BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150075-EI

PETITION FOR APPROVAL OF ARRANGEMENT TO MITIGATE IMPACT OF UNFAVORABLE CEDAR BAY POWER PURCHASE OBLIGATION, BY FLORIDA POWER & LIGHT COMPANY.
_______________________________/

VOLUME 4

Pages 681 through 839

PROCEEDINGS: HEARING

COMMISSIONERS PARTICIPATING: COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, July 28, 2015

TIME: Commenced at 4:28 p.m.
Concluded at 4:57 p.m.

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

REPORTED BY: ANDREA KOMARIDIS
Court Reporter

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING
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TALLAHASSEE, FLORIDA
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I N D E X

WITNESSES

EXHIBITS

P R O C E E D I N G

(Transcript follows in sequence from Volume 3.)

COMMISSIONER EDGAR: Similarly, we will admit into the record as though read the FIPUG prefiled testimony on behalf of Witness Rudolph.

ERRATA SHEET

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

Signature ________ Date 6/29/15

PAGE	LINE	CORRECTION AND REASON FOR CHANGE
__14__	__14__	Strike "2015"; insert "2013" - transcription error
__15__	__7__	Strike "downsize"; insert "downside" - transcription error
__80__	__16__	Strike "they"; insert "name" - transcription error
__91__	__23__	Strike "2004"; insert "2014" - error in testimony
__96__	_3-5_	Strike answer in its entirety; insert "Any pre-closing refunds or claims will belong to us; any post-closing refunds or claims will belong to FPL." - error in testimony
__105__	__5__	Strike "and"; insert "in" - transcription error
__109__	__6__	Strike "being"; insert "benefit" - transcription error
__112__	__14__	Strike "MPV"; insert "NPV" - transcription error
__113__	__13__	Strike "PB"; insert "PV" - transcription error
__129__	__6__	Strike period; insert comma followed by "insofar as the revenues and costs under the PPA would not change. However, the extension of the steam agreement would diminish the risk of not receiving the future revenues under the PPA so a reasonable buyer would therefore as a result put a higher value on that revenue stream." - clarification to testimony

__130__ __1__ Strike period; insert comma followed by "insofar as the revenues and costs under the PPA would not change. However, the consummation of the refinancing, as with the extension of the steam agreement, would diminish the risk of not receiving the revenue stream under the PPA. Therefore, a reasonable buyer would as a result of the consummation of the refinancing put a higher value on the PPA." - clarification to testimony

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 150075-EI

FILED: May 6, 2015

THE DEPOSITION OF: STEPHEN MARK RUDOLPH

AT THE INSTANCE OF: FIPUG AND OPC

DATE: May 15, 2015

TIME: Commenced at 1:45 p.m.
concluded at 5:53 p.m.

PLACE: 2540 Shumard Oak Boulevard
Room 105
Tallahassee, Florida

REPORTED BY: SARAH B. GILROY, RPR, CRR
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I N D E X

INDEX OF EXHIBITS

(Exhibits attached hereto.)

The following deposition of STEPHEN MARK RUDOLPH was taken on oral examination, pursuant to notice, for purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by the applicable and governing rules. Reading and signing is not waived.

* * *

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

THE WITNESS: I do.

Thereupon,

STEPHEN MARK RUDOLPH

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

MR. TRUITT: John Truitt with OPC. Again, statement for the record. OPC intends to use this deposition as a pure discovery deposition. Should any part of your staff choose to move any portion of these depositions, including any past exhibits --

THE REPORTER: I'm sorry. I'm not -- I'm having trouble hearing you.

MR. TRUITT: Okay. For the record, OPC intends to use this deposition as a pure discovery deposition. Should any part of your staff choose to move any portion of these depositions, including any past exhibits, in evidence, OPC intends to exercise any and all related provisions found in the Rules of Civil Procedure that are applicable, including objections on any available grounds, as well as the right to rebut the evidence.

DIRECT EXAMINATION

BY MR. TRUITT:

Q To start with, could you please state your name and spell your last name for the record.

A Stephen Mark Rudolph, R-U-D-O-L-P-H.

Q And state the company you work for and your business address please.

A Cogentrix Energy Power Management, 9405 Arrowpoint Boulevard, Charlotte, North Carolina, 28273.

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

A Ten years.

Q What is your current job title?

A Senior vice-president, chief financial officer.

Q How long have you been in that position?

A Five years.

Q And could you give us a description of the duties that go along with your current position?
A I'm in charge of all the accounting, corporate finance, and tax functions. I think that's all.
Q And could you please give us a brief overview of your work history, including other positions with your current employer.
A I started out with Cogentrix in 2005 as the controller. My background is accounting. I got my bachelor's and master's in accounting from the University of Florida.
Prior to working at Cogentrix I worked at the independent power subsidiary of TECO Energy. Prior to TECO, I worked in public accounting, primarily at Deloitte & Touche.
Q What are your specific responsibilities with regards to the Cedar Bay plant specifically?
A I oversee the people in my group who do the accounting; they do financial management, which includes reporting on the debt, includes internal management reporting; the tax group does any required tax filings.
So I indirectly oversee all of that.
Q Are there any employees at the Cedar Bay site themselves that are direct reports to you?

A No.

Q Are there any reports that emanate from Cedar Bay that you get?

A No.

Q Okay. In your duties, are you required to review any particular reports that come from Cedar Bay?

A No.

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

A Negotiations, no.

Q Were you involved in any way of drafting the purchase and sale agreement between FPL and Cedar Bay?

A By "drafting," do you mean review?

Q That's going to be my next question, but I mean actually drafting.

A No drafting.

Q Okay. Do you --

A Sorry, step back. I was involved in the -- I guess I would call it the construction of the working capital exhibit. I didn't do any drafting. But I think we provided a spreadsheet that ultimately became part of an exhibit of the PSA.

Q Okay. And then the next question, were you involved in any way in the review of the purchase and sale agreement?

A Yes.

Q Okay. Now, could you give us the description of how you were involved in that issue?

A When the document got circulated periodically, I would review specifically our reps and warranties that we were making as part of the document to make sure everything was true and correct and that we could -- from my standpoint and my view and the company stand behind the reps and warranties.

Like I said, any -- specifically if we had as part of our reps and warranties, you know, made financial statements available, et cetera, making sure the reps were correct and that the periods of information that we provided were accurate.

And the same with the working capital, the schedule working directly with that.

Q Would it be a fair statement to say that, prior to signing off on the purchase and sale agreement, that your approval of the way it was set up was required?

A My -- I wouldn't characterize it like that. It was circulated for review. And I didn't approve it. But the way it would generally work is, we need to sign off that we have reviewed it and that everything -- that we don't know that anything is incorrect about it.

And that, when I say "we," that wouldn't include just me. It would include really all the functional areas within Cogentrix, which could include my area as well as engineering, environmental, legal, et cetera.

So I would be one, quote, unquote, reviewer, and I would sign off that I had, in fact, reviewed it.

Q Okay. You speak about areas that make me ask. How many direct reports do you have?

A I was counting back, I think, after you asked Rick that. I think it's 15 now.

Q Okay. And who do you direct report to?

A Doug Miller, who is the president of the company.

Q Okay. In the scope of your duties in your position, are you responsible for any compliance aspects of the Cedar Bay facility?

A Can you define "compliance"?

Q Any kind of regulatory scheme that requires following something, like, for example, we had environmental permitting. Obviously there is certain accounting requirements and things like that I'm trying to get in the grand scheme of things.

A Not from a regulatory perspective, no.
Q Okay. Any other perspective?
A For -- when I think of compliance, I think of debt compliance and -- and maybe tax compliance. Debt compliance, you know, the debt agreement comes with all different kinds of covenants that we have to comply with which affect, you know, my department all the way across from financial statements to tax filings to covenant -- or coverage ratio calculations, et cetera.
So we're doing all kind of compliance work from that perspective.
Q Okay. Now, are you responsible for, in any way, implementation or execution of the current PPA between Cedar Bay and FPL?
A No.
Q Okay. Are you responsible for, in any way, review of the execution of the current PPA between Cedar Bay and FPL?
A No.
Q Okay. Do you, in the course of your duties, get reports on that PPA?
A There is -- actually, they're not very widely circulated. But I'm knowledgeable of a report that's done for compliance with a covenant in the PPA

regarding -- it's a maximum -- I think it's a maximum debt allowance type covenant. It's not operational in any way for us, but it's required as part of a -- I guess Mr. Patterson used the term, check the box type requirement, that it's an agreed upon procedures report that our auditors do.

Q Okay. I'm going to ask you to grab a copy of what we have as Exhibit 3, which is the presentation from yesterday. And, again, forgive me, it may seem repetitive, but I want to get the statements that you had under oath. So I will ask questions, and if you could give kind of a broad answer with the scope limited to what you did yesterday.

Right after -- would you give us an explanation of the current monthly costs and revenues for Cedar Bay and also where you have future assumptions going regarding those.

A Can you tell me specifically what you're referring to in here?

Q Specifically I'm talking about the financial results. You had that specific section --

A It's on page 15, the historical financial results?

Q Yeah. And then you -- because you had also mentioned projected on page 16. So if you could kind of recap in your own words again what you did yesterday just so we have it in the record.

MR. WRIGHT: Okay. John, just to clarify, your pending question used the word "monthly." This appears to be annual.

MR. TRUITT: Right. And that's fine. I understand it was in this format. So I will amend my question.

MR. WRIGHT: Did you want to ask him about monthly, or did you want to ask him about this information? That's what I'm trying to clarify.

MR. TRUITT: We'll go with this information that we have in front of us, and it may require different question.

BY MR. TRUITT:

Q I will strike my previous question and say, can you please go over page 15 and 16 of Exhibit 3.

A Okay. Sure. Page 15 is historical financial results. And we have laid it out in terms of EBITDA, which, if you look in the audited financial statements, that's operating income plus depreciation. EBITDA doesn't appear in there, so I defined it.

And the first bullet there is really a trend of our EBITDA from 2007 through 2014. We included that to show the low points in 2007, 2008, when there were forced outage issues that have been previously discussed. And the trends, as I stated in the presentation, it shows an upward trend.

It starts at 41 million in 2007, dips down to 27.4 million in 2008, and trends upward all the way to 2012, where it topped out at 82.7. And then in 2013 and 2014, it dips down to 50 million and 54 million, respectively.

And, again, as I explained before, the dips in 2013 and 2014 is related to a scheduled reduction in the base capacity payments. In the PPA they were originally sculpted to increase over time, and then decrease for a short period of time, and then increase again. And so you can see from 2013 to 2014, it's increasing again.

The reason why we wanted to put that on there is because the base capacity payments are really economically the lifeblood of the plant. I think over 75 percent of the plant revenue is derived from the capacity payments.

The second bullet is -- describes the capital structure of Cedar Bay, because it's a little different than you would normally see in that it has senior debt and subordinated intercompany debt. The subordinated intercompany debt has been there as far as I know from the beginning of time. We weren't involved in the original design of that capital structure. But it's been treated as equity for -- as long as I've been around.

It eliminates within consolidation, so it's owed to an affiliate company. [redacted]

The next bullet down there, the senior debt of $250 million was raised in a refinancing in 2013. That debt has since been paid down to $179 million and is scheduled to be paid off when we close with FPL. The refinancing in 2015 occurred because we had debt coming due.

At that time the debt due was less than $100 million. So we were able to, through the strength of the PPA, raise 250 million in the debt markets.

On page 16 are projected financial results, really just going through what we went through in order to present that debt package to the market. The financial projections were -- you know, a detailed financial model was prepared and was a basis for that financing. And it was, of course, reviewed by the debt arrangers, the credit rating agencies, lenders and lenders' independent engineers.

The base case projections showed EBITDA generally in excess of $70 million a year. That was based on a dispatch profile provided by an independent consultant and a coal forecast provided by an independent consultant.

The projections also included downsize sensitivities. I put the most onerous one in here, which was a high dispatch case, which still showed EBITDA at excess of $50 million per year. The high dispatch case was shown, because in a high dispatch situation, it eats into the profitability of a capacity payment, but it still shows the capacity payment provides more than enough to have financed $250 million and pay it off by the end of the term in 2020.

Also put in here the projections for capex are minimal, averaging $650,000 per year. In the model I believe that's really an estimate that is escalated and that we don't have projected capital expenditures other than routine that are out there that needed to be included specifically.

That's all on that page.

Q Thank you. Now, with that information kind of as the background and looking at this proposed purchase and sale, when did you become aware that the purchase and sale negotiations were occurring?

A Tough to remember the time frame, maybe sometime around this time last year.

Q Okay. Now, we know the purchase and sale agreement, it's a $520 million figure; you're aware of that; correct?

A Yes, sorry.

Q That's fine. When did you become aware that that was the figure that these parties were settling on?

A I'm not quite sure. I'm not sure when that was.

Q Okay.

A It might have been when it actually got written into the agreement.

Q Okay. I'm going to try and narrow it down. I understand it might not be precise, but it might help me. I know in the purchase and sale agreement, it says "dated as of December 10th, 2014," is the exhibit that FPL submitted.

Do you know if it was before that you were aware of it?

A Yes. I think it was before that.

Q Same month, the month prior? I'm not trying to get an exact date, just --

A No, it was --

Q -- trying to get an idea.

A -- it was probably -- it was probably end of the summer type --

Q Right.

A -- time frame, which would have been like August, September time frame.

Q Okay. Now, from -- in your position, you discuss here excess of [redacted] you say here on page 16.

A Uh-huh.

Q What's the benefits to Cogentrix selling the facility versus keeping the PPA as it stands?

A I think the main benefit is just to reduce the operating risk of realizing that [redacted] a year.

As you've gone through the operating depositions here, there is a lot of work that goes into earning that and keeping the facility running with, you know, the coatings programs that Tracy Patterson went through and all the work that the plant has done to improve operations.

All that has been done, but it's a lot of work going through that. And you will always have operating risks to try and keep the plant available and running as well as it has.

Q Okay. Now, you mentioned on page 16 of Exhibit 3 the -- I'm sorry, 15, the refinancing of debt, $250 million. And you had stated, I believe, based on the strength of the PPA, I think that was the line that you used.

A Yes.

Q So then it's accurate to say that the PPA was a strong reason that that financing -- was that the main support for that financing to occur?

A Absolutely.

Q Okay. In your position, do you do internal valuations of the PPA?

A No.

Q No. Did you -- or did Cogentrix have a third party do valuations of the PPA?

A No.

Q No. Okay. I've got two exhibits. I'm going to keep them separate. So it's going to be -- what are we at, 17 and 18?

(Exhibit Nos. 17 and 18 were identified for the record.)

BY MR. TRUITT:

Q All right. So 17 -- both of these came in discovery from Cedar Bay. 17 is a Cogentrix memorandum, dated August 9th, 2013. And 18 is going to be a Duff & Phelps valuation of assets of 2013.

I'll give you a second, if you could look over those briefly as he's passing them out, and we will have a conversation about them.

A I'm familiar with the Duff & Phelps report.

MR. TRUITT: Okay. I guess -- do you want to go off the record?

MR. WRIGHT: No.

MR. TRUITT: Okay.

MR. WRIGHT: Just before you go on, John --

MR. TRUITT: Uh-huh.

