867

 1 BEFORE THE

 FLORIDA PUBLIC SERVICE COMMISSION

 2

 DOCKET NO. 060658-EI

 3

 In the Matter of:

 4

 PETITION ON BEHALF OF CITIZENS OF THE

 5 STATE OF FLORIDA TO REQUIRE PROGRESS

 ENERGY FLORIDA, INC. TO REFUND CUSTOMERS

 6 $143 MILLION.

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 12 THE OFFICIAL TRANSCRIPT OF THE HEARING,

 THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

 13

 14 VOLUME 7

 15 Pages 867 through 1086

 16 PROCEEDINGS: HEARING

 17 BEFORE: CHAIRMAN LISA POLAK EDGAR

 COMMISSIONER MATTHEW M. CARTER, II

 18 COMMISSIONER KATRINA J. MCMURRIAN

 19 DATE: Wednesday, April 4, 2007

 20 TIME: Commenced at 9:40 a.m.

 21 PLACE: Betty Easley Conference Center

 Room 148

 22 4075 Esplanade Way

 Tallahassee, Florida

 23

 REPORTED BY: LINDA BOLES, RPR, CRR

 24 Official FPSC Reporter

 (850) 413-6732

 25

 APPEARANCES: (As heretofore noted.)

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 1 I N D E X

 2 WITNESSES

 3 NAME: PAGE NO.

 4 HUBERT J. MILLER

 5 Prefiled Direct Testimony Inserted 874

 6 JOHN BENJAMIN CRISP

 7 Prefiled Direct Testimony Inserted 886

 8 JAMES N. HELLER

 9 Direct Examination by Mr. Walls 914

 Prefiled Direct Testimony Inserted 915

 10 Prefiled Rebuttal Testimony Inserted 958

 Cross Examination by Mr. McGlothlin 981

 11 Cross Examination by McWhirter 997

 Cross Examination by Brew 1008

 12 Redirect Examination by Mr. Walls 1014

 Continued Redirect Examination by Mr. Walls 1023

 13

 BERNARD M. WINDHAM

 14

 Direct Examination by Mr. Young 1027

 15 Prefiled Direct Testimony Inserted 1029

 Cross Examination by Mr. Walls 1045

 16 Cross Examination by Mr. Burgess 1072

 Cross Examination by Mr. McWhirter 1074

 17 Redirect Examination by Mr. Young 1080

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 22 CERTIFICATE OF REPORTER 1086

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 1 EXHIBITS

 2 NUMBER: ID. ADMTD.

 3 79 JNH-1 1025 1025

 4 80 JNH-2 1025 1025

 5 81 JNH-3 1025 1025

 6 82 JNH-4 1025 1025

 7 83 JNH-5 1025 1025

 8 84 JNH-6 1025 1025

 9 85 JNH-7 1025 1025

 10 86 JNH-8 1025 1025

 11 87 JNH-9 1025 1025

 12 144 JBC-1 885 885

 13 145 JBC-2 885 885

 14 146 JBC-3 885 885

 15 147 JBC-4 885 885

 16 148 JBC-5 885 885

 17 149 JBC-6 885 885

 18 156 BW-2 1084 1084

 19 157 BW-3 1084 1084

 20 158 BW-4 1084 1084

 21 159 BW-5 1084 1084

 22 160 BW-6 1084 1084

 23 161 BW-7 1084 1084

 24 162 BW-8 1084 1084

 25 163 BW-9 1084 1084

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 1 EXHIBITS

 2 NUMBER: ID. ADMTD.

 3 164 BW-10 1084 1084

 4 165 BW-11 1084 1084

 5 225 Direct Testimony of James Heller on 993 1025

 behalf of FMPA, et al., 9/16/06

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

 2 (Transcript follows in sequence from Volume 5.)

 3 CHAIRMAN EDGAR: Good morning. We'll get started

 4 this morning. Before we move into witnesses, any housekeeping

 5 matters that we need to take up or that would be useful?

 6 Okay. Mr. Burnett, your witness.

 7 MR. McGLOTHLIN: Well, we do have one housekeeping

 8 matter.

 9 CHAIRMAN EDGAR: As soon as I move on, there always

 10 is. So, yes, Mr. McGlothlin.

 11 MR. McGLOTHLIN: We've had conversations regarding

 12 whether the parties require Mr. Crisp to appear for

 13 cross-examination. Mr. Crisp sponsors calculations that

 14 pertain to his position with respect to the cost of replacement

 15 energy in the event it is determined that using the blend would

 16 cause the loss of 124 megawatts from 4 and 5. Of course, the

 17 dispute is over whether it is or is not a derate. And if

 18 Progress Energy will stipulate that only in the event the

 19 Commission determines that there would be a loss of megawatts

 20 associated with the blend would Mr. Crisp's calculations have

 21 any applicability, then we would have no questions of Mr. Crisp

 22 because that would, the limited scope of our inquiry, should he

 23 appear on the stand anyway, would be to make that point.

 24 CHAIRMAN EDGAR: Mr. Burnett.

 25 MR. BURNETT: Madam Chairman, I think that's

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 1 acceptable. I do agree that if this Commission finds that

 2 there would be no derate as a factual matter, obviously

 3 Mr. Crisp's testimony goes away and is not relevant. If the

 4 Commission finds anywhere between one and 124 megawatts, then

 5 Mr. Crisp's testimony would apply and a mathematical derivation

 6 could be used to determine -- if you find the whole 124, then

 7 it would be the number reflected, and anywhere down from there

 8 all the way to one the Commission could still use that. But

 9 that being clear, I think we have a stipulation.

 10 CHAIRMAN EDGAR: Ms. Bennett?

 11 MS. BENNETT: No objection.

 12 CHAIRMAN EDGAR: No objection.

 13 Commissioners, questions? Comfortable?

 14 Everybody seems to be comfortable. Mr. McGlothlin,

 15 you're comfortable?

 16 MR. McGLOTHLIN: All right.

 17 CHAIRMAN EDGAR: All right.

 18 MR. BURNETT: Madam Chairman, if I may, I believe we

 19 also can stipulate Mr. Hub Miller. I understand that no one

 20 has questions. So if the Commission did not have questions, we

 21 would be in a position, as I understand it, to stipulate him as

 22 well.

 23 CHAIRMAN EDGAR: Mr. McGlothlin, you're comfortable

 24 with that?

 25 Commissioners?

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 1 Okay. Then let's take up -- let's start with

 2 Mr. Miller's testimony.

 3 MR. BURNETT: We would move it into evidence, and he

 4 has no exhibits, Madam Chairman.

 5 CHAIRMAN EDGAR: Okay. The prefiled testimony of

 6 Witness Miller will be moved into the record as though read.

 7 You said no exhibits?

 8 MR. BURNETT: Yes, ma'am. And may he be dismissed?

 9 CHAIRMAN EDGAR: And he may be dismissed.

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 1 MR. BURNETT: And to the extent we need to move

 2 Mr. Crisp and his exhibits, we would do so now.

 3 CHAIRMAN EDGAR: Okay. The prefiled testimony of

 4 Witness Crisp will be entered into the record as though read

 5 And I see six exhibits, 144 through 149.

 6 MR. BURNETT: Yes, ma'am.

 7 CHAIRMAN EDGAR: Exhibits 144 through 149 will be

 8 entered into the record as evidence.

 9 (Exhibits 144 through 149 marked for identification

 10 and admitted into the record.)

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 1 MR. BURNETT: And then finally, Madam Chairman,

 2 Mr. Heller is available now, so we can take him back up, if it

 3 is the Commission's pleasure. We're prepared to bring him on

 4 now.

 5 MS. BENNETT: Madam Chair.

 6 CHAIRMAN EDGAR: Ms. Bennett.

 7 MS. BENNETT: We do not have Mr. Windham in the room

 8 available, so now would be appropriate to take Mr. Heller.

 9 CHAIRMAN EDGAR: Okay. Does that work for everybody,

 10 all of the parties?

 11 Okay. Then let's call Witness Heller.

 12 MR. BURNETT: Thank you.

 13 CHAIRMAN EDGAR: Thank you.

 14 MR. WALLS: Mr. Heller, will you please introduce

 15 yourself to the Commission and provide your address.

 16 THE WITNESS: My name is James N. Heller. My address

 17 is 4803 Falstone Avenue, Chevy Chase, Maryland.

 18 MR. WALLS: And have you been sworn as a witness?

 19 THE WITNESS: I've not.

 20 CHAIRMAN EDGAR: Okay. Thank you. And let's go

 21 ahead and do that. If you would stand with me and raise your

 22 right hand.

 23 JAMES N. HELLER

 24 was called as a witness on behalf of Progress Energy Florida

 25 and, having been duly sworn, testified as follows:

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 1 DIRECT EXAMINATION

 2 BY MR. WALLS:

 3 Q Mr. Heller, who do you work for and what is your

 4 position?

 5 A I work for Hellerworx, Incorporated, and I'm the

 6 President.

 7 Q And have you filed prefiled direct and rebuttal

 8 testimony and exhibits in this proceeding?

 9 A Yes, I have.

 10 Q And do you have your prefiled direct and rebuttal

 11 testimony and exhibits in front of you?

 12 A Yes, I do.

 13 Q Do you have any changes to make to your prefiled

 14 direct and rebuttal testimony and exhibits?

 15 A No, I don't.

 16 Q If I ask the same questions in your prefiled direct

 17 and rebuttal testimony today, would you give the same answers

 18 that are in your prefiled testimony?

 19 A Yes, I would.

 20 MR. WALLS: We request that the prefiled direct and

 21 rebuttal testimony of Mr. Heller be moved into evidence as if

 22 it was read in the record today.

 23 CHAIRMAN EDGAR: The prefiled direct and rebuttal

 24 testimony will be entered into the record as though read.

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 1 BY MR. WALLS:

 2 Q Mr. Heller, do you have a summary of your prefiled

 3 direct and rebuttal testimony?

 4 A Yes, I do.

 5 Q Will you please summarize it for the Commission,

 6 please?

 7 A Yes. My testimony involves the objective

 8 determination of, first, what PEC and PFC did from 1996 to

 9 2005, and, second, what the impact would have been on the

 10 customer had PFC and PEF done what OPC and Mr. Sansom suggests,

 11 that is commit to an equal blend of PRB and bituminous coals at

 12 CR4 and CR5 beginning in 1996.

 13 Any prudence determination regarding coal procurement

 14 must start with how the utility went about procuring coal and

 15 what decisions it made in the procurement process. The

 16 beginning point is not what the later reported delivered prices

 17 would be on FERC forms months or years after the coal

 18 procurement efforts were undertaken and decisions made.

 19 A review of PFC's coal procurement practices and

 20 activities showed that they were consistent with industry

 21 practice and with what this Commission expected.

 22 PFC began with an assessment of its coal needs after

 23 taking into account coals under contract and coals in

 24 inventory. Based on this need, the company determined the tons

 25 needed and, based on market conditions, decided whether to

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 1 issue an RFP or participate in the spot market.

 2 PFC had several long-term contracts, as the

 3 Commission preferred, and maintained a balance between coals

 4 under contract and spot purchases. PFC further maintained dual

 5 transportation modes, including rail and water, both as a means

 6 of hedging transportation or deliverability risks and as a

 7 means of keeping transportation costs as low as reasonably

 8 possible. Within the physical limits of the rail and water

 9 system PEF sought coals under both transportation means for

 10 Crystal River. All of this was reasonable.

 11 During the period between 1996 and January 2006 PEF

 12 issued seven RFPs for compliance coals for Crystal River Units

 13 4 and 5, and PRB bids were received in response to four of

 14 those RFPs. The RFP solicitation and evaluation processes were

 15 nearly indistinguishable. The bidder lists always included

 16 producers and brokers of PRB coals, Colorado coals, Central

 17 Appalachian bituminous coals and foreign coals, as well as

 18 synfuel producers. Notices of the RFPs were printed in coal

 19 industry publications, as was the utility's involvement in the

 20 spot market. The RFP stated preferences for coal offers but

 21 excluded no coals from consideration, except those that

 22 exceeded the sulfur restrictions at Crystal River 4 and 5. Not

 23 every domestic or synfuel producer bid on every RFP, so it

 24 should be no surprise that in response to some RFPs there were

 25 no or few PRB bids, Colorado or foreign coal bids. Indeed, if

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 1 the RFP solicitation process is sufficient to produce PRB bids

 2 in response to four out of the seven RFPs, it would seem the

 3 process is functioning properly.

 4 I believe everyone here acknowledges that no prudent

 5 utility buys coal based simply on the lowest delivered cost.

 6 Differences in coal qualities and characteristics can impact

 7 boiler operations as well as operating and maintenance costs

 8 and can create coal handling and operational issues. These

 9 cost differences must be accounted for in making a decision on

 10 which coal to buy. PFC initially did this by using an industry

 11 standard EPRI model for evaluating the cost impacts of coals

 12 with different qualities from the coals that the utility

 13 typically burned. This analysis produces what is called an

 14 evaluated or bus bar cost.

 15 Looking at the first RFP in which PFC received PRB

 16 coals in 2001, the coals were not cost-effective on an

 17 evaluated or bus bar cost basis when compared with other

 18 options, including foreign bituminous coal, which is what PFC

 19 bought at that time.

 20 Had PFC entered into a contract for PRB coals based

 21 on the 2001 bid, bid responses, they would have paid three to

 22 four times more than the mine price for PRB coals for the prior

 23 ten years and more than PRB coals sold for a year later.

 24 In July 2003 and the April 2004 RFPs, PFC again

 25 received PRB coal bids. In 2003, these coals ranked behind

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 1 import coals on an evaluated or bus bar basis, so PFC again

 2 bought the import coals. In response to the April 2004 RFP

 3 results where PRB coals ranked favorably relative to other

 4 options, PFC accelerated efforts to evaluate switching to a

 5 blend that included PRB coals.

 6 I understand that the 2004 hurricane season disrupted

 7 the utility's evaluation of PRB coals. In my experience in

 8 assisting utilities in the evaluation of fuel switching

 9 options, it's not unusual that this process occurs over a

 10 period of years, particularly with respect to PRB coals which

 11 have significant differences in Btu and moisture content and

 12 where dusting and spontaneous combustion are issues.

 13 In the second part of my analysis I asked the

 14 question, what would have been the impact on customers had PFC

 15 and PEF actually done what OPC suggests and converted to an

 16 equal blend of PRB and bituminous coals in 1996? I used the

 17 same transportation method that Mr. Sansom uses in his damages

 18 calculation, transportation of the PRB coals from the mine to

 19 the river, loading on a river barge for movement to IMT in New

 20 Orleans, and offloading the coal there for storage and

 21 reloading on a Gulf barge for the delivery to Crystal River.

 22 The differences are that I accounted for all of the costs that

 23 PFC would have paid, including terminal charges at IMT, rather

 24 than taking costs under different contracts, including

 25 transportation costs for TECO and then the Southern Company,

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 1 before considering for the first time PFC costs in 2004 and

 2 2005 but still excluding the terminal charge.

 3 My transportation costs account for the portion of

 4 the regulator or waterborne market proxy that were in effect

 5 for PFC and PEF from 1996 to 2003 with a stipulated rate in

 6 2004. This is the way PFC evaluated PRB foreign and domestic

 7 coals shipped by water to Crystal River during this time

 8 period.

 9 It's not unreasonable for PFC to evaluate coals this

 10 way, considering the waterborne proxy applied to all coals

 11 actually purchased for CR4 and 5 and shipped by water,

 12 including adjustments for portions of the proxy that applied

 13 like with foreign coals.

 14 Certainly PFC and PEF took the risk, which the

 15 waterborne rate -- when the waterborne rate was in effect, the

 16 market costs might actually be higher than the proxy. It's

 17 simply hindsight to look back now and say that there were

 18 periods where portions of the regulator were above market.

