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 1 BEFORE THE

 FLORIDA PUBLIC SERVICE COMMISSION

 2

 3 DOCKET NO. 070703-EI

 4 In the Matter of:

 5 REVIEW OF COAL COSTS FOR

 PROGRESS ENERGY FLORIDA'S

 6 CRYSTAL RIVER UNITS 4 AND 5

 FOR 2006 AND 2007

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 9 VOLUME 1

 10 (Pages 1 through 162)

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 THE OFFICIAL TRANSCRIPT OF THE HEARING,

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 14 PROCEEDINGS: HEARING

 15 BEFORE: CHAIRMAN MATTHEW M. CARTER, II

 COMMISSIONER LISA POLAK EDGAR

 16 COMMISSIONER KATRINA J. McMURRIAN

 COMMISSIONER NANCY ARGENZIANO

 17 COMMISSIONER NATHAN A. SKOP

 18 DATE: Monday, April 13, 2009

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

 20 PLACE: Betty Easley Conference Center

 Room 148

 21 4075 Esplanade Way

 Tallahassee, Florida

 22

 REPORTED BY: LINDA BOLES, RPR, CRR

 23 Official FPSC Reporter

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 FLORIDA PUBLIC SERVICE COMMISSION

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 23

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 5 the Commission.

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

 2 CHAIRMAN CARTER: Good morning. I'd like to

 3 call this hearing to order. I hope everyone is doing

 4 fine this morning. We'll begin by having -- staff,

 5 would you please read the notice?

 6 MS. BENNETT: Yes. Commissioners, by notice

 7 duly given, this day and date were set for the hearing

 8 for Docket Number 070703, review of coal costs for

 9 Progress Energy Florida's Crystal River Units 4 and 5

 10 for 2006 and 2007.

 11 CHAIRMAN CARTER: Okay. Let's take

 12 appearances.

 13 MR. BURNETT: Good morning, Commissioners.

 14 John Burnett on behalf of Progress Energy Florida.

 15 MR. McGLOTHLIN: Good morning. Joe McGlothlin

 16 with the Office of Public Counsel on behalf of the

 17 citizens of the State of Florida.

 18 MR. McWHIRTER: John McWhirter on behalf of

 19 the Florida Industrial Power Users Group.

 20 MS. BENNETT: Lisa Bennett and Keino Young on

 21 behalf of Commission staff.

 22 MS. HELTON: Mary Anne Helton, advisor to the

 23 Commission.

 24 CHAIRMAN CARTER: Thank you. Good to see you

 25 again, Mr. McWhirter. Welcome back.

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 1 MR. McWHIRTER: Nice to see you, Mr. Chairman.

 2 CHAIRMAN CARTER: Before we proceed with

 3 preliminary matters, Commissioner Skop, you're

 4 recognized.

 5 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 6 I just had two quick preliminary matters of my own that

 7 hopefully after staff takes up its preliminary matters,

 8 perhaps the parties may be willing to stipulate to.

 9 The first issue, I'm trying to find an easy

 10 way to get some of the testimony from the last docket

 11 into this so we don't have to lay a foundation, and so

 12 I'd ask the parties respectfully to consider if the

 13 testimony for Mr. Sansom, Mr. Barsin and Mr. Putman from

 14 the 060658 docket could be admitted into the record to

 15 avoid the need to lay foundational questions that I may

 16 have in this docket.

 17 Secondly, in the interest of judicial

 18 efficiency, the record evidence and discovery that will

 19 be adduced during this hearing and also in the interest

 20 of further narrowing the issues in controversy in this

 21 docket, I would respectfully ask the parties to consider

 22 stipulating to limiting the discussion of the, the

 23 alternative coal to domestic coal and not that of the

 24 Indonesian coal. So I'd ask the parties again to

 25 consider whether we could limit the discussion and

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 1 narrow the issues to discuss the PRB, the western coal.

 2 And if we can get some agreement on that, I think that

 3 that would simplify the questioning and the discussions.

 4 CHAIRMAN CARTER: Thank you.

 5 COMMISSIONER ARGENZIANO: Mr. Chair.

 6 CHAIRMAN CARTER: Commissioner Argenziano,

 7 you're recognized.

 8 COMMISSIONER ARGENZIANO: Just a question to

 9 Commissioner Skop. Why do you want to limit the

 10 discussion on the coal?

 11 COMMISSIONER SKOP: I can get into the details

 12 when I ask the questions to the parties. However,

 13 there's a couple of reasons that will reveal themselves

 14 and make themselves clear, at least from my perspective.

