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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint petition for determination)
of need for an electrical power plant) DOCKET NO.
in Volusia County by the Utilities) 981042-EM
Commission, City of New Smyrna Beach,)
Florida, and Duke Energy New Smyrna)
Beach Power Company Ltd., L.L.P.)
)

VOLUME 4
Pages 524 through 682

PROCEEDINGS: HEARING
BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
COMMISSIONER E. LEON JACOBS
DATE: Thursday, December 3, 1998
TIME: Commenced at 9:30 a.m.
PLACE: Betty Easley Conference Center
Room 148
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Tallahassee, Florida
REPORTED BY: NANCY S. METZKE, RPR, CCR

C & N REPORTERS
REGISTERED PROFESSIONAL REPORTERS
POST OFFICE BOX 3093
TALLAHASSEE, FLORIDA 32315-3093
(850) 697-8314 / FAX (850) 697-8715

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1 P R O C E E D I N G S

2 (Whereupon, the transcript continues in sequence
3 from Volume 3)

4 CHAIRMAN JOHNSON: We're going to go back on the
5 record.

6 MR. WRIGHT: Thank you, Madam Chairman. The
7 joint petitioners call John C. L'Engle.

8
9
10 * * * *

11 Whereupon,

12 JOHN C. L'ENGLE

13 was called as a witness by the Joint Petitioners and, after
14 being first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WRIGHT:

17 Q Good afternoon, Mr. L'Engle.

18 A Good afternoon.

19 Q Would you state your name, position, and business
20 address for the record, please?

21 A My name is John C. L'Engle. I'm general manager
22 of the Florida Municipal Power Agency, and it's address is
23 1701 Lake Ellenor Drive in Orlando.

24 Q Mr. L'Engle, are you the same John C. L'Engle who
25 prepared and caused to be filed in this proceeding direct

1 prefiled testimony consisting of five pages?

2 A I am.

3 Q And if I were to ask you the questions contained
4 within that testimony today, would your answers be the
5 same?

6 A They would be.

7 Q And do you adopt this testimony as your sworn
8 testimony before the Commission in this proceeding?

9 A I do.

10 MR. WRIGHT: Madam Chairman, I request that
11 Mr. L'Engle's testimony be entered into the record as
12 though read.

13 CHAIRMAN JOHNSON: It will be so inserted.
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IN RE: JOINT PETITION FOR DETERMINATION OF NEED
BY THE UTILITIES COMMISSION OF NEW SMYRNA BEACH
AND DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY,
FPSC DOCKET NO. 981042-EM

DIRECT TESTIMONY OF JOHN CLAUDE L'ENGLE, P.E.

1 Q: Please state your name and business address.

2 A: My name is John C. "Claude" L'Engle, and my business address
3 is 7201 Lake Ellenor Drive, Orlando, Florida 32809.

4

5 Q: By whom are you employed and in what capacity?

6 A: I am employed by the Florida Municipal Power Agency as its
7 General Manager.

8

9 Q: Please describe your responsibilities in that position.

10 A: As General Manager, I have overall responsibility for the
11 management and operation of FMPA. These operations
12 currently include five power supply projects, including the
13 All-Requirements Project. I report directly to FMPA's Board
14 of Directors.

15

16

QUALIFICATIONS AND EXPERIENCE

17 Q: Please describe your professional experience and educational
18 background.

19 A: I have more than 40 years experience in the utility
20 industry. Prior to joining FMPA, I served seven years as
21 Utilities Director for the City of Lake Worth, Florida
22 Utilities. I joined Lake Worth as Chief Engineer in 1971

DIRECT TESTIMONY OF JOHN C. L'ENGLE, P.E.

1 and served in various management positions leading to my
2 appointment as Utilities Director in 1984.

3 As Lake Worth's representative to FMPA, I served from
4 1983 to 1991 on FMPA's Board of Directors and Executive
5 Committee, including one term as FMPA's Vice-Chairman and
6 two terms as Chairman from 1985 through 1987.

7 My background also includes 15 years of experience with
8 the engineering consulting firm of Reynolds, Smith & Hill,
9 where I specialized in power plant design and where I worked
10 on power system feasibility studies, power plant site
11 development, power plant permitting, and power plant design
12 and construction.

13 I hold a Bachelor of Science in Mechanical Engineering
14 degree from Auburn University, and I am a registered
15 professional engineer in the State of Florida.

16

17 **Q: What is the purpose of your testimony in this proceeding?**

18 A: The purpose of my testimony is to support the application of
19 the Utilities Commission, City of New Smyrna Beach, Florida,
20 and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.
21 for a determination of need for the New Smyrna Beach Power
22 Project.

23

24 **Q: Please describe the purpose and structure of FMPA.**

25 A: The Florida Municipal Power Agency was created on February
26 24, 1978, under the provisions of the Florida Constitution,

DIRECT TESTIMONY OF JOHN C. L'ENGLE, P.E.

1 the Joint Power Act (Part II of Chapter 361, Florida
2 Statutes), and the Florida Interlocal Cooperation Act of
3 1969. FMPA was formed to allow its members to cooperate
4 with each other, on the basis of mutual advantage, to
5 provide services and facilities in a manner and in a form of
6 governmental organization relevant to geographic, economic,
7 population, and other factors influencing the needs and
8 development of local communities. Specifically, FMPA is
9 involved in the joint financing, construction, acquisition,
10 ownership, management, and operation of electric generation
11 resources. Currently, there are 27 members of FMPA and each
12 city commission, utility commission, or utilities authority
13 has the right to appoint one member to FMPA's Board of
14 Directors.

15 The FMPA participates in power supply projects that
16 supply power to its member utilities, obtains power supplies
17 for its member utilities, and also obtains and arranges for
18 transmission of power to its members. The Agency currently
19 has five power supply projects in operation: the St. Lucie
20 Project, the Stanton Project, the Tri-City Project, the All-
21 Requirements Project, and the Stanton II Project.

22

23 **Q: Please describe the operations of FMPA.**

24 **A:** FMPA is a project-oriented, joint action agency where each
25 power supply project is a stand-alone project. One of these
26 projects is the All-Requirements Project ("ARP"). The

DIRECT TESTIMONY OF JOHN C. L'ENGLE, P.E.

1 members of this project are the City of Bushnell, City of
2 Clewiston, Fort Pierce Utilities Authority, City of Green
3 Cove Springs, City of Jacksonville Beach, City Electric
4 System of Key West, City of Leesburg, Ocala Electric
5 Utility, City of Starke, and City of Vero Beach.

6

7 **Q: Please describe the functions of the All-Requirements**
8 **Project.**

9 A: The ARP provides its members with all of their electric
10 capacity and energy requirements. FMPA is responsible for
11 assessing and acquiring power supply resources necessary to
12 meet the future capacity and energy needs of the ARP
13 members.

14

15 **Q: Does the ARP have a projected need for electric capacity and**
16 **energy beginning approximately in the year 2001?**

17 A: Yes. Counting the capacity and energy that will be provided
18 by the Cane Island 3 Power Project, a joint project of FMPA
19 and the Kissimmee Utilities Authority, FMPA anticipates that
20 it will need in the range of 200 to 220 MWs of additional
21 capacity, and the associated energy, commencing in the year
22 2001. FMPA will seek to fill those capacity and energy
23 needs through a combination of self-build and purchased
24 power arrangements.

25

26

DIRECT TESTIMONY OF JOHN C. L'ENGLE, P.E.

1 **Q: Is the proposed New Smyrna Beach Power Project the type of**
2 **facility that FMPA would consider utilizing to meet a**
3 **portion of the ARP's future power supply needs?**

4 **A:** Yes. Subject, of course, to meeting FMPA's pricing and
5 operational criteria, I believe that the New Smyrna Beach
6 Power Project may be a facility that FMPA would be
7 interested in purchasing capacity and energy from. FMPA
8 would entertain discussions with Duke New Smyrna regarding
9 serving a portion of the ARP's future power supply needs
10 from their proposed new generating facility.

11

12 **Q: Does FMPA support an active wholesale electricity market?**

13 **A:** Yes. It is FMPA's mission to find the most economical and
14 the most reliable power supply resources for its members,
15 and wholesale purchases are a very important part of the
16 FMPA's power supply mix. Accordingly, FMPA supports the
17 application for determination of need filed by the Utilities
18 Commission of New Smyrna Beach and Duke Energy New Smyrna
19 Beach Power Company.

20

21 **Q: Does this conclude your direct testimony?**

22 **A:** Yes, it does.

23

1 BY MR. WRIGHT (Continuing):

2 Q Mr. L'Engle, could you present a brief summary of
3 your prefiled testimony to the commissioners?

4 A Yes, I would. It's -- I appreciate the
5 opportunity to appear here before you today on behalf of
6 the New Smyrna Beach Duke Joint Project. Florida Municipal
7 Power Agency is a joint action agency created by a group of
8 municipalities about 25 years ago. The primary purpose,
9 although we can do many things, is to provide a reliable
10 economic power resource to different groups of these
11 municipalities. We are a project-oriented group. We take
12 any particular selection of the utilities that want to
13 participate in a particular project, put them together and
14 create the project.

15 One of the projects, which is the subject of our
16 testimony, is called the All-Requirements Project, and this
17 is where Florida Municipal Power Agency does the complete
18 planning and supplies the entire power needs to about ten
19 municipalities, and they are listed in the testimony; but
20 they range all the way from Key West to Jacksonville Beach
21 on the east coast, and over in the center of the state
22 there is Ocala and Leesburg.

23 At the time that we submitted the testimony, we
24 had an unfilled power need for the summer of 2001 of 200 to
25 220 megawatts. Since that time, coincident with the recent

1 approval of need by this body and the award of a contract
2 for the purchase of a combustion turbine -- this is a plant
3 that we are building in conjunction with Kissimmee called
4 the Cane Island plant -- we have reduced that need to about
5 80 to 100 megawatts. But this need still exists; it is
6 unfilled. We are actively seeking to negotiate a contract
7 to supply that need.

8 We view the plant that is contemplated by Duke
9 New Smyrna Beach as the type of facility that has the
10 capability of producing an economical power supply, and we
11 are interested in seeing that project come to fruition
12 because it will provide us with another resource. We're in
13 the business of purchasing wholesale power for our members,
14 and we support a vigorous wholesale power supply market in
15 the state. And I believe, without too much checking, I
16 think that's about the summary of what my testimony was.

17 Q Thank you very much.

18 MR. WRIGHT: Madam Chairman, the Joint
19 Petitioners tender Mr. L'Engle for cross examination.

20 CHAIRMAN JOHNSON: Okay. Mr. Moyle.

21 MR. MOYLE: I have just a couple of questions.

22 CROSS EXAMINATION

23 BY MR. MOYLE:

24 Q I wanted to ask you yesterday -- I understand
25 that there was some discussion in oral argument regarding

1 who or what types of facilities could compete in a
2 wholesale market in Florida. Were you here for that?

3 A I think I remember that.

4 Q As I understand what was discussed, some of the
5 investor-owned utilities took a position that only they and
6 those entities who might buy existing power plants or build
7 power plants, such as combustion turbines that are exempt
8 from permitting under the Power Plant Siting Act, may be
9 competitors with generating facilities. My question to you
10 is, do you believe that a policy or interpretation that
11 limits competitors in Florida's wholesale market to such
12 entities would be good for your organization?

13 MR. GUYTON: Objection. It goes beyond the scope
14 of this witness's direct testimony.

15 MR. SASSO: We join in that examination.

16 MR. GUYTON: This is not cross examination.

17 CHAIRMAN JOHNSON: Mr. Moyle.

18 MR. MOYLE: I think that he is talking about the
19 benefits to his organization in his direct. I think -- you
20 know, I prefaced the question with some stuff that happened
21 yesterday. I can surely modify my question to withdraw
22 that preface, but from a standpoint of asking him if he
23 thinks that's beneficial to his organization, I think it's
24 a permissible question.

25 CHAIRMAN JOHNSON: Allow the question.

1 WITNESS L'ENGLE: Anything that puts a limitation
2 on the potential suppliers to our wholesale power needs is
3 not in the best interest of FMPA. Like I said in the
4 testimony, we support a vigorous market.

5 BY MR. MOYLE (Continuing):

6 Q You mentioned in your direct that you viewed this
7 as another option in an economic asset. I take it from
8 that that you then would be confident in being able to rely
9 on such type of a merchant plant in the state; isn't that
10 correct?

11 A I would rely on a contract with a merchant plant
12 or anybody else, yes.

13 Q And can you conceive of any scenario or situation
14 in which the Commission's granting the determination of
15 need to the New Smyrna Beach Power Project could harm FMPA
16 or its member utilities or their retail customers?

17 A The existence of the plant as a resource for the
18 wholesale market would benefit FMPA.

19 Q Thank you very much.

20 COMMISSIONER CLARK: Mr. L'Engle, just so I'm
21 clear, you indicated that you could not rely on that
22 without a contract?

23 WITNESS L'ENGLE: Well, we're under contract to
24 supply the needs of ten utilities. Their load now is
25 approaching a thousand megawatts, and we are obligated to

1 supply that load, and we are also obligated to back that
2 load up with a certain amount of reserves. So if we are
3 talking about being able to rely on a power supply, it
4 would take a contract which would provide us a firm
5 resource. I would not rely on the non-firm market to
6 supply a firm need.

7 COMMISSIONER CLARK: So you would not rely on a
8 non-firm market to supply a firm need?

9 WITNESS L'ENGLE: No, ma'am. I might rely on a
10 non-firm market to give me some economical energy, but so
11 far as the obligation that we have to meet the load of
12 these ten municipalities, it has to be a firm -- we either
13 have to own it, or we have to have a firm contract for its
14 supply.

15 COMMISSIONER CLARK: Okay. When is this plant
16 due on line?

17 WITNESS L'ENGLE: When we were first talking
18 about this plant with the people that put the petition in,
19 it was our understanding it would be available for the
20 summer of '01. Now if that's slipped, I don't know.

21 COMMISSIONER CLARK: Well, as I understand your
22 testimony, you have a need of 200 to 220 megawatts of
23 additional capacity in that time frame commencing in that
24 year.

25 WITNESS L'ENGLE: Well, actually, since that time

1 the Commission approved the need for the Cane Island plant,
2 and that gave us 120 megawatts, so our need right now is 80
3 to 100 megawatts; and, yes, ma'am, we do.

4 COMMISSIONER CLARK: Well, I thought -- If you
5 look on Page 4, it seems to me that your testimony
6 indicates the need of 200 to 220 megawatts in addition to
7 the Cane Island.

8 WITNESS L'ENGLE: If that's what I said, I'm in
9 error. It was 200 to 220 megawatts not counting the Cane
10 Island facilities. See, when I submitted the testimony,
11 the Cane -- we had not negotiated a participation agreement
12 with Kissimmee and this plant had not been approved for
13 need by the Commission. So while we knew that it was a
14 strong possibility, it certainly wasn't, you know,
15 something that we could count on as a fact. So at that
16 time, we needed the 200 to 220 megawatts.

17 COMMISSIONER CLARK: All right. So with the Cane
18 Island, how much do you need?

19 WITNESS L'ENGLE: With Cane Island we need 80 to
20 100 megawatts.

21 COMMISSIONER CLARK: Okay. You don't anticipate
22 building that, do you, at this point?

23 WITNESS L'ENGLE: No, ma'am, we don't.

24 COMMISSIONER CLARK: So you anticipate purchasing
25 it?

1 WITNESS L'ENGLE: From somebody, yes, ma'am.

2 COMMISSIONER CLARK: Well, how come you haven't
3 entered into a contract with Duke at this point like New
4 Smyrna has if you need the capacity in a relatively short
5 period of time?

6 WITNESS L'ENGLE: We have been willing to go into
7 hard negotiations with Duke for sometime. It takes two
8 people to negotiate.

9 COMMISSIONER CLARK: Do I take it from your
10 testimony that Duke is unwilling to enter into a firm
11 capacity --

12 WITNESS L'ENGLE: No, ma'am. No, ma'am.

13 COMMISSIONER CLARK: -- contract with you?

14 WITNESS L'ENGLE: We just haven't reached that
15 stage of the negotiations yet. I have no indication that
16 they are unwilling to do so.

17 COMMISSIONER CLARK: Okay. If you were asked
18 right now, what are you willing to contract with them for
19 firm capacity, how much would that be, how many megawatts?

20 WITNESS L'ENGLE: Commissioner, Duke isn't the
21 only person that we're talking to, so without getting too
22 deep into this, and I really don't want to --

23 COMMISSIONER CLARK: Okay.

24 WITNESS L'ENGLE: -- we would be willing to
25 contract with them for needs not only for '01, but '02,

1 '03, '04. We have growing needs because we have contracts
2 that are ramping down, and we also have some growth. I
3 would say anywhere between 50 and 100 megawatts, and it
4 might not necessarily be for '01 now. Now remember, we are
5 talking with other people and in various stages of
6 negotiations.

7 COMMISSIONER CLARK: Okay. How fast can you get
8 a plant in the ground to meet that kind of need? What lead
9 time do you need?

10 WITNESS L'ENGLE: We took bids on the Cane Island
11 plant. The turbine was awarded a few weeks ago, and it can
12 be on line in '01, so the time frame is getting very close
13 for a plant. Now there is another alternative. We
14 recently put in approximately 40 megawatts using used and
15 re-conditioned equipment, and that took about a year. Now
16 I really wouldn't want to do that but, you know, there are
17 other alternatives.

18 COMMISSIONER CLARK: Well, let me ask one final
19 question: What is sort of your final deadline for making
20 sure you have committed capacity to meet the additional
21 need you anticipate in 2001?

22 WITNESS L'ENGLE: It's not far off. I would say
23 somewhere before you get too far into next year. Maybe
24 January.

25 COMMISSIONER CLARK: Thank you.

1 WITNESS L'ENGLE: It's getting very close.

2 BY MR. MOYLE (Continuing):

3 Q Just in follow-up on a question I asked you and
4 some questions Commissioner Clark asked you: Assuming this
5 plant were approved by this Commission and was able to be
6 built -- to be built, you then entered into a contract with
7 Duke New Smyrna to take energy out of that plant, you could
8 rely on it then, couldn't you?

9 A If we had a contract, we would rely on it. If we
10 felt we couldn't rely on it, we wouldn't sign a contract.

11 MR. MOYLE: Thank you.

12 CHAIRMAN JOHNSON: Mr. Guyton.

13 CROSS EXAMINATION

14 BY MR. GUYTON:

15 Q Good day, Mr. L'Engle.

16 A Mr. Guyton.

17 Q Who are your direct reports, sir?

18 A Pardon me?

19 Q Who are your direct reports?

20 A My direct reports?

21 Q Yes, sir. Who directly reports to you in FMPA?

22 A We have a staff of approximately 40. I don't --
23 Can you be more specific?

24 Q Sure.

25 A I don't want to name all 40 people.

1 Q That's all right. Is Mr. Casey one of your
2 direct reports?

3 A Yes, he is.

4 Q Okay.

5 A He does not directly report to me though.

6 Q He reports to somebody that reports to you?

7 A That's correct.

8 Q Okay. Now the Cane Island unit that you were
9 discussing earlier was approved. It was a 240-megawatt
10 combined cycle, gas combined cycle unit, correct?

11 A Yes.

12 Q And it's owned 50/50 by FMPA All-Requirements and
13 the Kissimmee Utility Authority?

14 A That's right. By FMPA for the All-Requirements
15 Project.

16 Q Is that a joint energy power supply project?

17 A KUA is not in the project. The All-Requirements
18 Project is -- you know, I don't know if there is a real
19 definition of that, but I would call that a joint power
20 supply project, the All-Requirements Project, not our
21 relation with KUA. They are not in the project; we just
22 have a business arrangement with them.

23 Q And your All-Requirements Project is a project
24 that is jointly owned by the members?

25 A The All-Requirements Project is ten utilities

1 that have signed a power supply agreement with us to supply
2 them power. I don't know how to -- you know, other than
3 that, I don't know how to answer your question.

4 Q Okay. Now either the Kissimmee Utility Authority
5 or the FMPA All-Requirements Project could sell 30
6 megawatts of capacity from the Cane Island unit, could they
7 not?

8 A There is no legal bar for them to -- well, I
9 don't know about Kissimmee. I can't speak for Kissimmee.
10 But the All-Requirements Project -- FMPA on behalf of the
11 All-Requirements Project has no restrictions, but there
12 is -- you know, we are still capacity short, so there
13 wouldn't be any firm capacity available from the --
14 produced by the Cane Island unit; but non-firm capacity,
15 I'm sure there will be some of that available from time to
16 time.

17 Q And there is no restriction on the sale of firm
18 capacity, you just don't think that is very probable?

19 A I don't think it's very what, profitable?

20 Q Probable.

21 A There is no firm capacity available.

22 Q And you're just not aware of one way or another
23 as to whether the Kissimmee Utility Authority is prohibited
24 from selling 30 megawatts of capacity out of their share of
25 the unit?

1 A I have -- I seriously doubt that there is any
2 inhibition, no. Prohibition, sorry.

3 Q A few moments ago Commissioner Clark asked you
4 several questions about your testimony. I want to make
5 sure that we are clear. Would you turn to Page 4 of your
6 testimony?

7 A I have it.

8 Q Yes, sir. At Line 20, should 200 to 220
9 megawatts be changed to 80 to 100 megawatts? Is that the
10 change that you were making?

11 A Well, as it stands today with the approval of the
12 Cane Island facility and the purchase of the combustion
13 turbine with a deadline that will allow -- which, by the
14 way, was in serious doubt until we took bids -- with a
15 deadline that will allow us to meet the summer of '01 peak,
16 we now need between 80 and 100 megawatts.