 19 I note further that even Mr. Sansom uses the Gulf

 20 barge rate portion of the PEF waterborne proxy in his damages

 21 calculation. He simply fails to include the IMT portion of the

 22 proxy, although the PRB coals clearly would have gone through

 23 IMT. In fact, I understand he fails to include a terminal

 24 charge in New Orleans at all.

 25 Also, Mr. Sansom uses TECO's actual waterborne costs

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 1 in its reported FERC forms when TECO recovered its costs even

 2 if TECO's costs were above market, as long as they were below

 3 the Commission-approved benchmark.

 4 I also took into account existing contracts and

 5 physical delivery limitations on how many PRB tons could be

 6 brought in. I also used the real blending costs at the site

 7 and the additional capital and operational and maintenance

 8 costs that would have been incurred to make the fuel switch as

 9 developed by PEF's other experts. I can say, however, based on

 10 my experience assisting several utilities in evaluating fuel

 11 switches that all prudent utilities consider all capital,

 12 operational and maintenance costs in determining whether a fuel

 13 switch is cost-effective. Every utility has to account for all

 14 of its costs.

 15 Once these costs are included, it's clear that a fuel

 16 switch to an equal blend of PRB and bituminous coal at Crystal

 17 River Units 4 and 5 would have been a poor decision for the

 18 customer over this ten-year period of time, leading to over

 19 $50 million in additional costs. This is even before

 20 consideration of such additional factors as the value of the

 21 lost megawatts of capacity due to the derate from historical

 22 production at Crystal River Units 4 and 5 using high quality,

 23 high Btu bituminous coals. Other considerations include the

 24 ash quality impact, the mercury removal issues under new

 25 environmental regulations, and the fact that the company will

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 1 be scrubbing the units in 2009 and 2011.

 2 When all of these considerations are accounted for,

 3 the company's decision to make a fuel switch to an equal blend

 4 of PRB and sub-bituminous coals to PRB and bituminous coals

 5 does not appear to be a reasonable one. Thank you.

 6 MR. WALLS: We tender Mr. Heller for

 7 cross-examination.

 8 CHAIRMAN EDGAR: Thank you.

 9 Mr. McGlothlin.

 10 CROSS EXAMINATION

 11 BY MR. McGLOTHLIN:

 12 Q Good morning, Mr. Heller.

 13 A Good morning.

 14 Q One of your assignments in the past was, involved an

 15 evaluation of Illinois Power's Baldwin Plant; is that correct?

 16 A That's correct.

 17 Q And is it true that in the course of your assignment

 18 there you encouraged Illinois Power, the owner of the Baldwin

 19 Plant, to look strongly at the possibility of using Powder

 20 River Basin coal?

 21 A That's correct.

 22 Q So where economics warrant, you have no reluctance or

 23 bias against the consideration of Powder River Basin coal as an

 24 appropriate fuel choice for a particular plant; is that

 25 correct?

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 1 A I missed the pronoun in there. Where the economics

 2 are favorable, I have no bias, was that the question?

 3 Q You have no bias or reluctance to encourage the use

 4 of Powder River Basin coal if the economics warrant its use; is

 5 that correct?

 6 A Right. My consideration is only to a portion of the

 7 analysis because I can work on -- I work on the fuel and

 8 transportation. The engineering analysis, which is crucial to

 9 understanding what the boiler modification, coal handling costs

 10 might be, is usually done by somebody else. And so mine is a

 11 component input to that.

 12 Q Is it true that with respect to any quantification

 13 that you have done in the preparation of your testimony and

 14 exhibits you are relying on someone else in this case?

 15 A No, that's not true.

 16 The quantification that I did had to do with the

 17 delivered -- the fuel prices and the transportation. I have

 18 relied on others for the capital modifications at the plant.

 19 Q Mr. Heller, do you recall that you were deposed prior

 20 to your appearance here today?

 21 A I do.

 22 Q Do you have your deposition in front of you?

 23 A No, I don't.

 24 Q Mr. Heller, I'll give you a copy of your transcript

 25 of your deposition taken earlier in this docket and ask you to

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 1 read the answer beginning at Page 31, Line 10.

 2 MR. WALLS: I think in fairness, Mr. Heller should

 3 read the question too.

 4 CHAIRMAN EDGAR: Mr. Heller, if you would read the

 5 question and the answer, please.

 6 THE WITNESS: Yes, ma'am.

 7 The question begins on Page 7. It says, "As you use

 8 the term on Line 10, Page 6, a relatively low Btu high moisture

 9 coal like a PRB coal generally has a negative effect on boiler

 10 performance."

 11 I'm sorry. There's actually -- my answer before that

 12 was a question, so I need to go back one more question, I

 13 think, to get the context. I need to read you two more

 14 questions and then we'll have the context of this.

 15 CHAIRMAN EDGAR: That's fine. Take a moment. We can

 16 work our way through it.

 17 THE WITNESS: The question was, "Did you use the test

 18 burn results for any purpose in your testimony?"

 19 My answer, "Not explicitly."

 20 Question, "Is it fair to say, sir, that you don't

 21 know personally whether the use of Powder River Basin coal

 22 either by itself or in a blend would have a negative effect on

 23 the boilers at CR4 and CR5, and that you were relying on others

 24 for whatever information you were getting on that subject?"

 25 Answer, "What do you mean by negative effect?"

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 1 Question, "As you used the term on Line 10, Page 6,"

 2 that's in my testimony, "a relatively low Btu high moisture

 3 coal like a PRB coal generally has a negative effect on boiler

 4 performance."

 5 And this is the answer to that, "For any

 6 quantification that I'm doing in this case, I'm relying on

 7 somebody else."

 8 That was in the context of the boiler impact of the,

 9 the impact of those qualities on the boiler, not on the

 10 delivered fuel price.

 11 BY MR. McGLOTHLIN:

 12 Q Well, let's take several items individually then.

 13 You treat the subject of capital costs and O&M costs that would

 14 be necessary allegedly to burn the blend. Is it true that you

 15 did not perform an independent analysis of the capital and O&M

 16 costs that would be necessary?

 17 A The blend I assume you're referring to is the 50/50

 18 blend, which is what was proposed by OPC, and for that purpose

 19 I relied on Mr. Hatt's estimate of the capital and operating

 20 costs.

 21 Q Your testimony and exhibits also touch on the subject

 22 of the impact of a derate. Is it true, sir, that you did not

 23 perform an independent analysis of whether or not there would

 24 be a derate if the blend were used?

 25 A That's correct, I didn't perform an independent

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 1 analysis. I relied on Mr. Crisp's estimate of the cost of the

 2 impact, and Mr. Hatt, I believe, testified about the effect of

 3 the low Btu coal on boiler output.

 4 Q Among the materials that were supplied to you as you

 5 began your engagement was the Sargent & Lundy report prepared

 6 for Progress Energy; is that correct?

 7 A I think in my deposition I was uncertain about that.

 8 Q Well, is it true that you did not review the

 9 Sargent & Lundy report in preparing your testimony?

 10 A That's correct. To my recollection, I did not rely

 11 on it. And I couldn't remember as to whether or not I had

 12 reviewed it.

 13 Q And returning to the subject of the evaluation of

 14 impact of particular coals on boiler performance, by that are

 15 you referring to the evaluations of bids that were performed by

 16 either Progress Energy Florida or Progress Fuels Corporation

 17 when conducting RFPs over time?

 18 A I think you mixed two things there and I'm not sure

 19 what you mean. I think you were asking me previously about the

 20 quantification of what the impact of the PRB coal would be on

 21 the boiler in terms of the overall capital and operating costs,

 22 and now I think you may have switched to what was called an

 23 evaluated or bus bar analysis.

 24 Q I am referring to the evaluated or bus bar analysis

 25 of particular coals. And is it true, sir, that with respect to

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 1 any quantification or calculation of the impact on bus bar

 2 costs you relied upon work performed by or for Progress Energy?

 3 A I used information from the bid responses, which have

 4 in there a delivered fuel cost and then what's called an

 5 evaluated cost. I looked at those and I looked at the

 6 difference between the two, which would normally -- which was

 7 being used to indicate the impact of the different coal quality

 8 of the sub-bituminous coal on the unit, and that's what I used

 9 is the amount to adjust the delivered fuel price to produce an

 10 evaluated price.

 11 Q But the values that you compared were provided to you

 12 and were the result of calculations made by others; is that

 13 correct?

 14 A The analysis -- the items that I took out of the

 15 bids, I explained which ones I chose out of the bid

 16 solicitations and those are in my work papers. And I did go

 17 back and I had some information about how to do the

 18 calculations. But I could not reproduce them all, so I relied

 19 on the company's analysis.

 20 Q If you'll turn to Page 23 of your prefiled testimony.

 21 A Yes, sir.

 22 Q Beginning at Line 6 you respond to the question, "How

 23 would companies evaluate PRB coals?" And at Line 19, 18 and 19

 24 you say, "However, it appears that PEF's calculations of the

 25 PRB evaluated costs were more conservative estimates until PEF

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 1 became further focused on the PRB option in 2003." Do you see

 2 that statement?

 3 A I do.

 4 Q And by more conservative estimates, do you mean that

 5 the impact on boiler performance to which the program

 6 attributed PRB coal was more severe and resulted in a greater

 7 penalty than would a less conservative approach?

 8 A What I meant, in fact, was for the company to be

 9 conservative would have meant to be inclusive in terms of, of

 10 the PRB bids. In other words, there would -- because the PRB

 11 coal is lower in Btu and higher in moisture it carries a

 12 penalty; because it's lower in sulfur it gets a premium. This

 13 evaluated cost differential is the combination of these various

 14 factors, including some others. So if it meant that the

 15 company didn't assign a very big differential, it would mean

 16 that -- negative differential, it would mean that PRB coal is

 17 more likely to be included. And that was the context in which

 18 I used the word "conservative."

 19 Q But to be clear, when you say "more conservative,"

 20 that means a larger negative differential; is that correct?

 21 A No. I think what it means is the opposite, which

 22 means once they focused on the Powder River Basin coal more

 23 closely, the differentials in later years were larger, as shown

 24 in my analysis, which has the effect of making the Powder River

 25 Basin coals appear less favorable relative to the Central

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 1 Appalachian coals.

 2 Q I think that was my question, but I think the record

 3 is now clear.

 4 You described your use of the evaluated bid values in

 5 your own work and you said that you used the difference between

 6 the evaluated bus bar cost of the PRB coal on the one hand and

 7 the bituminous coal on the other as the, as the appropriate

 8 measure of the impact of use of PRB coal; is that correct?

 9 A I used the evaluated differential for the limited

 10 purpose of, of looking at how one would modify the delivered

 11 prices to be on an evaluated basis. I did not include in that

 12 analysis, for example, the capital costs that might be required

 13 to actually implement the 50/50 blend that OPC is proposing.

 14 Those are something greater.

 15 Q And is it true, sir, that in your analysis you used

 16 larger negative deducts in the later years because that's what

 17 appeared in the bids?

 18 A I missed the last part of your question.

 19 Q In your analysis you used larger negative deducts in

 20 the later years because that's what appeared in the bids.

 21 A That's -- it was -- I used what was in the bid

 22 sheets, as I explained. And in the bid sheets in the later

 23 years the evaluated, the impact of the evaluated analysis shows

 24 larger negative numbers. I don't know exactly the source. I

 25 don't know quite why that occurred.

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 1 Q And is it true, sir, that you weren't able to get

 2 much guidance from Progress Energy about how those adjustments

 3 were calculated?

 4 A I had some guidance but not sufficient to allow me to

 5 reproduce each of those numbers in each year. That information

 6 comes out of the, you know, model that they run, which is not

 7 one that I have access to. That's also one, I would say,

 8 that's commonly used in the industry for doing these kinds of

 9 analyses.

 10 Q In your summary you described the activities involved

 11 in a conversion of one fuel to another by a utility. Do you

 12 recall that?

 13 A Yes. I described that generally.

 14 Q Yes. Would you agree that the activities necessary

 15 for conversion are somewhat utility and plant specific?

 16 A The general process or the specific action items?

 17 Q The specific action items.

 18 A Yeah. The specific items are likely to be unique to

 19 a particular plant. The general process that's gone through in

 20 my experience seems to be relatively similar.

 21 Q Would you agree that one consideration in that

 22 plant-specific situation is whether the fuel under

 23 consideration is the same fuel for which the units were

 24 designed to burn?

 25 A I would -- it's possible that somewhere in the mix of

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 1 thinking that a utility goes through in determining whether or

 2 not to do a conversion is certainly a look at the boiler and

 3 the capabilities of the boiler. It's also a look at the coal

 4 handling facilities, the environmental regulations. So what

 5 you identified is, you know, what is probably buried in one of

 6 those items that a utility would, would consider. It's not a

 7 determinative one, I wouldn't think.

 8 Q If you'll look at Page 29 of your testimony.

 9 A Yes, sir.

 10 Q Beginning on Page 28 and 29 you discuss your

 11 calculation of the transportation component of delivery of

 12 Powder River Basin coal; is that correct?

 13 A I describe it on Page 28 and it goes over into 29.

 14 That's correct.

 15 Q And at Page 29 you use the term "regulator," do you

 16 not?

 17 A Yes, I do, at Line 15.

 18 Q And so that the record is clear, would you take a

 19 moment and tell the Commissioners what you mean with the term

 20 "regulator"?

 21 A I state later on in that sentence that I use it to

 22 mean the waterborne market proxy rate established by this

 23 Commission. And what I take that to mean is the amount that

 24 Progress Energy was allowed to charge for the waterborne

 25 transportation of coal from the mine site to -- or from

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 1 wherever consideration began, which initially was Central

 2 Appalachia down to the Crystal River plant. Later on that was

 3 modified by the Commission to include a portion of the

 4 waterborne proxy specifically to address imported coals because

 5 they would use a different portion of the waterborne

 6 transportation route than would the other domestic coals.

 7 Q And with respect both to the original waterborne

 8 proxy applicable to moving from the Appalachian area and the

 9 modified waterborne proxy applicable to the ocean portion, both

 10 of those proxies have been specifically approved by the

 11 Commission, have they not?

 12 A The proxy for Central Appalachian coal movements is,

 13 is what the original proxy -- it didn't say that, but it

 14 appears to have been modeled after -- but it was certainly

 15 looking at, you know, domestic coals, as pointed out later.

 16 The -- what you were referring to as the

 17 waterborne -- I'm not sure exactly what your term was -- but

 18 later on when the company began importing coals into IMT, a

 19 portion of the proxy was applied for the movement of those

 20 coals from IMT to Crystal River.

 21 Q And both of those proxies have been specifically

 22 submitted to and approved by the Commission; correct?

 23 A That's my understanding, yes.

 24 Q Now you have made an adjustment to the waterborne

 25 proxy and have used that in your calculation of transportation

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 1 costs; correct?

 2 A Yes. In order -- yes. In order to apply the

 3 waterborne proxy to Powder River Basin coal movements, I laid

 4 out a methodology which is intended to mirror or follow the

 5 methodology that the Commission used when it approved imported

 6 coals, and I applied that to Powder River Basin coal.

 7 Q And it's true, is it not, sir, that your adjustment

 8 to the waterborne proxy that you've used in this case has

 9 neither been submitted nor approved by the Commission?

 10 A To my understanding, it's neither been submitted nor

 11 approved. That's correct.

 12 Q Now your use of the, of your adjusted proxy is one

 13 distinction between your calculation of the economics of Powder

 14 River Basin coal and Mr. Sansom's; is that correct?

 15 A One of the differences between us has to do with the

 16 calculation of the waterborne transportation rates.