 15 But, again, I would leave that to the parties to reach a

 16 stipulation based upon the, some of the discovery that

 17 was made in this case.

 18 COMMISSIONER ARGENZIANO: I would like to hear

 19 what the parties have to say.

 20 CHAIRMAN CARTER: Why don't we do this,

 21 Commissioners. I don't know if the parties had an

 22 opportunity to digest this. Let's go with -- let's take

 23 a moment here and give these parties an opportunity at

 24 least to discuss it before we go further.

 25 Commissioner Argenziano, you're recognized.

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 1 COMMISSIONER ARGENZIANO: I'm just not so

 2 certain that I want to limit that discussion.

 3 CHAIRMAN CARTER: Okay. Okay. Well, let's

 4 proceed then. Let's have preliminary matters, staff.

 5 MS. BENNETT: Yes, Commissioner. Staff notes

 6 that OPC has filed an amendment to Mr. Putman's

 7 testimony. The witness can explain the amendment in his

 8 testimony, in his summary. But I think that

 9 Mr. McGlothlin will also have some changes to his

 10 prehearing statement and obviously the Prehearing Order

 11 based upon the amendment to the testimony, and I think

 12 Mr. McGlothlin would like to speak to that.

 13 CHAIRMAN CARTER: Mr. McGlothlin, good

 14 morning. You're recognized.

 15 MR. McGLOTHLIN: Thank you. We filed some

 16 amended testimony and revised exhibits on April 7th,

 17 unfortunately not quite in time to also include the

 18 changes to the numerical values that appear in the

 19 Prehearing Order. Mr. Putman will address it when he

 20 gets on the stand. But the nature of the amendment is

 21 to take into account the Btu differential between the

 22 coals comparison.

 23 After reading rebuttal testimony and attending

 24 some depositions, we were persuaded that the intent of

 25 the Commission in the last case was to include in any

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 1 calculation refund, recognize that the full Btu needs of

 2 the unit under review, and he has done so. And that

 3 results in revised exhibits that were marked by

 4 Mr. Putman, revised 7, 11 and 13, that will replace

 5 those originally filed.

 6 And with respect to the Prehearing Order, the

 7 first change appears on Page 7. In the last line of the

 8 top paragraph, the $61 million should be stricken, and

 9 that would be replaced to a range of $33 to $35 million.

 10 And the range is there because Mr. Putman addresses two

 11 methods of quantifying the makeup Btus. One method is

 12 to assume they'll all be bituminous coal. The other

 13 method is to assume that it would be made up of the same

 14 20/80 blend that he sponsors in the balance of his

 15 testimony.

 16 The next change occurs on Page 11. In the

 17 middle of the page under Issue 1C for OPC, in the third

 18 line the figure $25,149,162 should be, should be

 19 stricken and replaced with this range, $14.7 to

 20 $15.4 million; the range again being a function of the

 21 two methodologies.

 22 And in the one, two, three, fourth line the

 23 value for the SO2 related credits should be changed to

 24 $1.178 or $1.154 million. Those numbers replace the

 25 $2,915,308 that appears in the order.

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 1 Page 13, at the top of the page in the third

 2 line, the $25,866,364 should be replaced by the range of

 3 $13.08 to $14.7 million. And in the next to the last

 4 line of that position statement, the figure $7,348,059

 5 should be stricken and replaced by the range of $5.04 to

 6 $5.3 million.

 7 And then the last change for OPC's position on

 8 Page 13 with respect to the refund, the $61,279,193

 9 should become the range of $33.9 to $35.5 million.

 10 Those changes reflect the impact of the amended

 11 testimony and the revised exhibits that he will sponsor.

 12 CHAIRMAN CARTER: Thank you, Mr. McGlothlin.

 13 Mr. Burnett.

 14 MR. BURNETT: Sir, I have no objection to the

 15 amended testimony coming in, and I'll assume that

 16 Mr. McGlothlin read those numbers accurately from the

 17 testimony. No objection.

 18 CHAIRMAN CARTER: Mr. McWhirter, any

 19 objections?

 20 MR. McWHIRTER: No objection.

 21 CHAIRMAN CARTER: Without objection, show it

 22 done.

 23 First of all, before we go further, an

 24 opportunity to make an appearance. Good morning,

 25 Ms. Bradley. You're recognized.

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 1 MS. BRADLEY: Thank you, Mr. Chairman.

 2 Cecilia Bradley, Office of the Attorney General, on

 3 behalf of the citizens of Florida. Thank you.

 4 CHAIRMAN CARTER: Thank you. We had,

 5 Ms. Bradley, we had just gone through preliminary

 6 matters by OPC.

