

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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



VOLUME 13
Page 1595 through 1687

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
COMMISSIONER E. LEON JACOBS

DATE: Friday, December 18, 1998

TIME: Commenced at 2:30 p.m.
Concluded at 4:30 p.m.

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

REPORTED BY: CATHY H. WEBSTER, RPR

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1 CONTINUATION OF PROCEEDINGS

2 COMMISSIONER DEASON: Call the hearing to order.

3 Mr. Wright, you were inquiring; is that correct?

4 MR. WRIGHT: Yes, Commissioner Deason; I was.

5 COMMISSIONER DEASON: Okay.

6 MR. WRIGHT: Thank you.

7 COMMISSIONER DEASON: Please proceed.

8 CONTINUED CROSS EXAMINATION

9 BY MR. WRIGHT:

10 Q Mr. Dolan, when we concluded your partial cross
11 examination last time, I think I had just asked you what is
12 your definition of a merchant plant. Have you got an
13 answer to that question?

14 A Yes, I do. Actually, this is probably a good
15 place to start because in the course of the hearing we've
16 used some examples like Rockingham and other plants and
17 held them out as merchants. And I think it would be
18 important to make sure we understand what a merchant is and
19 is not.

20 What I thought would be useful, I'm very comfortable
21 with how we discuss this in deposition, which was I think I
22 partly use Ms. Hesse's example where she said a merchant
23 was an electric generating facility that sells power at
24 wholesale on a market basis at market base rates, which is
25 what I consider to be a good start. But then add to that

1 kind of in my own layman's terms it's a plant that's
2 basically built on speculation and economic opportunity,
3 certainly in a jurisdiction where it's allowed by law and
4 it is able to sell its output to anyone at any time at any
5 price and is under no obligation to sell its power to
6 anyone in any given time; essentially has full freedom and
7 no contractual commitment to deliver its capacity to any
8 particular seller.

9 Q So would you say that once a merchant committed
10 its power for any period of time, say a year or two years,
11 that it would no longer be a merchant plant?

12 A What I would say -- No, not necessarily. What I
13 would say is that we probably need to distinguish between a
14 pure merchant, and we had a lot of conversation about
15 future merchant world and going naked with no contracts
16 with Dr. Nesbitt. So certainly as you move into some type
17 of contractual commitment, it moves you away from a pure
18 merchant.

19 So I've heard terms semi-merchant and quasi-merchant.
20 I'm not necessarily sure I understand what they all mean,
21 but a contract would certainly distinguish it from being a
22 pure merchant.

23 Q So let's deal with the project at hand, the New
24 Smyrna Beach power project. If between now and the time
25 the plant becomes operational, Duke New Smyrna were

1 successful in negotiating contracts for let's say 400
2 megawatts total of the plant's capacity for one- to
3 two-year sales, say from 2001 to 2003, would it not be a
4 merchant any more? I mean, wouldn't it be a merchant thus
5 that it had some contracts for a period of time?

6 I'm trying to understand.

7 A I'm not sure I understand your question. At what
8 point are the contracts going to come in?

9 Q Well, let's say they're signed in early 2001 and
10 they kick in when the plant goes in service in the second
11 or third quarter of 2001.

12 A Well, first off, if we're talking about that
13 hypothetically in Florida, I think the process works in
14 reverse here where we'd have to have the contracts first
15 and then make a determination of need.

16 MR. WRIGHT: Mr. Chairman, I object and move to
17 strike. This is not responsive to my question.

18 I asked him the question specifically regarding
19 suppose it was built, would you consider it to be a
20 merchant plant under those circumstances. And he's trying
21 to go off talking about the need determination process.

22 COMMISSIONER DEASON: And I understand that. And I'm
23 not going to strike the response, but I would ask the
24 witness to listen precisely to the question and try to
25 answer that question before there is any explanation.

1 Please proceed, Mr. Wright.

2 MR. WRIGHT: Thank you.

3 A Would you repeat the question?

4 BY MR. WRIGHT (Continuing):

5 Q The question was if the Duke New Smyrna project
6 had contracts for one or two years, would it be a merchant
7 during the time period of those contracts or would it not?
8 I mean, does it stop being a merchant for the period that
9 it has contracts and then resume being a merchant when the
10 contracts expire?

11 A I guess I don't know whether I would consider
12 that -- Certainly if it's under contract -- I think there's
13 maybe -- My confusion is because there's probably two parts
14 to your question. That's why I'm struggling a little bit
15 with it.

16 You know, to say whether it's a merchant or not, I
17 don't want to suggest that one year or two years is
18 sufficient to define it as a merchant or not a merchant.
19 If it's under contract for a period of time that would
20 suggest to me that during that contract period it's not a
21 pure merchant plant.

22 But as to whether or not the plant taken in total is a
23 merchant or not, I think that's a different question.

24 Q So could it be a merchant plant or could a plant
25 be a merchant plant and then from time to time have part of

1 its capacity committed and that capacity would not in your
2 terminology be merchant capacity during that time; is that
3 what you're saying?

4 A No, I don't think so.

5 Q Let's talk about the example that I discussed for
6 a while with Mr. Rib regarding the Indian River plants.
7 Are you aware that there has been some press recently
8 regarding the potential sale of those plants?

9 A Yes.

10 Q I ask you to assume for the purposes of the
11 following questions that those plants are in fact sold to
12 some other entity. And we previously, in Mr. Rib's
13 deposition, used Pacific Corp, so let's just stick with
14 that. Suppose it was sold to Pacific Corp, or the plants
15 were sold to Pacific Corp and Pacific set up an entity,
16 we'll call it Pacific Corp Indian River LLP, and began
17 operating as a merchant plant. From the time it began
18 operating -- Let's say at the time it began operating it
19 was only selling short-term and broker-type sales. Would
20 that be a pure merchant plant under your definition?

21 A So I understand it, your example is that we --
22 that the plant is sold, the entire output of the plant is
23 sold, it's not under any contract, it begins to sell as
24 available into the market; was that what I understood?

25 Q As available, broker, short-term economy,

1 whatever you want to call it, yes.

2 A Yes, that would be a merchant.

3 Q Okay. Now suppose -- My understanding is there's
4 about 600 megawatts of capacity at the Indian River
5 plants. Suppose they committed that for two years, all 600
6 megawatts. Would it still be a merchant plant and just --
7 Go ahead.

8 A That's right. My answer would be not
9 necessarily.

10 Q Okay. But then when the contracts expired, it
11 would be a merchant plant again?

12 A It's possible that it could.

13 Q You mention Rockingham. What is your
14 understanding of the capacity and contractual commitments
15 from the Rockingham project?

16 A My understanding of Rockingham is that the
17 current capacity of the plant, it has moved around a little
18 bit. My understanding is -- I've heard two different
19 reports. I think it's in the 750 to 800 megawatt range,
20 depending on how the units are rated. It's essentially
21 five individual peaking units that were bid to Duke Energy
22 in response to an RFP that Duke issued in 1997.

23 My understanding is as a minimum 600 megawatts of that
24 capacity are contracted to Duke for a minimum of three
25 years. They have an option to go to eight years.

1 It's also my understanding that the other unit is
2 available to Duke as part of the contract on call during
3 periods of peak for reliability purposes. And there's also
4 some suggestion that that unit was added in the event that
5 one of the other four units was unavailable due to
6 maintenance or other unscheduled outages.

7 The -- Further, my understanding of the situation with
8 Duke is that consistent to some degree with Florida, that
9 that plant will require approval by the Utilities
10 Commission, North Carolina, requires a Certificate of
11 Public Convenience and Necessity, which at this time I
12 believe is pending. It's been filed. And I think it will
13 require the Utility Commission, North Carolina, to make a
14 judgment as to whether or not there is sufficient need for
15 that plant and whether or not the purchase power agreement
16 associated with that plant is consistent with their
17 interpretation of the laws and the rules in the State of
18 North Carolina.

19 Q Suppose the plant is permitted and constructed
20 and that Duke Power then decides not to exercise its
21 options after three years. Would it be your understanding
22 that the output of the plant and the plant itself would be
23 a merchant plant at the end of that three years?

24 A Yes, I believe that would.

25 Q Mr. Dolan, on December 4th we filed a request for

1 judicial notice of a filing made by the Rockingham entity.

2 Did you receive a copy of that?

3 A Yes, I did.

4 Q Okay. Have you had a chance to look at that?

5 A Yes, I have.

6 Q Do you happen to have one with you?

7 A Yes, I do.

8 Q Okay. Would you look at page 6 of the filing by
9 Rockingham?

10 A Okay. I have page 6.

11 Q Who initially submitted the proposal to Duke for
12 the facility in Rockingham County?

13 A Progress Energy Corp is what this document says.

14 Q And that is -- Project Energy Corp is an
15 affiliate of Florida Power and a sub of Florida Progress
16 Corporation?

17 A I believe that's correct.

18 Q In your testimony you talk briefly, I would say,
19 about Duke's position regarding restructuring. Do you have
20 the understanding or do you take the position that Duke is
21 opposed to merchant plants in its home service territory?

22 A Actually I believe the answer to that would be
23 yes.

24 MR. WRIGHT: Mr. Chairman, I'm going to have
25 Mr. Shine hand out a copy of a press release that we

1 obtained off the Internet. It's a press release issued by
2 Dynegy Incorporated, which is now the developer of the
3 Rockingham project. We got it from Yahoo.

4 BY MR. WRIGHT (Continuing):

5 Q Have you followed any of the trade press
6 regarding the Rockingham plant, Mr. Dolan?

7 A Yes, I have.

8 MR. GUYTON: Scheff, if you don't mind, could you wait
9 until that's handed out so we would have the benefit of it?

10 MR. WRIGHT: Certainly, Charlie; I apologize.

11 (Brief pause.)

12 BY MR. WRIGHT (Continuing):

13 Q Mr. Dolan, I'd like you to read the last full
14 paragraph at the bottom of the first page of this press
15 release aloud, please.

16 MR. GUYTON: I'm going to object until it's been
17 authenticated and established that this witness is familiar
18 with it and can attest to its accuracy.

19 COMMISSIONER DEASON: Mr. Wright.

20 MR. WRIGHT: Commissioner Deason, I don't think that's
21 necessary. This is a press release relating to a power
22 plant that Mr. Dolan has acknowledged that his company's
23 affiliate was the initial proposer of. It's something in
24 the public domain and he has said that he is familiar with
25 the press coverage of this plant.

1 COMMISSIONER DEASON: I'll overrule the objection.
2 You may proceed.

3 MR. WRIGHT: Thank you.

4 A I'm sorry, your --

5 BY MR. WRIGHT (Continuing):

6 Q I would like you to read aloud into the record
7 the last full paragraph on the first page of this press
8 release.

9 A Beginning with "Transactions"?

10 Q Yes, please.

11 A Okay. "'Transactions such as this power purchase
12 agreement are the next step in the evolution to an open
13 market for power. During the term of the agreement, Duke
14 Power has access to capacity at a reasonable price
15 delivered from a facility located in our service area.
16 When the agreement ends, Rockingham Power will be a
17 merchant power plant selling into the region at the
18 then-current market price,' said Curtis Davis, senior vice
19 president, power generation for Duke Power. 'The facility
20 will continue to provide value to Duke's customers by
21 contributing to the capacity available in North and South
22 Carolina,'" end quote.

23 Q Now if you want to dispute the authenticity of
24 this article, you're welcome to do it, but in light of this
25 you're not going to stick by your position that Duke Power

1 opposes merchants plants in North and South Carolina; are
2 you?

3 A Yes, I am. And let me explain why.

4 Q Okay.

5 A I think what confuses me about Duke Energy is
6 that, first off, you know, this is not -- The fact that
7 they went out for RFP suggests to me something different
8 than they're encouraging merchant development in North
9 Carolina. And it's under contract for three years with an
10 option for eight. So that's one area that I would call
11 into question about Duke's promotion of merchant
12 development in the State of North Carolina.

13 The other example, I think it's a matter of the record
14 in North Carolina is when Empire Power tried to develop
15 what was really a merchant plant in North Carolina, both
16 Duke and CPL objected to that. It was subsequently denied
17 by the Utility Commission in North Carolina. And part of
18 the order talked about things like over building generation
19 in North Carolina, that there was an absence of a contract
20 with the utility in North Carolina.

21 So I guess, you know, given the history as I'm aware
22 of it in the 1990's in North Carolina, I'm not sure that
23 one quote versus actual contractual behavior and actual
24 intervention in a case before the Commission is something
25 that would convince me about Duke's position as it relates

1 to merchant plants.

2 Q What was your understanding of the Empire case?
3 What did Empire want to do in that case?

4 A Empire wanted to build peaking capacity in North
5 Carolina against a supposed statewide need. It's very --
6 Matter of fact, it's very similar to the case that we're
7 talking about here today in my opinion.

8 Q You don't recall that it was Empire's intention
9 to attempt to force Duke power to buy the full output of
10 that plant at full avoided cost ala QFs?