17 Q And so the 200 to 220 should be changed to 80 to
18 100 megawatts?

19 A Yeah. I tell you the truth, I thought that I
20 made a reference to Cane Island in here, but I think it was
21 in the deposition and not here.

22 Q Okay. Well, you do in the first part of the
23 sentence up at Page 17, and I really don't want you to
24 misstate your testimony here. I just want to make sure
25 that the record is clear about how we understand --

1 A Well, let me see, it says "counting the capacity
2 and energy that will be available."

3 COMMISSIONER CLARK: See, I took that to mean you
4 were counting that as existing?

5 A Yeah, I think it's a problem with the way we
6 constructed the -- There was no intent to mean
7 anything -- The Cane Island facility would decrease the
8 amount of capacity that we need. At the time that the
9 testimony was presented, the firmness of the Cane Island
10 facility in our arrangement with KUA was not what it is
11 today, so what we need --

12 Q So if you --

13 A However you want to characterize the testimony,
14 what we need is 80 to 100 megawatts right now.

15 Q Right now, or beginning 2001, as you testify in
16 your testimony?

17 A We are looking for 80 to 100 megawatts right now
18 for use for the summer of '01.

19 Q Okay. Now you said it takes two parties to
20 negotiate. What did you mean by that?

21 A Well, I think it's -- It obviously takes two
22 parties to negotiate. You can't negotiate by yourself.

23 Q And you expressed a willingness to negotiate with
24 Duke, correct?

25 A That's true.

1 Q All right. So the only other party that it would
2 take to negotiate would be Duke?

3 A That's true.

4 Q All right. Now in response to a question by
5 Commissioner Clark, you stated that you would be willing to
6 contract with "them," and it wasn't clear to me in the
7 context if you meant Duke or any one of the number of
8 alternatives that you were looking at for this 80 to 100
9 megawatts. Would you clarify that, please?

10 A We will contract with whom we have to contract,
11 be it Duke or somebody else, to supply the 80 or 100
12 megawatts, but we consider Duke a viable candidate.

13 Q But you won't necessarily contract with Duke?
14 You may end up with a situation --

15 A I'm not going to negotiate with Duke sitting here
16 at this table.

17 Q Yes. All I'm trying to establish, there is a
18 possibility you may not contract with Duke at all, isn't
19 there?

20 A There is, yes.

21 Q Yes. Duke New Smyrna has not offered FMPA a
22 specific price to sell power from the Duke New Smyrna unit,
23 have they?

24 A No, they have not.

25 Q Given the absence of a contract, and even a

1 specific price at which they might sell, it wouldn't be
2 prudent for FMPA to rely upon Duke New Smyrna for meeting
3 its forecasted load at this time, would it?

4 A At this time, no, you are correct.

5 Q And before you relied on Duke New Smyrna to meet
6 part of your capacity needs, you would need to know the
7 terms and conditions of that arrangement, wouldn't you?

8 A Absolutely.

9 Q You'd need to know the price as well as the other
10 terms that affect the reliability of the supply from the
11 unit, wouldn't you?

12 A That's right.

13 Q Indeed, you wouldn't even be able to assess cost
14 effectiveness unless you knew that price, would you?

15 A That's right.

16 Q Mr. L'Engle, thank you.

17 CHAIRMAN JOHNSON: Mr. Sasso.

18 CROSS EXAMINATION

19 BY MR. SASSO:

20 Q Mr. L'Engle, as I understand it, you currently
21 have a need for 80 to 100 megawatts of power by the year
22 2001; is that right?

23 A For the summer of 2001, yes, sir.

24 Q And for planning purposes, do I understand that
25 that 2001 deadline is pressing upon you?

1 A I would characterize it so, yes, sir.

2 Q Okay. And without asking you to name the names
3 of the parties involved, do I understand accurately that
4 currently you are in active negotiations with other
5 potential power suppliers?

6 A Yes, sir.

7 Q Okay. Your testimony in this case is dated
8 September 28, 1998. Can you recall when you were first
9 contacted by Duke to file testimony in this case?

10 MR. WRIGHT: Object to the question in that it
11 assumes a fact not in evidence. It assumes that Duke
12 contacted Mr. L'Engle.

13 BY MR. SASSO (Continuing):

14 Q Well, when were you first contacted to file
15 testimony in this case, sir?

16 A It's been quite a while ago.

17 Q Was it before September?

18 A Oh, yes.

19 Q Okay. September 28th was over a couple of months
20 ago. Could it have been as long as, say, three or four
21 months that you were contacted about testifying in this
22 case?

23 A Yes.

24 Q Okay. And to date, however, Duke has not entered
25 into actual contract negotiations with you; is that

1 correct?

2 A Entered into contract negotiations is kind of a
3 loose term. We have had discussions with Duke from time to
4 time.

5 Q But you're not negotiating with them as you are
6 with the other potential suppliers; is that correct?

7 A We are negotiating with a lot of people. Some
8 are more or less active. Some are very energetic, and some
9 are less so. A lot of people sitting here in this room are
10 parties to the negotiation.

11 Q Yeah, and you would characterize your discussions
12 with Duke as less active?

13 A Well, they're not the least active, I will say
14 that.

15 Q And they're not the most active?

16 A And they're not the most active.

17 MR. SASSO: That's all.

18 CHAIRMAN JOHNSON: Is that it?

19 MR. SASSO: Yes.

20 CHAIRMAN JOHNSON: Staff?

21 MS. PAUGH: I'm sorry, staff has no questions of
22 this witness.

23 CHAIRMAN JOHNSON: Commissioners?

24 (NO RESPONSE)

25 CHAIRMAN JOHNSON: Redirect.

1 MR. WRIGHT: Just a couple, Madam Chairman.
2 Thank you.

3 REDIRECT EXAMINATION

4 BY MR. WRIGHT (Continuing):

5 Q Mr. L'Engle, I'm about to say something as a
6 predicate, and I think it's your testimony that the New
7 Smyrna Beach Power Project is the type of facility that the
8 FMPA would be interested in buying from at such times as it
9 becomes available. Is that an accurate characterization?

10 A Yeah, I think it's a type of facility that has
11 the ability to produce a reliable economic power supply.
12 As a matter of fact, it has the same generic unit
13 characteristics as the Cane Island facility.

14 Q Yes, sir. If you know the answer to this, I'd
15 appreciate your telling the Commission about it. In your
16 experience with permitting power plants, do you think it's
17 at least possible that that power plant -- that the New
18 Smyrna Beach Power Project may be permitted and constructed
19 in time for an in-service date of the summer of 2001.

20 MR. GUYTON: I object. It's beyond the scope of
21 his direct testimony.

22 MR. WRIGHT: On cross examination he was asked
23 about this project serving his '01 need and by the
24 Commissioners and specifically as to who he might buy from
25 and whether it might be available, I believe.

1 MR. GUYTON: Once again, it goes beyond the scope
2 of those questions as well, Commissioners.

3 MR. WRIGHT: I don't agree.

4 CHAIRMAN JOHNSON: I'll allow it.

5 WITNESS L'ENGLE: '01 may be possible. I think
6 '01 would be tight. I would be much more comfortable with
7 meeting additional power supply needs we would have for
8 '02.

9 BY MR. WRIGHT (Continuing):

10 Q Would you be better off if the project could be
11 constructed and its permitting expedited so that it would
12 be in service by the summer of '01?

13 A Well, of course the more people in the mix, the
14 better arrangements that we can make to provide for our
15 members' power supply needs, certainly.

16 Q I hate to ask the question about the Cane Island
17 3 capacity, but I just want to nail down: Is it a correct
18 characterization of your testimony that as of today the
19 FMPA needs 80 to 100 megawatts of additional capacity
20 starting in or for 2001 above and beyond that which would
21 be provided by Cane Island 3?

22 A Yes, and if the way we worded the answer to that
23 was confusing, I apologize.

24 Q Mr. Guyton asked you a couple of questions
25 regarding your present lack of knowledge regarding terms

1 and conditions of a potential power sales contract for
2 power from the New Smyrna Beach Power Project. Do you
3 recall those questions?

4 A Yes, I do.

5 Q In your experience as director of the FMPA and
6 formerly as director of another municipal utility
7 authority, would you expect those terms and conditions
8 would be comparable to those that would be in other
9 contracts in the market?

10 MR. SASSO: Objection. It's total speculation.

11 MR. WRIGHT: I don't think so at all. I'm asking
12 him in his experience as director of the FMPA whether it's
13 reasonable for him to expect that the terms and conditions
14 in a contract that he might negotiate with Duke would be
15 similar or comparable to those he might negotiate with
16 someone else. I think I laid an adequate predicate, Madam
17 Chairman.

18 CHAIRMAN JOHNSON: Allow the question.

19 WITNESS L'ENGLE: Well, I certainly would expect
20 they would be. Whether they would be or not remains to be
21 seen.

22 BY MR. WRIGHT (Continuing):

23 Q Would they be negotiated as between you all and
24 Duke?

25 A Yes.

1 Q In this circumstance?

2 A Yeah.

3 Q That's all I have.

4 MR. WRIGHT: Thank you.

5 COMMISSIONER JACOBS: I have one question. I'm
6 sorry I didn't get it in before.

7 In your planning for the Cane Island, you went
8 through bidding for that. I'm not necessarily wanting to
9 get into all that, but I'm interested in what were the key
10 factors that drove you towards the build decision versus
11 purchase power in that result, and I'm interested in
12 whether or not you think those would apply when you came to
13 meet these 2001 and 2002 requirements?

14 WITNESS L'ENGLE: Well, we did go out for an RFP,
15 and we were looking for firm long-term power either we
16 would build at Cane Island or somebody would build
17 something for us. We were looking for another group of
18 power requirements to meet a short-term and another for an
19 immediate term. The advantage that Cane Island had was
20 that its price was at least comparable with the best that
21 we got, but the certainty of being able to build the plant
22 and have it on line by the year two -- to meet our needs,
23 we knew that that plant had the best chance of meeting our
24 deadline requirements, and I think that proved to be
25 ultimately very true; so nobody could beat it on price. We

1 had the site. It's the third unit in the site. We had
2 been doing pre-planning for the power plant for a number of
3 years, and unless there was a beatable alternative, which
4 there wasn't, that was the way we chose to go.

5 COMMISSIONER JACOBS: And so those factors
6 wouldn't necessarily drive a decision to meet your demand,
7 your needs for 2001 and 2002?

8 WITNESS L'ENGLE: You mean with the 80 to 100
9 megawatts?

10 COMMISSIONER JACOBS: Right.

11 WITNESS L'ENGLE: Not necessarily, no.

12 COMMISSIONER JACOBS: Okay.

13 COMMISSIONER CLARK: Mr. L'Engle, this isn't part
14 of your direct testimony, but I'm thinking you may know.
15 In 1989, staff has indicated to me the planned reserve
16 margin was 23%. Do you remember that at all? Do you know
17 if that was -- Was that about the plan reserve margin for
18 that year?

19 WITNESS L'ENGLE: My recollection back in those
20 times, that there was no state planned reserve margin.
21 There may have been a calculated reserve margin, but
22 reserve margins were left up to the individual utility, and
23 then there was a state LOLP calculation to determine
24 whether the state as a whole was going to be long or short.
25 But the winter of '89 was a very rough period. I went

1 through it in a control room. It was very extreme.

2 COMMISSIONER CLARK: Let me ask you this:
3 Assuming that the planned reserves were 23%, is that what
4 you think we should plan for? Is that the reserve margin
5 we should require our customers to --

6 WITNESS L'ENGLE: Reserve margins from 20 to 25%
7 were the norm. Now with the --

8 COMMISSIONER CLARK: In 1989?

9 WITNESS L'ENGLE: Yes, ma'am, until fairly
10 recently. With everybody anticipating some type of open
11 access retail competition -- Reserve margins, of course,
12 cost you money; so in trying to achieve a balance of
13 bringing your costs down as much as possible with
14 reliability, the reserve margins have decreased. Now if it
15 is the -- I would be more comfortable, personally, with a
16 20% reserve margin, but I've been in the operations end of
17 this, you know, many facets of this business for a long
18 time, but -- As a matter of fact, our reserve margin for
19 summer load is 18%; winter load is 15%, but --

20 COMMISSIONER CLARK: Let me ask it differently.
21 Do you think it's appropriate to make the investment? Is
22 the cost of maintaining that 20% worth the benefits you get
23 from it?

24 WITNESS L'ENGLE: On a statewide basis, I don't
25 know if I could answer that. From our basis, we could not

1 afford it because of competition. If everybody else is at
2 a 15% reserve margin, we couldn't afford to carry a 20% or
3 25% reserve margin and compete; so I certainly would not
4 want --

5 COMMISSIONER CLARK: But your prices would be
6 higher?

7 WITNESS L'ENGLE: Yes, they would be higher. Let
8 me try and answer it this way: I certainly don't want
9 to -- I would hope the Commission would not go any lower.
10 I really and truly think you're on the edge.

11 COMMISSIONER CLARK: You think that 15% is on the
12 edge?

13 WITNESS L'ENGLE: Yes, ma'am.

14 COMMISSIONER GARCIA: Do you think we should
15 adopt that as a policy of this Commission, required?
16 Because right now we don't.

17 WITNESS L'ENGLE: That's true, you don't.

18 COMMISSIONER GARCIA: Should we, for safety sake
19 in Florida, for liability sake?

20 WITNESS L'ENGLE: That's an interesting --
21 that's an interesting point. I'd have to think about
22 whether I think the Commission should do it. It has been
23 agreed upon. The FRCC has adopted it, and the Commission
24 did approve -- I believe this was in the matter where,
25 who was eligible for Schedule A emergency power, whether

1 they -- what type of a prudent level of reserves they
2 should carry; and that, I think, was the genesis several
3 years ago of the 15% number.

4 COMMISSIONER CLARK: I think you're right, and we
5 said -- we set that level so that it was -- it would
6 dictate the schedule from which you can purchase power.

7 WITNESS L'ENGLE: So in effect you've already
8 done that, Commissioner Garcia. I mean if you want to be
9 able to buy reserves from your neighbor, you've got to have
10 a planning reserve of 15% because, if it's less than that,
11 you are not eligible for reserve.

12 COMMISSIONER CLARK: And that's because you're --

13 WITNESS L'ENGLE: I mean emergency.

14 COMMISSIONER CLARK: -- relying on your neighbor
15 to meet your margin of reserve.

16 WITNESS L'ENGLE: Yes, that's true.

17 COMMISSIONER CLARK: Thank you.

18 COMMISSIONER JACOBS: This is kind of tricky
19 questions, I'll let you know up-front. This proposed plant
20 would not have a backup fuel. The concern I have is -- and
21 this goes to the discussion about reserve margin and what
22 it should be -- the concern I have is, you know, we just
23 had a recent event where there was a critical loss of
24 capacity for gas. We have -- Most of the new capacity
25 coming in is gas based. Should we have -- should we

1 consider the idea that -- You know, this plant goes down
2 with no backup, you know, that will have an impact on the
3 reserve margin. Should we increase the reserve margin in
4 light of that? Should that be a factor?

5 WITNESS L'ENGLE: I don't think it should be a
6 factor of any statewide determination of reserves. If we
7 were -- In our negotiations with Duke it would be a
8 factor.

9 COMMISSIONER JACOBS: Okay. Thank you.

10 COMMISSIONER DEASON: Let me ask a follow-up
11 question. Mr. L'Engle, you indicated that the reserve
12 margins have declined from what they historically had been,
13 and I think you indicated that a reason perhaps among other
14 reasons, but nevertheless a reason, is that there is the
15 concern over the possibility of competition even at the
16 retail level; is that correct?

17 WITNESS L'ENGLE: I think that that is one of the
18 driving forces.

19 COMMISSIONER DEASON: Okay. And with that
20 threat, utilities are trying to reduce costs, and obviously
21 the higher reserve margin, the higher overall cost; is that
22 also correct?

23 WITNESS L'ENGLE: Yes, sir.

24 COMMISSIONER DEASON: So if there is a reluctance
25 there to have too much capacity in the state from the

1 utilities which serve retail load, why is it that Duke is
2 willing to come in and build capacity? Is it because that
3 capacity is not under contract and there is no limitation
4 on the price they can charge for that?

5 WITNESS L'ENGLE: Commissioner, I couldn't answer
6 that. I mean whatever reasons Duke has are their own
7 reasons. I don't know.

8 COMMISSIONER DEASON: Okay. But you're -- You
9 don't know?

10 WITNESS L'ENGLE: I don't know.

11 COMMISSIONER DEASON: You can't -- We had an
12 objection earlier to a question that was speculation, and I
13 think that that was overruled because of your experience as
14 someone with a lot of utility experience in the State of
15 Florida over the years. You can't speculate based upon
16 that experience?

17 WITNESS L'ENGLE: Duke says that they want to be
18 active in the wholesale market. We are taking them at
19 their word. We are not going to rely on a state level of
20 reserves. We are going to be very concerned with FMPA's
21 level of reserves. I presume that Duke is going to look to
22 enter into agreements with people like ourselves for the
23 sale of the additional capacity. But any agreement that we
24 have with Duke would be firm or we would not enter into an
25 agreement.

1 COMMISSIONER DEASON: Okay. Thank you.

2 MR. WRIGHT: Madam Chairman, just a couple of
3 follow-up questions on questions from the bench.

4 REDIRECT EXAMINATION

5 BY MR. WRIGHT (Continuing):

6 Q Mr. L'Engle, Commissioner Clark asked you a
7 question regarding the reserve margins in 1989 and you gave
8 an explanation of what was going on then, and I just want
9 to ask you a very specific question. Commissioner Clark
10 indicated that the PSC staff had advised her that the
11 projected winter reserve margin for the winter of 1989,
12 1990 was 23%. As far as you know, is that approximately an
13 accurate number?

14 A That would sound like it would be accurate.

15 Q You also testified in response to questions, I
16 believe, from Commissioner Jacobs and perhaps others, and
17 Commissioner Clark, I think, that you would not -- you
18 would be more comfortable with a 20% reserve margin but
19 that you would not feel so comfortable making the
20 additional investment necessary to reach that for FMPA on
21 its own; is that an accurate characterization of what you
22 said so far?

23 A If everybody was -- used a 15% reserve margin
24 except us, then we -- If the norm for the state was 15%,
25 then we would not use a 20% reserve margin.

1 Q My question for you is: Would it be a good thing
2 to allow for merchant plants such as the New Smyrna Beach
3 Power Project to put their capacity and thereby at least
4 making their capacity available?

5 A Their capacity would not count towards being
6 anybody's reserve margin unless it is firmly committed by
7 contract. But with that, sure, the more capacity in the
8 state, the more contracts, you know, the more reliable the
9 state would be.

10 Q Do you think they should have to have a contract
11 before they're allowed to build a plant?

12 A Oh, I don't know. I mean before we rely on them
13 we need a contract. I wouldn't hazard an answer to that.

14 Q If the plant were built before you had a
15 contract, would you be glad to have the opportunity to
16 enter into a contract with them?

17 A If the plant were built -- Assuming that I came
18 to, we came, our staff came to a reasonable comfort level
19 that the plant was going to be built and we had sufficient
20 things in the contract. We are not going to pay for
21 something and then it not be built.

22 Q Of course not. I'm asking you the hypothetical
23 question, if the plant were built.

24 A Oh, if it were already built. I'm sorry.

25 Q Would you be glad for the opportunity to talk to

1 them about a contract?

2 A Sure.

3 Q Thank you.

4 COMMISSIONER GARCIA: You raised an interesting
5 question, and perhaps it's my ignorance, and maybe you can
6 work me out of it; but you mentioned the point that if you
7 had to carry reserves much higher than the IOUs it makes
8 you less competitive, yet to some degree we require,
9 because of their obligation to serve, our IOUs to carry at
10 least some margin, but Duke won't be required to do that?
11 In other words, it can contract all of its power at a
12 certain level so that because they are not carrying, I
13 guess, a reserve, doesn't it make their power cheaper?

14 WITNESS L'ENGLE: Well, if we entered into a
15 contract with Duke, we would have to factor in the 15%
16 reserve margin. We would have to supply it, or we would
17 have to buy it from Duke under some type of an
18 arrangement. If the plant was down, somebody is going
19 to --

20 COMMISSIONER GARCIA: Got you.

21 WITNESS L'ENGLE: So, but that's true of any --
22 If we built -- Like the Cane Island facility, that's true
23 of that also.

24 COMMISSIONER GARCIA: Got you.

25 CHAIRMAN JOHNSON: Sir, you made one other

1 statement there, and if you didn't say this, let me have it
2 clarified. You talked about the generation that would be
3 provided by Duke, that as we look at that issue we
4 shouldn't look at that in the context of maybe the state
5 standard of 15% margin reserve. There is another -- I'm
6 sorry, is that -- You were shaking your head?

7 WITNESS L'ENGLE: No, I'm sorry. Would you
8 continue?

9 CHAIRMAN JOHNSON: Yeah. Do I need to start
10 over? Did you not understand the question or -- Let me
11 start over.

12 WITNESS L'ENGLE: Yeah. Yeah.

13 CHAIRMAN JOHNSON: I thought when Mr. Wright had
14 asked you a question you stated that the -- We had had
15 conversations before about 15% margin reserve, and when he
16 asked you about the Duke plant, you said, well, whatever is
17 generated there shouldn't be factored into any kind of
18 margin reserve analysis. I thought you meant like for
19 Peninsular Florida, or as a part of our analysis we can't
20 count on that because it's non-firm.