 7 Okay. Any, staff, any further preliminary

 8 matters?

 9 MS. BENNETT: Yes, Mr. Chairman.

 10 CHAIRMAN CARTER: You're recognized.

 11 MS. BENNETT: There are no -- excuse me. Let

 12 me try that again. There are no objections to the

 13 Comprehensive Exhibit List, which includes staff's

 14 composite exhibit list. We will be after opening

 15 statements asking that the Comprehensive Exhibit List be

 16 entered into the record and the staff's composite

 17 exhibit be entered into the record as Exhibits 1 and 2.

 18 CHAIRMAN CARTER: Okay. Do all the parties

 19 have a copy of staff's -- okay. You may proceed.

 20 MS. BENNETT: And, Mr. Chairman, there are no

 21 other outstanding motions other than a couple of

 22 confidentiality orders that will be addressed by

 23 separate order.

 24 CHAIRMAN CARTER: Okay.

 25 MS. BENNETT: At least staff has no other

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 1 preliminary matters.

 2 CHAIRMAN CARTER: Any, Mr. Burnett, any

 3 preliminary matters?

 4 MR. BURNETT: Mr. Chairman, I would just note

 5 that Progress Energy Florida has no objection to

 6 Commissioner Skop's request that the prior testimony of

 7 Mr. Sansom, Barsin and Putman be entered in, and we're

 8 happy to discuss any stipulations at any time.

 9 CHAIRMAN CARTER: Mr. McGlothlin.

 10 MR. McGLOTHLIN: No objection.

 11 MR. McWHIRTER: No, sir.

 12 MS. BRADLEY: No objection.

 13 CHAIRMAN CARTER: Okay. Any other preliminary

 14 matters from any other parties?

 15 Okay. One second, please. Let's -- the

 16 question is that do the changes that OPC presented, does

 17 that match up with the positions of the parties as we

 18 have in our documents here?

 19 MR. BURNETT: Commissioner Carter, it still

 20 matches up with Progress Energy's. The negative

 21 $1.5 million that we show at the bottom of Page 17 is

 22 actually going to increase in its negativity. But it's

 23 still negative, so it matches up for all practical

 24 purposes for us.

 25 CHAIRMAN CARTER: Okay. What about the

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 1 Intervenors, how does that impact on --

 2 MS. BRADLEY: I think it may reduce the amount

 3 that we were saying needed to be refunded, and I think

 4 Mr. McGlothlin has addressed that, so.

 5 CHAIRMAN CARTER: Okay. Mr. McWhirter, you --

 6 MR. McWHIRTER: I don't understand the issue.

 7 I'm sorry.

 8 CHAIRMAN CARTER: It seems like deja vu all

 9 over again. The impact of the corrections in the

 10 preliminary matters in terms of the numbers presented.

 11 MR. McWHIRTER: Yeah. The price goes down and

 12 he acknowledged that, and we agree that that's

 13 appropriate.

 14 CHAIRMAN CARTER: It's consistent. Okay.

 15 Okay. That's fine.

 16 Let me see. Commissioner Skop, you're

 17 recognized for a question.

 18 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 19 Like I say, I think that the parties have stipulated to

 20 bringing in the testimony from the previous docket,

 21 which I thank the parties for.

 22 Again, if there is room for that stipulation,

 23 again, I think that, I think it'll become clearer. But

 24 I'll leave that to the parties if maybe we could, you

 25 know, at the appropriate time take a few minute break

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 1 and maybe there's some consensus. If not, I'm happy to

 2 move forward and ask the questions that I'm prepared to

 3 ask.

 4 CHAIRMAN CARTER: Okay. Anything further from

 5 the bench?

 6 Okay then. Staff, are there any additional

 7 preliminary matters that we may have overlooked at this

 8 time?

 9 MS. BENNETT: No, Mr. Chairman, there are not.

 10 CHAIRMAN CARTER: Any further comments or

 11 questions from the bench before we proceed further?

 12 Anything further from any of the parties on preliminary

 13 matters before we proceed further? Okay.

 14 MR. McGLOTHLIN: I'm not clear on,

 15 Commissioner Skop, what you want the parties to do with

 16 respect to your request. I can, I can address my

 17 reaction now, if you wish. I'll wait, if you wish. But

 18 --

 19 CHAIRMAN CARTER: Commissioner Skop.

 20 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 21 If I may clarify.

 22 Again, I guess my concern would be, you know,

 23 in the interest of judicial efficiency and the record

 24 evidence that will be entered in this proceeding as well

 25 as the discovery as well as trying to further narrow the

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 1 issues, I would respectfully ask the parties if they

 2 could reach consensus to the extent that Indonesian coal

 3 not be considered as an alternate coal and we limit and

 4 narrow the discussion to the procurement of PRB.