11 MR. SASSO: I object to that characterization. That
12 is a mischaracterization

13 MR. WRIGHT: Well, he can answer.

14 A I'm sorry; what was the question?

15 BY MR. WRIGHT (Continuing):

16 Q Do you know whether Empire attempted to force,
17 intended and attempted to force Duke to buy the full output
18 at full avoided costs as though it were a QF?

19 A No, I don't recall that.

20 MR. WRIGHT: Mr. Chairman, I'd like this marked as an
21 exhibit please, or, Madam Chairman. Thank you. I think
22 38.

23 CHAIRMAN JOHNSON: It will be marked as 38. And the
24 short title for it?

25 MR. WRIGHT: Rockingham Power press release.

1 CHAIRMAN JOHNSON: Okay.

2 (Exhibit 38 marked for identification.)

3 BY MR. WRIGHT (Continuing):

4 Q Mr. Dolan, what year was the Empire proceeding
5 before the North Carolina Utilities Commission?

6 A Subject to check, I believe it was 1992. And it
7 was upheld on appeal in 1993.

8 Q I think the dates would be immaterial since ya'll
9 asked for judicial notice, but we can nail that down
10 later.

11 Changing subjects slightly, and I would ask that you
12 think carefully about the question that I am asking you
13 before you answer. Does your testimony identify any
14 problems that you allege in your testimony as filed will
15 arise from the construction and operation of the New Smyrna
16 Beach power project?

17 A In light of your preface, I'm not sure I
18 understand your question. Maybe you can help me a little
19 bit with it.

20 Q Well, I think it was a straightforward question.
21 The question is does your testimony, your prefiled
22 testimony here, identify any problems that you allege in
23 that testimony will arise or occur from the construction
24 and operation of the New Smyrna Beach power project.

25 MR. SASSO: I object to that question. I'm sorry.

1 COMMISSIONER GARCIA: Could you repeat the question?
2 The chairman may need to hear it again, but I didn't even
3 understand it.

4 MR. WRIGHT: My question is -- I think it's a simple
5 question. Does his testimony identify any problems which
6 he alleges will result from the construction and operation
7 of the New Smyrna Beach power project?

8 COMMISSIONER GARCIA: If I'm not mistaken, didn't his
9 testimony delineate four points and then he explained all
10 four points. Wasn't that -- Is that what you're --

11 MR. WRIGHT: I'm not sure that's his testimony,
12 Commissioner Garcia.

13 COMMISSIONER GARCIA: Oh, okay.

14 MR. SASSO: My objection is --

15 MR. WRIGHT: He raises -- I'm sorry; go ahead,
16 Gary.

17 MR. SASSO: I'm sorry. My objection is that he is
18 asking Mr. Dolan to characterize I guess his prefiled
19 testimony as opposed to his testimony from the stand. The
20 testimony says what it says. If he wishes to ask Mr. Dolan
21 about any particular aspect of it, he's free to do so. But
22 I don't think it's fair to ask him to review the entirety
23 of his testimony and characterize it in that manner.

24 CHAIRMAN JOHNSON: Mr. Wright.

25 MR. WRIGHT: I think it's completely fair to ask him

1 what his testimony says. I think -- Frankly, I think his
2 testimony is very limited as to alleged problems and I want
3 to bring that out to the Commissioner's attention.

4 MR. SASSO: That's a matter for argument, Madam
5 Chairman. The testimony is as of record. And Mr. Wright
6 can argue it however he wants to in his briefs in this
7 case.

8 COMMISSIONER JOHNSON: I'm sorry, Mr. Wright. I was a
9 bit distracted. You're asking him to summarize?

10 MR. WRIGHT: I'm asking him where in his testimony his
11 testimony identifies problems that he alleges will result
12 from the construction and operation of the New Smyrna Beach
13 power project.

14 CHAIRMAN JOHNSON: So you want him to point that out
15 to you?

16 MR. WRIGHT: Yes, ma'am.

17 CHAIRMAN JOHNSON: Go ahead.

18 A This may take a few minutes, Mr. Wright.

19 BY MR. WRIGHT (Continuing):

20 Q Okay.

21 COMMISSIONER GARCIA: While he's going through this, I
22 don't want you to testify; I don't understand what you're
23 asking him. Is it that you're asking for him to show from
24 his prefiled testimony where he says that this wouldn't be
25 a good plant, this isn't a good plans or project?

1 MR. WRIGHT: Where he says this plant is going to
2 cause specific problems, Commissioner Garcia.

3 A Mr. Wright, I'm not sure I'm following this line,
4 but I'll offer something and see if this is responsive to
5 your question.

6 If you look at page 4 of my testimony, on line 8, I
7 think my testimony suggests that this joint petition calls
8 upon the Commission to change the ground rules for
9 developing new generation capacity in Florida. If that's
10 what you're searching for in terms of identifying a
11 problem, I think that might be one area where I suggest
12 it's going to create problems for this Commission and
13 participants in the market in Florida.

14 I'm still struggling as to whether or not that's
15 addressing your question, but I'll offer that as a starting
16 point.

17 BY MR. WRIGHT (Continuing):

18 Q Continue.

19 A Okay. Page 5, line 5, I would suggest another
20 problem is to take this step would at a minimum amount to a
21 major reworking of the current prevailing regulatory
22 understanding and approach in this State. That would
23 present a problem.

24 Q Any others?

25 A It may take a few minutes, but I'll continue with

1 this, if you would like me to.

2 Q I would.

3 A Thank you. Page 6, line 21, preface that, that
4 section deals with how other states dealt with significant
5 changes to their regulatory structure. Line 21 suggests
6 the problem would occur to the extent that we undertake a
7 piecemeal approach to changing what is the understanding of
8 the regulatory environment in Florida, that that would
9 present a problem.

10 Page 7, I don't know that I would point to a
11 particular word in there, but the point of that particular
12 question is, as I've suggested in my earlier testimony,
13 that it would present a problem that given the petition and
14 the facts as we have heard them as to whether or not this
15 would suggest that a number of other merchants like this
16 one that's proposed would follow behind it. And in the
17 event that it would, I think it poses a particular problem
18 for this Commission as to what the standard would be for
19 what plants might follow this one in the event that it was
20 approved.

21 It's not clear to me given the facts that I've heard
22 at least that that's clear at this point.

23 Page 9, reference to my exhibit, VMD-1, letter from
24 James Scott to Honorable Julia Johnson, to the extent that
25 this plant was approved, that would certainly present a

1 problem in that given what Senator Scott offered, there
2 seems to be a conflict at least in his mind about whether
3 or not there is statutory authority for this plant to be
4 built and whether or not this plant and others like it
5 ought to be built without a full and complete review of the
6 issues associated and other policy implications with this
7 plant.

8 Also on page 9, line 15, again speaks to the lack of a
9 standard. We had discussions in the course of this hearing
10 about 30 megawatts matching up with 500 and whether or not
11 10 would match up with 1,000 or 50 would match up with
12 5,000. Again, it's not clear to me at least as to what the
13 standard is that we're going to hold ourselves to and how
14 we're going to prove need in the future. It certainly
15 suggests a different standard than the current participants
16 in the regulatory environment in Florida are held to. That
17 would present a problem at least in my mind.

18 Page 11, line 5, addresses an issue that I think I
19 addressed a week ago, a concern about what the impact of
20 this decision might have as it relates to uneconomic
21 duplication of facilities and at some point in the future
22 the subsequent impact on stranded costs. I think I
23 addressed that at length last Friday. Certainly that would
24 be a concern and a problem that this decision would
25 present.

1 Page 12, line 2, once approved I think it's been
2 established that this Commission will have limited, if any,
3 jurisdiction on the wholesale activity of the merchant
4 portion of this plant. And it's being held out as somehow
5 fitting into a need for Florida.

6 We think it's interesting that under contract with
7 Rockingham and Duke there is some contractual commitment
8 for that plant to be there for liability purposes at peak.
9 There seems to be an absence of that here. We seem to be
10 relying very heavily on the future merchant world and the
11 economic need for this plant. I think we spent little time
12 talking about reliability, which is I think of great
13 importance to the utilities and the Commission in the State
14 of Florida.

15 Page 13, you can take items 1 through 8. You could
16 put them all in the category of problems. They're problems
17 in the fact that we have not spent in my opinion a
18 sufficient amount of time understanding the policy
19 implications of this decision and what might be the result
20 behind this. I think we talked about that at length on
21 Friday as well. I don't believe there is a need to go
22 through those individually.

23 I'm sure there are other examples if we wanted to take
24 the time to go through and go line by line through the
25 testimony. I'm not sure that would serve us much purpose

1 here in the interest of time. But certainly I think this
2 petition presents problems that it's outside the current
3 regulatory framework in Florida; no merchants exist today
4 because they're not allowed; there is no real assurance
5 that the reliability criteria for this particular plant is
6 going to be there when it's needed; and, as I have
7 suggested on numerous occasions, there's a right way and a
8 wrong way to go about significant changes in the regulatory
9 framework in Florida, and I don't believe this petition is
10 the right way for this State to take this issue up. I'll
11 stop there.

12 Q Okay. Well, I understand that to be your
13 testimony, that you think merchant plants aren't allowed.
14 And I'm sure you understand we have a difference of opinion
15 as to whether this is really is a reworking of the
16 regulatory approach. We assert that it's within the scope
17 of current regulations.

18 MR. SASSO: Madam Chairman, I object to Mr. Wright
19 testifying. I would appreciate it if he could put a
20 question to the witness.

21 MR. WRIGHT: It was a predicate statement to what I am
22 about to ask him.

23 CHAIRMAN JOHNSON: Go ahead.

24 MR. WRIGHT: Thank you.

25 BY MR. WRIGHT (Continuing):

1 Q You've raised in this context the possible lack
2 of a standard. Why wouldn't the standard simply be the
3 criteria in Section 403.519?

4 A Well, I suppose it -- I guess I'm hesitating in
5 answering this question because I think we went to great
6 lengths about interpreting statutes and law. And I'm not
7 here today to interpret the statutes and the law.

8 Certainly if you would like me to do that, I would
9 suggest that if we do make that interpretation, that would
10 be an appropriate standard and this plant would not be
11 allowed in my opinion. So if you want to continue on that
12 line, we certainly can.

13 Q Well, I wasn't asking you for a legal opinion.
14 You were saying that, as I understood your testimony, as a
15 matter of policy we'd be kind of out in the woods with
16 respect to what the standard would be. And I was simply
17 asking you don't you think the Commission can apply the
18 criteria in Section 403.519 as the standard against which
19 it would judge the application, the need determination
20 petition for this project and for any other merchant
21 project?

22 MR. SASSO: Object; it's argumentative. I think he is
23 attempting to call for a legal opinion.

24 MR. WRIGHT: I did clearly preface my question by
25 saying as a matter of policy, Madam Chairman.

1 CHAIRMAN JOHNSON: You can answer it.

2 A Certainly the Commission could do that, yes.

3 BY MR. WRIGHT (Continuing):

4 Q You made reference in your response to Senator
5 Scott's letter. Have you studied the legislative history
6 of the Power Plant Siting Act, Mr. Dolan?

7 MR. SASSO: Again, I must object. Mr. Wright is
8 attempting repeatedly to engage Mr. Dolan in a legal
9 argument over these issues. We have discussed and argued
10 the legislative history at length during the legal argument
11 portion of this case.

12 Mr. Dolan is not here to argue statutory construction
13 or statutory authority. Whenever he got close to that
14 issue in his testimony, Mr. Wright moved to strike and we
15 reached an accord to delete anything that was arguably in
16 that ballpark.

17 CHAIRMAN JOHNSON: Mr. Wright, does this go to
18 anything that's currently in his testimony?

19 MR. WRIGHT: Yes, ma'am. Senator Scott's letter
20 that's still appended as an exhibit and to his response to
21 my earlier question.

22 CHAIRMAN JOHNSON: And your question?

23 MR. WRIGHT: My question is has he studied the
24 legislative history of the Power Plant Siting Act.

25 CHAIRMAN JOHNSON: And how does that go to Senator

1 Scott's letter? You have got to make a better connection
2 for me.

3 COMMISSIONER CLARK: Madam Chair, I would also suggest
4 that these are things that I view would be put in a legal
5 argument on this issue.

6 MR. WRIGHT: Madam Chairman and Commissioner Clark, I
7 apologize; I'm not -- I'm not trying to engage Mr. Dolan
8 in a debate over what the legislative intent was.

9 COMMISSIONER GARCIA: Tell us where you are going,
10 Scheff. Maybe we can --

11 MR. WRIGHT: I just want to know to what extent -- I
12 just want to know to what extent he has researched the
13 legislative history and to what extent if any that informs
14 the statements he has made here. He says that this
15 represents a major policy change. He says -- In response
16 to my previous question, he says that Senator Scott's
17 letter highlights that. And I want to know what if
18 anything he knows about the history of the Power Plant
19 Siting Act.

20 CHAIRMAN JOHNSON: Hold on one second. I'm just
21 looking at the comments that you made. I'm just looking at
22 the comments that you made when you referenced the letter.

23 Now as you've just responded, Mr. Wright, to
24 Commissioner Clark, you stated that he talked about general
25 legislative history, because, candidly, looking at what he

1 said here, he's not expressing any intent or any testimony
2 as to the legislative history. He's citing to the letter
3 and I guess his interpretation of that letter.