MR. WRIGHT: -- I just wanted to let everybody know that the latter document, the Duff & Phelps report, dated April 5, 2013, is what we characterize as highly sensitive information. Everybody's fine.

MR. TRUITT: 18.

MR. WRIGHT: I just want everybody to know that.

MR. TRUITT: For the record, Exhibit 18 is -- falls in the highly sensitive category?

MR. WRIGHT: Correct.

MR. TRUITT: Okay.

MR. MOYLE: But that doesn't -- that doesn't mean anything, other than double heads up, you know --

MR. WRIGHT: Doesn't mean anything to anybody in this room, yeah. Everybody in this room can see it, and that's fine. My colleagues at FPL can't show it to their business people. That's what it means.

BY MR. TRUITT:

Q I do want to start with 17 first. So I will ask the question essentially for the record.

Are you familiar with 17, this memorandum?

A The memorandum?

Q Yeah.

A I haven't seen it in a while. So I haven't read it in a while. But I'm familiar with the gist of it, I believe.

Q Okay. I will ask, do you know who Phil Gregorich is?

A Yes.

Q Okay. Can you explain for the record who he is?

A He previously worked for Cogentrix as our controller.

Q Previously. Okay. When did he leave; do you know that?

A December 2014.

Q Okay. I was -- I was wanting to look at this. And is it -- I guess if you can skim it, and you can either say you don't know, or if skimming it you do know, it's up to you. It appears to be a memorandum that, one, references this transaction. But the specific thing I was looking for is that on the second page it mentions, in the middle section, following key conclusions of Cedar Bay are included in the Rhea valuation report.

Do you see that kind of in the middle?

A Uh-huh.

Q The second bullet?

A Uh-huh.

Q It mentions there, "Cedar Bay PPA with FPL Group had a [redacted]

And it appears that this memo discusses the value of the PPA and how it supported this transaction.

Am I generally correct in that idea?

A And how it supported this trans -- can you describe this transaction?

Q Well, the memorandum is regarding acquisition by Carlyle, this membership in CBAS Power Holdings.

And, I guess, in terms of the acquisition, they wanted to know the assets, liabilities, et cetera, and that a valuation of the PPA which kind of came along with that acquisition would be included. So a valuation was done; is that correct, or am I off base?

A This valuation -- I guess it's easier for me to start with the Duff & Phelps report. This valuation was done. It's not -- it says valuation. It's a purchase price allocation as a part of the purchase that Carlyle did of the entire Cogentrix portfolio that they purchased from Goldman, a component of which is Cedar Bay and its assets and liabilities.

Q Okay. All right. So then let's look at what we have in 18, the valuation.

A Uh-huh.

Q Now, it goes through, as you've just stated, it goes through kind of a portfolio type evaluation.

Can you give us an overview of what this report is, and then we will get to some specific questions. But I want to get for the record your understanding of exactly what this is.

A Yeah. When -- when the -- the purchase and sale agreement was drafted, which is common in most purchase and sale agreements, there is agreement among the parties to allocate the purchase price to the acquired assets and liabilities --

Q I'm sorry. Let me stop you for a second. Just for the record, purchase and sale agreement, exactly which one are you talking about when you say purchase and sale agreement at this time?

A I was saying generally at this time. So it is generally a requirement in purchase and sale agreements for both parties to agree on the allocation of the purchase price.

Q Okay.

A In the case where Carlyle purchased the portfolio from Goldman, we agreed to perform the purchase price allocation and hired Duff & Phelps to do so.

Q You say "we hired Duff & Phelps to do so." Now I notice, if you look at page 2 of this report, which is CB 0042860, it appears to be a cover letter, the second page right after the first cover itself. I'm sorry.

A Yes.

Q And it appears that that letter is written to you. So by "we," was it you specifically engaged Duff & Phelps, or is Duff & Phelps just giving the report to you because of your position?

A Giving the report to me because of my position.

Q So when Duff & Phelps was engaged, what was the request for them to do exactly?

A To take the purchase price paid by Carlyle to Goldman for the entire portfolio and allocate it among the different assets and liabilities acquired.

Q Okay. Now it discusses the PPA between Cedar Bay and FPL in here.

A Uh-huh.

Q If you could please explain to me your understanding of this report's valuation of the PPA? If you're able to point out pages, that's great, but I'm not hoping for something more than just a cursory overview.

A Sure.

Q I want to walk through.

A Sure. What they -- what Duff & Phelps would have done is taken the model that Goldman provided to Carlyle, a cash flow model, and taken the adjusted -- if Carlyle made any adjustments to it, taken the adjusted model that Carlyle based its purchase price on, and looked at that model and applied discounted cash flow analysis based on their understanding of markets to sort of separate the different assets acquired into -- break the purchase price into different assets acquired by -- by the cash flows associated with each one.

Q Okay. Now, I'm going to look at -- I'm looking at specifically page -- the section starting on page 44 of the report, Section 7, entitled "Valuation of the Intangibles and Other Assets and Liabilities."

Are you there?

A Uh-huh.

Q Okay. On 45 they have a listing chart. And you see the Cedar Bay PPA on that; correct?

A Yes.

Q And it goes through a discussion of the power purchase agreements. And then go to page 47. And there is a little chart right above that that says, "valuation concluded, agreements for the sum of present cash flows is positive" --

Then it says Cedar Bay nets [redacted] in its valuation they gave it; correct?

A Yes.

Q So am I correct, if I remember reading this report, because that's a fair market value is what they did in terms of the valuation?

A Yes.

Q Okay. And can you explain fair market value; it's my understanding it has a specific meaning; it's not a general term. Can you explain to us what you understand the meaning of "fair market value" when you hear it in your business capacity to be?

A The price paid between two willing parties in an arm's length transaction.

Q Okay. So when this report was done -- I know it's dated April 5th, 2013, on the cover --

A Uh-huh.

Q -- but I believe someone -- again, I'm not sure exactly -- it had a specific date -- this valuation is effective as of -- you know, most of these valuations --

A Exactly.

Q -- they put a date on it.

Do you know the exact date?

A It would have been done as of the closing date of Carlyle's purchase of the portfolio from Goldman.

Q Okay. Do you know when that was?

A I want to say -- I don't know the exact date -- December of 2012.

Q Okay. So in theory, as of December 2012, whenever that date is in there, the PPA was worth [redacted]

A In that transaction, yes. But it's all a function of what Carlyle paid for the entire portfolio, which included other assets and which also included an operating platform at Cogentrix, which included a long-term run rate of costs in there.

So the starting point is what Carlyle paid for the basket of assets and liabilities that it purchased. So once you apply that, then that's how much comes out to the Cedar Bay PPA.

Q Okay. Now, I know there's some worksheets toward the back. And they go kind of through all these -- there is a bunch of different exhibits in the back. And they go through different analyses. And let's see, I'm going to look at page -- it's Exhibit D.2. The CB number is going to be CB 0042948.

MR. MOYLE: Would you mind repeating that, please?

MR. TRUITT: CB 0042948, Exhibit D.2.

BY MR. TRUITT:

Q Are you there?

A Yeah.

Q Okay. At the top here it says "valuation of Cedar Bay PPA." It does say purchase price allocation analysis, so I get that.

And then you would agree they did this chart here; it looks like they went from the point in time of valuation, 2012, to the end of the PPA?

A Uh-huh.

Q Is that what that says?

A Yes.

Q I'm looking here, and they have capacity factor varies every single year.

I looked across this chart, and I see capacity factor is 250 megawatts.

So you guys weren't planning on changing the capacity factor of the plant; is that correct?

A Correct.

Q Okay. Now I see the capacity factor varies through all these years. Do you know why that is?

A It's an estimate based on -- I don't know what it's exactly based on, but that's what -- well, actually, let me think back. I believe what that comes from is when Carlyle purchased the portfolio from Goldman, they had an independent engineer come in and help them with capacity factor and analysis of the plant. And then I believe that capacity factor is what they got from their independent engineer.

Q Okay. So was it your understanding that they looked at past operations of the plant and tried to project the future or tried to make a -- an assumption on what it would do in the future? Or what was your understanding? I guess I will put it that way.

A I wasn't part of that process, because at the time I was on the other side of the transaction.

Q Okay.

A I was employed by a subsidiary of Goldman.

Q All right. In terms of your professional experience, have you seen other valuation reports before?

A Yes.

Q Okay. Is that common practice in the valuation reports you've had experience with that they attempt to predict what's going to happen in the future?

A Yes.

Q Okay. Now, we see a bunch of the numbers; they change, vary from year to year. And it would be logical that a lot of that changes depending on the capacity factor and the output and everything else; am I correct in that assumption? A lot of these numbers are trickling out from how much they anticipate the plant is going to be used, et cetera?

A Absolutely, yes.

Q Okay. Now we're getting -- all the way -- we trickle down all the way to the bottom left-hand column, and it comes up with that [redacted] number. Now when I look at the chart, they've put in -- you know, they have the steam revenue here, and the total revenues, and the total variable costs, all these different lines. And they come down to [redacted]

I'm trying to understand how the [redacted] is part of the total allocation of the purchase price, because it appears by this chart that they took in all the revenues, and they took out all the costs. And then they said that's what this PPA is going to make you in 12 years.

And I'm not an accountant. I'm just old infantry playing a lawyer, so I'm hoping to understand that.

So I don't understand that difference, because you were saying it's the allocation. But it looks to me -- when I look at this chart, it looks like they said, we think the plant is going to do this for 12 years. Based on the revenues that come in and the expenditures that go out, it's worth [redacted].

How is that part of this price allocation that they paid for this whole portfolio? What's the differences here?

A It's not -- it's not a big difference. But the -- I guess the premise is, unless there is extenuating circumstances, they can't come up with a value that's greater than the purchase price for the portfolio in total.

And so they've got to use -- in some respects they've got to backsolve for some of the value, in that if they -- for instance, if they used capacity factors, and they used a discount rate, they came up with a value that was higher than the purchase price of the portfolio in total, it is likely that they would assume one of their variables was incorrect and attempt to backsolve for either some variable that may have been off, because, again, in the absence of extenuating circumstances, they've got to get back to that purchase price, because it's an allocation of a purchase price. It is not specifically a valuation for purposes of making a deal.

The deal has already been made. The purchase price has already been set for what -- the transaction. So they've got that number to work with; they've got to allocate it.

So when they do this cash flow analysis for all of the assets in the portfolio, they've got to do a certain amount of backsolving in order to come up with the actual purchase price paid.

Q Okay. So is that -- I think you were saying, I know we were talking about this specific scenario, that they had the purchase price, and then they had to backsolve and tweak some variables.

Again, in your experience, prior history of valuations, is that how it normally works in the deals, or was that just specific to this deal?

A No. I think that's how it normally works because, again, the notion that the -- that the accountants are driving this a lot of times, that they're trying to get away from is negative goodwill, meaning there is one party at the outset that has -- it was a bargain purchase. There has to be extenuating circumstances in order to come to a bargain purchase.

And so unless those extenuating circumstances exist, you know, something extreme like buying it out of bankruptcy, then the assumption is it's a fair market value; it's a transaction between willing parties. And so that purchase price, whatever it was, has to be allocated.

And so in order to make everything fit into that bucket, there has to be some backsolving and manipulation of the numbers. Again, it's not a determination of value in order to make the deal. The deal has already been done. It's just a mechanical process in order to do the accounting and do the tax filings.

Q Okay. Just a second. Sorry.

Based on what you just said there, the deal has been done, and you're doing some, you know, back -- what did you say, backfiling?

A Backsolving.

Q Backsolving. I'm sorry. Thank you. Trying to make sure you didn't run into the goodwill problems in all of the numbers.

So then if the valuation is done in that order, you have the deal, and then you do this valuation for allocation purposes.

A Uh-huh.

Q Am I correct in saying it that way? Is that an accurate way to say it?

A Yeah. I think so.

Q Okay. Okay. It seems illogical to me that you would use a valuation like this to support the purchase price; am I correct in that? Because you're doing it after the fact.

A You're not necessarily supporting -- that's correct. You're not supporting the purchase price. All you're doing is allocating what was there.

Q Okay. So it wouldn't be accurate for me to say, hey, I bought this; I got [redacted] See, it's worth [redacted] I got a good deal?

A No, no.

Q Okay. I wanted to make sure on that. Now -- again, because, like I said, this is kind of new to me.

Also in this valuation, like we talked about, we have capacity factors kind of vary, and we discussed that we were assuming that Duff & Phelps was kind of projecting where things would go.

A Uh-huh.

Q Have you ever seen a valuation for -- we're going to go with power plant here -- where those numbers never change in the future, capacity factors steady, heat rate steady, revenue steady, burn hold steady?

A No.

Q Okay. Now, would it be fair to say that Carlyle paid [redacted] for this and for Cedar Bay in December 2012 and is now turning around and selling it for 520 million?

A No.

Q Okay. What is incorrect about that statement?

A The [redacted] is a component of, again, a larger portfolio sale. That price was determined at arm's length that included more components than Cedar Bay, one of which was, again, a platform that is an ongoing cost center that they've taken on from Goldman, which would not be included in here. It is neither an asset, nor is it a liability.

So they negotiated a deal overall for what they purchased from Goldman, a much broader set of assets and liabilities than Cedar Bay. And all this is doing is -- again, assuming that that purchase price was arm's length and was not a bargain purchase, all this is doing is allocating value to the Cedar Bay -- to an identifiable asset in that transaction.

But, again, the overriding premise is you have to start with what they paid for the whole thing.

Q Okay. So, again, he is much better at accounting stuff than I am. I'm just going to muddle around here for a minute.

A Sure.

Q You have the purchase price; it's a big pot, a big basket. So this egg was valued at [redacted] I'm just saying that's how it was allocated out.

A Yes.

Q Now that egg would be going to FPL for 520 million?

A (Nodding head affirmatively.)

Q So until -- again, my simple way is having difficulty with -- if it's valued at [redacted] when you divvied up the allocations and just that little piece that was valued at [redacted] is going over here for 520 million, how is it not basically, got it for [redacted] going over here for 520 million?

A I will help you reconcile it one other way --

Q Okay.

A -- which is -- first way is what we just described; it was not specifically purchased, that asset, at arm's length from Goldman.

Second way is a lot of things changed between 2012 and when the deal with FPL was consummated. You had a significant de-risking of the asset with the refinancing. The steam agreement got extended, which was very significant, because it's required for QF status.

So the extension of the steam agreement, the refinancing that we were able to execute in the market, allowing for a debt, and an enormous distribution that came out of that unlocking value, and continued low gas prices and continued to forecast low gas prices.

The capacity factors in here are nowhere near where we have been operating and where we are projected, and the projections in the financing are nowhere near this high.

And I think something that we have been talking about in previous dep -- you know, testimony that we're giving is, the whole notion that Cedar Bay -- the more it runs, the worse off it is economically, which is absolutely true, because of, you know, I think Tracy mentioned wear and tear on the equipment, higher maintenance, et cetera.

But the factor, as I was listening, that didn't come up as much is the production margin. When the plant runs and dispatches at a high level, because of the difference in coal price that the plant pays versus what it gets reimbursed in revenue based on the St. Johns River Power Park marker, because that's a negative differential, the more it runs, the more it loses on an energy basis. But even in a high dispatch case there was still a significant amount of profitability in the PPA in the capacity payments to allow for this refinancing.

