



1 I N D E X

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14 EXHIBITS

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P R O C E E D I N G

(Transcript follows in sequence from  
Volume 2.)

COMMISSIONER EDGAR: Mr. Truitt.

MR. TRUITT: We have two more witnesses. And  
they have been excused. So, we would ask that  
Mr. Myers's prefiled testimony and the items listed  
Exhibits 13 and 14 on staff's comprehensive exhibit  
list be entered into the record.

COMMISSIONER EDGAR: Okay. The prefiled  
testimony of Witness Myers will be entered into the  
record as though read.

**DIRECT TESTIMONY**

**OF**

**TERRY M. MYERS**

On Behalf of the Office of Public Counsel

Before the

Public Service Commission

Docket No. 150075-EI

**Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

A. My name is Terry M. Myers, Senior Project Manager, GDS Associates, Inc., 111 N. Orange Avenue, Suite 750, Orlando, Florida 32801.

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.**

A. I received the degree of Bachelor of Science in Accounting from Indiana State University in Terre Haute, Indiana, in December 1981. I passed the CPA exam in November 1991. I am a member in good standing of the Indiana CPA Society. Prior to accepting employment with GDS Associates in October 2008, I spent twenty-three (23) years in the utility industry working in multiple utility environments. During that time, I worked five (5) years with a state utility commission, three (3)-plus years with a large investor-owned utility, and approximately fifteen (15) years combined for three utility consulting firms. During that time, my positions and responsibilities changed from initially a utility rate accountant to a Senior Utility Consultant.

1           As a utility rate financial consultant over the last twenty-nine (29)-plus  
2 years, I have had the primary responsibility for assignments pertaining to wholesale  
3 rates, retail rates, financial planning, transmission formula rates, and Reliability Must  
4 Run proceedings. My various assignments include utility projects on behalf of  
5 municipal utilities, power agencies, and cooperatives, non-profits, investor-owned  
6 utilities, and multiple consumer advocate offices and regulatory commissions in ten  
7 states and the District of Columbia. I have attached a copy of my resume as  
8 Appendix A.

9  
10 **Q. WHAT IS THE NATURE OF YOUR BUSINESS?**

11 A. GDS is an engineering and consulting firm with offices in Marietta, Georgia; Austin,  
12 Texas; Auburn, Alabama; Manchester, New Hampshire; Madison, Wisconsin and  
13 Orlando, Florida. GDS provides technical and financial consulting services to a  
14 nationwide base of clients, which primarily includes municipal and cooperative  
15 electric utilities, Public Service Commissions and large consumers of electricity.  
16 Areas of expertise include generation support and management consulting, power  
17 supply and transmission planning, rate consulting, distribution services, least cost  
18 planning and litigation support. Generation support services provided by the firm  
19 include plant operational monitoring on behalf of co-owners of fossil and nuclear  
20 power plants, plant ownership feasibility studies, plant management audits, plant  
21 construction cost and schedule analyses, evaluations of power plant O&M costs and  
22 budgeting practices, production cost modeling and plant outage and replacement  
23 power cost evaluations.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN PROCEEDINGS BEFORE THIS**  
2 **COMMISSION?**

3 A. This is the first time that I will be providing testimony before the Florida Public  
4 Service Commission, although members of the firm have testified before the  
5 Commission.

6  
7 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN PROCEEDINGS BEFORE**  
8 **OTHER REGULATORY COMMISSIONS?**

9 A. Yes. I have testified before the Indiana Utility Regulatory Commission (formerly the  
10 Public Service Commission of Indiana) in over 100 proceedings and before the  
11 Arizona Corporation Commission. I have also filed testimony and exhibits before the  
12 Federal Energy Regulatory Commission ("FERC"), the Public Service Commission  
13 of West Virginia, and the Virginia State Corporation Commission in proceedings that  
14 were ultimately settled before the trial phase and the Michigan Public Service  
15 Commission. I have testified or filed affidavits in a Federal District Court and an  
16 Indiana State Court related to utility rate matters. A listing of my testimonies before  
17 these Other Regulatory Commissions and Courts is included as Appendix B.

18  
19 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

20 A. I am presenting testimony on behalf of the Office of Public Counsel.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. My assignment from the Office of Public Counsel is to examine the reasonableness of  
3 Florida Power & Light Company's ("FPL" or "Company") proposed accounting,  
4 regulatory reporting and ratemaking treatments for the acquisition of the Cedar Bay  
5 Power Generation Facility ("Cedar Bay Facility") and the Power Purchase Agreement  
6 ("PPA") between Cedar Bay Generating Company and FPL through a stock purchase.  
7 My testimony presents my recommendations regarding appropriate adjustments, or  
8 other Commission actions, related to FPL's proposed accounting, regulatory reporting  
9 and ratemaking treatments for the acquisition of the Cedar Bay Facility.

10

11 **Q. WHAT ACTIONS ARE YOU RECOMMENDING IN THIS CASE?**

12 A. I am recommending that, if the Commission approves the asset purchase instead of  
13 the PPA contract buyout, then FPL must follow the Federal Energy Regulatory  
14 Commission Uniform System of Accounts ("USOA") Electric Plant Instruction 5,  
15 *Electric Plant Purchased or Sold*, in 18 Code of Federal Regulations ("C.F.R.") Part  
16 101, which requires that acquired *electric utility* property plant and equipment be  
17 recorded at net book value. The gross original cost amount for the Cedar Bay Facility  
18 and the accumulated depreciation balance should both be recorded on the books and  
19 records in FERC Account 102 with the "negative" acquisition adjustment recorded in  
20 FERC Account 114 to reflect the Cedar Bay Facility's net fair value of zero per FPL.

21 The Regulatory Asset-Loss on PPA should be deductible in the current year,  
22 based on the IRS private letter ruling for Florida Power Corporation's ("FPC") 1997  
23 acquisition and buyout of the purchased power contracts with Tiger Bay Limited,

1 LLC, which would result in a reduction in the annual cost proposed to be charged to  
2 ratepayers by FPL of \$34.5 million, or a total reduction of \$326.9 million over the  
3 remaining life of the PPA. FPL should be required to request from the IRS a  
4 definitive private letter ruling specifically addressing the circumstances of their  
5 acquisition of the Cedar Bay Facility, the PPA and the deductibility of the PPA Loss  
6 Regulatory Asset, based on the termination of the PPA.

7 I am also recommending that FPL not be authorized to include the full  
8 weighted average cost of capital (“WACC”) return on the unamortized balance of the  
9 FPL proposed PPA Loss Regulatory Asset for recovery. FPL should be authorized to  
10 include for recovery through rates either the commercial paper interest rate, the cost  
11 of debt for the debt issued to consummate the acquisition of the Cedar Bay Facility  
12 and PPA, or the debt component of the WACC, as a return on the unamortized  
13 balance.

14

15 **Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF FPL WITNESSES**  
16 **BARRETT, OUSDAHL, HARTMAN AND HERR?**

17 A. Yes, and I have also reviewed FPL’s responses to discovery submitted by the Office  
18 of Public Counsel.

19

20 **Q. PLEASE DESCRIBE FPL’S PROPOSAL REGARDING THE ACQUISITION**  
21 **OF THE CEDAR BAY FACILITY.**

22 A. The Company’s proposal for the acquisition of the Cedar Bay Facility is to purchase  
23 100% of the equity interest in CBAS Power Inc. (“CBAS”) and its subsidiaries from

1 CBAS Power Holdings, LLC for \$520.5 million as discussed by FPL Witness  
2 Barrett's Direct Testimony, page 2. FPL will acquire 100% of the shares of CBAS  
3 through the "Purchase and Sale Agreement" with CBAS Power Holdings, LLC.  
4 Cedar Bay Generating Company, Limited Partnership ("Cedar Bay Genco") is a  
5 subsidiary of CBAS, which currently owns the Cedar Bay Facility. After the  
6 acquisition, FPL intends to retain the existing subsidiary structure as discussed by  
7 FPL Witness Ousdahl in her Direct Testimony, pages 3 and 4. Therefore, FPL is not  
8 separately purchasing the Cedar Bay Facility or any other of the assets of CBAS, but  
9 is purchasing 100% of the equity interest in CBAS.

10

11 **Q. PLEASE DESCRIBE HOW FPL IS PROPOSING TO RECORD THE**  
12 **ACQUISITION OF THE CEDAR BAY FACILITY.**

13 A. FPL is proposing to record on its books the acquisition of the Cedar Bay Facility  
14 under Accounting Standards Codification 805 – Business Combinations ("ASC 805")  
15 reflecting the fair value of the facility of \$0 rather than the net book value, based on  
16 the valuation performed by Duff & Phelps, LLC, according to FPL's Witness Herr in  
17 his Direct Testimony, page 3. According to FPL's Witness Ousdahl in her Direct  
18 Testimony, page 5, Ms. Ousdahl claims that FPL is not required to record the  
19 acquisition of the Cedar Bay Facility, a qualifying facility under the definitions  
20 prescribed by FPSC Rule No. 25-17.080, at the net book value. Ms. Ousdahl adds  
21 that "As such, because FPL is acquiring plant from CBAS, an entity that is not  
22 primarily engaged in the generation or sale of electricity, then Electric Plant  
23 Instruction 5 is not applicable and the USOA does not require FPL to record the

1 assets at net book value.” Ms. Ousdahl further states: “In absence of such direction,  
2 recording the assets at fair value is appropriate and consistent with both GAAP and  
3 the USOA.”

4

5 **Q. DO YOU AGREE WITH FPL WITNESS OUSDAHL’S INTERPRETATION**  
6 **OF THE USOA AND ELECTRIC PLANT INSTRUCTION 5**  
7 **APPLICABILITY TO CBAS IN THE PROPOSED CEDAR BAY**  
8 **TRANSACTION?**

9 A. Yes, I agree with Ms. Ousdahl’s interpretation of the USOA and Electric Plant  
10 Instruction 5 in regards to the recordation of Cedar Bay Facility transaction by CBAS  
11 as the seller. CBAS is not a public utility under the Federal Power Act and, therefore,  
12 the USOA and Electric Plant Instruction 5 are not applicable to CBAS.

13

14 **Q. DO YOU AGREE WITH FPL WITNESS OUSDAHL’S INTERPRETATION**  
15 **OF THE USOA AND SPECIFICALLY ELECTRIC PLANT INSTRUCTION 5**  
16 **APPLICABILITY TO FPL IN THE PROPOSED CEDAR BAY**  
17 **TRANSACTION?**

18 A. No, I do not agree with Ms. Ousdahl’s interpretation of the USOA and Electric Plant  
19 Instruction 5 in regards to the recordation of Cedar Bay Facility acquisition by FPL.

20

21 **Q. PLEASE EXPLAIN WHY YOU DON’T AGREE WITH FPL WITNESS**  
22 **OUSDAHL’S INTERPRETATION OF THE USOA AND SPECIFICALLY**

1           **ELECTRIC PLANT INSTRUCTION 5 ELECTRIC PLANT PURCHASED OR**  
2           **SOLD.**

3    A.    The USOA and Electric Plant Instruction 5 Electric Plant Purchased or Sold are both  
4           applicable to FPL, since FPL is a public utility under the Federal Power Act. Neither  
5           the USOA, nor Electric Plant Instruction 5, provides FPL an *exemption* from  
6           recording the Cedar Bay Facility acquisition at the net book value. I will discuss the  
7           various parts of the Electric Plant Instruction 5, specifically Parts A, B and E, and  
8           how they pertain to FPL and the acquisition of the Cedar Bay Facility.

9  
10   **Q.    PLEASE DISCUSS THE ELECTRIC PLANT INSTRUCTION 5, PART A,**  
11           **AND HOW IT PERTAINS TO FPL AND THE ACQUISITION OF THE**  
12           **CEDAR BAY FACILITY.**

13   A.    Electric Plant Instruction 5, Part A, states the following:

14                   “When electric plant constituting an operating unit or system is acquired by  
15                   purchase, merger, consolidation, liquidation, or otherwise, after the  
16                   effective date of this system of accounts, the costs of acquisition,  
17                   including expenses incidental thereto properly includible in electric plant,  
18                   shall be charged to account 102, Electric Plant Purchased or Sold.”

19           Part A specifically addresses electric plant constituting an “operating unit” or  
20           “system” being acquired. FPL is acquiring the Cedar Bay Facility under Accounting  
21           Standards Codification 805 – Business Combinations (“ASC 805”). The proposed  
22           Cedar Bay Transaction meets the definition of a business acquisition for accounting  
23           purposes and the Cedar Bay Facility would constitute an “operating unit” or  
24           “system;” therefore, Electric Plant Instruction, Part A, is applicable to the acquisition  
25           of the Cedar Bay Facility.

1 Q. PLEASE DISCUSS THE ELECTRIC PLANT INSTRUCTION 5, PART B,  
2 AND HOW IT PERTAINS TO FPL AND THE ACCOUNTING FOR THE  
3 ACQUISITION OF THE CEDAR BAY FACILITY.

4 A. Electric Plant Instruction 5, Part B, states the following:

5 "The accounting for the acquisition shall then be completed as follows:

6 (1) The *original cost of plant* [*emphasis added*], estimated if not known,  
7 shall be credited to account 102, Electric Plant Purchased or Sold, and  
8 concurrently charged to the appropriate electric plant in service  
9 accounts...as appropriate.

10 (2) The depreciation and amortization applicable to the *original cost*  
11 [*emphasis added*] of the properties purchased shall be charged to account  
12 102, Electric Plant Purchased or Sold, and concurrently credited to the  
13 appropriate account for accumulated provision for depreciation or  
14 amortization.

15 (4) The amount remaining in account 102, Electric Plant Purchased or  
16 Sold, shall then be closed to account 114, Electric Plant Acquisition  
17 Adjustments."