 17 Q If you'll turn to Page 30 of your prefiled testimony.

 18 A Yes.

 19 Q Beginning at Line 4 you discuss an analysis entitled

 20 Estimated Powder River Basin Origin Transportation Market. And

 21 at Lines 9 through 12 you say, "First, barge rates always have

 22 some fixed component and so they do not vary by distance alone.

 23 Second, the market rates are indicative of economic forces that

 24 include many factors other than distance." Do you see that

 25 statement?

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 1 A I do.

 2 Q And would you agree with me, sir, that one of those

 3 other factors indicative of economic forces would include

 4 competition?

 5 A I think embodied in what in a rate setting process in

 6 fact is, is competition, that's one of the market forces.

 7 The -- I was using that here to explain why the analysis that

 8 was done in what I have as Exhibit JNH-4 is different than the

 9 analysis that I used. I relied upon information on actual

 10 published rates, I'm sorry, published indices for the two

 11 relative movements as opposed to simply a distance

 12 proportioning.

 13 Q Would you agree that -- in looking at commercial

 14 rates you would agree that competition is one of the economic

 15 forces that would shape rates.

 16 A Yes, I think competition is one of the forces.

 17 Q I'm going to take a moment and distribute a document.

 18 CHAIRMAN EDGAR: 225?

 19 MR. McGLOTHLIN: Thank you.

 20 (Exhibit 225 marked for identification.)

 21 BY MR. McGLOTHLIN:

 22 Q I've provided Exhibit 225, captioned Direct Testimony

 23 of James Heller on Behalf of Florida Municipal Power Agency,

 24 September 19, 2006. Do you recognize this as your testimony in

 25 what we've referred to as the Taylor project?

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 1 A It looks like it.

 2 Q If you'll turn to Page 4 of the document, you

 3 answered the question at Line 18, "Describe the approach you

 4 took in developing the forecast of rail rates." You want to

 5 take a moment and review the answer there, and then I'm going

 6 to ask you a question about it.

 7 A Okay. I see that.

 8 Q In your answer you say, "Our forecasting approach was

 9 based on a model of bidding behavior known as 'next best'

 10 pricing. For any route where competition exists between two or

 11 more railroads, the rail rate is assumed to be determined by

 12 the lowest amount the railroad with the second-best route is

 13 willing to bid. The railroad with the best route would

 14 generally be expected to bid just below its estimate of the

 15 'second-best' railroad's bid, in order to maximize the value of

 16 its superior route."

 17 Is it fair to say that you adopted in your testimony

 18 here and in that case a technique or method of capturing the

 19 effect of competition on transportation costs?

 20 A Your question was did I adopt that in that case and

 21 in this case?

 22 Q My -- no. I was specific to the docket in which you

 23 appeared here.

 24 A Yes. That was how I did -- that was part of how we

 25 did the calculations, and that's also how I did it here.

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 1 Q Where in your testimony do you have -- have you

 2 adopted this approach?

 3 A If you look at the analysis of the rail rates that I

 4 used from the Powder River Basin to the river docks, you'll see

 5 that there's several different distances and several different

 6 docks involved. And the way we applied it was to take a look

 7 at the more inefficient route, which is the route to St. Louis,

 8 to apply a relatively low mill rate to that, recognizing that

 9 that would be the second-best carrier. And if you saw the

 10 rates that I have and that Mr. Edwards has and that ultimately

 11 UP had, I think they reflect that kind of thinking.

 12 Q In your analysis did you consider deliveries to

 13 Mobile and the use of that route?

 14 A In my analysis I was responding to the testimony of

 15 Dr. Sansom -- of Mr. Sansom, and Mr. Sansom's testimony had

 16 relied on the movements to, as I understood it, to the

 17 Mississippi River and then through the Gulf. So I didn't try

 18 to develop a separate analysis through Mobile, nor to my

 19 knowledge did he. I did look at that route and I think it's

 20 problematic. I was aware that there are bids that have been

 21 submitted here that are, I think that were discussed. But if

 22 you look at those bids to Mobile, they're unusual. One of them

 23 is a joint line haul between the BN and the UP, which is

 24 virtually undone in this industry. It has a limitation on it

 25 of 200,000 tons, which indicates that it was not going to be a,

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 1 you know, a long-run option.

 2 I talked to the Burlington Northern to see what their

 3 view was of handling coal through Mobile, and it's my

 4 understanding that that line is limited both in terms of the

 5 weight per car and in terms of train length. And, as a result,

 6 they consider that route to be relatively unattractive.

 7 But, again, I didn't analyze it. My position here

 8 was primarily to respond to Mr. Sansom's work, and he proposed

 9 the route through the Gulf. It's actually, by the way -- to my

 10 knowledge, the Burlington Northern has actually leased the

 11 piece of track. They no longer go directly to Mobile. It was

 12 unattractive enough to them that they no longer fully own that

 13 line.

 14 Q If I could have a moment in place, I think I'm about

 15 to wrap.

 16 You may have said this during your summary, sir, but

 17 you referred to a, a transportation proxy that TECO had

 18 utilized. That also was a Commission-approved rate, was it

 19 not?

 20 A There is a market proxy for TECO that I believe is

 21 Commission approved. I'm not sure where in my testimony you

 22 were referring to.

 23 Q In your summary. But that's, that's my last

 24 question. Thank you.

 25 CHAIRMAN EDGAR: Thank you.

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 1 Mr. McWhirter.

 2 CROSS EXAMINATION

 3 BY MR. McWHIRTER:

 4 Q Good morning, Mr. Heller.

 5 A Good morning.

 6 Q I'm John McWhirter, and I represent a consumer group,

 7 industrial consumer group.

 8 Are you familiar with the working relationship over

 9 the years between Progress Energy Corporation and its

 10 predecessor Florida Power Corporation and Progress Fuels

 11 Corporation and its predecessor Electric Fuels Corporation?

 12 A In a very, very general sense.

 13 Q Uh-huh. Would you describe that relationship as, as

 14 far as you understand it?

 15 A Again, in my general sense, Electric Fuels had -- and

 16 I'm talking about Electric Fuels had a contract with Florida

 17 Power Corporation under which they would provide fuel to

 18 Florida Power, and that Electric Fuels was responsible for the

 19 procurement of coal and for the delivery of that coal to, to

 20 Florida Power. That's very general.

 21 Q Do you know whether other utility companies have the

 22 same kind of arrangement with affiliated transportation

 23 companies?

 24 A Affiliated transportation companies in particular?

 25 Q Well, it looks like you get many services from

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 1 Electric Fuels in addition to transportation. Do you know of

 2 other utilities that have that same panoply of services

 3 provided by an affiliate company?

 4 A There are some variations that I know of. Tampa

 5 Electric has affiliate operations that are involved in the

 6 transportation of, of coal to, to its plants.

 7 Q Do you know of other utilities that have that?

 8 A I know that Utility Fuels, which was an arm of

 9 Houston Lighting & Power, had an arrangement, and Southwestern

 10 Public Service had and may have -- I think had an affiliate

 11 called Tuco. I'm not sure what that meant. But I believe they

 12 were responsible for some portion of the transportation and

 13 coal handling.

 14 Q Do you understand from your experience and study why

 15 these affiliated transportation and ancillary service companies

 16 are set up?

 17 A I have, you know, I haven't researched them, but I,

 18 you know, have some understanding of -- I can give you my

 19 opinion as to why, if that's what you'd like, but I don't know

 20 for sure.

 21 Q You don't know for sure?

 22 A I don't.

 23 Q I see. Well, I won't probe that, if you don't know

 24 for sure.

 25 In your study of the shipments in this case, what --

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 1 as a general matter, what portion of the total delivered cost

 2 of coal to the Crystal River site was represented by the price

 3 for the coal purchased itself and what percentage of the price

 4 was represented by the charges imposed by Electric Fuels? Is

 5 that question too ponderous for you to ponder?

 6 A The way you asked it, there's a whole range of

 7 percentages that would come out. So unless you're more

 8 specific, it would be very hard for me to -- I couldn't respond

 9 with a percentage.

 10 Q Let me state it sort of in general terms. Is -- does

 11 the -- sir, does the cost of coal itself when purchased from a

 12 third party represent more or less than 50 percent of the total

 13 price charged to Florida Power Corporation and its successor

 14 Progress Energy of Florida?

 15 A Let me give you two examples to tell you why I can't

 16 answer that question.

 17 Q All right.

 18 A Assume the price of Central Appalachian coal is $60 a

 19 ton, which it has been during the time period that we're

 20 considering, and the price of transportation, let's say, is 20,

 21 then transportation constitutes 25 percent of the delivered

 22 price of the fuel.

 23 Now let's say that the transportation cost is $20 and

 24 the price of the coal is $40, or $20 -- $30, I can do that math

 25 in my head. If it's $30 for the coal and it has been less than

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 1 that in the time period we're talking about and $20 for the

 2 transportation, then transportation would constitute 40 percent

 3 of the, of the price.

 4 Q In your Exhibit JNH-7 --

 5 A Yes, sir.

 6 Q Bear with me a minute. JNH-6, which I believe is

 7 Exhibit 84 marked for identification, over the period

 8 1996 through 2005 in Column 1 you use the spot price for PRB

 9 coal. Can you quickly figure what the average cost for the

 10 spot price of PRB coal was during that period of time?

 11 A Do you want me to take a mathematical average of that

 12 column?

 13 Q Do I want you to make a mathematical calculation?

 14 Just looking at it I think you can come to a conclusion of what

 15 the average price was over the ten-year period, can't you?

 16 A You know, a simple average of those numbers would

 17 be -- the lowest number I have is $4 and the highest number I

 18 have is $11.30.

 19 Q And the $11.30 is way out of line with the rest of

 20 them, isn't it?

 21 A That is correct. That occurred during 2001.

 22 Q Yeah.

 23 A And actually at the time the company went out for

 24 bid. So if you -- the preponderance of numbers are going to be

 25 in the, you know, $5 to $7 range.

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 1 Q And using the $5 to $7 range, how would the cost of

 2 transportation compare to the cost of coal in those

 3 circumstances?

 4 A You're asking me specifically about Powder River

 5 Basin coal?

 6 Q Yes, sir.

 7 A And how it would -- Powder River Basin coal in

 8 general is a much smaller proportion of the delivered price of

 9 fuel. The FOB mine price of Powder River Basin coal is a

 10 smaller proportion of the delivered price of fuel certainly to

 11 Crystal River and to virtually any plant in the country.

 12 Q I appreciate that. But what I'm asking you is the

 13 price charged by Electric Fuels or Progress Fuels relative to

 14 the price of spot coal, what would the percentage of the

 15 transportation costs be compared to the percentage of the coal?

 16 A If you look at Column 7 on Exhibit 6, you can see

 17 that the delivered price for PRB coal is around $40 a ton,

 18 varies anywhere from $37 to $46. So if the price is, say, $8 a

 19 ton out of $40, that's going to be about 20 percent.

 20 Q The coal price would be 20 percent and the Progress

 21 Fuels Corporation price would represent 80 percent of the total

 22 cost, delivered cost of the coal; is that right?

 23 A 80 percent would be in the transportation.

 24 Q Yes.

 25 A That's not all Progress Fuels. That includes the,

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 1 what I have as a rail rate to St. Louis which goes to the

 2 railroad, that's actually the lion's share, and then the spot

 3 coal price. But I'm telling you that's a phenomenon of Powder

 4 River Basin coal. The transportation costs of PRB coal are

 5 either almost always greater or always greater than the price

 6 of the coal.

 7 Q Well, Progress Fuels would be responsible for

 8 transloading and blending and Dixie Fuels' transport rate. And

 9 what other, what other portion of the price would Progress

 10 Fuels bear in that analysis?

 11 A Are you talking about when the proxy was in place or

 12 --

 13 Q I'm talking about your exhibit.

 14 A And I've said it varies year to year. The portions

 15 in here that I've used the proxy for are Column 4, which is the

 16 barge to IMT, and I'm using a portion of the proxy. And I

 17 explain that I've prorated that because the distance is shorter

 18 than from Central Appalachia. The transloading and blending

 19 fee in Column 5 is the market proxy amount. The Dixie Fuels

 20 transportation rate is the market proxy amount.

 21 Q All right. And what percentage would Progress Fuels

 22 Corporation represent compared to the price of coal in that

 23 circumstance?

 24 A It varies. Just doing -- this is in my head, you

 25 know, maybe a third in 2004.

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 1 Q 60 percent of the cost would be --

 2 A Maybe 50 percent in another area.

 3 Q Yeah.

 4 A So it would --

 5 Q Uh-huh.

 6 A You'd have to do it year by year.

 7 Q Okay. Well, we won't go into that a little bit more.

 8 But you've talked about the proxy arrangement. What is the

 9 proxy arrangement as you understand it?

 10 A The proxy arrangement that existed in 1996?

 11 Q Yeah. Well, through 2005. Yes, sir.

 12 A Okay. It varied over time. The proxy, as I

 13 understood, that existed in 1996 through 2002 was based upon an

 14 amount that had been agreed to by the company and approved by

 15 the Commission that provided a certain dollar amount for the

 16 transportation of coal. Let's say in 1993 it was from Central

 17 Appalachia. And that had within it a component that took the

 18 coal from the mine to the river, it was a relatively small

 19 amount, then there was a transloading fee at the river, the

 20 cost of moving the coal by barge from the Central Appalachian

 21 point down to the terminal in New Orleans at IMT, the

 22 transloading at IMT, and then the movement across the Gulf to

 23 Crystal River. And portions of that movement were handled by

 24 affiliate companies. And rather than go back and continually

 25 examine how actual costs might change, the market proxy was

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 1 developed to make it easier to determine how the transportation

 2 costs would shift over time without regard to what were

 3 necessarily the underlying costs, meaning the company could

 4 take, would take the risk that if rates went, barge rates, for

 5 example, went through the ceiling, the market proxy might not

 6 allow them to recover that. And if they were able to make them

 7 less than the proxy, then, you know, the company would, could,

 8 could benefit from that. So it was put in place to approximate

 9 the cost but to make it easier to regulate it over time.

 10 It's my understanding that that proxy was modified

 11 in, I think it was stipulated, I'm not sure I have my years

 12 right, in 2003 and then eliminated in 2004, and currently I

 13 don't believe there's a proxy. I think the company charges its

 14 actual costs.

 15 And at times, because there were affiliates involved

 16 in the transportation movement, it became easier to -- it was

 17 called a market proxy because the risk would be borne based on

 18 changes in market, not necessarily changes in actual cost.

 19 Q If -- did Progress Fuels utilize barges for its

 20 transportation, water transportation?

 21 A Barges?

 22 Q Barges, water transportation.

 23 A Did Progress Fuels use barges?

 24 Q Yes.

 25 A It did for some of its movements. It did use barge

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 1 transportation, yes.

 2 Q And was the market price for rail used as the market

 3 proxy in evaluating the charges that were appropriate for the

 4 barge traffic?

 5 A In the case of Progress Energy?

 6 Q Yes, sir.

 7 A No. To my knowledge the rail rates weren't

 8 explicitly used.

 9 Q What was the market proxy? What -- with a proxy I

 10 understand you look at something else to evaluate the value of

 11 the service the affiliate is providing. What was the other

 12 thing that was looked at to determine the proxy for the

 13 services delivered by the affiliate?

 14 A I don't recall all the pieces, but there are -- there

 15 is a list of independent escalators, meaning those were things

 16 that were under third-party control that were used to adjust

 17 portions of the proxy. Let me look. I'm not sure if I have --

 18 actually they're not here. I don't have them in my, they're

 19 not listed in my testimony. I think they were in my work

 20 papers.

 21 Q All right. In your Exhibit JNH-7, which I believe to

 22 be Exhibit 86, in Column 5 you're using evaluated price for PRB

 23 coal including capital recovery requirement. What, what does

 24 "including capital recovery requirement" mean? What is that?