21 WITNESS L'ENGLE: I didn't mean what the
22 Commission can do. For any capacity from the Duke plant to
23 be factored in as part of the firm capacity that's
24 available to the state or contributing to the state
25 reliability, it has to be under firm contract with somebody

1 that has a retail load.

2 CHAIRMAN JOHNSON: So in terms of the reliability
3 analysis that the Commission might undertake, what would be
4 your recommendation or opinion as to that that we should
5 not -- when we are looking at the need and we are thinking
6 about the reliability and we are thinking about margin
7 reserves, should we -- How can we do a needs assessment if
8 this is non-firm? I mean how can you do a Peninsular
9 Florida kind of analysis with non-firm?

10 WITNESS L'ENGLE: Well, I think you'd have to
11 make some assumptions as to whether it would eventually
12 become somebody's firm capacity or not.

13 CHAIRMAN JOHNSON: And then -- Okay. Let me ask
14 you one other question then just because of your expertise.
15 How would you go about making those assumptions? What
16 would be the criteria that you'd use?

17 WITNESS L'ENGLE: Oh, for the state I wouldn't
18 presume to do that. My job is to make sure that the power
19 supply for our projects, you know, is firm, is reliable and
20 we can deliver it. I really wouldn't like to answer that.

21 CHAIRMAN JOHNSON: That's fine. Thank you.

22 And I don't believe there are any exhibits.
23 Mr. Wright, did you want to -- I saw you shaking your head.
24 I didn't know if --

25 MR. WRIGHT: No. No.

1 CHAIRMAN JOHNSON: Okay. Thank you very much.

2 MR. WRIGHT: There were no exhibits.

3 CHAIRMAN JOHNSON: Okay. And I think you can
4 still catch your 3:30.

5 MR. L'ENGLE: Thank you for helping me to get out
6 of here in time to make the plane, I appreciate it.

7 MR. GUYTON: Commissioners, may we take a short
8 break before the next witness?

9 CHAIRMAN JOHNSON: We'll take ten minutes.

10 MR. GUYTON: Thank you.

11 (BRIEF RECESS TAKEN)

12 CHAIRMAN JOHNSON: We are going to reconvene the
13 hearing.

14 MR. SHINE: I'm sorry, Commissioner, although I
15 would like to -- Unfortunately, Commissioner, although I'd
16 like to introduce the witness, we are going to have to wait
17 for Mr. Wright to return in just about half a minute.

18 CHAIRMAN JOHNSON: Okay. Welcome, Richard.

19 MR. WRIGHT: Are we --

20 CHAIRMAN JOHNSON: Yes, we're --

21 MR. WRIGHT: I apologize for my slight tardiness.

22 CHAIRMAN JOHNSON: That's okay.

23 MR. WRIGHT: Thank you. The Joint Petitioners
24 call Mr. Michael C. Green.

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* * * *

Whereupon,

MICHAEL C. GREEN

was called as a witness by the Joint Petitioners and, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q Good afternoon, Mr. Green.

A Good afternoon.

Q Are you the same Michael C. Green -- I'm sorry, would you please state your name, position, and business address for the record?

A Michael C. Green, vice president and general manager of Duke Energy Power Services Florida. Address is 615 Crescent Executive Boulevard, Lake Mary, Florida.

Q And are you the same Michael C. Green who prepared and caused to be filed in this testimony -- prefiled direct testimony consisting of 21 pages?

A I am.

Q And did you also prepare or -- and/or cause to be filed in this proceeding exhibits consisting of five exhibits sequentially numbered MCG-1 through MCG-5?

1 A That is correct.

2 Q And are you also sponsoring certain parts of what
3 is identified as the filing exhibits in this case that has
4 now been marked for identification as our filing exhibit,
5 the book with a picture of a power plant on the cover as
6 Exhibit 16 as described at Pages 5 and 6 of your testimony?

7 A That is correct.

8 Q If I were to ask you the questions contained in
9 your prefiled direct testimony today, would your answers be
10 the same?

11 A Yes, they would.

12 Q Do you have any changes or corrections to make to
13 that testimony?

14 A No, I do not.

15 Q And do you adopt this as your sworn testimony for
16 the purpose of this proceeding?

17 A Yes, I do.

18 MR. WRIGHT: Madam Chairman, I would request that
19 the testimony of Mr. Michael C. Green be entered into the
20 record as though read.

21 CHAIRMAN JOHNSON: It will be entered.

22

23

24

25

IN RE: JOINT PETITION FOR DETERMINATION OF NEED
BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA
AND DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY,
FPSC DOCKET NO. 981042-EM

DIRECT TESTIMONY OF MICHAEL C. GREEN, P.E.

1 Q: Please state your name and business address.

2 A: My name is Michael Charles Green, and my business address is
3 Duke Energy Power Services, L.L.C., 615 Crescent Executive
4 Court, Suite 100, Lake Mary, Florida 32746.

5

6 Q: By whom are you employed and in what position?

7 A: I am employed by Duke Energy Power Services, L.L.C. ("DEPS")
8 as Vice President and General Manager, Florida and
9 Southeast.

10

11 Q: Please describe your duties with Duke Energy Power Services.

12 A: My duties and responsibilities for DEPS include development
13 and origination of power generation asset opportunities for
14 DEPS in the Southeastern Region, including Florida.

15

16 QUALIFICATIONS AND EXPERIENCE

17 Q: Please summarize your educational background.

18 A: I hold a Bachelor of Science in Civil Engineering from the
19 University of Tennessee.

20

21 Q: Please summarize your employment history and work
22 experience.

DIRECT TESTIMONY OF MICHAEL C. GREEN, P.E.

1 A: I have 26 years of experience in the electric power
2 industry, all with Duke. I began my career in 1972 in
3 the Design Engineering Division of Duke Power Company,
4 where I participated in, and eventually managed, the
5 design of several Duke generation facilities, including
6 nuclear, fossil, and hydroelectric facilities. On
7 assignment to the Institute of Nuclear Power Operations
8 (INPO), I spent two years, from 1983 to 1985, evaluating
9 the construction of nuclear power plants. I was the
10 United States representative on an International Atomic
11 Energy Association (IAEA) evaluation team of the Alto
12 Lazio nuclear facility in Italy in 1987.

13 I returned to become the general manager of Duke
14 Power's Project Management Department, which managed several
15 capital and operating projects aimed at improving the
16 efficiency or other operating parameters of Duke Power's
17 generating plants. I subsequently became General Manager of
18 Duke Power's Strategic Planning Department. In that
19 position, I was responsible for clarifying Duke's strategic
20 direction for the future, which resulted in the merger with
21 PanEnergy to form Duke Energy Corporation in 1997. At that
22 time, I became Vice President in the Corporate Accounts
23 Department, our company-wide marketing arm, coordinating the
24 marketing efforts of several Duke business units. In June
25 of this year, I accepted my current post as Vice President
26 and General Manager, Florida and Southeast for Duke Energy

DIRECT TESTIMONY OF MICHAEL C. GREEN, P.E.

1 Power Services, L.L.C.

2

3 **Q: Have you previously testified before regulatory authorities**
4 **or courts?**

5 A: Yes. I testified at the hearings of the Advisory Committee
6 on Reactor Safety (ACRS) relating to Duke Power's Catawba
7 Nuclear Generation Station in the late 1970s.

8

9 **Q: Are you a registered professional engineer?**

10 A: Yes. I am a registered professional engineer in the States
11 of North Carolina and South Carolina.

12

13

SUMMARY AND PURPOSE OF TESTIMONY

14 **Q: What is the purpose of your testimony?**

15 A: I am testifying on behalf of the Utilities Commission, City
16 of New Smyrna Beach, Florida ("UCNSB"), and Duke Energy New
17 Smyrna Beach Power Company Ltd., LLP ("Duke New Smyrna"),
18 the joint applicants for the Florida Public Service
19 Commission's ("the Commission") determination of need for
20 the New Smyrna Beach Project (or "the Project"). My
21 testimony describes Duke Energy Power Services, L.L.C., Duke
22 New Smyrna, and the relationships between DEPS, Duke New
23 Smyrna, Duke Energy Corporation, and other Duke affiliates
24 involved in developing the New Smyrna Beach Project. My
25 testimony also describes the basic elements of the business
26 relationship between the UCNSB and Duke New Smyrna, and

DIRECT TESTIMONY OF MICHAEL C. GREEN, P.E.

1 addresses Duke's assessment of the need for new merchant
2 power plant capacity in Florida. Finally, my testimony
3 addresses the projected capital cost of the Project.
4

5 **Q: Please summarize your testimony.**

6 A: The Utilities Commission, City of New Smyrna Beach and Duke
7 New Smyrna are petitioning the Commission to grant its
8 determination of need for the New Smyrna Beach Power
9 Project, a 500 MW (nominal) gas-fired combined cycle power
10 plant to be located in New Smyrna Beach, Volusia County,
11 Florida. The Project utilizes state-of-the-art technology,
12 with proven reliability, high efficiency, and a very benign
13 environmental profile. The Project will provide clean and
14 cost-effective power to the UCNSB and a clean and cost-
15 effective power supply option to other electric utilities to
16 meet the growing demands of their retail customers in
17 Florida. In contrast to rate-based facilities, Duke New
18 Smyrna will bear all of the capital investment and operating
19 risks associated with the Project, while the purchasing
20 utilities and their ratepayers bear none. The UCNSB will
21 receive 30 MW of the Project's output, and the remaining
22 capacity will be sold on a "merchant" basis in Florida's
23 wholesale power market.

DIRECT TESTIMONY OF MICHAEL C. GREEN, P.E.

1 Q: What are your responsibilities with respect to the New
2 Smyrna Beach Power Project?

3 A: As DEPS's senior "on the ground" officer in Florida, my
4 responsibilities with respect to the New Smyrna Beach
5 Power Project include the general coordination of
6 regulatory and business activities relating to the
7 Project, as well as eventually coordinating the
8 marketing efforts for capacity and energy sales from the
9 Project.

10

11 Q: Are you sponsoring any exhibits to your testimony?

12 A: Yes. I am sponsoring the following exhibits.

13 MCG-1. Duke Energy New Smyrna Beach Power Company Ltd.,
14 L.L.P., Ownership Structure.

15 MCG-2. Order of the Federal Energy Regulatory Commission
16 ("FERC") approving Duke New Smyrna's market-based
17 rate tariff.

18 MCG-3. Order of the FERC confirming Duke New Smyrna's
19 status as an Exempt Wholesale Generator under the
20 Public Utility Holding Company Act of 1935.

21 MCG-4. The Participation Agreement between the UCNSB and
22 Duke New Smyrna.

23 MCG-5. New Smyrna Beach Power Project, Project Structure.

24 I am also sponsoring Figures 1 and 2 in the Exhibits
25 filed on August 19, 1998 in support of our joint petition
26 for determination of need for the Project, as well as the

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1 text contained within Sections II.A, II.C, II.D, II.E, II.F,
2 and III.F of those Exhibits.

3

4 **DUKE ENERGY CORPORATION, DUKE ENERGY POWER SERVICES,**
5 **AND DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY**

6

7 **Q: Please describe Duke Energy Power Services, L.L.C. and its**
8 **business.**

9 **A:** Duke Energy Power Services, L.L.C. ("DEPS") is a limited
10 liability corporation organized and existing under the laws
11 of the State of Delaware. DEPS is a wholly-owned subsidiary
12 of Duke Energy Global Asset Development, Inc., which is a
13 wholly-owned subsidiary of Duke Energy Corporation ("Duke
14 Energy").

15 DEPS is in the business of acquiring and developing
16 "merchant" power plants, i.e., power plants that are
17 operated to sell power to other utilities at wholesale at
18 voluntarily negotiated rates, with DEPS taking all financial
19 and operating risk associated with the plants. Merchant
20 plants are not subject to the traditional regulatory
21 treatment wherein the utility is assured the opportunity to
22 recover prudently incurred costs, as well as the opportunity
23 to earn a specified rate of return (currently ranging from
24 10.75 percent to 13.0 percent in Florida and other
25 jurisdictions) on its equity investment. No retail electric
26 customers, and no utilities, are obligated to purchase the
27 output of a merchant plant, nor to pay for the capital costs

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1 of such a merchant plant if it should become uneconomic in
2 the market.

3

4 **Q: What other power plants has DEPS acquired?**

5 A: Duke Energy Power Services has closed on the acquisition of
6 three power plants in California, with total generating
7 capacity of 2,645 MW. These power plants are now owned by
8 three affiliated entities of DEPS. Duke Energy Morro Bay,
9 L.L.C. owns and operates the Morro Bay Generating Station, a
10 1,002 gas-fired unit. Duke Energy Moss Landing, L.L.C. owns
11 and operates the Moss Landing Generating Station, a 1,478 MW
12 gas-fired unit. Duke Energy Oakland, L.L.C. owns and
13 operates the Oakland Generating Station, a 165 MW diesel-
14 fueled unit. These plants are operated as merchant plants,
15 selling power predominantly into the California wholesale
16 market.

17

18 **Q: What other projects is DEPS currently developing?**

19 A: DEPS is presently developing the Bridgeport Energy Project,
20 a 520 MW (nominal) natural gas fired combined cycle power
21 plant that will, as an EWG and FERC-regulated public
22 utility, provide wholesale power to the United Illuminating
23 Company, based in New Haven, Connecticut, and to other
24 wholesale customers in New England. The Bridgeport Project
25 is presently under construction: Phase I of the Project, 350
26 MW of combustion turbine capacity, is currently producing

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1 power and is in commercial operation. The complete combined
2 cycle plant, including an additional 170 MW of steam turbine
3 generation, is expected to achieve commercial operation
4 status in July 1999. Like the New Smyrna Beach Power
5 Project, the Bridgeport Power Project will be operated by a
6 Duke subsidiary, Duke Bridgeport Energy, L.L.C., which is
7 also the majority (95.9 percent) owner of the Bridgeport
8 Project.

9 In conjunction with Associated Electric Cooperative,
10 Inc. ("AECI"), Duke is developing a 250 MW gas-fired
11 combined cycle power plant in Southeast Missouri. This
12 power plant is expected to achieve commercial operation in
13 mid-1999. DEPS is pursuing additional development
14 opportunities in the United States.

15

16 **Q: Does either DEPS or any of its merchant power plant**
17 **affiliates sell electricity at retail in other**
18 **jurisdictions?**

19 **A:** No. The only Duke Energy companies that provide retail
20 electric service are Duke Power and Nantahala Power & Light
21 Company, which serve approximately 2 million retail electric
22 customers in North Carolina and South Carolina.

23

24 **Q: Please describe Duke Energy New Smyrna Beach Power Company**
25 **Ltd., L.L.P. and its business.**

26 **A:** Duke New Smyrna is a Florida limited liability partnership

DIRECT TESTIMONY OF MICHAEL C. GREEN, P.E.

1 created in 1997. Duke New Smyrna's general partner is Duke
2 Energy Power Services Mulberry GP, Inc., a Delaware
3 corporation which has a 1 percent ownership interest, and
4 the sole limited partner is Duke Energy Global Asset
5 Development, Inc., which has a 99 percent ownership interest
6 in Duke New Smyrna. The ownership structure of Duke New
7 Smyrna is shown in Exhibit ____ (MCG-1).

8 Duke New Smyrna is a public utility under Section 201
9 of the Federal Power Act. By its order issued on June 25,
10 1998, the FERC approved Duke New Smyrna's Rate Schedule No.
11 1, which permits Duke New Smyrna to enter into negotiated
12 wholesale power sales agreements with willing purchasers.
13 Duke Energy New Smyrna Beach Power Company Ltd., L.L.P., 83
14 FERC ¶61,316. Pursuant to a FERC order issued on June 9,
15 1998, Duke New Smyrna is also an Exempt Wholesale Generator
16 ("EWG"). Duke Energy New Smyrna Beach Power Company Ltd.,
17 L.L.P., 83 FERC ¶62,220. Copies of these orders are
18 included as Exhibits ____ (MCG-2) and ____ (MCG-3) to my
19 testimony.

20 The primary purpose of Duke New Smyrna is to own and
21 operate the New Smyrna Beach Power Project, i.e., the 500 MW
22 (nominal) power plant that we are developing in New Smyrna
23 Beach, Florida, to serve the power supply needs of the
24 Utilities Commission, City of New Smyrna Beach and to
25 provide reliable, competitively priced, environmentally
26 clean, no-risk power in the Florida wholesale market.

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- 1 **Q: Please describe the regulatory status of Duke Energy New**
2 **Smyrna Beach Power Company Ltd., L.L.P.**
- 3 A: Because its business is selling wholesale power in
4 interstate commerce, Duke New Smyrna is a "public utility"
5 under the Federal Power Act and is subject to the regulatory
6 jurisdiction of the Federal Energy Regulatory Commission.
7 Duke New Smyrna has received the FERC's authorization to
8 sell wholesale power at voluntarily negotiated, market-based
9 rates. Duke New Smyrna has also been certified by the FERC
10 as an Exempt Wholesale Generator ("EWG") pursuant to the
11 Public Utility Holding Company Act of 1935 ("PUHCA"). This
12 status enables Duke Energy Corporation to own its interest
13 in Duke New Smyrna while remaining exempt from regulation
14 (by the Securities Exchange Commission) as a holding company
15 under PUHCA.
- 16
- 17 **Q: Please describe Duke Energy Corporation and its business.**
- 18 A: Duke Energy Corporation was formed in 1997 by the merger of
19 Duke Power Company and PanEnergy Corporation. Measured by
20 assets, Duke Energy Corporation is the seventh largest
21 energy company in the world. Through Duke Power and
22 Nantahala Power & Light Company, Duke Energy presently
23 serves more than 2 million electric customers in North
24 Carolina and South Carolina. Duke Power has more than
25 18,000 MW of electrical generating capacity in the
26 Carolinas. Approximately 12 percent of all natural gas

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1 deliveries in the United States move through Duke Energy's
2 pipeline system.

3 Duke Energy's subsidiaries and affiliates have
4 operations on six continents. The main areas of operations
5 are electric operations, energy transmission (electrical
6 transmission as well as natural gas and liquids), and energy
7 services. Duke Energy also has subsidiaries in real estate
8 development, telecommunications, and water systems.

9 Duke Energy is financially strong and sound, with total
10 assets exceeding \$24 billion and a bond rating of AA/AA+.

11

12 **Q: What experience do Duke Energy Corporation and other**
13 **affiliates of DEPS and Duke New Smyrna have in operating**
14 **electrical power plants?**

15 **A:** This section of my testimony addresses the power plant
16 operations of Duke Power, Duke/Fluor Daniel, and American
17 Ref-Fuel Company.

18 Duke Power. Duke Power, Duke Energy's vertically integrated
19 electric utility that serves North and South Carolina, has
20 been in the business of providing electric service from
21 company-owned-and-operated power plants for more than 90
22 years. At present, Duke Power owns and operates the
23 following generating units:

24 1. 30 pulverized coal fired power plants, located at 8
25 generating stations, with total generating capacity of
26 7,699 MW;

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- 1 2. 16 natural gas fired power plants, located at 1
2 generating station, with total generating capacity of
3 1,200 MW;
- 4 3. 23 oil fired power plants, located at 5 generating
5 stations, with total generating capacity of 589 MW;
- 6 4. 7 nuclear power plants, located at 3 generating
7 stations, with total generating capacity of 7,054 MW;
8 and
- 9 5. 79 hydroelectric power plants, located at 20 generating
10 stations, with total generating capacity of 2,694 MW.
- 11 Duke Power's coal and nuclear units have consistently
12 ranked among the most efficient in the United States.
- 13 Duke Engineering & Services, Inc., another Duke Energy
14 subsidiary, is the world's leading engineering and services
15 company, serving the nuclear, fossil and hydroelectric power
16 industry with complete plant life-cycle capabilities, from
17 design to operations to decommissioning.
- 18 Duke/Fluor Daniel. The Duke/Fluor Daniel ("DFD") companies
19 combine the engineering, construction and operational
20 capabilities of Duke Energy and Fluor Daniel Inc. DFD is
21 currently constructing or operating facilities around the
22 globe.
- 23 American Ref-Fuel Company. Duke Energy recently acquired a
24 50 percent interest in American Ref-Fuel Company, the third
25 largest waste-to-energy company in the U.S. At present,
26 American Ref-Fuel operates five waste-to-energy facilities

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1 in New York, New Jersey, and New England.

2

3 **Q: Why is Duke Energy Power Services interested in building and**
4 **operating the New Smyrna Beach Power Project in Florida?**

5 A: The Energy Policy Act of 1992 opened the nation's wholesale
6 electric marketplace. DEPS strongly believes that Florida
7 represents a sound business opportunity for wholesale power
8 plants. With its growing population, growing electric
9 demand, and peninsular geography, Florida needs additional
10 generating capacity in the peninsula, and will benefit
11 significantly from additional efficient and cost-effective
12 gas-fired power. This need is particularly evidenced by the
13 shortages and interruptions (of interruptible and load
14 management customers) during this summer's hot spell. With
15 Duke Energy's expertise and experience in constructing and
16 operating highly efficient power plants, we are confident
17 that we can compete effectively in the Florida wholesale
18 market while providing reliable, cost-effective electric
19 capacity and energy to Florida utilities for resale to their
20 retail customers. We fully recognize that, as a merchant
21 power plant, no utility nor any body of retail electric
22 customers is obligated to buy the Project's output, and that
23 Duke New Smyrna will bear all of the financial and operating
24 risks associated with the construction and operation of New
25 Smyrna Beach Power Project.