So, again, talking about what changed? Significant de-risking associated with those activities, getting the steam agreement extended so the QF status wasn't in jeopardy, and getting a refinancing done so a new owner wouldn't have to pay some type of bullet that was due, gas prices remaining low such that the dispatch factors -- the capacity factor in the valuation that you see in the Duff & Phelps report is, if you look at the numbers, [redacted]

And the -- in the financing report that an independent consultant, Ventex did, the capacity factors projected in that report were [redacted] than what Cedar Bay has been doing in most recent history. They were in the [redacted], sometimes in [redacted] in terms of how much Cedar Bay would run and, therefore, how much Cedar Bay would not have to incur the negative differential on its production margin.

So really just reaping the benefit of the capacity payment.

Q Okay. So that's what I was going to ask you, what the projected capacity factors were. Now you referenced what document when you said [redacted]

A As a part of the financing, and it's in the independent engineer's report that we provided as part of the data and materials. We -- the lenders always -- always make any type of independent financing get independent projections. And they agreed that we would use a firm, Ventex.

And they provided projections of capacity factors to drive a lot of the financial modeling. And those capacity factors, again, a measure of how much it's running, some -- I think -- I want to say just for a general measure, [redacted] percent on average is what they were predicting. So, again, that [redacted] capacity factor versus what you're seeing here is a significant reduction of the negative margin that the plant would experience by running.

Q Okay. And then -- let's see. So then after that explanation, I'm starting to wrap my head around it, it is -- I will get there eventually -- I can't take this report and say, this justifies the [redacted] price for that. And I was going -- I know it was a background thing. Just take that away.

Okay. If I said [redacted] I couldn't take this and say, nope, I'm good. It says [redacted] that is proof that it is a fair arm's length transaction.

That's not the intent of this document; correct?

A Absolutely not; correct.

MR. TRUITT: Okay. I appreciate it. Thank you. I have nothing else.

MR. WRIGHT: Before we go on, I just want to clarify that I've had a chance to look at Exhibit 17, the memorandum from Mr. Gregorich, and we have determined that that is also highly sensitive information.

MR. MOYLE: Tell Mr. Butler.

MR. WRIGHT: He heard me. He knows.

(Discussion off the record.)

CROSS EXAMINATION

BY MR. MOYLE:

Q Have you been deposed before?

A No.

Q You were in the room yesterday when I gave some directions --

A Yeah.

Q -- to Mr. Patterson. So I'm trying to have a conversation with you and get information from you; I'm not trying to trick you or --

A Sure.

Q If I'm not asking clear questions, ask me to rephrase. Make sure you understand what I'm asking and also make sure we're not talking past each other.

Let me ask the question, and then you respond, because the court reporter is taking everything down, and it will be available in written format and reads better if there is a question followed by an answer without talking over each other.

A Understood.

Q Okay. Where do you -- where do you live?

A Charlotte, North Carolina.

Q Okay. And that's more than 100 miles from Tallahassee; right?

A Yes.

Q And in your previous employment history, you said you were with TECO, the nonregulated arm of TECO for a while --

A Correct.

Q -- is that right?

A Correct.

Q And where did you go after that?

A Cogentrix.

Q Cogentrix? And then did you leave Cogentrix or -- how did you end up at Goldman? I guess it was before TECO?

A No. I was not at Goldman. I was -- when Goldman was the seller to Carlyle, Cogentrix was still a wholly-owned subsidiary of Goldman Sachs. So we didn't -- we weren't on the Carlyle side negotiating a deal with Goldman.

So this -- the information I was pointing to was -- that was Carlyle information, what I came to know of it after the fact.

Q Okay. I'm not that familiar with the transactions. But maybe just walk me through a history of Cogentrix, if you would.

A A history of Cogentrix?

Q Right.

A Like I said, that's -- I've only worked there since 2005. So, I mean, I know anecdotally kind of where Cogentrix came from. Is that --

Q You know, go ahead and just tell me what you know.

A I think it was founded in 1983 as an independent power company and family-owned through 2003, I think, when Goldman bought them.

And then through 2003 through 2012 Goldman owned Cogentrix as a wholly-owned subsidiary. And then in 2012, Carlyle bought Cogentrix, and I guess what -- what hasn't come out yet in this is that Cogentrix now -- the assets of the former Cogentrix are owned by funds managed by Carlyle. So Cogentrix is no longer -- Cogentrix Energy Power Management is no longer an owner of assets. We manage the assets for Carlyle, operate them via contract.

Q What was -- who was the family that started

Cogentrix?

A The Lewis family.

Q Where are they out of?

A I think -- I've never met any of them. I don't -- I think Charlotte. I think it's always been Charlotte.

Q Is that family in the banking business?

A I do not know.

Q Don't know. So Goldman owns it in 2003, and then they sell it to Carlyle in 2012; is that right?

A Yes.

Q Okay. How much did Goldman sell it for?

A I think it's in this document.

Q When you say "this document" are you referring to 18?

A This is the Duff & Phelps report, yes.

Q Why don't you point me to it.

A Well, it's not stated in here actually that I could find. But if you look on page -- the second page of the report, that's how they've allocated all of the value. So in other words, they've allocated [redacted] to property, plant, and equipment.

Q Okay. Hold on a second. The second page of the report that I have at the bottom is CB 0042860, and that's the --

A Oh, sorry. I'm on 862, which is a table.

Q Okay.

MR. WRIGHT: Before we can continue, I'd just like to interpose an objection as to the relevancy of this information to anything having to do with this case. But you can continue the question.

A So the answer to your question specifically, I would have to go back to the purchase and sale agreement and actually look. I can't remember. But what this implies is the values on this page, 862 here.

BY MR. MOYLE:

Q So you're the -- you have a -- you're a CPA; is that right?

A Yes.

Q Are you licensed presently?

A Yes.

Q What states?

A Florida.

Q So if I was going to look at CB 0042862, which is a page in this Duff & Phelps report, to get the purchase price, what would I -- what column would I add up?

MR. WRIGHT: I'm just going to object to the form to the extent that -- that it's not clear that you can get the purchase price from this table. If you can, then he can answer the question.

A I wouldn't try to do that, honestly, unless I had the purchase and sale agreement in front of me, and I could reconcile what was stated in there as the purchase price to what was in this table, to be honest with you.

If I tried -- if I just told you, well, just add up in the fair value owned column, I'm not certain that would be accurate.

BY MR. MOYLE:

Q I'm confused, because when I initially asked you the question, it was just a straight out question: How much did Goldman sell it for?

A I don't -- the answer to that is, I don't remember.

Q Okay. But then you went to this table and said, I look at this table. So that tells me, I mean, if we're allocating -- allocating a purchase price, you don't pay Duff & Phelps to allocate only a portion of the purchase price; right?

A Correct.

Q So wouldn't the logic follow that this table, if you add it all up, it gets you to the purchase price, if it's 100 percent allocation?

A Yes. But I want to qualify that in that I wouldn't say that that's the purchase price unless I reconciled it to the document that was an actual purchase and sale agreement.

Q And you would -- you would reconcile it for the purchase and sale as a double-check; correct?

A Yes.

Q It's not because you don't have confidence in these --

A Correct.

Q -- numbers?

A Correct. I would want to make sure. Again, this document was prepared a while ago. I haven't looked at it in a while. And so I would want to make sure that I was able -- if I added up the numbers in one of these columns, it actually equaled what was said in the purchase and sale agreement.

Q Which -- which column would you add up? And for the purposes of the record, there's two columns; one that is more to the left of the page and one that's more to the right of the page.

So if you would tell me which column you would add up to determine the --

A The one on the right.

Q And why would you do that?

A Because the one on the left is fair value at 100 percent. And at the time of the purchase, not all of the assets in the portfolio were 100 percent owned. You can see two were 50 percent owned.

Q But the Cedar Bay facility was 100 percent owned?

A Yes.

Q So in doing this calculation, would I -- I subtract the numbers that are in parentheses?

A Yes. Those are liabilities.

Q Do you -- do you know the -- the number? If I asked you, what does the number add up to, could you tell me, or do you have a calculator --

A No.

Q -- or I could give --

A No.

Q -- you a calculator?

A No, not without doing the math, no.

A (Performing calculations.) I can round, hopefully.

Q Yeah, round.

A The phone calculator is not what I'm used to.

[redacted]

Q [redacted]

A Uh-huh.

Q Thank you.
A Uh-huh.
Q And do you know why there were parentheses around the two Cedar Bay numbers, Cedar Bay MSA and Cedar Bay OMA?
A Yes. The Cedar Bay, the -- that stands for MSA agreement and operations and management agreement. Those agreements are legacy agreements at the plant.
And so those -- they date back to I think the beginning of when the plant went in service. And the fees associated with those contracts are what the accountants would call out of market at this point in time, because they're -- you can't charge as much as you were able to in the early '90s for those types of contracts.
Q And the MSA stands for what?
A Management services agreement.
Q Okay. And the OMA stands for operations and maintenance agreement?
A Yeah.
Q And do you know the term of those two agreements as we sit here today?
A I don't. I don't know whether they're for the entire term or they renew, you know, periodically with an evergreen clause of some sort.

Q And how is the determination made that they were out of market at the point in time this Duff & Phelps valuation was prepared?

A I would have to read their methodology. But we have been asked that a number of times. It's very difficult to determine, because there isn't a ready, available market for these types of contracts. So it's -- it's -- you know, from their valuation standpoint, it's -- it's difficult.

Q Right. But you don't question it? I mean, you hired them; they're the experts on valuation?

A Right. Again, in this type of study, you know, that's how it's done. If the assumptions are generally reasonable, you know, there is a -- it's okay.

Q And the discussion you had with Mr. Truitt about allocation, is there an IRS regulation that requires you to do that? I mean, is it for tax purposes? Why do you do the allocation?

A It can be for tax purposes, and it can be for accounting purposes.

Q Why was it done in this case?

A I would have to look at the -- the purchase and sale agreement and see whether -- why it's stipulated that it would be done. Sometimes it stipulates in accordance with tax regulations. Sometimes it stipulates it needs to be done in accordance with GAAP.

Sometimes it's silent and just says the parties agree that one will be done.

Q Why do you have to get an appraiser to do it?

A You don't. It's just usually more efficient to do that, because they are used to doing it. And obviously it involves a lot of data crunching. And it's easy to make errors. It's better to have an expert do it.

Q All right. It seems to me -- I don't know much about this, I will confess. But it seems to me that you don't have a lot of discretion with respect to allocation. I mean you couldn't kind of do it randomly and say, you know, let's kind of reallocate it this way, put all the value on, you know, [redacted] and none of the value on the other assets, and we just agreed with it, and that works?

A That's right.

Q And that's right why?

A Well, I guess it also depends on -- on how you're going to use the allocation once it's been done. If you're going to use it to file a tax return, obviously you have to certify the tax return that the numbers are correct.

If you're going to use it in financial statements, you probably have to certify in the financial statements that the numbers are correct and reasonable. If you have to provide it to, you know, a seller or a buyer, there is probably some certification in there.

So there has to be some degree of reasonableness assumed.

Q And the deal between Goldman and Carlyle, that was an arm's length transaction, a fair market value deal; correct?

A As far as I know, yes.

Q And you -- the position you were in at the time was what?

A I was the CFO of Cogentrix.

Q Okay. So if there was some situation which suggested maybe it wasn't a fair market value deal, you would know of that?

A Yes.

Q What is the -- what is -- well, what is -- presently do you know what your basis is? When I say "your basis," the basis in the plant? Does this establish the basis?

MR. WRIGHT: I'm just going to object to the form, because I think it's ambiguous as to what you mean by "basis," Jon.

BY MR. MOYLE:

Q Do you understand what I meant by "basis"?

A I understand, but I -- the basis could occur at many levels, you know, within the organization.

Q So does the basis get reset after a deal like this is consummated? So now all of a sudden Carlyle owns it; they paid a certain amount for it, for capital gains purposes, or other they take it at a certain basis; right?

A They do. But, again, Carlyle, you know, it's owned by funds. And I don't know what happens from a fund accounting level.

And so the basis that you're talking about, from the purchase, gets -- gets pushed down into the financials at -- you know, they didn't get pushed into Cedar Bay Generating; they got pushed into upper level entities. And so the basis is reset there based on this.

And if Carlyle has further adjusted it, I have no knowledge of that.

Q Right. I understand how it could be split going upstream to funds that own it, they could allocate it this way or that way. I'm just trying to understand. Let's just say you kept it at this level, and you didn't upstream it or force it up. Would it be [redacted] or would it be close to that? Or you just -- there is nothing in this report that would tell you that?

A No. It would be, based on this report, at the entities that were -- that the purchase price was allocated to, it would be in that particular instance [redacted] and it would be amortized through to the end of the PPA.

MR. WRIGHT: I'm just going to note a continuing objection to this line of questioning as to its relevance to this proceeding.

MR. MOYLE: And I would just note that I think we've had a discussion about what this report is and done by appraisers, and I think it has information related to value that is relevant. But we will probably -- none of us in this room can decide that today, so we will move on.

BY MR. MOYLE:

Q What do you know about Duff & Phelps?

A Just generally?

Q Yeah.

A I just know them as a valuation firm that we have used in the past.

Q Did you select them for this, or did someone else select them, or do you remember?

A No. I selected them.

Q I was trying to understand your answer to a question from Mr. Truitt. You said that you believed that the value of the PPA may have increased as time has gone forward. Did I get that right?

A What I was saying is that he was asking to reconcile between [redacted] and 520, and I was providing factors that could change the value.

I wasn't really reconciling between the two, because, again, you have an arm's length deal between two parties determining value. I was citing some factors that have changed positively since their Carlyle purchase.

Q And those factors that you cited in terms of positively changing, those were all factors that are important to the current owner; correct?

A Yes.

Q Do you have a belief as to their level of importance to the purchaser?

A I don't.

Q Okay. And if the purchaser has, you know, a lot of cash, and I think FPL has a lot of cash, you look at their financial statements, and they don't need the debt -- they're not buying it and assuming that debt, your comment about -- about the refinancing being done probably wouldn't be particularly meaningful to them with respect to valuation; correct?

MR. WRIGHT: I'm going to object to lack of foundation as to all this stuff about FPL.

MR. BUTLER: I would join that objection.

BY MR. MOYLE:

Q When you had answered, you told Mr. Truitt a lot of things have changed; there was refinancing. If a purchaser didn't need the refinancing, we could agree that the refinancing wouldn't have value to the purchaser with respect to determining a price to pay for an asset; correct?

A I don't -- I think every situation would have to be looked at on its own. I couldn't say that for sure.

Q Well, if you were going to buy a house for $100,000, and somebody had a mortgage on it, and there was $50,000 on the mortgage, you know, at 10 percent interest, and you had $20 million, and you were going to buy the house, would you give much weight to the fact that there was a $50,000 mortgage on the house that might be assumable?

A In that situation, no.

Q And you also said that one of the things that had changed was the continued low gas price and that you think that that de-risks things. Explain why you said that, please.

A Because with lower gas prices, Cedar Bay doesn't run as much. One of the scenarios in the refinancing, the most onerous scenario, was high gas prices and high dispatch, meaning if gas prices were high, gas units would not run, and Cedar Bay would run more, and that would allow the coal price differential to eat into the value of the capacity and bring it -- bring the profitability down.