 25 A There was the -- again, the simulation that I'm doing

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 1 here, and I'm not saying this is how things would or certainly

 2 should be done, in responding to OPC, they posited that this

 3 coal would be blended at Crystal River. And in order to do the

 4 blending at Crystal River and burn it in the units, as Mr. Hatt

 5 has indicated, there are changes that need to be -- capital

 6 needs to be invested at the plant. And this includes within

 7 the evaluation the capital that would be required to actually

 8 affect the, you know, situation that OPC has posited.

 9 Q I see. So that's a fairly substantial amount

 10 relative to the overall cost. When you did capital recovery,

 11 did you include a return on the investment in the new

 12 facilities that Mr. Hatt said were required?

 13 A That's correct. That's in my work papers.

 14 Q Did it include --

 15 A The nature -- I'm sorry?

 16 Q Did you include depreciation?

 17 A There's a capital recovery factor that's used and I

 18 think it takes account of depreciation. It's in my work

 19 papers.

 20 Q And did you look at the capital structure and

 21 determine what portion of the capital structure was equity and

 22 what portion was debt?

 23 A That's embedded in the cost recovery factor that was,

 24 that's used.

 25 Q Did you ever consider the fact that if the plant had

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 1 initially been represented to be capable of burning PRB coal,

 2 that the capital shortcomings might be the responsibility of

 3 the company that represented that it could burn PRB coal rather

 4 than the responsibility of people who consumed that, the

 5 electricity produced by that coal?

 6 A That's certainly beyond the scope of what I

 7 considered. But to the extent that the company was actually

 8 going to burn PRB coal at the site in the proportions that OPC

 9 indicates, they, like all other utilities, would have to spend

 10 substantial capital to do it.

 11 Q And did you make a determination in your analysis of

 12 whether that capital recovery should be through base rates or

 13 through the fuel clause?

 14 A I did not. That's beyond the scope of what I did.

 15 Q I see. If Column 5 were -- well, in the capital

 16 recovery Mr. Hatt used estimates of the cost that range between

 17 something like a $40 million investment to something like a

 18 $70 million investment. Did you use a $40 million number or

 19 the $70 million number?

 20 A His range was between 48.6 and 73.7, and I used the

 21 average of those two.

 22 Q So you used something like a return on $60 million?

 23 A It would be about that.

 24 Q I'm not that good at math. You used the average.

 25 What was the capital that you used?

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 1 A It's in my testimony, and I think it's about

 2 60 million.

 3 Q About 60 million?

 4 Would it be fair to say that if that column were

 5 deleted from your analysis, that it would markedly change the

 6 results of your conclusions?

 7 A If Column 6 were deleted from my analysis --

 8 Q Column 5. Column 5.

 9 A I'm sorry. Column 5 were deleted from my analysis,

 10 then the damages calculation that I have would be, would

 11 change; however, the conclusion as to whether or not Powder

 12 River Basin coal made sense to be burned during this time

 13 period would not. Just the amount of how bad an idea it is

 14 would, would change.

 15 MR. McWHIRTER: Thank you. That's all the questions

 16 I have.

 17 CHAIRMAN EDGAR: Mr. Twomey?

 18 MR. TWOMEY: No questions.

 19 CHAIRMAN EDGAR: Mr. Brew?

 20 MR. BREW: Very briefly, Your Honor.

 21 CROSS EXAMINATION

 22 BY MR. BREW:

 23 Q Good morning.

 24 A Good morning.

 25 Q On Page 3 of your prefiled testimony, Lines 15

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 1 through 17, you say that you have previously done work for

 2 Florida Power Corp, Progress Energy and Electric Fuels. Do you

 3 see that?

 4 A Yes, sir.

 5 Q Can you tell me for the years we're talking about,

 6 1996 to 2005, in which of those years did you assist any of

 7 those companies in the solicitation or evaluation of the coal

 8 procurement?

 9 A I never assisted them directly in the solicitation or

 10 evaluation of an RFP response. I did provide information to

 11 them that I believe was used in the administration of the

 12 market price reopeners under some of their contracts.

 13 Q Okay. So you have no personal knowledge of how the

 14 companies actually evaluated the coal bids; is that right?

 15 A I have the information from, you know, bid sheets and

 16 what's been provided in this record. I don't have an -- I

 17 haven't independently participated in that process.

 18 Q But you have no personal knowledge of how they

 19 evaluated the bids at the time they were doing it.

 20 A Other than what's in the record, I don't have

 21 independent knowledge.

 22 MR. BREW: Thank you. That's all I have.

 23 CHAIRMAN EDGAR: Ms. Bradley? No questions?

 24 Questions from staff.

 25 MS. BENNETT: No questions.

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 1 CHAIRMAN EDGAR: No questions.

 2 Mr. Walls.

 3 MR. WALLS: Just a couple of minor questions on

 4 redirect.

 5 COMMISSIONER CARTER: Madam Chairman.

 6 CHAIRMAN EDGAR: Commissioner Carter.

 7 COMMISSIONER CARTER: I just wanted to ask a

 8 question, if I may.

 9 CHAIRMAN EDGAR: You may.

 10 COMMISSIONER CARTER: I was just trying to reconcile

 11 this. I think that on yesterday Mr. Hatt made reference to

 12 about $80 million in the context of $60 million for the

 13 retrofitting at the plant and about $2 million a year for the

 14 maintenance operation. It may very well be in his testimony,

 15 although I don't think you were here yesterday. And today

 16 you're saying that in terms of in addition to that $80 million,

 17 just my rough guestimate for the ten-year time frame is that

 18 for fuel and transportation there would be an additional

 19 $50 million in order to use the 50/50 mixture; is that correct?

 20 THE WITNESS: I have to take a look at my exhibit. I

 21 think you're referring to my Exhibit JNH-7. If you look

 22 there -- I don't know how it's numbered for the proceeding, but

 23 in my testimony it's JNH-7. And the, in the lower right-hand

 24 corner there's a negative $51,376,000. That's the $50 million

 25 number that I'm referring to. And to tie that to Mr. Hatt's

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 1 estimate I included both his capital, the average of his

 2 capital costs, and I included the $2 million a year that he had

 3 for actually doing the blending and doing the operations at the

 4 plant. Those numbers are embedded in my calculation of the

 5 evaluated price for PRB coal, including capital recovery.

 6 What I've done on Exhibit JNH-7 is for this time

 7 period from 1996 to 2005, if I include in there the annual

 8 costs associated with the adjustments that Mr. Hatt proposes be

 9 made at the plant and I deliver the coal to Crystal River using

 10 the adjusted market proxy and the market prices for coal, by my

 11 calculation the company would be -- the customers would have

 12 paid $50 million more in to use the PRB coal over this time

 13 period than they would have by following the -- by actually the

 14 results that the company got buying Central Appalachian and

 15 imported coal.

 16 So there's some apples to oranges in that Mr. Hatt,

 17 when he talks about a capital investment of, say, $80 million,

 18 in order to break that out over the years, I have to annualize

 19 that. I think Mr. McWhirter was asking me about that. So what

 20 I do is I break a piece off of it each year and assign that to

 21 the amount of coal delivered that year. So in effect, my

 22 negative $51 million has in it both the effect of the cost of

 23 transporting the fuel, the Powder River Basin coal down to

 24 Crystal River, and the recovery of a portion, not all, but a

 25 portion of the capital costs that Mr. Hatt has, has included.

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 1 The reason I have only a portion and not all is

 2 because that capital would be covered over a long period of

 3 time. And if it turns out that these units are actually

 4 converted to scrubbers in, I think, 2009 and 2011, this other

 5 investment might not be needed, in which case the, you know,

 6 negative impacts would be even greater because there would be,

 7 you know, there might be no more PRB coal with which to recover

 8 that investment. So I have embedded in mine both the

 9 transportation, the fuel and the capital recovery portion of

 10 Mr. Hatt's.

 11 COMMISSIONER CARTER: Madam Chair.

 12 CHAIRMAN EDGAR: Yes, Commissioner Carter.

 13 COMMISSIONER CARTER: I hear what you're saying about

 14 the apples-to-oranges comparison there, but I'm just trying to

 15 make sure that I really have the number here. Because from my

 16 discussion and questioning is that I was asking specifically

 17 what would it cost. I even asked one of the witnesses, I think

 18 it was Mr. Weintraub, whether or not it was cost prohibitive

 19 even to do this. And I think that the -- from my discussion

 20 with Mr. Hatt, he said that it would be $60 million to upgrade

 21 CR4 and CR5 in terms of infrastructure and capital improvement

 22 costs for the facilities to burn the PRB coal. Secondly, he

 23 said in addition to that there will be an annual operating cost

 24 of about $2 million. And just my rough guestimate of

 25 $2 million over 10 years, that's $20 million. You add that to

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 1 the $60 million upgrade, that's $80 million.

 2 Then today I'm listening to what you're saying in the

 3 context of the transportation costs and the cost of the coal in

 4 terms of the spot market and as well as what is available, and

 5 because of the run up there's a problem where there was either

 6 a supply problem or whatever the problem was with PBR -- PRB

 7 coal that shot the price up, I think it went from -- I'm not

 8 sure exactly what the charge --

 9 THE WITNESS: It went up on Exhibit 6. If you look

 10 on Exhibit 6, it was $11.30 in 2010.

 11 COMMISSIONER CARTER: Yeah. Yeah. So what I'm

 12 trying to get my arms around is that when I hear you say

 13 $50 million, I'm thinking that this $50 million is dealing with

 14 the cost of, the additional cost of the coal plus the

 15 transportation costs to get the coal to CR4 and CR5. This is

 16 what I'm thinking. Now if I'm wrong, straighten me out.

 17 THE WITNESS: I understand your question. It's going

 18 to take me probably about -- it's complicated. It'll take me

 19 about five minutes, but I can walk you through how I used

 20 Mr. Hatt's costs.

 21 COMMISSIONER CARTER: You got a shorter version and a

 22 simpler version? Give me the one-minute simpler version.

 23 THE WITNESS: Okay. Can I take you to -- I need to

 24 use my Exhibits JNH-6 and --

 25 COMMISSIONER CARTER: Sure.

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 1 MR. BURNETT: Commissioner, Mr. Walls speaks

 2 Mr. Heller's language, and a couple of redirect questions may

 3 be able to clear this up if we could translate it from --

 4 COMMISSIONER CARTER: Do you understand what I'm

 5 asking?

 6 MR. BURNETT: I understand. Absolutely, sir.

 7 COMMISSIONER CARTER: Okay. Good. That's fine. If

 8 we can bring it out in redirect.

 9 CHAIRMAN EDGAR: Okay. Let's go to redirect. And

 10 then, Commissioner Carter, if you have follow-up questions, we

 11 will, we will go there.

 12 Mr. Walls.

 13 MR. WALLS: I hope I can address your questions.

 14 REDIRECT EXAMINATION

 15 BY MR. WALLS:

 16 Q Mr. Heller, have you taken the full number that was

 17 provided by Mr. Hatt in order to do the capital upgrades and

 18 the maintenance costs to both blend and operate onsite, if you

 19 brought 100 percent PRB onsite and burned in a 50/50 blend,

 20 into consideration in your calculations?

 21 A Yes. I've taken into account both his full capital

 22 costs, the $60 million and the $2 million a year over ten

 23 years. Both of those are included in my calculation.

 24 Q And all of that money would have to be spent under

 25 your calculation; correct?

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 1 A All that money would have to be spent. That's

 2 correct.

 3 Q And it would be incurred in the first year when they

 4 made these improvements; right?

 5 A The $60 million would be incurred in the first year.

 6 The $2 million a year would be incurred, $2 million a year over

 7 ten years.

 8 Q But you wouldn't necessarily recover that $60 million

 9 that first year; right?

 10 A No, you would not.

 11 Q You would have to recover that over what period of

 12 time?

 13 A I think the capital recovery factor that's used is 20

 14 years, but I'm not certain. It's something that the company

 15 has embedded, I believe, in their capital recovery factor, but

 16 I'm not sure. I guess it would be 20 to 30 years.

 17 Q And so what you're looking at in your exhibit from

 18 1996 to 2005 is a portion of that time period; right?

 19 A That's correct. I'm only looking at ten years of it.

 20 Q And why are you just looking at that ten-year period

 21 of time?

 22 A Because those are the ten years from 1996 when this

 23 proposed switch would have occurred to now.

 24 Q To now. Right. But would the company in 2005 have

 25 recovered the full $60 million necessary to do the capital

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 1 upgrades in order to do this blend onsite by 2005?

 2 A No. They would still have an outstanding amount to

 3 be recovered in the future.

 4 Q And at the end of this ten-year period of time what

 5 does your 51 -- you called it a negative $51 million. What

 6 does that represent just at that end of the period of time?

 7 A The negative $51 million represents the amount of

 8 additional money the company would have paid for coal,

 9 transportation, additional operating and maintenance expenses,

 10 and the portion of the capital that they had recovered to date.

 11 Q And so does that represent a fuel savings or a cost

 12 to the customer versus what the company actually did over that

 13 1996 to 2005 time period?

 14 A That represents an additional cost to the customer

 15 over what the company actually did during that time period.

 16 Q Okay. So it would -- and at the end of this 2005

 17 period has the company recovered the full amount of that

 18 capital investment of $60 million necessary to even burn the

 19 50/50 blend on site?

 20 A No. It would still have a residual amount of capital

 21 left to be recovered.

 22 MR. WALLS: I hope that helps. That's the best I can

 23 do.

 24 CHAIRMAN EDGAR: Commissioner Carter.

 25 COMMISSIONER CARTER: It's really pretty much the

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 1 same answer he had given me. I'm from South Georgia and I

 2 like, you know, we like things real simple there.

 3 One, we talked about the cost to improve the

 4 infrastructure of the plant to burn this, this coal. Two, we

 5 talked about the additional operating and maintenance costs for

 6 going through the conversion. And today Mr. Heller is talking

 7 about transportation and the cost of the coal. So I'm -- you

 8 know, I understand the cost to upgrade the plant to work and

 9 make this conversion and burn this type of coal. I understand

 10 what it would cost in the additional maintenance and all like

 11 that.

 12 Today we're talking about getting the fuel to the

 13 plant. That's different to me, that's different to me than

 14 what it would cost to upgrade the plant, what it would cost to

 15 maintain the plant during the process. Now we're talking

 16 about -- because yesterday that was just the plant itself. Now

 17 we're talking about what it would cost to get the fuel to the

 18 plant and what it would cost -- do you understand what I'm

 19 saying? It's not apples and grapefruit, not from my

 20 standpoint. Maybe apples and kumquats. But the point of the

 21 matter is, you said is -- Mr. Hatt said -- I can read my notes.

 22 He said $60 million to upgrade CR4 and CR5. That's to upgrade

 23 the facilities, the plants themselves in order to burn this

 24 blend. He said $2 million dollars annually in ongoing

 25 operating and maintenance costs for that for CR4 and CR5. And

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 1 in my rough guestimate, going back ten years at $2 million a

 2 year, that's where I came up with the $20 million to add on top

 3 of that $60 million, so I got $80 million. Today I hear

 4 discussion on $50 million. In looking at your exhibits, you

 5 say $51 million. But I'm trying to say -- what I'm trying to

 6 get in my mind is that is this $80 million operational and

 7 maintenance and infrastructure improvement to the plant plus

 8 $50 million for the fuel or is it all a wash? Do you

 9 understand? I mean, do you understand what I'm asking you?

 10 THE WITNESS: I do. I understand exactly what you're

 11 asking. I'm trying to put this in terms that answer it.

 12 The -- what -- my negative $50 million or $51 million

 13 is not just the coal and not just the transportation. You

 14 could -- I could look at the cost of buying coal as Progress

 15 Energy did, whether it was imports or Central Appalachian coal,

 16 delivering it to the plant, and let's say that cost, I'll use

 17 dollars per million Btu because the -- let's say it costs $40 a

 18 ton to do that for imported coal or for Central Appalachian --

 19 for Powder River Basin coal.