18 Part B, as stated above, specifically requires that the electric plant being acquired be  
19 recorded as follows: (a) at the original cost of the plant as a credit to Account 102 and  
20 concurrently charged (i.e., a debit) to the appropriate electric plant in service  
21 accounts; (b) the accumulated depreciation related to the original cost of the plant be  
22 charged (i.e., a credit) to Account 102; and (c) any amount remaining in Account 102  
23 should be closed out to Account 114, Electric Plant Acquisition Adjustments (i.e., a  
24 debit or credit). In FPL's proposed acquisition of the Cedar Bay Facility with the fair  
25 value of the facility being \$0, the amount that would be closed out to Account 114,  
26 Electric Plant Acquisition Adjustments would be negative or a credit, which would  
27 bring the value of the Cedar Bay Facility to \$0. FPL would then need to amortize the  
28 balance of the "Negative Acquisition Adjustment" in Account 114 to Account 403 to

1 off-set the annual depreciation expense for the Cedar Bay Facility, which would  
2 essentially off-set any impact on rates. The Office of Public Counsel's proposed  
3 journal entries to accomplish the implementation of Electric Plant Instruction 5 are  
4 shown on page 1 of Exhibit TMM-1.

5  
6 **Q. PLEASE DISCUSS THE ELECTRIC PLANT INSTRUCTION 5, PART E,  
7 AND HOW IT PERTAINS TO FPL AND THE ACCOUNTING FOR THE  
8 ACQUISITION OF THE CEDAR BAY FACILITY.**

9 A. Electric Plant Instruction 5, Part E, states the following:

10 "In connection with the acquisition of electric plant constituting an  
11 operating unit or system, the utility shall procure, if possible, all existing  
12 records relating to the property acquired, or certified copies thereof, and  
13 shall preserve such records in conformity with regulations or practices  
14 governing the preservation of records of its own construction."

15 Part E, as stated above, requires FPL to procure all existing records or certified copies  
16 related to the Cedar Bay Facility from CBAS and preserve such records in conformity  
17 with the preservation of records of its own construction. Therefore, FPL would have  
18 all the plant data necessary to record the net original cost book value of the plant  
19 acquired for the Cedar Bay Facility. The net original cost book value of the Cedar  
20 Bay Facility on December 31, 2014 was \$269.6 million per FPL's response to OPC's  
21 3<sup>rd</sup> Set of Interrogatories No. 25.

22  
23 **Q. HAS FERC SUPPORTED THE PURCHASE METHOD OF ACCOUNTING  
24 FOR BUSINESS COMBINATIONS IN SECTION 203 PROCEEDINGS AND  
25 ELSEWHERE?**

1 A. Yes, in the FERC Order Denying Rehearing and Clarifying Accounting Requirement  
2 in Docket Nos. EC07-99-001 and EL07-75-001, FERC states the following: “The  
3 Commission has generally supported the purchase method of accounting for business  
4 combinations in section 203 proceedings and elsewhere.”<sup>1</sup> The Order further states:  
5 “To use this accounting method under the Commission’s Uniform System of  
6 Accounts, the acquiring corporation should first allocate the cost of the acquired  
7 company to all identifiable assets acquired and liabilities assumed based on their fair  
8 value on the date of acquisition. The amounts allocated to utility plant in excess of  
9 depreciated original cost at the date of acquisition should be recorded as an  
10 acquisition adjustment in Account 114.”

11

12 **Q. THAT FERC ORDER APPEARS TO ADDRESS AN ACQUISITION**  
13 **PREMIUM ABOVE THE DEPRECIATED ORIGINAL COST. WOULD**  
14 **ACCOUNT 114 ALSO BE UTILIZED FOR THE TREATMENT OF AN**  
15 **ACQUISITION DISCOUNT?**

16 A. Yes. Account 114 is utilized for both acquisition premiums and acquisition  
17 discounts, where the purchaser paid less than depreciated original cost.

18

19 **Q. HAS FERC PROVIDED ANY ADDITIONAL GUIDANCE OR ISSUED ANY**  
20 **ORDERS WHICH ADDRESS HOW THE ACQUISITION OF PLANT**  
21 **SHOULD BE REFLECTED?**

---

<sup>1</sup> See, e.g., *Entergy Services Inc. and Gulf States Utilities Co.*, 65 FERC ¶ 61,332 (1993); *El Paso Electric Co. and Central and South West Services, Inc.*, 68 FERC ¶ 61,181 (1994); see also *Transwestern Pipeline Co.*, Docket No. AC03-50-000 (July 25, 2003) (unpublished letter order).

1 A. Yes. In Docket No. EC08-82-000, FERC specifically addressed its long-standing  
2 accounting policy for utilizing the original cost principle for the acquisition of plant.  
3 FERC addressed the proper accounting in Finding Paragraphs 27 through 31. More  
4 specifically, the Order states in Finding Paragraph 27 the following: “The  
5 Commission’s Uniform System of Accounts Prescribed for Public Utilities and  
6 Licensees requires that the acquisition of an operating unit or system must be  
7 accounted for in accordance with EPI No. 2, Electric Plant to be Recorded at Cost,  
8 EPI No. 5, Electric Plant Purchased or Sold, and Account 102, Electric Plant  
9 Purchased or Sold.”<sup>2</sup> In addition, the Order states that “EPI No. 2 requires amounts  
10 included in the accounts for electric plant acquired as an operating unit or system to  
11 be stated at the cost incurred by the person who first devoted the property to utility  
12 service (original cost principle).”<sup>3</sup>

13

14 **Q. DOES THE FERC ORDER IN DOCKET EC08-82-000 MAKE A**  
15 **DETERMINATION THAT MERCHANT PLANTS ARE CONSIDERED TO**  
16 **BE DEVOTED TO PUBLIC SERVICE?**

17 A. Yes. The Order in Finding Paragraph 29 clearly states that “...the Commission  
18 disagrees with PacifiCorp’s position that the Chehalis Facility has not been devoted to  
19 public service because it has not been included in a cost-based rate, served captive  
20 customers, or been subject to Part 101 of the Commission’s regulations.” In addition,  
21 the Order in Finding Paragraph 30 states that “Prior to *Puget Sound*, the Commission

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<sup>2</sup> 18 C.F.R. Part 101 (2008)

<sup>3</sup> The term “original cost,” as applied to electric plant, means the cost of such property to the person first devoting it to public service. Definition No. 23, Original cost, 18 C.F.R. Part 101 (2008)

1 affirmed a delegated order of the Chief Accountant which required that the  
2 acquisition of plant that had not been included in the predecessor owner's rate base,  
3 and on which the predecessor owner did not earn a return or recover depreciation, be  
4 recorded on the purchaser's books at depreciated original cost."<sup>4</sup> "In the delegated  
5 order, the Chief Accountant noted that there is no provision in the USofA for  
6 excluding depreciation accumulated on properties previously devoted to public  
7 service, regardless of the rate treatment afforded the facilities prior to their  
8 acquisition."<sup>5</sup>

9 The Order in Finding Paragraph 31 states the following: "Since *Puget Sound*,  
10 Commission Staff has determined that merchant generating facilities in the same  
11 circumstances as the Chehalis Facility have been devoted to public service.<sup>6</sup> As was  
12 the case in these orders, the Chehalis facility is an operating unit or system, and  
13 wholesale sales of electric energy were made from the facility pursuant to a  
14 Commission approved market-based rate tariff. Consequently, the Chehalis Facility  
15 was previously devoted to public service, and the accounting for the Proposed  
16 Transaction should follow the Commission's original cost rules. Accordingly,  
17 Chehalis must account for the acquisition pursuant to EPI No. 2, EPI No. 5, and  
18 Account 102, and record the original cost, estimated if not known, in Account 101  
19 and concurrently record the related accumulated depreciation in Account 108,  
20 Accumulated Provision for Depreciation of Electric Utility Plant. PacifiCorp must

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<sup>4</sup> See *Northern Border Pipeline Company*, 77 FERC ¶ 61,006 (1996).

<sup>5</sup> *Northern Border Pipeline Company*, Docket No. AC93-116-000 (February 15, 1994) (unpublished letter order).

<sup>6</sup> See *Goldendale Energy Center, LLC and Puget Sound Energy, Inc.*, 118 FERC ¶62,101 (2007); *PSEG Lawrenceburg Energy Company LLC, American Electric Power Service Corporation, AEP Generating Company*, 119 FERC ¶ 62,015 (2007); *DTE Entergy Services, Inc., DTE Georgetown Holdings, Inc., DTE Georgetown, LP, and Indianapolis Power & Light Company*, 120 FERC ¶ 62,040 (2007); *Quachita Power, LLC and Entergy Arkansas, Inc.*, 122 FERC ¶ 62,071 (2008); *Entergy Corporation*, *supra* at note 11; and *AEP*, *supra* at note 11.

1 record in Account 114, Electric Plant Acquisition Adjustments, any difference  
2 between the purchase price and the depreciated original cost of the Chehalis Facility.”

3 Finally, Ordering Paragraph (I) states the following: “PacifiCorp shall  
4 account for the Proposed Transaction in accordance with EPI No. 2, EPI No. 5, and  
5 Account 102.”

6  
7 **Q. THE FERC ORDER IN DOCKET EC08-82-000 RELATES TO A MERCHANT**  
8 **PLANT. WOULD THE CEDAR BAY FACILITY, AS A QUALIFYING**  
9 **FACILITY (“QF”), BE DEEMED TO HAVE BEEN DEVOTED TO PUBLIC**  
10 **SERVICE?**

11 **A.** Yes. The Cedar Bay Facility has provided wholesale sales of electric energy to FPL,  
12 per the PPA, under the FERC Rate Schedule/Tariff Number COG-2 and, therefore,  
13 would be deemed to have been devoted to public service. Consequently, the  
14 acquisition by FPL of the Cedar Bay Facility should be recorded at original cost  
15 under the FERC’s original cost rules.

16  
17 **Q. DO YOU AGREE WITH WITNESS OUSDAHL’S ASSERTION THAT THE**  
18 **COMMISSION RULES PROHIBIT THE TREATMENT THAT YOU**  
19 **RECOMMEND ACCORDING TO FERC’S ORIGINAL COST RULES?**

20 **A.** No. A review of Commission Rule No. 25-17.080, Definitions and Qualifying  
21 Criteria, which Witness Ousdahl cites on page 5 of her testimony, reveals that there is  
22 no such prohibition and that the underlying federal rule that appears to be the basis  
23 for her assertion regarding the ownership limitations requirement for qualifying

1 cogeneration and small power production facilities has been removed by FERC Order  
2 No. 671.

3

4 **Q. WHAT OTHER ASSETS OR LIABILITIES HAS FPL PROPOSED BE**  
5 **RECOGNIZED RELATED TO THE ACQUISITION OF THE CEDAR BAY**  
6 **FACILITY?**

7 A. Per Ms. Ousdahl's testimony, FPL has proposed certain journal entries (Exhibit KO-  
8 1) to recognize the following assets and liabilities: (A) Regulatory Asset – Loss on  
9 PPA, (B) Regulatory Asset – Tax Gross-Up (PPA), (C) Deferred Tax Liability – Loss  
10 on PPA, (D) Asset Retirement Cost, (E) Asset Retirement Obligation (F) Deferred  
11 Tax Asset – Book/Tax Difference on Acquired Plant, and (G) Regulatory Liability –  
12 Deferred Tax on Plant Book/Tax Difference.

13

14 **Q. PLEASE DESCRIBE FPL'S PROPOSED REGULATORY ASSET – LOSS ON**  
15 **PPA.**

16 A. In March 2015, FPL Witness Herr produced a valuation of the PPA and proposes in  
17 this docket that the PPA would have a fair value of approximately \$520 million to a  
18 market participant in today's market. In August 2014, FPL and CBAS Power  
19 Holdings, LLC had reached mutually agreeable terms in the "Purchase and Sale  
20 Agreement" for FPL to purchase 100 percent of the equity ownership interest in  
21 CBAS for \$520.5 million. Using the March 2015 valuation document subsequently  
22 produced by Witness Herr, FPL would allocate 100 percent of the purchase price to  
23 the PPA. According to FPL Witness Ousdahl's Direct Testimony (page 8), FPL plans

1 to terminate the PPA upon purchase of CBAS resulting in an equivalent loss to FPL  
2 of \$520.5 million. FPL proposes to record the loss as a regulatory asset in  
3 recognition of FPL's proposal to defer and recover the terminated PPA over the  
4 remaining original life of the PPA. I do not offer an opinion about the validity of the  
5 \$520.5 million amount for the fair value of the PPA. OPC Witness Gary Brunault  
6 provides an evaluation and recommendation for this fair value amount and the  
7 valuation approach utilized by FPL Witness Herr. My testimony addresses the  
8 income tax valuation accounting treatment proposed by Witness Ousdahl regardless  
9 of the actual dollar amount and assuming the proposed equity purchase is allowed by  
10 the Commission.

11  
12 **Q. HAS FPL MADE A DETERMINATION THAT THE LOSS ASSOCIATED**  
13 **WITH THE TERMINATION OF THE PPA IS NOT DEDUCTIBLE FOR**  
14 **INCOME TAX PURPOSES?**

15 A. Yes, FPL has stated in Witness Ousdahl's testimony, page 8, lines 19-21, that the  
16 company believes that termination of the PPA is not deductible for income tax  
17 purposes. Witness Ousdahl did not provide any supporting details or documentation  
18 from the IRS for that position.