Again, still profitable, because it was a worst case scenario, still profitable, and allowed us to raise a significant amount of money. But, again, that -- that worst case scenario hasn't turned out and isn't forecast to turn out anytime soon.

Q And is that because your payment for energy is fixed?

A No. Our payment for energy isn't fixed.

Q What is it pegged to?

A The St. Johns River Power Park cost of fuel.

Q Well, if gas went to 15 bucks, and coal stayed the same, wouldn't that help you economically, or, no, it would be indifferent -- you would be indifferent to that?

A I don't think you can simplify it like that. If -- if gas went to 15 bucks, it depends on what the -- what the coal purchase price at St. Johns River Power Park is versus our own coal purchase price, what that differential is, and then how much Cedar Bay is going to run. Again, the best scenario is don't run at all.

Q And the reason that's the best scenario is, is you very nicely said it. I was floundering around with it for a couple of days trying to understand the point.

But I think you said it was because of the production margin differential; is that right?

A Right.

Q And does that, in effect, mean that it costs you -- you know, when you're running you're losing money, because it costs you more to run than the revenue you receive?

A If the coal price differential is what it has been in the recent past, yes. It fluctuates, because the cost at St. Johns River Power goes up and down based on what we buy coal for, and ours goes up and down based on the timing of our reopeners in our coal contract. It's been narrow at times; it's been wide at times.

Q Do you track that pretty regularly, whether you're in the money or out of the money? And when I say "in the money or out of the money," do you understand what I mean by that?

A Generally. I mean I don't track the cost at St. Johns River Power Park versus our costs in that level of detail regularly. But you can look at the financial statements and see where we are relative to that from a broad perspective.

Q Tell me about this platform that you reference. There was a platform that was part of the transaction, and it was neither --

A It's just --

Q -- an asset --

A I'm sorry.

Q -- nor a liability.

A Just the Cogentrix corporate group, the -- you know, the building, the land, the computer systems, the people, the ongoing cost of maintaining that corporate group.

Q And just -- why did you bring that up?

A Because it was a factor in the value that Carlyle paid Goldman. They were taking on a longer term cost that, because it's not a specific liability, wouldn't have been valued. But, still, to the extent that they wanted to keep it as a going concern, it would be a long-term cost for them.

Q So would -- in that situation would Carlyle argue for a little bit of a lower price because of them taking on kind of this platform with certain long-term fixed costs? Or would they say, oh, we will pay you more because we get this platform with these fixed costs?

A No. It would be the former.

Q And that same analysis would be done, I would assume, with respect to any long-term contracts that are in place with respect to suppliers to Cedar Bay? And if you have a long-term contract, another 20-year contract where you have to make lease payments, or you have to rent cars, rail cars, you know, if FPL is looking at that saying, well, gees, we're going to shut the plant down, but I got a 20-year lease obligation for rail cars, they would suggest maybe they should pay less for the -- for the deal; isn't that correct, all other things being equal?

A I can't speak for what FPL would -- you mentioned FPL. But I guess I can answer as a buyer, yeah, you would probably factor that in to your analysis.

Q Do you understand how FPL makes money?
A Only generally.
Q Do you understand generally that the more FPL pays for an asset, assuming the commission approves it, and they get to earn on the asset, that that's better than paying less for an asset?
MR. BUTLER: I'm going to object to the form of the question.
BY MR. MOYLE:
Q You can answer.
MR. BUTLER: Better in what sense, Jon?
MR. MOYLE: Economically.
BY MR. MOYLE:
Q It can be characterized this way. I mean, would you rather earn 10 percent on $100 or 10 percent on $500?
A In that characterization I would rather earn it on $500. But I -- again, I've not worked in a regulated environment.
Q So if I asked you a question about how you have information about a regulatory asset and how that's treated, you probably wouldn't be able to answer that?
A Correct.
Q The three things you told Mr. Truitt, you said

there were three things that you think de-risk the deal, and the steam agreement being inked was one of them.

If there were plans to not continue to run a facility, that wouldn't be particularly significant with respect to value; correct?

MR. WRIGHT: I'm going to object to the form as to from whose perspective it wouldn't be significant as to value?

MR. MOYLE: A purchaser.

A Can you restate your question?

BY MR. MOYLE:

Q Sure. You had said that the steam agreement being inked helped de-risk the deal, I believe from your perspective. And I'm asking you from a purchaser's perspective, if you assume the purchaser's plans were not to continue to run and operate the facility for an extended period of time, you would agree that having a steam agreement would not -- not add value from the purchaser's perspective?

A Again, it would need to be analyzed in its own merit. You know, the rest of the contract would need to be analyzed in terms of termination rights and that type of thing, so --

Q It could be a liability if you signed a steam deal that requires you to put steam to somebody for 20 years, and your plan is to shut it down, that could potentially be a liability; couldn't it?

MR. BUTLER: I'm going to object to the form of the question. Speculation as to the terms of the agreement, not specifying what they are and not tying them to any particulars in the agreements that's at issue here.

BY MR. MOYLE:

Q Can you answer?

A Can you restate the question?

Q Okay. Do you have -- do you have familiarity that there is a current agreement -- you must, because you answered it in response to Mr. Truitt's question. You said there is a steam agreement that's been inked; right? So do you have information about a steam agreement that's been inked with RockTenn?

A Yes.

Q Okay. And why did you answer Mr. Truitt when you said that was important, because it de-risks the situation?

A Because a steam agreement is required in order to maintain QF status, which is required by the PPA. So extending that extends the QF status through the end of the PPA and paved the way for a refinancing.

Q And if -- if a potential purchaser was not concerned about maintaining QF status, wouldn't it logically follow that having that steam agreement in place would not be particularly valuable?

MR. WRIGHT: I object to the form. This is speculative and potentially misleading because you're just talking about generic purchasers. And that's not really the context here.

BY MR. MOYLE:

Q Can you answer the question?

A I'm sorry. Can you state it again?

Q Sure.

MR. MOYLE: You know what, let's take a break.

MR. WRIGHT: Good idea.

(Short recess.)

BY MR. MOYLE:

Q We were taking a break, and I was having a verbal wrestling match with you with respect to the issue of the value of maintaining QF status vis-a-vis the steam agreement.

And from Cogentrix's perspective, that has value, because contractually, as long as you're a QF, and you're available to provide energy to FPL, FPL has to make a capacity payment to you; you would agree with that; correct?

A Yes.

Q So to the extent that FPL is buying this power plant, the value of having to make the capacity payment goes away; that's why FPL is, you know, doing this deal as represented to the commission, because they are saying the capacity payment is over market, and they want out of the capacity payment.

Wouldn't you agree that with respect to having that RockTenn agreement extended at -- to the purchaser is probably not of much value if -- if --

MR. BUTLER: Jon, are you talking about the value of the PPA, or are you talking about the fair value of the asset?

MR. MOYLE: I'm talking about with respect to the value that he ascribed to having the steam contract with RockTenn. He said --

MR. BUTLER: Contracts of the fair value of the PPA or PPA or of the facility?

MR. MOYLE: Of the facility.

MR. BUTLER: I would object to that as not relevant to what's at issue to the proceeding, but I'm happy to let him continue to answer the question --

MR. MOYLE: Well, let's talk about that.

BY MR. MOYLE:

Q Do you not think that the fair market value of the facility is relevant to the proceeding?

MR. BUTLER: Well, certainly not in a very direct sense. I mean the figure we have all been talking about here, the $520 million, is the fair value estimate for the PPA I guess is what I'm trying to get clarification from you on.

BY MR. MOYLE:

Q Okay. There was a question pending. Do you want to take a stab at it?

A Can you repeat the question --

Q Sure.

A -- since there has been a --

Q Sure. I'm just trying to get your impression or ask you to agree with me that to the extent that the RockTenn steam agreement de-risks the deal from your perspective, because it gave you greater certainty that you would continue to be a QF, you continue to be a QF, you get your capacity payments, with FPL buying it, the fact that this RockTenn agreement is there may not be that significant?

MR. WRIGHT: I object to the form.

A Yeah, in terms of significant, I'm not sure significant to whom? I mean --

BY MR. MOYLE:

Q To FPL.

A I don't know in terms of what their -- what their intent is, how they look at that steam agreement. I just don't know -- I can't speak for them.

Q Do you have an idea as to how long that steam agreement continues to run for?

A It runs through the PPA length now.

Q Is there any way out of it?

A I don't know what the termination provisions are.

Q So if you have an ongoing, long-term obligation to make payments, that's kind of viewed as a negative as a deal point; isn't it?

A I think it would depend on the contract and what the termination provisions were.

Q Okay. Who negotiated this deal?

MR. WRIGHT: Objection to the form. "This deal" is vague, Jon, in this context. Which deal? The steam agreement extension?

MR. MOYLE: Okay. And I --

MR. WRIGHT: The purchase of the membership interests in the -- in the companies that own the facility? By a deal, which deal?

BY MR. MOYLE:

Q Do you understand that a petition has been filed with the Public Service Commission asking them to approve a contractual arrangement between Cogentrix and Florida Power & Light?

A Yes.

Q Okay. And if I say "this deal," in a shorthand fashion, can we agree that that will reference the contract that Florida Power & Light is asking the commission to approve?

A If I'm confused, I will tell you.

Q So I will take that as a yes?

A Yes.

Q Okay. Who negotiated this deal?

A To the best of my knowledge, it was Tom Bonner, who was Cogentrix's former president, and Cliff Evans, who are the two people that I know -- I think were involved. I was not involved in the contract negotiations.

Q Do you know between Mr. Bonner and Mr. Evans who kind of was the chief negotiator of --

A I don't.

Q And do you know who the counterparties were with respect to FP&L?

A I thought you were talking about the RockTenn extension.

Q No. I'm sorry.

A That's who -- that's what I was referring to is the RockTenn extension.

Q Okay. So Mr. Bonner and Mr. Evans negotiated the RockTenn extension?

A Yes.

Q Who negotiated the sale of the Cedar Bay facility to FP&L?

MR. WRIGHT: I object just to this extent, Jon: It's not the facility that's being sold; it's the membership interest and companies that own the facility.

MR. MOYLE: Which has the result of selling the facility.

MR. BUTLER: The facility is an asset of the entities in which we are acquiring stock.

MR. WRIGHT: It's an acquisition of membership interest and stock.

MR. MOYLE: Okay.

MR. WRIGHT: Again, there is an exhibit in FP&L's testimony --

BY MR. MOYLE:

Q Do you know -- do you know who negotiated the acquisition of the ownership interest and stock as it relates to the Cedar Bay project on behalf of

Cogentrix or Carlyle?
A Not specifically.
Q Generally?
A Not persons. As far as I know, it took place at what I will call the Carlyle level.
Q What does that mean?
A That people at Carlyle spoke with people at FPL and negotiated a deal.
Q Who would the people at Carlyle typically be that would be arranging such a deal?
A Potentially Jim Larocque.
Q How do you spell his last name?
A L-A-R-O-Q-U-E [sic], I think.
Q What position does he hold?
A I don't know specifically within Carlyle.
Q Who else?
A I don't know.
Q Why do you say you think Jim Larocque would have been involved in this deal?
A From a Carlyle perspective, he is the person who is most involved in Cedar Bay.
Q What is your involvement with Carlyle? How do you interact with them?
A Mostly to provide information -- you know, information requests, monthly financial statement

reviews, you know, any requests for historical information that they have kind of thing.

Q Do you do that typically verbally, e-mail, mixed bag?

A Mixed bag.

Q The monthly reports, are they in e-mails?

A Generally, yes.

Q Who did Mr. Larocque negotiate with on the other side for FPL; do you know?

A I don't.

Q Have you ever heard the name Jim Robo?

A No.

Q Eric Silagy?

A No.

Q I think you already testified you weren't involved in the negotiations; right?

A Correct.

Q Was Doug Miller?

A I don't know.

Q Who is Doug?

A He's the president of Cogentrix.

Q Okay. And John Gasbarro, who is he?

A He is the senior vice-president of asset management for Cogentrix.

Q Gary Heichel?

A He's our tax director. He works for me.
Q You had indicated that, I think, you had reports related to debt covenants. Do you prepare monthly reports to people who have loaned you money about debt covenants or periodic reports?
A People in my department do.
Q Okay. And why do they do that?
A To maintain compliance with the covenants.
Q Okay. Have the covenants ever not been complied with at any point in time, as far as you know?
A Of the current loan?
Q Or the preceding loan.
A The current loan I don't know of any -- any defaults in the covenants. In the preceding loan there was a -- I believe a payment default. But I don't know of other covenant defaults.
Q And what prompted that payment default?
A I think that -- I was in a different position at the time, so I wasn't as involved in the financing aspect. I was the controller, in charge of the accounting only.
But as far as I know, the loan, as structured at that time, had high fixed payments. And so when Cedar Bay had operational issues in the 2007-2008 time

frame that created a cash flow issue, and high fixed payments on that debt created obviously a payment issue on that debt, so there was a restructuring that had to occur.

Q And was that the restructuring that took place, the 250 million?

A No. That was prior to that.

Q So -- so the debt was restructured prior to the 250 million refinancing?

A Yes. The debt was restructured in, I believe late 2008, and the payment schedule was changed from a fixed amortization schedule to a minimum amortization schedule, where the fixed amortization was low, and 100 percent of the cash was swept, I believe it was 100 percent, to allow for volatility in cash flow.

And by doing so, all of the debt was paid down to roughly -- something less than [redacted] I want to say, by the time that it was refinanced in 2013.

Q And how did -- I don't understand how, if you aren't amortizing the loan, how you would reduce and pay down the debt.

A Cash flow sweeps would go to pay -- if it's a small amount of principal that's required, the rest of the cash would come from cash flow sweeps to pay -- using cash that was left over, essentially, prior to it going to owners.

Q Unallocated free cash flow?

A Free cash flow would used to be -- would be swept to pay down principal and interest.

Q Okay. And the 250 financing, that was just because the current paper was expiring; there was --

A The restructured loan was reaching its natural termination in June of 2013. So it had to be refinanced.

Q Who was the lender of the loan before the 250?

A It was a consortium of lenders.

Q And who loaned you the 250?

A Again, a consortium of lenders.

Q Who is the lead?

A It was arranged by Barclays primarily.

Q Do you know the genesis -- and I will -- I will say the deal, but the purchase of the stock interests that we described previously, do you know the genesis of that arrangement?

A What I know, I believe FPL called Cliff Evans and asked about the potential of reworking the economics of the deal somehow.

Q You had said from your perspective, getting cash now was attractive because it eliminated the operating risk; is that correct?

A Certainly if it sold, yes, the operating risk is eliminated, yes.

Q You also agree regulatory risk is a significant risk with the existing asset; correct?

A Describe what you mean by "regulatory risk."

Q New regulations that may come down, requirements by governmental entities that regulate you, be they local, state, or federal?

MR. WRIGHT: I'm going to object to the form. That's still ambiguous. If you could clarify whether you mean economic regulatory, OSHA, environmental, Securities and Exchange Commission. What -- what are you trying to ask about?

BY MR. MOYLE:

Q I'm trying to keep it general and move it along. We can -- I can go through -- get out the laundry list of governmental entities and go through them one at a time. But ...

