

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.)
_____)

REDACTED

**CEDAR BAY GENERATING COMPANY'S REVISED
SIXTH 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 transcript of Cliff Evans (the "Deposition Transcript") which was filed with the Commission on June 3, 2015. Please note that on June 24, 2015, Cedar Bay filed its Sixth Request for Confidential Classification which included a blanket request for confidential treatment of the Deposition Transcript. This REVISED Sixth Request for Confidential Classification includes the full-size pages of the Deposition Transcript and is intended to supersede the blanket requests for confidential treatment with respect to the Deposition Transcript

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(excluding the index to Mr. Evans' deposition transcript, which will remain covered by the blanket request). In support of its request, Cedar Bay states as follows:

1. On June 3, 2015, Cedar Bay filed its Sixth Notice of Intent to Request Confidential Classification ("Sixth NOI")

COM _____
AFD _____
APA _____
ECO _____
ENG 1+CD
GCL 1+CD
IDM _____
TEL _____
CLK _____

related to the Deposition Transcript. On June 24, 2015, Cedar Bay filed its Sixth Request for Confidential Classification. Accordingly, Cedar Bay's original Sixth Request for Confidential Classification was timely. This REVISED Sixth Request only covers information that was already covered by Cedar Bay's Sixth NOI and Sixth Request, thus there has been and can be no lapse in confidential protection of the information covered by this REVISED Sixth Request. Please note that on June 29, 2015, Cedar Bay filed its Eighth Request for Confidential Classification which addressed the deposition transcript of Cliff Evans 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 Cliff Evans (in the "mini" version) which had been designated as testimony by FIPUG. Cedar Bay will file a separate Notice of Substitution of Exhibits whereby Cedar Bay will provide the Commission the full-page version of Exhibits A and B to the REVISED Eighth Request for Confidential Classification. This REVISED Sixth Request includes the full-page version of Mr. Evans' 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-size version of the Deposition Transcript of Cliff Evans 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 version of the Deposition Transcript 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 Transcript because the Deposition Transcript 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 Transcript as confidential and Cedar Bay has not voluntarily disclosed the information contained in the Deposition Transcript 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 Sixth Request for Confidential Classification be granted.

Respectfully submitted this 16th day of July, 2015.



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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 24th day of June, 2015.

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Florida Public Service Commission
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Tallahassee, Florida 32301

Mr. Ken Hoffman
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Anna H. Upton, P.L.
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Tallahassee, Florida 32312



Attorney

PSC DOCKET 150075-EI

CEDAR BAY GENERATING COMPANY'S
REVISED SIXTH 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.)
_____)

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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
SIXTH 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 Sixth Request for Confidential Classification (the "REVISED Sixth 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 Cliff Evans, one of the individuals

who has been deposed in connection with the above-styled proceeding and whose deposition is the subject of this REVISED Sixth 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 transcript of Cliff Evans as more specifically identified in Exhibits A and C of Cedar Bay's REVISED Sixth 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

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 15th 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.



Karen J. Fincher

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 DOCKET NO. 150075-EI
of Arrangement to Mitigate
Impact of Unfavorable Cedar Bay FILED: May 6, 2015
Power Purchase Obligation

Volume 1, Pages 1 - 108

THE DEPOSITION OF: CLIFFORD D. EVANS, JR.

AT THE INSTANCE OF: FIPUG AND OPC

DATE: May 27, 2015

TIME: Commenced at 9:08 a.m.
Terminated at 11:50 a.m.

PLACE: 2540 Shumard Oak Boulevard
Room 362
Tallahassee, Florida

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

ACCURATE STENOTYPE REPORTERS, INC.
2894-A Remington Green Lane
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(850) 878-2221

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20 JACOB POLLACK, ESQUIRE
21 MICHAEL GERGEN, ESQUIRE

22

23

24

25

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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	
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14 14 e-mail string, beginning 11-12-14	
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1 The following deposition of CLIFFORD D. EVANS, JR.,
2 was taken on oral examination, pursuant to notice, for
3 purposes of discovery, and for use as evidence, and for
4 other uses and purposes as may be permitted by the
5 applicable and governing rules. Reading and signing is
6 not waived.

7 * * *

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

11 THE WITNESS: I do.

12 Thereupon,

13 CLIFFORD D. EVANS, JR.
14 the witness herein, having been first duly sworn, was
15 examined and testified as follows:

16 MR. MOYLE: Good morning. I'm Jon Moyle. I
17 represent Florida Industrial Power Users Group. I
18 will be asking you some questions today, along with
19 the Office of Public Counsel.

20 For the record, please state your name and
21 business address.

22 THE WITNESS: My name is Clifford David
23 Edwards, Jr. My business address is 9405 Arrow
24 Point Boulevard, Charlotte, North Carolina, 28273.

25 MR. MOYLE: And you're a resident of North

1 Carolina?

2 THE WITNESS: I am.

3 MR. MOYLE: And that's more than 100 miles
4 from Florida; correct?

5 THE WITNESS: Yes.

6 MR. MOYLE: And from Tallahassee. The Office
7 of Public Counsel is going to ask you questions
8 first, followed by FIPUG. A couple of preliminary
9 matters I think.

10 We were taking depositions recently and just
11 had everybody in the room identify themselves. So
12 we will go ahead and do that, starting with your
13 counsel, since you've already identified yourself
14 and I've identified myself. Schef?

15 MR. WRIGHT: Schef Wright, and I represent
16 Cedar Bay and Cogentrix.

17 MR. POLLACK: Jacob Pollack. I'm here for
18 Cogentrix.

19 MR. GERGEN: Mike Gergen, from Latham &
20 Watkins, on behalf of Cogentrix.

21 MR. BUTLER: John Butler, representing FPL.

22 MR. SHEINKIN: Adam Sheinkin, representing
23 FPL.

24 MR. ELLIS: Phil Ellis, commission staff

25 MS. BARRERA: Martha Barrera, commission

1 staff.

2 MS. MTENGA: Moniaishi Mtenga, commission
3 staff.

4 MR. REHWINKEL: Charles Rehwinkel, Public
5 Counsel's Office.

6 MR. TRUITT: John Truitt, Pubic Counsel's
7 Office.

8 MR. FLETCHER: Bart Fletcher, Commission
9 staff.

10 MR. SUMPSWORTH: John Sumpsworth (phonetic),
11 staff.

12 MR. HIGGINS: Devlin Higgins, staff.

13 MS. WU: Jenny Wu, staff.

14 MR. MOYLE: Great. Mr. Truitt, your deponent.

15 MR. TRUITT: Thank you. OPC are going to
16 start off with reading the same notice we read in
17 the other depositions.

18 So, for the record, OPC intends to use this
19 deposition as a pure discovery deposition. Should
20 any party or staff choose to move any portion of
21 these depositions, including any attached exhibits,
22 into evidence, OPC intends to exercise any and all
23 related provisions found in the Rules of Civil
24 Procedure that are applicable, including objections
25 on any available grounds, as well as the right to

1 rebut the evidence.

2 DIRECT EXAMINATION

3 BY MR. TRUITT:

4 **Q** Morning, Mr. Evans.

5 A Morning.

6 **Q** You already have your name and address in the
7 record.

8 So I'll ask, how long have you worked for your
9 current employer, sir?

10 A Since 2004.

11 **Q** Okay. And what is your current job title?

12 A I'm senior vice-president of operations.

13 **Q** And how long have you been in that current
14 position?

15 A Since December of last year.

16 **Q** Okay. Could you give us a description of the
17 duties that go along with your current position,
18 please.

19 A I'm responsible for the operations and
20 maintenance of all the generating facilities under the
21 control of Cogentrix Energy Power Management. That
22 includes all the staff and personnel in the plants.

23 **Q** Okay. And how many direct reports do you
24 have?

25 A I have seven direct reports.

1 Q Okay. And then who do you report to?

2 A I report to the president of the company,
3 Douglas Miller.

4 Q Okay. And then could you please give us a
5 brief overview of your work history, including
6 positions with this employer.

7 A I graduated college in '79; worked for General
8 Electric for three years as a field service engineer;
9 left there and went to work for Jersey Central Power &
10 Light, a public utility in New Jersey; spent six years
11 there before I jumped into the independent power
12 business with a subsidiary of Jersey Central called
13 Energy Initiatives, worked there for several years.

14 I left there in 1991 to go to work for a
15 company called Cogen Technologies, and that was the
16 last time I changed jobs on purpose. Since then, my
17 company has been acquired, and I've been acquired with
18 it.

19 I was part of a sale to an Enron subsidiary.
20 Our company became East Coast Power; subsequently sold
21 to El Paso Energy in 2001; El Paso Energy sold some
22 facilities to Goldman Sachs in 2003, and I moved with
23 that sale. And then upon Goldman's acquisition in
24 December of 2003 of Cogentrix, I was part of the
25 management team moved from New York down to Charlotte

1 to help manage Cogentrix.

2 Q Immediately preceding your current position,
3 what was your position?

4 A I was a senior vice-president of asset
5 management and operations.

6 Q Okay. And then what was the general overview
7 of duties and responsibilities of that position?

8 A In that position I shared with another
9 gentleman responsibility for all the commercial and
10 operational activities for a smaller subset of plants
11 that we control.

12 Q Okay. And then with regards to the Cedar Bay
13 plant at issue in this docket, what are your specific
14 responsibilities and duties in that aspect?

15 A Currently the -- the general manager at that
16 facility reports up through Tracy Patterson, who was
17 one of my vice-presidents of operation, and then Tracy
18 reports to me, so --

19 Q Were you involved in any way with the
20 negotiations with FPL regarding its proposed purchase?

21 A I was.

22 Q How so?

23 A I participated on a team that met with Florida
24 Power & Light to discuss various terms of the
25 agreement. I did not participate in discussions

1 around the financial terms.

2 Q Okay. When did that involvement start?

3 A In the spring of 2014.

4 Q Were you involved in any way with the drafting
5 of the purchase and sale agreement itself?

6 A I -- I saw turns of the document and had an
7 opportunity to offer comments on it.

8 Q Okay. So would it be fair to say you were
9 more involved with reviewing-editing or drafting? I'm
10 actually looking for a specific distinction.

11 A Reviewing and editing. I did not draft.

12 Q Okay. Regarding the Cedar Bay facility, are
13 you overall responsible for any form of compliance --
14 regulatory compliance, environmental compliance, any
15 of those compliances?

16 A I am.

17 Q Okay. What types of compliance are you final
18 authority for?

19 A Well, I'm ultimately responsible for, as I
20 mentioned before, the operations and maintenance.
21 That includes the compliance with contracts, with
22 environmental regulations, with FRCC reliability
23 regulations pertaining to the facility.

24 Q Okay. And then you mentioned contracts. So
25 are you responsible for in any way any implementation

1 or execution of the current PPA between Cedar Bay and
2 FPL?

3 A Our organization is -- it's not exactly clear
4 on how -- how we interact. The operations and the
5 asset management teams function together to achieve
6 compliance in the contracts. I'm responsible for all
7 the personnel at the site and the work that they do to
8 comply with the contract. The asset management
9 function is responsible for, you know, the ultimate
10 commercial relationship with FPL.

11 Q Okay. Okay. To go back just a second,
12 regarding the negotiation, when you mentioned spring
13 of 2014, do you know if that's when the entire process
14 with Cogentrix negotiating with FPL started?

15 A That was the beginning of the discussions.

16 Q Okay. Spring of 2014, so I'm going to try to
17 narrow it down a little bit.

18 Can you put a month on that roughly?

19 A I'm not sure. I think it was April.

20 Q Okay. I want to talk a little bit about
21 Cogentrix's fleet in general to kind of get an idea
22 where Cedar Bay fits in that fleet.

23 How many coal-fired plants are in Cogentrix's
24 fleet?

25 A Three.

1 Q And can you tell me where they are?

2 A One is in Hopewell, Virginia; one is in
3 Norfolk, Virginia; and one is Cedar Bay in
4 Jacksonville, Florida.

5 Q Okay. And can you tell me the size in terms
6 of megawatts?

7 A The Hopewell and Portsmouth facilities are
8 pretty much identical, and they're about 120 megawatts
9 in electrical capacity. And Cedar Bay is nominally a
10 250 megawatt plant.

11 Q Are they the same type of coal-fired plant,
12 meaning the fluidized bed that you've discussed during
13 the presentation we had before the last depos?

14 A No. The Hopewell and Portsmouth plants are
15 very old and mature technology. They're stoker-fired
16 coal plants. They don't have the same environmental
17 performance as -- as the fluidized bed waters do.

18 Q Okay. Now in terms of revenues accruing to
19 Cogentrix from these facilities, where does Cedar Bay
20 rank in the list of the coal-fired plants?

21 MR. WRIGHT: Can you be a little more clear in
22 what you're asking?

23 BY MR. TRUITT:

24 Q In terms of the revenues that are coming in
25 based on the plant's generation of electricity and

1 sales, in terms of total volume of revenue.

2 MR. WRIGHT: Total dollars?

3 MR. TRUITT: Total dollars, right.

4 MR. WRIGHT: Per year?

5 MR. TRUITT: Not per megawatt or anything like
6 that. Kind of the big picture. I want to see
7 where Cedar Bay fits in Cogentrix's portfolio.

8 THE WITNESS: Cedar Bay's revenues to us
9 currently are larger. The other two plants are
10 currently merchant plants and are not under
11 contract.

12 BY MR. TRUITT:

13 Q Okay. What other types of plants does
14 Cogentrix have in its fleet as of today?

15 A We have two different types of solar
16 facilities, and we have numerous natural-gas-fired
17 facilities.

18 Q Okay. Can you give me a total number of
19 plants?

20 A We have a plant in New Jersey. We have six
21 plants in Georgia. We have six plants -- six gas
22 plants in California, one solar plant in California,
23 and one solar plant in Colorado.

24 Q Okay. Now, again, in terms of revenues
25 accruing to Cogentrix, with the same qualifiers as

1 before, just looking at the overall revenues accruing,
2 where does Cedar Bay rank in terms of the overall
3 Cogentrix fleet?

4 A I think Cedar Bay is the highest revenue
5 generator in the fleet.

6 Q I'm going to look back at some exhibits that
7 we had last time. I'm going to start with Exhibit 1.
8 And as a refresher, since it's been a little while,
9 this is from CB 0001517, which was provided by
10 Cogentrix to FIPUG, so it's a discovery request. It's
11 a summary page of a workbook regarding Cedar Bay and
12 monthly operations. It happens to be April 2013.

13 Do you recognize this type of report?

14 A Yes.

15 Q Okay. Do you, in your position, look at
16 reports like this?

17 A I do.

18 Q Okay. I want to look at the heat rate section
19 in the right-hand column. I know we had a discussion
20 with Mr. Patterson where we didn't quite know the
21 details for all the numbers. So I kind of want to go
22 through those again, because I want to understand what
23 calculations go into each of these heat rates if we
24 can.

25 So we have a list there -- do you see where

1 I'm talking about, generation only, average full load,
2 et cetera?

3 A I do.

4 Q Can you explain to us what each of those mean?

5 A I am not sure that I can. The generation --
6 I'll make an attempt.

7 Q Thank you.

8 A The generation-only heat rate is the total
9 amount of fuel consumed in the unit divided by only
10 the electrical generation, the kilowatt hours.

11 And since this plant generates steam, that's
12 not -- that's not a true measure of the efficiency of
13 the plant, because a lot of the steam is taken off for
14 production purpose, process purposes. And that also
15 considers the heat rate at partial loads, so it's a
16 very gross number. It's -- it's just total fuel in
17 divided by total electricity out over the period of
18 this month.

19 Average full load generation only is a
20 measurement of the fuel consumed divided by the full
21 load generation -- again, electrical generation only,
22 and only during the times when the plant is running at
23 full load, its normal steady state, full load
24 condition.

25 The gross plant heat rate is the gross

1 electricity generated -- in other words, we don't
2 subtract off the in-house consumption of
3 electricity -- divided by the -- well, it's the
4 total -- it's the total fuel divided by that gross
5 electrical output. There is also some accounting for
6 the process steam. I can't explain to you exactly how
7 that's done.

8 It's -- it -- I'm not sure which method the
9 plant is actually using for doing that, whether
10 they're subtracting the BTU thermal content of that
11 steam off from the fuel or whether they're somehow
12 ascribing a relationship with that steam to kilowatt
13 hours produced, whether they're creating a bogey
14 electrical production.

15 I'm not sure when method the plant is using.

16 **Q** Okay.

17 **A** The net plant heat rate, again, is the total
18 fuel consumed over only the electricity that is sent
19 over the transmission lines off to FPL. But it also
20 does include an adjustment for steam.

21 I'm not sure. I'm going to take that back. I
22 think it doesn't. I think the net plant equivalent is
23 the adjustment for steam.

24 **Q** Okay.

25 **A** And process is just how many BTUs we use -- we

1 consume to produce each pound of processed steam that
2 we send off to RockTenn.

3 Q Okay. Thank you. In looking at Cogentrix's
4 generating fleet, I'm sure there's probably a complex
5 metric that you use to evaluate the operations of your
6 fleet. But I'm trying to get an overview of, when
7 you're looking at the entire fleet, how do you review
8 the performance of the generating units in the fleet?
9 Big picture. I don't want to get in the weeds.

10 MR. WRIGHT: Can you be a little clearer? Are
11 you trying to ask him, does the company compare
12 performance of generators against -- generation
13 units against other generation units in the fleet
14 or what, John?

15 MR. TRUITT: Yes. Do they compare them
16 against one another in terms of, for example, is
17 revenues one of the things they use to compare? Do
18 they compare heat rates among similar fuel type, or
19 do they only look at specific generation type.

20 Like I understand the coal -- for example, the
21 coal, if you have a fluidized bed, and the other
22 two are not, do they compare them?

23 MR. WRIGHT: I would like to ask you to ask
24 some foundation questions --

25 MR. TRUITT: Okay.

1 MR. WRIGHT: -- as to whether and how the
2 company, if at all, compares generation units
3 against other generation units within the fleet. I
4 don't have any problem with what you're trying to
5 get at, and the questions you just gave as examples
6 are fine questions, but I'm not sure that the
7 foundation is there --

8 MR. TRUITT: Okay.

9 MR. WRIGHT: -- in reality.

10 BY MR. TRUITT:

11 Q With Cogentrix's generating fleet, do you
12 compare the performance of plants among other plants
13 in the fleet?

14 A It depends. For some plants that are
15 basically identical construction, we can compare one
16 against the other and try to understand the
17 differences. A large number of the plants are unique
18 in terms of their design and what their capability
19 should be.

20 So it's -- for instance, I can't -- I can't
21 easily compare Cedar Bay's performance against
22 Portsmouth or Hopewell's performance. I can't compare
23 it against a 50-megawatt gas turbine in California.
24 But I have four identical units in California that are
25 all 50-megawatt gas turbine plants, and I can compare

1 their performance against each other.

2 So each plant is really very unique, for the
3 most part.

4 Q Okay. Looking at the heat rate, in terms of
5 the coal-fired plants; you've got three of them, and I
6 know you mentioned the other were older technology.

7 How does Cedar Bay's heat rate compare to
8 theirs, if you know?

9 A I don't recall offhand what their numbers are,
10 but they're not terribly different.

11 Q Okay. And then from your position, looking at
12 these heat rates, is that about what you would expect
13 Cedar Bay to put out, based on, you know, historical
14 reviewing your fleet?

15 MR. BUTLER: John, I'm sorry, "these"
16 referring to --

17 MR. TRUITT: Sorry, the heat rate on
18 Exhibit 1.

19 MR. BUTLER: Exhibit 1?

20 MR. TRUITT: Yes.

21 A These -- I would like to see -- well, it --
22 again, it depends. The average full load heat rate
23 shown here at 12,065 BTUs per kilowatt hour, that's a
24 shade high. I would like to see that number down in
25 the 11,000, 11,800, 11,900, somewhere in that range.

1 That's a better comparison for me, you know,
2 historically, seeing a plant be able to do that.

3 BY MR. TRUITT:

4 Q Are you aware of any plans -- I guess I'll
5 preface this with: Assuming the PPA went forward as
6 it stands, you know, there's no sale, no closure, or
7 anything like that, future plans for Cedar Bay.

8 Were you aware of any plans to improve the
9 heat rate at Cedar Bay and Cogentrix?

10 A We did -- we did not have any specific plans
11 in place, but we do have a process of continuous
12 improvement. So we're always looking to try to
13 improve the performance of the plant. I don't know
14 that we had identified any particular initiatives at
15 that time.

16 Q Okay. And then I know Mr. Neff had spoken
17 earlier about the clean power plan, but I'd like to
18 get, from your position, your interpretation of the
19 clean power plan in the future and how it could affect
20 Cedar Bay, if you had anything else to add?

21 MR. WRIGHT: That's vague. You are speaking
22 of Section 111(d), Carbon Regulation, Clean Power
23 Plan?

24 MR. TRUITT: Correct.

25 A I rely on Mr. Neff, really, to interpret that.

1 I just -- I don't have time to climb into the
2 regulations and the development of those regulations
3 myself.

4 BY MR. TRUITT:

5 Q Okay. And that's fine.

6 Now, looking at heat rates and efficiency --
7 and that's the context I'm looking at.

8 A Uh-huh.

9 Q And I know historically, you know, Cedar Bay,
10 we had varying capacity factors over the years, and I
11 believe there were previous depositions; there were
12 discussions about future projections, whether it would
13 be decrease in capacity factor.

14 Do you recall -- is that your understanding of
15 Cedar Bay operating in the future under the PPA as the
16 plan goes?