19  
20 **Q. DO YOU AGREE WITH FPL WITNESS OUSDAHL'S POSITION THAT THE**  
21 **TERMINATION OF THE PPA IS NOT DEDUCTIBLE FOR INCOME TAX**  
22 **PURPOSES?**

1 A. No, I do not. The whole purpose for the acquisition of the Cedar Bay Facility,  
2 according to FPL, is to terminate the uneconomic PPA that FPL has with CBAS. The  
3 IRS in the 1997 private letter ruling, PLR-120013-97, addresses the deductibility of  
4 the termination or cancellation of uneconomic power purchase agreements with QFs.  
5 The IRS determined that the taxpayer may deduct under Section 162 the  
6 consideration for the termination of such contracts in the taxable year that the  
7 consideration is paid. Section 162 further provides that taxpayers may deduct all the  
8 ordinary and necessary expenses paid or incurred during the taxable year in carrying  
9 on any trade or business. The IRS also determined that the consideration paid for  
10 terminating the QFs contracts was in the nature of deductible termination costs. PLR-  
11 120013-97 states the following: “Specifically, these amounts were paid to terminate  
12 Taxpayer’s long-term contractual obligations to purchase power from these QFs  
13 under the N Contracts. As a result, these payments will reduce future costs to  
14 Taxpayer by allowing it relief from burdensome and uneconomic power purchase  
15 agreements. As discussed above, amounts paid to terminate burdensome contracts  
16 and to reduce or eliminate future costs, without more, are generally considered  
17 ordinary and necessary business expenses under §162. See Capitol Indemnity Ins.  
18 Co., 237 F.2d at 901; Montana Power Co., 171 F. Supp. at 943; Stuart Co., T.C.  
19 Memo at ¶ 50,171; see also Rev. Rul. 95-32, 1995-1 C.B. 8.”

20

21 **Q. HAS THE IRS PROVIDED ANY ADDITIONAL GUIDANCE OR PRIVATE**  
22 **LETTER RULINGS THAT ADDRESS THE CURRENT YEAR**

1           **DEDUCTIBILITY OF PURCHASE POWER AGREEMENT/CONTRACT**  
2           **BUY-OUT COSTS?**

3    A.    Yes. Florida Power Corporation (“FPC”) requested a letter ruling from the IRS on  
4           April 30, 1997, related to the current year’s deduction for the Tiger Bay purchase  
5           power agreement buy-out costs, not related to depreciable plant, on its income tax  
6           return for FPC’s purchase of the Tiger Bay cogeneration facility and the termination  
7           of the related purchased power contracts. FPC received a favorable letter ruling from  
8           the IRS on the deductibility of the buy-out costs not related to depreciable plant.

9

10   **Q.    BASED ON THE ABOVE FAVORABLE IRS PRIVATE LETTER RULING**  
11           **FOR FPC, HOW WOULD THAT IMPACT THE CEDAR BAY FACILITY**  
12           **ACQUISTION COSTS TO BE RECOVERED THROUGH THE CAPACITY**  
13           **CLAUSE?**

14   A.    The favorable IRS private letter ruling for FPC would mean that FPL’s proposed PPA  
15           Loss Regulatory Asset would be deductible for income tax purposes and that the  
16           annual cost to be recovered from ratepayers would be reduced by \$34.5 million,  
17           which totals \$326.9 million over the remaining life of the PPA.

18

19   **Q.    IS THE IRS BOUND BY THE ABOVE MENTIONED FAVORABLE**  
20           **PRIVATE LETTER RULINGS IN THE INSTANT CASE, THAT THE**  
21           **TERMINATION COSTS OF THE PPA OR PPA LOSS WOULD BE**  
22           **DEDUCTIBLE FOR INCOME TAX PURPOSES?**

1 A. No. Each Private Letter Ruling is based on the requested specific entity's situation  
2 and circumstances related to each of the individual PPA buyouts. If FPL were to  
3 request one, it is possible that the IRS could issue an unfavorable private letter ruling,  
4 if they were to determine that the circumstances were not similar.

5

6 **Q. SHOULD FPL REQUEST A PRIVATE LETTER RULING FROM THE IRS**  
7 **REGARDING THE DEDUCTIBILITY OF THE PPA LOSS REGULATORY**  
8 **ASSET THAT IT PROPOSES TO SET UP FOR THE TERMINATION OF**  
9 **THE PPA?**

10 A. Yes. FPL should request a private letter ruling from the IRS regarding the  
11 deductibility of the termination of the PPA, based on the specific circumstances of  
12 FPL's acquisition of the Cedar Bay Facility and the termination of the PPA.

13

14 **Q. IS FPL PROPOSING TO INCLUDE THE UNAMORTIZED BALANCE FOR**  
15 **THE PROPOSED PPA LOSS REGULATORY ASSET AS A COMPONENT**  
16 **OF THE CAPACITY CLAUSE FOR RECOVERY?**

17 A. Yes. FPL is proposing to include the unamortized balance of the proposed PPA Loss  
18 Regulatory Asset as a component of the Capacity Clause and is requesting to earn  
19 FPL's overall WACC on the unamortized balance, over the remaining contract term  
20 of the PPA.

21

22 **Q. HAS THE FPSC ISSUED ANY PRIOR ORDERS WHICH ADDRESS THE**  
23 **APPROPRIATE CAPITAL COSTS ON REGULATORY ASSETS**

1           **INCLUDABLE IN THE CAPACITY CLAUSE AND, SPECIFICALLY, THE**  
2           **WACC?**

3    A.    Yes. The FPSC has addressed the appropriate capital costs on regulatory assets  
4           includable in the Capacity Clause and, specifically, the WACC in two orders which  
5           reflected settlements. The two orders are: (1) Order No. PSC-97-0652-S-EQ, Docket  
6           No. 970096-EQ, related to the purchase of the Tiger Bay co-generation facility and  
7           termination of the purchased power contracts by Florida Power Corporation; and (2)  
8           Order No. PSC-00-1913-PAA-EI, Docket No. 000-82-EI, related to the buyout and  
9           termination of the Okeelanta purchased power contracts by FPL.

10

11   **Q.    DID THE FPSC PRIOR ORDERS MENTIONED ABOVE PROVIDE FOR**  
12           **THE FULL WACC RETURN ON THE UNAMORTIZED BALANCE OF THE**  
13           **PPA BUYOUTS?**

14    A.    No. Neither of the FPSC prior orders provided for the full WACC return on the  
15           unamortized balance of the PPA buyouts. The Tiger Bay order based on the  
16           stipulation provided recovery of only the "... (2) interest applicable to the  
17           unamortized balance of the retail portion of the *Tiger Bay* Regulatory Asset, and (3)  
18           amortization of the remaining principal of the retail portion of the *Tiger Bay*  
19           Regulatory Asset."<sup>7</sup> The Okeelanta order based on the settlement agreement provided  
20           for the recovery of the settlement payment over a term of five years with 79%  
21           recovered through the capacity clause and 21% recovered through the fuel adjustment

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<sup>7</sup> See 1997 Fla. PUC LEXIS 672.

1 clause with any unamortized balance during the five-year term earning interest at the  
2 commercial paper rate rather than a higher overall rate of return.<sup>8</sup>

3

4 **Q. IF THE FPSC, IN THIS PROCEEDING, AUTHORIZES FPL TO INCLUDE**  
5 **THE PPA LOSS REGULATORY ASSET TO BE RECOVERED THROUGH**  
6 **THE CAPACITY CLAUSE, SHOULD THE FPSC ALSO AUTHORIZE THE**  
7 **FULL WACC FOR THE UNAMORTIZED BALANCE OF THE PPA LOSS**  
8 **REGULATORY ASSET AS REQUESTED BY FPL?**

9 A. No. The FPSC should not authorize FPL to recover the full WACC for the  
10 unamortized balance of the regulatory asset. FPL should only recover (a) the debt  
11 component of the WACC or (b) the actual interest cost of any debt that FPL issues in  
12 order to consummate the Cedar Bay Facility acquisition. In a normal rate proceeding,  
13 the full WACC return should only be applied to components of the rate base or  
14 investments in plant in service. This PPA Loss Regulatory Asset is not related to  
15 either the rate base or to investments in plant in service, but is related to purchase  
16 power costs. It is specifically related to the buy-out of the purchase power  
17 agreement/contract, where the economics of the PPA have become unfavorable and  
18 the contract is "...above today's current and projected market prices and well above  
19 FPL's current avoided costs."<sup>9</sup>

20

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 A. Yes, it does.

---

<sup>8</sup> See 2000 Fla. PUC LEXIS 1222.

<sup>9</sup> Transmittal Letter at 3, FPSC Docket No. 150075-EI.

1                   COMMISSIONER EDGAR:   Marked Exhibits 13 and 14  
2                   will be entered into the record.

3                   (Exhibit Nos. 13 and 14 admitted into the  
4                   record.)

5                   MR. TRUITT:   And for Mr. Dawson, again, we  
6                   would ask that his prefiled testimony be entered  
7                   into the record as though read, and exhibits marked  
8                   as 15 through 22 on staff's comprehensive exhibit  
9                   list be entered into the record.

10                  COMMISSIONER EDGAR:   Prefiled testimony by  
11                  Witness Dawson will be entered into the record as  
12                  though read.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition for Approval of Arrangement To  
Mitigate Impact of Unfavorable Cedar Bay  
Power Purchase Obligation, by Florida Power &  
Light Company**

**DOCKET NO. 150075-EI**

**FILED: June 8, 2015**

**REDACTED**



**(PER DESIGNATION OF FPL AND/OR COGENTRIX (CEDAR BAY) PENDING FINAL DETERMINATION)**

**DIRECT TESTIMONY**

**OF**

**CHRISTOPHER C. DAWSON**

**ON BEHALF OF THE CITIZENS OF**

**THE STATE OF FLORIDA**

**J.R. Kelly  
Public Counsel**

**Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400**

**Attorney for the Citizens  
of the State of Florida**

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**DIRECT TESTIMONY**

**OF**

**CHRISTOPHER C. DAWSON**

**On Behalf of the Office of Public Counsel**

**Before the**

**Public Service Commission**

**Docket No. 150075-EI**

**Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

A. My name is Christopher C. Dawson, Principal of GDS Associates, Inc., and my business address is 1850 Parkway Place, Suite 800, Marietta, Georgia 30067.

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.**

A. I earned a Bachelor of Science degree in Industrial & Systems Engineering from Georgia Institute of Technology in Atlanta, Georgia, in December 1994. I passed the Professional Engineering exam in October 2000 and I am a member in good standing of the Institute of Industrial Engineers as well as the National Society of Professional Engineers. I received a degree of Masters of Business Administration from Georgia State University in Atlanta, Georgia in December 2005. I have been employed with GDS Associates since December 1994. Over the past 20 years at GDS Associates, I have had the primary responsibility for assignments pertaining to power supply planning, procurement and solicitation processes, evaluation of power supply

1 alternatives, contract negotiations and administration, and activities in RTO/ISO  
2 markets. My various assignments include utility projects on behalf of municipal  
3 utilities, cooperatives, joint-action agencies, and industrial retail customers in seven  
4 states. I have attached a copy of my resume as Appendix A.

5

6 **Q. WHAT IS THE NATURE OF YOUR BUSINESS?**

7 A. GDS Associates, Inc. ("GDS") is an engineering and consulting firm with offices in  
8 Marietta, Georgia; Austin, Texas; Auburn, Alabama; Manchester, New Hampshire;  
9 Madison, Wisconsin and Orlando, Florida. GDS provides technical and financial  
10 consulting services to a nationwide base of clients, which primarily includes  
11 municipal and cooperative electric utilities, Public Service Commissions and large  
12 consumers of electricity. Areas of expertise include generation support and  
13 management consulting, power supply and transmission planning, rate consulting,  
14 distribution services, least cost planning and litigation support. Generation support  
15 services provided by the firm include plant operational monitoring on behalf of co-  
16 owners of fossil and nuclear power plants, plant ownership feasibility studies, plant  
17 management audits, plant construction cost and schedule analyses, evaluations of  
18 power plant O&M costs and budgeting practices, production cost modeling and plant  
19 outage and replacement power cost evaluations.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN PROCEEDINGS BEFORE THIS**  
2 **COMMISSION?**

3 **A. This is the first time I will be testifying before the Florida Public Service**  
4 **Commission, although other members of the firm have provided testimony before the**  
5 **Commission.**

6

7 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN PROCEEDINGS BEFORE**  
8 **OTHER REGULATORY COMMISSIONS?**

9 **A. No, I have not filed testimony or testified before other Regulatory Commissions.**

10

11 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

12 **A. I am presenting testimony on behalf of the Office of Public Counsel.**

13

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 **A. My assignment from the Office of Public Counsel is to examine the reasonableness of**  
16 **Florida Power & Light Company's ("FPL") evaluation of the purported benefits for**  
17 **its retail customers, as well as the potential risks, under FPL's proposed acquisition of**  
18 **the Cedar Bay Power Generation Facility ("Cedar Bay Facility") and the Power**  
19 **Purchase Agreement ("PPA") between Cedar Bay Generating Company and FPL**  
20 **through a stock purchase. Regarding the benefits for FPL's retail customers, FPL**  
21 **Witness Hartman provided an economic analysis, Exhibit TLH-4, which projects cost**  
22 **under the existing PPA and compares that to the projected cost of FPL's**  
23 **contemplated method of acquisition of the Cedar Bay Facility. Witness Hartman**

1 claims on page 8 of his direct testimony, and as shown on Exhibit TLH-4, that FPL's  
2 retail customers will save an estimated \$70 million (NPV). These projected savings  
3 are based on various assumptions of the expected cost and availability of the Cedar  
4 Bay Facility, as well as the expected cost of replacement power in lieu of  
5 energy/capacity received from the Cedar Bay Facility. My testimony examines the  
6 reasonableness of Witness Hartman's assumptions and economic analysis, as well as  
7 identifying deficiencies in the form of potential liabilities that Witness Hartman, and  
8 FPL's other witnesses, have not adequately disclosed, explained or addressed with  
9 respect to the proposed Cedar Bay acquisition. These shortcomings cast doubt on  
10 whether FPL's retail customers will achieve the estimated \$70 million (NPV) savings.  
11 As I will discuss in more detail in my testimony, because of the potential for FPL's  
12 retail customers to achieve no savings under FPL's proposed acquisition of the Cedar  
13 Bay Facility, I have made certain recommendations regarding the conditions which  
14 the Commission should consider in deciding whether to approve the transaction as  
15 currently proposed by FPL. These conditions include protection of the customers  
16 from possibly unnecessary income tax costs, certain unknown liabilities, and an  
17 excessive return on the unamortized balance of the regulatory asset that FPL has  
18 proposed to recover from customers. I have also evaluated a scenario where FPL  
19 pursued a lower overall cost option and buys out of the existing PPA [REDACTED]  
20 [REDACTED]. I  
21 summarize the benefits of the alternative and compare it to FPL's proposed  
22 acquisition of the Cedar Bay Facility.