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DUKE NEW SMYRNA AND THE UTILITIES COMMISSION,
CITY OF NEW SMYRNA BEACH1
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Q: Please describe the business arrangement between the Utilities Commission, City of New Smyrna Beach and Duke Energy New Smyrna Beach Power Company.

A: The Utilities Commission, City of New Smyrna Beach, Florida, and Duke New Smyrna have entered into a Participation Agreement that sets forth the parties' duties and responsibilities in their business relationship. This Participation Agreement, including Amendment Number One, is included as Exhibit ____ (MCG-4) to my testimony. The key features of the Participation Agreement are as follows.

1. The UCNSB will furnish the site for the New Smyrna Beach Project to Duke New Smyrna.
2. The UCNSB will also furnish an interconnection point for the New Smyrna Beach Project to the 115 kV bus at the UCNSB's Smyrna Substation.
3. The UCNSB will provide reuse water from its adjacent wastewater treatment plant (currently under construction) and will provide other water supply sufficient for the process and make-up water requirements of the Project.
4. Duke New Smyrna has granted to the UCNSB an "entitlement" to 30 MW of the Project's capacity for the technical and economic life of the Project. Duke New Smyrna will provide the energy associated with the

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1 entitlement capacity at agreed-upon pricing. When the
2 final power purchase agreement is negotiated and
3 executed, Duke New Smyrna will, consistent with FERC
4 regulations, file that agreement with the FERC.
5 5. Duke New Smyrna will design, engineer, construct,
6 finance, own, and operate the Project, and will market
7 all capacity, energy, and, subject to future FERC
8 approval, ancillary services provided from the Project.
9 Duke is also responsible for the provision of natural
10 gas service to the Project.
11

OVERVIEW OF THE NEW SMYRNA BEACH PROJECT

13 **Q: Please describe the New Smyrna Beach Project.**

14 **A:** The New Smyrna Beach Project is a 500 MW (nominal) natural
15 gas fired power plant using advanced combustion turbine
16 technology in combined cycle with a heat recovery steam
17 generator and an electric steam turbine generator. The
18 Project's rated summer capacity is 476 MW and its rated
19 winter capacity is 548 MW. The Project will be constructed
20 by Duke Fluor Daniel. The Project is scheduled to achieve
21 commercial in-service status in October 2001, and is
22 projected to have a technical and economic life in excess of
23 30 years. Firm delivered gas supply will be provided for
24 the Project's operations pursuant to a contract between
25 Citrus Trading Corp. and DEPS having an initial term of 20
26 years. Exhibit ____ (MCG-5) depicts the overall structure

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1 of the New Smyrna Beach Power Project.

2 The Project will satisfy all applicable environmental
3 permitting requirements. Gas-fired combined cycle
4 technology is the most efficient and most environmentally
5 benign electric generation technology currently available
6 and feasible on a commercial basis. Indeed, we expect that
7 the Project's operations will have a net beneficial effect
8 on total emissions from power generation in Florida.

9 Detailed technical information regarding the New Smyrna
10 Beach Power Project is presented in the testimony and
11 exhibits of Mark Locascio, P.E. (power engineer), Kennie
12 Sanford, P.E. (power engineer), Jeffrey Meling
13 (environmental and permitting expert), Larry A. Wall (fuel
14 supply), Dale Nesbitt, Ph.D. (project economics), and Michel
15 Armand, P.E. (transmission issues).

16

17 PROJECTED OPERATIONS OF THE NEW SMYRNA BEACH PROJECT

18 **Q: Please give an overview of the projected operations of the**
19 **New Smyrna Project.**

20 **A:** Dr. Nesbitt's analyses of the Florida bulk power supply
21 market and of the Project's operating economics yield
22 projections that the Project will operate between 7,000 and
23 8,500 hours per year, with an availability factor of
24 approximately 96 percent. In addition to supplying 30 MW of
25 capacity and approximately 250,000 MWH per year of cost-
26 effective energy to the UCNSB, we anticipate that the

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1 Project will provide approximately 476 MW (summer) and 548
2 MW (winter) of capacity, and between 3,700,000 MWH and
3 4,200,000 MWH per year of cost-effective electrical energy,
4 into the wholesale power market in Peninsular Florida.
5

6 **Q: How likely is it that the Project will make sales to**
7 **utilities outside Florida?**

8 A: It is unlikely that any significant amount of the Project's
9 output would be sold outside Florida. This is a function of
10 several factors, including relatively low generation costs
11 in the SERC region as compared to those within Peninsular
12 Florida, recent power shortages and projected tight reserves
13 in peninsular Florida (when compared to the reserves within
14 Florida), and limited transmission export capacity from
15 Florida into the SERC region. Our analyses indicate that
16 the market for the Project's is the wholesale power market
17 within Florida, or within peninsular Florida, to be more
18 precise. Of course, this is why we are seeking the
19 Commission's determination of need that will enable us to
20 build the New Smyrna Project in peninsular Florida, and why
21 the transmission interconnection facilities are being
22 designed to accommodate deliveries of power from the Project
23 to utilities located south of the Project. Because the
24 wholesale market in Peninsular Florida needs the capacity
25 and energy of the Project, Duke New Smyrna -- being a
26 wholesale provider -- needs the Project in order to

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1 participate in that market and deliver the benefits that our
2 projections say will result from that participation.

3 It is possible that, under certain short-term
4 circumstances, Duke New Smyrna, like other Florida utilities
5 with available power for sale, would make sales to utilities
6 outside Florida. For example, if a strong cold front were
7 to stall over South Georgia, resulting in mild weather for
8 peninsular Florida coinciding with very cold weather in the
9 rest of the Southeast, it is possible that the Project
10 might, like other Florida utilities with available capacity,
11 make some wholesale sales to utilities in, perhaps, Georgia
12 or Alabama, assuming that there was adequate transmission
13 capacity to accommodate such south-to-north transactions.

14 Overall, however, we expect that the vast majority of
15 the Project's power sales will be made, at wholesale, to
16 other utilities within Florida.

17

18 **Q: Does Duke New Smyrna either plan to sell electricity at**
19 **retail in Florida or anticipate making retail power sales in**
20 **Florida?**

21 **A:** No. In the first place, by law, as an Exempt Wholesale
22 Generator, Duke New Smyrna cannot sell electricity at
23 retail. In addition, selling at retail is not a part of
24 either DEPS's or Duke New Smyrna's development or marketing
25 plans. As noted above, the only Duke Energy companies that
26 sell power at retail are Duke Power and Nantahala Power &

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1 Light, and none of DEPS's merchant plant affiliates sells at
2 retail in any jurisdiction. Our primary areas of core
3 expertise include building very efficient power plants and
4 operating them very efficiently. This wholesale operation
5 is our goal for the New Smyrna Beach Power Project.

6

7

PROJECT FINANCE, CAPITAL COST, AND VIABILITY

8

**Q: Please give an overview of the financing plan for the New
9 Smyrna Beach Power Project.**

9

10 **A:** The Project will be constructed and brought into commercial
11 service solely with internal Duke New Smyrna funds.

12

13 **Q: What is the projected capital cost of the New Smyrna Beach
14 Power Project?**

15

A: The direct construction cost of the New Smyrna Beach Power
16 Project is expected to be \$160 million, which equates to
17 approximately \$311 per kW based on the Project's 514 MW
18 capacity at ISO temperature and humidity conditions. This
19 does not include the cost of downstream transmission
20 upgrades that are planned to support power deliveries from
21 the Project; the UCNSB has estimated the cost of those
22 transmission additions to be approximately \$6.3 million.

23

24 **Q: Please comment on the financial viability of the New Smyrna
25 Beach Power Project.**

26

A: With Duke Energy's resources funding both the capital

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1 investment and the operating costs of the Project, there can
2 be no doubt as to its financial viability. With the
3 Project's anticipated internal financing, DEPS and Duke New
4 Smyrna will have very strong incentives to maintain and
5 operate the Project as efficiently and economically as
6 possible. In simple economic terms, we will expect to
7 operate the Project whenever our potential incremental
8 revenue exceeds our incremental production costs. As noted
9 above, we expect to operate the Project between 7,000 and
10 8,500 hours per year, with a very high availability factor.

11 Also, the gas-fired combined cycle technology that we
12 have selected for the Project is the most efficient and the
13 most economical currently available on a commercial basis.
14 Indeed, it is the technology of choice throughout the U.S.
15 electric industry today. Thus, we consider the Project to
16 be entirely viable. The ultimate proof of this is that we
17 are planning to invest approximately \$160 million of
18 internal Duke New Smyrna funds in this Project.

19

20

REQUESTED COMMISSION ACTION

21 **Q: What action are UCNSB and Duke New Smyrna asking the**
22 **Commission to take in this proceeding?**

23 **A: We are petitioning the Commission to issue its order**
24 **granting an affirmative determination of need for the New**
25 **Smyrna Beach Power Project. There is a need for additional**
26 **generating capacity in Florida, and the Project is a viable,**

DIRECT TESTIMONY OF MICHAEL C. GREEN, P.E.

1 clean, reliable, highly available, highly efficient, and
2 cost-effective power plant that will benefit the Utilities
3 Commission, City of New Smyrna Beach, its retail electric
4 customers, and other Peninsular Florida utilities and their
5 customers, without any obligation to purchase the Project's
6 output, without any obligation to pay for the Project's
7 capital cost, and without any of the financial or operating
8 risks associated with power plants.

9

10 **Q: Does this conclude your direct testimony?**

11 **A: Yes, it does.**

1 MR. WRIGHT: And I would ask that Mr. Green's
2 Exhibits MCG-1 through MCG-5 be marked as a composite
3 exhibit, and I would have that as 17.

4 CHAIRMAN JOHNSON: It will be marked as 17, MCG-1
5 through 5.

6 (SO MARKED EXHIBIT NUMBER 17)

7 MR. WRIGHT: And similarly, that the parts of our
8 filing exhibit that has now been identified as Exhibit 16
9 be identified and attached -- identified to Mr. Green's
10 testimony as outlined therein, and I'll move those in at
11 the conclusion of his testimony.

12 CHAIRMAN JOHNSON: That second part, the --

13 MR. WRIGHT: There are several portions of the
14 filing exhibit that Mr. Green is also sponsoring as set
15 forth at Pages 5 and 6 of his testimony.

16 CHAIRMAN JOHNSON: Okay. It will be marked and
17 identified as set forth in his testimony, I guess on Page
18 6, Lines 1 and 2.

19 MR. WRIGHT: Actually I think it starts at the
20 bottom of Page 5, Line 24.

21 CHAIRMAN JOHNSON: Line 24 through?

22 MR. WRIGHT: Page 6, Line 2.

23 CHAIRMAN JOHNSON: Line 2.

24 MR. WRIGHT: Yes, ma'am. Thank you.

25 BY MR. WRIGHT (Continuing):

1 Q Mr. Green, you have been sworn, have you not?

2 A Yes, I have.

3 Q Okay. Have you prepared a summary of your
4 testimony for the Commissioners?

5 A Yes, I have.

6 Q Would you present it, please?

7 A I'd be glad to.

8 Madam Chairman and Members of the Commission,
9 I'll try to keep my summary very brief. I'm employed by
10 Duke Energy Power Services as vice president and general
11 manager for Florida. I have general management
12 responsibilities for the Florida operations of Duke Energy
13 Power Services. I have 26 years of experience in the
14 electric industry, all with Duke or one of its affiliates.
15 Duke New Smyrna and the Utilities Commission of New Smyrna
16 Beach are respectively asking the Commission to grant this
17 determination of need for this project. This project is
18 being developed by Duke Energy Power Services. When
19 complete it will be owned and operated by Duke Energy New
20 Smyrna Beach Power Company Limited, L.L.P., which I
21 generally refer to as Duke New Smyrna.

22 Duke New Smyrna will own and operate the power
23 plant itself. The Utilities Commission of New Smyrna Beach
24 will own and operate the substation through which the
25 project will put its power out to the Florida wholesale

1 grid. The Utilities Commission of New Smyrna Beach will
2 have an entitlement to 30 megawatts of the power's out --
3 of the project's output, excuse me, and have rights to
4 purchase associated energy at a price that is determined
5 pursuant to the Participation Agreement. Duke New Smyrna
6 intends to sell the rest of the capacity and energy at
7 wholesale to investor-owned utilities, municipalities and
8 cooperatives in Florida.

9 Duke has other affiliates similar to Duke New
10 Smyrna that are currently selling wholesale in other
11 states: Currently California and Connecticut. Duke New
12 Smyrna is a public utility under the Federal Power Act with
13 an approved tariff to sell wholesale power at negotiated
14 market-based rates. This project will provide reliable,
15 cost-effective, environmentally clean power to the
16 Utilities Commission of New Smyrna Beach and to other
17 utilities in Florida.

18 Florida's electric demand is projected to grow
19 vigorously. There are few states, if any, that have a
20 growth rate as robust as Florida's. Florida needs a
21 significant amount of new generation given its geography on
22 the ground in Peninsular Florida to meet that need.

23 The direct construction cost of this project is
24 160 million dollars. This does not include substation
25 upgrades. It does not include the additional transmission

1 line upgrades that we feel will more than adequately
2 provide the capability to move power from the project to
3 other utilities in Florida, and it does not include the
4 water lines that bring the water from the wastewater
5 treatment facility of New Smyrna Beach to the plant. With
6 these elements included, our estimated cost for the project
7 is approximately 168 million dollars.

8 The project will contribute to system reliability
9 and integrity in Peninsular Florida and will also provide
10 power at a reasonable cost to Florida utilities. It has to
11 be cost effective power because wholesale buying utilities
12 will only purchase from Duke New Smyrna when it is the best
13 deal available. If they can self generate cheaper or if
14 they can buy wholesale from someone else on the already
15 existing wholesale market cheaper, they will do so and not
16 purchase from me.

17 Importantly, in contrast to traditional
18 rate-based power plants, no incumbent utility and no body
19 of electric customers would be at risk for either the
20 capital cost or the operating cost of this facility. In
21 short, this is a clean, cost-effective power supply project
22 that can only enhance reliability and integrity of electric
23 supply in Peninsular Florida. And perhaps, more
24 importantly, no one is at risk for the investment but Duke
25 Energy. I'm only an engineer, but quite frankly, I only

1 see positives for the utilities of Peninsular Florida and
2 the ratepayers of Florida with this project. And again,
3 I'm respectively asking the Commission for a determination
4 of need for this project. Thank you, that concludes my
5 summary.

6 CHAIRMAN JOHNSON: Thank you.

7 MR. WRIGHT: Madam Chairman, we tender Mr. Green
8 for cross examination.

9 CHAIRMAN JOHNSON: Okay. Mr. Moyle.

10 MR. MOYLE: Thank you, Chairman Johnson.

11 CROSS EXAMINATION

12 BY MR. MOYLE:

13 Q Mr. Green, I have a few questions, and I
14 appreciate your testimony that was filed and what not, but
15 with respect to the New Smyrna arrangement, there has been
16 a little discussion about contracts and the need for
17 contracts. Do you consider the exhibit that was attached
18 to the direct testimony of Mr. Vaden a contract?

19 A You're referring to the Participation Agreement?

20 Q That's correct.

21 A Absolutely so. It's a binding contract signed by
22 both parties.

23 Q There is also -- you talk about your business
24 operations and what not and negotiations. I've got a
25 couple of questions with respect to your anticipated

1 business operations in negotiating the sale of power coming
2 out of this power plant. Do you intend to enter into such
3 negotiations to sell the power coming out of this power
4 plant?

5 A Absolutely. As soon as I have a good indication
6 that I'm going to be allowed to build this facility, then I
7 will get into very robust negotiations with wholesale
8 buyers in the state.

9 Q It wouldn't make any sense for you at this time,
10 would it, to spend a lot of time negotiating with people
11 until you get a clear indication as to whether you are
12 going to be permitted by this Commission to go forward and
13 build this power plant; isn't that correct?

14 A That is correct. I feel it would be
15 inappropriate for me to try to enter into any firm, binding
16 negotiations for power sales when I don't know I have the
17 green light to go forward with this plant.

18 Q Okay. And in terms of making your business
19 judgment about coming -- to try to put this plant in the
20 ground, you talked about the need for energy in Florida.
21 Did you go back and look at the events surrounding that
22 1989 Christmas freeze when we had a severe shortage in the
23 state?

24 A I looked at it briefly, yes.

25 Q And you also were aware of the shortage this

1 summer in the state when we had some hot weather in the
2 summer? Are you aware of that?

3 A Yes, I was.

4 Q And did that factor into your decision and kind
5 of continued belief that this type of a plant is needed in
6 the State of Florida?

7 A Absolutely. I look at that as two good
8 indicators that there is a need for additional capacity in
9 Peninsular Florida.

10 Q And you're aware, aren't you, that as we sit here
11 today that there is some competition in the wholesale
12 market in the State of Florida?

13 A A wholesale market exists today in Florida.

14 Q And that some of that wholesale market is made up
15 of the state's investor-owned utilities who are selling
16 their excess capacity; isn't that correct?

17 A That is correct.

18 Q And as far as you know, there is nothing that
19 would govern what price they could charge on that wholesale
20 market, is there?

21 A I do not believe there is anything that would
22 govern what any existing supplier in Peninsular Florida
23 could charge in the wholesale marketplace. They are
24 totally open to market conditions.

25 Q Given the fact that there are investor-owned

1 utilities that are selling their excess capacity in the
2 marketplace and that the market is governing that, are you
3 aware of any situations where those investor-owned
4 utilities have been accused of gouging in that wholesale
5 market?

6 A I wouldn't characterize gouging. The market
7 clears at what the market clears. When demand is high and
8 supply is short, the clearing price would indeed rise.
9 Currently there's few players in the wholesale market of
10 Florida. More players in the wholesale market is better.
11 It will keep a better market control on the clearing price
12 of wholesale energy.

13 Q And isn't it your belief that if you had more
14 players and more competition in the wholesale market that
15 that would drive the price downward?

16 A Absolutely. More players in a wholesale
17 marketplace will have a downward pressure on pricing.

18 Q And when you -- Assuming the Commission acts
19 favorably on your petition and you're given the green light
20 to go ahead, to the extent that you have excess capacity,
21 don't you intend to let the market govern the price of it?

22 A Absolutely. There is no other way to do it. It
23 must be governed by market conditions.

24 Q Thank you.

25 MR. MOYLE: Madam Chairman, I have no further

1 questions at this time.

2 CHAIRMAN JOHNSON: Okay. Mr. Guyton.

3 CROSS EXAMINATION

4 BY MR. GUYTON:

5 Q Mr. Green, you feeling better today?

6 A Better, still not good. I need a vacation.

7 Q I understand the sentiments, sir.

8 Let me ask a follow-up question, if I might, to a
9 question by Mr. Moyle. Is it your understanding -- are you
10 testifying that Florida investor-owned utilities have
11 market-based rates?

12 A I believe that Florida investor-owned utilities
13 participate in the wholesale market with some of their own
14 committed capacity.

15 Q Is it your understanding though that they have
16 FERC approved market-based rates like Duke New Smyrna has?

17 A I believe they do.

18 Q Do you know that for a fact, or are you just
19 speculating?

20 A I believe that they do. If they are
21 participating in a wholesale market, I believe they must
22 have market-based rate determination.

23 Q Well, now they could have rates approved by the
24 Federal Energy Regulatory Commission other than
25 market-based rates, couldn't they?

1 A I'm not certain.

2 Q So you don't really know whether or not the
3 investor-owned electric utilities in the State of Florida
4 have market-based rates?

5 A I do not know for a fact, no.

6 Q All right. Several times in your testimony,
7 Mr. Green, you speak of Duke New Smyrna bearing all of the
8 capital investment and operating risk associated with the
9 project while purchasing utilities and their ratepayers
10 bear none. Do you recall that?

11 A Yes, I do.

12 Q Now what specific utilities are you referring to
13 when you use the term "purchasing utilities"?

14 A Any state regulated utility that would build
15 power plants and put the cost of that into their rate
16 base.

17 Q Well, do you have any specific purchasing utility
18 in mind when you use the term "purchasing utility"?

19 A I'm not sure if I've got any particular in mind,
20 no. I think in general the major utilities that exist in
21 Florida today are putting capacity on the ground in the
22 rate-based concept.

23 Q Has any entity other than the Utilities
24 Commission of New Smyrna Beach been identified as a
25 specific purchasing utility for the Duke New Smyrna output?

1 A We are identifying as potential purchasers the
2 investor-owned utilities, FMPA, perhaps the cooperatives
3 and other municipalities in the state.

4 Q Those are all potential. Have any other specific
5 entities contracted for the purchase?

6 A We have no other contracts as yet.

7 Q So you don't know which, if any, Peninsular
8 Florida utilities you'll sell the uncommitted output of
9 this capacity to, do you?

10 A At this time I do not.

11 Q Now you plan to sell your capacity on the open
12 market, correct?

13 A I plan to sell my capacity and energy under any
14 set of -- an array of combinations of whatever the
15 customers buying, wholesale buyers in the state are looking
16 for.

17 Q And you plan to sell your plant's output to the
18 highest bidder, don't you?

19 A I plan to sell the output of our plant at
20 whatever we negotiate with our potential buyers.

21 Q And if you have two deals that are otherwise
22 equal, you are going to take the one with the higher price,
23 aren't you?

24 A In all likelihood, yes, depending -- all the
25 terms of the contract are the same.

1 Q Now you'll sell your capacity to the higher
2 bidder even if that particular higher bidder doesn't need
3 your capacity to meet its reliability criteria, won't you?