17 A That was my expectation.

18 Q Okay. Now, in your experience, is it harmful
19 to run coal-fired plants at lower boiler loads, or
20 does it matter? By "harmful," I mean does it create
21 wear and tear on the equipment that would be greater
22 than if you're running it at full load?

23 A Running it at low loads does not create a --
24 an increased wear or -- it does not cause damage to
25 the facility.

1 Q Okay. Does running at low loads, is that
2 more -- is it inefficient as compared to running at
3 full loads?

4 A It's less efficient than running at full load.

5 Q Okay. How so? Would you just explain how
6 that works.

7 A If you look at the heat rate numbers provided
8 on Exhibit 1, and you -- you see the generation-only
9 heat rate at 14,845, and you compare that to the
10 average full load heat rate at 12,065, the major
11 difference there is the increased heat rate when you
12 operate at partial loads.

13 When you blend that in together for the full
14 plant operation during this particular month, you see
15 that the heat rate is much -- is much higher when
16 you're factoring in those partial load periods.

17 Q Okay. Thank you. I'm done with Exhibit 1. I
18 did want to flip to Exhibit 3, which is the
19 presentation that Cogentrix presented before we
20 started the depositions last time.

21 Do you have that, sir?

22 A Yes.

23 Q Okay. If you could flip to your Slide 6,
24 please, titled "Reliable Operating Performance."

25 A Okay.

1 Q Looking at the third bullet point -- no, I'm
2 sorry, the second bullet point. I apologize.

3 Number 3: Sourced and delivered coal from
4 more economical sources.

5 And I remember during a presentation, you
6 discussed that you'd looked at sourcing coal from more
7 economical sources.

8 I'd like to, for the record, get a picture of
9 where the coal comes from now -- we'll do that first.
10 So the coal is sourced now from?

11 A From a company called Nally & Hamilton. It's
12 a Central Appalachian coal out of Kentucky.

13 Q And then our understanding, that the price of
14 coal is indexed to the St. Johns River Power Park,
15 according to the PPA?

16 A No. The price that we get paid for our
17 electricity is indexed to the price of coal at St.
18 Johns River Power Park. The price we pay for coal is
19 completely disconnected from our revenue stream.

20 Q Okay. And so the way you worded that, I
21 assume that is different.

22 Can you explain what the difference is -- not
23 in terms of numbers. Do you -- is St. Johns River
24 lower or higher than the coal from Appalachia?

25 A St. Johns River Power Park does a great job

1 buying coal, and they buy coal at a lower price than
2 we're able to get it.

3 Q Okay. So then this, where it says, sourced
4 and delivered coal from more economical sources, just
5 for the record, can you explain to us what that bullet
6 meant, why you put that in the slide here?

7 A One of the things we discovered is that part
8 of the reason why St. Johns River Power Park can buy
9 their coal so much less expensively than we can is
10 because they source a lot of their coal from Columbia,
11 international coal, and have it shipped in.

12 And our facility has traditionally been
13 landlocked. It doesn't have a port facility. We've
14 had to receive our coal by rail, so that kind of
15 limited us to domestic sources of coal within a
16 reasonable rail distance.

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

Q Okay. Now --

9

A Excuse me. Let me clarify that.

10

Q Uh-huh.

11

12

13

14

15

Q Okay. Now, we had a discussion just a couple minutes ago about the difference in what you actually paid for the coal and then in terms of the electricity, what you're paid back, so there's that difference in the fuel.

20

Do other Cogentrix facilities have similar differences, that you're aware of? I'm trying to see if that term which is in this PPA appears anywhere else in your fleet.

24

A I don't think we have any PPAs at any of the other facilities in our fleet. So the -- these type

25

1 of terms don't exist in other facilities.

2 Q Okay. In your industry experience, is that
3 term unusual -- and by "unusual," I'm just meaning in
4 your experience, have you seen those types of terms
5 before? How common are they if you have?

6 A I don't think I've seen another facility that
7 was indexed to a -- to another generator in this
8 state. It's common for the electric price to be
9 indexed off of some fuel standard, so that aspect of
10 the Cedar Bay contract is not unusual. But the fact
11 that it's indexed against a price that they're
12 actually paying for -- for coal in a facility is a
13 little unique.

14 Q Okay. Fair enough.

15 Now assuming -- again, assuming the sale as
16 proposed doesn't grow through, and the PPA operates as
17 planned, what is Cogentrix's plans for the Cedar Bay
18 facility in 2025 when the PPA ends?

19 A At 2025, we would either -- depending on the
20 development of the market, if there was a market for
21 merchant energy in the state, we would -- we would
22 seek to enter that market, or -- we'd have to make a
23 determination at that point whether it made more sense
24 to shut the facility down and decommission it,
25 dismantle it, or operate it in emergent mode, or

1 perhaps convert it to burn renewables.

2 The CFP boilers can actually burn biomass
3 fairly economically. So we would have to reevaluate
4 whether there was an economic -- whether the economics
5 justified continued operation or not.

6 Q Okay. Internally Cogentrix, do you have a
7 working projection of what you think would occur,
8 given what you know right now? Do you have a
9 prediction, tentatively in 2025, if nothing changes,
10 Cogentrix will be doing X, or it's completely open,
11 and you have nothing on the books on what you're going
12 to do with it?

13 MR. BUTLER: I'm sorry. When you say nothing
14 on the books?

15 BY MR. TRUITT:

16 Q I mean nothing scheduled. You have no
17 proposals to do shut down, refit, anything.

18 A We have not developed any plans to
19 decommission the plant or shut it down.

20 Q Okay. Have there been any dismantlement
21 studies done for the Cedar Bay facility?

22 A We had a contractor come in and give us a --
23 an estimate of what he thought it would take to
24 dismantle the plant.

25 Q Okay. Did you review that estimate?

1 A I think I got a summary report of it. I
2 didn't review the detailed estimate.

3 Q Okay. So from the summary review, what's your
4 understanding of the dismantlement costs of the plant?

5 A Depending on the path and the amount of -- the
6 path we took and the amount of time we were willing to
7 wait to have the plant disassembled, at that point in
8 time that we received that -- that proposal, they
9 would have paid us somewhere between [REDACTED]
10 to dismantle the plant and take the scrap, or if we
11 were willing to invest more time, they had a strong
12 belief that there was a market for this equipment to
13 be disassembled and shipped overseas and reassembled
14 in a foreign country that required these type of
15 units.

16 Q And you said at the time. So when was that
17 done?

18 A Probably sometime last year. I don't remember
19 exactly when.

20 Q Okay. In terms of the scope of the
21 dismantlement, to what level of dismantlement would it
22 have gone to? And by that I mean, do you go down to
23 the foundation? Do you completely return the earth to
24 earth?

25 A My understanding of the requirements were we

1 go to the foundations.

2 Q Okay. Just to touch on the coal question
3 before I move on to something else, has Cogentrix
4 prepared a budget or forecast that shows coal price
5 Delta of much less or even zero over the 2015 to 2025
6 horizon?

7 MR. BUTLER: I'm sorry, John --

8 MR. WRIGHT: I object. I think that's vague.

9 BY MR. TRUITT:

10 Q From what the current assumptions are under
11 the current contract?

12 MR. WRIGHT: I still object to that as being
13 vague. Just try it again. I'm honestly not sure
14 what you're asking.

15 BY MR. TRUITT:

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 MR. BUTLER: John, when you say "other index,"
24 you're talking about the SJRPP?

25 MR. TRUITT: Yes.

1 MR. WRIGHT: Did you understand the question?

2 THE WITNESS: No, not exactly.

3 BY MR. TRUITT:

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Q Okay. So then have you done the new -- have
19 you done a forecast using that new assumption?

20 A No.

21 Q No. Okay.

22 MR. WRIGHT: I just want to interject that --
23 just to be clear for the record of this specific
24 deposition, since we're now talking about specific
25 numbers and business behavior by our

1 counterparties, this whole thing is confidential.
2 I just don't think we got that on the record at the
3 outset of this one today.

4 BY MR. TRUITT:

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 Q But you didn't share those with FPL?

20 A No.

21 Q Okay. I'm going to hand out -- this will be
22 my only handout today. So this is going to be Exhibit
23 23. It's -- it's technically the corrected
24 confidential Exhibit TLH-2 that FPL had provided.
25 It's the purchase and sale agreement between Florida

1 Power & Light and CBAS. I just wanted to use the
2 version we already had going through. This is going
3 to be 23.

4 (Exhibit No. 23 was identified for the
5 record.)

6 BY MR. TRUITT:

7 Q Based on some discussions earlier, it's safe
8 to assume that you're relatively familiar with this
9 document, sir?

10 A It's been a long time since I looked at it.

11 Q Okay. I'm going to walk through some specific
12 things. So if you need a minute or something to look,
13 please let me know; that's fine. I understand it's a
14 big document, and it's been a little while. It can
15 get a little fuzzy.

16 I wanted to flip to -- when I'm using page
17 numbers, I'm going to reference the page numbers in
18 the top right-hand number that FPL has Bates stamped
19 on these exhibits, so that way everybody will be on
20 the same page.

21 A Okay.

22 Q First I want to flip to page 144. It's going
23 to be Schedule 1.01B, Sellers' Knowledgeable of
24 Individuals.

25 Do you see that, sir?

1 A Yes.

2 Q And your name is on that at number 6?

3 A Yes, it is.

4 Q Can you, for the record, explain what gets you
5 put on this list?

6 A No.

7 Q Okay. Can you tell us why you think you're on
8 this list?

9 A Because of my -- my historical work on the
10 project.

11 Q Okay. Do you know all the other people on
12 this list?

13 A I do.

14 Q Okay. Can you just briefly for the record
15 explain who these people are?

16 A James Larocque is a -- a Carlyle Group
17 employee. Douglas Miller is the president of
18 Cogentrix Energy Power Management. Mark Rudolph was
19 deposed here a few weeks ago; he is our chief
20 financial officer.

21 Gary Carraux is senior vice-president and the
22 chief risk officer for Cogentrix.

23 Rick Neff is our senior vice-president of
24 environmental health and safety.

25 John Gasbarro is the senior vice-president of

1 asset management.

2 And Gary Heichel -- I'm not sure of his exact
3 title, but he's our tax manager. He's the lead tax
4 person.

5 Q So there is only one person on there not
6 Cogentrix?

7 A That's correct.

8 Q Okay. Now, you stated earlier that you were
9 there at the beginning when the negotiations started
10 with FPL; correct?

11 A Yes.

12 Q All right. Were you aware of any other
13 discussions of asset transactions between Cogentrix
14 and NextEra that were occurring either in relation to,
15 parallel with, at the same time as this negotiation
16 when this one started?

17 A Regarding a different facility?

18 Q Yes.

19 A I'm not aware of any.

20 Q Are you aware of any other discussions
21 regarding asset transaction between Carlyle and
22 NextEra that were either in conjunction with, parallel
23 with, same time as this --

24 A Separate from Cedar Bay?

25 Q Correct.

1 A I'm not aware of any.

2 Q Okay. Now, you said you looked at this,
3 reviewing and editing, and you had input during the
4 process. So as the senior VP of operations, from that
5 perspective, I'm looking at it from your position,
6 what were the key provisions in the purchase and sale
7 agreement that you really focussed on?

8 I mean, you can even go down the table of
9 contents. I'm just trying to get a big picture of
10 where you fit in in terms of this whole document.

11 A The things that I was most concerned with in
12 reviewing this document was to make sure that there
13 were no statements made that weren't factual, that the
14 correct information was conveyed to FPL for their
15 diligence process, and that we were going to be able
16 to meet the covenants of the seller.

17 Q Okay. There is a term I did want to
18 specifically ask about on page 40. Looking at
19 Article 7 -- do you see that?

20 A Yes.

21 Q Okay. Just a second. Do you see 7.01B, where
22 it says FPSC?

23 A I do.

24 Q Okay. There's a term in here -- again, page
25 numbering on these is in the top right-hand corner,

1 sorry.

2 Where it says, soon as practicable, and it
3 mentions purchaser, which is FPL. That's my
4 understanding; correct?

5 A Yes.

6 Q Okay. That they were going to file to request
7 cost recovery at the purchaser's weighted average cost
8 of capital.

9 Do you see that term there?

10 A I do.

11 Q Did Cogentrix provide that term?

12 A Did we provide that term?

13 Q Yeah.

14 A No.

15 Q Okay. Now, looking through, the purchase and
16 sale agreement has a purchase price of \$520,500,000;
17 is that correct?

18 A I'm not sure where that is located.

19 Q I can get you a page number in just a second.
20 Let me see. Page 18, Article 2, 2.02.

21 A Okay. Yes.

22 Q Okay. Could you tell us when the parties
23 agreed that that was the right number?

24 A I can't tell you. I don't know. I didn't --
25 as I mentioned before, I didn't participate in the

1 financial negotiations, the negotiations of the
2 number.

3 Q Okay.

4 A My -- my role was more focused on other terms
5 in the contract and providing diligence materials to
6 help FPL get comfortable with the deal.

7 Q Okay. In terms of -- in terms of the
8 materials for the diligence, I know previously we had
9 seen a valuation allocation by Duff & Phelps.

10 Do you recall what I'm speaking about; that
11 was done in 2013? Let me do it this way.

12 Can you look at Exhibit 18. We'll do it that
13 way. We're going to come right back to this one,
14 so ...

15 A Okay. Okay.

16 Q Do you recognize this valuation?

17 A No, I've never seen it before.

18 Q Okay. Now, what it says on the cover, it's a
19 valuation of certain tangible and intangible assets
20 and liabilities, Cogentrix -- prepared for Cogentrix
21 on the cover by Duff & Phelps; correct?

22 A Yes.

23 Q In terms of the materials that were given to
24 FPL, do you know if this was ever provided to FPL?

25 A I do not know.

1 Q You stated you had never seen this before.
2 Had you ever heard of this report before?

3 A I've heard it discussed.

4 Q Okay. In what context?

5 A Well, it had been explained to me that this
6 was a process that was followed to divide the purchase
7 price that Carlyle -- the Carlyle Group paid -- or the
8 investors in the Carlyle Group paid to Goldman Sachs
9 for five entities, as well as our home office
10 organization. And this was the method that was used
11 to apportion that purchase cost up against the various
12 assets.

13 Q Okay. Are you aware of any other valuations
14 either Cogentrix did or Cogentrix had performed on
15 Cogentrix's behalf of the Cedar Bay PPA?

16 A I'm not. That's not my normal role to
17 participate.

18 Q Okay. Are you aware if there were any other
19 valuations provided to FPL during the negotiations --

20 MR. WRIGHT: I'm going to object --

21 MR. TRUITT: Regarding the PPA.

22 MR. WRIGHT: Thank you.

23 A I didn't -- I didn't participate in the
24 financial negotiation.

25 BY MR. TRUITT:

1 Q Looking at this Duff & Phelps real quick -- I
2 know you said you haven't seen it. I want to look at
3 a page, though, of it, Exhibit D-2. These are Bates
4 stamp numbered by Cogentrix, so it's going to be CB
5 0042948.

6 A Okay.

7 (Discussion off the record.)

8 BY MR. TRUITT:

9 Q Now, not having seen this before, I'm not
10 going to ask you if you agree with all the numbers or
11 anything. That's not where I'm going. I'm using this
12 as an example.

13 So I'm looking at a chart for the PPA from
14 2012 to 2024. Do you -- would you agree with my
15 statement of that?

16 A I see it, yes.

17 Q Okay. Do you see on the left column, they
18 have capacity factors, outputs, revenues, heat rate,
19 et cetera?

20 Do you see that?

21 A Yes.

22 Q Okay. I just want to look just generally
23 speaking, when you look across the chart at capacity
24 factor, for example, you can see that it fluctuates;
25 correct?

1 A Yes.

2 Q Now, not the values of the number, but the
3 fluctuation is what I'm talking about. Is that normal
4 when you're looking at what a generating facility puts
5 out every year, that it's going to vary somewhat, in
6 your experience?

7 A The capacity factor very often varies year to
8 year, yes.

9 Q Would that be the same for the heat rate?

10 A The heat rate will also vary year to year,
11 oftentimes because of the capacity factor or because
12 of changes in steam load to our thermal host.

13 Q Okay. Is there -- in your position as senior
14 VP of operations, do you look at forward-projected
15 operations of plants at this level scale, looking
16 several years in the future, predicting what the
17 capacity factor of a plant would be, what heat rate it
18 would have, et cetera?

19 A Not -- not to the extent we used to.

20 Q Not to the extent you used to. Okay. But you
21 have done it before in the past?

22 A Yes.

23 Q Generally speaking, when you do that
24 forward-look, how do you come up with the values that
25 fill in that chart?

1 A Well, oftentimes we will hire a consultant to
2 do a study of the -- of a particular market and the --
3 the generation mix in that market and the expectations
4 for unit retirements and new unit construction and
5 forward prices for natural gas and coal.

6 And we obtain from the consultant an estimate
7 on what they think the capacity factor would be going
8 forward.

9 Q Okay. In terms of future projected heat
10 rates, how do you guys normally -- when you're doing a
11 chart like that, how would you predict what the heat
12 rate is going to be?

13 A We basically use our historical information
14 and see what the heat rate was at similar capacity
15 factors historically, and we'll use those going
16 forward.

17 Q Okay. Now, I'm not going to go back to that
18 anymore. Thank you for indulging me on that one.

19 Are you aware of any contract disputes between
20 Cedar Bay and any -- or Cogentrix and any entities it
21 has contracts with regarding the Cedar Bay facility?

22 A There were -- there were times when we made
23 claims for *force majeure* because of storm damage or
24 other things, and -- and FPL hasn't always agreed with
25 us. So there have been -- have been some

1 disagreements historically over that point.

2 My understanding is that sometime before my
3 arrival at Cogentrix and my participation in the
4 management of Cedar Bay, that there was actually, you
5 know, some larger dispute that was ultimately settled
6 through legal action.

7 Q Okay. Are you aware of any currently ongoing
8 contract disputes in the same context?

9 A No. I'm not aware of any disputes currently.

10 Q Okay. And I know previously during the
11 presentation in some of the previous depositions, am I
12 correct in my assumption in saying that Cedar Bay, the
13 less it runs, the more profitable it is?

14 A That's correct.

15 Q Okay. And can you explain why that statement
16 is an accurate statement?

17 A Because Cedar Bay loses money on every
18 megawatt hour that it sells to Florida Power & Light.
19 We have a negative energy margin, which means it costs
20 us more to produce that megawatt hour than we get paid
21 for it.

22 Q Okay. And what's the main driver for that
23 negative energy margin?

24 A The main driver for that is the fuel cost and
25 the fact that what we're paid for energy isn't based

1 on what we pay for fuel; it's based on what's paid for
2 fuel by St. Johns River Power Park.

3 Q Right. Okay. And so, again, assuming the
4 sale doesn't go through, and the PPA exists as it
5 stands right now, you know, that's how we move
6 forward; in some of the previous depositions, there
7 were discussions that it would be predicted that Cedar
8 Bay would actually operate less going into the future.

9 Is that correct?

10 A That's our assumption.

11 Q Okay. So the less it operates and the more
12 profitable it is, why does Cogentrix want to sell
13 Cedar Bay?

14 MR. WRIGHT: I'm going to object. Cogentrix
15 isn't selling Cedar Bay; CBAS Power Holdings is.
16 And additionally, I'm not sure you have foundation
17 to ask this witness that question. But you can ask
18 it again, clearly, and he can answer if he can
19 answer.

20 BY MR. TRUITT:

21 Q Okay. Given that prediction, it will operate
22 less, and the less it operates, the more profitable it
23 is, in your opinion, what is the incentive to sell
24 CBAS, rather than operating as it stands right now?

25 A Well, we now work -- you know, the work we now

1 do is on behalf of investors in a fund, in the Carlyle
2 Group. And working for a fund is a lot different than
3 all of my previous experience where we owned the
4 facility for the long haul, and we would have been
5 very happy just continuing to operate Cedar Bay.

6 And so there are some dynamics in the fund
7 world and in returning money to investors and in
8 avoiding operational risks that -- I don't participate
9 in those discussions, but it's my belief that -- that
10 those conditions incentivize the investors to avoid
11 operational risk and to -- and to get a return of
12 their invested capital and a return on it at the
13 earliest opportunity.

14 Q Okay. Sorry. Just a second.

15 So based on that answer, it leads me to the
16 question of, are you aware whether FPL approached
17 Cogentrix regarding the sale, or did some other entity
18 approach FPL with the proposal of the sale?

19 A FPL approached us.

20 MR. TRUITT: If we could, maybe we'll go off
21 the record and take maybe a five-minute break. And
22 I want to get back and go through the purchase and
23 sale agreement at one time and not really stop on
24 that so we don't get lost, if that works?

25 MR. WRIGHT: Of course.

1 (Short recess.)

2 BY MR. TRUITT:

3 Q Mr. Evans, I wanted to do a few cleanup
4 questions -- I realize there was a couple -- before we
5 do the purchase and sale agreement.

6 Did -- you had discussed -- when we talked
7 about the negative energy margin earlier, did Cedar
8 Bay share with FPL in the negotiation process any
9 future measures to improve that negative energy
10 margin, that you're aware of?

11 A I don't believe that was part of -- I wasn't
12 aware of any conversations.

13 Q Okay. And then the steam contract with
14 RockTenn -- you're aware of what I'm talking about;
15 correct?

16 A Yes.

17 Q It's my understanding that -- was the contract
18 amended recently -- by recently, in the last couple of
19 years?

20 A Yes.

21 Q Okay. Can you explain what the amendments did
22 for the contract? Like, what was the intent of that?

23 A The -- the contract was amended -- and I think
24 it was early 2013 -- to extend its term. It was due
25 to expire at the end of 2060, and so we extended its

1 term through the full term of the purchase agreement.