 20 Now if I add up the cost of the coal and the

 21 transportation for Central Appalachian coal and if it costs

 22 $40 a ton for the Powder River Basin coal and it costs me $50 a

 23 ton for the Central Appalachian coal, then at first blush it

 24 looks like the Powder River Basin coal is going to be cheaper,

 25 $40 for the Powder River Basin coal, $50 for the Central

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 1 Appalachian coal.

 2 In order to -- if I just do the math on that basis, I

 3 miss several things I have to adjust for. One of them is the

 4 heating value of the Central Appalachian coal is much higher

 5 than the heating value of the Powder River Basin coal. So you

 6 need more tons of Powder River Basin coal to drive the

 7 generators.

 8 COMMISSIONER CARTER: So there's a cost for that.

 9 THE WITNESS: There's a cost there. That's right.

 10 COMMISSIONER CARTER: Okay. So add that to your, add

 11 that to your equation.

 12 THE WITNESS: Right.

 13 COMMISSIONER CARTER: Because where we go to the

 14 bottom line when we get -- I just want to let you know upfront

 15 when we get to the bottom line I want to know the bottom line

 16 for the cost of fuel excluding -- I've already separated that

 17 other cost out. I don't want to talk about that. I don't want

 18 to talk about what it costs to improve the plant, I don't want

 19 to talk about the $2 million maintenance. I just want to talk

 20 about the cost of the coal itself, the transportation of the

 21 coal. Now you told me because there's a different Btu level,

 22 so you're going to need more of it. So add that into the

 23 equation and tell me exactly what it would cost for the coal.

 24 I think that's in your testimony.

 25 Thank for your indulgence, Madam Chairman.

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 1 CHAIRMAN EDGAR: Take your time.

 2 COMMISSIONER CARTER: I just need a minute here.

 3 In your testimony, you're a consultant and you

 4 provide consultant services to assist power generators,

 5 transportation companies and energy producers in solving

 6 economic and technical problems related to energy and

 7 transportation markets and environmental compliance issues;

 8 right?

 9 THE WITNESS: Yes, sir.

 10 COMMISSIONER CARTER: Okay. So what I want to know

 11 is what is the energy and transportation, energy and

 12 transportation market costs and compliance for this case here

 13 --

 14 THE WITNESS: I can --

 15 COMMISSIONER CARTER: -- based upon what's presented

 16 to us?

 17 THE WITNESS: I can answer your question with

 18 Exhibits JNH-6 and JNH-7.

 19 COMMISSIONER CARTER: Okay.

 20 THE WITNESS: If you can -- you may have to tear them

 21 apart, but I can --

 22 COMMISSIONER CARTER: All right. That will be fun to

 23 tear it apart. Okay.

 24 THE WITNESS: Okay. If you look on Exhibit JNH-6.

 25 COMMISSIONER CARTER: Okay.

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 1 THE WITNESS: Column 10.

 2 COMMISSIONER CARTER: Okay.

 3 THE WITNESS: For 1996.

 4 COMMISSIONER CARTER: 2.23.

 5 THE WITNESS: 2.23. That's dollars per million Btu.

 6 The reason I'm doing that instead of dollars per ton is to

 7 adjust for this heating value problem we were talking about.

 8 COMMISSIONER CARTER: Okay.

 9 THE WITNESS: Okay. If you take a look at

 10 Exhibit JNH-7 and you go to Column 4.

 11 COMMISSIONER CARTER: Okay. 2.16.

 12 THE WITNESS: You'll see the delivered price for

 13 Central Appalachian coal in 1996 was $2.16.

 14 COMMISSIONER CARTER: Okay.

 15 THE WITNESS: And the evaluated price for Powder

 16 River Basin coal in 1996 is $2.23 a ton. That has, involves --

 17 that does not involve Mr. Hatt's capital costs. His capital

 18 costs are separate. His $60 million is a separate calculation.

 19 COMMISSIONER CARTER: Okay. Can you bottom line this

 20 for me or ballpark it?

 21 THE WITNESS: I'm going to do something really crude,

 22 and since I have to do this in real time, I --

 23 COMMISSIONER CARTER: Just give me a guestimate.

 24 THE WITNESS: Take the $51.3 million --

 25 COMMISSIONER CARTER: Okay.

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 1 THE WITNESS: -- number that I've got. I have to

 2 subtract from that the $20 million, some portion of the

 3 $20 million because I think it's net present valued. So if I

 4 were to subtract --

 5 COMMISSIONER CARTER: That leaves us $31 million.

 6 THE WITNESS: 15, that would give me $31 million. If

 7 they spent, you know, $60 million on capital costs and they may

 8 have recovered a third of that, you know, that's 20. That

 9 still says without considering any of the capital --

 10 COMMISSIONER CARTER: So you add 40 to the 31 then;

 11 right?

 12 THE WITNESS: From the 31 you would -- from the

 13 31 you subtract the 20 that is already in here. In other

 14 words, the 20 -- if they recovered a third of the $60 million

 15 they spent -- in other words, they spent $60 million over --

 16 let's say it was going to be recovered over 30 years, this has

 17 lasted ten years, so a third of the 60 that they recovered

 18 would be $20 million. You didn't want me to count the capital

 19 portion of that.

 20 COMMISSIONER CARTER: So that leaves you $40 million;

 21 right?

 22 THE WITNESS: So it's going to be somewhere in the --

 23 it would be -- there would still be -- it would still be a

 24 negative number. In other words, the cost of the Central

 25 Appalachian -- the PRB coal would still be greater than the

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 1 Central Appalachian coal.

 2 COMMISSIONER CARTER: But just on that straight line

 3 that we've been going on, that leaves us about $40 million; is

 4 that right?

 5 THE WITNESS: The negative number, I think, would be

 6 more like $20 million, something like that. But I would really

 7 prefer -- this isn't the proper way to do it. I would prefer

 8 not to have done what we just did, but to help you in terms of

 9 understanding it.

 10 COMMISSIONER CARTER: Okay. Thank you, Madam

 11 Chairman. Thank you, Mr. Heller.

 12 THE WITNESS: Yes, sir.

 13 CHAIRMAN EDGAR: Okay. Exhibits.

 14 MR. WALLS: I'm sorry. I just had one minor

 15 redirect.

 16 CHAIRMAN EDGAR: Oh, I'm sorry. I thought you had

 17 finished. Go finish your redirect.

 18 COMMISSIONER CARTER: You were supposed to be helping

 19 me, by the way.

 20 MR. WALLS: I am just a lawyer, so.

 21 CONTINUED REDIRECT EXAMINATION

 22 BY MR. WALLS:

 23 Q Mr. Heller, I believe you were asked some questions

 24 by Mr. McWhirter about your JNH-6 in respect to the market

 25 proxy and which columns included the market proxy. Do you

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 1 recall that?

 2 A Yes.

 3 Q And are you on JNH-6?

 4 A I am.

 5 Q Okay. And when you referred to Column 5 as

 6 including, I think you said the market proxy. Does that

 7 include additional costs besides the market proxy?

 8 A Yes, it does. I included in there the blending fee

 9 along with the market proxy for the IMT.

 10 Q And where did you get the blending costs from?

 11 A The blending cost we've included in there was from

 12 Mr. Sansom's estimate of what the cost would be of blending at

 13 Crystal River.

 14 Q In this calculation, the blending costs, did you look

 15 at Mr. Hatt's --

 16 A I'm sorry. What's in Column 5 is the, actually the

 17 recovery of what the Commissioner was asking me about regarding

 18 the $2 million a year that is in Mr. Hatt's analysis. That's

 19 actually in my Column 5.

 20 Q And I believe you were asked a question by

 21 Mr. McGlothlin about the TECO rate being a proxy. Do you

 22 recall that?

 23 A Yes, I do.

 24 Q Did you use the TECO rate in your analysis between

 25 1996 and 2003?

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 1 A Not at all.

 2 Q Who did?

 3 A Mr. Sansom did.

 4 Q And was that a competitive rate?

 5 A No. That's a market proxy. And Mr. Sansom notes

 6 that it was far in excess of market, but it's what he uses for

 7 his comparison.

 8 MR. WALLS: No further questions.

 9 We would at this time move Mr. Heller's exhibits in

 10 evidence, Exhibits 79 through 87, which I believe includes his

 11 direct and rebuttal exhibits.

 12 CHAIRMAN EDGAR: Yes. That is my understanding.

 13 Exhibits 79 through 87 will be moved into evidence.

 14 (Exhibits 79 through 87 marked for identification and

 15 admitted into the record.)

 16 And then, Mr. McGlothlin, you have an exhibit.

 17 MR. McGLOTHLIN: I move 225.

 18 MR. WALLS: No objection.

 19 CHAIRMAN EDGAR: Okay. Exhibit 225, which I have

 20 labeled Direct Testimony, J. Heller on behalf of FMPA, et al.,

 21 9/19/06, will be moved into the record as evidence.

 22 (Exhibits 225 admitted into the record.)

 23 The witness is excused.

 24 MR. WALLS: May he be dismissed, please?

 25 CHAIRMAN EDGAR: Yes, he may.

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 1 Let's take a short break to stretch, and then,

 2 Ms. Bennett, we will call your witness. We will come back at

 3 25 after by the clock on the wall.

 4 (Recess taken.)

 5 CHAIRMAN EDGAR: Okay. We will come back from break

 6 and go back on the record. And, Ms. Bennett, your witness.

 7 MS. BENNETT: We call Mr. Bernard Windham.

 8 MR. BURGESS: Madam Chairman, while Mr. Windham is

 9 coming to the witness stand, I would like to ask a request of

 10 the Chair. I've spoken to the parties about this. We have one

 11 witness who has pressing travel plans, Dan Lawton, and I would

 12 ask that we move him in the order of our witnesses when we get

 13 to our portion of the case, if we can move Mr. Lawton to first

 14 on our witness list.

 15 CHAIRMAN EDGAR: Okay. So we will take up

 16 Mr. Windham, and then I would expect that we would call

 17 Mr. Stewart. And then as we move into the rebuttal, we'll

 18 begin with Mr. Lawton.

 19 MR. BURGESS: Thank you, Madam Chairman.

 20 CHAIRMAN EDGAR: Thank you.

 21 Ms. Bennett, has your witness been sworn?

 22 MR. YOUNG: Yes.

 23 CHAIRMAN EDGAR: Oh, sorry, Mr. Young.

 24 MR. YOUNG: Not a problem, Madam Chair.

 25 BERNARD M. WINDHAM

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 1 was called as a witness on behalf of the Staff of the Florida

 2 Public Service Commission and, having been duly sworn,

 3 testified as follows:

 4 DIRECT EXAMINATION

 5 BY MR. YOUNG:

 6 Q Mr. Windham, please state your full name and business

 7 address for the record.

 8 A Bernard M. Windham, Florida Public Service

 9 Commission, 2540 Shumard Oak Boulevard, Tallahassee 32399.

 10 Q Have you been sworn, Mr. Windham?

 11 A Yes.

 12 Q Did you submit prefiled testimony in this proceeding

 13 consisting of 14 pages?

 14 A Yes, I did.

 15 Q Do you have any changes or additions to that

 16 testimony?

 17 A No. No.

 18 Q With regard to your testimony, if I were to ask you

 19 the same questions set forth in your testimony, would your

 20 answers be the same?

 21 A Yes.

 22 Q Are you sponsoring any exhibits with your testimony?

 23 A Yes.

 24 Q What are those exhibits?

 25 A BW-2 through BW-11, and they're listed on Pages 2 and

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 1 3 of my testimony.

 2 Q At this time, Madam Chairman, I'd ask that

 3 Mr. Windham's testimony be entered into the record as though

 4 read.

 5 CHAIRMAN EDGAR: The prefiled testimony will be

 6 entered into the record as though read.

 7 MR. YOUNG: Thank you.

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 1 BY MR. YOUNG:

 2 Q Mr. Windham, have you prepared a summary of your

 3 testimony?

 4 A Yes, I have.

 5 Q Would you please provide us with that summary at this

 6 time?

 7 A Good morning, Commissioners. The purpose of my

 8 testimony is to, is to add information from staff databases to

 9 provide a comprehensive set of information to address the coal

 10 procurement practices of PEF as it relates to foreign and

 11 western bituminous coal. Information from staff discovery and

 12 databases maintained to monitor fuel clause expenses indicated

 13 that for most years from 1996 to 2005 South American or western

 14 bituminous coal appeared to be the most cost-effective options

 15 available to PEF. During these years other southeastern and

 16 coastal utilities were using increasing amounts of such coal

 17 procured at prices virtually always less than the prices of the

 18 CAPP, the Central Appalachian coal or synfuel procured for PEF.

 19 Historically, waterborne delivered coal procured for

 20 PEF, both Central Appalachian coal and foreign coal, has been

 21 received and processed at the IMT coal terminal on the Gulf

 22 Coast. Each month all major utilities in the U.S. report

 23 delivered price and quality information to the, to the Federal

 24 Energy Regulatory Commission, which is included in the FERC 423

 25 database. All of the data reported each month to FERC by PEF

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 1 had the delivered price of coal to the IMT terminal.

 2 In recent years, some foreign coal procured for PEF

 3 is to another Gulf Coast terminal in Mobile, which is also used

 4 by several other southeastern utilities in my comparison.

 5 Since most other utilities' data reported to FERC is the

 6 delivered price to their plant, most of the other utilities'

 7 delivered price includes the cost of an additional

 8 transportation leg to get the coal from the receiving terminal

 9 to the plant. The price for foreign coal most comparable to

 10 the price of procuring foreign coal for PEF at the IMT or

 11 Mobile terminals is the price of the other utilities to the

 12 receiving coal terminal. The FERC reported prices for most

 13 other utilities listed in my, in my Exhibit BW-9 represent a

 14 conservative estimate of these delivered prices. Average

 15 delivered prices for the FERC data for each year were

 16 calculated for PEF and the other coastal utilities.

 17 Some of the utilities, including my Exhibit

 18 BW-3 summary of average delivered price comparisons, have

 19 significantly higher additional transportation short-haul leg

 20 costs included. And outliers can significantly affect

 21 averages. Thus, for each year the median of the utility

 22 average delivered prices for the utilities using foreign coal

 23 was chosen as the most valid summary measure of the average

 24 delivered price for foreign coal. These are provided in

 25 BW-3 compared to the average delivered price of Central

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 1 Appalachian coal procured for PEF. Prices for contract coal

 2 can be more or less than the price for spot coal depending on

 3 market conditions; thus, the average delivered price of foreign

 4 coal and PEF CAPP coal were calculated separately for contract

 5 versus spot for each year. These are shown in the yearly

 6 summaries in BW-3. The medians for each year for both spot and

 7 contract coal are easily calculated from the summary data in

 8 BW-3. That concludes my summary.

 9 MR. YOUNG: Madam Chairman, at this time we'd tender

 10 Mr. Windham for cross.

 11 CHAIRMAN EDGAR: Thank you.

 12 Mr. Walls.

 13 MR. WALLS: Yes. Thank you.

 14 CROSS EXAMINATION

 15 BY MR. WALLS:

 16 Q Good morning, Mr. Windham.

 17 A Good morning.

 18 Q I understand you're testifying as an expert in this

 19 proceeding; correct?

 20 A Correct.

 21 Q And as I understand from your testimony, you're

 22 relying on your experience and responsibilities as an

 23 engineering specialist for staff; right?

 24 A Yes.

 25 Q And I understand you've worked in the fuels

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 1 department of staff for ten years; right?