4 A Could you say that again, sir? I'm sorry.

5 Q You will sell the output of your capacity to the
6 higher bidder even if that particular utility doesn't need
7 your capacity to meet its reliability criteria, won't you?

8 A If a wholesale buyer will enter into a contract
9 with me for the output, I will -- at a negotiated rate, I
10 will sell to them, as long as we agree on the price.

11 Q And you won't stop that potential purchaser from
12 trying to buy from you even if that purchaser doesn't need
13 it for reliability purposes, will you?

14 A I don't think he would buy from me unless he
15 needed it.

16 Q Well, sir, are you speaking now of economic need,
17 or are you speaking of a reliability need?

18 A Probably both.

19 Q Is it your testimony that you don't think any
20 utility in the State of Florida would buy from you solely
21 for economic need, that they would all have to have a
22 reliability need?

23 A I would expect utilities in Florida to buy from
24 me for perhaps both. It could be a reliability need, or it
25 could be an economic need.

1 Q When you state that Duke New Smyrna assumes all
2 the capital investment risk in the project, what do you
3 mean by the term "capital investment risk"?

4 A I'm an engineer, but basically it's, I'm writing
5 a check for the plant.

6 Q So it's a risk of recouping your investment and a
7 risk of recovering a return on your investment?

8 A Duke Energy Power Services -- Duke New Smyrna,
9 I'm sorry, is assuming the risk that we will be able to
10 recoup our investment, yes.

11 Q And as well as, you're assuming a risk that
12 you'll earn an adequate return on your investment?

13 A Yes.

14 Q Any other capital investment risks that you can
15 identify or you mean to refer to?

16 A I don't know of any. I'm not sure where you're
17 going.

18 Q The entities that bear the capital investment
19 risk in the project, they will be the investors in this
20 project, correct?

21 A Yes.

22 Q And who are those entities that bear the capital
23 investment risk in this project?

24 A Duke Global Asset Development is the primary
25 investor in this project.

1 Q And who is the other investor?

2 A I have to check my testimony. Hang on a second.

3 (WITNESS REVIEWED DOCUMENTS)

4 A Duke Energy Global Asset Development, Inc. is 99%
5 limited partnership, and they own one hundred percent of
6 the stock. Duke Energy Power Services Mulberry, General
7 Partner, Inc. is the general partner. Does that answer the
8 question?

9 Q Well, are those the only investors in this
10 project?

11 A Outside of the costs of the substation, water and
12 transmission lines, yes, I believe so.

13 Q If the investors that assume the capital
14 investment risk in the project receive a return on their
15 investment, what will the source of revenues of that be?

16 A Revenues from wholesale buyers that we are
17 selling our output to.

18 Q And you project that to be Peninsular Florida
19 utilities, correct?

20 A Yes, that is true.

21 Q And if Peninsular Florida utilities buy the
22 power, they will in turn pass the cost of that power on to
23 their ratepayers, correct?

24 A I'm not an expert on the rate structure of
25 Florida, but I believe that's how it works.

1 Q So even though Duke New Smyrna won't sell
2 directly to end-use ratepayers, if it sells to Peninsular
3 Florida utilities as envisioned, Florida ratepayers will
4 pay the revenues which will ultimately pass to the
5 investors in Duke New Smyrna as a return on their
6 investment, correct?

7 A I disagree with the characterization that the
8 ratepayers are going to provide Duke a return on their
9 investment. I believe the ratepayers of Florida are paying
10 for a kilowatt hour. They are not sure where it's going.

11 Q And that revenue in turn is paid to their
12 utilities which in turn pay it to Duke New Smyrna, correct?

13 A I believe that's correct.

14 Q All right. So you disagree with the
15 characterization that Florida ratepayers, if this project
16 operates as envisioned, will ultimately pay the revenues
17 that earn the return to the investors in the capital
18 investment?

19 A I might have misheard your question earlier, but
20 again, I think ratepayers of Florida are paying their
21 dollars for a kilowatt hour. They are not paying it to
22 recoup any -- In their minds I don't believe they are
23 recouping any investment of anybody.

24 Q Well, sir, I didn't ask you what they were
25 thinking. I asked you if indeed the revenues that they

1 paid would have the effect of paying the return on the
2 investment, and isn't that the case?

3 A That's --

4 MR. MOYLE: Madam Chair, in terms of the
5 question, it presumes that he has to know what the
6 investor-owned utilities would do with respect to the
7 ratepayers after he sells them the power. I think it
8 requires him to have to speculate. I mean he can't be put
9 in a position of knowing what the investor-owned utilities
10 will do after he sells them the power. It's a little
11 unfair.

12 MR. GUYTON: Commissioners, I think it's quite
13 fair. He understands the revenue stream quite candidly, he
14 just won't admit to the ultimate --

15 COMMISSIONER GARCIA: Let me ask you a question
16 then to follow up that question.

17 WITNESS GREEN: Sure.

18 COMMISSIONER GARCIA: Staples that sells paper
19 clips to Florida Power Corporation or Florida Power &
20 Light, the ratepayers of Florida are paying for the
21 revenues that will be made by Staples, correct?

22 WITNESS GREEN: I believe that's correct.

23 COMMISSIONER GARCIA: So in your contract -- in
24 your case, yes, to some degree, I guess, the ratepayers of
25 Florida will be paying, I guess, the revenues that will be

1 derived to some degree by Duke Power?

2 WITNESS GREEN: To some degree, I would --

3 COMMISSIONER GARCIA: But I understand your point
4 to be that they are paying for kilowatt hours.

5 WITNESS GREEN: They are paying for kilowatt
6 hours. I don't know the extent, and I'm not an expert on
7 the rate structures of Florida, so I'm not sure of all of
8 the revenue stream from the utilities coming from the
9 ratepayers. I believe that would be correct, however.

10 MR. WRIGHT: Madam Chairman, I'm going to pose an
11 objection to the form of the questions being asked by
12 Mr. Guyton to the extent that they assume that there will
13 be -- that the payments made by ratepayers to utilities and
14 thence on to Duke New Smyrna when it sells such power will,
15 in fact -- His questions are assuming that it will, in
16 fact, include a payment that will be a return on
17 investment. That's not been established.

18 CHAIRMAN JOHNSON: Mr. Guyton.

19 MR. GUYTON: Well, I think what I asked him is
20 that if they earn a return on their investment won't it be
21 from Florida ratepayers. I didn't ask him to assume that
22 there would be. I said if there was one, wouldn't the
23 source of revenues ultimately be from Florida ratepayers?

24 MR. SASSO: I would add that the facts that
25 Mr. Wright has mentioned have just been established by the

1 witness.

2 CHAIRMAN JOHNSON: You can answer the question.

3 BY MR. GUYTON (Continuing):

4 Q Now unlike investors in Florida utilities,
5 investors in this project do not face any regulatory
6 limitation on their earned rate of return, do they?

7 A That is correct.

8 Q Now do investors in investor-owned Florida
9 utilities bear the capital investment in those utilities
10 generating assets?

11 A Could you repeat? I'm sorry, Mr. Guyton.

12 Q Do investors in investor-owned Florida utilities
13 bear the capital investment in those utilities generating
14 assets?

15 A I'm not -- again, I'm not an expert on the
16 Florida structure for utilities. I would believe that some
17 of it is borne by the ratepayers and some by the investors.
18 I'm not sure what the breakout is.

19 Q Do you recall your deposition?

20 A Yes, I do.

21 Q Do you have a copy of your deposition with you?

22 A Yes, I do.

23 Q Would you turn to Page 42 of your deposition?

24 A Yeah, I've got it.

25 Q There I ask you the question on line 2: "Let me

1 ask you this: Do investors in investor-owned utilities bear
2 the capital investment risk in generating assets?" What
3 was your answer?

4 A "Yes, I believe they do."

5 Q All right. Are you changing your testimony now,
6 sir?

7 A No, I don't believe so. As the next line
8 suggests, I suggest I wasn't sure if ratepayers also share
9 in some of that utility generating assets.

10 Q Now ratepayers in a utility are not investors in
11 a utility by virtue of them being ratepayers, are they?

12 A Not by virtue. They could be. I mean --

13 Q But if they are, it's because they are invested
14 in the stock market and not because they are ratepayers?

15 A Yes. Yes, I'm sorry.

16 Q Now investors in utilities are not guaranteed a
17 return on their investment, are they, sir?

18 A No, they are guaranteed an opportunity to earn a
19 rate of return, I believe.

20 Q And utilities can and have gone bankrupt, haven't
21 they?

22 A Yes, they have.

23 Q Now the inclusion of an asset in a utility's rate
24 base doesn't guarantee that it will earn a rate of return,
25 does it?

1 A No, it does not guarantee that.

2 Q But if the asset is included in a utility's rate
3 base, there is a cap on the utility's authorized rate of
4 return, isn't there?

5 A I believe that is what -- I believe that is
6 correct.

7 Q And the investors in a utility face a risk of
8 regulatory intervention if the utility earns in excess of
9 its authorized rate of return, don't they?

10 A Generally I agree. Again, I'm not an expert on
11 the Florida situation.

12 Q But investors in a merchant plant, they don't
13 face the possibility of a state regulatory authority coming
14 in and adjusting the merchant's rate of return, do they?

15 A They do not, I agree.

16 Q Now if investors in a Florida utility, if they
17 receive a return on their capital investment, what's the
18 ultimate source of revenues that pay that return?

19 A I would envision the revenues supplied to them by
20 their assigned customers and their wholesale sales that
21 they make.

22 Q So can we say that both merchant plants as you
23 propose, if they operate as intended and sell to Peninsular
24 Florida utilities as well as utilities in Peninsular
25 Florida, ultimately if they earn a return on their

1 investment, it will be due to revenues received from
2 Peninsular Florida utility customers?

3 A Yeah, I believe that whatever return either a
4 merchant plant makes or an investor-owned utility makes,
5 the revenue that determines that is based on the rates, in
6 the case of utilities, what they are charging and what
7 revenue streams we get from utilities.

8 Q Now what do you mean by the term "operating risk"
9 in your testimony?

10 A If we operate this plant efficiently, we will
11 sell the output of this plant at a lower cost than if we do
12 not operate this plant as efficiently.

13 Q So operating risk is essentially a consideration
14 of efficiency?

15 A It's a consideration of how efficiently we are
16 operating the plant, would be the way I would say it.

17 Q Is there any other risk of operation other than
18 the efficiency of the unit?

19 COMMISSIONER DEASON: Mr. Guyton, I'm sorry, I
20 need to interrupt for just a second and get something
21 clarified.

22 MR. GUYTON: Sure.

23 COMMISSIONER DEASON: Mr. Green, did I understand
24 you to say that you indicated that to the extent you
25 operate more efficiently you can charge less for the output

1 of the plant or that you would charge less? I'm trying to
2 understand what you said.

3 WITNESS GREEN: If we operate the plant more
4 efficiently than less efficiently, our cost structure is
5 less; therefore, as a merchant plant, I will sell the
6 output of this plant whenever I can exceed the cost of my
7 fuel and my variable O&M.

8 COMMISSIONER DEASON: But you're not going to
9 base your rates upon your cost, you are going to base your
10 rates upon the market; is that correct?

11 WITNESS GREEN: Yes, I am.

12 COMMISSIONER DEASON: Okay. I just wanted to
13 clarify that.

14 WITNESS GREEN: I'm sorry.

15 BY MR. GUYTON (Continuing):

16 Q And indeed when you base your rates on the
17 market, it's going to be the highest that the market will
18 bear, won't it?

19 A It will be whatever the buying entity feels is a
20 fair price, or they would not buy it from me.

21 Q Okay. And that's --

22 A From my side it would be the highest of two equal
23 bids, yes.

24 CHAIRMAN JOHNSON: Could you say that answer
25 again? And let me -- before you do that, when he asks a

1 question, could you start off with a yes/no answer first
2 and then explain?

3 WITNESS GREEN: I'm sorry. I apologize.

4 CHAIRMAN JOHNSON: And could you then -- The
5 last part of it I think you answered yes, but what was
6 your -- what were the words that you used?

7 WITNESS GREEN: Mr. Guyton, restate the question
8 and make sure I do it right.

9 MR. GUYTON: Perhaps we could get the reporter to
10 read it back.

11 (WHEREUPON, THE COURT REPORTER REREAD THE
12 QUESTION)

13 BY MR. GUYTON (Continuing):

14 Q If the investors in Duke New Smyrna are
15 compensated for their operating risk, if they are
16 compensated for them, once again, the ultimate source of
17 revenue paying their return will be Peninsular Florida
18 ratepayers, won't they?

19 A Ultimately the ratepayers of the utilities pay
20 the utilities and the utilities pay me.

21 Q So consistent with Commissioner Johnson's
22 instruction, would the answer be yes?

23 A I'm sorry, yes.

24 Q Let's assume that your project was successful in
25 securing a determination of need and a power plant

1 certification, and let's assume that you entered into a
2 long-term contract for 200 megawatts of output with a
3 project that's a Peninsular Florida utility. That's a
4 possibility, isn't it?

5 A Yes, it is.

6 Q Let's assume further that the purchasing utility
7 had relied upon your 200 megawatts of output in its
8 planning process instead of building 200 megawatts. Are
9 you with me so far?

10 A Yes, sir.

11 Q Let's further assume that in your contract with
12 that utility --

13 COMMISSIONER GARCIA: I'm sorry, I missed that
14 point. Can you just repeat it?

15 Q Let's assume that the purchasing utility had
16 relied upon that 200 megawatts of output in its planning
17 process instead of building its own 200 megawatts.

18 Let's assume further that there is no replacement
19 power provision in your 200-megawatt contract. That's a
20 possibility too, isn't it?

21 A Yes.

22 Q Now let's assume that your unit does not perform
23 at the time of the purchasing utility's peak and the
24 utility has insufficient reserves to replace your power and
25 its customers are interrupted. In that scenario, hasn't

1 the purchasing utilities and its customers borne the
2 operating risk of the Duke New Smyrna unit?

3 A I'm trying to follow through the sequence here of
4 the ifs. Again, I don't believe that the ratepayers -- the
5 answer is no, I do not believe the ratepayers in Florida
6 are bearing any operating risks of a merchant plant.

7 Q Well, let's go back through the scenario and see
8 where the logic broke down. We assumed that you had a
9 200-megawatt contract, and you said that was a
10 possibility. We assumed that a Florida utility relied upon
11 you. Certainly you believe that's a possibility?

12 A Yes. Is that a question? I'm sorry.

13 Q And we assumed that the replacement power
14 contract didn't -- that the contract didn't have a
15 replacement power provision, that was another possibility
16 you agreed to?

17 A That is a possibility.

18 Q Now we assumed that at the time of the utility's
19 peak the utility -- that your unit didn't operate as
20 envisioned, your 200 megawatts of capacity wasn't available
21 as envisioned, and that the utility didn't have sufficient
22 reserves to replace your power and its customers were
23 interrupted. In that scenario, isn't the purchasing
24 utility and its customers bearing the operating risk of
25 this plant?

1 A I'm sorry, Mr. Guyton, I can't agree to that. I
2 believe that -- I just can't believe that -- agree to
3 that.

4 Q Why not, sir?

5 A If a contract was entered into and if there was
6 no backup provision of the contract, I would only envision
7 that the buying utility that is purchasing from us would
8 have some other sources of backup or it wasn't important to
9 them and, therefore, the backup provision would have been
10 asked for. So in that context, I can't get that far with
11 your logic.

12 Q Well, sir, I asked you to assume that away, that
13 they didn't have an adequate backup provision; and in that
14 scenario, don't the ratepayers of the utility face an
15 operating risk associated with your plant?

16 A In the scenario as you've laid it out with all of
17 the assumptions, indeed if all that played out true and if
18 there was no other capacity available for the utility to
19 purchase from at that time, then the ratepayers would, I
20 only assume, would be interrupted.

21 Q And that would be bearing the operating risk of
22 the plant, wouldn't it?

23 A I'm sorry, Mr. Guyton, I don't equate those two
24 as bearing the operating risk, just in my terminology.

25 Q You want the Florida utilities to rely upon the

1 capacity and energy from this project, don't you?

2 A Absolutely.

3 Q And you want them to rely upon it to meet their
4 service obligations, don't you?

5 A Yes.

6 Q And you will gladly enter into a contract with
7 those utilities that doesn't obligate you to provide
8 replacement power, won't you?

9 A If that's what the buying utilities are looking
10 for, we'd certainly enter into such contract. Yes, I'm
11 sorry.

12 Q At Page 6 and 7 of your testimony, you state that
13 a utility -- that no utility or retail customers are
14 obligated to pay the capital costs of a merchant plant if
15 it becomes economic in the market. Do you recall that?

16 A I recall that. I'm not sure I found it yet, but
17 I recall it.

18 Q All right. Let's assume that you sign a 20-year
19 contract to provide a utility 30 megawatts of capacity.
20 That's a possibility, isn't it?

21 A Absolutely.

22 Q And after four years of that contract, after the
23 commercial in-service date of the unit, your project
24 becomes uneconomic in the market. That's a possibility,
25 isn't it?

1 A It's unlikely, but a possibility, yes.

2 Q Indeed that's a possibility that you provided for
3 in your contract with Duke New Smyrna, isn't it?

4 A Yes, we did.

5 COMMISSIONER GARCIA: Before you move on,
6 Mr. Guyton, how could that possibility Mr. Guyton -- You
7 said it was unlikely. Give me the unlikely scenario that a
8 modern day power plant would become inefficient within five
9 years that Duke would close it down. Give me -- You said
10 it was highly unlikely, but give me the scenario that he is
11 talking about. I mean you are an engineer. What, we
12 figure out how to -- Fusion energy becomes affordable?

13 WITNESS GREEN: I cannot envision a way in the
14 next four years that this plant with the state-of-the-art
15 technology that it is employing will become not cost
16 effective in the next four years.

17 COMMISSIONER GARCIA: How about if gas prices
18 just go way up?

19 WITNESS GREEN: I can't envision gas prices going
20 out the roof that much in four years time.

21 COMMISSIONER GARCIA: And even if they did go up,
22 they'd go up for everyone, so you --

23 WITNESS GREEN: It would not be just me.

24 COMMISSIONER GARCIA: I'm sorry, Mr. Guyton, I
25 just wanted --

1 BY MR. GUYTON (Continuing):

2 Q Let's go back through the hypothetical and make
3 sure we are still on the same page. Let's assume you have
4 a 20-year contract to provide a utility 30 megawatts of
5 power and after four years from your commercial operation
6 date your project becomes uneconomic in the market, for
7 whatever reason. Now even though your project was no
8 longer economic, you wouldn't forgive the utility from
9 meeting its contractual obligations to pay you for the 20
10 years, would you?

11 A I'm sorry, I would not forgive them what? I'm
12 sorry, I could not hear your last part.

13 Q You wouldn't forgive the purchasing utility the
14 remaining 16 years of the contract to purchase from you,
15 would you?

16 A If my plant becomes uneconomic, that's the best
17 thing for the buying utility in four years. That means
18 that there's another option out there that's at a better
19 price than what I can offer him from my plant. That's good
20 for whoever in your hypothetical case I'm selling to.

21 Q I agree, but you're not going to forgive him the
22 other 16 years of your contract with him, are you? You are
23 going to expect him to pay you for the full 20 years,
24 aren't you?

25 A If I'm not selling them -- Well, it depends on

1 what the stipulations of the contract are. I guess I'm
2 going back to the Utilities Commission of New Smyrna Beach,
3 but it depends on what the stipulations are.

4 COMMISSIONER GARCIA: Well, I think that is what
5 he is asking you. Under the contract, what would happen?

6 WITNESS GREEN: Which contract, sir, is what I'm
7 asking.

8 COMMISSIONER GARCIA: The contract with the city.

9 WITNESS GREEN: No, that's not what he asked me,
10 sir, I don't believe.

11 MR. GUYTON: That's not what I was asking.

12 COMMISSIONER GARCIA: -- with someone else, okay.

13 WITNESS GREEN: I'm sorry, I was getting
14 confused. Are you waiting on me for -- I'm sorry.

15 BY MR. GUYTON (Continuing):

16 Q Yes, sir, I'm just asking. You are not going to
17 forgive somebody that has a 20-year contractual obligation
18 with you simply because your plant is no longer economic in
19 the market, are you? You are going to expect them to pay
20 you, aren't you?

21 A Again, I don't know what the, all the base -- all
22 the stipulations of such a hypothetical contract are and
23 what the provisions may be for such a contract. I mean if
24 we enter into a contract, both parties will live by the
25 contract, whatever that contract says. I can't speculate

1 what I might forgive or not forgive in a contract that
2 doesn't exist.

3 Q Would you turn to Paragraph 1.1 of the
4 Participation Agreement?

5 A Yes, sir, I've got it.

6 Q Now that paragraph explains Duke New Smyrna's --
7 I'm sorry, the Utilities Commission's entitlement to
8 capacity, correct?

9 A That is correct.

10 Q And that entitlement continues for the technical
11 and economic life of the facility, correct?

12 A That is correct.

13 Q And the technical and economic life of the
14 facility is the period that the facility is technically
15 capable of producing electricity at a cost that results in
16 a reasonable profit and cash flow to the owner of the
17 facility, correct?

18 A That is correct.

19 Q So the Utilities Commission's entitlement is
20 contingent upon your facility being technically capable of
21 generating at a cost that produces a reasonable profit and
22 cash flow?

23 A That is correct.

24 Q What would a reasonable profit and cash flow to
25 the owner of a facility be within the meaning of Paragraph

1 1.1?