2 We also changed the pricing structure of that
3 agreement. The original agreement had a very high
4 fixed price, like a capacity price, and a low energy
5 price. What that did was, it encouraged RockTenn mill
6 to consume as much steam as they could.

7 And if you looked at the underlying economics,
8 the mill could actually produce -- on an overall
9 basis, it could produce its own steam in its gas-fired
10 boilers at a lower price than what it was paying
11 overall to Cedar Bay for that steam.

12 So we restructured the agreement, [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED]
21 [REDACTED] [REDACTED]
22 [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED]
25 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

So the net effect was that it lowered the --
it lowered the mill's total energy cost for steam, and
it extended the contract throughout the term of the
PPA for us.

Q Okay. Now, based on that answer, if the steam
contract had expired, you hadn't extended it, would
Cedar Bay have remained a qualifying facility?

A Cedar Bay would have had to take some
additional actions to maintain a qualified facility.
We would have had to develop a different steam host.

Q So that steam contract was the contract that
made you a qualifying facility?

A Yes.

Q And then just to be clear, it's -- you stated
today that no one in Cogentrix management approached
FPL about selling CBAS?

A This time. There have been multiple times in
the past when either Cogentrix or -- you know, where
Cogentrix had approached FPL.

Q Regarding this facility?

A Yes.

1 Q Okay. When was the last time that occurred;
2 are you aware?

3 A It was many years ago, maybe 2010, 2009. I'm
4 not sure. We were never able to really develop a --
5 an interest on both sides to do anything.

6 Q But roughly five years ago would have been the
7 most recent attempt?

8 A Something like that.

9 Q Okay. That's fair enough.

10 A Okay. Now I'm going to look at 23, the
11 purchase and sale agreement. I was kind of going to
12 go through some terms.

13 A Now, again, I know you had pieces of this that
14 you worked on, sir. So if you didn't touch it, that's
15 fine. Tell me I don't know; doesn't matter.

16 A Okay.

17 Q But I just want to go through and kind of
18 check some blocks. I'm going to start out on page --
19 again, I'm going to use the page numbering at the top
20 right-hand corner. Page 25, and I'm looking at
21 section 3.11, legal proceedings.

22 A Okay.

23 Q It says here, except as set forth in Schedule
24 3.11, as of the date hereof, and then the front is
25 dated December 10th, 2014. It says, There are no

1 actions or proceedings about which the seller, CBAS,
2 or any subsidiary has received written notice pending.
3 That's as of that date.

4 Is this still an accurate statement, to your
5 knowledge, as of today?

6 A To my knowledge, it's accurate.

7 Q Okay. I'm going to flip to Page 32. And I'm
8 looking at 4.09, acquisition as investment.

9 Are you there, sir?

10 A Yes.

11 Q Okay. Do you see where it says, the
12 purchaser, which is FPL -- is acquiring CBAS's
13 interest for its own account as an investment without
14 the intent to sell, transfer, or otherwise distribute.

15 Do you see that section there, sir?

16 A I do.

17 Q Was that a condition that Cogentrix wanted in
18 this contract, to your knowledge?

19 A I don't know.

20 Q Do you know anything about that term?

21 A No.

22 Q All right. I'm going to look at Page 36,
23 entitled "Supplemental Disclosure."

24 A Okay.

25 Q It discusses the -- until the date following

1 three business days prior to closing date, seller has
2 the right but not obligation to supplement or amend
3 its disclosure schedules.

4 Have there been any -- have there been any
5 supplements or amendments that we don't have in this
6 document here that you're aware of?

7 A I'm not aware of any.

8 Q Would you -- earlier you talked about
9 diligence in ensuring they got everything.

10 Would you be aware if there had been
11 supplements or amendments?

12 A Probably not at this point, just because I'm
13 not in the middle of those conversations any longer.

14 Q Okay. When did you exit the conversations? I
15 guess I will ask that.

16 A I don't know that I formally exited the
17 conversations; it's just that I -- once this agreement
18 was signed, we kind of moved along different paths
19 to -- to affect our pieces, you know.

20 My big focus has been on the continued
21 operation and maintenance of the facility. So I
22 haven't followed -- you know, there may have been --
23 you know, there may have been things that happened on
24 the legal front that might have generated some -- some
25 follow-up or cleanup on the document that I'm unaware

1 of.

2 Q Okay. Look at page 97. It's actually
3 page 95, 96, and 97. There is a letter dated
4 February 9th.

5 Do you see that, sir?

6 A I do.

7 Q It has your signature on page 97?

8 A It does.

9 Q Okay. So, again, I'm trying to kind of get
10 down to a time frame. Is this -- this letter appears
11 to be amending some dates.

12 But just in terms of when you were last
13 actively involved with this purchase and sale
14 agreement, this is the place I locate your signature
15 in here. Would it be accurate to say this is the last
16 time you were actively involved with this purchase and
17 sale agreement?

18 A This is probably the last change that I'm
19 familiar with, yes.

20 Q Okay.

21 A But I'm guessing. I don't know that for a
22 fact. I --

23 Q Okay. That's fine. I was just trying to get
24 a rough time frame is all. That's fine. If you don't
25 recall exactly, that's okay.

1 I'm going to go back to page 39. I'm looking
2 at section 6.01, governmental approval, third party
3 consents; do you see that section?

4 A I do.

5 Q Toward the end of that paragraph -- let's see,
6 after the semicolon, six lines up from the bottom,
7 there is a clause there that states: Purchaser will
8 not refile, restate, amend, or modify this FPSC
9 petition without prior written consent of the seller,
10 which would be CBAS.

11 Do you see that sentence or clause there?

12 A I do. I do.

13 Q Okay. Are you aware of any requests by FPL to
14 amend or modify its petition to the Public Service
15 Commission?

16 A I'm not aware.

17 Q Okay. Again, would you be aware if something
18 like that had occurred?

19 A Not necessarily.

20 Q Okay.

21 A I might.

22 Q That's fine. I'm going to flip to page 41.

23 A Okay.

24 Q There is a big block paragraph at the top
25 half, which is a bleed-over of 7.01B, which is roughly

1 discussing the actions of the Florida Public Service
2 Commission. Kind of almost right in the middle of
3 that, there's a sentence that states: Purchaser
4 agrees it will file the FPSC petition with the express
5 request that FPSC grant the petition and approve this
6 agreement and the transaction set forth herein in
7 their entirety without any modification thereto.

8 Do you see that section?

9 A I do.

10 Q Okay. Is that a clause that Cogentrix had
11 wanted in this contract, to your knowledge?

12 A I believe it was.

13 Q Okay. Can you explain why?

14 A Because we had agreed to -- to enter into this
15 transaction for a -- a certain purchase price, and we
16 did not want to take the -- we -- we -- I think this
17 plays in with some other terms of the agreement,
18 that -- where we may be obligated to close once the
19 Florida Public Service Commission approves the deal.

20 And if the Florida Public Service Commission
21 were to come in and cut the purchase price in half, we
22 did not want to be obligated to actually close on that
23 purchase because that wasn't what our agreement was.

24 Q Okay.

25 A And so we -- we are, for the most part,

1 unfamiliar with how the Florida Public Service
2 Commission works and how it acts. That's FPL's
3 strength in this negotiating process.

4 So we wanted to make sure -- this is the deal
5 we're presenting. If it changes from that, we've got
6 to have the ability to get out of it.

7 Q Okay. You mentioned in your answer purchase
8 price. Is this a main concern, or are you -- to your
9 knowledge, are there other terms in this contract that
10 would also be, you know, deal killers should the
11 Public Service Commission amend and change?

12 A I can't think of exactly what they are, but I
13 believe there are other things besides the purchase
14 price.

15 Q Okay. It's not just the purchase price; it's
16 the contract as a whole?

17 A Yes.

18 Q Would that be an accurate statement?

19 A Yes.

20 Q Okay. If we could flip to page 43, article 8,
21 I'm looking down at 8.05, governmental or regulatory
22 approvals.

23 Do you see that section, sir?

24 A I do.

25 Q Do you see there in sub (a), talking about the

1 order from FERC pursuant to section 203. And it says,
2 The order shall have been issued in full force and
3 effect, and the period for seeking rehearing shall
4 have expired.

5 Do you see that?

6 A I do.

7 Q You understand, given FERC orders, what that
8 means? There's an option, if the order comes out, a
9 rehearing can be requested. There's kind of a time
10 period where it's not set in stone?

11 A Yes.

12 Q Okay. And you see B, it says, Tthe Florida
13 Public Service Commission order shall have been
14 issued.

15 A Yes.

16 Q Okay. So there's a distinct difference in
17 language there. Do you -- are you aware, or to your
18 knowledge, why the language isn't similar?

19 A I'm not.

20 Q Okay. Are you aware of any discussions about
21 what would happen if the hypothetical occurred where
22 this is approved, and then it's appealed and
23 overturned, what would happen?

24 If it's approved by the commission, I'm sorry,
25 and then a party appeals it, and a higher court

1 overturns it, are you aware of any discussions about
2 what would happen under that scenario?

3 A It was my belief that section 8.05A was
4 intended to require that the course of any appeals be
5 completed before the --

6 Q I'm sorry. I'm looking at B, an order from
7 the Public Service Commission.

8 A (Examining document.) I guess I'm not sure
9 what you're asking me.

10 Q Okay. What I mean is, in your position, were
11 you ever aware of any discussions where the
12 hypothetical was presented -- let's suppose the order
13 is issued -- it's approved by the Public Service
14 Commission, an order is issued approving it; a party
15 appeals it, and it's overturned by a higher court,
16 then we're going to do what?

17 Were you ever a part of a discussion like
18 that? I'm sure some lawyers had that discussion. I'm
19 just asking if you were ever part of that discussion.

20 A I wasn't.

21 Q Okay.

22 MR. BUTLER: John, you're aware the FPSC order
23 is defined as nonappealable in --

24 MR. TRUITT: Yes. I'm just trying to clarify
25 some of the language versus the other descriptions

1 and see what his understanding of it was.

2 BY MR. TRUITT:

3 Q If you could flip to 51, which is a carryover
4 from article 11 talking about indemnifications.

5 A Okay.

6 Q I'm looking at II there, toward the top of
7 page 2, where it says, notwithstanding the foregoing,
8 seller shall have no obligation or liabilities
9 under -- and it goes through some discussion.

10 Do you see that, sir?

11 A I do.

12 Q It states here that there's a deductible in
13 terms of the indemnification.

14 Do you see that?

15 A I do.

16 Q Okay. To your knowledge, were you involved
17 with this term, this section?

18 A No.

19 Q Okay. Were you a party to any discussions
20 revolving around indemnification --

21 A No.

22 Q -- aspects of this contract at all?

23 A No.

24 Q Okay. And then I'm going to go to page 56
25 where we have a termination article 12.

1 Do you see where I am?

2 A I do.

3 Q Okay. I'm looking specifically at 12.01B(i)
4 there, where it says: If closing has not occurred on
5 or before September 1st, 2015, which date may be
6 extended up to 15 month anniversary.

7 I will give you a second to read that, and I
8 will ask you if the statement I'm making is accurate.

9 MR. MOYLE: What section?

10 MR. TRUITT: 12.01B, I on page 56.

11 MR. MOYLE: Thank you.

12 BY MR. TRUITT:

13 Q Is my reading correct in that, if PSC has not
14 issued the order by the closing date, then either CBAS
15 or FPL, unilaterally, could extend the closing date?

16 MR. WRIGHT: I'm just going to object to the
17 extent it calls for a legal conclusion. He can
18 answer with respect to his understanding of the
19 agreement.

20 MR. TRUITT: Okay.

21 MR. WRIGHT: Contract speaks for itself.

22 A (Examining document.) This appears to suggest
23 that either party can request an extension.

24 BY MR. TRUITT:

25 Q Okay. In terms of your part that you played

1 in the negotiations and the discussion of this
2 contract -- so, again, from your knowledge,
3 perspective only -- did you have discussions about
4 when the Public Service Commission may issue an order,
5 the time frame that you guys were looking for?

6 A We -- we had an expectation that this deal
7 would close by sometime midyear 2015.

8 Q And did you have contingency discussions that,
9 should it not close by then, how far into the future
10 it could go?

11 A I -- I wasn't involved in any conversations
12 along those lines.

13 Q Okay. The last question is more of a general
14 question that actually goes all the way to the back,
15 page 222, schedule 3.19 regarding insurance.

16 Do you see that chart there, sir?

17 A I do.

18 Q Okay. See, we have several different values,
19 [REDACTED] and there's another one, [REDACTED]
20 [REDACTED] and [REDACTED]; do you see how those
21 are kind of different?

22 Do you know what these values represent?

23 A The -- I have a very vague understanding of
24 the insurance provisions. I'm not an expert on them
25 by any means. But the property insurance on the

1 project is established in different layers with
2 different insurance companies participating in
3 different percentages for the different layers.

4 It all depends on their appetite.

5 Q Okay. And so do you know why the values are
6 different?

7 A Different tiers of -- you know, depending on
8 what a potential property damage claim would be, if it
9 was -- if the amount was above [REDACTED] the
10 coverages at [REDACTED] -- or up to [REDACTED]
11 would then kick in. So it's all about who covers a
12 property damage event and in what percentage they
13 cover it.

14 Q Okay. I appreciate you walking through that
15 with me.

16 MR. TRUITT: I don't have anything else.

17 Thank you.

18 CROSS EXAMINATION

19 BY MR. MOYLE:

20 Q Good morning, Mr. Evans. I'm going to walk
21 through some questions with you based on the answers
22 you gave to OPC largely to clarify.

23 You had mentioned you graduated from college.
24 Where did you go to college?

25 A I went to undergraduate at Stevens Institute

1 of Technology and graduate school at Monmouth
2 University.

3 Q At Monmouth?

4 A Monmouth. At the time, it was Monmouth
5 College; now it's Monmouth University.

6 Q Is that New Hampshire?

7 A West Long Branch, New Jersey.

8 Q New Jersey. Then what did you get a degree
9 in? Was it an engineering degree or a technical
10 degree?

11 A I have a bachelor of engineering degree and a
12 master's of business administration from Monmouth.

13 Q Okay. You had said you moved from New York to
14 Charlotte.

15 Why did you move from New York to Charlotte?
16 Is that when Goldman sold their interest or --

17 A No.

18 Q Just tell me.

19 A I was living in Houston, working for El Paso
20 Energy when El Paso Energy sold the Linden
21 Cogeneration Facility to Goldman Sachs. That was in
22 October of 2003. When they completed that sale, I --
23 I essentially went with the transaction and became an
24 employee of Goldman Sachs.

25 In December of 2003, Goldman Sachs acquired

1 Cogentrix Energy, and in late January of 2004, Goldman
2 Sachs decided that they were going to manage the
3 Cogentrix business from Cogentrix's home offices in
4 Charlotte. So I was relocated to the Charlotte area.

5 Q Were you still an employee of Goldman at the
6 time?

7 A At the time, I was.

8 Q And how long did you remain an employee of
9 Goldman?

10 A I think until about October of 2004. They --
11 they asked me to move onto the Cogentrix payroll.

12 Q Why did the -- why was that change made?

13 A Mostly for convenience, because the people
14 that I worked with were really all the Cogentrix
15 people and not necessarily -- I didn't have a lot of
16 interactions with Goldman Sachs at the time.

17 So when it came time for doing performance
18 reviews, there weren't a lot of people that I could
19 identify in my performance reviews at Goldman that
20 could provide input into what I was doing. All the
21 people were at Cogentrix. So they asked me to move to
22 Cogentrix.

23 Q Would you just briefly characterize Goldman --
24 I guess Goldman Sachs, it's an investment company;
25 they have energy interests? Just give me a narrative,

1 if you would.

2 A Well, Goldman Sachs is a large investment
3 bank, and they also had a significant commodities
4 trading group. They were trying to enhance and build
5 up their energy trading desk at the time they acquired
6 Linden Cogeneration, and they thought that -- with the
7 belief that having physical assets in the market would
8 help their trading position.

9 And so they -- when they acquired Linden and
10 then subsequently Cogentrix, they did it on their
11 balance sheet. So we were actually owned by Goldman
12 Sachs.

13 But with the financial crisis in the 2008 time
14 period, Goldman Sachs converted to become a commercial
15 bank in order to participate in some of the -- you
16 know, some of the bailout funds, I guess is the way I
17 describe them, to help them survive their financial
18 crisis.

19 And as a result of converting to a commercial
20 bank, different rules applied. And having ownership
21 of -- of these cogeneration plants or independent
22 power plants was not integral to the business of a
23 commercial bank. And ultimately they -- they looked
24 to divest.

25 Q It was a business decision that Goldman

1 made --

2 A Yeah.

3 Q -- to divest? Were you involved in it?

4 A In making that decision? No.

5 Q But it wasn't required to be done, as far as
6 you know; was it?

7 A Exactly what was required and when, based on
8 the Volcker rule and other rules that were applying to
9 commercial banks is well beyond me.

10 Q If I said Goldman had -- is characterized by
11 folks that are pretty knowledgeable in business and
12 pretty smart folks, would you disagree with that?

13 A I'd probably want to go on an
14 individual-by-individual basis.

15 Q You would agree it's one of the leading
16 investment banking companies in the world; right?

17 A Yes.

18 Q It's publicly traded?

19 A Yes.

20 Q They generally make money?

21 A Generally.

22 Q Do you know how much Goldman sold their
23 interest in Cedar Bay and related assets for to
24 Carlyle?

25 A I don't remember offhand what the number was.

1 Q Let me refer you to Exhibit 17 that's
2 previously been marked.

3 A Okay.

4 Q Do you have in front of you Exhibit 17 that
5 was previously marked?

6 Would you please identify that document.

7 A It's a memorandum to -- to file from Phil
8 Gregorich.

9 Q Are you familiar with this document?

10 A It's the first time I've looked at it.

11 Q You didn't see it last week or two weeks ago
12 when it was introduced as an exhibit to the
13 depositions?

14 A I was -- I did not look at the exhibits at
15 that time.

16 Q At the bottom it says: Purchase price. Total
17 consideration from Goldman to CPH2 for the acquisition
18 was [REDACTED]

19 Do you know that to be true, false, have no
20 information about it?

21 A I don't have any information to counter that.

22 Q Who -- and you know Phil Gregorich; right?

23 A Yes.

24 Q Who is he?

25 A Phil was our controller, the controller at

1 Cogentrix.

2 Q You wouldn't have any reason to doubt that he
3 got it right?

4 A No.

5 Q And indeed he -- as comptroller, that was his
6 job to get it right; correct?

7 A As a controller, yes.

8 Q So help me with some simple math, if you
9 would. I'm not very good at math.

10 But if Carlyle bought [REDACTED]
11 [REDACTED] do you
12 know, that included more than just Cedar Bay; correct?

13 MR. WRIGHT: I object to this whole line of
14 questioning. He has never seen this document
15 before, and it's outside his area of expertise.

16 MR. MOYLE: Well, if he knows. I mean, he
17 knows because he sat in the deposition last week,
18 I'd think, if he remembers.

19 MR. WRIGHT: He heard discussion about it.
20 Lack of foundation, outside his area of expertise.
21 He's never seen the document before.

22 BY MR. MOYLE:

23 Q You can go ahead and answer.

24 A Would you repeat the question?

25 Q Do you know if the acquisition by Carlyle of

1 [REDACTED]
2 [REDACTED] included more than the Cedar Bay facility?

3 MR. WRIGHT: My objections continue as long as
4 you're discussing this document or anything related
5 to it. I won't state them again.

6 A I'd have to -- I'd have to look at a
7 quarterly -- I'd have to look at a corporate
8 organization chart to know -- there are multiple
9 entities in our org chart that start with CBAS. And
10 I'm not sure which one this is.

11 [REDACTED]
12 [REDACTED] -- and, again, I'm
13 not sure which -- which level this entity exists.
14 It's not something I normally work with.

15 BY MR. MOYLE:

16 Q All right. Well, maybe we can show you an org
17 chart later.

18 Do you know what the Rhea valuation report is?

19 A No.

20 Q So when it says on page 2 of this document,
21 even though the document is not numbered, it's CB
22 0028936. It says: Cedar Bay's PPA with FPL Group has

23 [REDACTED]
24 You don't have any information about that?

25 A I do not.

1 Q Do you have any understanding as to how the
2 PPA was valued for the purposes of the transaction
3 that FPL is asking the PSC to approve?

4 A I do not.

5 Q Okay. So what -- you said you were involved
6 in the negotiations.

7 What part of the negotiations were you
8 involved with?

9 A The -- the -- my primary role in the
10 negotiations was around the -- you know, some of the
11 terms of the power purchase agreement, and also the
12 terms of an operations and maintenance agreement under
13 which Cedar Bay Operating Services would continue to
14 operate and maintain the facility under FPL's
15 ownership.

16 Q So the O&M agreement, and then you said some
17 of the terms. That was pretty broad. I assume it's
18 not financial terms, because you already said you
19 didn't do financial stuff; right?

20 A That's right. The -- the discussions on the
21 dollar values were -- were -- were not a part of any
22 of the conversations that I was in. But I was in
23 conversations with -- which we were evaluating
24 different aspects of the deal to try to see if we
25 could make adjustments, or modifications, or

1 concessions to make the deal work for both parties.

2 Q Were there negotiations like this deposition
3 where everybody got in the room and went back and
4 forth? Or were there serial discussions; you as the
5 operations guy talked to FPL's operations guys, let
6 the money guys talk to the money people?