1 **Q. PLEASE SUMMARIZE YOUR ASSESSMENT OF WITNESS HARTMAN'S**  
2 **ECONOMIC ANALYSIS/ASSUMPTIONS AND THE POTENTIAL**  
3 **LIABILITIES THAT HAVE NOT BEEN ADDRESSED BY FPL WITNESSES**  
4 **IN THIS PROCEEDING.**

5 **A. Witness Hartman's Exhibit TLH-4 provides projections of FPL's cost to acquire**  
6 **Cedar Bay (Line H – Total Cost of Acquiring CBAS), the incremental**  
7 **energy/capacity cost to replace the existing PPA (Line I – FPL System Impact), and**  
8 **the related fixed cost under the existing PPA (Line L – Total Avoided Costs of PPA).**  
9 **The \$70 million (NPV) in projected retail customers' savings he claims might result**  
10 **are based, in part, on FPL's assumptions for fuel prices, replacement capacity prices,**  
11 **and Cedar Bay capacity bonus payments. Witness Hartman conducted a fuel price**  
12 **sensitivity on natural gas prices but not on the price of coal. According to FPL's**  
13 **economic evaluation, Cedar Bay's projected fuel price for 2015, under the existing**  
14 **PPA, is higher than current spot prices and escalates over the remaining term of the**  
15 **PPA. Cedar Bay's contractual fuel price is tied to actual average fuel cost at the St.**  
16 **Johns River Power Park, which has two coal contracts set to expire in 2015 and 2016.**  
17 **Assuming a reduction of \$0.25/MMBtu in Witness Hartman's projected coal prices**  
18 **results in \$14 million (NPV) of reduced savings for the retail customers.**

19 **In 2018, after retiring the Cedar Bay Facility, FPL anticipates having to**  
20 **acquire up to 322 MW of additional capacity at an estimated cost of \$13 million, or**  
21 **equivalent to an average capacity price of \$3.48/kW-month. This capacity price is**  
22 **much lower than the cost of new peaking generation and may understate FPL's cost**

1 to replace Cedar Bay by as much as \$3 million (NPV) for every \$1/kW-month that  
2 the actual price is higher than \$3.48/kW-month.

3 Also, under the existing PPA contract scenario, FPL did not account for the  
4 162 MW of excess capacity in 2022 that could be sold for an additional \$7 million in  
5 revenues. These potential additional revenues, worth \$4 million (NPV), reduce FPL's  
6 cost under the existing PPA contract as well as reduce the estimated \$70 million  
7 (NPV) in savings.

8 As discussed in more detail in the testimony of OPC Witness Gary D.  
9 Brunault, the projected Cedar Bay bonus capacity payments are too high relative to  
10 Cedar Bay's historical performance and should be reduced by approximately \$21  
11 million on a net present value basis.

12 Regarding other potential risks and liabilities that have not been addressed by  
13 FPL's witnesses in this proceeding, I am aware of one and that is the environmental  
14 risk associated with the Cedar Bay ground lease which is discussed in more detail in  
15 the testimony of OPC Witness Dan Wittliff. I discuss this issue and the potential  
16 impact in greater detail in my testimony; however, the combination of FPL's  
17 economic evaluation assumptions and these unquantified risks suggests that achieving  
18 \$70 million in savings for FPL's retail customers could prove difficult, if not  
19 impossible.

20

21 **Q. DID WITNESS HARTMAN PERFORM FUEL COST SENSITIVITIES TO**  
22 **SUPPORT HIS ESTIMATES OF SAVINGS TO FPL'S RATEPAYERS?**

23 **A. Yes, Witness Hartman performed natural gas price sensitivities.**

1 Q. DID WITNESS HARTMAN PERFORM ANY SENSITIVITIES RELATED TO  
2 THE PRICE OF COAL USED TO DETERMINE THE PRICE OF ENERGY  
3 FPL WOULD PURCHASE FROM CEDAR BAY?

4 A. No.

5

6 Q. HOW IS THE PRICE OF ENERGY PURCHASED BY FPL FROM CEDAR  
7 BAY DETERMINED?

8 A. The contractual basis for fuel pricing in the existing PPA is stated as follows:

9 "Unit Fuel Cost - the weighted average cost, in dollars per million Btu, of  
10 coal, and oil if applicable, burned at St. Johns River Power Park's Units #1 and  
11 #2. The cost of coal at St. Johns River Power Park shall be calculated from the  
12 data reported on a monthly basis to the FPSC in Schedule A5 entitled "System  
13 Net Generation and Fuel Cost." Start-up oil cost for St. Johns River Power  
14 Park's Units #1 and #2 as reported in Schedule A5 will be included in the Unit  
15 Fuel Cost calculation for any Monthly Billing Period that includes one or  
16 more Facility start-ups as a result of an FPL-required shutdown. The most  
17 recently filed Schedule A5 data shall be used in calculating the Unit Fuel  
18 Cost."

19

20 Q. IS THIS COST THE SAME AS THE PRICE THAT CEDAR BAY ACTUALLY  
21 PAYS FOR FUEL?

22 A. No, it is not.

23

24 Q. DOES CEDAR BAY OR FPL HAVE ANY CONTROL OVER THE PRICE OF  
25 COAL DELIVERED TO ST. JOHNS RIVER POWER PARK?

26 A. As a joint owner of St. Johns River Power Park (SJRPP), FPL may have some control  
27 over the negotiated price paid for coal supplied to SJRPP; however, Cedar Bay does  
28 not.

1 Q. WHAT ARE THE SOURCES OF THE COAL DELIVERED TO SJRPP?

2 A. EIA Form 923 data through March 2015 show deliveries of spot coal from the Illinois  
3 Basin, Illinois Basin Coal, provided under a contract set to expire at the end of 2015,  
4 and Colombian (imported) coal provided under a contract set to expire at the end of  
5 2016.

6

7 Q. ARE THERE PRICE VARIANCES BETWEEN THE COALS PROVIDED?

8 A. Yes. For instance, in March 2015 coal from the Ace In The Hole mine in Indiana  
9 cost \$4.072/MMBtu while coal from the El Cerrejon mine in Colombia cost  
10 \$3.021/MMBtu. Had the Indiana coal not been purchased, the average price of coal  
11 delivered for the month would have dropped from \$3.149/MMBtu to \$3.021/MMBtu  
12 – a reduction of \$0.128/MMBtu.

13

14 Q. DOES WITNESS HARTMAN'S CEDAR BAY COAL PRICE FORECAST  
15 RECOGNIZE THE SJRPP COAL COST REDUCTIONS THAT MIGHT BE  
16 ACHIEVED AS A RESULT OF THE EXPIRATION OF HIGHER PRICED  
17 COAL CONTRACTS AT THE END OF 2015?

18 A. No, it does not. Witness Hartman's coal forecast (CB-15-009489) for January 2016  
19 shows a \$0.13/MMBtu (4%) increase over the estimated fuel cost for December 2015.

20

21 Q. IS WITNESS HARTMAN'S ASSUMPTION UNREASONABLE?

22 A. Not necessarily; however, neither is it unreasonable to assume that the expiration of a  
23 higher priced coal contract compared to the current, lower spot prices may result in a

1 significant cost reduction at the end of 2015 and possibly again at the end of 2016  
2 where Witness Hartman assumes a \$0.10/MMBtu (3%) increase. This possibility, at  
3 the very least, justifies consideration of a sensitivity.

4

5 **Q. CAN YOU QUANTIFY THE IMPACT THAT PERFORMING SUCH A**  
6 **SENSITIVITY MIGHT HAVE?**

7 **A. Yes. Combining the lower spot price versus the 2015 coal contract price (a difference**  
8 **of \$0.128/MMBtu) and eliminating Witness Hartman's 2016 coal price escalation**  
9 **(\$0.130/MMBtu), equals approximately a \$0.258/MMBtu reduction in coal price**  
10 **projections. Assuming a \$0.25/MMBtu decrease from Witness Hartman's estimated**  
11 **fuel cost for 2016 and each year thereafter, the Cedar Bay annual generation amounts**  
12 **assumed by FPL Witness Herr (876,000 MWh per non-leap year), and the contract**  
13 **heat rate and adjustment (0.99) pursuant to the PPA, FPL's annual Cedar Bay energy**  
14 **costs would be lower by approximately \$2.1 million per year. If the existing PPA**  
15 **remained in service through the end of its term, the cost under the existing PPA (and**  
16 **therefore the estimated savings to ratepayers by eliminating the PPA) would be**  
17 **reduced by at least \$14 million (NPV).**

18

19 **Q. WOULD THE FUEL SAVINGS YOU IDENTIFY ABOVE TEND TO**  
20 **INCREASE WITH INCREASED DISPATCH?**

21 **A. Yes. The lower dispatch price for Cedar Bay generation would allow it to be more**  
22 **heavily dispatched into the market when it could replace more expensive generation.**  
23 **This would be particularly true under the high gas price sensitivities in Witness**

1 Hartman's economic evaluation where Cedar Bay's relatively low contract heat rate  
2 and lower coal price basis would become highly competitive with natural gas-fired  
3 alternatives.

4

5 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS REGARDING THE COAL**  
6 **PRICE FORECAST UTILIZED BY FPL TO ESTIMATE CUSTOMER**  
7 **BENEFITS.**

8 A. By over-estimating the cost of SJRPP coal used as a basis for energy pricing at Cedar  
9 Bay, FPL may have over-estimated ratepayer savings by \$14 million or more on a net  
10 present value basis.

11

12 **Q. WHAT ARE FPL'S INCREMENTAL CAPACITY REQUIREMENTS IF**  
13 **CEDAR BAY IS RETIRED?**

14 A. FPL has proposed to acquire and then shut down the Cedar Bay Facility at the end of  
15 2016. According to documents that FPL provided in discovery, specifically Bates  
16 Nos. CB15-009440 and CB15-009467, FPL estimates that it will need 322 MW and  
17 88 MW of short-term capacity purchases in 2018 and 2022, respectively, if the Cedar  
18 Bay Facility is retired. Under the scenario where FPL continues to purchase capacity  
19 (and energy) from Cedar Bay under the current PPA, FPL estimates that it will only  
20 need to purchase 72 MW of short-term capacity in 2018.

1 **Q. WHAT IS FPL'S ESTIMATED PRICE FOR THE INCREMENTAL**  
2 **CAPACITY REQUIREMENTS AND WHAT IS THE BASIS FOR THAT**  
3 **PRICE?**

4 A. According to documents that FPL provided in discovery, specifically Bates Nos.  
5 CB15-009440 and CB15-009467, FPL uses a 2015 purchase proxy price of  
6 ██████-month, which FPL escalates at ██████ per annum until the year 2018, to  
7 determine capacity purchase prices for future years. Using these assumptions, my  
8 calculations of the 2018 and 2022 capacity prices is \$3.48/kW-month. Using these  
9 calculated rates and FPL's claimed capacity requirements of 322 MW (2018) and 88  
10 MW (2022), I derive short-term capacity purchases costs of \$13.4 million and \$3.7  
11 million, respectively. Excluding rounding to the nearest million, my calculations are  
12 close to FPL's capacity charges of ██████ million (2018) and ██████ million (2022)  
13 contained in Bates Nos. CB15-009457. This provides support for my determination  
14 that my calculated \$3.48/kW-month capacity price estimate is an accurate  
15 representation of FPL's estimated capacity price for 2018 and 2022. To the best of  
16 my knowledge, FPL has not provided any additional information regarding the basis  
17 for the 2015 proxy capacity price or the annual escalation rate of 9.8%.

18

19 **Q. WHAT IS THE POTENTIAL IMPACT OF REPLACEMENT CAPACITY**  
20 **COST ON WITNESS HARTMAN'S PROJECTION OF CUSTOMER**  
21 **SAVINGS?**

22 A. FPL has assumed a 2018 and a 2022 capacity price of \$3.48/kW-month for capacity  
23 purchases of 322 MW and 88 MW, respectively. Depending on when FPL conducts

1 an RFP for these incremental capacity requirements 3 and 7 years in the future, the  
2 actual capacity price may be higher than their estimated \$3.48/kW-month. By  
3 comparison, according to EIA's 2014 Annual Energy Outlook, the projected cost of  
4 new combustion-turbine generation (i.e., peaking capacity generation) is \$971/kW  
5 (Total Overnight Cost, 2013 \$/kW), which translates into a levelized cost of  
6 \$9.91/kW-month over a 25 year life and a 7.5% WACC. Acknowledging that FPL  
7 will probably not build a new combustion turbine generation plant and instead will  
8 probably purchase short-term capacity from a third-party supplier, FPL will be  
9 subject to prevailing market capacity prices that could be much higher than their  
10 current estimate of \$3.48/kW-month. For every \$1/kW-month that the capacity  
11 purchase price is higher than FPL's current estimates, the estimated customer savings  
12 will be reduced by \$3 million (NPV).