4 MR. WRIGHT: Madam Chairman, he says at line, line 8,
5 at line 8, page 9 -- On page 9, line 8, he says that this
6 can only be contemplated in a broad industry review which
7 by necessity must result in legislative changes. I want to
8 know --

9 CHAIRMAN JOHNSON: Where are you reading from?

10 MR. WRIGHT: His corrected testimony, Madam Chairman,
11 page 9, line 8.

12 COMMISSIONER GARCIA: Scheff, couldn't his simple
13 reading of the statute lead him to that conclusion or his
14 simple feeling when he reads the statute, he says this is a
15 big change, at least the way I see it?

16 MR. WRIGHT: It could. And if that's his answer,
17 that's his answer.

18 COMMISSIONER GARCIA: Well, he's certainly not going
19 to have a legal scholar degree or a history degree from the
20 time he sat down until now.

21 MR. WRIGHT: Commissioner Garcia, and that may or may
22 not be true. He's offered as their policy witness. He has
23 testified as to legislative intent. He's testified that
24 what my clients are proposing in this case would require
25 legislative changes. And I just want to know what he knows

1 about the history of the statute, if anything.

2 CHAIRMAN JOHNSON: Go ahead, Scheff. Or, I'm sorry,
3 you can answer the question.

4 BY MR. WRIGHT (Continuing):

5 Q Have you got the question?

6 A I'm not sure I do.

7 Q Have you reviewed the legislative history of the
8 Florida Electrical Power Plant Siting Act?

9 A No.

10 Q Thank you. You mention the questions and issues
11 that you raised at pages 13 and 14 of your testimony.
12 Mr. Dolan, are those essentially similar to, if not the
13 same as, questions and concerns that you posed to a
14 Commission Staff workshop in November of 1997?

15 A Yes, they are similar to those.

16 Q Got any answers or suggestions for the Commission
17 as to these?

18 A Any one in particular or just any of them?

19 Q Generally. When I asked you at your deposition,
20 you didn't. I just wonder if you do today.

21 A I think I did answer some at my deposition, so,
22 whatever.

23 Q Okay. Well, go ahead.

24 A Sure. Let's take No. 7.

25 Q Okay.

1 A I think we did that one. This may be somewhat
2 repetitive from what we talked a little bit about last
3 week, but certainly to the extent that this plant is
4 allowed and others like it, at some point it's -- Well,
5 initially if the plant's not needed, it's going to have an
6 impact on from an environmental standpoint. These are
7 not -- As I said last week, these are not simple stores
8 that we plop on a street corner. They have a significant
9 use of land, water, fuel, and certainly transmission, which
10 building new transmission, I'm sure there are a number of
11 folks that are coming to tell you that's not a simple
12 matter these days.

13 So to the extent that this plant and others like it
14 are built and are not needed and are duplicative of
15 existing plants, that certainly would present issues as it
16 relates to the environment in the State of Florida. So
17 that would be one.

18 Did you want to go through all of these?

19 Q Well, let's take that one.

20 A Okay.

21 Q Will you agree that whether a particular power
22 plant has net positive effect on environmental
23 externalities or a net negative effect on environmental
24 externalities is a fact specific question specific to the
25 given power plant?

1 A To some degree, yes.

2 Q Let's move on. I'm going to hand out a copy of a
3 document that we discussed briefly at your deposition.
4 It's an edition of a Merchant Power Scoreboard.

5 Madam Chairman, I'd request that this be marked for
6 identification; I would have No. 39.

7 CHAIRMAN JOHNSON: It will be marked 39. And short
8 title?

9 MR. WRIGHT: 9/24/98 Merchant Power Scoreboard.

10 CHAIRMAN JOHNSON: Thank you.

11 (Exhibit 39 marked for identification.)

12 BY MR. WRIGHT (Continuing):

13 Q Mr. Dolan, do you remember discussing this at
14 your deposition?

15 A Yes.

16 Q And do you remember -- I'm sorry.

17 MR. SASSO: I just coughed.

18 BY MR. WRIGHT (Continuing):

19 Q Do you remember acknowledging that you had looked
20 at this or an edition of this in preparing your testimony?

21 A Yes.

22 Q Thank you. How much merchant power is currently
23 in operation in the United States, plus or minus, say to
24 the nearest 1000 megawatts?

25 A Approximately 10,000 megawatts.

1 Q And will you agree that there are some states
2 where merchant plants either exist or are allowed that do
3 not have retail competition?

4 A Yes.

5 Q Will you also agree that there are some states
6 where merchant plants either exist or are allowed where no
7 statutory change is required to permit them to exist?

8 A I'm not sure that I know specifically that I
9 could say yes or no on that question. That's possible.

10 Q Let's talk about Texas. There are merchant
11 plants in Texas; aren't there?

12 A Yes, there are.

13 Q Okay. Are you aware of whether there were any
14 statutory change was required to allow such plants to
15 either exist or to be permitted in Texas?

16 A I don't know the answer to that specifically.

17 Q Okay. How many states have full retail choice as
18 of today, Mr. Dolan?

19 A Could you define "full retail choice"?

20 Q I'd be happy for you to define it. I would
21 define it as something like what is in place in California,
22 where a retail customer may choose his, her or its electric
23 supplier. If you want to use a different definition,
24 that's -- just tell me what it is and I'm sure we can agree
25 on it.

1 A Full retail choice or open market conditions, I
2 would say there are probably three states currently that
3 are in that stage of retail choice: California,
4 Massachusetts, and Rhode Island.

5 COMMISSIONER GARCIA: Isn't Pennsylvania there, too?

6 A Commissioner, I believe Pennsylvania is in a
7 pilot stage right now.

8 COMMISSIONER GARCIA: Gotcha.

9 A But there are other states that are moving
10 towards choice. They have dates established, but I was
11 trying to be specific --

12 COMMISSIONER GARCIA: You're probably right.

13 A -- to who actually can choose today.

14 BY MR. WRIGHT (Continuing):

15 Q Bearing in mind, and with respect for our
16 difference of opinion as to whether this plant is allowed,
17 I just want to ask you can you think of a scenario where
18 the plant, the New Smyrna Beach power project would be
19 built, and where Florida Power Corporation would find
20 itself buying from the project from time to time in the
21 wholesale market?

22 A Can I think of that scenario in Florida?

23 Q Yes.

24 A No.

25 Q What about the -- Do you think Florida Power --

1 Can you conceive of a scenario where Florida Power
2 Corporation would buy power from an Indian River merchant
3 plant, assuming that the sale goes through as it may do?

4 A Well, that's possible, but I think we would need
5 to clarify. I have some questions about Indian River.
6 This is, again, where we're, you know, we're using one
7 example of what could happen with that plant. And I think
8 the same press reports that you refer to suggest that there
9 may be a power purchase back to Orlando Utilities.

10 Certainly we're a long way from establishing Indian
11 River as a merchant plant in Florida. I mean, I have
12 questions about -- Or I would assume at least that Orlando
13 Utilities is counting that capacity in their Ten-Year Site
14 Plan that they file with this Commission. And to the
15 extent that the release of that capacity compromises their
16 reserve margin, that would certainly be a question that
17 this Commission would be interested in.

18 And to the extent that there is a purchase power
19 agreement back, you know, that certainly changes -- I mean,
20 it certainly wouldn't define that plant as a merchant power
21 plant, at least not in my mind.

22 So I think we need to be careful before we label that
23 plant as a merchant plant in the State of Florida.

24 Q Well, that was a fairly long answer to what I
25 thought was a short question. Can you think of a scenario

1 where the sale went through and it had some power for sale
2 in the wholesale market where FPC might buy some from it?

3 A That's possible.

4 Q On Friday last, Mr. Dolan, on the 11th, I think
5 that in response to some questions from the bench you made
6 some remarks regarding qualifying for generation
7 facilities?

8 A You might have to help me a little bit more. I'm
9 not recalling that specifically.

10 Q I'm not really sure. My notes indicate that you
11 talked about QFs and we did discuss it at your deposition.
12 I have a couple of questions along those lines.

13 A I do recall the deposition. I honestly don't
14 recall Friday, but maybe that will come to me.

15 Q That's okay.

16 A It's been a little while.

17 Q I'll ask my questions. And they're along the
18 lines of the questions I asked you at your deposition. Do
19 QFs have the right to sell power to existing utilities
20 under PERPA?

21 A Yes.

22 Q Do they have the right to purchase backup,
23 standby and supplemental power under PERPA?

24 A I believe they do.

25 Q Do they have rights under PERPA and state law to

1 require existing utilities to wield for them?

2 A I believe they do.

3 Q Now a merchant plant, where it existed, would it
4 be your understanding that it would have a similar
5 statutory right to backup power?

6 MR. SASSO: Madam Chairman, I must object. It seems
7 we're using a double standard on when it's appropriate to
8 ask Mr. Dolan for a legal opinion. Mr. Wright is now
9 asking a series of questions about statutory authority, but
10 he won't -- He wouldn't let him express opinions that might
11 be colorably legal when they were contrary to Duke's
12 position.

13 MR. WRIGHT: I'll withdraw this question, Madam
14 Chairman.

15 MR. WRIGHT: Mr. Dolan, I'm going to ask Mr. Shine to
16 hand to you and to the others present copies of two
17 additional deposition exhibits, exhibits that were marked
18 at your deposition, Florida Progress' Annual Report and
19 Florida Progress' and Florida Power Corporation's 4- and
20 10-K. And I'd request that these be marked individually,
21 Madam Chairman.

22 CHAIRMAN JOHNSON: Which first?

23 MR. WRIGHT: The annual report first, please, ma'am.
24 And I would call it the Florida Progress 1997 Annual
25 Report. And then the 10-K is Exhibit 41. And I would

1 label that the Florida Progress/FPC 1997 10-K.

2 CHAIRMAN JOHNSON: Thank you.

3 (Exhibits 40 and 41 marked for identification.)

4 COMMISSIONER DEASON: Mr. Wright, are you leaving
5 Exhibit 39 or are you going to come back to it? I'm sorry.
6 Not 39, but 3- -- Yeah, 39.

7 MR. WRIGHT: Commissioner Deason, I was leaving
8 Exhibit 39. If you want to inquire, please have at it.

9 COMMISSIONER DEASON: Well, Exhibit 39, which the
10 pages are unnumbered, but it's the ninth page from the
11 back, there is a listing there for Progress Energy.

12 A I'm sorry, Commissioner; I don't know which one
13 is 39.

14 COMMISSIONER DEASON: 39 is the Merchant Power
15 Scoreboard. Nine pages from the back I guess is the
16 easiest way to --

17 There is a listing in the middle of that page for
18 Progress Energy. Is that an affiliate of Florida Power?

19 A It's a subsidiary of Florida Progress, yes.

20 COMMISSIONER DEASON: And it states in there that
21 there are plans for development of plants in a number of
22 states, one of which is Florida. Is that merchant plants
23 in Florida or is that just plants that would have a
24 contract with a utility in Florida or you don't know?

25 A Commissioner Deason, I think this is -- This is

1 an area in this report that I would call in question.
2 There have been numerous trade press reports about Florida
3 Progress developing merchant plants, as an example, in
4 North Carolina certainly responding to an RFP for
5 legitimate need by a utility. I think that's a
6 mischaracterization of the company's activities up there.

7 I don't -- I'm not aware that Progress Energy -- First
8 off, Progress Energy is no longer pursuing generation.
9 That activity has been shut down within the company.

10 Secondly, I think I can say with certainty that if
11 a --

12 COMMISSIONER DEASON: Let me stop you. What does
13 Progress Energy do?

14 A Right now?

15 COMMISSIONER DEASON: If they're not in the business
16 of generating.

17 A They're essentially -- There is a limited amount
18 of activity. There's a few folks left. And I think their
19 main activity that remains is their pursuit of the
20 desalination plant down in Pinellas County.

21 COMMISSIONER DEASON: Is there any new affiliate that
22 is in the business of developing power plant?

23 A No, sir; there is not.

24 BY MR. WRIGHT (Continuing):

25 Q Just a follow-up on Commissioner Deason's

1 question: Has either Progress Energy or Florida Power Corp
2 or any other affiliate of your family of companies
3 considered building additional capacity in Florida and
4 selling large amounts of that capacity at wholesale?

5 A I'm not sure I know any of the specifics, but I
6 may offer this answer. That what I am certain about is if
7 like the project in North Carolina, to the extent there
8 were opportunities that were legitimate in the State of
9 Florida or any other state in response to an RFP that
10 followed the guidelines and the regulations and the laws in
11 that state, I would suspect that while they were still in
12 operation Progress Energy was pursuing those types of
13 opportunities.

14 As I said earlier, they're no longer in that business.
15 So as far as currently, they're not -- We're not engaged in
16 that activity at all.

17 Q Does Florida Power ever submit a bid to another
18 utility in Florida to sell wholesale capacity to it out of
19 capacity that's not otherwise required for its retail
20 customers?