7 I mean, just give me a sense of the
8 negotiations if you would.

9 MR. WRIGHT: I object to the form. It was
10 ambiguous. You had at least three questions in
11 there. Try again.

12 BY MR. MOYLE:

13 Q Did you understand the question?

14 A I think so.

15 Q Please describe the negotiations.

16 A I was in two face-to-face negotiating sessions
17 in which we sat around a table like this and
18 negotiated the nonfinancial terms.

19 Q And who was in those meetings?

20 A From my side, asset manager that worked for me
21 at the time, Collin Franceschi; Tracy Patterson, at
22 the time the general manager of Cedar Bay; Jim
23 Larocque from Carlyle; Dan Barbosa, also from Carlyle;
24 and Tom Hartman from FPL.

25 Occasionally Tim Gerrish from FPL;

1 occasionally Sam Forest from FPL; an attorney with
2 FPL, Charlie Landy was in most of the conversations.
3 There were some operational folks and fuels folks from
4 FPL, but I don't recall their names.

5 Q So there were two meetings that you recall; is
6 that right?

7 A I attended two, yeah.

8 Q You said Sam Forest was in and out. Was he in
9 one meeting, both meetings?

10 A I only remember seeing him in the second
11 meeting.

12 Q Where did these meetings take place?

13 A Florida Power & Light's offices in Juno Beach.

14 Q Who negotiated the financial deal points?

15 A I believe Jim Larocque had the conversations
16 from our side, but I don't know who he was
17 corresponding with.

18 Q I'm sorry. Jim is?

19 A He's -- I think his title is principal at the
20 Carlyle Group. He managed the fund that acquired
21 Cedar Bay.

22 Q Do you interact with him?

23 A Yes.

24 Q Describe your interaction with him. Are they
25 regular and routine? Do you report to him? Are they

1 haphazard?

2 A I don't report to him. But from the Carlyle
3 organization's structure, Jim is their commercial guy
4 that looks after Cedar Bay. And so, you know, we
5 participate in weekly calls -- or he looks after, not
6 just Cedar Bay, but other facilities.

7 And we participate in weekly calls where we
8 review the operations and the status of the projects
9 so he can stay in touch with how things are operating.

10 Q And the Carlyle Group, they -- you had
11 answered a question previously about funds. They make
12 the decisions with respect to buy, sell, take a right,
13 take a left?

14 MR. WRIGHT: Objection, vague.

15 BY MR. MOYLE:

16 Q Strike the "take a right, take a left." With
17 respect to --

18 MR. WRIGHT: It's still vague as to who you're
19 asking about, Jon.

20 BY MR. MOYLE:

21 Q Who made the decision to accept the offer; was
22 it you?

23 A It was not me.

24 Q Was it anybody within Cogentrix?

25 A No.

1 Q Who was it?

2 A I don't know for certain.

3 Q But you know it was someone with Carlyle;
4 correct?

5 A Within Carlyle.

6 Q And who did Jim negotiate with on the other
7 side of the transaction, the financial terms?

8 A I don't know.

9 Q Do you know if the Carlyle Group or any of its
10 subsidiaries has any other business dealings with
11 Florida Power & Light, NextEra Energy, or any of its
12 subsidiary companies?

13 A I'm not aware of any.

14 Q Do you know how the purchase price was arrived
15 at?

16 A No.

17 Q If you assume [REDACTED] in
18 Exhibit 17 is accurate, and it set a value for Cedar
19 Bay, or Cedar Bay and other assets, I did some rough
20 math and came out, if you total it out to 100 percent,
21 it would be a little over [REDACTED]

22 MR. WRIGHT: I renew my objections to any
23 questioning about this. If he knows --

24 MR. BUTLER: I will object further it's vague
25 as to what you're referring to. Are you referring

1 to the interest in this particular entity? The
2 question seems to suggest --

3 BY MR. MOYLE:

4 Q Help me. You're familiar -- you look at
5 profit and loss statements. I mean, you have
6 familiarity with financial matters; don't you, as part
7 of your -- part of your job?

8 A That's not -- that's not in my realm of
9 responsibility.

10 Q You don't look at budgets for your operating
11 plants?

12 A I look at budgets. We develop budgets.

13 Q Are you familiar with budgets and --

14 A I am.

15 Q So back on Exhibit 17 -- do you have it in
16 front of you?

17 A I do.

18 Q So if Phil got it right, and the total
19 consideration to Goldman ██████████ was -- was ██████
20 ████████, if you doubled ████████, that would get you to ██████
21 ████████, and it would be just under ██████████; right?

22 MR. WRIGHT: Objection. Lack of foundation.

23 The witness has never seen this document before.

24 It's outside of his area of expertise.

25 You can ask him if he knows something, Jon,

1 but asking him to somehow or other verify your math
2 is not acceptable.

3 MR. BUTLER: I'd further object that you
4 continue to be completely vague as to a hundred
5 percent of what? This letter you're referring to
6 has some specific interest. Your questions seem to
7 be suggesting that you're talking about valuation
8 for the assets in question between the FPL and CBAS
9 purchase and sale agreement.

10 BY MR. MOYLE:

11 Q So is my math generally accurate?

12 MR. WRIGHT: Continuing objection.

13 A I think you're trying to take a number from
14 this page and simply ratio it up to a larger number.
15 And what I do know about Cedar Bay and the ownership
16 interests is that it's a very complex web of
17 organizations and ownership interests and different
18 valuations at different points in time.

19 And so when -- when the Carlyle Fund acquired
20 Cogentrix from Goldman Sachs, they acquired [REDACTED]
21 [REDACTED] of the entity that owned Cedar Bay, because
22 Goldman understood that there were certain activities
23 underway that could significantly enhance the value of
24 Cedar Bay, and they did not want to sell it at its
25 current valuation.

1 And so when you're looking at this one number,
2 ██████ that is one of the -- that is one of the Carlyle
3 Fund entities that acquired a Goldman piece after
4 Goldman had -- had received significant distributions
5 from a refinancing, I believe.

6 And so it all depends on the point in time and
7 who received what benefit from the ownership. And so
8 trying to take ██████████ and ratio it up to a total
9 value of the project, I don't think that's accurate.

10 Q And you don't think it's accurate because
11 there were -- you said that there were some things
12 taking place to enhance the value.

13 Was that the refinancing that you're
14 referencing, or what else?

15 A It was the combination of increasing the --
16 renegotiating the steam agreement and increasing the
17 term of that agreement and changing the pricing to
18 encourage different behavior from the steam host.

19 It was the refinancing of the project, and it
20 was also the general market conditions.

21 Q And what do you -- what do you mean when you
22 say "general market conditions"?

23 A The -- the significant changes in the -- in
24 the price of natural gas and a -- persistent changes
25 in the price of natural gas, which made it less

1 economical for Cedar Bay to operate from -- I -- it
2 lowered our dispatch rate. And the lower our dispatch
3 rate, the higher the value of the PPA to Cedar Bay,
4 the more value there was in the entity.

5 Q The PPA really has the only value, because
6 when you run the plant, you lose money; right?

7 A We -- we lose money on each megawatt hour we
8 sell, yes. So with low price gas displacing us in the
9 queue, our -- the fact we ran less meant we lost less
10 money on the energy side. The project always made
11 money on the capacity side.

12 Q So if I told you, say, well, look, I -- I
13 don't know Phil. Maybe I'll talk to him at some
14 point; maybe not. But here is the comptroller of
15 Cogentrix writing a memo that says the purchase price

16 [REDACTED]
17 [REDACTED] If you took it
18 up to 100 percent, my number comes in at roughly [REDACTED]

19 [REDACTED]

20 MR. WRIGHT: Objection. Lack of foundation,
21 outside his area of expertise, and probably asked
22 and answered at least twice.

23 BY MR. MOYLE:

24 Q Am I wrong with that math?

25 MR. WRIGHT: Objection. You're attempting to

1 put words in the witness's mouth. That's not
2 acceptable.

3 BY MR. MOYLE:

4 Q You can go ahead and answer.

5 A I don't believe that would reflect the -- the
6 proper value of Cedar Bay.

7 Q Would the -- would the Duff -- you don't know
8 that Duff report that did the allocation, you don't
9 know if that would either?

10 A I know the purpose of the Duff report, but I
11 didn't participate in it or review it.

12 Q What was the purpose of it?

13 A To allocate the total purchase price that
14 Carlyle paid to Goldman Sachs for five assets and our
15 management team, to allocate the value of that -- that
16 purchase price, to allocate certain portions of that
17 to each of the assets.

18 It was not a ground-up valuation of each of
19 the assets. It was just an apportionment of the
20 purchase price across those assets so that there was
21 some basis for those investments.

22 Q So -- so help me, if you can, if you know. I
23 mean, you've been around, knocked around this business
24 for a while.

25 The allocation for Cedar Bay was approximately

1 [REDACTED] for the -- for the purchased power. I
2 don't understand, if you have a purchase price of
3 [REDACTED] how you allocate beyond [REDACTED].

4 MR. WRIGHT: Objection. There is no question
5 there.

6 BY MR. MOYLE:

7 Q Can you help me understand that?

8 A I don't know how that works.

9 Q So if you assume Goldman paid -- Goldman
10 received [REDACTED] you don't know from an accounting
11 standpoint -- well, you can go in and value assets
12 irrespective of the purchase price. You don't have to
13 key to the purchase price, or you don't have any
14 information on that?

15 A That's not my area of expertise.

16 Q No. But you answered the question about the
17 allocation, the Duff & Phelps report?

18 A I understood the purpose of the Duff & Phelps
19 report was to allocate the purchase price.

20 Q You didn't get into the granularity with
21 respect to, can you allocate more than the purchase
22 price?

23 A I don't know how that works.

24 Q Cogentrix has two other coal plants, one in
25 Norfolk, and where was the other one?

1 A Hopewell, Virginia.

2 Q Hopewell?

3 A Hopewell.

4 Q Would you just briefly describe how those
5 plants are being dispatched currently in today's
6 market?

7 A They're merchant facilities selling to the PJM
8 interchange.

9 Q Given the price of natural gas and some of the
10 other things we discussed, are they -- are they in the
11 market? Are they making money? Or are they even run?

12 A [REDACTED]

13 Q What's the plan for those assets?

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q What about the other -- which one is that?

18 [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 A Yes.

25 MR. WRIGHT: Just before we go on, I just want

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[REDACTED]

MR. MOYLE: No problem. That's a you and Mr. Butler issue.

MR. WRIGHT: It is; that's correct.

BY MR. MOYLE:

Q How many megawatts is Hopewell?

A Approximately 120.

Q So about half of Cedar Bay?

A Yeah. A little less.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

21 Q Who did they have purchase power agreements
22 with?

23 A Northern Virginia Electric Co-op.

24 Q Both of them?

25 A Both of them.

1

2

3

Q Is that public information?

4

A I don't know.

5

6

7

Q Have you done, or are you aware, has anybody done any kind of analysis to see what the value paid for the PPA with FPL, [REDACTED]

8

9

10

A I'm not aware of any analysis like that.

11

12

Q If Carlyle did that analysis, would it flow down to you? Probably not?

13

14

A I don't know any reason we would be comparing the two.

15

16

17

Q Has Carlyle -- has Carlyle or Cogentrix as a business decision said, [REDACTED]

18

19

MR. WRIGHT: I object to the form, at least as to you asking him about Carlyle.

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[REDACTED] We, as a rule, look at each facility and its contractual arrangements individually and try to make a determination of what the best path forward is for that -- for that asset.

1 And so in some cases, there may be a power
2 purchase agreement that is no longer economical for
3 our counterparty, and they may be willing to buy out
4 of that contract and terminate the contract. And if
5 that makes sense to Carlyle in the total economics of
6 the deal, they will transact.

7 Q We talked about three. Does Carlyle have any
8 other coal assets than the three we've talked about?

9 A No.

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MR. WRIGHT: Same objection as to the scope
and lack of foundation.

17

18

MR. MOYLE: Well, I can lay a foundation.

19

BY MR. MOYLE:

20

Q You're the vice-president of operations;
21 right, senior vice-president of operations?

22

A I am.

23

Q And are you responsible for the Norfolk and
24 the Hopewell plants?

25

A I am.

1 Q Okay.

2 A We --

3 MR. WRIGHT: Jon, you're asking him about
4 Carlyle. If you want to ask him about Cogentrix
5 power holdings or whatever, that's fine.

6 MR. MOYLE: Right. But he just answered the
7 question about the negotiations that Carlyle was in
8 the room, you know. If he has information about
9 it, I think it's fair game.

10 MR. WRIGHT: Ask him if he knows.

11 BY MR. MOYLE:

12 Q So would it be a fair statement to say that,

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 MR. WRIGHT: Objection; lack of foundation.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 BY MR. MOYLE:

22 Q I mean actually, in this case, you're looking
23 at taking back the Cedar Bay plant after closing;
24 right?

25 A I don't think that's -- I don't think

1 that's -- I'm not aware of that being a part of the
2 transaction.

3 Q So you were in some -- you weren't in all the
4 negotiations, then?

5 A I was not in all of the negotiations, but I --
6 my understanding of this deal is that FPL is
7 purchasing the plant and that we're going to operate
8 it for them. There is -- I'm not aware that we're
9 reacquiring the facility.

10 Q So your acquisition or involvement would just
11 be through operation; is that right?

12 A That's correct.

13 Q Mr. Truitt asked you about the link to the
14 St. Johns River Power Park coal pricing. And I was
15 not clear with your answer with respect to what is
16 tied to what.

17 Could you explain, with respect to the Cedar
18 Bay facility, how your link to the St. Johns River
19 Power Park pricing -- I wasn't clear whether it was
20 the price that they pay for coal or it was the price
21 that electricity is sold. Just explain the linkage to
22 the St. Johns River Power Park, please.

23 A There's a formula within the power purchase
24 agreement -- and I don't remember all the exact
25 specifics of that formula. But one element of that

1 formula that tells us what we get paid for megawatt
2 hours includes the price paid for coal by St. Johns
3 River Power Park. It includes some heat rate for what
4 I believe was a historical avoided cost unit and some
5 discount factored to that.

6 And the combination of those determines what
7 Cedar Bay gets paid for each megawatt hour that it
8 delivers.

9 Our price of fuel never comes into that
10 equation. And so whether we have a negative or a
11 positive energy margin depends on how well we do with
12 buying coal versus how well St. Johns River Power Park
13 does. It depends on how well we operate our plant.

14 Historically it's varied between -- you know,
15 we've had some positive margin in some years and --
16 but for most years it's a negative margin.

17 MR. MOYLE: Would you read back his answer,
18 please?

19 (Last answer read.)

20 BY MR. MOYLE:

21 Q So out of the three elements you gave me in
22 the formula, is it your understanding that the only
23 one that varies is the coal price?

24 A That's correct.

25 Q And who owns St. Johns River Power Park, if

1 you know?

2 A I think it's a joint venture between Florida
3 Power & Light and Jacksonville Electric Authority.

4 Q Do you know which of the two is responsible
5 for procuring coal?

6 A No.

7 Q But you do know that they're able to do it
8 very efficiently and effectively and typically are
9 below the price that you pay for coal?

10 A Yes.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED]
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20 [REDACTED]
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22 [REDACTED]

23 [REDACTED]
24 [REDACTED]
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[REDACTED]

[REDACTED]

Q Office of Public Counsel asked you some questions about a [REDACTED] I took it from your answer that you did the [REDACTED] on your own volition; is that true?

A I'm not sure what you mean by that.

Q So what prompted you to do a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q Okay. So the [REDACTED] was sort of prompted by Cogentrix and its affiliated entities looking at, what are our options with respect to the future of Cedar Bay; is that fair?

A Yes.

Q And stated conversely, you -- you didn't do the [REDACTED] because FPL wanted it done; you were doing it on your own?

A We did it for Cogentrix's purposes, yes.

Q And did the same company that performed the [REDACTED] for your -- [REDACTED] do the one for Cedar Bay?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q Did they also give you one for [REDACTED]

A [REDACTED]

Q Did you ask for the [REDACTED] and the Cedar Bay

1 [REDACTED] at the same time?

2 A No.

3 Q Approximately?

4 A No.

5 Q In response to a question from Mr. Truitt, you
6 had talked about a formal legal action that had taken
7 place between Cedar Bay and FPL.

8 What did that relate to?

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Q And people tell you, hey, this happened
14 before; just tell me what you know about that dispute.

15 A I pretty much told you already.

16 Q It was dispatched, [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 Give me a little more -- if you know it.

20 A I don't know exactly what the issues were. [REDACTED]

21 [REDACTED]
22 [REDACTED]

23 Q Did anybody tell you how it got resolved?

24 A I believe that there was -- well, no. I don't
25 know exactly how it got resolved.

1 Q Do you know who sued who?

2 A No.

3 Q Do you know where the lawsuit was brought?

4 A No.

5 Q You said there was some disputes about *force*
6 *majeure* events?

7 A That's right.

8 Q What were those about?

9 A If -- if Cedar Bay cannot meet its obligations
10 to FPL because of a circumstance that's beyond our
11 control, that qualifies as a *force majeure* event under
12 the power purchase agreement, you know, we can be
13 excused for -- for that.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Q Did you -- did you have regular communications
22 with FPL about the -- about the Cedar Bay unit, its
23 operations, its run time; whether it was making money,
24 not making money?

25 A In the normal course, I wouldn't have any

1 conversations with FPL. It would mostly be handled at
2 an operational level. If there was some sort of a
3 contract dispute, I may get involved.

4 Q Did you have a point of contact at FPL?

5 A Yes.

6 Q Who?

7 A Tom Hartman.

8 Q So FPL was tough. Did you ever have occasion
9 to work cooperatively with FPL related to the purchase
10 power agreement and how it was dispatched, how the
11 unit was dispatched?

12 A We really didn't have much -- we didn't have
13 much call to -- other than just living up to the terms
14 of the contract and making sure that both parties did
15 that. It -- it's been a fairly quiet relationship.

16 Q Do you have an understanding of how FPL
17 dispatches the Cedar Bay unit?

18 A I don't know all the factors that go into
19 their dispatch decisions.

20 Q Do you know any of them?

21 A I know some of them, I think.

22 Q Tell me what you know.

23 A Economics is certainly a driver. And I think
24 reliability of the power grid is also a driver in
25 terms of when we get dispatched and when we don't.

1 And I think the terms of the power purchase
2 agreement also govern how many opportunities FPL has
3 to shut us down during the year.

4 Q What's your understanding of that?

5 A They can turn us off six times.

6 Q But there's no limit on how long they can turn
7 you off for?

8 A No limit.

9 Q So they in theory could shut you down for the
10 whole -- whole year? They could do one shutoff and
11 say we're not going to need you and leave you sitting
12 for 12 months?

13 A They can.

14 Q You told Mr. Truitt that FPL approached you,
15 but there had been previous times where you had
16 approached FPL about selling the unit or reworking the
17 purchase power agreement.

18 Were you involved in those previous
19 discussions?

20 A I was.

21 Q And tell me -- tell me, how many were there?

22 A I believe there were two different -- two
23 different times when we approached FPL about a
24 potential contract renegotiation or modification.

25 Q And tell me, just a time frame on the first

1 one, roughly.

2 A I -- I don't remember -- all I know is
3 somewhere between 2004 and 2010. We were under
4 Goldman ownership at the time.

5 Q And then with respect to the second, when was
6 the second? It was later in time; right?

7 A Yes. I'm guessing. I mean, 2010 time frame.
8 I don't know exactly when they occurred. We didn't
9 gain any traction. I don't think the economics of the
10 market at that time were enough to drive an agreement.

11 Q Right. Let me ask it this way: There was a
12 span of years between the first and second --

13 A I think so.

14 Q -- approach?

15 A Yeah.

16 Q And why was the first approach made?

17 A Because the president of our company at that
18 time had had a lot of success historically in
19 renegotiating power purchase agreements that he
20 believed were, quote, out of the money, unquote, for
21 our counterparties. And he wanted to pursue that same
22 type of opportunity at Cedar Bay.

23 Q And who was that?

24 A Larry Kellerman.

25 Q Was he a Goldman person or a Cogentrix person?

1 A Yes. (Laughter.)

2 He was -- I think he was a partner, managing
3 director at Goldman, but he was also president of
4 Cogentrix.

5 Q So he wore two hats?

6 A Yes.

7 Q K-E-L-L-E-R-M-A-N?

8 A Yes.

9 Q And what was your role in that first approach?

10 A I was the asset manager for the project. So I
11 was the one that had the firsthand knowledge of what
12 the project could do and couldn't do.

13 Q And what was proposed?

14 A I don't even remember the terms of the deal.

15 Q Was it basically cashing out of the PPA?

16 A It was more complicated than that. You'd have
17 to know Larry Kellerman to understand how complicated
18 it was.

19

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21

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23 Q And was that because, at that point in time,
24 in effect, Cedar Bay was still having negative
25 margins? So you were -- it was costing you money to

1 generate megawatts?

2 A Yeah.

3

4

5

6 A That was the concept.

7 Q And what did -- how did FPL react?

8 A Well, they talked with us about it, but it
9 never got anywhere.

10 Q Would -- was part of that to extinguish the
11 PPA?

12 A I -- I don't think that the intent was to
13 necessarily extinguish the PPA. I think what our -- I
14 think what the hope was on our part was that we would
15 be able to source the power from an alternate facility
16 and share those savings with FPL, but still collect
17 the capacity payment, or the major piece of that.

18 Q Was part of that proposal to reduce the
19 capacity payment?

20 A I don't remember whether it included any
21 reduction in the capacity payment. Certainly we
22 weren't -- our preference would be not to reduce the
23 capacity payment, but just to save money on the energy
24 loss.