13  
14 **Q. ARE THERE ANY OTHER ISSUES WITH FPL'S EVALUATION OF**  
15 **REPLACEMENT CAPACITY AND IF SO, WHAT IS THE ECONOMIC**  
16 **IMPACT?**

17 **A.** Yes. FPL has evaluated the incremental capacity cost associated with retiring the  
18 Cedar Bay Facility at the end of 2016 and has identified two short-term capacity  
19 purchases of 322 MW and 88 MW in 2018 and 2022, respectively. However, in the  
20 scenario where FPL continues to purchase the output of Cedar Bay under the current  
21 PPA, then FPL should have excess short-term capacity to sell in 2022 (FPL claims  
22 they would still have a 72 MW deficiency in 2018 and this was included in their  
23 economic evaluation). The amount of excess short-term capacity in 2022 is equal to

1 the difference between the 88 MW deficiency and the 250 MW of Cedar Bay  
2 capacity, or 162 MW. Using FPL's estimated price of \$3.48/kW-month for short-  
3 term capacity in 2022, the value of the excess capacity would be \$6.8 million (on a  
4 nominal basis) and \$4.1 million (NPV). It does not appear that FPL has considered  
5 these additional revenues, which would result in a reduction of cost under the existing  
6 Cedar Bay PPA, in Witness Hartman's economic analysis. The effect of this excess  
7 capacity sale in the analysis would reduce the claimed \$70 million savings to FPL's  
8 customers by another \$4.1 million.

9  
10 **Q. WHAT IS THE CAPACITY BONUS PAYMENT AND HOW DOES IT**  
11 **IMPACT WITNESS HARTMAN'S ECONOMIC EVALUATION?**

12 **A.** The "Capacity Bonus" payment is the term used to describe the "bonus", or increase  
13 in monthly capacity payments made by FPL to Cedar Bay under the PPA to the extent  
14 the Billing Capacity Factor exceeds certain threshold levels. OPC Witness Gary  
15 Brunault discusses this Capacity Bonus payment in greater detail in his testimony, as  
16 it relates to his review of the purported Fair Value of the PPA. In Exhibit TLH-4,  
17 FPL Witness Hartman includes projections of Capacity Bonus payments of 5.0%,  
18 which Witness Brunault testifies is too high. The 5% Capacity Bonus payment  
19 assumption increases FPL's projected payments to Cedar Bay which has the effect of  
20 increasing the projected customer savings versus using an assumption for a lower  
21 Capacity Bonus payment.

1 **Q. HAS FPL WITNESS HARTMAN DESCRIBED THE BASIS FOR THE 5%**  
2 **CAPACITY BONUS ASSUMPTION IN HIS TESTIMONY OR EXHIBITS?**

3 A. No, not specifically. FPL Witness Hartman simply qualifies his capacity bonus  
4 assumption in his testimony with the statement (page 9 of 17): "While there are  
5 performance standards that Cedar Bay Genco must meet in order to qualify for these  
6 payments, Cedar Bay Genco reliably achieves those standards and, recent years, has  
7 consistently earned the potential performance bonus". However, FPL provided  
8 responses to OPC Interrogatory No. 48 and confirmed that Witness Hartman's  
9 economic evaluation assumed a 98% Billing Capacity Factor (as defined in the PPA)  
10 and was based on Cedar Bay's performance over the most recent five years.

11

12 **Q. WHAT HAVE YOU DISCOVERED THAT CASTS DOUBT ON THE 5%**  
13 **BONUS CAPACITY REVENUE ASSUMPTION?**

14 A. OPC's Witness Brunault has reviewed the most recent 8-year period of actual average  
15 Bonus Capacity Revenue percentage that would be comparable to the 5% assumption  
16 reflected in Mr. Hartman's economic evaluation and arrived at 2.59%.

17

18 **Q. WOULD THE 2.59% CAPACITY BONUS PAYMENT REPRESENT A MORE**  
19 **REASONABLE ASSUMPTION THAN THE 5.0% IN THE ECONOMIC**  
20 **EVALUATION?**

21 A. Yes. I have reviewed Mr. Brunault's testimony and agree with his recommendation.

1 Q. WHAT IS THE IMPACT ON THE ECONOMIC ANALYSIS OF  
2 SUBSTITUTING YOUR RECOMMENDED 2.59% CAPACITY BONUS  
3 PAYMENT IN PLACE OF FPL WITNESS HARTMAN'S 5.0%  
4 ASSUMPTION?

5 A. All else the same, reflecting the 2.59% Bonus Capacity Revenue assumption would  
6 lower the Customer Savings by approximately \$21 million (NPV)<sup>1</sup>.

7  
8 Q. ARE THERE ANY RISKS FPL HAS FAILED TO QUANTIFY IN ITS  
9 ECONOMIC EVALUATION OF THE PROPOSED CEDAR BAY  
10 PURCHASE?

11 A. Yes, I have identified one potential liability or risk that FPL has not quantified. As  
12 OPC Witness Dan Wittliff describes in greater detail in his testimony, there is also an  
13 unquantifiable, environmental risk due to FPL's failure to recognize that its review of  
14 Cedar Bay environmental documents was incomplete due to missing pages in the  
15 ground lease.

16  
17 Q. PLEASE EXPLAIN THE RISK ASSOCIATED WITH THE CEDAR BAY  
18 GROUND LEASE.

19 A. As part of the Cedar Bay acquisition, FPL will be acquiring a ground lease. As OPC  
20 Witness Dan Wittliff details in his testimony, Article XX of the ground lease contains  
21 two sections related to environmental issues: (1) Section 20.1 outlines environmental

---

<sup>1</sup> The \$21 million net present value for this issue is slightly higher than the impact on the Fair Value of the PPA that OPC Witness Brunault reports (\$18 million). This is due to differing discount rates and income tax impacts between the two analyses.

1           representations concerning the condition of the property at the time the lease was  
2           signed in 1991, and (2) Section 20.2 contains environmental covenants.  
3           Unfortunately, in the confidential documents provided to FPL by CBAS, Appendix  
4           20.1 is missing at least one page containing paragraph (ii) and its sub-paragraphs and  
5           possibly some sub-paragraphs associated with paragraph (i). Two blank pages appear  
6           instead. Given that this information was missing, it would have been impossible for  
7           FPL to properly assess its total environmental liabilities associated with the ground  
8           lease it would be assuming should the proposed Cedar Bay purchase be approved by  
9           the Commission.

10

11   **Q.   HOW DO YOU RECOMMEND THIS SITUATION BE ADDRESSED?**

12   A.   Since FPL evidently did not thoroughly inspect the ground lease document, as  
13       discovered by Witness Wittliff, if the Commission approves the transaction as  
14       currently proposed, then FPL's retail customers should be held harmless and the  
15       Commission should prohibit FPL from recovering costs from customers associated  
16       with any environmental remediation costs or other liabilities it incurs as a result of  
17       assuming the Cedar Bay ground lease.

18

19   **Q.   PLEASE SUMMARIZE THE POTENTIAL ECONOMIC IMPACTS TO**  
20       **FPL'S ESTIMATED CUSTOMER SAVINGS FOR THE ISSUES THAT YOU**  
21       **HAVE IDENTIFIED.**

22   A.   As I have described in my testimony, there are at least five issues that may impact  
23       FPL's \$70 million (NPV) projection of customer savings pursuant to the proposed

1 acquisition of the Cedar Bay Facility. These issues, as well as the potential impact of  
2 each (on a net present value basis) are:

- 3 a) Lower Cedar Bay Fuel Cost Paid under the PPA: \$14 million;
- 4 b) Inclusion of 2022 Excess Capacity Sale: \$4 million;
- 5 c) Lower Capacity Bonus Payments: \$21 million;
- 6 d) Incremental Replacement Capacity Cost: \$3 million for every \$1/kW-month  
7 that the 2018/2022 replacement capacity is higher than \$3.48/kW-month; and,
- 8 e) Ground Lease Liability: Not quantified.

9 The total quantified impact from the first three identified issues is approximately \$39  
10 million (NPV). Exhibit CCD-1 is a revised version of FPL Witness Hartman's  
11 Exhibit TLH-4 that includes the lower Cedar Bay fuel projections, revenues from the  
12 2022 excess capacity sale, and a reduction in projected capacity bonus payments.  
13 The result of these revisions is a much lower estimated customer savings of \$32  
14 million (NPV) that could be further reduced or eliminated by unquantified liabilities.  
15 There are additional potential costs associated with the incremental replacement  
16 capacity purchases in 2018 and 2022 and the potential environmental exposure with  
17 the ground lease. The combination of these unquantified issues could further reduce,  
18 and potentially eliminate, the revised \$32 million customer savings.

19 Of course, FPL's estimated customer savings require that the retail customers  
20 absorb potentially significant risks associated with FPL's acquisition and closure of  
21 the Cedar Bay Facility, specifically, the risks associated with future fuel prices (i.e.  
22 both natural gas and coal prices), incremental capacity purchase cost, and potential  
23 environmental exposure associated with the ground lease. On the other hand, FPL's

1 stockholders could potentially earn a return of up to \$121 million (NPV) with the  
2 proposed method of the Cedar Bay acquisition and assume very little risk relative to  
3 FPL's retail customers.

4  
5 **Q. WHAT OTHER POTENTIAL MODIFICATIONS TO THIS TRANSACTION**  
6 **WOULD HAVE AN OFFSETTING EFFECT ON CUSTOMER SAVINGS?**

7 **A.** As addressed in testimony by OPC Witness Myers, based on past precedent related to  
8 the Commission's allowed return on unamortized regulatory assets in connection with  
9 PPA buy-outs, and for the reasons Witness Myers cites in his testimony, one  
10 modification to FPL's proposed rate treatment is to only allow recovery of the debt  
11 component of FPL's weighted cost of capital ("WACC").

12  
13 **Q. WHAT IMPACT WOULD THIS CHANGE HAVE RELATIVE TO THE**  
14 **RECOMPUTED CUSTOMER SAVINGS YOU PRESENTED ON EXHIBIT**  
15 **CCD-1?**

16 **A.** This change would significantly improve the likelihood of achieving customer  
17 savings, or an amount higher than the \$32 million shown on my Exhibit CCD-1. As  
18 shown on Exhibit CCD-2, after including all of the same adjusted assumptions  
19 reflected in Exhibit CCD-1 as previously discussed, and reducing the return to just the  
20 debt cost only on the unamortized regulatory asset that was established as a result of  
21 cancelling the PPA with Cedar Bay, the customers' projected savings increase to  
22 approximately \$108 million (NPV). This is provided more for illustrative purposes  
23 since FPL had a provision inserted in the Purchase and Sale Agreement that expressly

1 requires the Commission to approve the WACC as a carrying cost as a condition of  
2 closing on the deal.

3

4 **Q. WHAT IS ANOTHER WAY THAT FPL COULD REDUCE ITS COST**  
5 **ASSOCIATED WITH ITS PROPOSED ACQUISITION OF THE CEDAR BAY**  
6 **FACILITY?**

7 A. FPL Witness Ousdahl has testified, page 8, lines 19 – 21, that the company believes  
8 that the termination of the PPA is not deductible for income tax purposes. OPC  
9 Witness Myers disagrees with that assessment and testifies that the proposed Cedar  
10 Bay acquisition would qualify as a deduction for income tax purposes.

11

12 **Q. WHAT IS REQUIRED FOR THE TERMINATION OF THE PPA, UNDER**  
13 **FPL'S PROPOSED CEDAR BAY ACQUISITION, TO QUALIFY AS A**  
14 **DEDUCTION FOR INCOME TAX PURPOSES?**

15 A. As OPC Witness Myers outlines in his testimony, pages 15 – 18, FPL should request  
16 a private letter ruling from the IRS regarding the deductibility of the termination of  
17 the existing PPA, based on the specific circumstances of this proposed transaction.

18

19 **Q. WHY DOES OPC WITNESS MYERS BELIEVE THAT IT IS POSSIBLE THE**  
20 **PROPOSED CEDAR BAY ACQUISITION WOULD RECEIVE IRS**  
21 **APPROVAL AS A DEDUCTIBLE EVENT?**

22 A. As OPC Witness Myers outlines in his testimony, in 1997 Florida Power Corporation  
23 (FPC) appears to have requested a private letter ruling from the IRS for its proposed

1 purchased of the Tiger Bay cogeneration facility and the termination of related  
2 purchased power contracts. Specifically, FPC was requesting that the Tiger Bay  
3 purchase power agreement buy-out costs, not related to depreciable plant, be  
4 considered a deductible event for income tax purposes. FPC appears to have received  
5 a favorable ruling from the IRS related to this matter since an IRS Private Letter  
6 Ruling on a very similar fact scenario was also published in 1997. On the surface, it  
7 appears that FPL's proposed acquisition of the Cedar Bay facility, a qualified QF,  
8 where FPL purchases the asset and terminates the underlying PPA, is very similar to  
9 FPC's acquisition of the Tiger Bay QF facility in 1997. Having said that, and as OPC  
10 Witness Myers acknowledges, receiving a favorable ruling from the IRS for the  
11 Cedar Bay acquisition is not guaranteed.

12

13 **Q. WHAT ARE THE ECONOMIC BENEFITS IF FPL RECEIVED A**  
14 **FAVORABLE RULING FROM THE IRS RELATED TO THE ACQUISITION**  
15 **OF THE CEDAR BAY FACILITY?**

16 **A.** OPC Witness Myers estimates the benefits from an IRS favorable ruling would be  
17 approximately \$34.5 million per year. Exhibit CCD-3 shows that the estimated  
18 customer savings would increase significantly, from \$32 million (NPV) to \$269  
19 million (NPV).