21 A I'm not sure. Could you repeat the question?

22 Q Sure. Does Florida Power Corporation ever submit
23 bids to other utilities within Florida to sell wholesale
24 power to them from capacity that is not otherwise required
25 to serve Florida Power Corporation's retail customers?

1 For example, did ya'll submit a bid to KUA a few
2 years ago?

3 A Yes; I'm sure we did.

4 Q Can you think of any other examples?

5 Wauchula?

6 A Wauchula? We were unsuccessful in Wauchula. So
7 I try to forget about that one, but I suppose we did put a
8 bid on there.

9 Q You did submit a bid?

10 A Yes, we did.

11 Q Does Florida Power Corporation consider itself to
12 be a competitor for wholesale sales within Florida?

13 A To some degree I would say yes.

14 COMMISSIONER GARCIA: You would characterize that as a
15 small degree, though; right? That last question. In terms
16 of that market, what that represents to you, that's a
17 relatively small thing for you?

18 A Commissioner Garcia, I believe at last count our
19 wholesale sales are in the range of maybe eight percent. I
20 think retail is probably about 90-plus percent of our sales
21 in the State of Florida.

22 COMMISSIONER GARCIA: You see it that high? Because
23 I'm looking at some figures here and I see it much lower.

24 A That's possible. I honestly don't have -- I
25 don't know. Are you looking at one of the exhibits?

1 COMMISSIONER GARCIA: I don't know what I'm looking
2 at. I asked staff to get me some information. And maybe
3 since Scheff brought you here, maybe we can touch on it
4 while he finds his place.

5 And so let me ask you a few questions about it and
6 then you can explain. Let's go back. You said there were
7 four issues. And, unfortunately, we ended up Friday near
8 those four issues and then you walked -- We had someone
9 else come up. And refresh my memory. You don't have to
10 explain each of them.

11 I know that number three was tax. The first one was?
12 You said there were four problems with this thing. The
13 third one was tax.

14 A Environmental.

15 COMMISSIONER GARCIA: Environmental.

16 A Duplication of facilities for stranded costs,
17 taxes, and wholesale sales.

18 COMMISSIONER GARCIA: Okay. Good. I'm glad -- I'm
19 glad -- I thought that that was it. So after you'd said
20 that, I asked staff to -- It's stuff you reported to us.
21 So I just asked staff to sort of compile it for me. I
22 think this might be something that you do anyway. So I
23 don't think it's anything that you're not aware of.

24 But I see on the economy broker, broker sales, Florida
25 Power Corp -- I guess one of the reasons that you said is

1 that there was money there that ratepayers made, if I'm not
2 mistaken. Well, all we made last year was I think it's
3 about half a million dollars on those economy sales on the
4 broker.

5 In other words, when you split it up, the
6 ratepayers -- When I say we -- I guess I was one -- I
7 guess I'm not a Tampa. I'm not a customer of that area of
8 the state. So the ratepayers of Tampa made about a little
9 bit over half a million dollars, \$540 -- \$574,000.

10 Yet when I go down to economy purchases, you guys made
11 a lot more of those. You made somewhere in the
12 neighborhood of 2.6 million dollars in purchases. So it
13 sort of begs the question.

14 What if Mr. Wright had his efficient plant running,
15 you could make more of those buys; couldn't you, because,
16 obviously, the ratepayers aren't doing that well with your
17 sales, but they did do very well with your -- We saved 2.6
18 million dollars.

19 If we've got another efficient competitor in the
20 market, don't you think we could -- our ratepayers in your
21 part of the state could save some more money?

22 A Well, I think the answer to that question is
23 yes, but I want to go back on one of your earlier points
24 and make sure I was clear on that, if I could.

25 COMMISSIONER GARCIA: Sure.

1 A The issue about the wholesale sales, if we look
2 at one year we may not get a true picture. It would be
3 important probably to look at a series of years and to look
4 at the state as a whole, because generally speaking --

5 COMMISSIONER GARCIA: But that's a good point. We
6 can -- If I can hold you there, statewide, on the 80%
7 revenue, we only did about 9 million. I have to say TECO
8 was the master of that area; they did 8.3 million dollars
9 worth of sales.

10 If I'm not mistaken -- And you probably know this
11 better than I, so you correct me if I'm wrong -- that's
12 because they've got a lot of cheap coal units that they've
13 got producing and they probably are going to make some very
14 good sales there to everyone's advantage, if I'm not
15 mistaken; correct? That's probably why they do a little
16 bit more of those sales?

17 A I don't know that, but that sounds like a
18 reasonable assumption.

19 COMMISSIONER GARCIA: All right. So using that
20 assumption, I mean, the one that would be most hurt by more
21 competition I thought would be TECO because it's a huge
22 number in comparison to the size of their company, yet I
23 think it's because they simply have cheaper fuel. If
24 you -- So -- I'm sorry; I interrupted you.

25 I guess I go back to that issue. One of the things

1 that troubled me -- It rattled around in my brain all
2 weekend and then I was fortunate enough to unburden myself
3 on Joe Jenkins and asked him to find some information and
4 he pulled this out for me, you know, because I thought, you
5 know, he's absolutely right. We make all these sales; our
6 ratepayers gain 80%; that's a big loss if we lose that.

7 Well, then I looked it up and it's half a million
8 dollars.

9 A Well, if I could, is that just the broker that
10 you're referring to?

11 COMMISSIONER GARCIA: That's the broker. If we go to
12 the -- I guess we can go to economy broker sales, also?
13 It's the same thing; right?

14 A Well, I think -- Certainly we could go back and
15 do some research on this if it's helpful, but I think one
16 of the points that was raised by --

17 COMMISSIONER GARCIA: Well, let's do that. I guess --
18 Could I ask for that?

19 Madam Chairman, might I ask for that?

20 I'd like, if I can, and let me ask the question, and
21 see if you can provide it for us.

22 MR. SASSO: I was just going to suggest, I think we've
23 already agreed to provide as a late-filed exhibit to
24 Mr. Rib's testimony a percentage of revenues from wholesale
25 transactions in relationship to total revenues.

1 COMMISSIONER GARCIA: Great. And if I could ask that
2 of TECO and of Florida Power and Light, I'd appreciate it.

3 A But, Commissioner Garcia, if I could just
4 clarify this point and then certainly we can move on. The
5 point about the wholesale sales, I think one of the things
6 that we would need to be careful about in assembling these
7 numbers is there has been a trend away from the broker into
8 more, for lack of a better term, bilateral-type
9 arrangements between utilities.

10 COMMISSIONER GARCIA: If I'm not mistaken, those would
11 be, I guess they're classified other negotiated sales;
12 would that be?

13 A That's very possible.

14 COMMISSIONER GARCIA: Twelve months ending September
15 30th, 19 -- And there, again, you know, again, I was
16 worried because of that, and Florida Power Corp's got three
17 million -- 3%. So there it is a major area. And I guess
18 something to your credit, staff points out that you credit
19 all the gains of those sales to the customers?

20 A Yes, we do, as all -- as I believe all the
21 utilities in Florida do. And that was really my
22 point, that --

23 COMMISSIONER GARCIA: Do they? Because I didn't know
24 that. That was a question I had for staff. Do they all
25 credit it through to their customers because staff only

1 footnotes your company?

2 A Well, I believe that as it -- I won't state as a
3 fact that I know, but I'm fairly certain that FPL and TECO
4 operate the same way. Whether or not the IOUs or the
5 munis -- I'm sorry -- the co-ops or the munis operate
6 differently, I can't say that with certainty sitting here
7 today, but I think they follow similar practice.

8 COMMISSIONER GARCIA: Then, again, of that, it's a
9 percent -- It doesn't even make up 1% of your total sales,
10 which you say is a growing market? It's percent gain on
11 total revenues. I think it's 79. I guess it's percent of
12 total megawatts; it's 3%. So, at least that's what I'm
13 looking at.

14 A Yeah, and I think that --

15 COMMISSIONER GARCIA: Is that about right? Do you
16 think I'm in the ballpark there?

17 A I honestly don't know, Commissioner. I think
18 the point I was trying to raise there is these plants were
19 not built -- These plants were based on legitimate need
20 for peak demand in the State of Florida. I think as the
21 system evolved, the regulatory system evolved, I don't know
22 where, at what point this happened, but there was a
23 decision made to look for better utilization of the assets
24 in the State as a whole. And the benefits of that are
25 shared to some small degree with the utility, but the

1 largest part of that flows back to the ratepayers in the
2 State of Florida.

3 COMMISSIONER GARCIA: Right. But it seems -- It seems
4 if that's the case, I bring you back to the issue as a
5 purchaser. You purchased at a total cost of 14,400,000,
6 you purchased power, purchased for your system, and that
7 represented a net savings of 2.6 million, which is about 17
8 million dollars that would have been expended, you expended
9 14 million. So it's about a little bit less than three
10 million dollars.

11 And it occurs to me that's real benefit because you're
12 getting cheaper product. That's great benefit for your
13 company, for the people of Florida, and for the people in
14 your territory.

15 So then it begs a question for me. And perhaps it is,
16 again, my ignorance of this. And I don't claim to be an
17 expert. What harm if Scheff's pumping in another 470
18 megawatts into the system, he's got no long-term client,
19 he's just pumping that in; isn't that good for you?

20 A I don't know that necessarily that's true. And
21 maybe --

22 COMMISSIONER GARCIA: Okay. Tell me where that's not
23 true and then answer my question, I guess.

24 A Okay. And, again, it might be helpful to just
25 take a moment, since you're interested, to go back through

1 the example that we talked about last week. If there's --
2 Let's assume that there's a willing buyer in the market at
3 \$30. And let's assume that the old inefficient utility
4 bids at \$22 and this new hybrid developer, who is much more
5 efficient than we are, has a 10% lower price than what we
6 do. So let's assume that we're offering a price of \$22.

7 COMMISSIONER GARCIA: Right.

8 A And they could offer --

9 COMMISSIONER GARCIA: Are we doing math that works
10 out? You probably have it all --

11 A I'm trying to make it very simple.

12 COMMISSIONER GARCIA: Good. You don't mind if I write
13 this down because --

14 A That's quite all right.

15 COMMISSIONER GARCIA: Because my math -- Commissioner
16 Deason can do this in his head, but I have problems.
17 You -- \$30 is the price that the market is asking for, did
18 you say?

19 A Let's say we have a buyer at \$30.

20 COMMISSIONER GARCIA: You have a buyer at 30. Okay.

21 A That's how the broker might work today.

22 COMMISSIONER GARCIA: Okay.

23 A And let's assume that the --

24 COMMISSIONER GARCIA: Should we not equate some kind
25 of total to that or just \$30?

1 A \$30 a megawatt hour.

2 COMMISSIONER GARCIA: Okay.

3 A Okay.

4 COMMISSIONER GARCIA: No, I meant an amount of
5 megawatts. You don't need it for this calculation. Okay.
6 Go on.

7 A I'm just trying to simplify it.

8 COMMISSIONER GARCIA: Okay.

9 A And let's assume that us slow utilities are 10%
10 less efficient than the new kid on the block.

11 COMMISSIONER GARCIA: Okay.

12 A And we sell at \$22 and they sell at \$20, 10%.

13 COMMISSIONER GARCIA: Okay. You sell at \$22; that's
14 good.

15 A Let's say we offer 22.

16 COMMISSIONER GARCIA: For 22.

17 A And they offer 20.

18 COMMISSIONER GARCIA: And Duke offers at 20.

19 A Yeah.

20 COMMISSIONER GARCIA: Okay.

21 A And let's assume the way it works today, that the
22 sale takes place at the midpoint, so that the sale in our
23 event is consumed at \$26, halfway.

24 COMMISSIONER GARCIA: Okay.

25 A And theirs is consumed at \$25. Those types of

1 sales occur every day.

2 COMMISSIONER GARCIA: Explain that midpoint to me.

3 A Well, basically that's the way the broker works
4 is my understanding, that you match a buyer and a seller at
5 the midpoint and people, you know, submit blind --

6 COMMISSIONER GARCIA: Okay. So they got a dollar on
7 you; is that what you're saying?

8 A Well, I'm not -- So far.

9 COMMISSIONER GARCIA: Oh, okay. Very good.

10 A So the margin that the utility would get would
11 be \$4 on the sale, assuming their cost was \$22.

12 COMMISSIONER GARCIA: Uh-huh.

13 A Margin that the developer would get would be \$5.

14 COMMISSIONER GARCIA: Okay.

15 A Okay. So now let's examine where that margin
16 goes. On the purchasing side, the buying utility has saved
17 a dollar.

18 COMMISSIONER GARCIA: Right.

19 A Okay. And the other \$4, we know where that goes.

20 COMMISSIONER GARCIA: Right.

21 A It goes in the developer's pocket.

22 COMMISSIONER GARCIA: Right.

23 A Okay. If it's a Florida utility that makes the
24 sale --

25 COMMISSIONER GARCIA: Three dollars go to the

1 ratepayers?

2 A Three dollars and twenty cents goes to the
3 ratepayer and eighty cents goes to the utility shareholder.
4 That's the way the broker system works today.