25 Q Was there ever an indication or an offer or

1 discussion about reducing the capacity payment?

2 A I don't know whether that -- that might have
3 been a part of the conversations, but...

4 Q Again, that was at a financial level that
5 probably wouldn't have included you?

6 A Or just a number of years ago, and I just
7 don't recall now.

8 Q All right. So tell me about the 2010
9 approach. I say 2010. That was roughly, not to hold
10 you to that, but the same -- same deal?

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 And, again, that got so tangled up and
20 convoluted that it wasn't possible to come to a deal
21 on that.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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Q In effect, it was another way of getting to your megawatt output equivalent.

A Right.

Q And where did that conversation go?

A Nowhere.

Q And who led it? Was Mr. Kellerman still involved, or no?

A Yes.

Q Where is Mr. Kellerman now?

A I don't know.

Q Is he still with Goldman?

A No.

Q Is he on an island?

A He could be.

Q And then this deal that is before the commission, this was different in that FPL approached Cogentrix?

1 A Yes.

2 Q And how do you know that?

3 A I received the call from Tom Hartman asking if
4 we would engage.

5 Q Was it a cold call?

6 A Yes.

7 Q So nobody -- nobody told you, hey, Hartman's
8 going to be calling you?

9 A No.

10 Q So tell me about that conversation with
11 Mr. Hartman.

12 A It was pretty short and sweet.

13 Q What did he say?

14 A He wanted to know if we were interested in
15 engaging in conversations about restructuring,
16 amending, perhaps terminating the power purchase
17 agreement. I said I'd talk to the powers that be and
18 let him know.

19 Q And so who did you talk to? Who were the
20 powers that be that you ran that by?

21 A Well, naturally, I run it by my boss, Doug
22 Miller. But ultimately those kinds of decisions are
23 made at the Carlyle Fund level. So I notified Jim
24 Larocque that -- that FPL was interested in engaging
25 about -- in discussions about the PPA.

1 Q How did you notify Jim?

2 A Probably by telephone.

3 Q What do you recall about that conversation?

4 A I don't recall anything specific about it.

5 Q He didn't say, holly smokes. We reached out
6 to them twice and have gotten nowhere; now they're
7 calling us?

8 A Well Jim had never been involved in any of
9 those previous conversations with FPL. That was all
10 under Goldman.

11 Q But he probably was aware of them; right? He
12 was the president of the company.

13 A He was.

14 Q He didn't express surprise or --

15 MR. WRIGHT: Object. That assumes a fact not
16 in evidence. You used the term "president of the
17 company," and I'm not sure of whom you were
18 speaking. If you're referring to Mr. Larocque, I'm
19 sure that fact is not in evidence. Try again.

20 MR. MOYLE: I'm sorry. I get confused about
21 who has what title.

22 BY MR. MOYLE:

23 Q Mr. Larocque is the Carlyle guy; right?

24 A Yes.

25 Q And the president of the company is Tom --

1 A Doug Miller.

2 Q Doug Miller. So you called Doug and said,
3 Doug, I just got a call from Mr. Hartman?

4 A I probably walked down the hall and talked to
5 Doug.

6 Q What was Doug's reaction?

7 A That's good. Let's engage. Talk to Carlyle;
8 make sure they're interested, and we'll engage.

9 Q So then you called Jim?

10 A I did.

11 Q And his reaction was, great?

12 A Precisely.

13 Q That was it?

14 A Pretty much. It was, you know, let's get back
15 to them and figure out when we can start a
16 conversation.

17 Q So tell me what happened after that.

18 A I don't remember specifically. But, you know,
19 I -- I did reach out to Tom, and we arranged a time to
20 talk about it.

21 Q Did you-all have internal discussions about,
22 how are we going to handle these discussions or
23 negotiations? Or did you just get on a plane and go
24 down to Juno and sit around the table? Kind of help
25 me with the next steps.

1 A I don't remember actual planning sessions or
2 how we may have decided to do that. I do know that,
3 you know, Jim told me that he was going to take the
4 lead position in terms of negotiating with FPL but
5 that I'd be -- I'd continue to be involved in the
6 process.

7 And so from that point forward, I think there
8 were -- there were phone conversations between Jim
9 Larocque and Tom Hartman that I wasn't a part of,
10 but...

11 Q Do you have the impression that Tom Hartman
12 did the financial negotiations for FPL, or --

13 A I don't know who did.

14 Q You don't know?

15 A I don't know.

16 Q You said Jim and Tom talked.

17 A That's right. In terms of being the -- kind
18 of the focal point from each organization. But in
19 terms of how the financial negotiations happened, I
20 don't know. I wasn't a part of them.

21 Q So if anybody from NextEra talked to anybody
22 from the Carlyle Group about this deal, would you know
23 of that?

24 A No.

25 Q As we sit here today, I know you had said you

1 weren't in the middle of the conversations; you're
2 still in the conversations. Who's in the middle of
3 the conversations today related to this transaction?

4 MR. WRIGHT: I -- I object to the form as
5 possibly assuming facts not in evidence. I'm not
6 sure exactly what conversations you're referring
7 to.

8 BY MR. MOYLE:

9 Q Conversations related to the Cedar Bay
10 facility. If all of a sudden something happens at the
11 Cedar Bay facility today; there's a fire; do you call
12 Tom Hartman, or does Jim get involved? Or if there is
13 a financial situation related to the coal contract?
14 Help me understand the information flow if you would.

15 MR. WRIGHT: I'm just going to object to the
16 extent that's compound. You can ask the questions
17 that were embedded in that question, but I would
18 appreciate it if you'd ask them one at a time.

19 The answers may be different.

20 BY MR. MOYLE:

21 Q You have a formal point of contact -- does
22 Cogentrix have a formal form of contact presently for
23 information to go to FPL related to this Marlin deal?

24 A It's not necessarily a single point of
25 contact. So I -- I correspond with Tom Hartman on

1 occasion if we're looking to renegotiate a coal
2 contract or coal pricing. I typically keep Tom
3 apprised of what -- where we're at in the process.

4 If there are things that have the potential of
5 carrying over into the period when FPL ownership, you
6 know, may be in place, I -- I make sure Tom's aware of
7 that. And when it comes to -- you know, I don't know
8 if there are other financial issues or other matters
9 that -- maybe the timing of the whole process is that
10 Jim Larocque may be engaging with Tom Hartman on; I'm
11 not necessarily in those.

12 Q And do you have an understanding as to whether
13 you need FERC approval for this proposed transaction?

14 A My understanding is that -- I believe a FERC
15 203 approval was required.

16 Q What is 203?

17 A Some section of a federal power act that
18 requires them to approve the transaction.

19 Q Do you know if it relates to market power, a
20 market power screen, or some other type of substantive
21 matter?

22 A I tend not to get in the middle of those
23 things, so I don't know its particulars.

24 Q So let me ask you this. If -- well, on the
25 point of contact question, it sounds like there's

1 multiple points of contact on your end going into FPL
2 presently; is that fair?

3 A Yes.

4 Q Okay. And then tell me the other point of
5 contacts that you understand to be in place with
6 respect to Cogentrix and FPL.

7 A I think our plant personnel correspond with
8 the dispatch center on a regular basis. I explained
9 earlier that I think, you know, Jim Larocque may have
10 conversations with Tom Hartman or others at FPL on
11 occasion.

12 Q Anybody else?

13 A For the most part, I think that's it.

14 MR. MOYLE: Okay. All right. So it's ten
15 minutes of 12:00. This is a good stopping point.
16 Let's take a break until 1:15. We'll come back and
17 finish up.

18 THE WITNESS: Okay.

19 (Lunch recess.)

20 (The deposition continues in Volume 2.)

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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 June, 2015.

/s/ Sarah B. Gilroy
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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 107 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 June, 2015.

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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 109 - 203

THE DEPOSITION OF: CLIFFORD D. EVANS, JR.

AT THE INSTANCE OF: FIPUG AND OPC

DATE: May 27, 2015

TIME: Commenced at 1:22 p.m.
Terminated at 4:30 p.m.

PLACE: 2540 Shumard Oak Boulevard
Room 362
Tallahassee, Florida

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(Exhibits attached hereto.)

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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	CB0010257
11	CB0013661
12	e-mail string, beginning 5-7-13
13	Cedar Bay PPA
14	e-mail string, beginning 11-12-14
15	Notification to Cedar Bay Employees

NUMBER DESCRIPTION (marked in Neff)

16 3-24-15 e-mail string

NUMBER DESCRIPTION (marked in Rudolph)

17	8-9-13 Cogentrix memo
18	Duff & Phelps report
19	2-7-13 McNamara e-mail
20	8-23-13 Officer's Cert
21	CBGC, LP financial statements December 31, 2014 and 2013
22	GBGC, LP 3-20-13 presentation to lenders

NUMBER DESCRIPTION (marked in Evans, Volume 1)

23 Purchase and sale agreement

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1 BY MR. MOYLE:

2 Q Let's go back on the record. Continue with
3 the deposition of Mr. Evans.

4 You're still under oath, notwithstanding our
5 lunch break; right?

6 A Right.

7 Q And I did not ask you whether you had been
8 deposed before when we started. I should have done
9 that.

10 Have you ever been deposed before?

11 A Yes.

12 Q And tell me about the depositions that you've
13 given in a professional capacity. I'm not really
14 interested in depositions for personal matters.

15 But tell me with respect to professional
16 matters.

17 A One was related to a case in which a -- a
18 contractor was killed on -- on the site of a power
19 project that I worked on. And another one was related
20 to a dispute that a power project I was responsible
21 for had with its thermal host.

22 Q Not Cedar Bay?

23 A Not Cedar Bay.

24 Q Okay. I think we've both done a fairly good
25 job of allowing people to speak without interrupting.

1 When I ask you a question, you know, answer; I will
2 try not to talk over you; you try not to talk over me.
3 I think we've done a good job of that.

4 If you're not clear on a question, I don't
5 want you to have to guess. I will rephrase.

6 But really I'm trying to have a conversation,
7 gather information from you, largely about the Cedar
8 Bay facility and matters related to it.

9 This afternoon I'm going to walk through some
10 documents with you like we did previously. I may ask
11 Mr. Truitt to help me if I could.

12 MR. WRIGHT: Are we marking this, Jon?

13 MR. MOYLE: I'm going to ask him some
14 questions about it first, because I'm not sure it's
15 relevant.

16 MR. WRIGHT: Okay.

17 BY MR. MOYLE:

18 Q This is an e-mail from Collin Franceschi --

19 A Yes.

20 Q -- to you dated Monday, October 13th, 2014; is
21 that right?

22 A Yes.

23 Q So you're familiar with this document?

24 A Yes.

25 Q And the references are [REDACTED] trip and [REDACTED]

1 [REDACTED] What are those?

2 [REDACTED]

3 [REDACTED]

4 MR. WRIGHT: Stop. We object. There's no
5 foundation. I believe that [REDACTED] is completely
6 irrelevant to the matters at issue in this docket.
7 If you can --

8 MR. MOYLE: That's why I was asking him the
9 question. I think I was going to get to the same
10 point, but I'd rather get there with the witness if
11 I could.

12 MR. WRIGHT: What's the pending question?

13 MR. MOYLE: It was what's the [REDACTED]
14 [REDACTED] He answered, he said that
15 [REDACTED] relates to some solar, and he hadn't
16 answered on [REDACTED].

17 So I think he can answer.

18 MR. WRIGHT: Ask him this question. Ask him,
19 does [REDACTED] have anything to do with Cedar Bay?

20 MR. MOYLE: You get to ask him that question
21 when you're redirecting --

22 MR. WRIGHT: If you don't ask him that
23 question, Jon, I'm going to instruct him not to
24 answer.

25 MR. MOYLE: Oh, good. Then we'll have an

1 issue we can take to the prehearing officer.

2 MR. WRIGHT: We will. That will be great.

3 BY MR. MOYLE:

4 Q Why did you reference the Cedar Bay project in
5 the second to the last paragraph in this e-mail?

6 MR. WRIGHT: Objection; assumes facts not in
7 evidence. It's not his -- either an e-mail to him,
8 not from him.

9 BY MR. MOYLE:

10 Q Okay. Do you know why the Cedar Bay project
11 was referenced?

12 A It has to do with -- it's really a timing
13 question of a project we were working on and how it
14 may be impacted by the Cedar Bay closing.

15 Q How, potentially, would it have been impacted
16 by the Cedar Bay closing?

17 MR. WRIGHT: Objection. That's outside the
18 scope, and it's irrelevant.

19 MR. MOYLE: You can go ahead and answer.

20 MR. WRIGHT: Hang on. Okay. You can answer
21 with respect to [REDACTED]

22 BY MR. MOYLE:

23 Q The pending question was, how did the timing
24 of the Cedar Bay closing relate to what's being
25 discussed in this e-mail?

1 MR. WRIGHT: To be clear, in this paragraph
2 with the highlighting; correct?

3 MR. MOYLE: Right.

4 [REDACTED]
5 [REDACTED] at some point up the
6 corporate ladder is owned -- has come into ownership.

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 BY MR. MOYLE:

15 Q And do you know how?

16 MR. WRIGHT: I'm going to object as to
17 relevance as anything that has to do with [REDACTED]
18 or any other project, other than Cedar Bay.

19 A Yeah. I don't know what the consequences of
20 that are, how that ties into it.

21 BY MR. MOYLE:

22 Q To get into it, I will tell you the relevancy
23 of it.

24 Is there anything pressing that says, hey,
25 we've got to hurry up and get this deal closed or else

1 bad things are going to happen to Cedar Bay?

2 MR. WRIGHT: I'm going to object that that's
3 vague. You can answer the question if you
4 understood it.

5 A The -- the proposed transaction, the sale, was
6 negotiated around a point in time with certain
7 conditions, certain financial conditions present at
8 that time.

9 The longer -- the more amount of time passes
10 between when we sign that deal and if and when it gets
11 approved, the more danger there is that that deal no
12 longer makes sense for either party. And so do we have
13 an interest in having this deal close soon? Yes. Can
14 I tell you that there's some particular cliff that
15 we're going to fall off at some point in time? No.

16 But the longer this progresses without this
17 deal being approved, the more money we make at Cedar
18 Bay, and the less value there is to the shareholders.

19 BY MR. MOYLE:

20 Q With whose shareholders?

21 A I shouldn't say shareholders. The ratepayers.
22 I mean, the less value there is for FPL to provide to
23 its ratepayers.

24 Q So given your answer, then I assume that, in
25 effect, time is on your side with respect to this

1 deal. The longer the deal percolates along, the more
2 value to Cogentrix, the less value to FPL; correct?

3 A Well --

4 Q Isn't that what you just said?

5 A Yes. But the danger is, if that balance that
6 was constructed at a certain point in time, if we fall
7 out of balance, if too much of the benefit accrues to
8 our side and not enough to the other side, the deal
9 falls apart, and there's no benefit to us.

10 Q That's all --

11 A So I don't know when that happens.

12 Q Okay. I just -- understand, I mean, the
13 contract covers -- that you covered it with OPC today,
14 you've got to close by September, and there's an
15 extension period following that.

16 I guess I'm just trying to understand from
17 your perspective -- I think you've answered it --
18 there's no pressing, compelling, we got to close by
19 date certain or everything falls apart; correct?

20 A As I mentioned before, the -- the motivations
21 of a fund are different than the motivations that I'm
22 used to as being a part of a long-term owner of a
23 power project. So clearly one of the elements that
24 goes into the evaluation for the fund of whether to do
25 a deal -- a sale like this or not has to do with how

1 long you continue to wear the operational risk and how
2 long it takes before you can return your investors'
3 money into capital.

4 So the longer this goes without being approved
5 and consummated, the less value there is there for the
6 fund, in those terms.

7 Q Do you know what the return will be to the
8 people who have ownership interest in the fund?

9 A No.

10 Q But you do know it will be less value as time
11 goes forward?

12 A I know that the factors that go into their
13 decision to sell involve wearing operational risk and
14 how much time it takes -- the longer we hold -- the
15 longer the Carlyle Fund holds the investors' money,
16 the more return they have to pay them. It's interest
17 on the money.

18 If you can -- if you can pay a set purchase
19 price tomorrow instead of next year, that's a much
20 better return for the investors tomorrow.

21 Q Time value of money?

22 A Time value of money.

23 Q And is it your understanding that's what is
24 motivating the Carlyle interest to do this deal?

25 A I can only assume that those factors play into

1 their total evaluation. I don't know all the factors
2 that they weigh.

3 Q Okay. What is [REDACTED]

4 MR. WRIGHT: I'm going to object. I don't
5 think it has anything to do -- I'm sorry. You can
6 answer that question.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Q So then there's a reference in here about an
11 injunction -- I say "in here." I'm referencing back
12 here to this e-mail that we've identified that I don't
13 think I will be marking because it doesn't seem to be
14 particularly relevant to Cedar Bay.

15 But you say, quote, [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q Okay. So --

23 A It's unrelated to Cedar Bay.

24 [REDACTED]

25 [REDACTED]

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MR. WRIGHT: I object to the form of the question as being vague. I don't think you've established there is a relationship there, Jon.

BY MR. MOYLE:

Q Is there anything in here that relates to the Cedar Bay?

A No.

Q Other than the words "Cedar Bay," prior to the Cedar Bay closing, I mean, that relates to it a little bit.

A That's just describing the timing of which comes first, you know, how we proceed.

Q And you don't have much information about why -- why timing was important?

MR. WRIGHT: Objection; vague. Which timing? He's already answered the question about timing with respect to Cedar Bay. I'm not going to let you ask him about the others.

MR. MOYLE: What did he say? Tell me what he said.

MR. WRIGHT: She can read back the answer.

1 MR. MOYLE: Would you read back his answer
2 when I asked him the question about the timing?

3 (Discussion off the record.)

4 MR. MOYLE: That's I think already been
5 marked, but I just want to show it to him.

6 MS. BARRERA: Jon, what are you showing him?

7 MR. WRIGHT: Exhibit 6 to the depositions.

8 BY MR. MOYLE:

9 Q So I just would reference to you Exhibit 6. I
10 think it was introduced with Mr. Patterson.

11 But it's an e-mail from you. Dated April
12 22nd, 2013, to Mr. Patterson; is that right?

13 A I think there may be some confusion in terms
14 of Exhibit 6. What you just showed me doesn't match
15 what I have marked in here as Exhibit 6.

16 Q Yeah, I misidentified it. It's not Exhibit 6.
17 I'm sorry. That was my purposes.

18 MR. WRIGHT: Well, hang on. Let us do get on
19 the same page, literally as well as figuratively.

20 MR. MOYLE: Let's go off the record.

21 (Discussion off the record.)

22 MR. MOYLE: Okay. Back on the record.

23 BY MR. MOYLE:

24 Q So there has been some correspondence -- I
25 think it's previously been marked as Exhibit 8 to a

1 deposition -- about JEA holding up a closing of the
2 \$250 million loan.

3 Did you write an e-mail related to that topic?

4 A I did.

5 Q Okay. And how was JEA holding up the closing,
6 if they were?

7 A In these loan agreements, the -- the lenders
8 typically reserve for themselves the right to step
9 into our shoes if something -- if we defaulted. And
10 so in order to effect that and perfect that right for
11 them, they typically ask for consents to assignment
12 from all the major contract counterparties; that they
13 agree that if we defaulted, that instead of just
14 declaring a default on the contract, they would allow
15 that contract to be assigned to the benefit of the
16 lenders.

17 And so JEA had not yet signed the consent to
18 assignment to the lenders as a part of the \$250
19 million refinancing that was done in the spring of
20 2013, so they were holding up the closing of the loan.

21 Q How is JEA involved? I thought they just
22 provided you electricity? Isn't it in fact a provider
23 to a retail customer of electricity to run your
24 office?

25 A JEA provides wheeling services to Cedar Bay.

1 They actually transmit the power that we generate.
2 Since Cedar Bay is located in JEA territory, JEA
3 actually transmits the power to FPL, hands it off to
4 them.

5 Q Do you have contracts to do that, or is that
6 just FERC tariff pricing?

7 A It's a contract.

8 Q It's a specific contract?

9 A Yes.

10 Q Do you know what happens to that contract upon
11 the closing of this deal, assuming it closes, with
12 FPL?

13 A It would -- it's a contract with Cedar Bay
14 Generating Company, so FPL would own the entity on the
15 other side of the contract. It would remain in force.

16 Q Do you have to pay them even if you don't
17 wheel power?

18 A I'm not sure of the terms. But I -- I'm not
19 sure of the terms. I haven't looked at the payment
20 terms on that in a long time.

21 Q Why was JEA holding things up?

22 MR. WRIGHT: I believe he's answered that, but
23 I'll let him answer it again.

24 A Why weren't they -- are you asking why didn't
25 they sign the document promptly?

1 BY MR. MOYLE:

2 Q Yeah. I asked it, why were they holding it
3 up? I mean, was it an oversight, or did somebody have
4 an issue, or some other reason?

5 A They were unfamiliar with the concept of
6 consent to assignment. So they had to be familiarized
7 with why we were asking for this and get themselves
8 comfortable with their ability to sign it.

9 Q Which they did?

10 A Yes.

11 MR. MOYLE: Okay. All right. I have another
12 document. We'll mark this one.

13 What number will it be?

14 THE REPORTER: 24, I think.

15 (Exhibit No. 24 was identified for the
16 record.)

17 MR. BUTLER: Is that 24?

18 MR. MOYLE: Right.

19 BY MR. MOYLE:

20 Q Now, you were aware that Cedar Bay was
21 challenging the assessment of their property as made
22 by the property appraiser for Duval County; correct?