20

21 **Q. GIVEN THE POTENTIAL FOR THE \$269 MILLION OF ESTIMATED**  
22 **SAVINGS UNDER FPL'S PROPOSED METHOD OF ACQUISITION,**  
23 **SHOULD FPL REQUEST A PRIVATE LETTER RULING FROM THE IRS?**

1 A. Yes. It is my recommendation that the Commission approve FPL's proposed method  
2 of acquisition of the Cedar Bay Facility *if, as a threshold matter*, FPL requests and  
3 receives a favorable ruling from the IRS on the deductibility of the Cedar Bay PPA  
4 buy out cost. A favorable ruling on this issue would guarantee a much more  
5 appropriate level of customer savings versus FPL's current proposed structure. I also  
6 recommend that this condition, if achieved, be accompanied by the use of a lower,  
7 debt-based carrying cost as mentioned previously in my testimony and in the  
8 testimony of OPC Witness Myers.

9

10 **Q. WHAT HAPPENS IF FPL DOES NOT RECEIVE A FAVORABLE RULING**  
11 **FROM THE IRS REGARDING THE DEDUCTIBILITY ISSUE?**

12 A. If FPL does not receive a favorable ruling from the IRS, then the Commission should  
13 reject FPL's proposed asset acquisition of the Cedar Bay Facility.

14

15 **Q. WHAT IS YOUR RECOMMENDATION REGARDING FPL'S PROPOSED**  
16 **ACQUISITION OF THE CEDAR BAY FACILITY?**

17 A. As described in my testimony, the combination of the estimated cost impacts and  
18 unquantified and/or non-quantifiable issues means that FPL's claim of \$70 million in  
19 net present value customer savings will be very difficult, if not impossible, to attain.  
20 Based on my findings as well as the recommendations put forth by OPC Witnesses'  
21 Brunault, Myers, and Wittliff, I recommend that the Commission reject FPL's  
22 proposed acquisition of the Cedar Bay Facility in the manner which they have  
23 proposed to value, pay for and account for the transaction. As an alternative, and

1 consistent with my belief that FPL should take action to eliminate the PPA from its  
 2 cost structure for the benefit of its customers, I recommend that the Commission  
 3 condition approval of FPL's proposed transaction on modifications to the transaction  
 4 that are aimed at providing a higher, and more reliable, level of savings for its  
 5 customers. I have recommended two such modifications: (1) conditioned approval  
 6 upon FPL receiving a favorable ruling from the IRS on the deductibility of the PPA  
 7 buy out cost; coupled with (2) allowing only the debt component of the WACC to be  
 8 recovered on the unamortized balances of the regulatory asset. As shown in Exhibit  
 9 CCD-4 this would result in customer savings of \$408 million (NPV). In addition, the  
 10 Commission should also re-determine the reasonableness of the equity/asset purchase  
 11 price taking into consideration the valuation concerns raised in the testimony of OPC  
 12 Witness Brunault.

13  
 14 **Q. DID FPL HAVE ANOTHER ALTERNATIVE TO TERMINATE THE**  
 15 **EXISTING CEDAR BAY PPA OTHER THAN FPL'S PROPOSED ASSET**  
 16 **PURCHASE OF CEDAR BAY?**

17 **A.** [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]

1 Q. [REDACTED]

2 [REDACTED]

3 A. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8

9 Q. [REDACTED]

10 [REDACTED]

11 A. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16

17 Q. [REDACTED]

18 [REDACTED]

19 A. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

5

6 Q. [REDACTED]  
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
8 [REDACTED]

9 A. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18

19 Q. **IN YOUR ANALYSIS IN EXHIBITS CCD-1 THROUGH CCD-4, YOU HAVE**  
20 **NOT REFLECTED ANY ADJUSTMENT TO THE PROPOSED PURCHASE**  
21 **PRICE OF \$520 MILLION. DO YOU BELIEVE SUCH AN ADJUSTMENT IS**  
22 **WARRANTED?**

1 A. I have not reflected any adjustments to the purchase price for simplicity and  
2 consistency in my testimony. I concur with Witness Brunault's conclusions that the  
3 valuation supporting the \$520 million purchase price that FPL asks the Commission  
4 to approve is suspect and should not be accepted for purposes of recovering costs  
5 from customers. Any reduction in the purchase price based on a different valuation  
6 assumption would be in addition to the adjustments reflected in my testimony and  
7 shown in the relevant exhibits, and would need to be considered under each of the  
8 equity purchase alternatives.

9

10 Q. PLEASE SUMMARIZE FPL'S OPTIONS WITH RESPECT TO THE  
11 EXISTING CEDAR BAY PPA.

12 A. As has been discussed in my testimony, the Commission has four alternatives as it  
13 relates to the existing Cedar Bay PPA: (1) do nothing and allow FPL to continue  
14 under the terms/conditions of the existing Cedar Bay PPA, (2) allow FPL to purchase  
15 the Cedar Bay Facility as they have proposed, (3) allow FPL to purchase the Cedar  
16 Bay Facility at a more reasonable purchase price based on a reasonable valuation  
17 AND with the conditions that FPL requests and receives a favorable ruling from the  
18 IRS on the deductibility of the PPA buy out cost and FPL utilizes an appropriate debt-  
19 based carrying cost in cost recovery, or (4) instruct FPL to re-negotiate the transaction  
20 with Carlyle to instead buy out the PPA. Exhibit CCD-7 is a table that summarizes  
21 these alternatives (subject to appropriate valuation and purchase price), including the  
22 amortized regulatory asset amount, key risks/exposures, and expected customer  
23 savings for each.

1 **Q. BASED ON THESE ALTERNATIVES, WHAT IS YOUR**  
2 **RECOMMENDATION?**

3 **A.** Given these alternatives and comparing the potential risks/exposures, as well as the  
4 demonstrated customer savings, I recommend that the Commission condition FPL's  
5 proposed asset purchase of Cedar Bay at a reasonable price conditioned upon a  
6 favorable IRS private letter ruling regarding the deductibility of the PPA buy out cost  
7 and a debt-based carrying cost, and consistent with the testimony, in the relevant  
8 areas, of all OPC witnesses. Based on the similarities of the Cedar Bay acquisition  
9 and FPC's previous acquisition of Tiger Bay, it is reasonable to assume that the IRS  
10 would grant FPL's request. If for some reason the IRS were to deny FPL's private  
11 letter ruling request, then the Commission should reject FPL's request to acquire the  
12 Cedar Bay Facility at the \$520 million level and instead direct FPL to negotiate with  
13 Carlyle for a buy out of the existing PPA.

14

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 **A.** Yes.

1 COMMISSIONER EDGAR: Exhibits marked 15  
2 through 22 are entered into the record at this  
3 time.

4 (Exhibit Nos. 15 through 22 admitted into the  
5 record.)

6 MR. TRUITT: Nothing further from OPC, Madam  
7 Chairwoman.

8 COMMISSIONER EDGAR: Thank you.  
9 Mr. Moyle.

10 MR. MOYLE: FIPUG has two witnesses,  
11 Mr. Pollock and Mr. Michael Lane. The parties have  
12 agreed to waive cross and have their testimonies  
13 entered into the record as though read.

14 So, for Mr. Pollock, we would move that his  
15 prefiled testimony along with what has been marked  
16 in staff's comprehensive list as Exhibits 23, his  
17 qualifications, and Exhibit 24, an appendix that  
18 shows testimony filed in other regulatory  
19 proceedings -- that those exhibits and his  
20 testimony be admitted into the record.

21 COMMISSIONER EDGAR: Okay. Thank you. The  
22 prefiled testimony of Witness Pollock will be  
23 entered into the record as though read.

24

**DIRECT TESTIMONY OF JEFFRY POLLOCK**

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A Jeffry Pollock; 12647 Olive Blvd., Suite 585, St. Louis, MO 63141.

3 **Q WHAT IS YOUR OCCUPATION AND BY WHOM ARE YOU EMPLOYED?**

4 A I am an energy advisor and President of J. Pollock, Incorporated.

5 **Q PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

6 A I have a Bachelor of Science Degree in Electrical Engineering and a Masters in  
7 Business Administration from Washington University. Since graduation in 1975, I  
8 have been engaged in a variety of consulting assignments, including energy  
9 procurement and regulatory matters in both the United States and several  
10 Canadian provinces. My qualifications are documented in **Appendix A**. A partial  
11 list of my appearances is provided in **Appendix B** to this testimony.

12 **Q ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

13 A I am testifying on behalf of the Florida Industrial Power Users Group (FIPUG).  
14 FIPUG members take power from various utilities throughout the state, including  
15 Florida Power & Light Company (FPL). They consume significant quantities of  
16 electricity, often around-the-clock, and require a reliable affordably-priced supply  
17 of electricity to power their operations. Therefore, FIPUG members have a direct  
18 and significant interest in the outcome of this proceeding.

19 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A I discuss FPL's proposal to recover the cost of buying out the power purchase  
21 agreement (PPA) with Cedar Bay by acquiring the asset, terminating the PPA and  
22 then shutting down the plant.

1 Q ARE YOU TAKING ANY POSITION ON THE PRUDENCE AND  
2 REASONABLENESS OF FPL'S DECISION TO BUY OUT THE PURCHASED  
3 POWER AGREEMENT WITH CEDAR BAY?

4 A No. I am not questioning FPL's decision to buy-out the PPA.

5 Q WHAT IS AT ISSUE?

6 A FPL is proposing to recover the \$520 million that it paid for the Cedar Bay plant  
7 and to earn a guaranteed return for shareholders.<sup>1</sup> However, FPL is also  
8 proposing to shut-down Cedar Bay in December 2016, soon after the acquisition  
9 closes. Thus, after 2016, Cedar Bay will no longer provide electricity to FPL's  
10 customers. The issues are:

- 11 • Whether it is reasonable for FPL to invest \$520 million to buy-out  
12 of a PPA and then shut-down the plant.
- 13 • Assuming any portion of the \$520 million is reasonable, is the buy-  
14 out and subsequent shut-down of Cedar Bay in the public interest?
- 15 • Should FPL earn a return on an asset that will not provide electricity  
16 to FPL's customers after December 2016?
- 17 • Whether the costs are eligible for recovery through the Capacity  
18 Cost Recovery (CCR) clause.

19 I am not addressing the first issue. As to the second issue, I discuss the reasons  
20 why shutting down Cedar Bay is not in the public interest. FPL should not be  
21 allowed to earn a return on an investment that will not be used and useful after  
22 Cedar Bay has been shuttered. And finally, the costs FPL is seeking to recover in  
23 this Petition are more in the nature of costs that should be recovered in base rates,  
24 not in the CCR.

---

<sup>1</sup> Petition at 8.

1 **Cedar Bay Facility**

2 **Q PLEASE DESCRIBE THE CEDAR BAY FACILITY.**

3 A Cedar Bay is a 250 megawatt (MW) power plant located in Jacksonville, FL.  
4 Although it burns primarily low sulfur bituminous coal, the plant is capable of  
5 burning other solid fuels, including wood waste.

6 **Q IS CEDAR BAY A TYPICAL COAL-FIRED POWER PLANT?**

7 A No. The plant comprises three reheat circulating fluidized-bed (CFB) boilers fueled  
8 by low-sulfur coal. Each CFB contains a mixture of crushed limestone and coal  
9 suspended in a flow of hot air. The limestone strips the sulfur from the coal during  
10 combustion, minimizing sulfur dioxide (SO<sub>2</sub>) emissions.<sup>2</sup> CFB is a more efficient  
11 and cleaner technology.

12 **Q DOES FPL PURCHASE POWER FROM CEDAR BAY?**

13 A Yes. FPL has a PPA to buy capacity and energy from Cedar Bay which was  
14 executed in 1988 and is scheduled to terminate in 2024. Under the PPA, Cedar  
15 Bay generates power based on FPL's power needs. FPL pays a fixed price to  
16 Cedar Bay for its capacity and operation and maintenance (O&M) expense.

17 **FPL Proposal**

18 **Q WHAT IS FPL'S PROPOSAL REGARDING ITS PPA WITH CEDAR BAY?**

19 A FPL is proposing to pay \$520 million to buy out the remaining term of the contract.  
20 After the transaction, FPL would gain ownership of the plant and the remaining  
21 term of the PPA contract would be canceled. FPL then plans on retiring the plant

---

<sup>2</sup> Cogentrix Energy Power Management – Cedar Bay. <http://www.cogentrix.com/cedar-bay/>

1 after December 2016.<sup>3</sup>

2 **Q WHY DOES FPL WANT TO BUY OUT THE CONTRACT?**

3 A Based on FPL's analysis, buying out the PPA contract would purportedly save  
4 customers \$70 million on a cumulative present value revenue requirement as  
5 compared to continuing the contract through the end of its term (2024). However,  
6 even if the \$70 million savings were to fully materialize, it would reduce bills by  
7 approximately only 6 cents per 1,000 kWh.

8 **Q IS THERE ANYTHING WRONG WITH THE PLANT THAT WOULD CAUSE FPL  
9 TO SHUT IT DOWN?**

10 A No. According to FPL:

11 The Facility is well-run and dependable, and there is every reason  
12 to believe it will remain operable into the foreseeable future.<sup>4</sup>

13 It does not make sense that FPL would purchase a dependable and well-run plant  
14 just to cease operations after next year — which is *at least* eight years prior to the  
15 end of the plant's useful life.

16 **Q IS CEDAR BAY A SIGNIFICANT SOURCE OF CARBON DIOXIDE EMISSIONS  
17 IN THE STATE OF FLORIDA?**

18 A No. Cedar Bay's 2012 CO<sub>2</sub> emissions were 1.2 million metric tons.<sup>5</sup> Overall, the  
19 state of Florida emitted 218.3 million metric tons of CO<sub>2</sub> in 2012.<sup>6</sup> Thus, Cedar

---

<sup>3</sup> Testimony of Thomas L. Hartman at 6-7.