 2 A Approximately.

 3 Q I further understand that you monitor the fuel

 4 information filed by the utilities in the fuel docket each

 5 year, you compile and maintain databases of the PSC and FERC

 6 forms that include delivered fuel prices including coal, and

 7 you review coal RFPs and contracts; is that correct?

 8 A I've been doing the database part for most of the ten

 9 years, the database part especially with respect to the

 10 A Schedules. I've also had other responsibilities. I only

 11 started looking at coal, coal issues and the, the contracts and

 12 RFPs and that kind of thing late in 2001 and mostly starting in

 13 2002.

 14 Q So the answer to my question would be, yes, that's

 15 what you do, right, currently?

 16 A Yes, that's what I currently do.

 17 Q Now you also testify at Page 1 of your direct

 18 testimony that you assist the Commissioners in preparing for

 19 fuel adjustment hearings by issuing reports and

 20 recommendations; correct?

 21 A Yes.

 22 Q You indicated that you have drafted discovery

 23 requests for the fuel adjustment hearings; right?

 24 A Yes.

 25 Q And that's part of your job, right, to draft

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 1 discovery requests for fuel adjustment proceedings?

 2 A Yes, it is.

 3 Q And the way a utility goes about procuring coal is

 4 through requests for proposals for contracts or spot contracts

 5 using vendor lists and other information; correct?

 6 A Yes.

 7 Q And you understand that you need to send a discovery

 8 request to the utility to get the RFPs and the RFP responses in

 9 the contracts; right?

 10 A Yes.

 11 Q And you could have asked for those documents in any

 12 of the fuel proceedings; correct?

 13 A Yes.

 14 Q And you would agree with me that it was your job to

 15 review coal contracts and coal procurement documents for

 16 prudence issues; correct?

 17 A Starting in 2002.

 18 Q And that was your job to review them for prudence

 19 issues; right?

 20 A Well, to review for prudence and various aspects

 21 related to the recovery of, of fuel costs.

 22 Q And one purpose for you to compile and maintain PSC

 23 schedules and FERC form databases is to use them to see if the

 24 utility was reasonable and prudent in coal procurement

 25 decisions; right?

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 1 A That's one reason.

 2 Q And you would agree with me that the purpose of your

 3 job to issue reports and make recommendations for Commissioners

 4 in fuel adjustment hearings was so the Commission could

 5 determine whether coal prices the utility incurred were

 6 reasonable and prudent; right?

 7 A Yes.

 8 Q And you would agree that the utility, I'm sorry, the

 9 Commission ultimately has the decision on whether the utility

 10 acted reasonably or prudently; right?

 11 A Yes.

 12 Q But the Commission will rely on staff, and that's

 13 your job; right?

 14 A That's right.

 15 Q Now I want to turn to your Exhibit BW-3 to your

 16 testimony. Are you there?

 17 A Yes.

 18 Q In your Exhibit BW-3 to your testimony you're

 19 comparing the average contract and spot delivered prices for

 20 PEF to the median price of foreign coal purchases for other

 21 utilities as reported on the FERC Form 423 for the period

 22 1994 to 2005; right?

 23 A As I stated in my summary, what I did was -- if you

 24 look at the other, the other pages of my BW-3, the various

 25 utilities' spot and, spot and contract coal tonnages and

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 1 delivered price, average delivered price were calculated for

 2 all utilities. So I calculated the average delivered price for

 3 all utilities and, and also for Progress. And if one wants to,

 4 you can compare the average delivered price of any utility to

 5 that of, of Progress.

 6 But for a summary measure, due to the fact that, that

 7 these average delivered price numbers for the various

 8 utilities, some of these utilities have, are considerably

 9 further away like as in New England and some of them have

 10 additional short-haul costs by, by barge or rail or trucking,

 11 and so that some of them have fairly high short-haul costs and

 12 that Progress doesn't have any. So due to these various

 13 differences in the utilities, some, some of those utilities

 14 would be outliers due to the additional cost.

 15 So that being the case, I decided that the most

 16 reasonable and accurate summary measure for the average

 17 delivered prices of the foreign coal for any given year would

 18 be to take the median of the average delivered prices of the

 19 various utilities.

 20 Q Okay. Mr. Windham, if we could look at BW-3, the

 21 first column is entitled Year; is that correct?

 22 A I'm sorry. Looking at BW-3?

 23 Q Yes.

 24 A Which page?

 25 Q The very first page. I'm sorry. Page 1 of 13.

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 1 A Okay. Yes.

 2 Q The first column is entitled Year.

 3 A Yes.

 4 Q The second column is entitled PEF/U.S. CAPP Average;

 5 correct?

 6 A Yes.

 7 Q The second column, I mean, third column is entitled

 8 South American Median; correct?

 9 A Yes. That's the median of average delivered prices

 10 of the various utilities.

 11 Q And then you calculated the difference from that;

 12 right?

 13 A Yes.

 14 Q Mr. Windham, it's also true in this hearing that

 15 you're not testifying that PEF actually made any imprudent coal

 16 purchases; correct?

 17 A When I did my testimony, I was -- for the most part,

 18 I had noticed that the record was not complete with respect to

 19 purchases of the various kinds of coal options that were

 20 available to PEF. And so the main purpose of my testimony was

 21 to put in the record the prices that all the different

 22 utilities that might be comparable to PEF had reported to FERC

 23 as far as the delivered price of their various coal purchases.

 24 And so my data that I put in the record was for that purpose,

 25 was for looking at what options were out there and what were

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 1 the most cost-effective options to look at.

 2 As I noted in my, in my deposition, there was another

 3 part. The other part that I did not look at in my testimony

 4 was the discovery and further looking at the reason that

 5 Progress did not purchase what appeared to be the most

 6 cost-effective options. And so that, that part I left undone

 7 until, until discovery had been accomplished.

 8 Q Mr. Windham, if you could turn to Page 68 of your

 9 deposition, which I'll put up for you, 68, Lines 2 through 11,

 10 where I asked you the following question, you gave the

 11 following answer:

 12 Question, "Is that the first year that you say that

 13 PEF made an imprudent coal purchase?"

 14 Answer, "I haven't said that PEF made an imprudent

 15 coal purchase. What I've said is that it was commonly the case

 16 that other coastal utilities were procuring coal mostly from

 17 foreign sources that was compliance grade coal that was cheaper

 18 than the coal that was being procured in larger part by PEF.

 19 There are other issues involved in prudence other than just the

 20 fact that one can procure something at a lower price."

 21 Is that an accurate statement?

 22 A That's right.

 23 Q Now you understand that the issue in this proceeding

 24 is whether PEF acted reasonably or prudently in its coal

 25 procurement practices for CR4 and 5 during the years 1996 to

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 1 2005; right?

 2 A Yes.

 3 Q And it's true that you have no opinion as to whether

 4 PEF acted reasonably or prudently or not in its coal practices

 5 from 1996 to 2005; right?

 6 A I had no opinion when I wrote my testimony because I

 7 had not seen the discovery, the discovery that was being

 8 carried out on the issue of why Progress did not appear to have

 9 recovered the most, purchased the most cost-effective options.

 10 Q And you also had no opinion at the time of your

 11 deposition; right?

 12 A Yes, because the discovery had not been completed at

 13 that time.

 14 Q And you certainly filed no report or recommendation

 15 regarding the foreign coals in your testimony for CR4 and

 16 5 with the Commission in any prior fuel docket proceeding;

 17 correct?

 18 A I'm sorry?

 19 Q You certainly filed no report or recommendation

 20 regarding the foreign coals that you testify in your testimony

 21 in Exhibit BW-3 for CR4 and 5 with the Commission in any prior

 22 fuel docket proceeding; right?

 23 A When I noticed -- when I started looking at, at the,

 24 the fuel procurement practices of, of the utilities that had

 25 affiliates like Progress and Tampa Electric, I noticed pretty

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 1 quickly that I thought there were some problems. And with

 2 respect to Progress, what I, what I did in 2002 was to request

 3 that an audit be done of Progress Fuels to look at coal

 4 procurement and, and coal transportation practices. So the

 5 first thing I did in 2002 was to request an audit.

 6 Q Mr. Windham, I asked you the following question, you

 7 gave the following answer in your deposition at Page 62, Lines

 8 20 to 25, carrying over to Line 1 through 3 on Page 63:

 9 Question, "Prior to filing your testimony in this

 10 docket have you ever prepared a report or recommendation to the

 11 Commission that addressed whether foreign bituminous coal could

 12 have been purchased cheaper than the coal that was purchased

 13 for CR4 and 5?"

 14 Answer, "I don't remember such a report for CR4 and

 15 5. I believe that I drafted a document that related to another

 16 utility."

 17 Is that correct?

 18 A That is true.

 19 Q And as I understand, the information that you are

 20 providing this Commission in this proceeding is what you regard

 21 as factual information; correct?

 22 A The information that I'm providing I do regard as

 23 factual information.

 24 Q Well, let's turn to that factual information and look

 25 at it.

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 1 A Okay.

 2 Q As I understand, what you did not include in your

 3 testimony or exhibits is any RFP request or response that PFC

 4 did for PEF for CR4 and 5; correct?

 5 A I was aware that the RFPs were in the testimony of

 6 your witnesses which I had looked at, so I didn't include them

 7 in mine.

 8 Q And you didn't include in your testimony or exhibits

 9 any actual spot offers or acceptances for coal for CR4 and

 10 5 during the years 1996 to 2005; correct?

 11 A I included in my, in my FERC data the results of the

 12 acceptances of spot and contract coal during that period.

 13 Q But you didn't actually include any actual spot

 14 offers or acceptances for the coal during the years --

 15 A No. And, again --

 16 MR. YOUNG: Objection, asked and answered.

 17 THE WITNESS: Well, I don't mind answering.

 18 I again, I again was aware that the offers, the spot

 19 and contract offers were provided by your witnesses, which I

 20 had looked at. And so since they were, since they were

 21 provided by your witnesses, I did not bother to put them in

 22 mine.

 23 BY MR. WALLS:

 24 Q In fact, you can't point me to any place in your

 25 testimony or your exhibits where you make any reference to a

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 1 Progress Fuels Corporation RFP or spot offer or response or

 2 spot offer acceptance between 1996 and 2005; right?

 3 MR. YOUNG: Objection, compound question.

 4 MR. WALLS: Well, we can take them in pieces.

 5 CHAIRMAN EDGAR: Let's try that.

 6 BY MR. WALLS:

 7 Q Mr. Windham, you cannot point me to any place in your

 8 testimony or your exhibits where you make reference to any PFC

 9 RFP in the responses to that RFP from 1996 to 2005; correct?

 10 A That's correct. That was not the purpose of my

 11 testimony.

 12 Q And you also can't point me to any place in your

 13 testimony or exhibits where you make any reference to any PFC

 14 spot offer and acceptance between 1996 and 2005; correct?

 15 A That's correct.

 16 Q And for all the other utilities that you compare PEF

 17 to in your testimony and exhibits, you haven't obtained from

 18 those utilities their RFPs or responses, their spot offers or

 19 spot responses in connection with the coal purchases identified

 20 in your exhibits; correct?

 21 A That's correct.

 22 Q What you do rely on is FERC Form 423 data for PEF and

 23 these other utilities; correct?

 24 A That's correct. And I will mention that that's very

 25 similar to the FPSC 423 data that we work with here at the

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 1 Commission. It has the same data plus some additional details.

 2 And the FPSC 423 forms are, in fact, the main thing that we use

 3 in looking at issues like prudence and that kind of thing. So

 4 this is comparable, what I used is comparable to what we do in

 5 normal practice.

 6 Q And you would agree with me that the FERC Form 423

 7 data includes the cost of coal that has already been delivered;

 8 correct?

 9 A Yes.

 10 Q So when utilities prepare the FERC Form 423, they are

 11 reporting on coal procurements that have already occurred;

 12 right?

 13 A That's correct.

 14 Q And that's the same for the PSC schedules; right?

 15 They indicate coal actually delivered in prior months; right?

 16 A Yes.

 17 Q And the FERC Form 423 and the PSC schedule's data do

 18 not indicate whether a utility went out for an RFP and when it

 19 went out for an RFP; correct?

 20 A That's correct.

 21 Q And the FERC Form 423 data and the PSC schedules do

 22 not indicate when a spot offer was made and when it was

 23 accepted; correct?

 24 A That's correct.

 25 Q And the FERC Form 423 and PSC schedules do not

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 1 indicate when a utility entered into a term or spot contract

 2 for the coal reported in the data; correct?

 3 A That's correct. But spot contracts in general are

 4 usually less than six months.

 5 Q And you would agree with me though that the spot

 6 prices that are reported in the FERC form data in the PSC

 7 schedules could have been months before and the term contracts

 8 a year or more before the delivered prices that are reported in

 9 those forms; correct?

 10 A Correct.

 11 Q And it's true that a spot offer and acceptance

 12 represents a market price at a point in time, and that price is

 13 not necessarily comparable to what might happen at another

 14 point in time even in the same year; right?

 15 A That's correct.

 16 Q So what you have and are relying on is delivered

 17 price information, but you would agree that you need to know

 18 more than the delivered price to determine whether there was

 19 some other coal that should have been bought; right?

 20 A Yes. As I noted, one thing would be why, why the

 21 choices that were made were in fact made.

 22 Q And that's because in prudence review there's

 23 something -- prudence review involves more than just what can

 24 be, what coal can be procured at the lower price; right?

 25 A That's correct.

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 1 Q And you would agree that quality characteristics of

 2 coal such as the Btu value, sulfur content, ash qualities,

 3 moisture content are important considerations in making any

 4 coal procurement decision; right?

 5 A That's correct. But just for example the Btu content

 6 is taken into account in the cents per million Btu calculation

 7 that is, that's given as the delivered price in the FERC data

 8 and in the FPSC 423 data -- well, in the FERC 423 data. And

 9 it's also what is commonly used by utilities in looking at

 10 which coal is the most cost-effective.

 11 Q And you would agree with me that a utility needs to

 12 be flexible in its approach to RFPs and spot purchases for

 13 coals; right?

 14 A Yes, within the Commission guidelines. The

 15 Commission has a procurement guideline, an order in that

 16 regard.

 17 Q And you would also agree with me that a utility

 18 management must be able to exercise judgment on the balance

 19 between RFPs and spot purchases; correct?

 20 A Again, subject to the Commission guidelines and the

 21 procurement order, which include the fact that they should

 22 procure most of it through long-term contracts that are, that

 23 use RFPs.

 24 Q Turning to your analysis of foreign coal purchases in

 25 Exhibit BW-3, and as I understand --

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 1 A I'm sorry. Refer me where?

 2 Q Back to BW-3, Mr. Windham. I'm sorry.

 3 A Okay.

 4 Q And what you did on one side of the column with

 5 respect to the PEF/U.S. CAPP average prices is you combined the

 6 average of the contract and spot price in that column; correct?

 7 A Of a sort. When I submitted this, I was in the

 8 process -- well, I had, I had divided out -- I started, I

 9 started off with, with the data not broken out into contract

 10 and spot, and I decided it needed to be broken out into

 11 contract and spot to give further definition to what was going

 12 on with the procurement.

 13 And like I said, if you look at the various yearly

 14 pages in BW-3, you will see that they are, in fact, broken out

 15 by spot and contract. But, but when I, when I calculated this

 16 particular table -- I intended, I intended to substitute a

 17 different table for this one that included the comparison by

 18 both spot and contract, and I had actually, I had actually done

 19 the medians at that time. But we had some problem, we had some

 20 major problems with producing my big, my big BW-9 and I had to

 21 redo that at the last minute. And due to that, I never got

 22 around to substituting the, the more complete version of the

 23 BW-3 summary.

 24 Q Okay.

 25 A So the version, the version I have is the, is the, on

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 1 Page 1 is the -- what it did, it took the, all of the coal for,

 2 for the utility and, and calculated an average, an average

 3 price.