23 A Yes.

24 Q And I've handed you a document and ask you if
25 you could identify this document?

1 A It appears to be an e-mail from one Antreas
2 Ghazarossian to Gary Heichel at my company.

3 Q Who is Kitty Guinsler?

4 A I have no idea.

5 Q Were you briefed regularly on the challenge to
6 the assessment?

7 A No.

8 Q Who was most knowledgeable about the ad
9 valorem challenge at Cogentrix or Carlyle?

10 A It would be Gary Heichel.

11 Q Do you have any information about the quoted
12 language under the second paragraph regarding the
13 purchase power agreement?

14 MR. WRIGHT: Jon, would you repeat that? I
15 missed a word at the beginning of your question.

16 MR. MOYLE: I'm asking if he has any
17 information in the quoted section under
18 paragraph 2. Paragraph 2 starts: With regard to
19 the purchase power agreement, we will respond as
20 follows. And then it says, colon: The petitioner
21 recognizes that the purchase power agreement
22 between Florida Power & Light and Cogentrix is a
23 contract requiring that all electricity generated
24 by the Cedar Bay Generating facility be provided
25 directly to FPL, paren, as a regulating utility,

1 close paren. As such, the agreement is an
2 intangible, having no relevance to the appraised
3 value of tangible personal property constituting
4 the generating plant. The petitioner does not
5 intend to introduce any part of the agreement as
6 evidence at the forthcoming VAB hearing nor even
7 allude to any of the terms of the agreement.

8 A I'm not sure what your question is.

9 Q So, do you have any information about this
10 statement or why it was put forward?

11 A I don't even know the gentleman that wrote
12 this e-mail, so --

13 Q So if I said to you -- I mean -- if you can
14 answer the pending question.

15 You have no information about this statement?

16 A No.

17 Q So it would follow, if I ask you, well, it
18 seems like this asset is being valued different ways
19 for different things. For the tangible personal
20 property evaluation process, the PPA is not
21 considered, but for the purposes of asking the PSC to
22 approve it, it's the only thing considered; would that
23 be fair?

24 MR. WRIGHT: Objection; lacks foundation. And
25 I'm -- yeah, I think it's -- no.

1 A I'm not an expert on property tax. And so
2 it's difficult for me to try to, you know, express an
3 opinion on what it is that the -- what is taxed versus
4 what isn't and whether it's the physical assets on the
5 ground or whether it's the business and its
6 contractual arrangements. I don't know what the basis
7 is for those things.

8 BY MR. MOYLE:

9 Q Okay. So let me flip you you page 3. I
10 highlighted this document. These are my highlights in
11 here.

12 It says: The 2012 purchase price for Cedar
13 Bay in 2012, and then at the bottom it says: What was
14 the purchase price of Cedar Bay Generating Company in
15 2012?

16 Do you know the answer to that question?

17 MR. WRIGHT: I'm going to object, lack of
18 foundation. I -- I withdraw that objection. You
19 can ask him that question, does he know what the
20 purchase price was.

21 Do you know?

22 THE WITNESS: I don't know.

23 MR. MOYLE: Okay. I will go ahead and mark --
24 that was already marked; right?

25 MR. WRIGHT: Just for the record, we're going

1 to object to the admissibility of this exhibit as
2 to lack -- a complete lack of foundation. But you
3 can mark it at the deposition. That's fine.

4 MR. MOYLE: You're going to have to make me
5 take your records custodian.

6 MR. WRIGHT: My objection was relevance, Jon.

7 BY MR. MOYLE:

8 Q Was there a point in time when -- when
9 Cogentrix was not operating the Cedar Bay facility,
10 but it owned the facility?

11 A There was a time when -- when Cogentrix owned,
12 I think, a 20 percent interest in Cedar Bay, and Cedar
13 Bay was operated by another entity.

14 Q And what point in time was that?

15 A Well, let me clarify. So I believe that
16 Cogentrix bought a 20 percent interest in Cedar Bay in
17 1998, so it was before I came to the company. And at
18 that point, it was operated by a company called USOSC,
19 a subsidiary of NEGTEC, National Electric -- National
20 Electric & Gas Transmission Company.

21 Subsequent to Goldman's purchase of the
22 remainder -- the other 80 percent piece of those NEGTEC
23 assets, Cogentrix -- Goldman through Cogentrix
24 controlled 100 percent of the project. But at some
25 point under USOSC's ownership, the labor force had

1 become unionized.

2 So when Goldman acquired -- Goldman, through
3 Cogentrix, acquired Cedar Bay, since Goldman managed
4 pension funds for unions and other things, they didn't
5 want to in any way get into a potential adversarial
6 relationship with labor.

7 And so we -- we engaged Worley Parsons to be
8 a -- basically a body shop, a -- an operator, although
9 they operated under our direction. Basically the
10 labor force worked for Worley Parsons, and Worley
11 Parsons worked for us.

12 Q How long did that relationship last?

13 A I think until 2013.

14 Q Okay. I'd reference you to Exhibit 13 that
15 was previously used in a deposition I believe with
16 Mr. Patterson. It says Cedar Bay PPA at the top.

17 Do you have that?

18 A I do.

19 Q Are you familiar with this document?

20 A Not really.

21 Q Somewhat?

22 A I'm getting familiar with it. Okay.

23 Q So are you familiar with this document?

24 A I am now.

25 Q Okay. Do you know -- the second page says

1 [REDACTED] right? We've already established that
2 that doesn't have anything to do with Cedar Bay.

3 A Correct.

4 Q So why was this -- the first page of this
5 document says: Cedar Bay PPA prepared?

6 A I don't know what purpose this was prepared
7 for. It -- it just appears to be a summary of certain
8 key provisions of two different power purchase
9 agreements.

10 Q Have you seen the document before, before I
11 showed it to you?

12 A No.

13 Q Since you signed the -- since you, your
14 company, signed the agreement with FPL, have you made
15 any adjustments to any of the terms related to
16 severance payments or retention payments that would be
17 made to employees at Cedar Bay?

18 A When we -- we signed the deal and announced it
19 to the employees, we -- we made available to the
20 employees a retention payment. If they stayed with us
21 through -- and I forget whether it's September 1st or
22 September 30th of this year, to try to avoid potential
23 turnover from people being concerned about what the
24 future may bring.

25 Q And were you taken up on that retention

1 payment by a lot of your employees?

2 A It hasn't -- it hasn't come due yet. [REDACTED]

3 [REDACTED]

4 [REDACTED] And if they continue to
5 stay there until the -- the earlier of this deal
6 closing or -- like I said, I can't remember whether
7 it's September 1st or September 30th -- they will
8 receive a retention payment.

9 Q And it's about a [REDACTED] fiscal impact;
10 is that right?

11 A I don't remember what the overall number was.
12 That wouldn't shock me.

13 Q And then whose obligation is that? Is that
14 part of the O&M agreement that will be transferred to
15 FPL?

16 A I think that Cogentrix is taking
17 responsibility for the retention, because the intent
18 of that program is to continue -- to continue the
19 employment of those -- those individuals, to help us
20 continue to operate the plant until such time as it's
21 not our responsibility to operate the plant.

22 Q So do you know that for a fact, that that's on
23 Cogentrix's side of the ledger?

24 A I think that's the way it worked out.

25 Q In some of the earlier depositions there was

1 discussions about a skinny budget or skinny version of
2 a budget.

3 Do you have any information or familiarity
4 with that term and what it signifies?

5 A Yes.

6 Q Okay. Please explain.

7 A The skinny budget was basically a version of
8 our normal operating budget for Cedar Bay that
9 reflected a change in dispatch. So if -- in other
10 words, if the plant was only going to be operated at a
11 3 to 5 percent capacity factor, there was a lot of
12 maintenance expense that could be taken out of that
13 budget, because we would not be doing six weeks worth
14 of outages, and we wouldn't be doing, you know,
15 extensive rebuilds and coatings of the tubes and other
16 things, because the plant wouldn't be experiencing the
17 wear that it normally would.

18 So it reflected a reduced -- a reduced
19 expense. And that was part of our discussions with
20 FPL about the cost of continuing to operate the plant
21 after their acquisition. So we were trying to -- we
22 were trying to give them an accurate picture of what
23 the true cost of operation would be in that kind of
24 scenario.

25 Q During that conversation, was there any

1 discussion about dispatch being handled differently by
2 FPL as to whether FPL owned it or whether they just
3 continued to have access to it through a purchase
4 power agreement?

5 A Well, the scenario that we developed was put
6 together on the basis of FPL terminating the power
7 purchase agreement and then dispatching the facility
8 at its true cost of production instead of its lower
9 contractual electricity price. And so that -- that
10 higher cost of production was expected to result in
11 even lower dispatch rates than we had seen.

12 Q Because -- because, in effect, FPL would be
13 seeing your cost at that point in time?

14 A That's right.

15 Q Really where I was going is, any -- any reason
16 that FPL -- that you know of that FPL would disband --
17 dispatch -- strike that.

18 MR. MOYLE: I have another document. I will
19 mark this one. What will it be?

20 THE REPORTER: 25.

21 (Exhibit No. 25 was identified for the
22 record.)

23 BY MR. MOYLE:

24 Q I'm handing you an exhibit that's been marked
25 as Exhibit 25. I want to reference you to -- it's an

1 e-mail string, but the point I want to reference is
2 that it appears that you sent an e-mail on October
3 15th, 2014, to Collin Franceschi.

4 You said, quote, the purpose of this is to
5 push some value to us prior to closing the deal. FPL
6 would run their month ahead projection and allow us to
7 opt to keep Cedar Bay offline by buying market price
8 power from FPL to substitute for our lost generation.
9 They would still pay us our contract price. Our
10 savings would be the difference between our cost of
11 production and their month ahead price forecast,
12 paren, the price at which they would sell us the
13 replacement.

14 What -- what prompted this arrangement?

15 A As we were going through the negotiations, we
16 were trying to find a way of giving FPL, you know, as
17 low a price as possible in the transaction to make it
18 work for FPL. And in return for doing that, we were
19 trying to determine if there was some way in the
20 interim for us to kind of share the savings that could
21 be realized by not having to run Cedar Bay for
22 dispatch while still meeting all the conditions -- the
23 terms of the -- the other terms of the PPA.

24 In other words, if it costs -- I'll give you
25 just rough numbers. These aren't real numbers; I'm

1 making them up for illustration purposes.

2 If it costs us \$75 to produce a megawatt hour,
3 but we're getting paid \$35 for it, we're losing \$40.
4 If we signed some sort of a deal with FPL that said,
5 if you want the power from Cedar Bay for that \$35
6 power, let us buy it from someplace else in the market
7 for -- if it's available -- for \$45, and we'll still
8 sell it to you at the -- the PPA price of \$35. And
9 that way, we only lose \$10 on a megawatt hour instead
10 of losing \$45 on a megawatt hour.

11 And so this was a concept we were trying to
12 decide -- to determine whether it was feasible or not
13 for us to still provide FPL with the deal that they
14 wanted -- you know, the deal that they had struck on
15 Cedar Bay, while not forcing us to lose as much money
16 during the interim process, because if -- if we could
17 envision some return for our project that way, we
18 could accept the lower sale price.

19 Q Wasn't this in essence what Mr. Kellerman had
20 proposed previously, just going into the market to --

21 A In general concept. It's not terribly far
22 off. This ultimately went the same path as the
23 Kellerman proposals. It didn't have legs, and it
24 wasn't workable.

25 Q Who were you interacting with at FPL on this?

1 A Really, all my contacts were through Tom
2 Hartman. I don't remember having -- I don't remember
3 having a conversation with him about it, though. I
4 don't -- that may have been something that he talked
5 about with Jim Larocque, because I don't remember
6 talking with Tom about this particular -- in one of
7 our face-to-face meetings, we discussed the concept,
8 but I just don't remember, you know, when the concept
9 got pulled off the table. I think I may have heard --
10 heard about that from Jim Larocque, that it was no
11 longer viable.

12 Q Did an arrangement similar to this ever take
13 place at Cedar Bay, that you know of?

14 A No, it never did.

15 Q Why did this not move forward?

16 A I don't know, because, I mean, I wasn't on the
17 conversation in which it got pulled off the table.
18 Ultimately someone determined that, you know, we
19 couldn't mess with the base terms of the PPA.

20 MR. WRIGHT: Are you going to mark this, Jon?

21 MR. MOYLE: I am. It will be 26.

22 (Exhibit No. 26 was identified for the
23 record.)

24 BY MR. MOYLE:

25 Q I'm handing you an exhibit that's been marked

1 as Exhibit 26 to your deposition. I'd ask you, if you
2 would, to identify this document.

3 A It appears to be an e-mail exchange between
4 Collin Franceschi and myself.

5 MR. BUTLER: Jon, you're asking to mark this
6 as Exhibit 26; right?

7 MR. MOYLE: That's right.

8 MR. BUTLER: Is that number 30 that's
9 handwritten on there, is that --

10 MR. MOYLE: That's my number.

11 MR. BUTLER: That's your number?

12 MR. MOYLE: Right. For the record, for all of
13 these exhibits I've used, the yellow highlighting
14 has been my yellow highlighting. And this is my
15 "30."

16 BY MR. MOYLE:

17 Q So you were involved in tax discussions with
18 Mr. Franceschi; is that right?

19 A I was trying to find out whether a tax
20 question had been resolved that was going to determine
21 how we proceeded with the -- you know, what structure
22 this deal took, whether it was a buyout of the power
23 purchase agreement or whether it was a sale of the
24 facility.

25 Q And what was contemplated here with respect to

1 FPL being able to hold the plant, quote, for an
2 instant before returning it to us for closure or
3 redevelopment, end quote?

4 A I wasn't -- I wasn't in that conversation. I
5 just -- the extent of my understanding is very, very
6 general. And that is that a purchase for -- or a
7 payment for the termination of the power purchase
8 agreement is treated differently for tax purposes than
9 the purchase of an asset.

10 And so there was some discussion about how --
11 how to achieve the -- the termination of the power
12 purchase agreement, which drives most of the -- you
13 know, the value of this project, you know, without
14 having to -- without having to sell the facility or to
15 transfer its ownership for a moment in time. And I
16 think the moment in time was determined as an
17 unworkable concept.

18 Q Are there plans to have the project site
19 redeveloped?

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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10 Q Why were you -- why were you looking into the
11 dismantlement and/or turning the facility into a
12 biomass facility, slash, renewable facility per our
13 previous conversation at a prior point in time if the
14 purchased power agreement, you know, was satisfactory
15 and in the money?

16 MR. WRIGHT: I'm going to object. I think
17 that assumes a fact not in evidence. I heard a
18 conversation with him about the prospects of those
19 options, but I don't recall that it was clear
20 exactly what the timing of those conversations was.

21 MR. MOYLE: We can take it step by step.

22 BY MR. MOYLE:

23 Q We have already established you considered
24 dismantling the plant; correct?

25 A Yes.

1 Q And at what point in time was that?

2 A The initial structure of the negotiations with
3 FPL were around a potential termination of the power
4 purchase agreement, with Cogentrix or the Carlyle Fund
5 still owning the facility.

6 Q And -- but the dismantlement, you guys looked
7 at dismantling it prior to the FPL deal ever
8 surfacing; correct?

9 A No.

10 Q I thought that's what you told me earlier this
11 morning when I was asking you about the dismantlement.
12 You did it independently of the FPL deal; it was
13 something you were looking at the same way you were
14 looking at Norfolk.

15 Did I get that wrong?

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[REDACTED]

So we started to do that work, not because of FPL's request, but because we had started -- we had engaged with FPL about a possible power purchase agreement buyout.

Q So all this work was -- in effect, wasn't something -- [REDACTED]
[REDACTED]
options that you were considering because you were in conversations with FPL?

A That's right.

Q Why would you do that if FPL is buying the plant?

[REDACTED]

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[REDACTED]

MR. MOYLE: I've got another document.

1 (Discussion off the record.)

2 (Exhibit No. 27 was identified for the
3 record.)

4 BY MR. MOYLE:

5 Q Who is Bruce Lester?

6 A Bruce Lester is an instrument and controls
7 specialist that works for Cogentrix Field Services, an
8 organization under the umbrella of Cogentrix Energy
9 Power Management.

10 Q And have you seen this e-mail before?

11 A Not before.

12 Q He made a statement, he said, quote, low gas
13 prices are responsible for this wave of coal plant
14 closures, period.

15 Do you disagree with that statement?

16 A Low gas prices are certainly a -- a large
17 component, you know, one of the large drivers of coal
18 plant closures. It's not the only one, but --

19 Q What are the others?

20 A Pending environmental regulations and age.

21 Q And that the generating fleet is getting
22 older?

23 A Uh-huh.

24 Q That was a yes; right?

25 A Yes. Sorry.

1 Q So you had talked about operational risk
2 associated with running a coal plant. It would be
3 fair to say there's also regulatory risk and risk of
4 obsolescence that are risks of operating coal plants?

5 A Yes.

6 MR. MOYLE: Go ahead and mark that.

7 (Exhibit No. 28 was identified for the
8 record.)

9 MR. BUTLER: Are you marking this, Jon?

10 MR. MOYLE: Yeah, 28.

11 BY MR. MOYLE:

12 Q I've handed you a document that's been marked
13 Exhibit 28. Could you please identify it?

14 A Looks to be a string of e-mails, some back and
15 forth with Tom Hartman, some between Collin Franceschi
16 and John Gasbarro, who is in our asset management
17 group, sent by me.

18 Q So you're familiar with it?

19 A Yes.

20 Q And why are you -- why are you telling Tom
21 Hartman, we had somebody to come look at the power
22 plant demo, and I'll pass along the contact
23 information? At least that's how I read it.

24 A Well --

25 Q That's on the front page.

1 A Yeah. Tom -- Tom was requesting an
2 opportunity to have a number of people come through
3 and tour the Cedar Bay facility, to take a look at
4 really all aspects of the project, but included
5 amongst the things that they were going to be
6 analyzing was the -- the potential cost of dismantling
7 the plant.

8 FPL had evidently dismantled some of their own
9 facilities in the not too distant past, and they were
10 interested in trying to get their hands around what
11 the -- you know, what the costs of dismantling Cedar
12 Bay would be if they completed the acquisition.

13 And so just to give -- give Tom and FPL a
14 little bit more information on that potential cost, I
15 offered to share with Tom the proposal that came in
16 from one outfit that we had had look at this back when
17 we thought we were going to continue to own the
18 facility.

19 So just, again, sharing information, trying to
20 make sure they had as much information as we did about
21 what the obligations were at Cedar Bay.

22 **Q** Did Mr. Hartman ever conduct a site visit?

23 A There was -- I don't know whether Tom was
24 there or not, but there was a contingent from FPL that
25 did go through and conduct site visits, yes.

1 Q Plural visits, or singular?

2 A I'm not sure, because most of that was just
3 handled at the plant, and we didn't -- at the time we
4 didn't know if we had a deal or not, so we didn't want
5 to get the workforce worried or spun up about what
6 might or might not happen.

7 And so we were -- we were trying to minimize
8 the number of site visits, but we -- we were trying to
9 conduct them in such a way that people weren't walking
10 around with FPL hard hats on. It wasn't obvious
11 that -- you know, what we were working on.

12 MR. MOYLE: All right. I've got another.

13 This will be 29.

14 (Exhibit No. 29 was identified for the
15 record.)

16 BY MR. MOYLE:

17 Q I asked you some questions about this earlier.
18 Here's a document -- you weren't sure of the employee
19 retention payment, but I've given you a document that
20 says it's [REDACTED] It appears you were copied on this
21 document. Is that -- is that true --

22 A Yes.

23 Q -- that you were copied?

24 A Yes.

25 Q You have no reason -- I mean, the employee

1 retention payment is [REDACTED] correct?

2 A That's the -- that was the budgeted amount for
3 it, yes. It all depends on how many people are
4 actually there at that point in time.

5 Q And you think that this is a Cogentrix
6 obligation, not an FPL obligation?

7 A I believe that's the case, yes.

8 Q I was going to say, you wouldn't swear to it,
9 or maybe you would?

10 A Well, the only thing I can tell you for sure
11 is that is what I advocated for. Whether I was
12 successful in -- whether I prevailed on that point or
13 not, I don't recall.

14 Q Do you think that it would be an appropriate
15 expense for FPL to pay or the ratepayers to pay?

16 A I guess it depends on the basket of puts and
17 takes.

18 MR. WRIGHT: I object to that. That calls for
19 real speculation and asking the witness to speak
20 for FPL. He can answer if he wants to.

21 MR. BUTLER: You're asking him an area that he
22 has no demonstrated expertise on.

23 MR. MOYLE: He's a fact witness, not an expert
24 witness.

25 BY MR. MOYLE:

1 Q Why did you advocate that Cogentrix pay for
2 it?

3 A Because I thought there was real value to
4 Cogentrix to continue to retain the highly skilled
5 workforce that we had developed while we were still --
6 while the performance of the plant was still at risk
7 and important to us.

8 Q Okay. I'm showing you an exhibit that will be
9 marked as Exhibit 30 to your depo. Could you please
10 identify this document?

11 A It's an e-mail from me to Jim Larocque.

12 (Exhibit No. 30 was identified for the
13 record.)

14 BY MR. MOYLE:

15 Q Why did you send him this e-mail?

16 A To relay to him the results of an analysis
17 that was performed by Collin Franceschi.

18 Q Why was this analysis performed?

19 A We were trying to determine what the potential
20 savings would be if energy was provided to FPL from
21 the market instead of from the Cedar Bay facility.