<sup>4</sup> Petition at 5.

<sup>5</sup> SNL Financial, Plant Environmental – Cedar Bay Generating, at 1.

<sup>6</sup> U.S. Energy Information Administration; *Florida Carbon Dioxide Emissions from Fossil Fuel Consumption (1980-2012)*.

1 Bay represents only a small fraction (0.7%) of the state's CO<sub>2</sub> emissions.  
2 Therefore, shutting-down Cedar Bay plant would not contribute to significantly  
3 reducing CO<sub>2</sub> emissions.

4 **Public Interest**

5 **Q IS SHUTTING DOWN CEDAR BAY IN THE PUBLIC INTEREST?**

6 A No. As previously discussed, Cedar Bay is a fully functional, modern state-of-the-  
7 art coal-fired power plant. It has all of the necessary environmental controls to  
8 comply with the EPA's Mercury and Air Toxins (MATs) regulations. The plant is  
9 capable of providing 250 MW of capacity year-round. If well operated and  
10 maintained, Cedar Bay can be used and useful until at least 2024. Shutting down  
11 a viable power plant that has at least another eight years of useful life is not in the  
12 public interest.

13 **Q WHY ELSE WOULD SHUTTING DOWN CEDAR BAY NOT BE IN THE PUBLIC**  
14 **INTEREST?**

15 A First, Cedar Bay provides fuel diversity. Second, FPL has indicated that it needs  
16 additional capacity as early as 2019.<sup>7</sup> Thus, shutting Cedar Bay down would  
17 lessen FPL's fuel diversity while contributing to and needlessly inflating FPL's  
18 future capacity deficits. Third, FPL is proposing to earn a return on the purchase  
19 price. The higher the purchase price, the higher the return. No return should be  
20 allowed on an asset that will not provide electricity to FPL's customers after 2016  
21 because the asset is not used and useful.

---

<sup>7</sup> *Florida Power & Light Company's 2015-2024 Ten Year Power Plant Site Plan*, at 52. (April 2015).

1 **Fuel Diversity**

2 **Q WHAT DO YOU MEAN BY FUEL DIVERSITY?**

3 A Fuel diversity provides a utility with various fuels to generate power and is not  
4 concentrated on one source.

5 **Q WHAT IS FPL'S FUEL MIX?**

6 A FPL's fuel mix is composed of about 61% natural gas and about 9% coal.<sup>8</sup>  
7 According to FPL, it projects that 70% of its energy will be generated by natural  
8 gas fired resources by 2017.<sup>9</sup>

9 **Q DOES FPL HAVE A GOAL OF PROVIDING A DIVERSE FUEL MIX?**

10 A Yes. FPL states that:

[T]he objective is to maintain/enhance fuel diversity in the FPL  
system. Diversity is sought both in terms of the types of fuel utilized  
by FPL and how these fuels are supplied to FPL.<sup>10</sup>

11 **Q WOULD CLOSING CEDAR BAY BE CONSISTENT WITH PROVIDING A**  
12 **DIVERSE FUEL MIX?**

13 A No. Closing the Cedar Bay plant would not maintain or enhance FPL's fuel  
14 diversity. It would do just the opposite which could affect electricity prices in the  
15 future.

16 **Q PLEASE EXPLAIN WHY NOT HAVING FUEL DIVERSITY COULD AFFECT**  
17 **ELECTRICITY PRICES.**

18 A A diverse fuel mix protects the utility and customers from the risk of price swings

---

<sup>8</sup> *Id.*, at 17, 21.

<sup>9</sup> Direct Testimony of Robert E. Barrett, Jr. at 4.

<sup>10</sup> *Florida Power & Light Company's 2015-2024 Ten Year Power Plant Site Plan*, at 8. (April 2015).

1 for various fuels. By concentrating its fuel mix on natural gas, FPL exposes its  
 2 customers to higher electricity prices if the price of natural gas increases. In fact,  
 3 Public Utilities Fortnightly commented on fuel diversity, stating:

4 Fuel diversity and long-term supply contracts also reduce exposure  
 5 to soaring costs of any single fuel.<sup>11</sup>

6 **FPL's Need for Capacity**

7 **Q WHAT IS FPL'S TARGETED RESERVE MARGIN?**

8 A FPL states that its goal is to provide a 20% reserve margin.<sup>12</sup>

9 **Q DOES FPL PROJECT A NEED FOR ADDITIONAL CAPACITY?**

10 A Yes. FPL forecasts that it will have a significant need for capacity beginning in  
 11 2019.

12 **Q HOW IS FPL PROPOSING TO MEET THE PROJECTED CAPACITY DEFICIT?**

13 A In March of 2015 it issued a request for proposal for additional capacity. FPL  
 14 expects to file in mid-2015 for the FPSC's determination of need approval.<sup>13</sup>

15 **Used and Useful**

16 **Q IS FPL PROPOSING TO RECOVER THE COST OF ACQUIRING CEDAR BAY?**

17 A Yes. FPL is proposing to recover the \$520 million acquisition cost through the  
 18 Capacity Cost Recovery (CCR) clause. The cost would be amortized over the  
 19 remaining term of the PPA (through 2024). FPL would earn a return on the  
 20 unamortized balance based on FPL's weighted average cost of capacity that is  
 21 used in adjustment proceedings.

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<sup>11</sup> Fortnightly Magazine, *The Future of Fuel Diversity: Crisis or Euphoria?*, Ellen Lapson and Richard Hunter (Oct. 2004).

<sup>12</sup> *Florida Power & Light Company's 2015-2024 Ten Year Power Plant Site Plan*, at 8. (Apr. 2015).

<sup>13</sup> *Id.* at 52-53.

1 **Q SHOULD FPL BE ALLOWED TO EARN A RETURN ON THE ACQUISITION?**

2 A No. A utility is entitled to earn a return on investments that provide electricity to  
3 the public. After FPL shuts-down Cedar Bay in December 2016, Cedar Bay will  
4 not provide electricity to FPL's customers. Thus, the asset will not be used and  
5 useful. Accordingly, FPL is not entitled to earn a return on the acquisition cost.

6 **Clause Recovery**

7 **Q IS IT APPROPRIATE TO RECOVER THE ACQUISITION COSTS THROUGH**  
8 **THE CAPACITY COST RECOVERY CLAUSE?**

9 A No. The purpose of the CCR clause is to allow utilities to recover fixed charges  
10 incurred under Commission-approved PPAs.<sup>14</sup> Allowing recovery of fixed PPA-  
11 related costs removes the disincentive for utilities to pursue purchased power  
12 when purchases are found to be more cost-effective than installed capacity. The  
13 costs that FPL is seeking to recover are not fixed purchased power costs.

14 **Q PLEASE EXPLAIN.**

15 A The proposed transaction would result in cancelling the PPA and FPL owning  
16 Cedar Bay. Once the acquisition has closed, the asset would be essentially the  
17 same as FPL's other power plant assets. Thus, FPL is attempting to recover costs  
18 through the CCR clause that are historically and typically ripe for possible recovery  
19 in base rates. Accordingly, FPL's proposal to recover the acquisition costs through  
20 the CCR clause should be denied.

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<sup>14</sup> *In Re: Generic Investigation of the Proper Recovery of Purchased Power Capacity Cost by Investor-Owned Electric Utilities*, Docket No. 970794-EQ, Order Concluding Generic Investigation and Determining the Proper Recovery of Purchased Power Capacity Costs by Investor-Owned Electric Utilities, Order No. 25773. (Feb. 24, 1992). See also, Clarifying Order, Order No. PSC-92-0414-FOF-EQ (May 27, 1992).

1 Q DOES THIS CONCLUDE YOUR TESTIMONY?

2 A Yes.

1                   COMMISSIONER EDGAR:  And exhibits marked 23  
2                   and 24 are entered into the record at this time.

3                   (Exhibit Nos. 23 and 24 admitted into the  
4                   record.)

5                   MR. MOYLE:  We've reached a similar  
6                   accommodation with respect to FIPUG witness,  
7                   Mr. Lane.  He prefiled testimony and also filed two  
8                   exhibits that are marked as hearing Exhibits 25 and  
9                   26.  We would ask that those be admitted into the  
10                  record.

11                  COMMISSIONER EDGAR:  Thank you.  The prefiled  
12                  testimony of Witness Lane will be entered into the  
13                  record as though read.

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**TESTIMONY  
OF  
MICHAEL G. LANE**

1 01. Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Michael G. Lane and my business address is NewGen Strategies and  
3 Solutions, 5115 Maryland Way, Brentwood, TN 37024.

4 02. Q. **BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by the firm of NewGen Strategies and Solutions, LLC. I am a  
6 Director, an LLC Member, and an Accredited Senior Appraiser.

7 03. Q. **BRIEFLY DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL  
8 BACKGROUND.**

9 I received an Associate's Degree in Applied Science and Nuclear Engineering  
10 Technology from Thomas Edison State College, in Trenton, New Jersey in 1994. In  
11 1999, I earned a Bachelor of Business Administration Degree from Belmont  
12 University in Nashville, Tennessee, and in 2003 I earned a Masters of Business  
13 Administration (finance) from the Jack Massey Graduate School of Business at  
14 Belmont University, Nashville, Tennessee. Also, in 2003, I earned the designation  
15 of Accredited Senior Appraiser from the American Society of Appraisers.  
16 Accredited Senior Appraisers are required to have passed required appraisal  
17 education classes, to have a minimum of five years full time experience appraising  
18 and valuing utility property, and to pass an 8-hour comprehensive public utility  
19 appraisal exam administered by the American Society of Appraisers. Attached as  
20 Exhibit MGL-1 is a list of independent appraisals that I have performed.

1           From 1985 to 1994, I was with the United States Navy as a submarine-based  
2           nuclear power plant operator. From 1994 until 1998 I was employed by Hartford  
3           Steam Boiler Inspection and Insurance Company as a boiler inspector. I joined R.  
4           W. Beck in 1998. R. W. Beck changed its name to SAIC Energy Environment and  
5           Infrastructure (SEE&I) in 2010. I am currently an LLC Member at NewGen  
6           Strategies and Solutions, LLC.

7   04.   Q.   **PLEASE DESCRIBE NewGen Strategies and Solutions, LLC**

8           A.   NewGen Strategies and Solutions, LLC was formed in 2012 by a group of  
9           consultants that had constituted the core of R.W. Beck's rates, financial, appraisal  
10          and economic consulting practices for the last 25 years of R. W. Beck's existence.  
11          Since its founding it has expanded rapidly and has offices in Austin, TX, Dallas, TX,  
12          Nashville, TN, Denver CO, and Seattle, WA. The firm started with 8 employees in  
13          2012 and now employs 35 consultants with clients throughout the United States.

14   05.   Q.   **WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
15          **PROCEEDING?**

16          A.   I am providing testimony regarding my review of certain documents related to the  
17          valuation of the 250 MW Cedar Bay coal fired generating facility in Jacksonville,  
18          Florida. I am filing this testimony on behalf of the Florida Industrial Power Users  
19          Group ("FIPUG").

20   06.   Q.   **HAVE YOU PREPARED APPRAISALS OF OTHER UTILITY PROPERTY**  
21          **PRIOR IN THE PAST?**

1 A. Yes. I have prepared appraisals of generation assets as well as electric, water,  
2 wastewater and gas utility facilities throughout the country. Exhibit MGL-1 is a  
3 listing of utility appraisals that I have prepared or participated in preparing.

4 07. Q. **What documents did you review as a part of this testimony?**

5 A. I reviewed the following documents:

6 -April 5, 2013 Duff and Phelps document entitled "Valuation of Certain Tangible  
7 and Intangible Assets & Liabilities of Cogentrix Power Holdings LLC"

8 -August 9, 2013 Memorandum TO: Cogentrix Power Holdings II LLC 2013  
9 accounting files FROM: Phil Gegorich regarding [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 - Agreement for the purchase of Firm Capacity and Energy between AED Cedar  
13 Bay, Inc. and Florida Power and Light Company

14 -The deposition of Stephen Mark Rudolph taken on May 15, 2015.

15 -The March 4, 2015 Duff & Phelps report entitled "Valuation of Certain Tangible  
16 and Intangible Assets of CBAS Power, Inc."

17 08. Q. **WHAT FINDINGS DID YOU DISCERN FROM YOUR REVIEW OF THESE**  
18 **DOCUMENTS RELATED TO THE VALUE OF CEDAR BAY**  
19 **GENERATING STATION?**

20 A. The Goldman sale of the Cedar Bay generating assets (the assets) in 2013 represents  
21 an arm's length transaction and provides a strong market comparable transaction that  
22 is useful in the valuation of the Cedar Bay generating assets. In the deposition of  
23 Mr. Rudolph on page 31, Mr. Rudolph implies that the Duff and Phelps report dated

1 April 5, 2013 was simply an “allocation” of the purchase price that had been set by  
2 the transaction and not really a valuation of the assets. I disagree with that statement  
3 in that, the purpose of the Purchase Price Allocation is to establish a Fair Market  
4 Value for the assets to first check for the presence of identifiable and unidentifiable  
5 intangible assets as well as goodwill that would have to be accounted for properly.  
6 The secondary purpose of a Purchase Price Allocation is to then allocate the value to  
7 assets for accounting purposes. The Duff & Phelps report is clearly titled “Valuation  
8 of Certain Tangible and Intangible Assets & Liabilities of Cogentrix Power  
9 Holdings, LLC”.

10 09. Q. **ARE THERE ANY OTHER FINDINGS OF NOTE?**

11 A. Yes. The arm’s length transaction and valuation of the assets in 2013 both provide a  
12 strong starting point for valuation of the assets. Based on Duff & Phelps’ valuation,

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] (see Duff & Phelps Valuation of Certain Tangible and Intangible  
16 Assets & Liabilities of Cogentrix Power Holdings, LLC [REDACTED]).