 4 Q Mr. Windham, my question --

 5 A Which that would be the same as doing -- I'm sorry.

 6 That would be essentially the same as doing a weighted average

 7 of the spot and contract.

 8 Q Mr. Windham, my question was looking at the column

 9 entitled PEF/U.S. CAPP average, what you have done is taken the

 10 average of PEF's contract and spot prices in each of those

 11 years from 1994 to 2005; correct?

 12 A Well, like I said, what I did was take, I took all,

 13 all of the purchases and did a weighted average.

 14 Q Mr. Windham, if I could refer you to your deposition,

 15 Page 75, Lines 14 to 18, the question was:

 16 "So what you've done there for Progress Energy Fuels

 17 is you've taken the average of their contract and spot prices,

 18 correct, in each of those years from 1994 to 2005?"

 19 Answer, "Yes."

 20 A A weighted average. I'm sorry. Which is the same

 21 thing as the average of, of the whole, of all the data.

 22 Q Mr. Windham, if you would turn to -- let's look at

 23 1994, Page 2 of 13. Are you there?

 24 A Page 94?

 25 Q Yes. Page 2 of 13, the year 1994 in Exhibit BW-3.

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 1 A Oh, I'm sorry. Okay. Okay.

 2 Q And what you can see there on the, in the middle of

 3 the document, do you see where you have a series of columns,

 4 tons on the left, price in the middle, utility on the right?

 5 A Yes.

 6 Q And you've broken out for these other utilities their

 7 prices from spot and contract; right?

 8 A Yes. These are -- I'm sorry. Yes. These are

 9 average, average delivered price for spot and contract for each

 10 utility.

 11 Q Right. And so what you have, for example, for JEA is

 12 you have their average spot price over that year, 1994.

 13 A Yes. That's right.

 14 Q And you have their average contract price broken out

 15 separately --

 16 A Yes.

 17 Q -- for that same year; correct?

 18 A Yes.

 19 Q And that's the same way you did it for every other

 20 utility other than PEF who bought import coal; correct?

 21 A I'm sorry. Repeat that.

 22 Q That's the same way you did it in this analysis for

 23 each year for every other utility except PEF; correct?

 24 A I calculated the average delivered price for all

 25 utilities, for each utility just like I did for PEF.

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 1 Q Well, Mr. Windham, do we need to go back to your past

 2 statement in your deposition where you admitted that for

 3 Progress Energy Fuels you took the average of their contract

 4 and spot prices together from 1994 to 2005?

 5 A The weighted average.

 6 Q Yes.

 7 A Which is the same thing. Yeah.

 8 Q And you would agree with me that that comparison you

 9 did was not an apples-to-apples comparison; correct?

 10 A All of my, all of my numbers for -- if you look, if

 11 you look -- well, anyway, the, all of my numbers are average,

 12 are average delivered prices. And you can compare the average

 13 delivered price of any utility to the average delivered price

 14 of Progress.

 15 You will note that I have an average delivered price

 16 for Progress for both spot and contract, and I likewise do for

 17 the other utilities, and you can compare them apples to apples,

 18 spot to spot and contract to contract.

 19 Q Mr. Windham, if you would look at your deposition,

 20 Page 80, Lines 2 to 5 where I asked you the question:

 21 "Mr. Windham, it's not the same comparison. It's not

 22 an apples-to-apples comparison, is it?"

 23 Answer, "It's not an exact comparison. I did this as

 24 a ballpark."

 25 Is that accurate?

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 1 A I'm sorry. Which page?

 2 Q That's an accurate statement, isn't it?

 3 A The -- like I said, the numbers on the page are, I

 4 have for both Progress and for the other utilities, I have

 5 average delivered prices. You can compare them, for any

 6 utility you can compare the average delivered price for spot

 7 and contract or, or for the total for any utility and for --

 8 for any of the other utilities and likewise for the, for

 9 Progress.

 10 Q Mr. Windham, in this analysis that you did comparing

 11 Progress Fuels' average CAPP and spot and contract prices to

 12 the South American median price of other utilities, what you

 13 purported to compare was PEF purchases to foreign bituminous

 14 coal purchases by other southeastern coastal utilities;

 15 correct?

 16 A I'm sorry. Repeat.

 17 Q What you purported to compare in this analysis was

 18 PEF purchases for CR4 and 5 to foreign bituminous coal

 19 purchases by other southeastern coastal utilities; correct?

 20 A Yes.

 21 Q But if you look at Exhibit BW-3 again, Page 1 of --

 22 well, let's go to Page 2 of 13, just looking at the first year,

 23 1994, you included such utilities as the Public Service Company

 24 of New Hampshire and Baltimore Gas & Electric, and they're not

 25 southeastern coastal utilities, are they?

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 1 A I said in my testimony that I included southeastern

 2 coastal utilities plus other utilities along the Atlantic

 3 Coast. The other ones you mentioned are very similar in the

 4 nature of coal procurement to that of Progress except that the

 5 delivery, the delivered distance is, is farther. On average

 6 the New England utilities are something like 50 percent further

 7 than Jacksonville, for example. But that's the only

 8 difference.

 9 Q We'll get to the transportation issue, Mr. Windham.

 10 A Okay.

 11 Q But you would concede that those two utilities and

 12 others in your list are not southeastern coastal utilities;

 13 correct?

 14 MR. YOUNG: Objection, asked and answered.

 15 THE WITNESS: They are not southeastern. They're in

 16 New England.

 17 BY MR. WALLS:

 18 Q Thank you. And you mentioned transportation costs.

 19 And you would agree that the delivered prices reported on FERC

 20 Form 423 that you use in your comparison of PEF coal purchases

 21 to other utility foreign purchases include transportation

 22 costs; right?

 23 MR. YOUNG: Objection, argumentative, calls for a

 24 legal conclusion.

 25 THE WITNESS: Yes, I do.

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 1 BY MR. WALLS:

 2 Q You did not, however, calculate by year the term --

 3 I'm sorry.

 4 CHAIRMAN EDGAR: Mr. Windham, you need to allow me to

 5 rule on the objection.

 6 THE WITNESS: I'm sorry.

 7 CHAIRMAN EDGAR: Okay?

 8 Mr. Walls, let's try it in a slightly different

 9 phrasing.

 10 BY MR. WALLS:

 11 Q Okay. Mr. Windham, do the FERC Form 423s include

 12 transportation costs?

 13 A Yes, they do.

 14 Q And in your calculation, your analysis in BW-3 and

 15 BW-4 for foreign coal comparisons to PEF and Colorado coal

 16 comparisons, you did not calculate by year the transportation

 17 piece of those delivered prices for the utilities; correct?

 18 A Not for all utilities. I put some data -- I had some

 19 information like that and I put some data -- we have in our

 20 FPSC 423 forms the, the, a breakout of the commodity and

 21 transportation costs for Florida utilities. And so I know what

 22 the -- I know what the, the transportation versus the, versus

 23 the commodity cost is for the Florida utilities, and I also

 24 know a good bit about some of the other utilities and some of

 25 them are very comparable. Their, their short-haul legs are

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 1 very comparable to the numbers in my BW-7 which is for Florida

 2 utilities.

 3 Q Mr. Windham, at Page 123 of your deposition, Lines 17

 4 to 24, I asked you the following question, you gave the

 5 following answer:

 6 "So it's fair to say that for each of those numbers

 7 that are listed in BW-3 that was paid by these utilities for

 8 South American coal you did not go back and say I'm going to

 9 separately calculate what the transportation piece of this coal

 10 was and determine what part of that price they paid was

 11 transportation; correct?"

 12 Answer, "No, I didn't do that."

 13 That's a correct statement; right?

 14 A That is correct. But I also put in my testimony the

 15 short-haul cost for Florida utilities from some of the FPSC 423

 16 forms, and I, and I also provided information about comparisons

 17 between some of the other utilities that weren't Florida with

 18 Florida.

 19 Q Mr. Windham, you would agree with me that in your

 20 analysis in Exhibit BW-3, based on the comparison of the

 21 foreign market to PEF prices, that you were comparing

 22 compliance coal because PEF can only burn compliance coal at

 23 CR5; right?

 24 A That's actually not true, but, okay.

 25 PEF, PEF, PEF has to, has to meet environmental

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 1 regulations. And what happens is that utilities often purchase

 2 some coal that has more than, more than compliance level, more

 3 than compliance level sulfur, for example, and some that has

 4 less. And they blend it to -- and as long, as long as the

 5 blend meets the compliance level, then there's no problem.

 6 Q Mr. Windham, if you could refer to on the screen Page

 7 133 of your deposition, Lines 11 through 16, where I asked the

 8 following question, you gave the following answer:

 9 Question, "By the way, before we get there, you did

 10 this calculation in Exhibit BW-3 based on compliance coal from

 11 a foreign market compared to compliance coal that Progress

 12 purchased because Progress can only burn compliance coal at

 13 CR4 and 5; correct?"

 14 Answer, "That's right."

 15 That's an accurate statement; right?

 16 A That statement is not complete. And in other places

 17 I noted that you can, in fact, blend coal, and that as long as,

 18 as long as the blend meets, meets the compliance level, it's

 19 okay.

 20 Q Mr. Windham, do you recall in your deposition that we

 21 went through your Exhibit BW-9, which was your composition of

 22 FERC data that you used for BW-3?

 23 A Yes, I remember that.

 24 Q And, in fact, we went through and looked at several

 25 of the utilities that you had included in your analysis, and,

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 1 in fact, one was on Page 23 of your BW-9 involving Gulf Power

 2 foreign purchases for 1996 where you agreed that most of the

 3 purchases were not compliance coal; right?

 4 A I agree that I was aware that some of the coal on,

 5 on, on that, on that sheet was not compliance, but that was

 6 true for both Progress and also for, for the other utilities.

 7 And as a matter of fact, before I, before I, before I

 8 filed my testimony I did a comparison for Progress versus the

 9 other utilities, and what I found was that for every year the

 10 average of the sulfur level in the other utilities was less

 11 than that for Progress. So since, so since in general the

 12 foreign coal had less sulfur than, less, a lower level of the

 13 sulfur than Progress -- now I'll note that I even include that

 14 on some of my BW-9 pages and also on some of the BW-3 pages.

 15 And so since I, since I noted that that was the case, that both

 16 Progress coal and also the foreign coal that I was comparing

 17 had some noncompliance coal and on average the Progress was

 18 higher, it did not -- and also the fact that most of the coal

 19 was compliance, it did not appear to be a major factor or

 20 significant to take out for both Progress and the other

 21 utilities the noncompliant part.

 22 Q Mr. Windham, in your deposition didn't you tell me

 23 that you didn't attempt in each of the years to go through BW-9

 24 and identify the coal that was not compliance coal and remove

 25 it from your BW-3?

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 1 A I did not -- I did a macro level filter where I

 2 calculated the average, average sulfur level for both, for

 3 both -- for any given year for both the foreign coal and the

 4 Progress coal, and what I found was that on average the

 5 Progress coal had a higher level than the, than the foreign

 6 coal. And I -- and thus I did not go through on a record by

 7 record -- to do it record by record I would have had to make a

 8 conversion using a formula and the, and the -- for each record

 9 the Btu value of the coal and so forth, I would have to do that

 10 for each record, and I didn't do that.

 11 Q And, Mr. Windham, it's fair to say that you also did

 12 not try to determine, for example, in 1996 who PEF should have

 13 bought foreign coal from.

 14 A No, I did not.

 15 Q And you also, using the same year 1996 as an example,

 16 did not try to calculate whether the ratepayer would have been

 17 better off and by how much if PEF had done something different

 18 in 1996; correct?

 19 A No. I only looked at which, which coal on average

 20 was the most cost-effective.

 21 Q And if we went through each of the years in your

 22 analysis, you did not determine how much coal, from whom and

 23 what the delta would have been had PEF done something different

 24 from what they did and purchased more foreign coals; correct?

 25 A I'm sorry. Repeat the question.

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 1 Q Sure. If we went through each of the years in your

 2 analysis, you did not determine how much coal, from whom and

 3 what the delta would have been had PEF done something different

 4 from what it did and purchased more foreign coals; correct?

 5 A In my testimony I did determine how much foreign coal

 6 I thought that Progress could have purchased without causing

 7 problems with contract, with other contracts or with a spot and

 8 that kind of thing. So I determined how much I thought

 9 Progress could purchase, but I did not specifically look at

 10 who -- which, which mine, for example, they might have

 11 purchased it from.

 12 Q Mr. Windham, I'm going to show you your deposition at

 13 Page 86, Lines 23 to 25, carrying over to Page 87, Lines 1 to

 14 8, where I asked you the following question, you gave the

 15 following answer:

 16 "I'm just curious as to -- that's all I'm getting at.

 17 I'm just curious as to what you've done as you sit here today,

 18 and, again, I can go through each year if you want, you know, I

 19 could go to 1997 and say how much coal, from whom and what

 20 would have been the delta? But if you can tell me you haven't

 21 done that analysis, that's all I'm getting at."

 22 Answer, "I've not done that analysis. I put the

 23 information in there from which other people could do such

 24 analysis given the information, this and other information."

 25 That's what you said in your deposition and that was

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 1 an accurate statement; right?

 2 A Yes. As I said before, I was, I was putting in, into

 3 the record information on what the, the prices of the various

 4 coals procured by the various utilities were, and that was the

 5 first step. And I was not going to, until I looked at the

 6 other part, which was whether or not, the reason why Progress

 7 might not have purchased what appeared to be the cheapest coal,

 8 until, until that was looked at fully through discovery, I

 9 wasn't going to bother and try and make a calculation about

 10 what, what the difference would be. But that would be a pretty

 11 easy calculation based on the information that I have in my

 12 testimony for someone to make.

 13 Q Mr. Windham, you would agree with me that your

 14 comparison of the average contract and spot PEF purchases as

 15 reported on FERC Form 423s from 1994 to 2005 to the median

 16 delivered prices reported for foreign bituminous coal purchases

 17 by other utilities was not intended for prudence or anything

 18 like that; correct?

 19 MR. YOUNG: Objection, argumentative, calls for a

 20 legal conclusion.

 21 THE WITNESS: Well, as I noted --

 22 CHAIRMAN EDGAR: Mr. Windham, hold on.

 23 THE WITNESS: Okay. I'm sorry. I'm sorry.

 24 CHAIRMAN EDGAR: Rephrase.

 25 MR. WALLS: I'm just trying to get at what his

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 1 opinion is and what it is not, and that's --

 2 BY MR. WALLS:

 3 Q Mr. Windham, you would agree that the average price

 4 comparison that you did with respect to foreign bituminous coal

 5 purchases was not intended for prudence or anything like that;

 6 right? That's what you intended?

 7 A I did not intend that I would use it for that

 8 purpose.

 9 Q And, in fact, you called it a ballpark type

 10 comparison; correct?

 11 A Yes.

 12 MR. WALLS: Thank you. No further questions.

 13 CHAIRMAN EDGAR: Mr. Burgess.

 14 CROSS EXAMINATION

 15 BY MR. BURGESS:

 16 Q Just with regard to the second to the last question,

 17 you were in the middle of an answer when the last question was,

 18 was asked. You, you had said that you were saying that you did

 19 not create it for the purpose of yourself calculating coming up

 20 with a prudence evaluation, and then you said "but" and the

 21 next question came to you. Did you have anything further to

 22 say?

 23 MR. WALLS: I'm going to object. That's not

 24 cross-examination.

 25 CHAIRMAN EDGAR: Mr. Burgess, do you have a question

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 1 for the witness?

 2 MR. BURGESS: Yes. Did you -- do you have -- well,

 3 first of all, I think that's perfectly legitimate

 4 cross-examination. There's nothing -- I mean, he's cited no

 5 rule for which the objection stands. But the cross-examination

 6 goes to -- the question I asked goes to and flows from his

 7 direct testimony precisely as the question asked by Mr. Walls.