5 COMMISSIONER GARCIA: Why \$3.20?

6 A Well, 80% of the \$4.

7 COMMISSIONER GARCIA: Okay. I'm sorry. You're right.

8 A So by my math, the ratepayers, if we look at the
9 ratepayers in this state in total, they're behind \$2.20 in
10 this example.

11 COMMISSIONER GARCIA: All right. But --

12 A I don't think this is an unrealistic example.
13 These types of transactions happen every day.

14 COMMISSIONER GARCIA: No, I don't, but when we look at
15 these types of transactions, you are clearly buying much
16 more than you're selling.

17 A Well, that may be true this year. But, as I said
18 earlier, I think it would be important. That type of
19 dynamic changes from time to time. I would -- Before I
20 would conclude that we are always a net buyer, I really
21 would want to look at some history --

22 COMMISSIONER GARCIA: Right.

23 A -- because that changes from one year to the
24 next.

25 COMMISSIONER GARCIA: Well, maybe you can do that in

1 that late-filed exhibit, give us a few years. I'm sure we
2 follow these internally in staff, but maybe you should give
3 us a few years; we could ask for the last five years or how
4 it's been going.

5 It would occur to me, though, that if, having seen
6 your last Ten-Year Site Plan that you're probably going to
7 be a buyer for a little while and we're relying on that for
8 you to meet your needs. I mean, that was your plan, not
9 mine. But it basically shows you coming up a little bit
10 short. So you're going to be coming up with different
11 resources on a peninsular basis.

12 So I guess you're a net buyer, at least going to be if
13 you're going to try to keep around where at least that plan
14 that was filed before us has left you; correct?

15 A Actually, Commissioner, I don't know that I would
16 agree with that.

17 COMMISSIONER GARCIA: Okay.

18 A I think our plan as filed shows, with the one
19 exception that we talked about, shows us to have sufficient
20 reserves. I think part of the reason we were a net buyer a
21 couple of years ago -- I don't know what year you're
22 looking at there. That might be 1997. As you know, our --

23 COMMISSIONER GARCIA: This is twelve months ending
24 September 30th.

25 A Of which year?

1 COMMISSIONER GARCIA: '98.

2 A '98. Okay. Well, I would suspect --

3 COMMISSIONER GARCIA: Let's do that. When they submit
4 it, if the companies could for the last five years, that
5 would be appreciated, because, see, I end up where when you
6 tell me how well we could do, you know, that -- Half a
7 million dollars is a lot less than 2.6 million dollars in
8 savings. It just is. I mean, perhaps an accountant can
9 come to a different conclusion, but at least in my ignorant
10 reading of what I got from staff is where it leaves us.

11 And so I just think if you're in the market like you
12 are, you guys are actually out there buying, and the
13 quantity is a tremendous difference. In other words, we're
14 talking about -- Let me make sure I'm giving you apples to
15 apples here. Percent that you sold was about half of a
16 percent of your total megawatts. And the percent that you
17 bought was almost three and a half percent.

18 So clearly there is a disbalance. And clearly you did
19 good. I mean, I guess we -- As a regulator, I'm happy to
20 see this. You didn't run your expensive units; were able
21 to purchase at a cheap price. So, again, it leaves me with
22 a question. And probably when I look at -- We're going to
23 find out you were right when I look at the last five years,
24 it will be shown that maybe you were right, that it
25 balances out differently.

1 But just looking at this sort of plainly, if I were
2 you I'd say come on aboard, Duke; I get to buy even cheaper
3 power.

4 A Commissioner, I guess, just so I make sure that
5 I'm not -- make sure that I'm clear on the point that I'm
6 trying to make here --

7 COMMISSIONER GARCIA: No, I think you were very clear
8 on the point about who gets what.

9 A Well, but beyond that. The other point that I
10 wanted to make is that it's really, it's less relevant to
11 look at one particular utility. The fact of the matter is
12 the system that we have in Florida today, what we know with
13 certainty is if we look at history, we know that when these
14 sales are made that the benefits accrue to the ratepayers
15 of Florida. If you look at the state as a whole, we know
16 that.

17 What we don't know, what we're speculating, is to how
18 and whether or not the prices will be impacted if we allow
19 merchants in.

20 COMMISSIONER GARCIA: Right.

21 A And that -- I can't sit here and predict what
22 type of behavior will happen in the market in the future.

23 COMMISSIONER GARCIA: Now I guess that will bear
24 itself out, but when you say that, market as a whole,
25 again, TECO is doing a phenomenal job of selling. And I

1 don't think it really buys that much. So in TECO's case
2 the ratepayers are tremendous beneficiaries of their good
3 management, and it comes out to about 8.3 million dollars
4 that they gave back to ratepayers in terms of percentage of
5 sales. And when you consider the size of TECO in
6 comparison to FPL and FPC, it's impressive.

7 But, again, I think -- I may be wrong -- but staff at
8 least used that as an explanation of what I was looking at,
9 much of what TECO is selling out there is probably cheap
10 coal units that they've got there that are tough to beat.
11 And I remember when -- what was his name -- Professor --

12 COMMISSIONER CLARK: Nesbitt.

13 COMMISSIONER GARCIA: Thank you. -- Professor Nesbitt
14 came back, coal, no matter how efficient you were, coal was
15 on the inside of that. You know, coal, coal, you just
16 couldn't beat that, especially I guess with those paid off
17 units that have been there a while.

18 So I don't think that -- I don't think Mr. Scheff's
19 client affects that. And that's why -- That's -- I guess
20 that's another question. Let me -- I'm sort of testifying
21 here. I don't think Scheff's client affects that; does he?

22 I mean, if TECO's got cheap power that it's selling,
23 you're not -- it wouldn't be affected by Scheff selling on
24 the market? Some of your more expensive power might or
25 some of their more expensive power, but the majority of

1 that would probably still be sold; don't you think, if it's
2 cheap power, if it's coal power?

3 A That's possible.

4 COMMISSIONER GARCIA: Okay.

5 A I guess what's troubling me about this is we
6 can -- I guess gets back to one of my fundamental
7 concerns. If we -- If we isolate one individual
8 circumstance in the overall way in which we run the
9 regulatory system here in Florida, are there examples that
10 we could find where one item or the other might be better?
11 I think there's probably that --

12 (Multiple speakers).

13 COMMISSIONER GARCIA: That's the problem, though. And
14 see, that's, again, I thought you -- You began your
15 testimony, and I was very impressed; I said this guy
16 figured out I guess, I guess some of the perceptions that I
17 have are wrong. And you went into four issues. And you'll
18 remind me, because I know I already forgot one as I began.
19 One of them was tax. I -- In all due honesty, I think
20 you're wrong there, but that was one. So I could sleep
21 better after I knock that one out.

22 Then the other one was this great benefit that the
23 Florida ratepayers got. Well, I look at this year -- And,
24 again, I may be wrong, but I'm just looking at this year in
25 a box, and, probably, but I think you're wrong there, too.

1 So that one is gone.

2 Then about economy -- environment, which I think is a
3 key issue that you brought up. Well, it occurs to me that
4 what this unit is going to displace is probably some more
5 expensive and, according to some of our intervenors here,
6 some more dirty units are going to be displaced by this.
7 So that one I have a problem following you on, the
8 environment.

9 I guess the only way that I have a problem with it is
10 if one follows Dr. Nesbitt's model, that there's going to
11 be all these new generation plants and perhaps we don't
12 want more than we need, so I've got one left. What was the
13 one that I'm missing?

14 A Environment -- Well --

15 COMMISSIONER GARCIA: Environment? So --

16 A Duplication, uneconomic duplication.

17 COMMISSIONER GARCIA: Duplication. So I guess there
18 is -- There is the rub, duplication. And, again, I think
19 you may be wrong there because I don't think -- I don't
20 think Wall Street makes many big mistakes, 100 million, but
21 I'm wrong -- But Wall Street's been wrong and I guess I
22 could probably be wrong, too; that perhaps we may get extra
23 cheap power that we don't want.

24 All right. Thank you. Thank you. Appreciate you
25 going through this with me. And I look forward to the

1 filings for the company.

2 COMMISSIONER CLARK: He appreciated you listening
3 while he went through this.

4 A I certainly respect your point of view,
5 Commissioner.

6 COMMISSIONER DEASON: Mr. Dolan, since Mr. Wright's
7 cross has been interrupted, maybe I can ask a question or
8 two.

9 You gave the example of a broker sale. With a
10 purchasing utility -- I assume the purchasing utility's
11 voidance or their cost would be \$30 a megawatt, and that
12 FPC could generate at 22; so that under the broker system,
13 there's economies, efficiencies there, and under that
14 system the purchasing utility should not generate at their
15 cost of 30, instead they should buy it from Florida Power
16 at 22, and that generates total savings for customers in
17 the state of \$7.20, that being the purchasing utility saves
18 \$4 because they've -- The midpoint would be \$26; correct?

19 A Yes, sir.

20 COMMISSIONER DEASON: The purchasing utility saves
21 four and then of the \$4 profit that Florida Power makes,
22 they pass along 80% of that, which would be \$3.20. Okay.

23 That's the way the system was designed to work and it
24 has worked quite well over the years. But I guess my
25 question is if we go to a more competitive wholesale

1 market, and let's put a merchant plant in there under your
2 assumption that could generate at \$20 a megawatt, would the
3 market work to where that transaction would take place at
4 the midpoint between 20 or 30, or would in a truly
5 competitive market the merchant plant would look at is who
6 they're competing against, and just for simplification
7 let's say it's Power Corp 22, and they say anything that we
8 sell over 20, we're going to make money, and we want to
9 sell as much as we can; we know the only person out
10 competing with us is Power Corp at 22; we're going to sell
11 at 22 or maybe 21.99 or maybe whatever, so that we can sell
12 to this customer. And that under a truly competitive
13 market, you wouldn't need this incentive, the 80% and all
14 of this that you do. Your incentive would be to sell
15 anything you can above your avoided costs or incremental
16 costs.

17 And under that scenario, the savings would be \$8, the
18 difference between 30 and 22. It's just that being a
19 little less efficient in this example, you have no --
20 You're indifferent whether you sell or not, but New Smyrna
21 is very much incented because they make \$2 a megawatt, and
22 the savings to the State of Florida is not \$7.20 but is
23 \$8.

24 Now tell me what assumption is wrong in that
25 conclusion.

1 A I don't believe that any of your assumptions are
2 wrong. I think that's possible. As to whether or not --
3 By the same token, I think it's possible that based on
4 market intelligence, you could sell higher than that or
5 lower than that, it's really hard for me to sit there --

6 COMMISSIONER DEASON: But do you agree from an
7 economic standpoint to the extent that a producer in the
8 market can sell above their avoided costs, they're incented
9 to do that?

10 A Yes, I would agree with that.

11 COMMISSIONER DEASON: Okay. But obviously there are
12 fixed costs of being in business and you can't always sell
13 on the margins; sometimes you've got to recover those fixed
14 costs. And maybe that's where contracts and things come
15 in. Or I'm just asking you what your opinion is.

16 A No, it's -- I really think this is an important
17 question. The -- You know, I struggle a little bit that we
18 take one plant and use it as an example. If we're going to
19 change to this future merchant world as has been suggested,
20 I think a lot of things come with that.

21 Now we can isolate this one plant and go through your
22 example. I think it's very valid, in fact, that, you know,
23 given some limits on the market that that type of dynamic
24 could take place.

25 What I tend to worry about is that there may not be

1 rational behavior. And we may get into a situation where
2 we over build the amount of capacity that we truly need.
3 And that brings with it other problems. I think I've said
4 that on many occasions.

5 And it's probably not unlike real estate. You know,
6 we could go through boom and bust cycles. We could have
7 price spikes. We could have a lot of different things
8 happen in that type of market that's not necessarily an
9 equilibrium like the market is more like that today in
10 Florida.

11 So I think it's hard to sit here and predict. We
12 talked a little bit about the New England market last week.
13 It will be interesting for me to watch and see how that
14 market responds to this onrush of new power plants up
15 there.

16 I personally -- and this is my personal opinion -- If
17 there is economic waste and there is overbuilt situations,
18 society pays those costs at some point. And I don't think
19 that we should sit here and say that that's at some
20 shareholder's risk because that works its way back through
21 our economy somehow, I believe. That's just my personal
22 opinion, for what that's worth.

23 So I don't think that we should ignore -- Plus, I also
24 think that it's important, as I said, this is not -- You
25 know, at some point maybe the market will decide how we do

1 this. I just don't believe that that's the situation we
2 find ourselves here in Florida today. And I think your
3 example is a good one and I think there are a lot of other
4 examples out there that we, that we ought to think
5 carefully about. And if and when we want to operate by a
6 different set of rules, then I think maybe at some
7 point the market will determine how that sort of thing
8 works.

9 BY MR. WRIGHT (Continuing):

10 Q Couple of follow-ups on your conversation with
11 Commissioner Deason. In your example you assumed that the
12 merchant could generate at \$20 a megawatt an hour and FPC
13 could generate at 22; is that correct?

14 A Yes.

15 Q If the transaction took place, wouldn't the total
16 fuel bill for electric generation in Florida be \$2 less if
17 the merchant made the sale than if Florida Power made the
18 sale? The total expenditure for fuel for electric
19 generation for that megawatt hour that we're talking about.