 5 CHAIRMAN CARTER: Commissioner Argenziano.

 6 COMMISSIONER ARGENZIANO: I need to express

 7 concern because I'm not sure that that isn't to be part

 8 of the discussion. I thought acquiring the, the least

 9 expensive amount of coal is desirable or at least to be

 10 talked about to figure out why it shouldn't be. So to

 11 limit that at this point I have real grave concern

 12 about. I think in a discussion we might be able to

 13 flush out why it's a good thing or a bad thing.

 14 COMMISSIONER SKOP: Mr. Chair, if I may.

 15 And to Commissioner Argenziano's point, I

 16 mean, I don't, I don't want to get into the record

 17 evidence because that's not been formally admitted yet.

 18 But it suffices to say that the parties are aware of the

 19 relative strengths and weaknesses of their case.

 20 I think that we've seen already through the

 21 modification to Mr. Putman's testimony, the refund

 22 amount has been slashed in half. And, again, I can

 23 spend a considerable amount of time articulating my

 24 points later, but, again, I think it'll become

 25 self-evident. Again, that's just my perspective. But

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 1 to facilitate not having to go through a long-drawn-out

 2 discussion, again, I'd ask the parties. And, again,

 3 it's not to, to reduce the refund. Again, I took a very

 4 strong position in the last docket and I still intend to

 5 ask very pointed questions. But, again, I'll leave that

 6 to the parties to see if there could be some compromise.

 7 But if not, I'm prepared to move forward and we can have

 8 that discussion.

 9 CHAIRMAN CARTER: Commissioner Argenziano.

 10 COMMISSIONER ARGENZIANO: With all due

 11 respect, Commissioner, I want to hear the discussion on

 12 it. I need to learn more about it and I don't want it

 13 limited. I have some questions. I don't know much -- I

 14 don't -- I'm not saying I'm one way or the other, but

 15 the discussion will help me to determine if it's valid,

 16 if it's not and what the particulars are. So I'd rather

 17 go for the lengthy discussion to get more information to

 18 find out why I should consider it or I should not

 19 consider it. And I haven't made up my mind on anything.

 20 I just need to hear it. So it's limited at this point,

 21 it limits me from understanding, and I don't want to

 22 limit either side to anything. I just need to hear that

 23 discussion and then we'll take it step by step.

 24 COMMISSIONER SKOP: Right. And I fully

 25 respect that and I'm happy to do that. I was just

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 1 hoping that perhaps the parties on their own may be

 2 willing to limit the discussion.

 3 MR. McGLOTHLIN: Well, perhaps I can help.

 4 OPC is not going to stipulate to the elimination of the

 5 Indonesian alternative at this point. That issue has

 6 been framed. We have seen nothing in either rebuttal or

 7 discovery that, that persuades that it shouldn't be part

 8 of the case.

 9 CHAIRMAN CARTER: Commissioner Argenziano.

 10 COMMISSIONER ARGENZIANO: Then I think it's

 11 only fair that we should, we should hear what they have

 12 to say. Whether it's, whether it's going to pan out or

 13 not, I don't know. I'd just like to hear the

 14 discussion.

 15 CHAIRMAN CARTER: Okay.

 16 COMMISSIONER SKOP: Right. And I agree. I

 17 was just looking to the parties to see if there might be

 18 some, some room for compromise. Thank you.

 19 COMMISSIONER ARGENZIANO: Got you.

 20 CHAIRMAN CARTER: We're in preliminary, so

 21 let's, let's go ahead on and move forward so we can, we

 22 can move forward. That will be fine. I think it's

 23 worthwhile to hear the case.

 24 Let's see here. Any further preliminary

 25 matters? Are there any other questions from any of the

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 1 parties before we proceed further?

 2 Okay. All right then. Opening statements,

 3 and we'll begin with Progress and then the Intervenors.

 4 And your opening statements will be seven minutes. Mr.

 5 McGlothlin (sic.), I'm so proud of you. Last time you

 6 broke a record. So our opening statements for the

 7 parties will be seven minutes. We'll start with

 8 Progress Energy and move forward.

 9 Mr. Burnett, good morning. You're recognized.

 10 MR. BURNETT: Thank you, Commissioners.

 11 Commissioners, a few years ago you heard

 12 Docket 060658 where OPC alleged that while Wyoming PRB

 13 coal had been uneconomic and a bad idea for PEF's

 14 customers from 1984 to 1995, it allegedly came back into

 15 the money in 1995 and PEF should have burnt it at

 16 Crystal River Units 4 and 5 from 1995 to 2005. OPC

 17 alleged about $135 million in damages in that case.