22 The analysis is -- is somewhat crude, because
23 the only proxy we had for market prices was the
24 projected as-available rates from Florida Power &
25 Light. And so just -- if indeed that reflected the

1 market price, our analysis of historical dispatch
2 suggested that, you know, if power was available at
3 that price from somebody else, we could -- we could --
4 we could save money by delivering the, you know, power
5 from the market to Florida Power & Light.

6 And also our analysis suggested that, because
7 Florida Power & Light has limited opportunities to
8 turn -- turn down our facility, you know, they -- you
9 can't turn a coal plant on and off with regularity;
10 they get six opportunities a year.

11 So when the project -- when the -- when our
12 power is, quote, out of the market, more expensive
13 than what the market price is, at night they typically
14 turn us down to minimum load, which is 90 megawatts
15 for this facility, and operate us there so that we're
16 available the next morning when they -- when they do
17 need the power, and we would be in the money for them.

18 They -- our analysis suggested that they may
19 be losing money by continuing to run us at minimum
20 load at night. So it pointed out somewhat of a -- to
21 us, you know, our expectation was there was a little
22 dilemma there.

23 They had to balance off how many times they
24 could shut us down versus how often we were really in
25 the money for them. It seemed to us like these

1 numbers suggested that there was great benefit to both
2 sides by coming to some sort of an agreement to
3 provide the power from the market instead of from the
4 Cedar Bay facility.

5 Q Did you share this conclusion with FPL?

6 A We didn't share this analysis with them, no.

7 Q How about with respect to the fact that you
8 believe they would have saved money? Isn't this the
9 same thing we've been talking about three times?

10 A We suggested that -- you know, we told them we
11 thought it would save money. I'm not sure that they
12 agreed with us. Again, as I mentioned, we were using
13 a proxy price of the as-available rates, since the
14 Florida market isn't -- doesn't really have a, you
15 know, kind of an open and visible trading market.

16 Q But if you look at the dates -- if you look at
17 the dates of this e-mail, it says from November 2011
18 through August 2014, and the e-mail was sent on
19 October 20th, 2014; right?

20 A Right.

21 Q So to me that doesn't look like it was
22 projected as available pricing; it's a historical
23 look-back, I'd assume; correct?

24 A This was looking at a historical period, but
25 we don't have historical market prices. The only

1 thing we had to go on was FPL's projected,
2 as-available rates for the next day. And we -- you
3 know, we kept those records each day and used that as
4 a proxy for the market price. The actual market price
5 often varies widely from the projected as-available.

6 Q Do you ever get paid as-available pricing for
7 any energy you generate?

8 A There is the possibility, but I don't think
9 we've ever availed ourselves of that. If FPL asks us
10 to decommit -- in other words, to shut down -- I
11 believe that under the terms of the power purchase
12 agreement, Cedar Bay has the ability to continue to
13 operate it and receive some discount from the
14 as-available rates. We wouldn't actually get the
15 as-available rate. I think it's some discount to
16 that.

17 Q Less than the as-available rate?

18 A Uh-huh.

19 Q You said you don't think FPL agreed with this
20 general proposition.

21 Why do you say that?

22 A It may have just been the negotiating
23 positions of each party. And they suggested that --
24 you know, that they wouldn't save by doing that. I --
25 we didn't have any information to challenge that,

1 so ...

2 Q So with respect to the site with Cedar Bay on
3 it, if you were given a choice and were exercising
4 good business judgment for Cogentrix, and they said,
5 do you want this plant? You can run it as a merchant;
6 you can do whatever you want with it, or do you not
7 want this plant, what would your recommendation be?

8 A I'm an operator at heart. Give me the plant.
9 I don't know that Carlyle would have the same opinion,
10 because they're trying to evaluate risk and don't view
11 it the same way I do. I'm much more comfortable with
12 operating risk.

13 Q And that may not have been the best way to ask
14 the question. But I've seen conflicting documents
15 about, oh, there is value. Somebody's saying the
16 people who did the dismantlement study are saying
17 they'll pay you, because they think there's value in
18 scrap. Some people have raised concerns about
19 potential groundwater issues or other cleanup issues.

20 Do you have a sense whether decommissioning
21 the plant is a money loser or a money gainer?

22 A My belief is that there is money in that
23 facility. That hardware, that iron in the ground has
24 real value and can be -- you know, continue to be used
25 in some form or fashion. And if it results in a

1 decommissioning, we have proposals from people that
2 suggested they would actually pay us to take the --
3 you know, take over the property and the plant, which
4 meant that they would assume all of the other
5 obligations associated with closure of that site.

6 Q All right.

7 (Discussion off the record.)

8 MR. BUTLER: Jon, did you mark this e-mail
9 from Mr. Evans and Mr. Larocque as 30?

10 MR. MOYLE: I meant to, but I don't think I
11 did. Actually, yeah, I did.

12 MR. BUTLER: So 31 is the one you just handed
13 out?

14 MR. MOYLE: Yeah.

15 (Exhibit No. 31 was identified for the
16 record.)

17 BY MR. MOYLE:

18 Q I've handed you an exhibit that's been marked
19 as 31. Could you please identify it.

20 A This is an e-mail from me to Tom Hartman,
21 copying Jim Larocque.

22 Q So you're familiar with it?

23 A Yes.

24 Q I highlighted a sentence in the third
25 paragraph that says, quote, the ultimate disposition

1 of the facility also matters. If FPL is just going to
2 shut down the plant in two years and decommission it,
3 the cost will be lower than if the plant was slated to
4 be sold for conversion to biomass.

5 Why did you make that statement?

6 A Because it's true.

7 Q Yeah. Tell me why. I mean...

8 A Our mode of operating and maintaining a plant
9 is such that we're always trying to prepare the plant
10 for -- you know, for the long-term. And so as an
11 example, every five years, whether they need it or
12 not, all of the -- the big ID draft fan motors get
13 pulled off their foundations, sent off to a shop.

14 It's disassembled; it's inspected; it's
15 cleaned; it's repainted; it's put back together again
16 and put back on site to run for another five years.

17 If you're going to tear a plant down in two
18 years, we probably would not take that fan out of
19 service and have all that work done on it and put it
20 back in place, especially knowing that we have a spare
21 sitting in inventory. But our normal practice,
22 because we're always looking for the long-term, is to
23 do that routine preventive maintenance, because
24 availability under this contract is key. And we have
25 to make sure that the plant is always available to

1 operate.

2 If you're running at a 3 percent capacity
3 factor, it's -- it's a different story. You
4 wouldn't -- you wouldn't -- you wouldn't take those
5 actions.

6

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9 A Well, that was one of the concepts being
10 explored.

11 Q How far did you go in exploring that?

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17 Q Did you reach a conclusion?

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Q Did you have to have a purchase power

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agreement

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Because you're cutting the fuel costs significantly;

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right?

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Q You would be a merchant, in effect?

14

A I'd be a merchant, yeah.

15

Q And I'm just asking, would it work as a

16

merchant running two out of three boilers if you had

17

enough fuel --

18

A Because Florida is not a liquid market, and

19

there's not a -- you know, there's not some exchange I

20

can go to. It would depend on negotiating deals with

21

counterparties, bilateral deals with counterparties,

22

and we never got to that point.

23

Q Do you know what the -- you said FPL -- FPL

24

approached you-all about doing this deal; correct?

25

A Correct.

1 Q Did they make an offer to you to start the
2 conversation? That's typically how it works.
3 Somebody calls up and says, hey, I'd like to talk to
4 you about buying your plant or buying down the PPA.
5 Did they offer...

6 A They didn't come and offer a number, but they
7 said that they were interested in exploring -- they
8 were interested in exploring opportunities to
9 restructure or terminate the power purchase agreement.
10 Because at that time their projections were that low
11 gas prices were going to persist and that the dispatch
12 of the facility was going to drop off further.

13 I think I remember hearing numbers of like 16
14 or 17 percent at our -- at our contract price is what
15 our dispatch would have been, which would have made
16 the plant further and further out of the money for
17 the -- for FPL and the ratepayers.

18 Q So who put the first number on the table?

19 A I don't know, because I wasn't involved in the
20 number conversations.

21 Q Did you -- were you made privy of offers
22 communicated in writing back and forth between the
23 Carlyle Group and Florida Power & Light?

24 A I may have seen numbers at some point. Like I
25 said, I wasn't engaged in a give-and-take on that, but

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4 Q I'm handing you an exhibit that has been
5 marked as 32 to your deposition. Would you please
6 identify it.

7 A This appears to be an e-mail string between
8 Collin Franceschi and Mark Rudolph. Further down in
9 the string, I was involved in that conversation.

10 Q Again, the subject is Cedar Bay financials;
11 right?

12 A Yes.

13 Q And it appears that there was a telephone
14 conference where FPL had Cedar Bay's 2013 financials,
15 and you were not aware how they obtained them; is that
16 right?

17 A That's right.

18 Q Okay. When -- you-all have shared all the
19 financial information of Cedar Bay with Florida Power
20 & Light; correct?

21 A I'm not sure of the full extent of the
22 financial transmittals. I wasn't focussed on that.

23 (Exhibit Nos. 32 and 33 were identified for
24 the record.)

25 MR. WRIGHT: I was just going to observe, this

1 appears to be highly sensitive -- this may or may
2 not be highly sensitive information. Let's see if
3 that can be determined. Actually it probably
4 isn't.

5 BY MR. MOYLE:

6 Q I've handed you an exhibit that's been marked
7 Exhibit 33 to your deposition.

8 Would you identify it, please.

9 MR. WRIGHT: Just to be clear, we're asking my
10 colleagues from FPL, that they treat this as highly
11 sensitive information.

12 Thanks, Jon.

13 MS. BARRERA: Highly sensitive. Is that what
14 you're saying?

15 MR. WRIGHT: Highly sensitive, yes. It
16 doesn't make any difference to y'all, but it's in
17 the confidential bucket.

18 MR. MOYLE: You used to call it super-super
19 secret.

20 MR. WRIGHT: I always called it the double --
21 (Discussion off the record.)

22 BY MR. MOYLE:

23 Q Go ahead and identify it if you can.

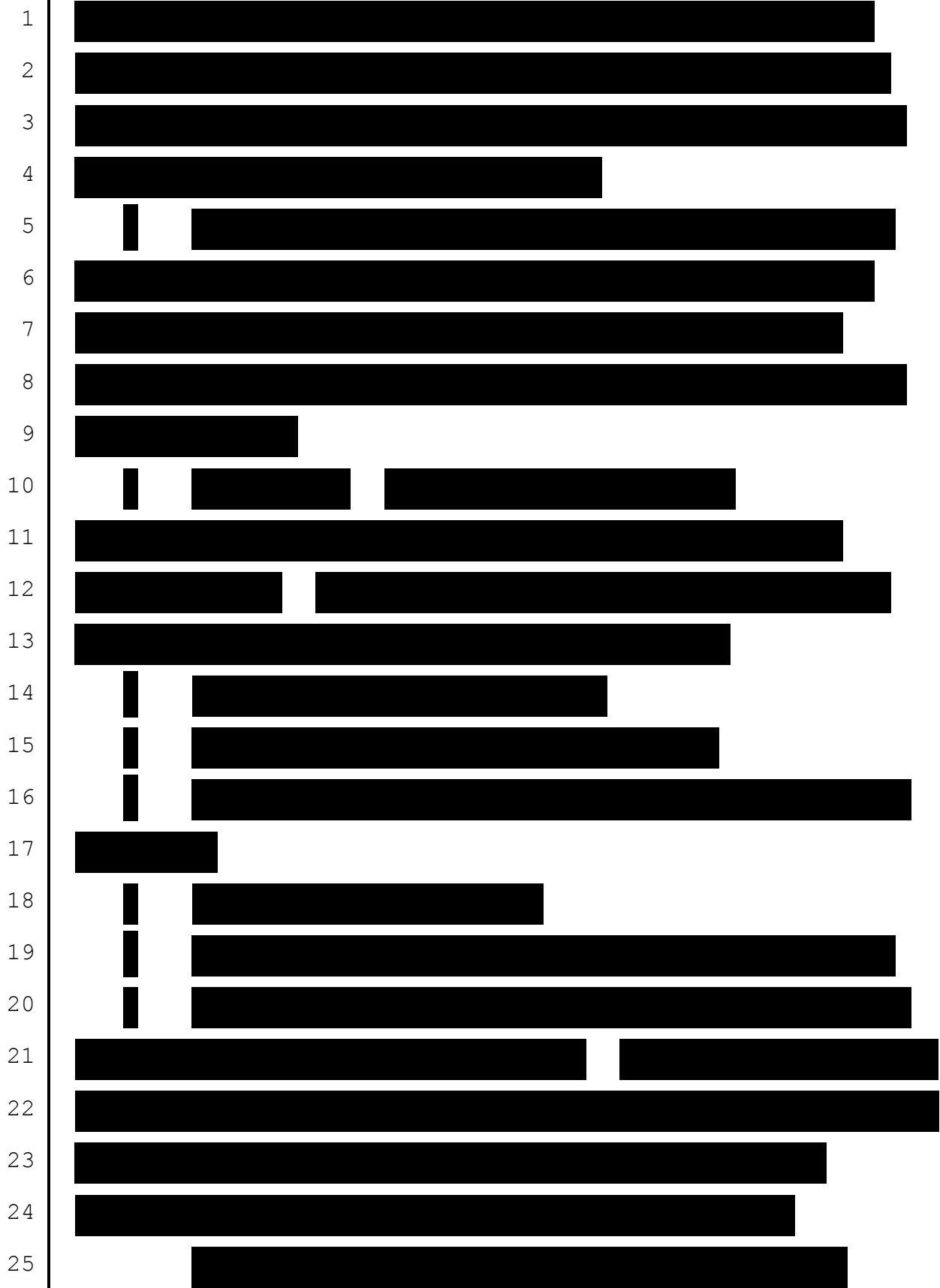
24 A This looks like a corporate structure chart
25 for Cedar Bay Generating Company.

1 Q If I asked you to describe this, could you do
2 that?

3 A I'm not sure that I can. Yes, okay. I think
4 I can -- I can try.

5 Q Okay. Go ahead.

6 [REDACTED]
7 [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED]
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[REDACTED]

1 (Exhibit No. 34 was identified for the
2 record.)

3 BY MR. MOYLE:

4 Q I've handed you a document that's been marked
5 Exhibit 34.

6 Have you seen this document before?

7 A No.

8 Q It does have a stamp at the bottom that
9 references it came from Cedar Bay; right, CB 0043698?

10 A Yes.

11 MS. BARRERA: Can you tell us what you would
12 call this document? I'm just trying to fix my
13 notes.

14 MR. MOYLE: Best I can tell, it's
15 communication to Duff & Phelps asking them to
16 reconsider certain assumptions.

17 MR. WRIGHT: I'm going to object to any
18 questions on this as to relevance and -- at least
19 as to relevance. The witness has said he never saw
20 this before. You know, it certainly -- it's
21 certainly one of the documents we produced, but we
22 had -- sitting here, we have no idea where this
23 came from or anything else about it.

24 It's obviously a draft of something. You
25 can -- you've asked him if he's ever seen it

1 before. He said no. If you want to try to ask him
2 something else to lay a foundation for anything
3 else you might want to ask him, you're welcome to
4 try. But for now, we object to this as relevant,
5 admissible, anything else.

6 BY MR. MOYLE:

7 **Q** Do you know if Duff & Phelps altered their
8 opinion with respect to allocation of value?

9 A I do not know.

10 MR. BUTLER: I'd also observe, unless you're
11 going to clarify to the contrary, I disagree with
12 you that it appears to be written to Duff & Phelps.
13 To me it's about a conversation that might take
14 place with Duff & Phelps.

15 MR. MOYLE: I don't think we have the right
16 people in the room.

17 MS. BARRERA: So you're going to withdraw?

18 MR. MOYLE: No. It will be easier for me to
19 find it if it's attached to the depo.

20 This will be 35.

21 (Exhibit No. 35 was identified for the
22 record.)

23 BY MR. MOYLE:

24 **Q** I'm handing you a document that's been marked
25 as Exhibit 35 to your deposition.

1 Would you please identify it.

2 A This appears to be an e-mail exchange between
3 myself and Tracy Patterson related to this
4 transaction.

5 Q And the subject is Project Marin. Project
6 Marin is the code name used for the Cedar Bay
7 transaction; is that right?

8 A That's correct.

9 Q You said at the bottom of this paragraph,
10 you're discussing some information exchange. You
11 said, quote, It will definitely let the cat out of the
12 bag, though, and I'm not sure if FPL would agree to
13 it.

14 What were you referencing?

15 A That the plant employees would be aware that
16 there was some sort of a pending transaction.

17 Q So that's the cat-out-of-the-bag reference?

18 A Yes.

19 (Exhibit No. 36 was identified for the
20 record.)

21 BY MR. MOYLE:

22 Q This is Exhibit 36. Can you identify this
23 document, please?

24 A This appears to be an e-mail from Doug Miller
25 to Jim Larocque referring to our, quote, skinny

1 budget, unquote.

2 Q And it has an e-mail that you sent to Doug
3 Miller on August 13th at 1:35 p.m., 2014; is that
4 right?

5 A That's correct.

6 Q Mr. Miller is the president?

7 A He is.

8 Q Of Cogentrix?

9 A Yes.

10 Q You made a statement here, expected savings of
11 Cedar Bay resulting from reduced dispatch and
12 acceptance of high forced outage rates.

13 What were you communicating when you used the
14 phrase "acceptance of high forced outage rates"?

15 A That -- that the -- the criticality of
16 availability of Cedar Bay would be reduced
17 significantly if it wasn't under the terms of the PPA
18 that existed at that time. So in having conversations
19 with -- with FPL about what they were looking for in
20 terms of, you know, the level of support they want
21 from us to operate and maintain the facility after
22 they took over ownership, they indicated that, you
23 know, the -- the availability of the unit didn't
24 necessarily have to, you know, stay at the high levels
25 that we had previously been set at, because the plant

1 was only going to be called on to operate 3 to 5
2 percent of the year.

3 Q So you contractually had a capacity or an
4 availability factor that had to be what percentage?

5 A Well, the available -- our availability under
6 that contract, high levels of availability under that
7 contract allowed us to earn bonus -- bonus payments on
8 our capacity payment. And so for us to maximize the
9 economics for Cedar Bay, we maintained very high
10 availability rates. We spend a lot of money to
11 maintain those high availability rates so we can earn
12 those bonuses.

13 If the availability drops below -- I have to
14 look at the PPA to remember exactly. I think if it
15 drops below 57 percent, we don't get a capacity
16 payment. I think we get our full capacity payment at
17 about 95 percent.

18 And then I think between 95 and 98 percent
19 there's a certain ramp rate that we earn bonus at.
20 And between 98 percent and 100 percent, there's
21 another ramp rate that gives us some bonus. Currently
22 we're over 100 percent, you know, in that range, so we
23 maximize that.

24 Q How does FPL know if you're available or not?

25 A Well, among -- there are probably a couple of

1 ways. One, by notice. We let them know when we're
2 not able to generate. They know what power they're
3 receiving from us. And we have electronic
4 communications that allows them to actually change --
5 they can -- their dispatch center can change the load
6 of our machine to receive the power that they want at
7 any particular point in time.

8 So they know, you know, what power they're
9 getting from us. They know whether we're online or
10 not.

11 Q So when they call you up and say, hey, go
12 offline; we're not going to need you for a while, does
13 that still count as you're being available to them
14 when they take you down?

15 A If we're not operating because of their
16 request, we get full credit for those periods of time,
17 yes.

18 MR. MOYLE: I'm going to give you that.

19 That's 36. I ran out of copies.

20 (Discussion off the record.)

21 (Exhibit No. 37 was identified for the
22 record.)

23 BY MR. MOYLE:

24 Q I'm showing you what's been marked as
25 Exhibit 37.

1 Could you identify this document, please.

2 A This appears to be an e-mail that I wrote to
3 various folks at Carlyle and to my boss at the time,
4 Tom Bonner.

5 Q And the subject says what?

6 A Says Cedar Bay indicative offer, draft.

7 Q Keep going.

8 A Version 7dm.doc. I don't know exactly what
9 that is.

10 Q Does that suggest it was a seventh draft?

11 A I don't know -- I don't know how that
12 terminology was developed. That's not a terminology
13 that I commonly use.

14 Q So maybe you were looking at something when
15 you typed in the subject?

16 A It appears so. It appears that there was an
17 attachment to this file, yes.

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[REDACTED]

Q So what's your understanding of Carlyle or Cogentrix receiving any interest in the plant, assuming the PSC approves it, and the deal closes?

1 A My understanding --

2 MR. WRIGHT: I'm going to object that's vague.
3 Are you asking forward looking based on the PSA
4 that's in front of the PSC today?

5 MR. MOYLE: For the first question.

6 MR. WRIGHT: Okay. I wanted to make sure we
7 didn't have an ambiguous antecedent between that
8 and this consideration from a year and a half ago
9 or a year and two months ago.

10

11

12 BY MR. MOYLE:

13 Q But you are going to operate it; right?

14 A We're going to operate it under the terms of
15 an O&M contract, yes.

16 Q But FPL said it's not going to operate very
17 long; right?

18 A That's correct.

19 Q All right. All right. I'm going to hand you
20 what I think may have been attached to it, but, again,
21 you're in a better position than I am. When I say
22 attached, to your e-mail.

23 A Okay.

24 (Exhibit No. 38 was identified for the
25 record.)

1 BY MR. MOYLE:

2 Q So I've handed you a document. At the bottom
3 of the first page of the document, it says CB 0044938,
4 which is the next number -- the next consecutive
5 number after Exhibit 37; right?