2 A Once this plant is built, whenever -- again,
3 whenever I can sell the output of this plant at a price
4 that exceeds my fuel and variable O&M costs, that's a
5 contributor to the already sunk cost that we put into this
6 plant. When I cannot sell the output of this plant at
7 price -- at that level or greater, I will not sell it.

8 Q Yes, sir, but that contribution to your fixed
9 cost, doesn't necessarily mean a profit, does it?

10 A No, it does not.

11 Q All right. What is the reasonable profit and
12 cash flow to the owner within the meaning of this
13 paragraph?

14 A I'd submit that's proprietary to Duke.

15 Q So you can't say?

16 A I can't say.

17 Q And you've not shared those values the Utilities
18 Commission, have you?

19 A I'm not sure. I believe we shared some financial
20 information under confidentiality. I'm not sure right
21 now. I can't remember what all that involved or included.

22 Q Were you here earlier today when Mr. Vaden was
23 testifying?

24 A Yes.

25 Q Do you recall that he wasn't aware of that

1 information?

2 A Which information again, Mr. Guyton?

3 Q What you would consider to be a reasonable profit
4 and cash flow.

5 A Yes. I'm sorry. Yes.

6 Q Isn't he the person that --

7 COMMISSIONER DEASON: Excuse me. I think maybe
8 there may a mis -- When you said Utilities Commission
9 supplying information, you're talking about New Smyrna
10 Utilities Commission, not the Florida Public Service
11 Commission?

12 MR. GUYTON: Yes, sir.

13 WITNESS GREEN: I'm sorry, I assumed --

14 COMMISSIONER DEASON: I thought you meant --

15 WITNESS GREEN: Excuse me, I'm sorry. Yeah, we
16 provided no information to Mr. Vaden nor the Utilities
17 Commission of New Smyrna Beach. Excuse me, I thought you
18 were referring to this Commission here.

19 BY MR. GUYTON (Continuing):

20 Q Now are you saying that you have provided
21 information to the Florida Public Service Commission that
22 indicates what is a reasonable profit and cash flow to the
23 owner under Paragraph 1.1 of the participation agreement?

24 MR. WRIGHT: Madam Chairman, I don't exactly
25 object to this question, but I do kind of want to clarify

1 what is going on. Staff asked us in an interrogatory in
2 which they inquired as to Duke New Smyrna's cost of
3 internal funds. We answered that in accordance with your
4 rules under cover of a notice of intent to request
5 specified treatment. We provided the information to the
6 staff. Subsequently, within the time allotted, they
7 returned the interrogatory answer to us.

8 CHAIRMAN JOHNSON: Okay.

9 MR. WRIGHT: I do want to clarify, that was the
10 estimated cost of internal funds. That may or may not be
11 the reasonable profit, and Mr. Guyton may inquire, as far
12 as I'm concerned, may inquire of Mr. Green about that to
13 the extent he knows. I just wanted you to know the facts
14 of what we have shared with your staff.

15 CHAIRMAN JOHNSON: Thank you.

16 MR. WRIGHT: Yes, ma'am.

17 BY MR. GUYTON (Continuing):

18 Q Mr. Green, do you know if Duke New Smyrna has
19 disclosed to the Florida Public Service Commission, the
20 five commissioners that are sitting before you here today,
21 what is a reasonable profit and cash flow to the owner of
22 the facility within the meaning of Paragraph 1.1?

23 A I do not believe we have shared that with the
24 Commissioners themselves. We have shared with the
25 Commission staff some financial information on our cost of

1 capital. I believe that is correct.

2 Q Mr. Green, have you ever performed a load
3 forecast for Peninsular Florida?

4 A No, I have not.

5 Q Have you ever performed a load forecast?

6 A No.

7 Q Have you ever performed a generation expansion
8 plan for Peninsular Florida?

9 A Nope.

10 Q Ever performed a generation expansion plan?

11 A No.

12 Q Ever run a system production costing model?

13 A No.

14 Q Ever testified regarding integrated resource
15 planning?

16 A No.

17 Q Have you ever testified for Duke Energy regarding
18 its system planning?

19 A No.

20 Q Have you ever performed a reliability assessment
21 for Duke Energy?

22 A No.

23 Q Have you ever performed any system reliability
24 assessment for Peninsular Florida?

25 A No.

1 Q Have you ever performed any system reliability
2 assessment anywhere?

3 A No.

4 Q Do you consider yourself an expert in generation
5 expansion planning?

6 A No.

7 Q Do you consider yourself an expert in electric
8 system planning?

9 A No.

10 Q Are you holding yourself out as an expert in
11 generation expansion planning in this case?

12 A No, I am not.

13 Q Now you testify at Page 18, Lines 3 through 6,
14 that Duke New Smyrna may like other Florida utilities make
15 sales outside of Florida, correct?

16 A What page again, Mr. Guyton?

17 Q Page 18, Lines 3 through 6.

18 A Yes, that is correct, under certain short-term
19 circumstances.

20 Q And you give one such example there of sales
21 happening when a cold front stalls and makes it cold in the
22 remainder of the southeast but mild in Florida, correct?

23 A That is correct.

24 Q Now that's not the only potential short-term
25 circumstance, is it?

1 A It probably is not the only possible
2 circumstance, no, but it's the most likely circumstance
3 that would cause us to, for some reason, try to sell
4 outside Peninsular Florida.

5 Q Now in that situation that you have hypothesized
6 there, you would expect that the cost in Georgia and
7 Alabama and the rest of the southeast for power would be
8 such that it might make a purchase from Duke New Smyrna
9 attractive to the Georgia and Alabama utilities, correct?

10 A I believe that if this hypothetical situation as
11 I've suggested in the testimony were to occur that the
12 buyers of SERC would be -- if any wholesale buyer
13 would -- any wholesale provider has uncommitted capacity in
14 Florida would also be trying to sell into SERC; and if that
15 price was attractive, the SERC buyers would buy it.

16 Q So if you were to make the sale that's envisioned
17 and discussed in your testimony, you'd be taking advantage
18 of economic opportunities in the SERC region, wouldn't you?

19 A That is correct, as would any other wholesale
20 provider of uncommitted capacity.

21 Q Now at Page 17 of your testimony, you state that
22 it's unlikely that any significant amount of the project's
23 output will be sold outside of Florida and that that's a
24 function of three things: Relatively low SERC generation
25 costs, recent power shortages and tight reserves in

1 Peninsular Florida, and limited transmission export
2 capacity from Florida into SERC, correct?

3 A That is correct.

4 Q Now isn't there some 19 hundred megawatt
5 transmission export capability from Florida into Georgia
6 available in the summer and some 25 hundred megawatts
7 available in the winter?

8 A I believe that's approximately the right numbers,
9 yes.

10 Q Now under FERC's open access rules, isn't that
11 capacity uncommitted and available to Duke New Smyrna?

12 A I believe it's uncommitted to any wholesale
13 provider that's trying to sell that way, I believe.

14 Q And it would be available to Duke New Smyrna,
15 wouldn't it?

16 A Yes, it would be available to us and others.

17 Q And certainly 19 hundred to 25 hundred megawatts
18 of capacity would be sufficient to move 500 megawatts for
19 Duke New Smyrna, wouldn't it?

20 A I would believe so, yes.

21 Q So there's not really a transmission constraint
22 that would physically prohibit Duke New Smyrna from moving
23 its power out of the state, is there?

24 A No, but I believe there would be a competition
25 for that transmission, depending on what the need was in

1 SERC. That any wholesale provider in Peninsular Florida
2 with uncommitted capacity, and if the market existed in
3 Georgia, they would attempt to sell there and there would
4 be competition for that, whatever available transmission
5 capacity there is.

6 Q Now another reason that you gave to say that you
7 thought that it was likely that the output would stay in
8 Florida is the recent power shortages and projected tight
9 reserves in Peninsular Florida. When you refer to recent
10 power shortages, what do you mean there, sir?

11 A The summer of 1998 was very tight on reserves.
12 If there wasn't a shortage of power, it was extremely
13 close. There's basically a greater excess capacity, if you
14 will, in SERC than there is in Peninsular Florida.

15 Q You've relied on Doctor Nesbitt's testimony,
16 haven't you?

17 A Yes, in part, yes.

18 Q Is that what Doctor Nesbitt shows, that reserves
19 are tighter in Florida than they are in SERC?

20 A I'm not sure if that's mentioned in his testimony
21 or not.

22 Q All right, sir. Now those, what you've
23 characterized the recent power shortages, they were weather
24 related, weren't they?

25 A I believe they were.

1 Q Now the SERC experienced similar recent power
2 shortages, didn't it?

3 A Excuse me, I'm sorry, Charlie, I couldn't hear
4 that.

5 Q The S-E-R-C, the SERC experienced recent similar
6 power shortages, didn't they?

7 A I believe they are recent. Again, I'm not sure
8 I'd characterize them all as power shortages, but they were
9 very tight on their reserves and getting tighter. I'm not
10 sure of the exact timing of each, if SERC met the peaks the
11 same time as Florida or not, I'm not too certain.

12 Q And systems beyond the SERC also experienced
13 recent power shortages and tight reserves, didn't they?

14 A Yes, they did.

15 Q And some of those regions were even more severe
16 than Florida's, weren't they?

17 A I'm not certain. I would only guess there are
18 some in ECAR, I think, that were more severe than
19 Florida's, but that's just an opinion.

20 Q Well, sir, you have occasion to take a look at
21 market prices around the country, don't you?

22 A Yes.

23 Q And, indeed, the market prices in the time of the
24 recent shortages were significantly higher for regions
25 outside of Florida than they were for Florida, weren't

1 they?

2 A Yes, I agree. The prices on the worst days in
3 ECAR were higher than they were in Florida.

4 Q Doesn't that suggest that there may be a market
5 outside of Florida for this power?

6 A Possibly. Under rare occurrences such as that,
7 that's possible, yes.

8 Q You'd certainly want to be in a position to be
9 able to take advantage of that, wouldn't you?

10 A It's not the intent of the plant in Florida to
11 serve SERC. It's -- No, I --

12 Q Well, sir, I'm sorry, I don't mean to cut you
13 off.

14 A I'm sorry. I was finished.

15 Q If you didn't have your committed -- you didn't
16 have your capacity committed to Florida and you had an
17 opportunity to sell to SERC or through SERC at a
18 significant profit, you would be indifferent to that?

19 A No, I would take that opportunity, as would any
20 wholesale provider with excess capacity.

21 Q You testify at Pages 17 and 18 that Duke New
22 Smyrna doesn't plan to make retail sales in Florida,
23 correct?

24 A That is correct.

25 Q Is Duke New Smyrna willing to accept a condition

1 of its determination of need or of its power plant
2 certification that neither Duke New Smyrna nor any
3 successor may make retail sales from the output of its
4 plant?

5 A I'd have to have more details on the terms of
6 that condition to make a judgment.

7 Q You won't consider that right now?

8 A Restate the condition again. I'm sorry,
9 Mr. Guyton.

10 Q Would you be willing to accept as a condition of
11 either your determination of need or of your ultimate power
12 plant certification that neither Duke New Smyrna nor any
13 subsequent owner of the plant could make retail sales from
14 the output of the plant?

15 A I would not commit to that without a time limit
16 on it. I can't project what the future is going to hold
17 for the wholesale market or the retail market.

18 Q So it's conceivable that Duke New Smyrna may very
19 well make retail sales out of this plant at some point in
20 the future?

21 A I really can't speculate on what the future of
22 retail competition is.

23 Q But you're not going to make a commitment that
24 would preclude you from that, are you?

25 A No, I would not.

1 COMMISSIONER CLARK: Mr. Green, I thought what
2 you've gotten from FERC says you won't make any wholesale
3 sales; is that --

4 WITNESS GREEN: Absolutely.

5 COMMISSIONER CLARK: And there's --

6 MR. WRIGHT: Retail.

7 WITNESS GREEN: Retail sales.

8 COMMISSIONER CLARK: And you can at some later
9 date say we don't -- no thank you any more?

10 WITNESS GREEN: No, and I might have
11 misunderstood Mr. Guyton's question, but you --
12 Commissioner, you are exactly right. We cannot sell retail
13 electricity out of the Duke New Smyrna plant with our
14 exempt wholesale generator permit allowance that we have.

15 COMMISSIONER CLARK: Right.

16 WITNESS GREEN: We cannot do that.

17 COMMISSIONER CLARK: What has to happen for you
18 to be allowed to do that? Do you apply -- do you tell them
19 you no longer want that status?

20 WITNESS GREEN: I really don't know, ma'am.
21 Something would have to change with our EWG status.
22 Something would have to change with the state down here in
23 Florida as far as how the retail marketplace would play
24 out. It would -- I don't really know.

25 COMMISSIONER CLARK: Well, assuming we open up --

1 the market here is opened up to retail sales. What do you
2 have to do in terms of the status you have with FERC to be
3 allowed to do that?

4 WITNESS GREEN: I really do not know, ma'am. I
5 believe I would have to refile something. I'd have to have
6 some change of my FERC status, I believe. I don't really
7 know.

8 COMMISSIONER CLARK: Is Duke a holding company
9 under PUCA?

10 WITNESS GREEN: No?

11 COMMISSIONER CLARK: Okay.

12 BY MR. GUYTON (Continuing):

13 Q Let's talk a little bit about Duke, if you will.
14 You spent a couple of pages of your testimony outlining
15 Duke Energy Corporation and its experience. Will Duke
16 Energy be operating the Duke New Smyrna plant?

17 A Duke New Smyrna will be; an affiliate of Duke
18 Energy.

19 Q So Duke Energy will not be operating it, will it?

20 A No, Duke Energy will not be operating the Duke
21 New Smyrna facility.

22 Q And Duke Energy won't be building the Duke New
23 Smyrna plant, will it?

24 A No.

25 Q Will Duke Energy become subject to the

1 jurisdiction of the Florida Public Service Commission as a
2 result of the construction and operation of the Duke New
3 Smyrna plant?

4 A I'm sorry, Mr. Guyton, did you say Duke Energy or
5 Duke New Smyrna?

6 Q Duke Energy.

7 A I don't believe Duke Energy would be subject to
8 any regulatory oversight from the Florida Commission.

9 Q Will Duke Energy assume any liabilities
10 associated with the Duke New Smyrna plant?

11 A Through its wholly-owned subsidiary of Global
12 Asset Development I believe it will, in that ownership
13 structure.

14 Q Through its wholly-owned subsidiary of what?

15 A Global Asset Development I believe is the
16 official name. Duke Energy Global Asset Development, Inc.

17 MR. WRIGHT: Madam Chair, I'm going to object to
18 this line to the extent that it's asking for legal
19 conclusions as to the allegation of liabilities. If
20 Mr. Green is capable of testifying as to his understanding
21 or belief as to that, I don't have any real objection to
22 his answering the question; but I don't want his testimony
23 and a subsequent reading of the transcript to be
24 mischaracterized.

25 MR. GUYTON: That's fine. I certainly don't want

1 him to go beyond his understanding.

2 BY MR. GUYTON (Continuing):

3 Q Mr. Green, in regard to your last response, are
4 you sure about the nature of your response? You want me to
5 pose the question to you again?

6 A Certainly.

7 Q Will Duke Energy assume any liabilities
8 associated with the Duke New Smyrna plant? And if you
9 don't know, that's fine.

10 A I really don't know.

11 Q Okay. You show on your organizational chart here
12 that Duke New Smyrna is organized as a limited liability
13 partnership. Was that done to protect potential liability
14 of upstream owners?

15 A I don't really know. The lawyers would have to
16 tell you.

17 Q So you can tell us what the project structure is,
18 but you can't tell us why?

19 A I don't know the legal reasoning behind L.L.P.

20 Q Can the Utilities Commission of New Smyrna Beach
21 count on more than 30 megawatts of capacity from this unit?

22 A Yes, we'll have 470 additional megawatts
23 available that I feel certain they will want to look into
24 buying from us.

25 Q Does it have a right, a contractual right to

1 count on anything other than 30 megawatts of capacity?

2 A At this time, they have no contractual right to
3 count on anything additional.

4 Q If it were to attempt to rely on the Duke New
5 Smyrna project for more than 30 megawatts of capacity, what
6 would the price terms be?

7 A I cannot speculate.

8 Q So without a contract, you really can't say what
9 the price terms would be, can you?

10 A It will be at a price that's attractive to the
11 Utilities Commission of New Smyrna Beach or they wouldn't
12 enter into it.

13 Q But you don't know what that price is, do you,
14 sir?

15 A I do not know what that price will be today.

16 COMMISSIONER GARCIA: Most probably it will be
17 higher than the price they contracted the first 30
18 megawatts?

19 WITNESS GREEN: Again, I don't know yet. It
20 depends on what the market is bearing at that time. I
21 would envision that it would be higher than what is
22 currently in there, yes.

23 COMMISSIONER GARCIA: Because you would agree
24 that that was a tremendously good price you gave them for
25 those first 30 megawatts?

1 WITNESS GREEN: I would characterize it as a very
2 good price.

3 COMMISSIONER GARCIA: You are not going to offer
4 that price as a contract to, you know, to Mr. Guyton's
5 company if they showed up and said can we buy it at 18 --
6 What is it, 18.50 a megawatt? You wouldn't offer him
7 another hundred megawatts at that price most probably,
8 right?

9 WITNESS GREEN: Again, we'd have to see what all
10 the stipulations are, but I doubt under many situations
11 would we offer much capacity at \$18.50.

12 BY MR. GUYTON (Continuing):

13 Q Now as to capacity above 30 megawatts, Duke New
14 -- or the Utilities Commission of New Smyrna Beach is
15 pretty much in the same position as any other peninsular
16 utility in Florida, isn't it?

17 A In what respect sir? I'm sorry.

18 Q It doesn't have a contract for any capacity from
19 your unit?

20 A That is correct.

21 Q And consequently, we wouldn't know the price that
22 the power would be sold from the unit to that Peninsular
23 Florida utility?

24 A That is correct. As you cannot predict the price
25 of purchases from these utilities of any other wholesale

1 providers in the state.

2 Q Well, sir, didn't we establish earlier that you
3 weren't entirely sure about that, that you didn't know
4 whether or not the investor-owned utilities had
5 market-based rates or cost-based rates at FERC?

6 A Yeah, I agree, yes.

7 Q All right, sir.

8 A Yes.

9 Q Duke New Smyrna doesn't even have a marketing
10 plan for this unit yet, does it?

11 A We have no written marketing plan for this
12 facility as yet, no. We have a marketing strategy to
13 basically produce low cost energy and sell it to whomever
14 we can contract a mutually agreeable price with. That's a
15 strategy rather than a plan I would guess.

16 Q Now you address the potential economic viability
17 of this project in your testimony, don't you?

18 A Yes.

19 Q And you testify that the project will be
20 constructed and brought into service solely with Duke New
21 Smyrna internal funds, correct?

22 A That is correct.

23 Q Are all the Duke New Smyrna internal funds
24 equity?

25 A Once again, I don't know, and I'm not sure. I

1 believe that would be proprietary, and it may be something
2 that we've provided to the staff under confidentiality, but
3 I don't remember.

4 Q Do you know what the sources of the Duke New
5 Smyrna internal funds are?

6 A Yes.

7 Q Are you in a position to share that with us, or
8 is that proprietary?

9 A That's proprietary.

10 Q What are the costs?

11 COMMISSIONER GARCIA: What was the question,
12 Mr. Guyton? I'm sorry.

13 MR. GUYTON: I asked if he was in a position to
14 prepare -- to share with us what the sources of Duke New
15 Smyrna's internal funds were or if that was proprietary.

16 COMMISSIONER GARCIA: He said that was
17 proprietary?

18 MR. GUYTON: I think that's correct.

19 COMMISSIONER DEASON: Let me inquire. Staff, do
20 we have that information?

21 MS. PAUGH: The information was returned under
22 the confidentiality rules.

23 COMMISSIONER DEASON: Do the confidentiality
24 rules allow you to tell me that in private, and can I rely
25 upon that as information that's nothing -- I don't have

1 access to that information?

2 MS. PAUGH: Yes, we can.

3 COMMISSIONER DEASON: Mr. Wright, staff can share
4 that with me in private, and I --

5 MR. WRIGHT: I believe that's correct,
6 Mr. Chairman.

7 MR. GUYTON: With all due respect, I take great
8 pause with that. That is a matter totally outside this
9 record. I would hope that staff would not share that with
10 you unless it's coming through the record. It's not in
11 this record, and it's not evidence.

12 COMMISSIONER DEASON: Well, obviously that's the
13 reason I'm asking the question. I don't want to do
14 anything that violates anybody's due process or violates
15 anybody's confidentiality agreement. So if it's
16 inappropriate, that's fine.

17 MS. PAUGH: We are checking the statutes on that,
18 Commissioner.

19 BY MR. GUYTON (Continuing):

20 Q Now to estimate the potential economic viability
21 of the project, one would need to know the cost of the
22 funds used to finance the project, wouldn't one?

23 A Yes.

24 Q And we don't know those costs, do we?

25 A Who is we? The staff does, I believe.

1 Q The other parties to this proceeding don't, do
2 they?

3 A I believe that's correct.

4 Q All right. And that hasn't been provided to the
5 Commission yet either, just to the staff?

6 A I don't believe it has, from what I just heard.

7 Q Did -- does Duke New Smyrna intend to finance or
8 refinance the project subject to -- or subsequent to its
9 commercial operation?

10 A Again, our financing plans are proprietary. I do
11 not believe I can share that with you.

12 Q If such were intended, that would affect the
13 project's economic viability though, wouldn't it?

14 A If you change the financing, you would change
15 your cost structure, yes.

16 Q Now you've testified that the direct construction
17 cost of the project is forecasted to be 160 million. What
18 do you mean by the term "direct construction cost"?