20 MR. GUYTON: I think I'm going to object to the
21 question because it assumes something that's not been
22 established, the total cost that's given as a fuel cost.

23 MR. WRIGHT: I asked the question regarding the total
24 fuel bill for power generation. And I used the numbers
25 that Mr. Dolan specified in his example.

1 CHAIRMAN JOHNSON: Okay. You can answer.

2 MR. SASSO: Can I ask Mr. Wright just to restate the
3 question.

4 BY MR. WRIGHT (Continuing):

5 Q In your example, isn't it true that the total
6 fuel bill for this megawatt hour that we're talking about
7 in this example would be \$2 less if the power were
8 generated by the merchant than if it were generated by FPC?

9 COMMISSIONER DEASON: Mr. Wright, I think the
10 objection was that you need to establish that the marginal
11 costs of megawatts is related to fuel. And I don't know
12 that that's been established or not.

13 MR. WRIGHT: Well, let me ask a clarifying question as
14 to Mr. Dolan's numbers.

15 BY MR. WRIGHT (Continuing):

16 Q Mr. Dolan, was the \$22 that you assumed as FPC's
17 incremental generating cost reflective of fuel plus
18 variable O&M?

19 A I really -- It could be. I mean, I didn't -- I
20 offered numbers on total cost. Whether it's O&M or fuel or
21 some other --

22 Q Total incremental generating costs?

23 A Yes.

24 Q Okay. And the \$20 number that you used for the
25 hypothetical merchant in this example was a comparable

1 total generating cost number; was it not?

2 A It wouldn't necessarily be that on the merchant
3 side. You know, I don't know that I would assume that in
4 the case of the merchant.

5 Q You wouldn't think the merchant would bid a price
6 higher than its incremental generating cost; would you?

7 A It could. I don't know. I don't know what the
8 merchant would bid. Depends on their knowledge of the
9 market.

10 Q In remarks to Commissioner Deason, you said that
11 the merchant in the example might sell at a price higher
12 than or lower than something. You'd agree that if Florida
13 Power was in the market willing to make a sale at \$22 a
14 megawatt hour, the merchant couldn't sell at anything
15 higher than \$22 a megawatt hour; wouldn't you?

16 A Well, if it was not on the broker, I would tend
17 to agree with that.

18 Q Well, wouldn't you agree that even in the
19 non-broker short-term economy transaction, that assuming
20 rational behavior by the purchasing utility, if the
21 purchasing utility could buy from FPC at 22, they wouldn't
22 pay 22.50 from the merchant?

23 A Generally, Mr. Wright, I would agree with that;
24 however, there probably are a lot of other factors that
25 enter into buyers' and sellers' minds besides just price.

1 So I think -- I don't think we should conclude that
2 absolutely, that price is the sole determining factor of
3 how transactions occur.

4 Q In response to a question from the bench, you
5 made the remark about existing power plants built
6 specifically to serve identified reliability needs; do you
7 recall that remark?

8 A I think I do.

9 Q Okay. When Florida Power Corporation built its
10 Crystal River 5 unit, do you know how many megawatts of
11 power plants it took out of service and placed into
12 extended coal storage?

13 A No, I do not.

14 Q I would like to ask you to look at page 20 of
15 what has been marked as Exhibit 40, your Florida Progress'
16 Annual Report.

17 A I'm sorry.

18 Q Page 20 of Exhibit 40.

19 COMMISSIONER GARCIA: Where it says "Financial
20 Information"?

21 MR. WRIGHT: Yes, sir.

22 A Okay.

23 BY MR. WRIGHT (Continuing):

24 Q Would you please read the paragraph that -- out
25 loud -- that begins at the bottom of page 20 and continues

1 on to page 21? And then I do have a question for you about
2 that.

3 A Do you want me to read that out loud?

4 Q Yes, sir.

5 A "The electric utility industry is undergoing
6 changes designed to increase competition in an industry
7 that, since inception, has been considered a natural
8 monopoly. Starting with the Public Utilities Regulatory
9 Policies Act of 1978 and the Energy Policy Act of 1992,
10 competition in the wholesale electric generation market has
11 greatly increased, especially from non-utility generators
12 of electricity."

13 Q And my question for you, Mr. Dolan, is designed
14 by whom? Your annual report refers to changes designed to
15 increase competition. And my question is designed by whom?

16 MR. SASSO: Mr. Wright hasn't established that
17 Mr. Dolan wrote this. He's asking him the intent of the
18 language.

19 MR. WRIGHT: Well, if he knows.

20 MR. SASSO: I think he's basically arguing with the
21 witness. Mr. Wright can argue whatever construction he
22 wants of this document.

23 CHAIRMAN JOHNSON: Go ahead. Go ahead.

24 BY MR. WRIGHT (Continuing):

25 Q If you know, Mr. Dolan, designed by whom, as the

1 term is used in the sentence that you just read?

2 A I don't know if -- It can include a number of
3 things. I don't really know that I would know that just by
4 reading this.

5 Q Mr. Dolan, Florida Power Corporation does sell
6 power from time to time at market-based rates; does it not?

7 A Yes.

8 Q Does Florida Power Corporation also purchase
9 power at market-based rates from time to time?

10 A Yes.

11 Q Does Florida Power Corporation purchase power
12 from power marketers?

13 A Yes.

14 Q Do you know whether Florida Power purchases any
15 power that either directly or indirectly comes from
16 merchant power plants?

17 A I don't know that specifically.

18 Q At page 7 of your corrected testimony, Mr. Dolan,
19 you testify regarding the status of competition in
20 California and Massachusetts; is that correct?

21 A Yes.

22 Q And you make the point that as of your writing
23 this testimony for pre-filing, the voters in the states
24 would speak about whether they felt the new system in those
25 states was better than the former model; is that also

1 correct?

2 A Yes.

3 Q What happened in those elections?

4 A I'll repeat what I said in deposition. In my
5 opinion, the voters in those states decided that continuing
6 with competition was a better proposition than repealing
7 and starting over again.

8 Q Do you happen to know approximately what the
9 percentages who voted against the referenda or recall
10 initiatives were in those states?

11 A Who voted against it?

12 Q The percentages who defeated the referenda.

13 A Yes, I do.

14 Q And what were they, the percentages?

15 A I don't know exactly, but they were in the range
16 of 70% I believe in both states.

17 CHAIRMAN JOHNSON: Mr. Wright, how much more do you
18 have?

19 MR. WRIGHT: I think very little, Madam Chairman. I
20 mean, depending on the length of the answers, ten to
21 fifteen minutes.

22 CHAIRMAN JOHNSON: Okay.

23 MR. WRIGHT: I have basically got two more lines,
24 neither of which in my opinion is very long.

25 I'm asking Mr. Shine to hand out a document that's

1 been filed by Florida Power Corporation with this
2 Commission.

3 A An answer I gave earlier to one of the questions,
4 I'm not sure that it was totally clear. I wanted to
5 clarify that, if that's possible.

6 BY MR. WRIGHT (Continuing):

7 Q Sure.

8 A Okay. Just on the subject when we were talking
9 about the amount of merchant capacity, I was referring to
10 your exhibit on the Merchant Power Scoreboard, when we
11 talked about 10,000 megawatts. I think we need to be
12 careful about that.

13 As an example, 8,000 of those 10,000 were plants that
14 changed hands at auction in California. They were existing
15 plants. And some of them may be under contract back to the
16 utility or may have must-run status in California.

17 So I think it would be important -- I can't say
18 absolutely, you know, as we were trying to make sure we
19 were clear on what is and is not a merchant plant, it may
20 in fact be less than the 10,000. So I just wanted to make
21 sure I was clear on that point.

22 Q That's fair enough. Since you bring it up, how
23 much is proposed?

24 A I'm sorry?

25 Q Since you bring it up, about how much is under

1 construction, how much is under development, how much is
2 proposed in the United States today?

3 A Well, under construction by this report, 2200.

4 Q I think if you look on the second page, there's a
5 summary.

6 A Under development, approximately 8,000.

7 Is that your question?

8 Q Yeah. And let's say plans reported, to use the
9 nomenclature in this report.

10 A Well, by this report, it alleges that plans
11 reported are about 30,000 or so.

12 MR. WRIGHT: Okay. Madam Chairman, I've just asked
13 Mr. Shine to distribute to Mr. Dolan and the others at the
14 tables here a copy of a petition filed by Florida Power
15 Corporation on October 20th, which initiated Docket No.
16 981360.

17 BY MR. WRIGHT (Continuing):

18 Q Mr. Dolan, are you familiar with this petition?

19 A Yes, I am, generally.

20 Q Pardon?

21 A Generally.

22 MR. WRIGHT: Okay. Madam Chairman, I'd ask that this
23 be marked as Exhibit 42 for identification. Short title
24 would be FPC Rule Waiver Petition.

25 CHAIRMAN JOHNSON: (Conversation with microphone

1 turned off).

2 (Exhibit 42 marked for identification.)

3 BY MR. WRIGHT (Continuing):

4 Q Mr. Dolan, this is a petition by Florida power
5 for waiver of the requirements of what is commonly known as
6 the Commission's --

7 COMMISSIONER GARCIA: Can I ask wasn't this withdrawn
8 or is this still before us?

9 A It's still pending as far as I know.

10 COMMISSIONER GARCIA: It's still pending?

11 A Scheduled for agenda on January 5th is my
12 understanding.

13 COMMISSIONER GARCIA: Wow. Are you -- It really is
14 scheduled for January 5th?

15 A As far as I know it is.

16 COMMISSIONER GARCIA: Well, Commission, we need -- Let
17 me just tell you now I'm going to defer it. I think we're
18 going to have a short agenda that day and I probably have a
19 lot to say about this issue.

20 Is this the rule waiver for generating? Yeah.

21 MR. MCGEE: There are some issues as they relate to
22 the statutory 90-day period for --

23 COMMISSIONER GARCIA: (Simultaneous conversation) And
24 it's about run?

25 MR. GUYTON: Pardon?

1 COMMISSIONER GARCIA: And it's -- It runs if we don't
2 take it up on the 5th?

3 MR. MCGEE: I don't know that. The clock is running.
4 I think 90 days is close to it. Whether it will be
5 exceeded if it went to the next agenda, I'm not sure.

6 COMMISSIONER GARCIA: All right. Grace, could you
7 maybe check out what the status? I just want to give you a
8 heads up because this is something that I had discussed
9 with staff and I had an interest having a nice full
10 discussion on it. And I think that they were going to try
11 to limit our agenda. We sort of -- You know, we have two
12 commissioners being sworn in that day.

13 I'm sorry. I just wanted to know the status of that.

14 BY MR. WRIGHT (Continuing):

15 Q Mr. Dolan, I would ask you to look at page 3 of
16 this petition. Is it true as represented in the petition
17 that Florida Power's last Ten-Year Site Plan projected an
18 in-service date for Hines Unit 2 in late 2004, but that now
19 has been moved up to the summer of 2001?

20 A Yes.

21 Q Asking you to look at page 3, paragraph 6, is it
22 true as represented in the Petition that during the summer
23 of 1998 Florida Power Corporation exceeded its previous
24 record summer peak demand set in 1997 on 30 separate days?

25 A Yes.

1 Q And isn't it also true, reading from the same
2 paragraph, that the peak demand on July 2nd exceeded the
3 1997 summer peak by more than 540 megawatts and the
4 forecasted 1998 summer peak by more than 400 megawatts?

5 A Yes; that's what the Petition said.

6 Q But to your knowledge are those true allegations
7 in the Petition?

8 A We wouldn't have put them in there if they
9 weren't true.

10 Q That's what I thought. Ask you to look at page
11 4, paragraph 7; is it true that your experience in the heat
12 wave this summer demonstrated that reliance on dispatchable
13 DSM for generating reserves can be problematic?

14 A Yes, to some degree.

15 Q Reading from the same paragraph, isn't it also
16 true that the human element in these programs imposes
17 practical limitations on the extent to which the programs
18 can be used without exceeding customer tolerance levels?

19 MR. SASSO: Madam Chairman, I'm not sure what purpose
20 is served by reading aloud every other line in this
21 document.

22 CHAIRMAN JOHNSON: I'm not either, Mr. Wright. You
23 can respond.

24 MR. WRIGHT: I've got a few more questions along these
25 lines. It goes directly to the issue of need and to the

1 issue of need as it relates to utility forecasting and
2 plant.

3 CHAIRMAN JOHNSON: I'll allow you a little latitude.

4 MR. WRIGHT: Thank you.

5 CHAIRMAN JOHNSON: Go ahead.

6 BY MR. WRIGHT (Continuing):

7 Q It said what I said it said; didn't it?

8 A I'm sorry; I didn't remember the question.

9 Q Isn't it true, as represented in the Petition,
10 that it is Florida Power's understanding or belief that the
11 human element inherent in these dispatchable DSM programs
12 imposes practical limitations on the extent to which they
13 can be used without exceeding customer tolerance levels?

14 A Yes, during prolonged periods of high demand;
15 yes, that's correct.

16 Q And is it also true that it's Florida Power's
17 position that these limitations do not exist with real
18 bricks and mortar generating plants?