A I would -- my understanding of regulatory risk would be with respect to what Mr. Neff went through in terms of his environmental deposition, which I think generally it's characterized as relatively low.

Q Do y'all do any kind of formal risk analysis for the Carlyle folks? Do they say, here is our fleet of power plants? We would like you guys to do a risk analysis for each one and tell us which ones present the lowest risk, which ones present the highest risk?

A No.

Q You were given a document that -- I think it's marked as Exhibit 17; it's that memorandum from Phil Gregorich.

A Uh-huh.

Q Do you have it?

A Yes.

[redacted]

Is that the same transaction for which the Duff & Phelps valuation report was prepared?

MR. WRIGHT: Just to be clear, you mean the -- what's Exhibit 18?

MR. MOYLE: Right.

A (Examining document.) This is addressing the purchase price allocation of the [redacted] that Carlyle bought -- subsequently bought from Goldman post the trans -- after the trans -- the Cedar Bay originally, in the original transaction between Goldman and Carlyle, Carlyle bought [redacted] and then subsequently acquired the rest of it, [redacted]

This memo addresses the [redacted] subsequent acquisition.

BY MR. MOYLE:

Q And did they pay [redacted] for [redacted] interest in the asset?

A They paid that for Goldman's interest in an entity.

Q And that entity had --

A For a minority interest in an entity.

Q Right.

A For the rights associated with that minority interest.

Q So now Carlyle has 100 percent of all of the Goldman assets; right?

A Yes.

Q Okay. And they picked up -- they picked up [redacted] as referenced here for [redacted] right?

A [redacted] of what I guess is the question, because what they picked up was Goldman's interests.

So you would have to look at what Goldman's membership interest afforded them in that LLC --

Q Well, you tell me, because you were there.

A I don't know. I would have to go back to the LLC agreement and see exactly what rights Goldman had or did not have with respect to the interests. I do not believe it is as simple as straight math of [redacted]

[redacted] of Cedar Bay is what they purchased, because they purchased a membership interest of these [redacted] membership interests in this entity.

So you would have to go back to specifically what [redacted] was and what it -- what it meant to purchase that.

Q Do you have any idea?

A I don't, without rereading the agreement.

Q So there may be other interests out there that we're not aware of that have interest in the Cedar Bay generating facility?

A No. There is [redacted] and [redacted] at the time, and so they bought out [redacted] And to determine what they bought, I think you have to look at the rights and obligations of [redacted]

Q What -- what does this memo represent, [redacted] is that right?

A Is that right? I think it is.

Q It's in the re, it says [redacted]

A (Examining document.) Yes, [redacted]

Q And [redacted] then would have [redacted]

A Along with other assets. They bought an entity, which the [redacted] owned a portion -- owned [redacted] of Cedar Bay and [redacted]

Q Okay. So if you take -- if you take the [redacted] interests and combine them with the [redacted] interests, those are all of the interests that comprise the ownership of Cedar Bay; correct?

A Yes. But [redacted] owns other interests as well.

Q Okay. So if you asked me, what would you rather have; would you rather have one share of [redacted] or one share of [redacted] if I asked you that question, I assume you would say [redacted] because I get one share of Cedar Bay plus some other assets, whereas [redacted] I only get one share of Cedar Bay; is that correct?

A Depends on the other assets.

Q If they were liabilities you might not say yes?

A Right.

Q Assuming they had value, the answer to my question would be, I'd rather have the [redacted]

A It would depend on how much value.

Q So tell me why I can't do this. If [redacted] only represents the interest in Cedar Bay, and it's [redacted] I assume this was an arm's length transaction; wasn't it?

A I believe so.

Q I mean you would know; right?
A I have no reason to believe it wasn't.
Q So if Goldman paid [redacted] for [redacted] couldn't I just do the math and say, well, what would the remaining [redacted] be if you used this transaction to establish fair market value at the point in time the [redacted] instruments were conveyed?
A I'm not sure I understood the question.
Q When [redacted] interest of Cedar Bay was sold -- and it was sold for [redacted] right? Wouldn't that suggest that the [redacted] that that had the consequence of also affecting the value of the [redacted] shares in terms of fair market value?
A [redacted] of Cedar Bay was not sold. [redacted] of the [redacted] in CBAS Power Holdings were sold.
Q And CBAS Power Holdings owned who?
A Ultimately it owned Cedar Bay, but the valuation would go to what the buyer was purchasing, what the buyer was purchasing in terms of the rights and obligations of the [redacted] In other words, they may have had very constricted rights and may not have had what you would think of as [redacted] in Cedar Bay.
Q Do you know if the distribution rights of free

cash or dividends were different for holders of [redacted]

A Yes, they are; they're different.

Q How so?

A [redacted] gets certain tax preferences from the other assets in the portfolio that [redacted] does not get. It's a complex allocation of cash. But [redacted] to the best of my knowledge, got no distributions.

Q Did [redacted] get distributions?

A Yes.

Q Do you know how -- how much?

A Not off the top of my head.

Q What's the -- is it Rhea or Rhea?

A Rhea

Q What is that?

A That was just a transaction they -- for the Goldman -- for the Carlyle purchase of Goldman's interest in the Cogentrix portfolio.

Q And it says here, I guess on this page I had asked you that question, it says D&P issued evaluation report, dated April 5, 2013, for the Rhea transaction, which, among other things, established the fair value of the Cedar Bay project.

Is that right?

A Is what right?

Q That sentence. Is that factually correct?
A I wouldn't word it that way.
Q I'm just asking you if it's in error.
A This -- I can explain that this is a purchase price allocation memo, and that because of the Duff & Phelps report that was already done, this memo was simply drafted in order to use the work that had already been done in the Duff & Phelps report and simplify the purchase price of allocation to -- to the percentage purchased.
Q Okay. So let's just break that sentence down quickly. D&P did the valuation report, dated April 5th, 2013, for the Rhea transaction; right?
A Where are you reading from?
Q See where it says push down accounting on the top of page 2?
A Yes.
Q Second sentence.
A (Examining document.) Okay.
Q Okay. So we're in agreement there that they did the report; right? And the next portion of that sentence says, "which, among other things, establish the fair value of the Cedar Bay project."
We're in agreement on that portion of the sentence as well?

A Agreement how?
Q That that's what it did.
A No.
Q So you -- you -- you don't think that it established the fair value of the Cedar Bay project?
A No.
Q Does that have consequences for any accounting folks if you are testifying under oath that you don't think that that report established a fair value for the Cedar Bay project?
A No. What -- I think the wording here is a bit poor, that it established an allocation, acceptable allocation, based on the prior transaction.
Q And Phil is a direct report to you?
A He no longer works for Cogentrix, but he was.
Q He was? Did he talk to you about this memo before he sent it to you?
A I'm sure he did.
Q Would you typically review drafts of memos like this before they would go to the accounting files?
A Yes.
Q Do you recollect reviewing this memo?
A Not specifically.
Q But it would be consistent with your general

practice to review it before it -- it went to the accounting file?

A Yes.

Q On the third page, the last bullet before the portion that says "subsequent accounting for basis differentials," the last bullet says, "the difference between the purchase price and the fair value of the assets and liabilities listed above is attributable to the PPA."

What does that mean?

A That's just a way of, again, backing into the purchase price. It was the same concept as before, an arm's length transaction. If the purchase price is [redacted] and you can identify other assets and liabilities and get to a -- a value, then this was an efficient way of allocating the purchase price, meaning, if everything else is -- has been established prior to that, then the rest is going to be allocated to the PPA.

Q How much was allocated to the PPA? Is that the [redacted] number?

A No. This would have only allocated the [redacted]

Q To the PPA?

A It would have allocated according to this memo. So I don't know -- it doesn't say how much was allocated to the PPA, I don't think.

Q Well, if -- if it was -- if it was buying [redacted] and [redacted] owned Cedar Bay assets and no other assets, and it bought [redacted] for [redacted], wouldn't you just allocate the whole [redacted]

A I think the fair value is allocated, if you look at the last full paragraph on page 2.

Q All right.

A Where it says, "given the short duration since the time of the Rhea transaction"?

Q Uh-huh.

A I think those bullets describe how it was allocated.

Q Can you summarize it for me?

A I can read it. I don't think I can summarize it without just reading it word for word.

Q It doesn't do any good to read it if it's already in the record. But I don't see any numbers in what you're referencing --

A There aren't.

Q -- me to.

Then how do you know how it was allocated if you don't have numbers to go, out of this [redacted] we're going to allocate X amount over here and Y amount over here?

A Well, there were numbers. They're just not in this memo.

Q Is there anything in this memo that's inconsistent with the allocation as set forth in the Duff & Phelps report?

A Not to my knowledge.

Q Other than the disagreement about the poor choice of words, I guess.

A Correct.

Q Do you have any information about a subordinated lease provision for the benefit of FP&L?

A That doesn't ring a bell.

Q Maybe I could show you a document. Would that possibly refresh your --

A It might.

Q -- memory? I mean, if there were liens on the property or things like that, would that be stuff that you would kind of keep up with as part of your duties and responsibilities, or no?

A Sure.

MR. MOYLE: John, will you help me?

MR. TRUITT: Yeah.

MR. WRIGHT: Is this going to be an exhibit, Jon?

MR. MOYLE: Yes.

(Exhibit No. 19 was identified for the record.)

MR. MOYLE: What number are we on? 19.

BY MR. MOYLE:

Q I've handed you what's been marked as Exhibit 19. The subject is Moody's questions relating to contract summaries. At the top it says "can you talk about the subordinated lease provisions for benefit of FP&L, under what circumstances do they take over?"

Then in bold it says, "pursuant to the FPL subordination agreement, FPL's right to take over is subordinated to the right of the lenders, including the new lender group. We anticipate that FPL consent will confirm this arrangement."

Is that ringing a bell, or no?

A Yes, yes. I hadn't heard it called a subordinated lease provision before.

Q And Kevin McNamara, who is he?

A He's now vice-president of asset management.

Q For Cogentrix?

A Yes.

Q So tell me your understanding of the subordinated lease provision or whatever it's called or the nomenclature that you all use to describe for me your understanding, if you would, please.

A Well, it's common for any PPA arrangement where the counterparty of the PPA has a lien on the assets, such that if the asset doesn't perform, and the contract is breached, then they have certain rights with respect to that asset. And all this is doing -- and FPL has that with respect to the PPA.

And all this is doing is -- it's explaining as a part of the financing that they would need to consent to the fact that the lenders have a superior lien in the financing.

Q And when you asked them to consent, is that just asking them to say, yeah, I understand? Or is that asking them to subordinate an interest right that they may have to the person loaning the money?

A It depends on the agreement. I mean, the consent, it's not just a, hey, we can do this. It's a document.

So it depends on what the language says in the agreement.

Q Do you have an understanding whether FPL had a higher lien position pursuant to the PPA with respect to a claim on the property before people who loaned you money?

A Not specifically, but the PPA generally -- the PPA counterparty always has a secondary lien to the lenders. The lenders will not loan money if they don't have the primary lien.

So going back through time, I don't believe -- at least in my time at Cogentrix, Cedar Bay has never been without project lenders. So the project lenders would always have the primary lien on the property.

Q What's a collateral agent?

A In a project financing, the cash flows are handled by a collateral agent. So the lenders, since their only recourse is to the project, the lenders control the cash accounts. And the collateral agent is -- could be a lender, but it could also be another bank that handles the cash accounts.

Q Did FPL ever draw down on collateral that was in place?

A Yes.

Q Tell me -- tell me the facts and circumstances related to that, please.

A As far as I know, again, it was prior to my current position. But as far as I know, there was -- for security under the PPA there was a $10 million letter of credit that was in place from a prior financing. And when that letter of credit came due to be renewed, it was not chosen to be renewed by the lenders.

And so FPL had the right at the time to take cash -- there was no longer a letter of credit available, so $10 million of cash was required as the security.

Q And where did that $10 million of cash come from?

A From the bank that issued the letter of credit.

Q Okay. Did you, in part of your role related to Cedar Bay, execute officer certificates?

A Yes.

Q Okay. And what -- what is the purpose of an officer certificate?

A As it relates to what specifically?

Q I hand you a copy of a document that is being marked as Exhibit 20, ask you if you -- to identify this document, please.

A (Examining document.)

(Exhibit No. 20 was identified for the record.)

A I don't remember this specifically, but generally it just looks like a series of facts that are -- that we were asked to certify, you know, regarding the PPA and the financing in order to get FPL consent for the financing.

BY MR. MOYLE:

Q Is that your signature on page 3?

A Yes.

Q Did you do this regularly and routinely, or was this sort of a one-off --

A No, this --

Q -- to get the consent?

A Yeah. This was specifically related to the financing.

Q I'm going to try to test your memory on this. I can get you the document if you need it. I think it's in, but there's also reference in a document that's -- I think it's Exhibit 13. Why don't we just pull it up and give it to you. 13.

MR. MOYLE: Do you have it, Schef?

MR. WRIGHT: What did you say? 13?

MR. MOYLE: 13. Yeah, here it is.

MR. WRIGHT: I will have it in a second.

MR. MOYLE: It's already been marked in a previous deposition as 13. For the purposes of the record, are you familiar with this document? I tell you what, let me -- I don't think I need you to be familiar with it.

The second sentence says, quote, in addition, pursuant to the PPA, Cedar Bay and FPL entered into a second lien mortgage and second lien security agreement. FPL's liens against Cedar Bay are subordinated to the liens of the loan.

That's the same thing we were talking about previously; is that right?

THE WITNESS: Yes.

BY MR. MOYLE:

Q Okay. And following that, there is a whole series of bullet points, of termination bullet points. Do you know why -- why this document was prepared?

A I don't.

Q Has Cedar Bay ever been in default of any of the bullet points that are set forth herein as to a default?

A (Examining document.) Not to my knowledge.

Q Okay. Do you have knowledge of FPL ever corresponding with Cedar Bay and providing written notice of a default?

A No.

Q Let me hand you Exhibit 5. That was marked yesterday, entitled "2004 Cogentrix Power Management Business Plan Objectives."

Have you seen that document before?

A Yes.

Q Who prepares this document?

A I think it's collectively prepared by the Cogentrix's senior management team.

Q And are you part of that team?

A Yes.

Q On page 3 there is a number of bullets related to Cedar Bay. The questions were asked yesterday about this. I think they may have been punted to you, so I'm going to just run through it quickly. The question pending was: There is a bullet that says, [redacted] So St. Johns River Power Park, I believe, has access to the Illinois Basin and Columbian, and their permit allows them to burn them.

[redacted] the negative differential that we discussed earlier.

Q Okay. So put in shorthand, [redacted]

[redacted]

MR. WRIGHT: Object --

[redacted]

MR. WRIGHT: -- just object to the form. Since you said "lose less money," I don't think it's established that the facility would lose money.

BY MR. MOYLE:

Q Go ahead.

[redacted]

Q The property tax assessment, do you have information about that that is ongoing?

A Yes.

Q Tell me what you know about that, please.

A The Cedar Bay facility, from a property tax perspective, the Duval County taxes, the tangible value of the facility. And as we have been talking about, you can -- from a value perspective, you split the facility into its tangible components and intangible components.

And as we have said, I think in FPL's filing, all the value is in the intangible component, which is the PPA, which is not taxable from a property tax perspective.