19 A That is the direct cost to engineer, buy the
20 equipment, and construct the facility.

21 Q Are there any other investment costs that Duke
22 New Smyrna will have to make to bring the project into
23 service other than direct construction costs?

24 A As I believe I've earlier testified, the
25 transmission upgrades, in all likelihood, Duke will -- Duke

1 New Smyrna will be paying that or at least a fair portion
2 of that.

3 Q Okay. And that was how much, sir?

4 A 6.7 million dollars, I believe, is the estimate
5 that we have.

6 Q Are there any costs besides that 160 million
7 direct construction cost in the transmission upgrades that
8 represent investment costs that Duke New Smyrna will have
9 to make to bring this project into commercial operation?

10 A That would include everything I can envision in
11 direct construction costs.

12 Q Now Florida Power & Light Company requested a
13 breakdown of that 160 million dollars of forecasted direct
14 construction costs, didn't it?

15 A I believe you did.

16 Q And you've declined to provide that claiming it
17 was proprietary and confidential, correct?

18 A I believe that's correct, yes.

19 Q Even though FPL offered to sign a nondisclosure
20 agreement?

21 A Again, yes, I believe that is correct.

22 Q Now if one were going to critically assess your
23 assertion that the project is economically viable, one
24 would need to look at the various elements of your
25 160-million-dollar direct construction cost estimates to

1 judge its reasonableness, wouldn't one?

2 A I'm sorry Mr. Guyton. Can you do it one more
3 time?

4 Q That's fine.

5 A Excuse me.

6 Q If one were going to critically assess your
7 assertion that the project is economically viable, one
8 would need to look at the various elements of your
9 160-million-dollar direct construction cost estimates to
10 judge their reasonableness, wouldn't you?

11 A I disagree. I believe the economic viability of
12 this facility is based on the pure concept of merchant
13 plant. No one will buy from this plant unless it's
14 economical for them. They don't have to buy from here.
15 It's -- The purchase of power out of this plant would only
16 be made when it's economically the best deal the buyer can
17 come up with.

18 Q When you assessed the economic viability or when
19 Duke New Smyrna assessed the economic viability of this
20 plant, did you consider or use the 160 million dollars of
21 direct construction cost?

22 A Yes, I believe we did.

23 Q And did you do that because you thought that was
24 a reasonable estimate?

25 A Yes.

1 Q And if somebody else were going to test the
2 reasonableness of your conclusion, they'd need to look at
3 that too, wouldn't they?

4 A No, I believe we would be looking at it from two
5 different view points. As the owner of the facility, I'm
6 looking at what my cost structure is to estimate whether I
7 can sell power enough hours of the year to justify my
8 investment. I think from a buying utility's perspective,
9 it's cost effective because you won't enter into that
10 contract unless it is effective.

11 Q But, sir, I'm not asking about the buying
12 utility's perspective. I'm asking about the Commission's
13 perspective in judging the reasonableness of your assertion
14 that this project is going to be economically viable?

15 A I believe that is up to the Commission to decide,
16 but I think we've already -- I think they are undertaking
17 review to see whether or not they can see this cost of
18 money.

19 COMMISSIONER CLARK: Mr. Green, just so I'm
20 clear, do you agree that we should be looking at how you're
21 financing and whether or not the assumptions you've made
22 with respect to the cost of the plant are something we
23 should look at?

24 WITNESS GREEN: My opinion, Commissioner, is that
25 you do not need to look at that. The merchant plant

1 concept, again, is by its definition and by its way the
2 market works. The output of this plant will be cost
3 effective to the utilities that are buying this output or
4 they wouldn't buy it. It's a no-risk situation.

5 COMMISSIONER CLARK: Well, but there is a risk in
6 this sense, that you don't have to operate your plant
7 unless there is a reasonable profit and cash flow. And if
8 you've made some very invalid assumptions, you're not going
9 to have a viable plant; and whether or not they have a
10 contract or not, they're not going to get power.

11 WITNESS GREEN: Ma'am, I -- If that situ -- If
12 our plant is not economically viable, that's good for the
13 State of Florida. That means something else is more
14 economical than my plant. And again, I see no harm or no
15 risk to the ratepayers. Something else is taking my place
16 more efficiently. Did I say yes or no? I'm sorry.

17 COMMISSIONER CLARK: No, you didn't.

18 WITNESS GREEN: I'm sorry.

19 COMMISSIONER CLARK: It's your position that
20 because if it's not economically viable and you are not
21 earning a reasonable profit and cash flow it will be
22 because there is another plant in Florida or there's other
23 capacity in Florida that is available and is in effect
24 displacing yours?

25 WITNESS GREEN: Yes, I believe that's correct.

1 Now if I can restate it and make sure I'm clear the way
2 you've said it: If another -- If my plant is uneconomic,
3 that means that the utilities that are buying from me
4 historically have decided that they would not buy from me,
5 and something else, I can only presume, is taking the place
6 of that capacity or energy I was providing them. If I was
7 the only thing left, they would buy from me, I would
8 envision.

9 COMMISSIONER CLARK: But it would have to be at a
10 price -- it would be at a price you dictated?

11 WITNESS GREEN: It would be at a price that the
12 wholesale market dictates, and the wholesale market already
13 exists.

14 COMMISSIONER CLARK: But if you're the only
15 supplier in that market, it's your price?

16 WITNESS GREEN: I would not -- I would not be the
17 only supplier in the market. There already are players in
18 the wholesale market today.

19 COMMISSIONER CLARK: Okay.

20 COMMISSIONER DEASON: Well, let me inquire about
21 that. The other players in the wholesale market in Florida
22 today, who are they?

23 WITNESS GREEN: Again, as I earlier stated, I'm
24 not sure I understand the total situation, but it's my
25 belief that the investor-owned utilities are currently

1 buying and selling between themselves wholesale.

2 COMMISSIONER DEASON: Okay. And how do we under
3 the Power Plant Siting Act grant authority or determination
4 of need for a whole -- the need for wholesale capacity as
5 opposed to retail capacity? Do you know the answer to that
6 question?

7 WITNESS GREEN: I don't know the answer to that
8 question, no, sir. I can offer an opinion, but that's
9 all.

10 COMMISSIONER DEASON: Okay. Can I have your
11 opinion?

12 WITNESS GREEN: Yeah, I believe that the Public
13 Service Commission can authorize this facility to go
14 forward because it is needed for the reliability and
15 integrity of the electric supply of Peninsular Florida.

16 COMMISSIONER DEASON: Well, then if there is
17 going to be robust competition, do we have the authority to
18 allow an investor-owned utility to build capacity under the
19 Power Plant Siting Act strictly to meet potential wholesale
20 demand?

21 MR. WRIGHT: Can I just ask a clarification? A
22 plant in rate base or outside rate base? I think it might
23 make a difference to his answer.

24 COMMISSIONER DEASON: You can answer it either
25 way, both ways if you like, however you like.

1 WITNESS GREEN: And I'm not -- excuse me,
2 Commissioner Deason, I'm not sure if it's -- Did you say
3 require the utility to or --

4 COMMISSIONER DEASON: No, do we have -- can we
5 allow the utility to build capacity, that is, grant them a
6 determination of need, and if they can meet the other
7 requirements, build capacity not for retail demand but for
8 the possibility of wholesale demand so that they can enter
9 the wholesale market and provide robust competition?

10 WITNESS GREEN: I believe that you could allow an
11 investor-owned utility outside of the rate base to put a
12 plant in the wholesale marketplace as an exempt wholesale
13 generator, I believe.

14 COMMISSIONER DEASON: And then it's a whole other
15 question as to whether we should and what impacts that
16 would have on the retail -- the captive customers of that
17 company; would you agree with that too or not?

18 WITNESS GREEN: I would agree to that.
19 Generally, it depends where you're going to -- who is
20 paying for that facility. Is it put in rate base or not?
21 That is a major determination in that.

22 COMMISSIONER DEASON: And then how it's financed
23 and who is responsible, all those things would be things
24 that would be considered; would you agree with that?

25 WITNESS GREEN: Again, if it's outside of rate

1 base, I'm not sure you need to consider how it's financed.
2 I mean if someone is willing to take the risk on the
3 potential to build some capacity and sell it and
4 increase --

5 COMMISSIONER DEASON: Well, let's say we did not
6 care how they financed it and it went belly up and that had
7 an adverse impact on the company's bond rating and the only
8 way then they could issue debt to supply capacity to retail
9 customers at a higher rate; is that something we should be
10 concerned with?

11 WITNESS GREEN: I would envision in that case you
12 would, yes, sir.

13 COMMISSIONER JACOBS: How about if the financing
14 allowed the provider to price its power well below market
15 and with associated market power they could drive the
16 marketplace, should we be concerned with that?

17 WITNESS GREEN: I'm not sure I understand.
18 Market power of whom, the investor-owned --

19 COMMISSIONER JACOBS: If a company were, let's
20 say they were a subsidiary and their financing allowed them
21 to draw down from their parent in such a -- the financing,
22 let me not even get into that. The financing was arranged
23 in such a way that they could price well below market,
24 okay, should we have some concern about that?

25 WITNESS GREEN: I'm not sure. I don't believe if

1 somehow you --

2 COMMISSIONER GARCIA: Before you answer the
3 question, could you repeat the question? I didn't hear it,
4 I'm sorry.

5 COMMISSIONER JACOBS: Okay. If a merchant plant
6 were financed in such a way, whether it be from a parent or
7 whatever, but financed in such a way such that it could
8 price well below market, not marginally below, but well
9 below market and probably begin to drive the market or at
10 least gain market power, should we be concerned about that?

11 WITNESS GREEN: I can't en -- If someone had
12 market power, you should be concerned about that, yes, sir.

13 COMMISSIONER JACOBS: Okay.

14 WITNESS GREEN: I don't believe one plant in a
15 system that's got 38 thousand megawatts, approximately, of
16 capacity is anywhere close to market power.

17 MR. WRIGHT: Madam Chairman, I would like to just
18 make an observation. There has been a number of questions
19 from the bench recently regarding the power of Duke New
20 Smyrna to dictate market prices or dictate the price at
21 which it sells its output and also issues regarding market
22 power and possibly -- well, regarding market power. We do
23 have a witness who is offered as an expert in these areas.
24 I don't -- Certainly we're not hiding the ball. I don't
25 have any objection to you all asking Mr. Green these

1 questions to the extent he understands them, but for your
2 edification and for the purposes of you all developing the
3 record, I'd suggest it would be real good for you to ask
4 Doctor Dale Nesbitt these questions. He is offered as an
5 expert. He does discuss the prices at which Duke New
6 Smyrna will be able to sell its power, and he does discuss
7 market power issues. I just wanted to lay that out for
8 you.

9 CHAIRMAN JOHNSON: Thank you, Mr. Wright.

10 COMMISSIONER DEASON: You know, Mr. Wright,
11 commissioners don't have very long memories, and we think
12 of a question, we want to ask it right away because we may
13 forget it later.

14 MR. WRIGHT: Just like I do, Commissioner Deason.

15 CHAIRMAN JOHNSON: Mr. Guyton.

16 BY MR. GUYTON (Continuing):

17 Q What operating costs will the Duke Energy Power
18 Services be funding for the Duke New Smyrna plant?

19 A Fuel, variable O&M, fixed O&M.

20 Q How long will they be making that funding?

21 A I'm not sure what you mean by funding. We will
22 pay for the operation and maintenance of the facility as
23 well as the fuel. If that's --

24 Q Well, you say at Page 19, Line 26, "Duke Energy
25 resource is funding both the capital investment and the

1 operating cost of the project." That's what I mean by
2 funding. And I'm asking you now about the operating cost
3 and how long you envision that Duke Energy Power Services
4 will be funding the operating cost.

5 A We'll be funding, paying for the operating costs
6 as long as this facility is operational.

7 Q And will that be from internal funds, or will
8 that be from revenues generated from the project?

9 A I'm not sure I can answer that.

10 Q Do you envision that you are going to provide
11 some operating funds prior to the revenues from the project
12 covering the operating cost of the project?

13 A Certainly. I believe before we've -- as we are
14 ramping up, I would envision we would have much of the
15 operational costs funded from internal funds.

16 Q And what's the amount of those operational costs
17 that you anticipate you'll have to fund from internal
18 funds?

19 A I do not know.

20 Q But the magnitude of those operating costs would
21 be something that affects the economic viability of the
22 project, wouldn't it?

23 A The magnitude of those costs, yes. From my view
24 point, as far as economic viability, yes, it would.

25 Q And if you knew that, you couldn't share it with

1 us, could you, that would be proprietary?

2 A Yes.

3 Q Now Duke Energy Power Services has forecasted
4 revenues from the project based on a forward pricing curve,
5 hasn't it?

6 A Yes.

7 Q And those are important factors in assessing the
8 economic viability of the project too, aren't they?

9 A They are important for us to assess the economic
10 viability, yes.

11 Q And they are confidential and proprietary too,
12 aren't they?

13 A Yes, they are.

14 Q And they are not available to the Commission, are
15 they?

16 A No. They have not been given that, no.

17 Q Now another element in calculating the economic
18 viability of the project would be the fuel price, correct?

19 A That is correct.

20 Q And you haven't shared the contracted fuel price
21 for the project because that's confidential as well,
22 correct?

23 A That is correct.

24 Q Now another element in determining economic
25 viability of the project is the variable O&M of the

1 project, correct?

2 A That is correct.

3 Q That's also confidential and proprietary, isn't
4 it?

5 A Yes, it is.

6 Q And another element that's part of the
7 determination of the project's economic viability is fixed
8 O&M for the project, correct?

9 A That is correct.

10 Q And that's also proprietary and confidential and
11 can't be shared?

12 A That is correct.

13 Q Now you plan to run this unit when the price of
14 power that you can sell exceeds your incremental production
15 cost, your fuel and variable O&M, correct?

16 A Yes, I will sell this, the output of this plant
17 when I can exceed my variable O&M and fuel costs.

18 Q And how much, on average, do you expect
19 incremental revenue to exceed incremental production cost?

20 A It varies. It depends on whatever the market
21 clears at.

22 Q All right. But even if you knew, you couldn't
23 tell, that's proprietary, right?

24 A My forward price curves on what the market clears
25 at is proprietary, if that's where you're going, sir.

1 Q How many hours a year does the unit have to run
2 at its average distance between incremental revenues and
3 incremental production costs for the project to be
4 financially viable?

5 A That's dependent on what the clearing price is,
6 and it's confidential and proprietary.

7 Q Now how do you define financial viability for
8 this project?

9 A From Duke New Smyrna's perspective, we have done
10 our estimates of what we feel the forward price curves are,
11 what we will be able to sell this output for, and for how
12 many hours we will be able to sell this output; and we feel
13 that at enough hours and an adequate price that our
14 investment is prudent.

15 Q And what earned rate of return is necessary for
16 this project to be financially viable?

17 A That's proprietary.

18 Q Now you say that the ultimate proof of financial
19 viability is that Duke is willing to invest 160 million
20 dollars. You want to have the Commission believe simply
21 because you are willing to invest the money that this
22 project is economically viable?

23 A Yes. I would feel that the Commission would see
24 this as economically viable since no ratepayer, no utility
25 is bearing the cost of this facility, and no one will have

1 to buy the output of this facility unless it's economically
2 the best thing on the market at that time.

3 Q Well, you state the ultimate proof of viability
4 is your willingness to invest. Is there no risk in the
5 project, no risk that it won't be economically viable?

6 A Yes, there is risk that it won't be economical.

7 Q Indeed, you said in your deposition there was
8 great risk, didn't you?

9 A Yes, my -- Yes, I did. My definition of "great"
10 meaning that 160 million dollars is a lot of money to me.

11 COMMISSIONER GARCIA: Duke isn't in the business
12 of just building power plants for its health, is it?

13 WITNESS GREEN: My future employment would not be
14 long.

15 MR. GUYTON: Commissioners, that's all I have.
16 Thank you.

17 MR. WRIGHT: Madam Chairman, could we take a
18 break, please?

19 CHAIRMAN JOHNSON: We'll take ten minutes.

20 MR. WRIGHT: Thank you, ma'am.

21 MR. SASSO: If it will help, I have very few
22 questions. We may be able to finish with -- Well, I
23 suppose that maybe --

24 MR. WRIGHT: I --

25 MR. SASSO: Okay. Fine.

1 (BRIEF RECESS)

2 CHAIRMAN JOHNSON: We're going to go back on the
3 record.

4 Mr. Sasso.

5 MR. SASSO: Thank you.

6 CROSS EXAMINATION

7 BY MR. SASSO:

8 Q Mr. Green, is it correct to say that you have not
9 negotiated a final power purchase agreement with the
10 Utilities Commission of the City of New Smyrna Beach as
11 yet?

12 A We have a binding participation agreement. We do
13 not have a firm power sales contract yet.

14 Q So the answer would be, yes, that you have not
15 negotiated a final power purchase agreement with the
16 Utilities Commission of the City of New Smyrna Beach as
17 yet?

18 A That is correct.

19 Q And are you in the process of negotiating such an
20 agreement at this time?

21 A No, we are not.

22 MR. SASSO: I have nothing further.

23 CHAIRMAN JOHNSON: Staff.

24 CROSS EXAMINATION

25 BY MS. PAUGH:

1 Q Mr. Green, is it your testimony that the project
2 costs are approximately 160 million?

3 A Yes, it is.

4 Q Does that estimate of 160 million include
5 pollution control equipment proposed in the site plan
6 filing with the Department of Environmental Protection?

7 A Yes, I believe it does.

8 Q Okay. Thank you.

9 MS. PAUGH: No further questions.

10 CHAIRMAN JOHNSON: Commissioners.

11 COMMISSIONER CLARK: Mr. Green, you mention that
12 the technology of choice throughout the industry today is
13 the gas fired combined cycle; is that right?

14 WITNESS GREEN: Yes, ma'am, I believe it is.

15 COMMISSIONER CLARK: Do you think any
16 consideration should be given by this Commission as to the
17 reliability of that fuel source in Florida? Is there a
18 point at which, that we should say no to further gas fired
19 combined cycle because we want more diversity in the
20 sources of fuel we use to fire the plants in Florida?

21 WITNESS GREEN: My opinion, ma'am, given the
22 perhaps 20 thousand megawatts of oil and gas fired steam
23 units that you have, that the benefits of a
24 state-of-the-art technology gas fired combined cycle unit
25 far outweigh any concerns in the near term.

1 COMMISSIONER CLARK: In the near term?

2 WITNESS GREEN: Yes, ma'am.

3 COMMISSIONER CLARK: Do you think it is a
4 reliability issue to look at the fuel sources of the
5 generating plants in Florida?

6 WITNESS GREEN: I believe fuel is very important
7 to the reliability of the plant. You've got to have the
8 natural gas to burn.

9 COMMISSIONER CLARK: Right.

10 WITNESS GREEN: I'm not sure I understand the
11 question fully.

12 COMMISSIONER CLARK: Well, I mean a while back we
13 had -- the source of gas to Peninsular Florida was
14 interrupted, and as I understand it, we came pretty close
15 to not being able to meet the electric load because of that
16 interruption in gas supply. Don't you think that
17 contingency should be a factor in determining whether or
18 not a plant should be sited or a plant should be the
19 particular plant to meet a need?

20 WITNESS GREEN: I personally don't believe
21 that -- I personally believe that the incident of the
22 explosion on the gas line, if that's what you're referring
23 to, is an extremely rare event and the probability of that
24 happening again is very slim.

25 COMMISSIONER CLARK: Well, let me ask it a

1 different way: Is it your testimony that it would be just
2 fine for Florida to have all of our plants fired by natural
3 gas?

4 WITNESS GREEN: No, I don't believe that would be
5 prudent. That's not in my testimony, no, ma'am.

6 COMMISSIONER CLARK: Okay. But there -- Let me
7 ask it this way: There is at some point that you should
8 insist on fuel diversity, but your adding this plant is not
9 that point?

10 WITNESS GREEN: I agree that fuel diversity is
11 good. I agree this is not the point you need to be
12 concerned about it. You have five or maybe four thousand
13 megawatts approximately of nuclear capacity. You have
14 perhaps nine thousand megawatts of coal capacity. You have
15 diversity now. You have very little gas fired combined
16 cycle in that mix currently.

17 COMMISSIONER CLARK: Okay.

18 MR. WRIGHT: Commissioner Clark, if I might just
19 interject, we do have a witness on fuel supply, Mr. Larry
20 Wall. You'll be more than welcome to ask him the same
21 questions about that.

22 CHAIRMAN JOHNSON: Any other questions,
23 Commissioners?

24 (NO RESPONSE)

25 CHAIRMAN JOHNSON: Redirect?

1 MS. JAYE: Commissioners, I hate to interrupt,
2 but staff has looked into the question asked by
3 Commissioner Deason about whether or not staff may brief
4 him privately concerning confidential information which has
5 been received by staff and has returned to the company
6 under the confidentiality rules. It is staff's
7 understanding, having gone and done some research on the
8 matter, that if the Commission wishes to view this
9 information, the company which submitted it to the
10 Commission must resubmit it with an intent to file
11 confidentiality and a request for confidential treatment of
12 it. The order may be granted. We can enter into some sort
13 of a protective agreement with the other companies who are
14 parties to this proceeding. Everyone will have fair and
15 full opportunity to view the confidential material,
16 including the Commissioners.

17 COMMISSIONER DEASON: I appreciate that, but I
18 don't -- my request is not to the point that it puts that
19 much of a burden on folks. I obviously don't want to look
20 at something that's not in the record, and I understand
21 it's not in the record. In fact, it's not even in the
22 Commission's possession at this time.