17 [REDACTED] (see Duff & Phelps Valuation of Certain  
18 Tangible and Intangible Assets & Liabilities of Cogentrix Power Holdings, LLC

19 [REDACTED]). Since the PPA has a defined term, the value of the PPA will generally go  
20 down over time unless it is extended or there is some dramatic change in the gas and  
21 power markets over the life of the PPA.

22 10. Q. **ARE YOU ABLE TO RECONCILE THE DIFFERENCE BETWEEN DUFF &  
23 PHELPS 2013 AND 2015 VALUATIONS OF THE CEDAR BAY**

1           **GENERATING STATION?**

2           In part, yes. The 2013 report relied on a [REDACTED] based on market-  
3           based inputs to the cost of capital analysis, which is appropriate for determining the  
4           fair market value of the asset. The 2015 report relied on a discount rate of 7%, based  
5           on the cost of capital of Florida Power and Light, which is appropriate for an  
6           investment value analysis of the assets, but not for a fair market value analysis of the  
7           assets. The appropriate discount rate for estimating fair market value would utilize  
8           market based inputs. In fact, Duff & Phelps prepared a market based cost of capital  
9           analysis for the 2015 report (see the March 4, 2105 Duff & Phelps report Valuation  
10          of Certain Tangible and Intangible Assets of CBAS Power, Inc. Exhibit D.2) that  
11          resulted in an [REDACTED] discount rate. The difference in value resulting from using the  
12          more appropriate discount rate accounts for about [REDACTED] (See exhibit MGL-2)  
13          of the total difference between 2013 and 2015 valuations of [REDACTED]  
14          [REDACTED]. Additionally, there was a tax amortization benefit  
15          included in the 2015 valuation that was not included in the 2013 valuation that  
16          accounts for [REDACTED] of the difference. Those two items account for  
17          approximately [REDACTED] of the increase in value from 2013 to 2015. The remaining [REDACTED]  
18          appears to be related to differences in assumptions related to the revenues produced.

19   11.   **Q. Do you believe the \$520,000,000 fair market value suggested by the Duff and**  
20           **Phelps March 4, 2015 report is overstated? If so, why?**

21    A.    Yes, I believe that the \$520,000,000 value suggested by Duff and Phelps' March 4,  
22           2015 report is overstated. The premise of value was intended to be Fair Market  
23           Value and the discounted cash flow analysis upon which the March, 2015 valuation

1 is based utilizes a discount rate more appropriate for an Investment Value premise of  
2 value. Utilizing the lower, Florida Power and Light specific, discount rate  
3 inappropriately adds at least [REDACTED] to the valuation results. Additionally, the  
4 truly arm's length transaction that occurred when the Assets were purchased by  
5 Carlyle in 2013 is a better indicator of value and a better market comparable than  
6 Florida Power and Light's purchase of the assets in 2015. Since Florida Power and  
7 Light is compelled by the Purchased Power Agreement (the Agreement for the  
8 purchase of Firm Capacity and Energy between AED Cedar Bay, Inc. and Florida  
9 Power and Light Company) to pay higher than market rates for the power purchased  
10 from Cedar Bay, the purchase price appears to have been affected by undue  
11 stimulus. A common definition of Market Value is: *Market value means the most*  
12 *probable price which a property should bring in a competitive and*  
13 *open market under all conditions requisite to a fair sale, the buyer and seller each*  
14 *acting prudently and knowledgeably, and assuming the price is not affected by*  
15 *undue stimulus.* Based on that definition, Florida Power and Light's ability to cease  
16 purchases of power at higher than market rates after the purchase of Cedar Bay  
17 appears to meet the definition of undue stimulus and the purchase price does not  
18 reflect Fair Market Value.

19  
20 12. Q. **DOES THIS CONCLUDE YOUR PREPARED TESTIMONY?**

21 A. Yes, it does.  
22  
23  
24

1           COMMISSIONER EDGAR:  And exhibits marked 25  
2           and 26 are entered into the record at this time.

3           (Exhibit Nos. 25 and 26 admitted into the  
4           record.)

5           COMMISSIONER EDGAR:  Mr. Moyle?

6           MR. MOYLE:  So, we have two more witnesses,  
7           Mr. Cliff Evans and Mr. Stephen Rudolph.  And we  
8           filed excerpts of their depositions.  They actually  
9           are employees of Cogentrix.

10          In talking with the parties and your counsel,  
11          I think we've gotten this in a position -- it's  
12          unusual, admittedly, but I think -- they are not  
13          here.  They are more than a hundred miles away and  
14          testified to that fact in there depositions.

15          So, we would admit the testimony that FIPUG  
16          filed of deposition excerpts along with certain  
17          deposition exhibits as listed in Comprehensive  
18          Exhibit List, No. 1.  It's for Mr. Evans.  I think  
19          it's identified as Hearing Identification No. 27;  
20          and for Mr. Rudolph, it's 28.

21          So, I would ask that their deposition  
22          testimony that FIPUG filed be entered into the  
23          record as though read, and the exhibits  
24          accompanying such testimony also be admitted into  
25          the record.

1           COMMISSIONER EDGAR: Okay. Are there any  
2 questions from the parties?

3           Yes, FPL.

4           MS. MONCADA: Yes, from FPL -- FPL moved to  
5 admit counter-designations to the designations  
6 marked by FIPUG for Witness Stephen Mark Rudolph  
7 and also to include as a counter-designation  
8 Exhibit No. 3 to Mr. Rudolph's deposition. And it  
9 was granted in the pre-hearing order on Page 20.  
10 So, we would ask that those be moved in in  
11 conjunction with the designations by FIPUG.

12           COMMISSIONER EDGAR: Okay. Ms. Helton, that  
13 is in keeping with your understanding of the  
14 pre-hearing order?

15           MS. HELTON: Yes, ma'am.

16           COMMISSIONER EDGAR: All right. Then we will  
17 show the FIPUG submitted deposition excerpts, et  
18 cetera, of Witness Evans, admitted into the record  
19 as -- we will admit Exhibit 27.

20           (Exhibit No. 27 admitted into the record.)

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1

## ERRATA SHEET

2 Under penalties of perjury, I declare that I have read  
 3 the foregoing transcript of my deposition and hereby  
 subscribe to the same, including any corrections and/or  
 amendments listed below.

4



5 Signature

6-29-2015

Date

6

PAGE

LINE

CORRECTION AND REASON FOR CHANGE

7

\_\_4\_\_

\_\_23\_\_

Strike Edwards, insert Evans - transcription error

8

\_\_12\_\_

\_\_17\_\_

Strike "waters"; insert "boilers" - transcription error

9

\_\_16\_\_

\_\_15\_\_

Strike "when"; insert "what" - transcription error

10

\_\_25\_\_

\_\_25\_\_

Insert "coal" before "facilities" - incomplete response

11

\_\_26\_\_

\_\_16\_\_

Strike "grow"; insert "go" - transcription error

12

\_\_26\_\_

\_\_25\_\_

Strike "emergent"; insert "merchant" - transcription error

13

\_\_27\_\_

\_\_2\_\_

Strike "CFP"; insert "CFB" - transcription error

14

\_\_45\_\_

\_\_25\_\_

Strike "2060"; insert "2016" - transcription error

15

\_\_53\_\_

\_\_3\_\_

Strike "take"; insert "that" - transcription error

16

\_\_55\_\_

\_\_12\_\_

Strike "Tthe"; insert "The" - transcription error

17

\_\_86\_\_

\_\_5\_\_

Strike "factored"; insert "factor" - transcription error

18

\_\_101\_\_

\_\_5\_\_

Strike "holly"; insert "holy" - transcription error

19

\_\_121\_\_

\_\_8\_\_

Strike "PPA"; insert "electric backfeed" - error in testimony

- 20 \_\_127\_\_      \_\_25\_\_      Strike "regulating"; insert "regulated" -  
transcription error
- 21 \_\_130\_\_      \_\_25\_\_      Strike "OSOSC's"; insert "USOSC's" -  
transcription error
- 22 \_\_163\_\_      \_\_25\_\_      Strike "Marobane"; insert "Marubeni" -  
transcription error
- 23 \_\_167\_\_      \_\_5\_\_      Strike "Marin"; insert "Marlin" -  
transcription error
- 24 \_\_167\_\_      \_\_6\_\_      Strike "Marin"; insert "Marlin" -  
transcription error
- 25 \_\_179\_\_      \_\_10\_\_      Strike "-- I'm not sure what the FPL entity  
is. But it's an FPL entity"; insert "Cedar  
Bay Generating Company" - error in testimony

## 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

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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

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22

23

24

25

I N D E X

<u>WITNESS</u>	PAGE NO.
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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 10 CB0010257	
11 11 CB0013661	
12 12 e-mail string, beginning 5-7-13	
13 13 Cedar Bay PPA	
14 14 e-mail string, beginning 11-12-14	
15 15 Notification to Cedar Bay Employees	
NUMBER DESCRIPTION (marked in Neff)	
16 16 3-24-15 e-mail string	
NUMBER DESCRIPTION (marked in Rudolph)	
17 17 8-9-13 Cogentrix memo	
18 18 Duff & Phelps report	
19 19 2-7-13 McNamara e-mail	
20 20 8-23-13 Officer's Cert	
21 21 CBGC, LP financial statements	
22 December 31, 2014 and 2013	
23 22 GBGC, LP 3-20-13 presentation to	
24 lenders	
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25 23 Purchase and sale agreement	32
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READ AND SIGN LETTER	108



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 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]

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Q Okay. Now --

9

A Excuse me. Let me clarify that.

10

Q Uh-huh.

11

12

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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

17

18

19

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21

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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]        [REDACTED]  
7        [REDACTED]  
8        [REDACTED]  
9        [REDACTED]  
10       [REDACTED]        [REDACTED]  
11       [REDACTED]        [REDACTED]  
12       [REDACTED]  
13       [REDACTED]        [REDACTED]  
14       [REDACTED]        [REDACTED]  
15       [REDACTED]        [REDACTED]  
16       [REDACTED]        [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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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 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 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

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[REDACTED]

[REDACTED] included more than the Cedar Bay facility?

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

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

[REDACTED]

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

BY MR. MOYLE:

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

Do you know what the Rhea valuation report is?

A No.

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

[REDACTED]

You don't have any information about that?

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]

19 [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]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
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 [REDACTED]  
19 [REDACTED]  
20 [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

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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

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

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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

14

15

16 MR. WRIGHT: Objection; lack of foundation.

17

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19

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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]

19 [REDACTED]

20 [REDACTED]

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[REDACTED]

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 4 [REDACTED]  
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 6 [REDACTED] [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]

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

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

16 Q So what prompted you to do a [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED] [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

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[REDACTED]

[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]

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.

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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.

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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.

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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

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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

REPORTED BY: SARAH B. GILROY, RPR, CRR  
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the State of Florida at  
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I N D E X

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INDEX OF EXHIBITS  
(Exhibits attached hereto.)

NUMBER DESCRIPTION (marked in Volume 1, Patterson)

1	Operations Summary, April 2013
2	FPL Billing statement, August 2013
3	Cogentrix presentation to PSC
4	DEP monitoring document
5	2014 Cogentrix business objectives
6	e-mail string, beginning 8-14-14
7	CB0009896
8	CB0012698
9	CB0013073
10	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	NUMBER DESCRIPTION (marked in Evans, Volume 1)	
	No. 24 11-26-13 e-mail string	126
2	No. 25 10-15-14 e-mail string	135
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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?

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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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]



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 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9           A Well, that was one of the concepts being  
10 explored.

11           Q How far did you go in exploring that?

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

17           Q Did you reach a conclusion?

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

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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]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]



1 [REDACTED] [REDACTED]  
2 [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
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7 [REDACTED] [REDACTED]  
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19 [REDACTED] [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED] [REDACTED]  
25 [REDACTED] [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.

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
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22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]

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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 [REDACTED]

19 Q If it was going to happen, would you have  
20 knowledge of that, or would that be maybe one of the  
21 financial people?

22 A If that was going to happen, it would be  
23 reflected in the purchase and sale agreement.

24 Q Well, sometimes people can have other  
25 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]

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[REDACTED]

MR. WRIGHT: Object. You're not going to answer that question. That's a fact not in evidence.

MS. BARRERA: Jon, is this a good time to take a break?

MR. MOYLE: Yeah. Yeah. I'm getting close to wrapping up. Let's take ten minutes.

MS. BARRERA: Before everybody goes --

MR. MOYLE: Off the record.

(Short recess.)

BY MR. MOYLE:

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**

1  
2 STATE OF FLORIDA            )  
3 COUNTY OF LEON             )

4       I, SARAH B. GILROY, Registered Professional Reporter,  
5 and Notary Public, do hereby certify that the foregoing  
6 proceedings were taken before me at the time and place  
7 therein designated; that a review of the transcript was  
8 requested, and that the foregoing pages numbered 109  
9 through 199 are a true and correct record of the  
10 aforesaid proceedings.

11  
12       I further certify that I am not a relative, employee,  
13 attorney or counsel of any parties, nor am I a relative  
14 or employee of any of the parties' attorney or counsel  
15 connected with the action, nor am I financially  
16 interested in the action.

17       DATED this \_\_\_\_\_ day of June, 2015.

18  
19  
20  
21                               /s/ Sarah B. Gilroy  
22                               SARAH B. GILROY  
23                               sbrinkhoff@comcast.net  
24                               850.878.2221  
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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, ANDREA KOMARIDIS, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 407 through 680, 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 of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 29th day of July, 2015.



\_\_\_\_\_  
ANDREA KOMARIDIS  
NOTARY PUBLIC  
COMMISSION #EE866180  
EXPIRES FEBRUARY 09, 2017