And so the -- for whatever reason, the tangible personal property on the tax rolls I think is on there for $120 million. And so our appeal involved reducing the tangible value because of the argument that all of the value of the facility, from a taxing standpoint, is in the PPA, which should not be taxable by Duval County.

Q Did you argue that -- that the proper value for taxation purposes is zero?

A No, we did not.

Q What did you argue?

A We went for -- it's more of a strategic call in terms of the -- rather than going to zero, in terms of negotiating with Duval County, we sought a reduction, rather than an elimination of property taxes, knowing the importance of tax revenue to the county. So I can't recall a specific reduction we asked for, but perhaps 50 percent.

Q So it's currently on the books at 120; is that right?

A On the property tax rolls. As far -- as far as my memory serves, yes, the tangible personal property that's taxable.

Q Right. And did you have -- you had conversations with them about how they got to the 120 number, I assume?

A No, I did not. Gary Heichel had meetings with them. But it's a -- it's -- that number, as far as I know, has been on the tax rolls for a long time. And so I'm not sure there is direct information about how it got to 120.

Q And where does that stand as we sit here today?

A It is in litigation, as far as I know, because we filed an appeal. There was a hearing. They denied the appeal. And then through attorneys, we have -- we made a claim. And it's not resolved at this point.

Q And would this ongoing litigation be transferred if the PSC approved this arrangement; do you know, to FP&L?

A I do not know whether they will continue to pursue it or not.

Q Whether FPL would pursue it or not?

A Correct.

Q Right, but -- but you do have an understanding if it would be transferred, it would be off your books; correct?

A Yeah. We would no longer have anything to do with it. It's the facility that is making the -- it's Cedar Bay Generating that is making the claim.

Q Okay. The next bullet, [redacted]

What does that mean?

[redacted] [redacted]

And so it's just a mechanism of managing that and making sure that we are aware of it.

Q Did you identify that there would be a risk that you would have to engage in debt restructuring based on the current financial situation?

A No.

Q And there was a bullet about approaching FPL about restructuring the PPA. Did that happen?

A As I stated earlier, I think FPL approached

Mr. Evans.

Q So that answer would be no?

A No. As far as I know.

Q What information, if any, do you have about the two budgets for 2015, the skinny budget and the other budget?

A I know about them.

Q And what is your understanding of the request from Carlyle?

A I'm not sure what request you're talking about.

Q There was a request that says, the only issue with the high level model is the request from Carlyle, as I understand it, is to have a working budget that could be used in the event of closing.

MR. WRIGHT: Jon, are you referring to a document that we can show the witness?

MR. MOYLE: I am. It's a document that's dated November 12, 2014. I think it's already in.

MR. WRIGHT: I was hoping that and hoping that we could identify it.

MR. MOYLE: I think it's Exhibit 14. Exhibit 14.

MR. WRIGHT: Thanks. Looks like that might be it.

MR. MOYLE: It's Exhibit 14. Thank you.
THE WITNESS: What's the question?
BY MR. MOYLE:
Q So the question is, why were two budgets being prepared for 2015?
A The first part -- the first budget for six months was for operating as usual. The second would have been, had the sale closed in the second half of the year, what a budget might have looked like if -- under FPL's ownership.
Q And why would there be a change?
A If they chose to dispatch the plant less than it was being dispatched.
Q Did that assume that they would be communicating that to you or -- I mean, did you all know that? It seems -- why -- why did you make that assumption?
A I didn't have any direct knowledge of communicating about that. But I think that's what, in terms of the people who were talking to FPL, I think that's why the budget was constructed is, what would it look like if it was dispatched -- how much cost would you have if it was dispatched less.
Q And after -- those costs would be borne by FP&L, correct, after the closing?

A Sure.

Q Yeah. I've handed you a document that we will mark as Exhibit 21.

(Exhibit No. 21 was identified for the record.)

BY MR. MOYLE:

Q It's entitled "Cedar Bay Generating Company, Limited Partnership, Financial Statements December 31, 2014, and 2013."

Are you familiar with this document?

A Yes.

Q The first question, what -- why do you have a financial statement when it says 2014 and '13? Are they two years' worth of financial statements, or is that something in the industry that --

A No, that's a standard GAAP convention of comparative financial statements; GAAP meaning Generally Accepted Accounting Standards.

Q Okay. Page 3, I sometimes, with financial statements, like to try to go to the bottom line. And if I were to do that with this financial statement, would -- would that -- would the bottom line be found on page 3, where it says, net income and comprehensive income?

A That's where that caption is, yes.

Q Okay. So -- so for 2014, after everything has been addressed, the plant made [redacted] is that right?

A That's the net income and comprehensive income. It doesn't -- the part there that can be a bit misleading is what I addressed in my original presentation, which is the interest expense there, over 55 percent of it is owed to an affiliate.

Q In the form of debt?

A Yes.

Q Is the affiliate going to be made whole if the commission approves this transaction?

A No. The debt will be canceled.

Q Why?

A Because it's -- it really just represents our historical equity in the project. It was an alternative to equity.

Q Will -- will there be an equity payout, people that have equity, will they get money if this deal closes?

A I'm not sure equity --

Q I'm trying to understand, you know, if the 520 million or 30 million is approved, and there is a closing, it seems to me logically that if I was on the Cogentrix side of the table, and I had some debt instruments where money was owed, I would kind of say, hey, I would like to get paid. But you're telling me, no, that's not how it's going to happen.

And so, are those people just going to be told, you don't have any money coming, or you have money, but we're going to pay it as a return on equity? What's going to happen?

A No. This debt is owed within the group of companies that FPL is buying. It's the owners of the generating company have loaned the generating company money over time, which really represents their equity in the project. And so that's not Cogentrix or anybody else.

That's within a group of companies that FPL is buying. And so that will go away with the transaction, because they will own both sides of the debt and the investment in the debt.

Q So those entities will have a capital gain likely; is that right?

A Which entity?

Q The entities that hold the debt, the intercompany entities that hold the debt.

A I don't think so. I'm not a tax expert, but that is going with the transaction. I would have to look back in the PSA and see exactly what is happening at closing. But it's both sides of the debt are being purchased. So it effectively goes away.

Q And these financial statements correctly state the financial condition of the company; correct?

A Yes.

MR. WRIGHT: Were you done with 21 for now, Jon?

MR. MOYLE: I am.

BY MR. MOYLE:

Q I'm handing you a document that we will mark as Exhibit 22 and ask if you can identify this document, please.

(Exhibit No. 22 was identified for the record.)

A This is a presentation that we gave to potential lenders regarding financing for the 2013 refinancing.

BY MR. MOYLE:

Q You were involved in the preparation of this document?

A Yes.

Q So you're familiar with it?

A Generally, yes.

Q All right. I want to walk through some questions with you. We were talking back and forth about the [redacted]

On page 3 there is a very simple statement that says, "Cedar Bay is a 250 megawatt coal fired generation facility located in Jacksonville, Florida, paren, the project, [redacted] owned by [redacted] and [redacted] owned by [redacted]

Is that accurate?

A That's what's included in this, yes.

Q And you have a provision that talks about the proceeds of the term loan, what they're going to be used to do?

A Yes.

Q Senior secured indebtedness at Cedar Bay, what was that? Was that the paper that was on it that you had to get kind of --

A The existing debt, yes.

Q Okay. And then cash collateralized security obligations, what's that?

A Cash collateralize, any debt service reserve, anything like that that we needed security for.

Q Did you need to do that?

A Yeah. That's standard. You can either cash collateralize or use a letter of credit.

Q And how had you done it prior to that? Was there cash -- had it been cash collateralized?

A Yes.

Q So couldn't you just keep that cash there, and you wouldn't need to take the new money and take out the old money?

A No. The previous lenders were different. So all that had to be cleared out and a new collateral agent set up, new accounts, et cetera.

Q Pay previously deferred operator and manager fees; what's that?

A The project had -- the operator and manager fees and the MSA and O&M agreements that we previously discussed were subordinated to the debt service in the previous loan. And as I said, the cash on the previous loan was all swept to the lenders. So there wasn't cash available to pay the fees on those contracts.

So when we refinance, that cash freed up, and we were able to pay the accrued fees.

Q Were there -- were there other obligations that you deferred besides -- besides the operator and manager fees?

A When you say "deferred," I'm not sure what you mean.

Q You didn't have enough -- just to respond to your answer, you didn't have enough cash to make the payment presently; you said, we will defer it and get you later.

A They weren't deferred in that they were accrued and owed. They weren't paid, because of where they came, and the cash waterfall for the project, which is the set of accounts that the project has to pay out of, all of the cash, before it reached the point that it could be paid to the holders of the MSA and O&M contracts, went to the banks first.

They were still -- they were not deferred; they were still accrued and owed.

Q What's the present waterfall of cash?

A It -- the waterfall is just -- it's just a term for a system of accounts that the collateral agent holds.

Q And here, the last one, repay a portion of the subordinated debt, accrued interest held by certain sponsor affiliates with Cedar Bay. Who is that?

A That's the same debt that we talked about. That's essentially quasi equity which is to make the accrued interest payment to the upstream entity that is essentially equity.

Q So I have seen the term "sponsors" used in other documents to refer to either [redacted] or [redacted] Is that consistent with your recollection of the use of the term "sponsor" in these documents?

A I think we named the sponsors in here.

So a sponsor is really just something -- somebody who the lenders can look to as, you know, the primary contact with respect to the offer, who is going to sign their engagement letter, et cetera.

Q So who are the sponsors in this offer?

A On this particular overview, I'm listed, and [redacted] at [redacted] is listed.

Q Okay. And on page 8, I appreciate the individuals, but that lists the overview of the sponsors being [redacted] and [redacted]; right?

A Yes.

Q Okay. So back to that bullet point, repay a portion of the subordinated debt accrued interest held by certain sponsor affiliates of Cedar Bay.

Did debt held by [redacted] or [redacted] get paid off with the proceeds from the 250?

A No. What was paid off was accrued interest on the intercompany debt between the Cedar Bay affiliated entities within the -- I don't have an org chart in front of me -- but within the group.

Q Okay. So it wiped out the accrued interest, didn't touch the principal?

A It didn't wipe out the accrued interest. It paid an amount of the accrued interest.

Q A portion of it?

A Yes.

Q How much did it pay?

A To the best of my knowledge, I think in the 2014 financial statements we have got it disclosed as [redacted]

Q It left, what did you say, [redacted] or [redacted], how much is remaining of that obligation?

A I'm not sure how much it is now. The principal is [redacted] I'm not sure what the accrued interest is. I would have to look on what -- you know, the financial statements for whatever period we're looking at.

Q Would it be in the documents I've shown you?

A Yes.

Q The financing structure, on page 4.

A Yes.

Q If I were to ask you to, say, make changes to this to show the current organizational structure, what would you do besides -- I guess you would scratch out [redacted]; right? Put an X through that, and then the [redacted] is a wholly owned subsidiary, along with [redacted]

[redacted] that are investment funds sponsored by The Carlyle Group; is that right?

A I think so. But this is -- as identified in 01, this is a simplified organizational structure. So I would want to look at our real active organizational structure to say that. It's a lot of entities in it, so I wouldn't want to speculate. But [redacted] is no longer in the picture.

Q Correct. Okay. It's a fair representation of the structure in a general sense?

A Generally.

Q Somebody loaned you 250 on it; right?

A Right. It says we have ref'd to this document, yes.

Q I'm having a little difficulty understanding the intercompany debt. I've asked you a lot of questions about it. Really I'm not trying to get information, just understand it better.

And on page 5 there is a footnote that references it. This is the sources and uses slide.

A Uh-huh.

Q And it says that the intercompany debt will be pledged as part of the collateral package.

What does that mean? Does that mean you will cancel the debt if you need to? Explain that statement to me.

A No. Whenever you're doing a loan that's a project-based financing, where it's nonrecourse and it's recourse only to the project, it's typical to pledge your equity in that project to the lenders for their being in default, and they have rights. In this case there isn't the equity; it's the subordinated debt.

So it's just simply pledge the subordinated debt to the lenders that they can step in and receive any payments to the subordinated debt holders that are due.

Q Okay. The next page, page 6, and you say it's a subordinated loan facility. Is that the same subordinated debt we have been talking about?

A Yes, I believe so.

Q Okay. So what does that show you with respect to -- read that line out and tell me what that line means for subordinated loan facility -- faculty, I'm sorry.

A Facility?

Q Facility?

A That's just the amount of principal and interest related to the subordinated loan that were on the books as of March 31st, 2013.

Q Page 12, what is this slide depicting?

A It's just showing the percentage that the debt gets paid down based on contracted gross margin, meaning the -- how much of the -- there is -- the debt paydown is based on a predictable cash flow resource, the PPA with FPL, enhances the credit quality.

Q So why do you start at [redacted]

A I guess it's -- I would have to see what they have defined in terms of gross margin, whether it's -- I would have to go back and look at the numbers. But that's what it's saying is gross margin, which would typically be revenue less fuel.

MR. BUTLER: Jon, I'm sorry, what are you saying is starting at [redacted]

MR. MOYLE: See it at the left hand of page 12 of Exhibit --

MR. BUTLER: Yeah, nothing starting at [redacted] though. There is a little diamond that is expressing percentages shown on the right-hand side. In the bar it looks like it's 114 is my question.

MR. MOYLE: I looked at the [redacted] to the left, and the diamond appeared close to the [redacted]

MR. BUTLER: There is a scale on the right too, if you look at the line, it's percentage of debt outstanding. I'm pretty sure that line there is [redacted] You've got two different methods expressed on this one axis.

THE WITNESS: Well, it's just -- it's just saying what percentage of the debt is being paid down by contracted cash flows.

MR. WRIGHT: Off the record.

A Contracted --

MR. WRIGHT: Can we go off for just a second. I'm just going to try to help you out.

(Discussion off the record.)

BY MR. MOYLE:

Q We had a discussion off the record about the slide page 12. I was referencing [redacted] There is a bar graph that shows [redacted] just so the record is clear with respect to that.

Again, the gross margin profile shows what?

A Shows -- I'm not sure what your question is.

Q What's the gross margin profile?

A It's the amount of gross margin generated by the plant.

Q When it pays for all its expenses, and then gets the PPA money, that's what that shows?

A It gets the PPA revenue, and this is the revenue less fuel cost, O&M.

Q So let me back up --
A It's not specifically defined in here.
Q Okay.
A It could be -- you would have to look at the financial statements to which it was referring to get back to the number. There isn't a standard definition of gross margin is what I'm trying to say.
Q Okay. I'm assuming that this PPA, that -- that the value of the PPA is -- declines as time goes on; is that right, because there is less capacity payments, and every year that rolls by so the value would decline?
A Yeah, cash flows roll off.
Q Page 14. The MPV of contracted cash flows, what is that?
A That's just showing the different discount rates, what the value of the cash flows from FPL would be if you chose these different discount rates.
Q And so if we were doing this calculation today -- this was done on March 20th, 2013; that was two years before. If you did this same calculation today, the numbers would be lower; right?
A Not necessarily. It depends on the discount rate you use, which is a function of operating risk. This is showing the lenders what their collateral

value is at the time that they're making the loan and showing some scenarios where it ranges from [redacted] to [redacted]

Q Is this valuing the PPA, the cash flows of the PPA?

A Yes.