 8 I'm, I'm asking the same question Mr. Walls asked.

 9 CHAIRMAN EDGAR: Then ask the question, please.

 10 BY MR. BURGESS:

 11 Q Okay. Did you, did you -- when you did your study,

 12 did you do it for the purpose of arriving at a prudence

 13 conclusion?

 14 A My testimony was for the purpose of putting

 15 information in the record from which others could look at the

 16 other issue, which was why Progress didn't appear to be

 17 procuring the most cost-effective coal. And I believe that my,

 18 my chosen summary, summary measure for the foreign coal, which

 19 is the median of the average delivered prices, I think that is

 20 a reasonable comparison that Progress might have been expected

 21 to be able to meet since the majority of utilities that are

 22 below that in general are, are ones that have an additional

 23 transportation cost leg that's more than average or it might be

 24 in New England and further, further away than average. So I

 25 think that my median of average delivered prices is a

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 1 conservative summary measure to compare the Progress prices to,

 2 though I did not intend that my, that my testimony go into the

 3 prudence issue because I was leaving that for others to do.

 4 MR. BURGESS: Thank you, Mr. Windham. That's all I

 5 have, Madam Chair.

 6 CHAIRMAN EDGAR: Thank you.

 7 Mr. McWhirter.

 8 CROSS EXAMINATION

 9 BY MR. McWHIRTER:

 10 Q Mr. Windham, to the casual observer of your testimony

 11 it becomes a little bit difficult to draw the comparisons, at

 12 least for me, and I was wondering if you would look at your

 13 BW-3, which is also identified as staff Exhibit 157 for

 14 identification.

 15 A Okay. Which page?

 16 Q Let's see. I was looking at Page 1 of 13 first.

 17 A Okay.

 18 Q And when you're using the PEF price for U.S. for

 19 compliance Appalachian coal, the number used is -- I'm looking

 20 at '94 now just for illustrative purposes, the number you're

 21 using is 177.13. And that number is not dollars per ton but

 22 rather, as I understand your testimony, it's cents per million

 23 Btus; is that correct?

 24 A That's correct.

 25 Q And the reason you do that is so that you can come up

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 1 with a comparable number when comparing coal purchases with

 2 different Btu values and so forth? I mean, different, yeah,

 3 Btu values and tons and so forth; is that right?

 4 A Yes. It takes into account the differences in Btu

 5 values and allows you to compare them on a comparable delivered

 6 price basis.

 7 Q In mathematics I guess you'd say you're bringing it

 8 to the lowest common denominator.

 9 A To a comparable level.

 10 Q And that's an appropriate methodology that's

 11 generally used by people who are in this practice and trade as

 12 far as you know?

 13 A Yes. That's the standard, standard method that most

 14 utilities look at to determine what's the most cost-effective

 15 option.

 16 MR. BURNETT: Madam Chairman, if I could object to

 17 this friendly cross-examination. I believe this is directly

 18 against your admonishment in the beginning that this shouldn't

 19 be an opportunity for five direct examinations to take place.

 20 The purpose of cross-examination is simply impeachment, and

 21 this is simply trying to rehabilitate Mr. Windham, a chance

 22 that we don't have as the utility and the defendant in this

 23 case.

 24 MR. McWHIRTER: Ms. Chairman, I am certainly not

 25 trying to impeach the voracity of Mr. Windham. I think he's a

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 1 highly credible witness. But for common understanding, I was

 2 not trying to recreate direct testimony, I was trying to --

 3 it's hard for people to understand fairly complex things, and I

 4 was trying to get it into a frame of reference that I could

 5 understand. And it has to do with the questions that were

 6 asked on cross-examination that seemed to indicate that he was

 7 comparing apples and oranges and things like that, so --

 8 CHAIRMAN EDGAR: We had kumquats and everything in

 9 there at one point in time.

 10 I was curious as to who in this room qualifies as a

 11 casual observer. But moving on, I did at the beginning of this

 12 proceeding ask that all parties work cooperatively and limit

 13 friendly cross, and I will ask that again. And I will ask it

 14 as we proceed into the rebuttal portion of this proceeding as

 15 well. I realize that it's about lunch time on the third day,

 16 we have a number of witnesses to go through. So,

 17 Mr. McWhirter, I'm going to give a little latitude and allow

 18 you to continue with a few questions, but would ask you to keep

 19 my comments in mind.

 20 MR. McWHIRTER: You're very gracious. I tried to --

 21 I think I can work it down to one last question, but while I

 22 was listening to you I forgot what it was.

 23 BY MR. McWHIRTER:

 24 Q Oh, yeah. The essence of the Public Counsel's case

 25 deals with the differential between Powder River Basin coal and

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 1 the price that Progress Energy paid. You take a different tack

 2 and you're looking only at foreign coal and the comparison of

 3 what Progress Fuels paid for foreign coal compared to other

 4 equivalent utilities; is that correct?

 5 A Yes. I only very recently became aware of the fact

 6 that the, the unit, the Crystal River unit, Crystal River 4 and

 7 5 units were, were constructed with, with, to be able to burn

 8 the Powder River Basin coal. And all of my discovery that I

 9 did through 2000, from 2000 to 2005 and 2006 related to

 10 bituminous coal that might have been done. And as a part of

 11 that process I did request first one audit and then another

 12 audit of the next year. And we went through a process of

 13 looking at these various things through a series of audits and,

 14 and a spinout docket and then further discovery on the coal

 15 prudence issue, procurement --

 16 Q If I may --

 17 A -- in 2005 and 2006.

 18 Q If I may be permitted one final question. The prices

 19 you use are the delivered price, so it includes not only the

 20 cost of the coal that was purchased that was equivalent type

 21 coal but also the cost of transportation. Can you give me an

 22 evaluation of the relative portion of the costs in these

 23 analyses that related to transportation and other handling as

 24 opposed to the price of coal itself?

 25 A You can actually find some of that in my BW-7 if you

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 1 know how to make calculations between dollars per ton and, and

 2 cents per million Btus and that kind of thing. But, in

 3 general, the commodity price is the largest price. And if

 4 we're talking foreign coal, the transportation costs -- because

 5 the foreign coal is delivered in large ocean vessels that might

 6 have as much as 60,000 tons, for example, and delivered to a

 7 terminal, the delivery price of such a coal in an ocean vessel

 8 like that is relatively low compared to the commodity price.

 9 So, for example, on a number during some, some years

 10 that I would be aware, I will be on the order of $4 a ton would

 11 be a delivered price to, from Colombia to an ocean terminal in

 12 Florida, and the commodity price was much bigger, much bigger

 13 than that.

 14 Likewise, I mentioned that there were some additional

 15 short leg costs. Some coals -- some utilities brought it into

 16 a terminal and then had to transload and deliver by barge or

 17 truck or something to their plant. So those, those additional

 18 costs were there also. And they varied with, with the

 19 utilities depending on what kind of additional short-haul costs

 20 they had.

 21 But an example, for example, if you look at Gulf

 22 Power, my BW-7 actually has some of the short-haul costs in

 23 there for Gulf Power. And it might be on the order of, let's

 24 just say for, for Crist, 10 to 12 cents per million Btus might

 25 be the short-haul cost that you would find in my BW-7 if you

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 1 convert the dollars per ton to cents per million Btus. And

 2 like for some other, other utilities like Daniel, it had a

 3 bigger short-haul cost, for example.

 4 MR. McWHIRTER: I'll quit, Ms. Chairman.

 5 CHAIRMAN EDGAR: Questions from others? No?

 6 Mr. Brew says no. Ms. Bradley says no. Mr. Twomey is absent,

 7 which I'm going to make the conclusion that that means no as

 8 well.

 9 And so Commissioners. Commissioner Carter.

 10 COMMISSIONER CARTER: Thank you.

 11 Mr. Windham, in the discussion you said that the

 12 information that you provided was not to determine prudence,

 13 that would be left for others. Remember that line of

 14 questioning?

 15 THE WITNESS: That's correct.

 16 COMMISSIONER CARTER: In this case as presented in

 17 the information has anyone made such an evaluation, and, if so,

 18 can you point me to where it is?

 19 THE WITNESS: I'm sorry. You mean some other party?

 20 COMMISSIONER CARTER: You said in the discussion

 21 about prudence of costs and the coal and all, you said you have

 22 not made that determination, you left that for others to do.

 23 So I'm saying have any others, in whatever they may be

 24 situated, have any other parties in this case made such a

 25 determination, and, if so, where is it so I can look at it?

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 1 THE WITNESS: What I was saying in my testimony in

 2 deposition with regard to the fact that I was not trying to

 3 determine prudence before, before, before all the case was

 4 in -- in other words, I was putting information into the record

 5 on the comparable cost of the various coals to different

 6 utilities, that kind of thing, and I was, I was going to leave

 7 the decision to other parties to make, make a recommendation to

 8 you and for the Commissioners to decide about the prudence

 9 issue based on putting together the data that I put in the

 10 record regarding the relative cost of the various options,

 11 putting that together with the reasons why Progress might not

 12 have purchased what appeared to be the most cost-effective

 13 coal. That was to be left to discovery and for someone to make

 14 a recommendation at a later time. I don't think that phase has

 15 happened yet.

 16 COMMISSIONER CARTER: Thank you, Madam Chair.

 17 CHAIRMAN EDGAR: Thank you.

 18 Mr. Young, redirect.

 19 MR. YOUNG: Thank you, Madam Chair. Briefly.

 20 REDIRECT EXAMINATION

 21 BY MR. YOUNG:

 22 Q Mr. Windham, if you can turn to Page BW-3 of your

 23 prefiled direct testimony exhibit.

 24 A Yes.

 25 Q As you look through BW-3, did you calculate the

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 1 average of each utility, the average delivered price of each

 2 utility?

 3 A Yes. I calculated the average delivered price for

 4 each utility, and I actually calculated it for, in total and

 5 also for spot and contract.

 6 Q Now looking at in, in 1994, BW-3, Page 2 of 13, in

 7 1994 did Progress Energy Florida purchase foreign bituminous

 8 coal based on a contract basis?

 9 A No.

 10 Q So that's, that's the reason you only have a spot

 11 purchase for them; correct?

 12 A That's correct.

 13 Q Okay. You also mentioned focusing on, on BW-3, Page

 14 2 of 13. You have Public Service Company of New Hampshire in

 15 here; correct?

 16 A Yes, I do.

 17 Q And what, under D Price what is that average

 18 delivered price?

 19 A For, for contract it's 142.10 and for spot it was

 20 163.83. You said New Hampshire, didn't you?

 21 Q Yes, sir.

 22 A Okay. Fine.

 23 Q And it's your testimony that Public Service New

 24 Hampshire has a 50 percent greater transportation cost than

 25 Progress Energy Florida?

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 1 A Not necessarily. They have a 50 percent greater

 2 distance from, from Jacksonville.

 3 Q To?

 4 A To that, to that particular facility. And it's more

 5 like 35 percent further than to Mobile, for example.

 6 Q And their average delivered price is lower than

 7 Progress Energy Florida; correct?

 8 A For contract.

 9 Q For contract; correct?

 10 A Yes.

 11 Q And that -- Progress Energy Florida's price is 177.13

 12 for 1994?

 13 A I'm sorry?

 14 Q And that average delivered price for Progress Energy

 15 Florida CAPP for 1994 is 177.13?

 16 A Yes, for contract.

 17 Q Okay. Now you were asked about the, and not to be

 18 exhaustive about it, you were asked about comparing average

 19 versus median. I think you said that you compared, you took

 20 the average of each company; correct?

 21 A I took -- yes. If you look at any page here, I, I

 22 took an average -- I calculated, in BW-9 I calculated the

 23 average delivered price for all of the utilities for each year,

 24 and so I have an average delivered price for each utility, for

 25 each of the foreign utilities, I mean, each of the utilities

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 1 that use foreign coal and I also have an average delivered

 2 price for Progress.

 3 Q So if one wants to do an average-to-average

 4 comparison not using your methodology, they can?

 5 A Well, if you're going to compare a group of data like

 6 this group of data we're looking at on Page 2, if you're going

 7 to compare a group, you have to do some kind of summary

 8 measure. And since, and since we have a lot of outliers in

 9 this set of data and since outliers cause problems with the,

 10 with doing a weighted average, in my opinion a more reasonable

 11 summary measure -- in fact, I think the most reasonable summary

 12 measure for this data would be the median of the average

 13 service, average delivered prices of the various utilities,

 14 that would be the most reasonable summary measure to use to

 15 compare this group of data to the Progress number.

 16 Q And my final questions are, is it your job to

 17 determine the amount of coal Progress Energy should have

 18 purchased?

 19 A I'm sorry?

 20 Q Is it your job to determine the amount of coal

 21 Progress Energy should, Progress Energy Florida should have

 22 purchased for any given year?

 23 A Do you mean how much from the various sources?

 24 Q Yes. Is it your job to determine that?

 25 A No.

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 1 MR. YOUNG: Okay. No further questions, Madam

 2 Chairman.

 3 CHAIRMAN EDGAR: Okay. Let's take up the exhibits.

 4 I have 156 to 165.

 5 MR. YOUNG: Madam Chairman, at this time we'd ask

 6 that Mr. Windham's Exhibits 166 to 165 be moved -- 156 to

 7 165 be moved into the record.

 8 CHAIRMAN EDGAR: Exhibits 156 through 165 will be

 9 moved into the record as evidence.

 10 (Exhibits 156 through 165 marked for identification

 11 and admitted into the record.)

 12 MR. BURNETT: Madam Chairman?

 13 CHAIRMAN EDGAR: Mr. Burnett.

 14 MR. BURNETT: Please forgive my interruption. We're

 15 not trying to reargue the motion to strike, but I think just to

 16 make the record clear we would note our objection to

 17 Mr. Windham's testimony and exhibits. I'm, again, not asking

 18 for the prehearing officer to rule again, but just to make the

 19 record clear.

 20 CHAIRMAN EDGAR: The previously registered,

 21 previously registered objection is noted for the record. Thank

 22 you.

 23 MR. YOUNG: Thank you, Madam Chair.

 24 CHAIRMAN EDGAR: Thank you.

 25 Mr. Windham, thank you. You're excused.

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 1 MR. YOUNG: May this witness be dismissed?

 2 THE WITNESS: I'm sorry?

 3 CHAIRMAN EDGAR: The witness may be dismissed.

 4 MR. YOUNG: Thank you.

 5 CHAIRMAN EDGAR: Thank you.

 6 Okay. I have 12:30, 12:35. I think it's a good

 7 place to break for lunch. Let's come back at 1:45. Does that

 8 work? Okay. Hearing no objection, we are on lunch break until

 9 1:45, and we will begin with Witness Stewart.

 10 (Lunch recess.)

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 1 STATE OF FLORIDA )

 : CERTIFICATE OF REPORTER

 2 COUNTY OF LEON )

 3

 4 I, LINDA BOLES, RPR, CRR, Official Commission

 Reporter, do hereby certify that the foregoing proceeding was

 5 heard at the time and place herein stated.

 6 IT IS FURTHER CERTIFIED that I stenographically

 reported the said proceedings; that the same has been

 7 transcribed under my direct supervision; and that this

 transcript constitutes a true transcription of my notes of said

 8 proceedings.

 9 I FURTHER CERTIFY that I am not a relative, employee,

 attorney or counsel of any of the parties, nor am I a relative

 10 or employee of any of the parties' attorneys or counsel

 connected with the action, nor am I financially interested in

 11 the action.

 12 DATED THIS \_\_\_\_\_\_ day of April, 2007.

 13

 14 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 LINDA BOLES, RPR, CRR

 15 FPSC Official Commission Reporter

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