6 A Right.

7 Q Does that tell you anything about whether that
8 was the attachment to your e-mail?

9 A I don't know how the whole Bates-stamping
10 process works, so...

11 Q What I've given you as 38, have you seen this
12 document before?

13 A I'm trying to determine that.

14 MR. BUTLER: Jon, are you suggesting Cedar Bay
15 initiative -- I'm sorry, indicative offer draft v7,
16 et cetera, that's referenced in Exhibit 37?

17 MR. MOYLE: I don't know, John.

18 But it also has a bunch of highlights and
19 scratches out, and it's signed. I was going to ask
20 the witness what he knows about this document.

21 THE WITNESS: I believe I did see this
22 document. I believe the comments A1 and A2 are my
23 comments.

24 BY MR. MOYLE:

25 Q Do you know why it was signed and comments

1 were still being made?

2 A No. I don't recall whether it was signed
3 before I made comments or whether I was just late to
4 the party and was commenting on a document that was
5 already formalized.

6 Q I hate when that happens.

7 A Get used to it.

8 Q So let me just reference you to page 44940.
9 And I think it may tie in to the previous exhibit, 37.
10 I think it tracks your thought in 37.

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Q If it was going to happen, would you have knowledge of that, or would that be maybe one of the financial people?

A If that was going to happen, it would be reflected in the purchase and sale agreement.

Q Well, sometimes people can have other agreements; can't they? I mean, not everything is

1 necessarily in this agreement.

2 A It's the only one I know of regarding this
3 transaction. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

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MR. WRIGHT: Object. You're not going to answer that question. That's a fact not in evidence.

15

16

17

MS. BARRERA: Jon, is this a good time to take a break?

18

19

MR. MOYLE: Yeah. Yeah. I'm getting close to wrapping up. Let's take ten minutes.

20

21

MS. BARRERA: Before everybody goes --

22

MR. MOYLE: Off the record.

23

(Short recess.)

24

BY MR. MOYLE:

25

Q So if the commission approves this

1 arrangement, and the deal closes, what do you foresee
2 your role being with the project on a go-forward
3 basis?

4 A I will continue to oversee the operations and
5 maintenance of the facility and its compliance with
6 the terms of the operation and maintenance agreement.

7 Q Okay. And that agreement is between who and
8 who?

9 A That agreement is between -- I'm not sure what
10 the FPL entity is. But it's an FPL entity and another
11 entity called Cedar Bay Operating Services, LLC, which
12 is a wholly owned subsidiary of Cogentrix Energy Power
13 Management.

14 Q Okay. So who does the O&M work; what entity
15 does the O&M work?

16 A Cedar Bay Operating Services, LLC.

17 Q Okay. And right now they contract with the
18 Cedar Bay partnership to do the O&M; is that right?

19 A That's correct.

20 Q And assuming the deal closes, then that
21 contract would either be assumed by FPL, or FPL would
22 enter into a new contract for the operation and
23 maintenance. Do you know which it is?

24 A It would be a new contract for the operation
25 and maintenance.

1 Q And I think there's a bonus payment in the
2 existing O&M agreement. Do you have any information
3 or understanding about that?

4 A I'm not sure what all the drivers are in the
5 existing agreement, but I do not believe that there is
6 any sort of a bonus payment structured in the -- in
7 the new O&M agreement that would be entered into.

8 Q Is that new O&M agreement in place, or is it
9 being talked about, or where is it?

10 A I thought we had finalized negotiations on
11 that. I don't know whether it's been signed or not.
12 But I think -- I think that's a finalized document. I
13 don't know for sure what its status is. It's not in
14 negotiation.

15 Q I don't want you to guess. If you don't know
16 where it is --

17 A I don't know. I don't know for sure.

18 Q Do you know if there were any material changes
19 to that O&M agreement as compared to the current one?

20 A It's significantly different than the existing
21 O&M agreement.

22 Q How so?

23 A It's been simplified a lot. The scope has
24 been modified to reflect what FPL's wishes are for the
25 scope of our services. It...

1 Q Is it fair to say that the new agreement, that
2 the maintenance and operations scope has been reduced,
3 given the anticipated dispatch of the facility, that
4 the dispatch will be reduced?

5 A I don't -- I don't think the document actually
6 addresses the dispatch rate. I don't think it
7 reflects the dispatch rate. You know, none of the
8 versions of the -- of the O&M agreements have
9 typically addressed that. It's more of which work are
10 we going to do versus which work -- you know, what
11 work is going to be performed by the people within
12 FPL.

13 Q Do you know who your point of contact would be
14 if the deal closes?

15 A I do not know who that would be.

16 Q I had asked you some questions about the
17 challenge to the property assessment. Do you know
18 where those challenges -- those legal challenges stand
19 right now?

20 A I think -- I think there were two issues
21 total. And one of them I think has been resolved, and
22 the second one, the last status report I heard was it
23 was in litigation. It had to work its way through the
24 courts.

25 Q Do you have an understanding about which one

1 was resolved and which one remains outstanding?

2 A I couldn't tell you the difference between the
3 two. I think the smaller value one was resolved, and
4 the larger value one was still outstanding.

5 Q So if I asked you to tell me the difference
6 between tangible personal property -- intangible
7 personal property or real property, that probably
8 wouldn't be a question you could answer?

9 A That's correct.

10 Q The -- the position that Cogentrix took with
11 the Duval property appraiser with respect to the value
12 of the Cedar Bay plant, do you know what it was? Did
13 you say the plant was worth nothing or something, or
14 just don't know?

15 A I don't know what the position was.

16 Q What's the purchase price for this transaction
17 that you're asking the commission to approve?

18 MR. WRIGHT: Objection; facts not in evidence.

19 It's not Cedar Bay's petition, Jon.

20 BY MR. MOYLE:

21 Q Okay. The petition that the commission is
22 being asked to approve filed by FPL relating to the
23 Cedar Bay facility, do you know how much the
24 commission is being asked to approve the transaction
25 for, the dollar amount?

1 A I think it's 520.5 million.

2 Q And that number is not confidential; correct?

3 A I don't know.

4 Q If it was filed in a petition that wasn't
5 blacked out?

6 A It was probably in press releases, so my guess
7 is it's probably not confidential.

8 Q Do you know of any reason why any of the
9 numbers that we've talked about today, the number
10 Goldman got paid for their interest, or the Duff &
11 Phelps allocation number, why those should be
12 confidential?

13 A I wouldn't have released the 520.5 million
14 number if I wasn't obligated to. I don't know why the
15 details of those bilateral agreements need to be
16 public, other than for whatever regulatory processes
17 are required to approve the transaction.

18 Q Do you have any information about Florida
19 having a sunshine law being open -- one of the most
20 open states in the country with respect to records and
21 information?

22 MR. BUTLER: I will object to the form of the
23 question.

24 A I don't have any knowledge of Florida's
25 sunshine laws.

1 BY MR. MOYLE:

2 Q All right. And one other point I just wanted
3 to clear up. You had talked about your involvement
4 with Goldman, and Goldman was involved in energy
5 trading, had a trading floor. And then they bought
6 physical assets -- I can't remember the words you
7 used, but I think it was part of a strategy to help
8 them back up their trades; is that fair?

9 A That's true, yes.

10 Q Is Carlyle similarly situated? Do they have a
11 trading floor with physical assets to back up the
12 trades?

13 A No, Carlyle is not a trading operation. And
14 these assets are not held on Carlyle's balance sheet
15 the way they were held on Goldman's balance sheet.
16 These assets are --

17 Q What's the difference?

18 A These assets are held in an investment fund,
19 and Carlyle manages the fund, for a fee, on behalf of
20 the investors. And so the actual ownership resides in
21 various investors.

22 Q Do you know who those investors are, what they
23 look like; institutions, insurance companies?

24 A All of the above.

25 Q The State of Florida?

1 A Could be.

2 Q Do you know if that's public information, the
3 largest institutional investors?

4 A Who the owners of the fund are? I do not know
5 if that's public information.

6 Q Do you know?

7 A I do not know all of the investors, no.

8 Q During the course of the negotiations, was
9 there ever a change where you were headed down one
10 path related to buying out a PPA and then buying the
11 plant? I mean, was -- was there a marked change in
12 direction in the negotiations, or no?

13 A There was a point in time in this discussion
14 where we stopped looking at the buyout of the power
15 purchase agreement and focused on the sale of the
16 business entity.

17 Q And when -- when was that, approximately?

18 A I don't remember exactly when it was. It was
19 sometime in mid 2014, as we were conducting the
20 negotiations.

21 Q Did you ever recall there being a negotiating
22 meeting where people stood up and shook hands and
23 said, great, we've got a deal?

24 A No.

25 Q You just went to two meetings that you recall?

1 A Yes, sir.

2 Q Do you know if other meetings took place that
3 you weren't a part of?

4 A I don't know of any other physical meetings; I
5 think there were a number of telephone calls,
6 conference calls that I did not participate in.

7 Q Do you get briefed on those conference calls?

8 A Not always; sometimes. Information doesn't
9 always flow in both directions in our organization.

10 Q It flows more uphill than downhill?

11 A Yes.

12 Q The law of gravity sometimes is a --

13 A (Laughter.)

14 Q -- not followed.

15 MR. MOYLE: But thank you. Thank you for your
16 time. We're done.

17 MS. BARRERA: We're off the record -- I'm
18 sorry. Go ahead. We have no questions. And I'm
19 sorry. But can we go off the record anyway, so I
20 can say this before I forget?

21 (Discussion off the record.)

22 MR. MOYLE: So we were off the record having a
23 conversation about process. We're back on the
24 record. FIPUG finished with its questions. And it
25 is now over to staff to ask any questions they may

1 have.

2 MS. BARRERA: Staff has no questions.

3 MR. MOYLE: FPL?

4 MR. BUTLER: Just a few.

5 CROSS EXAMINATION

6 BY MR. BUTLER:

7 Q Mr. Evans, do you have a copy of what was
8 identified as Exhibit 23, the purchase and sale
9 agreement?

10 A Okay. I do.

11 Q Okay. Would you turn to page 99 of 226? The
12 page numbers are in the upper right-hand corner.

13 A Okay.

14 Q Is that the new O&M agreement that is applied
15 to your operation of the facility for FPL if this
16 transaction is approved?

17 A It is.

18 Q And do you have a copy of Exhibit 2 available
19 to you? It's a billing statement for August 2013.

20 A Hang on, please. Exhibit 2. Yes, I have it.

21 Q And am I correct, this is a statement prepared
22 by Florida Power & Light Company; correct?

23 A Correct.

24 Q And this would be sent to Cedar Bay Generating
25 Company, indicating amounts that FPL would pay for

1 generation during that time period?

2 A Correct.

3 Q Okay. And in this particular statement it
4 shows a total of about 13.9 million to be paid to
5 Cedar Bay Generating Company for the month of August
6 2013; right?

7 A Correct.

8 Q Okay. Then underneath there is another line
9 that says termination fee. And that figure is
10 \$1,367,013,350; is that how you understand it?

11 A Yes.

12 Q Can you explain what that termination fee
13 represents?

14 A I know there was a term within the power
15 purchase agreement related to that. But I -- I don't
16 know exactly what it represents. I -- I'd be guessing
17 if I offered an answer.

18 Q Do you know whether it has to do with amounts
19 that Cedar Bay Generating Company would owe if it were
20 to terminate the PPA?

21 MR. MOYLE: Object -- object to the form.

22 He's already testified he doesn't know.

23 BY MR. BUTLER:

24 Q I'm just asking if he knows its purpose.

25 A That would have been my guess, but I'd have to

1 look at the terms of the PPA to confirm that.

2 Q Okay. Let me ask you to look back to
3 Exhibit 23, the purchase and sale agreement.

4 A Okay.

5 Q If you would turn to the page that's 43 of 226
6 in the upper right corner. It's at section 8.05.

7 A Yes.

8 Q Do you see that? You were asked some
9 questions about the sort of different language with
10 respect to an order from FERC versus the reference to
11 the FPSC order; do you recall those questions?

12 A I do.

13 Q I'd ask you to turn back, please, to page 11
14 of the purchase and sale agreement.

15 A Okay.

16 Q And do you see roughly the middle of the page
17 on the term, FPSC order defined?

18 A I do.

19 Q Okay. And what does the agreement say
20 about -- or what the status of the FPSC order has to
21 be?

22 A The agreement says that the FPSC order must be
23 a nonappealable order.

24 Q Okay. Would you consider that, to put in
25 terms of finality, on about the same footing as the

1 FERC order that's referred to in section 8.05A?

2 MR. MOYLE: Object to the form, calls for a
3 legal conclusion. I'm not sure any foundation has
4 been established with respect to knowledge about
5 FERC orders.

6 MR. BUTLER: Well, I believe that Mr. Evans
7 was asked earlier questions along this very line of
8 whether the reference to the FPSC order was
9 referring to something that doesn't have the same
10 sense of finality to it as the reference to the
11 FERC order in section 8.05A, and he testified about
12 that subject.

13 I'm asking him, based on his reading of the
14 definition of FPSC order, whether that gives him
15 reason to reassess his opinion on the finality of
16 the two forms of order. I think he's already
17 testified to that subject. So I --

18 MR. MOYLE: Well, I guess when I asked him
19 about the FERC proceeding, he said he didn't know
20 really what that was about.

21 MR. POLLACK: It wasn't you who asked the
22 questions.

23 MR. MOYLE: So the record will be clear, I
24 asked questions about the FERC proceeding as well.

25 MR. BUTLER: Yeah, but the question I was

1 referring to was one that Mr. Truitt asked.

2 BY MR. BUTLER:

3 Q If you know, Mr. Evans, you can answer the
4 question.

5 A It's my belief that that would put both the
6 FPSC order and FERC 203 approval on the same footing
7 in that both were beyond the point at which they could
8 be appealed and reversed.

9 MR. BUTLER: That's all I have. Thank you.

10 MR. WRIGHT: I just need a minute, please.

11 (Discussion off the record)

12 MR. WRIGHT: Back on.

13 CROSS EXAMINATION

14 BY MR. WRIGHT:

15 Q If we're lucky, I have two questions for you
16 on redirect or cross-examination, as the case may be.

17 If I could ask you to look at Exhibit 35,
18 please.

19 A Okay.

20 Q You were asked about this document by
21 Mr. Moyle. And in that document, he had highlighted
22 the sentence that reads: It will definitely let the
23 cat out of the bag, though, and I'm not sure if FPL
24 would agree to it.

25 And my question for you is this: What was the

1 putative concern with the cat being let out of the
2 bag?

3 A We did not want to -- we did not want
4 employees to be upset until we knew whether we
5 actually had a deal or not. So we did not want to
6 unnecessarily rile the workforce up.

7 Q Thank you. The other question I had relates
8 to Exhibit 38 about which Mr. Moyle also asked you a
9 few questions.

10 A I guess I didn't mark that -- 37. Okay. I
11 see it. I have it.

12 Q We did note, and Mr. Moyle did note that
13 the -- this document appears to include -- definitely
14 does include images of signatures on the last page;
15 correct?

16 A Yes.

17 Q Okay. Do you know whether those might have
18 been electronic signatures?

19 MR. MOYLE: Objection. I think it's been
20 asked and answered. He said he didn't know.

21 MR. WRIGHT: I don't recall him answering that
22 question about there being electronic signatures.

23 BY MR. WRIGHT:

24 Q You can answer. If it comes up later, we can
25 fight over its admissibility or not.

1 A It would not be uncommon for us to have
2 signatures on a separate signature page like this for
3 a document that was still working its way through
4 drafts.

5 Q Do you know whether this letter, as it has
6 been marked, this document that has been marked as
7 Exhibit 38, was in fact a letter that was sent to
8 Mr. Hartman at FPL?

9 A I don't believe this is -- that this letter in
10 its -- in this state was sent to FPL, because it has
11 comments, additions, and strikes that were from the
12 prior exhibit, 37. In my statement, I reflected that
13 they were comments from Doug Miller, and then I had
14 added these two comment boxes to Doug Miller's mark-up
15 of this document.

16 So this document appears to still have been in
17 draft form.

18 MR. WRIGHT: Thank you. That's all the cross
19 or redirect that I have for Mr. Evans.

20 MR. MOYLE: I've got a couple.

21 RE CROSS EXAMINATION

22 BY MR. MOYLE:

23 Q On that point, when I had asked you about this
24 document, you said you didn't know; maybe you were
25 doing a document that had already been sent, that it

1 wasn't uncommon.

2 So I'm concerned or confused how now you can
3 say, oh, no, this document definitely wasn't sent.

4 A It wouldn't have been this document in this
5 form; okay?

6 Q Right. Because you had some changes to it.

7 A Well, not just my changes, but it also
8 includes changes that you would see from Exhibit 37.
9 I had indicated it was Doug's mark-up, Doug Miller's
10 mark-up, so the comments I added are the ones in
11 boxes. And there are other mark-ups in here that
12 reflect changes that Doug Miller had made to the
13 document.

14 One thing I can tell you with certainty is
15 that a document in this form with those kind of
16 mark-ups on it would not have gone out.

17 Q Right. But I thought you said it could have
18 gone out without your suggested mark-ups, so there
19 wouldn't have been a red-lined version. You just
20 wouldn't have had the benefit of reviewing your
21 document -- your comments; you didn't know.

22 A It's possible there is a different version of
23 this document without these mark-ups that was sent
24 out.

25 Q Do you know what document was sent out, or

1 when?

2 A I didn't send it, so I don't know. I just
3 know we wouldn't send one out with edits on it.

4 Q Right. And I work with Mr. Wright on other
5 cases, and sometimes we're on the same side, and
6 sometimes I send him edits that are late, and he may
7 have already sent the document out without my edits.

8 That could have happened in this case;
9 correct?

10 A The thing I tried to -- I want to point you
11 to, though, is that I indicated in the accompanying
12 e-mail cover that I added comments to Doug Miller's
13 mark-up. So this document reflects Doug Miller's
14 mark-up, not necessarily a document that went out.

15 Q Okay. So you're comfortable tying Exhibit 38
16 to 37?

17 A I believe this is -- I believe Exhibit 38 is
18 the attachment to the e-mail on Exhibit 37, yes.

19 Q And then on 37, I had asked you that question
20 about draft v7dm. There's nothing that I see on 38
21 that suggests it's the seventh draft.

22 Have we been able to figure that one out?

23 A No. But just based on the contents, I believe
24 that it is what I was referring to in the e-mail in
25 Exhibit 37.

1 Q One more question. Mr. Butler asked you about
2 the O&M agreement that's attached to the purchase and
3 sale agreement.

4 A Yes.

5 Q That agreement is undated and unsigned;
6 correct? If you need to look, go ahead and look.

7 A I have to look. I'm trying to find the end of
8 it.

9 MR. MOYLE: John, what page was that, just to
10 speed it along?

11 MR. WRIGHT: The first page is 99. I think
12 you may be looking for page 126 as numbered in the
13 exhibit header.

14 A It appears to be unsigned and undated.

15 BY MR. MOYLE:

16 Q And you're referencing what pages to come to
17 that conclusion?

18 A The cover page is page 99 of 226, and the
19 signature page is 126 of 226.

20 Q Okay. So obviously an unsigned document is
21 not enforceable; correct?

22 A I'd have to -- I'd have to refer to my
23 attorneys to make that determination. Since this
24 is -- this is included in a signed document as a form
25 of the agreement that will be signed, I'm not sure

1 what the -- the actual legal ramifications of that
2 are.

3 Q Maybe we can do business at some point.

4 A We may have already.

5 MR. BUTLER: Wait. Mr. Moyle has inspired me
6 to another question.

7 RE CROSS EXAMINATION

8 BY MR. BUTLER:

9 Q Stay on Exhibit 23, Mr. Evans.

10 A Yes.

11 Q Turn to page 19 of it.

12 A 19? Okay.

13 Q Direct your attention to section 2.04B, as in
14 boy. He says, at closing seller shall, and then if
15 you go down to romanette ii, would you read that,
16 please.

17 A Deliver to purchaser an executed copy of the
18 O&M agreement.

19 Q Is that your understanding, then, that at
20 closing, the O&M agreement that Mr. Moyle was asking
21 you about would need to be executed?

22 A Yes.

23 MR. BUTLER: Okay. Thank you.

24 MR. MOYLE: And he wasn't even your lawyer.

25 THE WITNESS: I'm willing to take advice from

1 any good source.

2 MR. WRIGHT: We're done. Thank you.

3 (The deposition was concluded at 4:30 p.m.)

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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 June, 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 109
through 199 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 June, 2015.

/s/ Sarah B. Gilroy
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ERRATA SHEET

Under penalties of perjury, I declare that I have read the foregoing transcript of my deposition and hereby subscribe to same, including any corrections and/or amendments listed below.

Signature _____ Date _____

PAGE LINE CORRECTION AND REASON FOR CHANGE

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ACCURATE STENOGRAPHY REPORTERS
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June 2, 2015

Clifford D. Evans, Jr.
c/o Scheff Wright, Esquire
schef@gbwlegal.com

re: May 27, 2015, deposition of Clifford D. Evans, Jr.,
Docket No. 150075-EI

Dear Mr. Evans:

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

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\$ 1,367,013,350 [1] - 188:10
\$ 10 [1] - 137:9
\$ 250 [2] - 124:2, 124:18
\$ 30 [1] - 178:12
\$ 300 [1] - 144:13
\$ 35 [3] - 137:3, 137:5, 137:8
\$ 40 [1] - 137:3
\$ 45 [2] - 137:7, 137:10
\$ 55 [1] - 164:2
\$ 75 [1] - 137:2

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148 [1] - 112:4
150 [1] - 112:4
155 [1] - 112:5
15 t h [1] - 136:3
16 [1] - 159:13
160 [2] - 112:5, 112:6
165 [1] - 112:6