19 A Just -- Yes, to some degree.

20 Q Isn't it also FPC's position or belief that
21 calling upon these programs whenever needed without regard
22 to tolerance levels will cause an uncontrolled
23 deterioration of the programs in the form of rampant
24 attrition, again, pages 4 and 5, paragraph 8?

25 MR. SASSO: I would renew my objection, Madam

1 Chairman. These are really not proper questions. He's
2 just asking him to affirm what's in the document that I
3 presume he proposes to move into evidence.

4 MR. WRIGHT: Well, if he'll agree everything in the
5 document is true as stated, then I'll move on to my final
6 questions on this subject.

7 A Yes, Madam Chairman; I will say yes to that
8 question, in the interest of time.

9 CHAIRMAN JOHNSON: Thank you.

10 COMMISSIONER GARCIA: Thank you.

11 BY MR. WRIGHT (Continuing):

12 Q Don't these allegations, Mr. Dolan, demonstrate
13 that there is substantial uncertainty as to the degree upon
14 which utilities can rely on dispatchable DSM programs?

15 MR. GUYTON: Objection; that goes beyond the scope of
16 the representations. These are representations made only
17 as to Florida Power Corporation's programs and this
18 question goes well beyond the scope of that.

19 MR. WRIGHT: I apologize; I'll rephrase my question to
20 ask with respect to Florida Power Corporation.

21 CHAIRMAN JOHNSON: Thank you.

22 A I'm sorry; could you repeat the question?

23 BY MR. WRIGHT (Continuing):

24 Q Don't the concerns and allegations as stated in
25 your petition indicate that at least for Florida Power

1 Corporation there is significant uncertainty associated
2 with projecting need and the ability to meet need based on
3 the use of dispatchable DSM programs?

4 A No, I don't know that I would say that there -- I
5 would use the term that there is significant uncertainty.
6 There is some degree of uncertainty, as we've expressed in
7 our Petition. I don't know that I would conclude it's
8 significant uncertainty.

9 Q Your Petition indicates that the operation of
10 Hines Unit 2 would be expected to lower FPC's average fuel
11 costs; is that correct?

12 A Yes.

13 Q Wouldn't you expect the same result to occur if
14 FPC were able to purchase power from other sources at lower
15 fuel costs?

16 A I believe that's possible, yes.

17 MR. WRIGHT: If you would hand those out, please,
18 Mr. Shine.

19 BY MR. WRIGHT (Continuing):

20 Q Mr. Dolan, I have just had Mr. Shine distribute a
21 copy of what I understand to be an open letter from Florida
22 Power Corporation's president to its customers that
23 appeared in the St. Petersburg Times on June 25th, 1998.

24 Have you seen this before?

25 A Yes, I have.

1 Q And this makes the point that Florida Power is
2 committed to doing everything it can to meet the demand for
3 energy with regard for customer's comfort and convenience;
4 is that an accurate characterization of this letter?

5 A That's what it says.

6 Q And it also makes the point that Florida Power
7 Corporation is the only utility in the State of Florida
8 building new generating capacity; is that correct?

9 A Yes.

10 Q Do you think that it is inconsistent for Florida
11 Power Corporation to hold itself out as doing everything it
12 can to meet demand and as being the only utility in the
13 state building new generating capacity at the same time it
14 opposes the construction of capacity that might be made
15 available to serve the customers of Florida?

16 A No, I don't think that's inconsistent at all.

17 MR. WRIGHT: That's all I have, Madam Chairman.

18 MR. GUYTON: Madam Chairman, can we take a short
19 break?

20 CHAIRMAN JOHNSON: We'll take five minutes.

21 MR. GUYTON: Thank you.

22 (Brief recess).

23 CHAIRMAN JOHNSON: We're going to go back on the
24 record. Go back on the record.

25 MR. SASSO: I believe everyone has crossed who has

1 questions.

2 MS. PAUGH: Staff has no cross examination.

3 CHAIRMAN JOHNSON: Commissioners none, I think.

4 COMMISSIONER CLARK: I'll confess. I didn't really
5 look at what -- I have a question on page 21. I had an old
6 version and is it still in the new version.

7 A That's been taken out.

8 COMMISSIONER CLARK: It has been?

9 A Yes.

10 COMMISSIONER CLARK: I was just wondering what case it
11 was. If it's been taken out, I guess it doesn't matter.

12 MR. SASSO: We'll be happy to address that in briefs.

13 MR. WRIGHT: We will, too.

14 COMMISSIONER CLARK: I don't have any questions.

15 CHAIRMAN JOHNSON: Redirect?

16 MR. SASSO: Yes, very briefly.

17 REDIRECT EXAMINATION

18 BY MR. SASSO:

19 Q Mr. Dolan, let me give you another example of a
20 possible transaction. And let's say this is off broker.
21 You may want to write down some numbers.

22 Let's suppose that the purchasing utility's avoided
23 cost is \$30 again. And Florida Power Corporation's cost
24 again is \$22. And it makes a bid off broker at \$28. And
25 let's suppose that transaction is consumated and the sale

1 is made at \$28.

2 Can you calculate what ratepayer benefit would occur
3 aggregating the benefit to the purchasing utility's
4 ratepayer and the selling utility's ratepayers?

5 A I think that one is pretty straightforward. The
6 purchaser would save \$2 and the Florida Power ratepayers
7 would receive 100% of the \$6 margin.

8 Q And the total benefit to ratepayers would be \$8
9 then; is that right?

10 A Yes, it would.

11 Q Let's suppose that a merchant like Duke entered
12 the picture and bid \$27. Let me ask you first would that
13 be a plausible scenario in your judgement, if the merchant
14 seller were acting rationally and economically?

15 A Yes, certainly it would.

16 Q Let's suppose that the sale is made at \$27, can
17 you total up the ratepayer benefit in that transaction?

18 A Three dollars, I believe it would be.

19 MR. SASSO: Thank you. No further questions.

20 MR. WRIGHT: Recross.

21 CHAIRMAN JOHNSON: Exhibits.

22 MR. WRIGHT: Please.

23 Madam Chairman, I have direct questions on the line of
24 questions that Mr. Sasso asked.

25 You're not going to let me?

1 Okay.

2 CHAIRMAN JOHNSON: I think we've exhausted all of the
3 questions. And I gave you quite a bit of latitude
4 throughout these proceedings. And enough is enough.

5 Exhibits.

6 MR. SASSO: Yes. We would move into evidence
7 Mr. Dolan's exhibits, VMD-1 and 2, which I believe were
8 identified as Exhibit 36.

9 CHAIRMAN JOHNSON: Yes. Show that admitted without
10 objection.

11 (Exhibit 36 admitted into evidence.)

12 MR. SASSO: And also, Madam Chairman, we submitted to
13 the Commission in the interim, during this last week, a
14 request to take official notice of the need petition in the
15 City of Tallahassee case. We would ask that the Commission
16 accept that.

17 CHAIRMAN JOHNSON: Okay. We'll accept that without
18 objection.

19 MR. SASSO: And I have a question about the status of
20 Mr. Wright's request to take judicial notice that he
21 mentioned earlier, which was filed December 4th, which
22 included the need petition in North Carolina filed October
23 1, 1998; has that been acted on?

24 I seem to recall that there was some discussion about
25 it, but I don't recall whether --

1 MR. WRIGHT: My recollection, Madam Chairman, is that
2 no action has been taken on that. It was two weeks ago
3 today.

4 CHAIRMAN JOHNSON: Uh-huh.

5 MR. WRIGHT: There was some conversation. Mr. Sasso
6 simply indicated, as I recall, that he didn't think they
7 would have any objections but just wanted to review it and
8 that you reserved ruling pending any objections.

9 CHAIRMAN JOHNSON: Thank you.

10 MR. SASSO: And we have no objection. In fact, we
11 would join in the request to take official notice of the
12 North Carolina need petition.

13 CHAIRMAN JOHNSON: We'll show that the Commission will
14 take official recognition of the document.

15 MR. WRIGHT: Madam Chairman, we move Exhibits 38
16 through 42.

17 CHAIRMAN JOHNSON: Show those all admitted.

18 MR. GUYTON: Madam Chairman, I have an objection to
19 38.

20 CHAIRMAN JOHNSON: Let's go ahead and admit 39 through
21 42.

22 (Exhibits 39, 40, 41 and 42 admitted into evidence.)

23 CHAIRMAN JOHNSON: And 38, the press release.

24 MR. GUYTON: This press release has not been
25 established as something that the witness was familiar

1 with. He simply answered a question that he was generally
2 available with trade information. He was -- Expressed no
3 familiarity with this particular press release.

4 And Mr. Wright represented that this was something
5 that he gathered off the Internet at an Internet site
6 through Yahoo. I don't think the appropriate predicate has
7 been laid for the admission of this exhibit.

8 CHAIRMAN JOHNSON: Mr. Wright.

9 MR. WRIGHT: Madam Chairman, is Mr. Guyton objecting
10 to the or alleging that this is not an authentic document?

11 MR. GUYTON: Yes. And that the predicate hasn't been
12 laid for its admission.

13 MR. WRIGHT: I don't know what to say. The witness
14 said he was familiar with press accounts. The article says
15 what it says. And I guess --

16 CHAIRMAN JOHNSON: I'm going to allow it.

17 MR. WRIGHT: Thank you.

18 (Exhibit 38 admitted into evidence.)

19 CHAIRMAN JOHNSON: Anything else?

20 Did we ever --

21 I don't think I ever marked this June 25th.

22 MR. WRIGHT: We did not mark it, Madam Chairman.

23 CHAIRMAN JOHNSON: Okay.

24 MR. GUYTON: Madam Chairman, am I correct that it
25 continues to be the Commission's practice to take official

1 notice of its orders and rules?

2 CHAIRMAN JOHNSON: Yes.

3 Now we have one late filed, which was 35, staff, when
4 you want the percentage revenues from off system sales.
5 And that's all I have listed as a late file. Everything
6 else, Exhibits 1 through 42 have been identified and
7 admitted.

8 Mr. Wright. Did you have something?

9 MR. WRIGHT: I was getting ahead of myself with
10 respect to some other request for official notice, Madam
11 Chairman.

12 CHAIRMAN JOHNSON: Okay. Other matters?

13 MR. WRIGHT: Yes. Yesterday the Joint Petitioners
14 filed a request for judicial notice of certain items
15 pertaining to the legislative history of the Florida
16 Electrical Power Plant Siting Act, including a draft of the
17 bill or the bill, I should say, proceedings of the Florida
18 House Committee on Environmental Protection, Sub-Committee
19 on Permits, and certified copies of tape recordings of
20 proceedings of the Florida House Committee on Environmental
21 Protection, Sub-Committee on Permits. After we filed that,
22 Mr. Guyton telephoned us and indicated that he had a
23 transcript of the subject proceedings and asked would we be
24 amenable to having said transcript taken official or
25 judicial notice of. And we replied of course not. We

1 would not. Mr. Guyton has furnished a copy of that to us
2 this morning, I believe. And we've reviewed it. There are
3 a couple of funny little things in it, like there's a
4 reference to the "Southern Covenant" as opposed to
5 "Southern Company," but overall we're okay with it.

6 There is, however, additional material on the tapes
7 that was not part of what was transcribed by the court
8 reporter that did the transcript that Mr. Guyton has.

9 We would propose in the interest of completeness of
10 record that we, the Joint Petitioners in this case, will
11 engage a court reporter to transcribe the remaining
12 material pertaining to the original bill and furnish that
13 under cover of an appropriate request for judicial notice
14 along with our prior request for the tapes and the
15 transcript furnished us by Mr. Guyton.

16 CHAIRMAN JOHNSON: Okay. Now which do you want me to
17 take official recognition of now?

18 MR. WRIGHT: I guess at this time I would ask you to
19 take official recognition of what we filed, which is the
20 bill, some notes of proceedings, including attachments, and
21 the tape recordings, which are certified copies from the
22 Secretary of State. And then we would ask leave to submit
23 under cover a separate request for judicial notice copies
24 of the complete transcript, including that which has
25 already been furnished to us by Mr. Guyton, as well as the

1 transcript of the remaining portion that for whatever
2 reason had not previously been transcribed.

3 CHAIRMAN JOHNSON: Okay. Very good. Then we'll take
4 official recognition of the documents that you've stated
5 and you have leave to file late. And I'm sure the parties
6 will have the opportunity to review the other document, if
7 there was no objection.

8 MR. SASSO: Madam Chairman, my only concern is this
9 apparently was served on us by mail yesterday. And I
10 haven't seen what Mr. Wright has filed with his request.

11 I would like the opportunity to review this, insure
12 its completeness. And I suppose the way to deal with it is
13 to have leave to file as a late-filed exhibit or request to
14 take official notice of any supplemental materials that I
15 believe may be necessary to insure the completeness or
16 accuracy of these materials.