Q And if you -- when you say that you use different discount rates, that means the [redacted]

A Yes.

Q Okay. So the issue is the [redacted] and you ran the numbers today, the PB of FCF would be lower; wouldn't they?

MR. WRIGHT: I'm going to object that that is a potentially ambiguous.

A That's not an accurate statement, because it's -- these numbers are a function of the model that was used in this financing, which includes a certain dispatch rate. It includes certain assumptions of St. Johns River Power Park. It includes certain assumptions about our cost of coal.

So to the extent that any of those factors have changed, then applying these same discount rates will not yield the same numbers. This was based on a model that was presented to lenders at the time. If you applied these discount rates, this is what the value of the PPA, their collateral would be.

BY MR. MOYLE:

Q Okay. That's helpful. So the model may have inputs that have changed in effect. It's not as simple as just running math at [redacted],

A That's correct.

Q -- on a cash stream?

A That's correct.

Q Because there are a bunch of other independent variables?

A Yes.

Q What's the model that you used to run this?

A It's just an Excel-based set of spreadsheets that has all the different variables rolled into essentially a long-term cash flow.

Q Is it -- do you have a name for it?

A Just a base case model. It may be in here somewhere. It may be -- the financial projections may be in here. I think it was provided in the materials.

Q All right. So would it be fair to say at this point in time this is what the cash flows represented, depending on the discount rate used?

A Yeah. This, again, it was based on inputs from a third party regarding dispatch, inputs from a third party regarding coal costs, St. Johns River Power Park, et cetera.

Q Okay. Page 19. That capacity factor I've highlighted in there, it falls off precipitously from '11 to '12. Why is that?

A The plant ran less; it was dispatched less by FP&L.

Q And that's a good thing economically?

A Yes.

Q Page 21, your modeling assumptions. We were just talking about the modeler. Are those the assumptions that went into it?

A Some of them.

Q So page 23, there is a line about three-quarters of the way down that says, cash flow after debt service. I guess these are projected numbers; is that right?

A Yeah. I think -- it doesn't -- they're projections. I think it's probably the base case. I'm not sure.

Q How would somebody who was looking at this, if I were a financial person, how would I know base case versus other cases?

A It would need to be labeled.

Q It's not; right?
A It is not labeled.
Q Why do you think it's the base case?
A I can't tell specifically from this, but I wouldn't want to speculate. I was trying to tie it to page 25, but I can't.
Q So I -- I -- I think in your presentation yesterday, my recollection is you said there was 179 million in senior debt on the property. Is that -- is that your recollection?
A Yes.
Q Okay. So on this sheet that I'm looking at, I was looking, there is a line, cash flow after debt service. I didn't see the 179 of debt being serviced.
A The 179 is just what's outstanding now. The 250 has been paid down to 179 as of, I think I got that as the end of April. Cash flow after debt service is just simply a -- a caption for the amount of cash after we paid debt that's left over for payment of the subordinated debt.
Q Is cash flow after debt service the same thing as free cash flow?
A I think generally in this case, yeah.
Q And so if -- when people like you are looking at these numbers, and you were going to say, how does

this look with respect to my return on an investment and this asset, and if in 2013 your free cash flow is [redacted] in '14 it's projected to be [redacted] '15 it's [redacted] '16 is [redacted]

People like Goldman Sachs and Carlyle, would they say that's good or not so good or...

A You need to look at more facts than that. You can't say whether it's good or bad. We chose to borrow $250 million. We didn't -- if we had borrowed less than that and not taken a dividend out of that of [redacted] these cash flows would have been a lot higher.

So that was simply a choice that we made based on the debt markets at the time. There was active debt markets with good pricing, and so in terms of calculating return, and that [redacted] would be factored into that. So obviously we entered into this loan because it was a good return on it.

So the fact that these cash flows are what they are now is solely a function of how much we decided to borrow at the time. If we decided to borrow less at the time, these would be higher if the pricing were different in the market at the time.

Q At the time you had a need to borrow the 250; is that right? Was that including the 120 dividend payment?

A We did not have a need to borrow 250. The amount outstanding was less than [redacted]

Q Okay.

A We chose to borrow 250 just because of the market at the time would support that.

MR. MOYLE: All right. That's all I have. Thank you.

THE WITNESS: Uh-huh.

MR. MOYLE: Do you have that exhibit?

MR. WRIGHT: Jon, when you said that's all I have, does that mean you're done questioning Mr. Neff [sic]?

MR. MOYLE: Yeah, I want to make sure this exhibit is marked and in.

(Short recess.)

CROSS EXAMINATION

BY MS. BARRERA:

Q Mr. Rudolph, would you take a look at Exhibit 21, the Cedar Bay, Limited, financial statements?

MR. WRIGHT: You should have that.

THE WITNESS: I think you took them back from me.

MR. WRIGHT: Here it is. You took it back from me.

THE WITNESS: Yes.

BY MS. BARRERA:

Q Yes. And would you turn to page 2 and scroll down to where it says property and equipment, less of accumulated depreciation and the amount on -- under that for 2014 is [redacted]

A Yes.

Q Okay. What does this amount represent?

A That's the historical cost of the facility less accumulated depreciation and any capital expenditures since then.

Q Okay. Now is this the net book value of the plant as of December 31st, 2014?

A Of the property plant. I'm not sure what you mean by "plant" specifically. But it's the net book value of the property plant and equipment, yes.

MS. BARRERA: All right. I have no more questions.

MR. BUTLER: I hope to be as admirably efficient. I may have a couple more.

CROSS EXAMINATION

BY MR. BUTLER:

Q Let me ask you to get your copy of Exhibit 3 and then also your copy of the Duff & Phelps valuation report, Exhibit 18.

A Okay.

Q And on the Duff & Phelps exhibit, most, if not all, of my questions are going to be in the -- on the page that ends in 948, the Exhibit D.2 you were asked about earlier.

A Yes.

Q First of all, you have -- this shows, I think, a discount rate being used of [redacted] is that right, down near the bottom of the column before the 2012 entries?

A Yes.

Q Okay. And would you agree that if a lower discount rate were used, that it would result in a higher calculated fair value?

A Yes.

Q Okay. Let me ask you to turn to, in your Exhibit 3, to page 15. Do you have that?

A Yes. Sorry.

Q And the table there is showing the EBITDA -- I have trouble saying that -- for various years historically, including 2012 through 2014; is that right?

A Yes.

Q Okay. Now, I would like to look at what is shown as the EBITDA on -- excuse me -- that were projected here for 2012, 2013, and 2014 on the Exhibit D.2 of the Duff & Phelps valuation.

A Yes.

Q Okay. And your actual for 2012 was 82.7 million; correct?

A Yes.

Q Okay. And that compares to what on the Exhibit D.2?

A I think it's [redacted]

Q So something like [redacted] on the -- excuse me -- excuse me -- projections in the Duff & Phelps report compared to your actuals --

A Yes.

Q -- is that correct?

A Uh-huh.

Q Okay. And then for 2013 you show actuals of 50.6 million; correct?

A Correct.

Q And that compares to a projection for 2013 in the Duff & Phelps report of, what do you see -- what do I see there?

A I think it's [redacted]

Q [redacted] So something like [redacted] in the -- excuse me -- projections than the actuals; correct?

A Yes.
Q And then finally, for 2014 you have 53.8 million actual, and it looks like about [redacted] is that right?
A Yes.
Q Something like roughly [redacted] or [redacted] --
A Yes.
Q -- less?
Okay. Would lower EBITDA figures in the projection, if that carried through as a trend throughout the analysis, would that tend to result in a lower fair value than higher figures for that EBITDA in -- same projection?
MR. MOYLE: I'm going to object to the form.
BY MR. BUTLER:
Q If the EBITDA in Exhibit D.2 for each of these years were higher than it shows here, would that result in a higher fair value calculated for the PPA?
A Yes.
Q Okay. Can I ask you to turn to page 6, page 6 in Exhibit 3.
A Yes.
Q Okay. And this shows -- excuse me -- one of the things it shows in the table on page 6 are the --
MR. WRIGHT: Excuse me. Where are you?

MR. BUTLER: I'm sorry. Page 6 of Exhibit 3. I'm still looking to Exhibit D.2 in the Duff & Phelps.

MR. WRIGHT: Could you show me what you're looking at?

MR. BUTLER: The section entitled "reliable operating performance."

(Discussion off the record.)

BY MR. BUTLER:

Q So, again, focussing on the 2012 through 2014 actuals versus Duff & Phelps 2012 through 2014 projections, this shows an actual capacity factor of 31 percent for 2012; is that right --

A Correct.

Q -- on Exhibit 3?

A Yes.

Q And then the figure, it looks like, as capacity factor for 2012 projected with something like [redacted]

A Yes.

Q Okay. And then for 2013, there is a -- an actual capacity factor of 36.1 percent. And that compares to projections. Is that [redacted]

A Yes. Yes.

Q Okay. And finally, 2014 actual of 40.2

percent, and that compares to -- I have a hard time reading that. I guess it's --

A [redacted]

Q -- or something like that?

A Yes.

Q All right. Excuse me. So in each of those years where one can compare actuals to what was projected by Duff & Phelps, we were seeing a -- excuse me -- a lower actual capacity factor than what had been projected; is that right?

A Yes.

Q Okay. The lower -- the lower projected -- I'm sorry, the lower --

MR. WRIGHT: Excuse me. We're getting some fairly loud vibrations that the microphone is picking up that's causing some difficulty hearing down at this end.

MR. BUTLER: Sorry about that.

MR. WRIGHT: That's okay.

BY MR. BUTLER:

Q As you had discussed earlier on -- because of the phenomenon of the relationship between energy payments and cost of generation for Cedar Bay facility, lower capacity factors are actually good in terms of earnings for the facility; is that correct?

A Yes.

MR. MOYLE: Object to the form.

THE WITNESS: Sorry.

BY MR. BUTLER:

Q Would you please comment on whether or not lower capacity factors are likely to result in higher or lower income for the Cedar Bay facility in a particular year?

A Lower capacity factors are likely to result in higher income for the facility in a particular year.

Q If you look out at the capacity factors that were reflected in the Duff & Phelps valuation for the years after 2014, the figures, it looks like they are all ranking from a low of mid [redacted] up into the [redacted]

Is that consistent with your current expectation of capacity factors for the Cedar Bay facility in the years from 2015 through 2024?

A No.

Q Do you expect -- your current expectation is that the capacity factors would be lower or higher than those values projected by Duff & Phelps?

MR. MOYLE: Object to the form.

BY MR. BUTLER:

Q You can answer the question.

[redacted]

Q That the -- [redacted]

[redacted]

MR. BUTLER: That's all I have. Thank you very much.

MR. WRIGHT: I am going to have some cross, slash, redirect, but I need to confer with my general counsel for a minute.

MR. MOYLE: Do you need to go outside to do that?

MR. WRIGHT: That's probably a better idea. Thank you, Jon.

(Short break.)

MR. WRIGHT: Okay. Back on the record.

CROSS EXAMINATION

BY MR. WRIGHT:

Q Mr. Rudolph, I just have a few questions for you to clarify some things that came up during your examination by Mr. Truitt and Mr. Moyle.

There has been some discussion about -- and references to The Carlyle Group and Carlyle funds.

What -- what entities own the membership interests that FPL would be acquiring?

A As it relates to the Carlyle?

Q As it relates to the Carlyle entities.

A I'm not sure I understand the question.

Q Does Carlyle Group -- does the, capital T-H-E, Carlyle Group, own any of the membership interests that are being acquired in this transaction?

MR. MOYLE: Object to the form.

A They own directly the membership interests in CBAS Power.

BY MR. WRIGHT:

Q Who does?

A I would have to look at an org chart to see exactly, but it ultimately rolls up to Cogentrix Power and Cogentrix Power Holdings.

Q In your mind is there a difference between The Carlyle Group and Carlyle managed funds?

MR. MOYLE: Object to the form.

A Yes. I believe there is a difference.

BY MR. WRIGHT:

Q As between those, who -- what entity or entities would own the entities that own the membership interests that are the subject of the transaction here?

MR. MOYLE: Object to the form. It's ambiguous. We've already -- I spent a lot of time talking about member interests. They are A and B. It's ambiguous and compound.

BY MR. WRIGHT:

Q Subject to Mr. Moyle's objection, did you understand the question?

A Can you repeat the question?

Q As between The Carlyle Group and Carlyle Managed Funds, which owns the entities that own the membership interests that are the subject of this transaction?

MR. MOYLE: Same objection.

A Carlyle Managed Funds.

BY MR. WRIGHT:

Q Thank you. In 2012 -- you were asked a number of questions about the steam agreement between Cedar Bay and RockTenn; do you recall those questions?

A I recall being asked questions about it.

Q Fair enough. My first question is this: As of 2012, had the steam agreement been extended?

A I don't believe so.

Q As of 2012, say as of December 2012, had the refinancing that you discussed with at least Mr. Moyle, and I think maybe Mr. Truitt as well, had the refinancing been accomplished?

A No.

Q What effect, if any, did the extension of the steam agreement have on the fair value of the Cedar Bay PPA?

A I don't know that there is a direct link.

Q If you have an opinion, would it have tended to increase the fair value of the Cedar Bay PPA?

MR. MOYLE: Object to the form.

A It depends on in what context, I suppose.

BY MR. WRIGHT:

Q If you know, was there uncertainty surrounding the ability of Cedar Bay to extend the steam agreement as of December 2012?

A Yes.

Q If you have an opinion, would the refinancing that Cedar Bay accomplished in 2013 have tended to increase, decrease, or have no effect on the fair value of the Cedar Bay PPA?

MR. MOYLE: Objection; it's been asked and answered. It's the same question.

BY MR. WRIGHT:

Q Subject to Mr. Moyle's objection, you can answer the question. The fight over its admissibility would come later, if any.

A There isn't a direct link, I don't think.

Q Do you have an opinion as to whether the transaction between the FPL, as the purchaser, and CBAS Power Holdings as the seller of the interests involved in this transaction, is an arm's length transaction?

A Yes.

Q And your opinion is what?

A It is an arm's length transaction.

MR. WRIGHT: That's it. Thank you.

RECROSS EXAMINATION

BY MR. MOYLE:

Q I have two areas of redirect. With respect to your answer that you believe it's an arm's length transaction, why do you say that?

A Because as far as I could tell, it was two willing parties coming to the table to negotiate a transaction.

Q Okay. But you weren't -- you weren't at the table; right?

A Correct.

Q So whatever you're relying on for your opinion was told to you as hearsay?

A I don't know of any reason why it's not. I can put it that way.

Q Right. But I'm just asking -- my question relates to the basis for your opinion. And I think it's based on statements other people made to you; correct?

A Yes.

Q And are you aware, does The Carlyle Group or any other entities affiliated with it do other business with FPL or any other entities affiliated with FPL, including NextEra Energy or any of its companies?

MR. WRIGHT: I'm going to object on the basis that it's not related to anything I asked him and also on the basis that it's not relevant.

MR. BUTLER: I would join that objection.

BY MR. MOYLE:

Q You can go ahead and answer.

A I don't know.

Q Who would?

A I don't know.

Q The Carlyle company, they -- they are in finance; right? Isn't that -- that's part of what they do?

MR. WRIGHT: Objection. Well, beyond the scope of anything I asked him and irrelevant to this case.