23 MS. JAYE: Certainly. It could certainly be made
24 part of the record if the company would agree to refile it
25 under those conditions, however.

1 COMMISSIONER DEASON: No, I think there is going
2 to be ample evidence before we finish this record. And if
3 that was information that was going to be part of the
4 record, I just wanted to make sure that I had access to it
5 and that I did not break any confidentiality requirements;
6 but since it's information we don't even have here with us
7 at this time, I'm not going to pursue it any further.

8 MS. JAYE: Thank you, Commissioner.

9 MR. WRIGHT: Madam Chair, if I could just chime
10 in on that. I do agree with Commissioner Deason's remark,
11 that I think you are going to have ample evidence to act on
12 our application as well; but I want to make clear that it's
13 the Joint Petitioners' position that we would make
14 information available to you pursuant to appropriate
15 protective orders for you to consider. We're not trying to
16 hide anything.

17 CHAIRMAN JOHNSON: I think we are ready for
18 redirect?

19 MR. WRIGHT: Yes, ma'am, thank you.

20 REDIRECT EXAMINATION

21 BY MR. WRIGHT (Continuing):

22 Q Good afternoon, once again, Mr. Green.

23 A Good afternoon, Mr. Wright.

24 Q At the outset of your cross examination you were
25 asked some questions regarding the possibility of your

1 making sales from excess capacity. Does your ability to
2 make sales from excess capacity to whatever buyer depend on
3 the existence of excess uncommitted, that is, not
4 contractually committed capacity?

5 A Does my capability to sell? I'm sorry.

6 Q Yes, sir.

7 A My capability is not limited. I mean I'm not
8 sure I understand.

9 Q Well, your capability -- Is Duke New Smyrna's
10 capability to sell power from the project to anybody at a
11 given point in time subject to prior claims; that is, prior
12 contracts?

13 A Yes. I'm sorry, yes, prior contracts take
14 claim. I can only sell what I've not already committed to
15 sell.

16 Q And is Duke New Smyrna willing to enter into
17 contracts at various terms and types with basically any
18 utility, any other utility in Peninsular Florida?

19 A Absolutely. We are -- as soon as we can see that
20 we have a good feel that we are indeed going to be able to
21 build this plant, we will consider almost any and all
22 combinations of contract stipulations.

23 Q You were asked a question regarding the authority
24 of other Florida utilities to sell power at market-based
25 rates. Do you recall those questions?

1 A Yes.

2 Q And you, I think, answered that you didn't know
3 for certain but that you thought they did have market-based
4 rate authority. Is that a correct characterization of your
5 prior testimony?

6 A That is correct.

7 Q Where would you look to determine whether they
8 had market-based rate authority?

9 A I would go to FERC to see.

10 Q Okay. You were asked whether the project
11 currently has any other contracts in place other than the
12 Participation Agreement with the Utilities Commission of
13 New Smyrna Beach. You answered not at this time; is that
14 correct?

15 A That is correct.

16 Q Again, following on a previous question and this
17 one, is there a potential for such contracts and is Duke
18 willing to enter into them?

19 A Certainly. As we get closer and closer to the
20 reality of this facility the potential for this -- for
21 contracts for the output grow.

22 Q Will any electric utility be able to enter into a
23 contract for power from the project if it isn't built?

24 A Nobody can enter -- nobody will enter into a
25 contract if it doesn't exist.

1 Q You were asked some questions regarding the
2 allocation of capital investment risk. Does Duke New
3 Smyrna -- Well, let's assume that the plant is built and
4 operating. Does Duke New Smyrna have any assurance of cost
5 recovery sufficient to provide a return on its investment?

6 A Absolutely no assurance.

7 Q So is it possible -- I believe you testified in
8 response to several questions that Duke New Smyrna would
9 operate a plant and sell the output whenever the revenues
10 from those sales were greater than the incremental costs of
11 producing the energy to provide the quid pro quo for such
12 sales; is that correct?

13 A That is correct.

14 Q So is it possible that you could operate the
15 power plant for 30 or 35 years?

16 A I would hope 30 or 35 years is a minimum.

17 Q And you might or might not, depending on market
18 conditions, actually earn a positive rate of return?

19 A That's absolutely correct.

20 Q And is that the risk that you are taking?

21 A That is correct.

22 Q As you understand the regulatory system, does
23 Duke New Smyrna have an opportunity to go to any regulatory
24 authority and ask for the guaranteed opportunity to earn a
25 specified rate of return on its investment?

1 A There is no agency that we can approach with that
2 request.

3 Q You were asked some questions regarding the
4 possibility of utilities going bankrupt. What's the last
5 utility you've heard of going bankrupt, if you can think of
6 it?

7 A I can't think of the name right now. Out in the
8 southwest, the last I could remember. I can't remember the
9 name of it.

10 Q I'm just curious, was it one that ran into a
11 nuclear power plant cost overrun situation?

12 A Yes, it was, the last one I could think of. I
13 can't think of the name though.

14 Q Do you recall there ever having been in your
15 career in North and South Carolina working for Duke Power
16 and its affiliates any utility that experienced a negative
17 rate of return?

18 A I know of none.

19 Q You were asked a question regarding being subject
20 to state regulatory authority. If the Federal Energy
21 Regulatory Commission determined that Duke New Smyrna were
22 actually to have market power, would it be your
23 understanding, the way you understand regulation to work,
24 that you would or at least could come under the ratemaking
25 jurisdiction for wholesale sales of the FERC?

1 A I believe certainly, if we had market power.

2 Q If the project were built and subsequently were
3 to have a breakdown of some sort such that you had to
4 spend, let's say, two million dollars for repairs, would
5 that be on Duke New Smyrna's nickel?

6 A Yes, it would.

7 Q Would you have any opportunity to pass that on
8 through rates to any captive ratepayers?

9 A No, we would not.

10 Q With respect to the power sales agreement that
11 Duke New Smyrna contemplates entering into pursuant to the
12 Participation Agreement with the Utilities Commission of
13 New Smyrna Beach, if fuel cost turns out to be greater than
14 18.50, would Duke New Smyrna bear the risk subject to
15 adjustments in that price pursuant to the index provision
16 in the contract?

17 A Absolutely.

18 Q And the Utilities Commission of New Smyrna Beach
19 would still get the power at whatever the contract price as
20 limited by the index and the 18.50 was, right?

21 A That is correct.

22 Q You were asked several questions relating to an
23 assumption regarding a long-term contract for 200 megawatts
24 by Mr. Guyton. Do you recall those questions?

25 A I believe I do.

1 Q Mr. Guyton asked you whether utility ratepayers,
2 the purchasing utility's ratepayers would bear the
3 operating risk under a hypothetical scenario. Do you
4 recall that line of questioning?

5 A Yes, I do.

6 Q Do you recall that that line of questioning asked
7 you to assume that the purchasing utility contracted to
8 bear the operating risk of the plant by not entering in --
9 by not bargaining for a replacement power provision?

10 A I believe I recall that, yes.

11 Q Do you think that you -- that Duke New Smyrna
12 would consider entering into contracts with a replacement
13 power provision such as might be present in the agreement
14 with New Smyrna?

15 A Absolutely. I believe Mr. Guyton gave me a
16 hypothetical list of assumptions.

17 Q He also asked you some questions regarding what
18 if a power supply -- the project or a contract from the
19 project were to become economic through, coal fusion I
20 think was the example offered from the bench. Do you
21 recall that line of questioning?

22 A Yes.

23 Q Could the contract, or would the contract in your
24 view be an allocation of risk as to future market
25 conditions as between Duke New Smyrna and a purchasing

1 utility?

2 A What do you mean by allocation of risk? I'm
3 sorry.

4 Q Well, somebody agrees to a price. Duke New
5 Smyrna agrees to take a price, and a purchasing utility
6 agrees to pay a price for a certain period of time.
7 Doesn't that agreement on those prices represent an
8 allocation of the market risk of changes in the value of
9 the product?

10 A Yes, it does.

11 Q So at the time that Duke New Smyrna would enter
12 into a contract, that would be at a market-based or
13 negotiated type rate for whatever time period, right?

14 A Yes.

15 Q And you wouldn't expect you could sell, enter
16 into a 20-year contract for something greater than the
17 market price for 20-year contracts at that time of
18 negotiation, would you?

19 A I would not expect that we would be able to do
20 that.

21 Q You were asked a series of questions regarding
22 the phrase "reasonable profit and cash flow" as that phrase
23 appears, I believe it is, in Section 1.1 of the
24 Participation Agreement.

25 A Yes.

1 Q I'm looking at that section, and it appears to me
2 to refer to the technical and economic life of the
3 facility, and then goes on to refer to that life as being
4 dependent upon the utility -- the project operating so as
5 to produce a reasonable profit and cash flow; is that
6 correct?

7 A That is correct.

8 Q So is the economic life of the facility basically
9 as long as you can operate it, where the incremental
10 revenues derived from sales exceed the incremental cost of
11 making those sales?

12 A That is correct.

13 Q And following on previous questions as well as
14 these on redirect, would that necessarily assure any
15 positive rate of return?

16 A No, it does not.

17 Q You were asked a number of questions regarding
18 whether you had conducted load forecasts, generation
19 expansion plans, run production costing models or testified
20 on such topics. Do you recall that line of questioning?

21 A Yes, I do.

22 Q And you were asked whether you were holding
23 yourself out as an expert in system planning and the like.
24 Do you recall those questions?

25 A Yes, I do.

1 Q And you are not, are you?

2 A I am not.

3 Q What are you holding yourself out as, Mr. Green?

4 A I'm holding myself out as somebody that's going
5 to manage the Florida efforts that have 26 years of
6 experience in the electric industry, and I have evaluated
7 the existing situation in Florida, and it's my opinion that
8 there is need for incremental capacity.

9 Q There is a rather famous case -- my partner knows
10 the answer to it. There's a rather famous United States
11 Supreme Court case that involves the definition of
12 pornography, but I want to ask you a question that kind of
13 goes along with what Justice Powell said in that case. Do
14 you know electric system reliability when you see it?

15 A Yes, I do.

16 Q And does that knowledge inform the opinions
17 you've stated today?

18 A I'm sorry. What was that?

19 Q Does that knowledge inform these positions you've
20 stated regarding the reliability of Florida's power supply
21 system today?

22 A Yes, it does.

23 Q You were asked a number of questions regarding
24 Duke New Smyrna's willingness or the circumstances under
25 which Duke New Smyrna would sell power outside Florida. Do

1 you recall that line of questioning?

2 A Yes, I do.

3 Q Would it be fair to read any of your answers as
4 calling into question Duke New Smyrna's commitment to
5 Florida?

6 A Absolutely not. Duke New Smyrna is committed to
7 serving the electricity needs of Peninsular Florida, and
8 that's why we built the plant in Florida, or are proposing
9 to build the plant in Florida.

10 Q And if you were going to build a plant to serve
11 ECAR, you might build it in Missouri or someplace like that
12 that wasn't ECAR if it's not?

13 A Someplace like Ohio perhaps, yes.

14 Q Okay. And again is Duke New Smyrna willing to
15 commit to sell capacity and energy to Florida utilities in
16 advance pursuant to a range of contracts -- contract terms,
17 say 3 months, 6 months, 12 months, 1 year, 5 years, 10
18 years?

19 A Absolutely. As soon as we have some assurance
20 that we are going to be able to have a plant, we will enter
21 into negotiations with any and all folks for a range of
22 contract possibilities.

23 Q You were asked some questions regarding the
24 prospect of retail sales. Do you recall those questions?

25 A Yes.

1 Q Would you expect that Duke New Smyrna, if it
2 would ever consider entering into retail sales agreements,
3 would do so before, after, at the same time as such retail
4 sales by existing Florida utilities outside their historic
5 service areas became lawful?

6 A No, on the hypothetical case that retail sales
7 were appropriate, we would be looking at how to sell to
8 retail customers just like FP&L or FPC would be looking at
9 selling to retail customers outside of their currently
10 assigned jurisdictions.

11 Q That's not the plan for this project, is it?

12 A This is not the plan for this project; and, in
13 fact, we cannot do that with our FERC license.

14 Q And the affiliates that Duke has in other states
15 that have operating merchant power plants, do they enter
16 into any retail sales?

17 A No, they do not. They sell on the wholesale
18 grid.

19 Q You were asked a series of questions regarding
20 the capital and operating costs of the project. I want to
21 follow up on that. You were also asked some questions
22 regarding the confidentiality of certain cost items.
23 First, as to capital costs, are there other published
24 reports, published information regarding the direct
25 construction cost of power plants to which the Commission

1 might look as confirmation that Duke New Smyrna's
2 160-million-dollar plant or 311 to 320 dollars per kw of
3 capital construction cost is reasonable and you are within
4 the reasonable range of costs for such power plants?

5 A Yeah, certainly. I believe the -- I believe it
6 was the Hines unit was just announced, and I believe it has
7 a cost that's very close if not identical to what we
8 suggest our direct construction costs are.

9 Q Are you familiar with the cost on a per kw basis
10 of the Cane Island 3 unit? And if so, do you know whether
11 that's similar to the direct construction cost projected
12 for the New Smyrna Beach Power Project?

13 A I remember it being very similar. I don't have
14 the numbers in my head though.

15 Q You do know something about combined cycle power
16 plants, do you not?

17 A Yes, sir, I do.

18 Q Is there general market information or published
19 industry guides, for example, what is known as the EPRI TAG
20 guide, to which one might look for representative
21 information or data regarding projected variable and fixed
22 O&M costs?

23 A Absolutely.

24 Q And the Commission could look to such readily
25 available public information to confirm -- to consider in

1 evaluating the economic viability of this project, could
2 they not?

3 A Yes, they could, and I believe they could look at
4 the information provided by the suppliers, the GEs,
5 Westinghouse and whatever.

6 Q You were asked some questions regarding how often
7 the, or how much of the time the New Smyrna Beach Power
8 Project will run. Do you recall those questions?

9 A Yes, I do.

10 Q Certainly without asking you as your attorney to
11 divulge confidential information, can you give any estimate
12 or ball park of the hours per year that the project will
13 run? I thought your testimony gave such a number.

14 A Yeah, I believe it's -- We estimate that our
15 project will run 95% of the time. I might be off a couple
16 percentage points.

17 Q And could that vary from year to year?

18 A Yes, it would and could.

19 Q Does how often that project runs depend on where
20 it fits into the dispatch order, if you understand that
21 term, of the existing power supply production stack in
22 Florida?

23 A Yes, that's what it depends upon.

24 Q You were asked some questions from the bench a
25 few minutes ago regarding the -- well, let me try and

1 think. I guess you were asked questions regarding the
2 economic viability and responded by discussing certain
3 aspects of the production stack in Florida. Do you have an
4 opinion, or have you viewed any information that would
5 inform the Commissioners as to approximately where in the
6 supply stack this unit could be expected to fall, say,
7 against how many thousands of megawatts it might be cost
8 effective or expected to be such?

9 A I believe this combined cycle unit with the
10 latest state of the art technology will dispatch just after
11 the coal plants are dispatched. I say after you get to a
12 load of approximately 13 to 14 thousand megawatts on
13 statewide Peninsular Florida needs, this plant will
14 dispatch.

15 Q And the total supply stack available to Florida,
16 including imports, is what, Mr. Green?

17 A Approximately 35 to 38 thousand. I'd have to
18 check the numbers.

19 Q Okay. The Commissioners --

20 A The bottom --

21 Q Sorry.

22 A No, I'm sorry. The bottom line is our plant will
23 dispatch with that scenario 95% of the time.

24 Q If the Commissioners --

25 COMMISSIONER JACOBS: Are you proposing that as a

1 whole block of combined cycle that will be available or
2 just yours? Because by that time you'd have some other
3 plants out there, wouldn't you? By the time your plant
4 comes on line, aren't there going to be other gas plants on
5 line as well? Are you proposing that all of them would
6 dispatch in that sequence, or just yours?

7 WITNESS GREEN: Any combined cycle unit of an
8 equivalent heat rate and an equivalent production cost, if
9 you will, will dispatch prior to those units that are less
10 efficient.

11 COMMISSIONER JACOBS: Okay.

12 BY MR. WRIGHT (Continuing):

13 Q And if the Commission wanted some more detailed
14 information, could they ask Doctor Nesbitt about that, as
15 to how the unit will run and how often it will operate and
16 its relative economics compared to the other production
17 assets in Florida?

18 A Yes, they can, and I hope they do.

19 Q Commissioner Clark asked you some questions
20 regarding fuel source gas supply and fuel diversity. Do
21 you recall those questions?

22 A Yes.

23 Q Ultimately, doesn't the reliability of any fuel
24 source depend on being able to get the fuel to the power
25 plant?

1 A Yes, it does.

2 Q So the supply of natural gas to projected Florida
3 power plants depends on gas supply in the fields and
4 transportation capacity; is that right?

5 A That is correct.

6 Q Do you think we are going to have additional
7 pipeline capacity in this state in the next ten years?

8 MR. GUYTON: Objection. It goes beyond the
9 scope.

10 MR. WRIGHT: I think it goes directly to
11 Commissioner Clark's question regarding the reliability of
12 gas fired power plants in the state.

13 COMMISSIONER DEASON: I'll allow the question.

14 WITNESS GREEN: It's my opinion that the state --
15 I think the FERC has stated there was need for eight
16 thousand megawatts of new gas fired combined cycle units in
17 the state, that there is not adequate pipeline capacity, in
18 my opinion, to supply eight thousand megawatts of gas fired
19 combined cycle; therefore, I think additional capacity, gas
20 capacity has got to be brought into the state. I think the
21 answer to that is yes. I want to try and give yeses.

22 MR. WRIGHT: I thought so too.

23 Commissioner Deason, that is all the redirect
24 that I have.

25 COMMISSIONER DEASON: Okay. Exhibits.

1 MR. WRIGHT: I'd move Exhibit 17, which is
2 Mr. Green's composite exhibit consist of I believe MCG-1 to
3 MCG-5, yes, that's correct, as well as those parts of our
4 filing exhibit that we identified at the outset of
5 Mr. Green's testimony that are enumerated at pages 5 and 6
6 of his prefiled testimony.

7 COMMISSIONER DEASON: That's Exhibit 18. Without
8 objection --

9 MR. WRIGHT: I'm sorry, Commissioner Deason,
10 those are actually part of what's been identified as
11 Exhibit 16.

12 COMMISSIONER DEASON: It's Exhibit 16?

13 MR. WRIGHT: Yes, sir, the filing, the so-called
14 filing exhibit consists of what we filed with our petition.

15 COMMISSIONER DEASON: So it's just a section
16 within 16.

17 MR. WRIGHT: Yes, sir as identified in his
18 testimony.

19 COMMISSIONER DEASON: Okay. Well, I don't know
20 how we move part of an exhibit into the record. It's
21 delineated by line and page number as to what this witness
22 is sponsoring?

23 MR. WRIGHT: Page, table and section number, yes,
24 sir.

25 COMMISSIONER DEASON: Okay. And that's clear in

1 the record?

2 MR. WRIGHT: Yes, sir.

3 COMMISSIONER DEASON: Okay. Well, then Exhibit
4 17 and those portions that were previously identified as
5 Exhibit 16 are admitted without objection. Has there been
6 an identification of an Exhibit 18?

7 MR. WRIGHT: Not to my knowledge, Mr. Chairman.

8 COMMISSIONER DEASON: Okay. We are going to have
9 to correct the Chairman's list here then because I think
10 she understood that 18 was that portion which you just
11 characterized as part of 16. So when she gets back into
12 the room, perhaps you want to clarify that with her.

13 MR. WRIGHT: I apologize for the confusion that I
14 may have created, but I will certainly do that.

15 COMMISSIONER DEASON: Okay.

16 Thank you, Mr. Green. You may be excused.

17 WITNESS GREEN: Thank you.

18 COMMISSIONER DEASON: Mr. Wright, you may call
19 your next witness.

20 MR. WRIGHT: Thank you, Commissioner Deason. The
21 Joint Petitioners call Doctor Dale M. Nesbitt.

22 MR. MOYLE: Mr. Chairman, just -- it may ease
23 things in terms of the admission of the exhibits. The
24 petition was filed with certain documents attached, and I
25 think Mr. Wright moved certain portions of that in. I

1 would think logistically it may be complicated to piecemeal
2 them in. At least for U.S. Generating, we have no
3 objection to the petition with all the attachments coming
4 in as an exhibit, as a composite exhibit, it may be
5 easier.

6 COMMISSIONER DEASON: Mr. Wright, Mr. Moyle is
7 trying to help you a little bit here.

8 MR. WRIGHT: I understand that, Mr. Chairman, and
9 I'm trying to make it easier for him to do so by putting my
10 hands on a copy of the petition book.

11 COMMISSIONER DEASON: Okay. Perhaps you could
12 take that up with the Chairman when we clarify the exhibit
13 number.

14 MR. WRIGHT: Thank you, sir. I'll do it as soon
15 as possible.

16 COMMISSIONER DEASON: Thank you.

17 MR. MCGLOTHLIN: Commissioners, Doctor Nesbitt
18 was not in the room when you swore the other witnesses.

19 COMMISSIONER DEASON: Doctor Nesbitt, if you'll
20 please stand and raise your right hand, and I'll also ask
21 if there are any other witnesses who are now present which
22 were not present earlier, if you'll please stand and raise
23 your right hand.

24 (WHEREUPON, DOCTOR NESBITT AND WILLIAM STEINMEIER
25 WERE DULY SWORN BY COMMISSIONER DEASON)

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