17 CHAIRMAN JOHNSON: We'll handle it in that manner.

18 MR. WRIGHT: We're fine on that.

19 CHAIRMAN JOHNSON: Anything else? Staff?

20 MS. PAUGH: Staff request official recognition of
21 Order No. 22708 of this Commission issued March 20th, 1990,
22 in Docket No. 900071EG, as well as the staff report that is
23 incorporated into this order by reference. The staff
24 report is massive. So we did not make copies of that, but
25 we would request official recognition of both, please.

1 CHAIRMAN JOHNSON: We'll take official recognition of
2 the documents stated.

3 MS. PAUGH: Thank you, Madam Chairman.

4 MR. GUYTON: Is the staff report available?

5 MR. WRIGHT: Madam -- I'm sorry.

6 CHAIRMAN JOHNSON: Mr. Wright.

7 MR. WRIGHT: I know we're trying to hurry this along.
8 We want to move the admission of one more exhibit, please,
9 a deposition transcript.

10 MR. MCGLOTHLIN: Madam Chairman, the Joint Petitioners
11 ask that you identify and receive as an exhibit the
12 transcript of the deposition of Dr. Nesbitt. At the outset
13 of Dr. Nesbitt's testimony, FPL objected and moved to
14 strike certain portions of prefiled testimony and exhibits
15 based upon their contention that Dr. Nesbitt had failed to
16 provide everything other than in discovery. Without
17 conceding that it was owed, we made the point that this was
18 a discovery dispute. It should have been handled in a
19 different manner. And you agreed and denied the Motion to
20 Strike.

21 But I've heard Mr. Guyton say on at least two
22 occasions that FPL wished to preserve their position on
23 that issue, indicating perhaps or signifying their intent
24 to raise the issue elsewhere. For that reason we move the
25 exhibit of the deposition.

1 CHAIRMAN JOHNSON: I thought he withdrew his
2 objection?

3 MR. McGLOTHLIN: Beg your pardon?

4 CHAIRMAN JOHNSON: I thought he withdrew his
5 objection.

6 MR. McGLOTHLIN: No, you denied his Motion to Strike.

7 CHAIRMAN JOHNSON: Not to this point?

8 MR. WRIGHT: That was with respect to a separate
9 objection.

10 CHAIRMAN JOHNSON: Yeah. I'm following you.

11 MR. McGLOTHLIN: That deposition of November 10 and 11
12 was taken by FPL after providing notice that stated that
13 the deposition was being taken for purposes of discovery,
14 for use at trial, or for any other purpose allowed under
15 the Florida Rules of Civil Procedure and the Rules of the
16 Florida Public Service Commission. Rule 1.330(a)(3)(f)
17 of the Rules of Civil Procedure provides that the
18 deposition of a witness may be used by any party for any
19 purpose if, among other things, if the witness is a skilled
20 or expert witness. And Dr. Nesbitt is such a witness.

21 Both Mr. Guyton and I referred to what transpired
22 during the deposition in our respective arguments. And we
23 think it would complete the record of that argument and the
24 basis for your decision by making it an exhibit at this
25 time.

1 CHAIRMAN JOHNSON: Go ahead. We'll mark it as 43 and
2 it's the deposition of Dr. Nesbitt.

3 (Exhibit 43 marked for identification.)

4 MR. McGLOTHLIN: We have copies for the
5 Commissioners.

6 CHAIRMAN JOHNSON: Any objection?

7 MR. GUYTON: Madam Chairman, I think it was probably
8 more appropriate that that be presented by this party if
9 they were going to present it as part of their direct case.
10 Having said that, FPL won't object to the admission of the
11 deposition.

12 CHAIRMAN JOHNSON: Okay. We'll show it then admitted
13 without objection.

14 (Exhibit 43 received into evidence.)

15 CHAIRMAN JOHNSON: Anything else?

16 MR. SASSO: We have had some discussions with staff
17 about schedule for future events. Can we inquire about the
18 firmness of that schedule?

19 CHAIRMAN JOHNSON: Yes. Do you have the final revised
20 dates? I signed off on some.

21 MS. PAUGH: Before we get to the schedule, just for
22 everyone's information, we do have a Petition for
23 Reconsideration of the Prehearing Officer's Order Denying
24 Intervention from the Florida Wildlife Federation. It was
25 filed on December 11th. The response period has not run.

1 Staff will present to the full Commission at the next
2 agenda conference a recommendation on this petition.

3 CHAIRMAN JOHNSON: Okay.

4 MS. PAUGH: Okay. As to the schedule, staff
5 recommends that the parties' briefs be filed on January
6 19th. Oral argument may be held on January 28th. The
7 entire day has been set aside for that, if it is needed.

8 The staff recommendation can be filed on February
9 19th. And a special agenda has been scheduled for this
10 item on March 4th.

11 Those are our recommendations, Madam Chairman.

12 CHAIRMAN JOHNSON: Those dates are available?

13 MS. PAUGH: Yes, Madam Chairman.

14 CHAIRMAN JOHNSON: That's the schedule.

15 MS. PAUGH: Yes.

16 CHAIRMAN JOHNSON: Uh-huh.

17 COMMISSIONER DEASON: Let me ask a question. We had
18 what it seems to me was a day of oral argument the first
19 day of hearing and now we're going to have another day of
20 oral argument?

21 MS. PAUGH: It's my understanding that that was
22 requested by one of the Commissioners.

23 CHAIRMAN JOHNSON: At least two, and I'm one of them.

24 COMMISSIONER GARCIA: I don't know if I --

25 Commissioners, I don't know if we need a whole day. But

1 what happened last time, I'm sure that this will probably
2 go rather quickly. I had some additional questions that I
3 wanted to ask the parties. And I think I touched on them.
4 And they had to do with the basic legal argument. So I
5 just wanted to hear a little bit more about that. At least
6 I don't anticipate my curiosity dragging this out as it has
7 on some of these other issues that have been before us
8 today. I expect that to not last more than two hours.

9 CHAIRMAN JOHNSON: Should we put limits on it?

10 COMMISSIONER GARCIA: I would be fine with limits. I
11 mean --

12 COMMISSIONER DEASON: Well, let me suggest that we put
13 limits on the first day of hearing. It was I think a half
14 hour. I think we extended it to 45 minutes, and we ended
15 up arguing about 8 hours. Of course, a lot of that was
16 Commissioner questions. I'm not blaming the parties. But
17 I thought we had a very thorough discussion of this the
18 first day of the hearing, but, obviously -- You know, if
19 there is desire for more, that's fine.

20 COMMISSIONER GARCIA: I'll just say --

21 COMMISSIONER DEASON: I thought it was the parties
22 wanting it, but if it's Commissioners wanting it --

23 COMMISSIONER GARCIA: Just a little bit additional
24 curiosity, but, to be quite honest, I don't think that the
25 parties have to make any presentation. In all honesty, I

1 think it's we who may have some additional questions. And
2 that will -- Obviously they'll be ready to answer. And
3 that may take a while. Obviously I already heard them
4 present their case for dismissal quite thoroughly.

5 CHAIRMAN JOHNSON: Scheff, did you have -- Mr. Wright.

6 MR. WRIGHT: Madam Chairman, thank you. Recalling
7 from the conclusion of the session on December 4th,
8 Commissioner Garcia's indication that he had some
9 additional questions, I don't know if there is an
10 appropriate mechanism. I'm hoping that there is. If there
11 is any way we could know what particular areas the
12 Commission is interested in having addressed at this
13 additional oral argument discussion, it might be helpful to
14 us in preparing and expediting.

15 CHAIRMAN JOHNSON: The briefs come out first; right?

16 MR. WRIGHT: Yes, ma'am.

17 CHAIRMAN JOHNSON: The briefs.

18 MS. PAUGH: Yes.

19 CHAIRMAN JOHNSON: Is there --

20 MS. PAUGH: The briefs will be out a week ahead of
21 time.

22 COMMISSIONER JACOBS: And will all those be -- Are we
23 going to consider the motion to dismiss -- what's that
24 fancy word -- in reconsideration of the briefs and the
25 record or just on the face?

1 CHAIRMAN JOHNSON: I thought staff said they wanted --
2 Didn't ya'll want to file a recommendation, one
3 recommendation?

4 MS. PAUGH: Yes.

5 CHAIRMAN JOHNSON: Is what I understood them to say.

6 MS. PAUGH: That recommendation will address within
7 one recommendation the motions to dismiss as well as all of
8 the other matters in this docket.

9 MR. GUYTON: Commissioners, I have I guess an inquiry
10 similar to Mr. Wright's. I'm perfectly willing to argue
11 any aspect of this case that you would like to hear. I
12 have some concern about mixing questions of law with fact
13 on trying to argue a motion to dismiss.

14 COMMISSIONER GARCIA: Right. And I think that
15 would --

16 MR. GUYTON: I think the Commission would be very well
17 served to keep the legal issues separate from an argument
18 on the merits. And I would encourage you that if you are
19 going to entertain oral argument, that you entertain
20 argument as to the legal issue on the motion to dismiss.

21 CHAIRMAN JOHNSON: You know, a lot of my questions
22 will go towards the commerce clause, dormant -- And ya'll
23 didn't really have the opportunity to respond to the
24 filing. So if ya'll could focus on that in your briefs.

25 COMMISSIONER GARCIA: My questions are going to go

1 directly to some of the issues you touched on which is the
2 applicant, what is an applicant, how do you define the
3 applicant. I think you've done a good job of covering it
4 in your briefs. I just -- I guess I want to refine my
5 thinking by speaking to you all on those issues, but
6 clearly I'm -- I think we all want to stay on the legal
7 issues here.

8 COMMISSIONER DEASON: Yeah, and if we're going to have
9 it, you know, I'll take full advantage of it and I'll ask
10 questions and participate. And since the parties are
11 inquiring what you should present, I would like information
12 on, from the legal side, the Commission's authority under
13 power plant siting, the way that authority has been
14 interpreted in the past to determine need on basis other
15 than strict reliability requirements, i.e., general welfare
16 of the State of Florida or economic opportunities. I don't
17 know. If there's any cases out there which address
18 determinations of need other than a strict reliability
19 criteria, that's what I would like to have addressed.

20 CHAIRMAN JOHNSON: Let me ask staff one question if --
21 Because I think the briefs will be very informative. If we
22 read the briefs and have additional questions, is it -- How
23 would we go about giving the parties a heads up as to what
24 we want them to focus on?

25 MS. PAUGH: We can send a memorandum to the parties.

1 CHAIRMAN JOHNSON: Okay.

2 MR. WRIGHT: Madam Chairman, one more thing on our
3 briefs: As of this minute, there remain 32 issues other
4 than should this docket be closed in this case. I would
5 make an oral motion that we be permitted 75 pages of
6 briefing, since we do have 8 legal issues and by my count
7 24 policy and affect issues to address.

8 MS. PAUGH: Staff has no objections to that.

9 CHAIRMAN JOHNSON: Commissioners?

10 Okay. Seventy-five pages.

11 MR. WRIGHT: Thank you.

12 CHAIRMAN JOHNSON: Anything else?

13 COMMISSIONER GARCIA: I just want to say this has been
14 fascinating to watch. The witnesses have been -- I think
15 the witnesses have been great. I thank you all.

16 CHAIRMAN JOHNSON: I'm sorry I didn't excuse you.

17 You're excused.

18 A Thank you.

19 CHAIRMAN JOHNSON: Thank you all.

20 (End of proceedings.)
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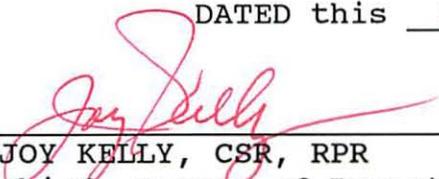
1 STATE OF FLORIDA)
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 2 COUNTY OF LEON) CERTIFICATE OF REPORTERS

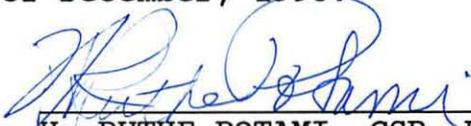
3 We, JOY KELLY, CSR, RPR, Chief, Bureau of
 Reporting and RUTHE POTAMI, CSR, RPR, Official
 4 Commission Reporters, and NANCY S. METZKE, RPR; MARY
 NEEL, RPR; CATHY H. WEBSTER, RPR, and JANE FAUROT,
 5 RPR,

6 DO HEREBY CERTIFY that the Hearing in Docket
 No. 981042-EM, was heard by the Florida Public Service
 7 Commission at the time and place herein stated; it is
 further

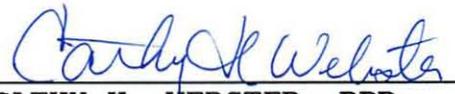
8
 9 CERTIFIED that we stenographically reported
 the said proceedings; that the same has been
 transcribed under our direct supervision; and that
 10 this transcript, consisting of 1687 pages, Volumes 1
 through 8, constitutes a true transcription of our
 11 notes of said proceedings and the insertion of the
 prescribed prefiled testimony of the witness.

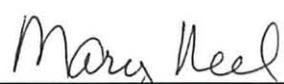
12
 13 DATED this 31st day of December, 1998.

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\$25 [1] 48:25	21 [4] 20:3,5 65:1 77:5	90-plus [1] 39:20	allow [4] 31:14 53:18 73:3 81:16
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