BY MR. MOYLE:

Q You can go ahead --

MR. BUTLER: I join the objection.

BY MR. MOYLE:

Q You can go ahead and answer.

A It's fund managers as far as I know. It's -- that's what I know of The Carlyle Group to be.

Q So fund managers, they're buying and trading different investments and equities and debt, things like that?

A I don't --

MR. WRIGHT: Same continuing objection, beyond the scope and irrelevant.

A I've never been in that business, so I don't know. I only know --

BY MR. MOYLE:

Q Sure.

A -- what they do with respect to our business.

Q And then Mr. Butler asked you some questions about -- asked you to compare these two documents based on a capacity factor. I think -- I think you said, well, if there is a lower capacity factor compared to a higher capacity factor, that means that the purchase power agreement is worth more; is that right, that the revenue streams associated with the purchase power agreement would be worth more, and, consequently, the asset would be worth more?

A I thought he asked about the profitability of the plant.

Q Okay. You're probably right.

Would it affect the value? The capacity factor, would that affect the value?

MR. WRIGHT: Just objection to the form. If you could clarify what you mean by "value" I'll probably withdraw the objection.

MR. MOYLE: Sure.

MR. WRIGHT: The value of?

MR. MOYLE: The value of the plant.

A A lower capacity factor would make the plant more profitable.

BY MR. MOYLE:

Q Okay. So it would make more money. Then the follow-up is, would it make it more valuable kind of in a fair market value context?

A I believe so, yes.

Q Why?

A A willing buyer would reap the benefit of more profit.

Q And do you have -- do you understand FPL to, you know, if gas went to $15, do you have an understanding, would that potentially alter FPL's dispatch decisions?

A I don't know.

Q Do you think having a coal plant is a -- not a bad hedge on fuel diversity?

MR. BUTLER: I object to that. It's way, way, way beyond my examination, not proper redirect by you.

BY MR. MOYLE:

Q You can go ahead and answer.

A I don't know.

Q I will represent to you there was something in these slides. If it says in the slides it's a good fuel diversity play, you wouldn't object to that or disagree with it; would you?

MR. WRIGHT: I'm going to object to the question. I think it's beyond the scope of your direct examinations, let alone our cross. But you can answer the question if you have an answer, Mr. Rudolph.

A It depends on the balance of the portfolio and what it's hedging.

MR. MOYLE: Thanks. That's all I have.

MR. WRIGHT: We don't have any more.

MR. MOYLE: Thanks for your time.

(The deposition was concluded at 5:33 p.m.)

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

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

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, SARAH B. GILROY, Registered Professional Reporter, and Notary Public, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that a review of the transcript was requested, and that the foregoing pages numbered 1 through 136 are a true and correct record of the aforesaid proceedings.

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

DATED this _____ day of May, 2015.

*_/s/ Sarah B. Gilroy_*

SARAH B. GILROY
sbrinkhoff@comcast.net
850.878.2221

ERRATA SHEET

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

______________________ ________________

Signature Date

PAGE LINE CORRECTION AND REASON FOR CHANGE

ACCURATE STENOTYPE REPORTERS
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May 29, 2015

Stephen Mark Rudolph
c/o SCHEF WRIGHT, ESQUIRE
schef@gbwlegal.com

Re: May 15, 2015 deposition of Stephen Mark Rudolph, Docket No. 150075-EI

Dear Mr. Rudolph:

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

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

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

Sincerely yours,

SARAH B. GILROY, Court Reporter

cc: All ordering parties

Waiver:
I, ______________________, hereby waive the reading and signing of my deposition transcript.

_________________________ ________________
Deponent signature Date

COMMISSIONER EDGAR: And Exhibit 28. And we will recognize the decision in the pre-hearing order as raised by FPL and have that reflected in the record.

(Exhibit No. 28 admitted into the record.)

COMMISSIONER EDGAR: Okay. Any other matters pertaining to witnesses or witness testimony or exhibits?

Okay. I'm seeing nothing.

Ms. Barrera, any other matters before we move to concluding?

MS. BARRERA: Yes, Madam Chair. A special agenda will be held --

COMMISSIONER EDGAR: Oh, nope. That's mine.

MS. BARRERA: Oh, that's yours? I am sorry so sorry.

COMMISSIONER EDGAR: That's okay.

MS. BARRERA: Yes, there are.

(Laughter.)

COMMISSIONER EDGAR: All right. If there are no other matters, it is my understanding that the Chairman's office is going to set -- let me put it this way: It's my understanding that the Chairman's office intends to set a special agenda to be held on August 27th at which point the proposed submitted settlement agreement will be before the Commission.

My understanding is that is to be noticed to be heard here in the hearing room following the internal affairs that is already scheduled for that day.

However, check the notice, work with our staff. That, you know, possibly could change, but it is my understanding that that is the plan forward as of now.

Okay. Now, Ms. Barrera, other matters?

MS. BARRERA: Thank you.

According to the order establishing procedure, briefs were due August 11th. However, staff suggests that, if the settlement agreement is not approved at special agenda, the deadline for filing briefs be extended to September 8th and a special agenda be held immediately after the regular agenda on October 13th.

COMMISSIONER EDGAR: I think that I've looked over these dates prior to this.

Any concerns?

MR. BUTLER: Not from FPL.

MR. MOYLE: Yeah, this is all kind of hitting -- hitting me anew at the end of a long day.

COMMISSIONER EDGAR: I understand. That's why I'm asking.

(Background noise.)

MR. MOYLE: Take my cue.

We've spent a lot of time today asking a lot of questions with the anticipation that, you know, we would be filing a post-hearing brief and making our arguments and, you know, filing a confidential brief that says here is why you ought to reduce, you know, the price for ratepayers.

It's not sounding to me like we're going to be provided that opportunity based on, you know, what I heard, if I understood it correctly -- potentially.

COMMISSIONER EDGAR: Yeah, I hear you.

Ms. Barrera?

MS. BARRERA: Our under -- staff's understanding is that Mr. Moyle is right. There would be no briefs filed prior to the special agenda on August 27th, and only -- but oral argument would be allowed at that time.

Mr. Moyle has indicated that he would file a motion or an objection to the settlement agreement, at which point, you know, he could be heard at oral argument at the August 27th agenda.

The plan or the suggestion that staff has is that no briefs be filed unless and until -- you know, on the chief case unless and until the settlement agreement is not approved.

COMMISSIONER EDGAR: Take a moment. Okay. Let's go ahead and take five. Everybody look at their calendars. I'll consult with staff. I ask the parties to coordinate to the best of your ability.

And gosh, it's not even 5:00 yet. Let's stretch, consult. And we'll come back at 4:45.

(Brief recess.)

COMMISSIONER EDGAR: Okay. We will go back on the record and gather back together.

I have conferred with staff. We have looked at the calendar a couple of different ways.

Mr. Moyle, you raised a concern about the dates and schedule that had been laid out. I think you made a very valid point. I have, again, conferred with staff to look at the calendar. And we have revised your schedule.

Ms. Helton, will you lay that out for us, please.

MS. HELTON: Yes, ma'am.

All parties will have the opportunity to file a brief on August 11th. That would be prior to taking up the settlement at the August 27th special agenda. And then if settlement is denied, then all parties would have an opportunity to file an additional brief on September 8th.

COMMISSIONER EDGAR: With the item, then, coming forward, foreseeing, October 13th.

MS. HELTON: Yes, ma'am. I'm sorry.

COMMISSIONER EDGAR: That's okay. Let that sink in for a moment.

Any questions?

MR. MOYLE: What's the October 13th?

COMMISSIONER EDGAR: That would be the date that the staff recommendation would come forward from the record of this case if the settlement agreement is not approved by the Commission at the August 27th date. In other words, kind of a two-step process.

OPC, you look like you have a question.

MR. REHWINKLE: Yes. Madam Chairman, my question would be, I think, since your ruling today essentially limited the scope of today's hearing to the petition and testimony that was filed --

COMMISSIONER EDGAR: Yes.

MR. REHWINKLE: That it would seem to follow that, at least with the August 11th brief, that that brief would similarly be limited to that scope. Am I -- I don't know if that's the intention or --

COMMISSIONER EDGAR: Let me look to our attorneys. Ms. Helton?

MS. HELTON: It seems to me if the Commission is going to take up the settlement at the August 27th special agenda and there will be oral argument on the settlement, that, in my mind, I'm thinking, to make the process as transparent as possible, that parties would be able to address the settlement in their brief as well as the issues that have been raised that we've heard testimony on today.

COMMISSIONER EDGAR: Mr. Butler.

MR. BUTLER: Yes, that is -- what Ms. Helton just said is consistent with our view. I think one of the values of the hearing we held today is to provide all of the parties and the Commission with information on what the pros and cons are of FPL's proposal and, in the context of that, does the settlement represent a reasonable resolution.

And we would want to and, frankly, expected that we would have the opportunity on the -- whatever the date is, on the 11th -- to file something using this record.

Obviously, we wouldn't have any information other than what's presented here, but say, in view of what you've heard, we think the settlement a reasonable resolution. Presumably, Mr. Moyle is going to say, in view of what you've heard, he doesn't think it is one.

But that seems like that is one that is appropriate that you're getting in those August 11th briefs, sort of both sides of the story on given the evidence you've heard, is the settlement appropriate.

COMMISSIONER EDGAR: I agree.

MR. BUTLER: Thank you.

MR. MOYLE: I --

COMMISSIONER EDGAR: That's okay. Thank you for the question. That's why we're all here.

Yes, Mr. Moyle.

MR. MOYLE: I guess I was operating sort of under a different view of the world given the Commission's previous decision in the rate case settlement. We didn't get into the settlement, you know, today. And last time, you said --

COMMISSIONER EDGAR: I believe that was at your request.

MR. MOYLE: Right. Right, because I got it Friday afternoon and I was getting ready for trial and, you know, didn't -- didn't have a chance to get ready for a settlement hearing.

COMMISSIONER EDGAR: Irregardless --

MR. MOYLE: Right. So, I'm assuming -- are we going to be able to take discovery on the settlement and ask questions? I mean, there is something in the settlement that it seems to be making a change to the reserved --

COMMISSIONER EDGAR: Thank you, Mr. Moyle. I appreciate the question.

And Ms. Helton and I did discuss if there were questions of the parties on the settlement, et cetera, the process that is already in place.

MS. HELTON: Yes, ma'am. It's, I think, typical process for staff of the Commission and any parties to a case where there is a settlement at issue to ask questions about the settlement and, perhaps, even to hold a noticed meeting about the settlement.

I haven't talked to Mr. Maurey or Mr. Ballinger or staff Counsel about that, but that is certainly typical practice to make sure that everyone understands how the settlement would operate and to clarify any questions out there so that there are no known ambiguities when you take it up.

MR. MOYLE: So, I guess my point is with respect to the comment about saying, okay, yeah, your August 11th brief, go ahead and brief up the settlement -- and for the record, I'm representing Page 4, it looks like it's Provision 3B that makes changes to the 2012 settlement agreement.

If I want to serve some discovery on FPL to do that, I'm not going to have time because the brief is due August 11th. There is 30 days for discovery presently. It's just not -- it's not going to work, you know.

So, I -- you know, I'm happy to -- happy to brief on August 11th with respect to the record we've established here today, but you know, we didn't get into anything related to the settlement, and I think I'm being foreclosed an opportunity to do that in a meaningful way given the timing.

COMMISSIONER EDGAR: Ms. Helton --

MR. BUTLER: May I respond?

COMMISSIONER EDGAR: Not yet.

Ms. Helton?

MS. HELTON: It seems to me we could set up an abbreviated process for Mr. Moyle or staff or anyone else to ask questions about the settlement and give a shortened time period for Power and Light to answer the questions. And maybe that's what Mr. Butler was going to suggest?

COMMISSIONER EDGAR: Mr. Butler?

MR. BUTLER: It is part of it. We would certainly agree to accommodate an accelerated turn-around time on any questions related to the settlement agreement.

I ask as a question, although I obviously don't know the schedule, whether it would make sense to push that brief date back a little bit since it would give a little bit more time for parties to respond to whatever information they get from us.

And also, I have to say, because I've heard it three times, and it's just not a fair characterization, Mr. Moyle saying that he got this information for the first time on Friday.

You know, we -- and Public Counsel can support this -- you know, met with him on Wednesday, on Thursday, had his experts and our people going through the terms of the settlement with him to see if we could answer any questions he has.

I know that's not on the record. We're certainly happy to provide that information formally so we can respond to it. But it's a bit much to hear that he only got information about this on Friday.

MR. MOYLE: Well, if I --

COMMISSIONER EDGAR: Okay. We are going to -- FPL has -- first of all, there is a process. The process will be followed. Mr. Moyle, on behalf of your client, the opportunity for you to get information from the parties will take place.

Mr. Butler, on behalf of FPL, has committed to accelerate response time -- or expedite -- whichever, expedite response times to questions that you may pose.

We can -- and this is an option that I had discussed with staff previously -- push back the 11th date for a little additional time if that would be helpful. I would suggest August 13th. Would that be helpful?

MR. MOYLE: That's fine.

COMMISSIONER EDGAR: Okay. Then, I revise my previous schedule. And briefs will be due

August 13th, moving towards the August 27th special agenda to be noticed.

Okay.

MR. MOYLE: And --

COMMISSIONER EDGAR: Yes, Mr. Moyle.

MR. MOYLE: Just one point. I don't think it helps the process for us to get into who said what when.

Mr. Butler is right. I -- I was provided a copy of this during the opt-out hearing last week. Obviously, I had other things on my mind in the middle of a case.

My point of distinction, and maybe I didn't make it that clearly, was I didn't know whether the Office of Public Counsel was going to sign on to the deal and there was going to be what played out or not until Friday afternoon.

So, I see just -- you know, I want to be clear on that. I don't want Mr. Butler or anybody else to think I'm intentionally trying to misrepresent anything. So, he's right. I did have a copy of it and had a chance to talk to him about it, but didn't focus on it, in large part, because I didn't know whether it was going to happen or not until Friday afternoon.

COMMISSIONER EDGAR: Thank you. I appreciate the additional clarification.

So, briefs will be due on the 13th. We will look toward the special agenda to be noticed for August 27th. If the matter is not resolved at that point, additional briefs may be filed by September 8th with an expected item before the Commission on October 13th.

I believe the only other outstanding matter was Mr. Wright's previous request to strike certain comments. Upon further consideration and consultation with our legal staff, I do understand the concern; however, I think that fine line was walked. And so, we will leave the record as it is.

MR. WRIGHT: Thank you, Commissioner.

COMMISSIONER EDGAR: Thank you.

Any other matters?

MS. HELTON: Madam Chairman, since we've talked about an accelerated schedule for Power & Light to answer questions about the settlement, maybe we should say any responses to questions should be due within five days? I don't know if that's reasonable.

MR. BUTLER: I don't know if it's reasonable, but it's doable, and we will.

(Laughter.)

COMMISSIONER EDGAR: All right. Thank you. I appreciate that cooperative spirit.

With that, thank you, all. A lot of discussions, I know, went on, a lot of give-and-take back and forth. Thank you to my colleagues and to our staff.

And we are adjourned.

(Whereupon, the proceedings were concluded at 4:57 p.m.)

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 681 through 839, 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