 18 You rejected OPC's allegations and found that

 19 in 2003 and 2004 and 2005 only PEF should have burned an

 20 80/20 blend of Wyoming PRB coal, and you ordered PEF to

 21 refund customers about $13 million instead of the $135

 22 alleged.

 23 You also gave a very clear and concise set of

 24 instructions in your order in that last case. You said

 25 because all the evidence regarding Wyoming PRB coal in

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 1 that last case ended in 2005, you ordered PEF to present

 2 evidence on that coal for 2006 and 2007, and that's why

 3 we're here today. That's what your order says.

 4 Following your order to the letter, PEF has

 5 done just what you told us to do and we presented

 6 testimony on the economics of an 80/20 blend of the PRB

 7 coal that you actually heard evidence on in the last

 8 case for 2006 and 2007. And just like the evidence

 9 showed in the last case when PRB coal was out of the

 10 money from 1984 all the way up to 2002, it was out of

 11 the money again for 2006 and 2007. No surprise, given

 12 the volatile economic history with this coal which was

 13 established in the last case.

 14 Our direct testimony in this case shows that

 15 by burning blends of high quality coal from Central

 16 Appalachia with lower quality coal from South America in

 17 2006 and 2007, PEF was able to save its customers about

 18 $3 million when compared to PRB blends. It seems that

 19 OPC realized that PRB coal would not pass muster in 2006

 20 and 2007, so OPC did not put on testimony in this case

 21 suggesting that PRB coal was a good choice in 2006 and

 22 2007. However, in a surprise move that's totally

 23 outside of the scope of the last case, OPC now contends

 24 that PEF should have bought Spring Creek coal from

 25 Montana and foreign coal from Indonesia in 2006 and 2007

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 1 instead of the PRB that you dealt with in the last case.

 2 When I cross-examine Mr. Putman today, you'll

 3 hear him admit that this Commission did not hear

 4 evidence on and did not consider Spring Creek or

 5 Indonesian coal in the last case. So it goes without

 6 saying that all the holdings you made in the last case

 7 and the methodologies that you created cannot fairly be

 8 applied to these coals.

 9 Said simply, PEF is the only party in this

 10 case that has followed your order and filed evidence on

 11 the coal that you actually heard evidence on in the last

 12 case, and for that reason alone PEF should prevail in

 13 this case from an evidentiary perspective as a matter of

 14 law.

 15 Even apart from these facts though, you

 16 recognized in the last case that it would have taken PEF

 17 two years, between 2001 and 2003, to test, permit and be

 18 ready for PRB coal. Perfectly consistent with that

 19 finding you will hear our witnesses testify today that

 20 even if Spring Creek coal from Montana and Indonesian

 21 coal were economic in 2006 and 2007, which they were

 22 not, PEF could not have burned those coals until years

 23 after 2006 and 2007, which renders OPC's entire position

 24 in this case moot since the whole point of your order

 25 from the last case was to only address what could have

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 1 happened in 2006 and 2007.

 2 But even if you are inclined to hear evidence

 3 on these coals that admittedly were not considered in

 4 the last case, PEF will show that if it could have

 5 burned these coals in 2006 and 2007, which, again, due

 6 to testing, just like you recognized, it cannot, it

 7 would have at least hurt PEF's customers by about

 8 $1.5 million, that's the number I just spoke of that's

 9 going to even go more negative now due to the

 10 corrections, if not by tens of millions more dollars in

 11 additional capital upgrades that may be needed to burn

 12 these coals.

 13 This is no surprise given what has happened

 14 here this morning. But days after OPC's witness's

 15 deposition and after we filed our rebuttal testimony,

 16 OPC filed the amended testimony that it talked about

 17 here this morning admitting that they had made a

 18 $27 million error in their testimony, and that's one of

 19 the errors that our witnesses called them out on in our

 20 rebuttal testimony. So even before this hearing begins,

 21 OPC has had to admit that 45 percent of their alleged

 22 damages were a mistake. This is simply irresponsible

 23 and it's unbelievable.

 24 Commissioners, when I cross-examine OPC's

 25 witness today, you will be, you will begin to see that

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 1 just like he had to do when he filed this $27 million

 2 oopsie today, he cannot escape the fact that his

 3 testimony and his analysis is riddled with errors and

 4 omissions and even his amended testimony is still wrong.

 5 You will hear OPC's witness admit time and

 6 time again not only the things that he did do which

 7 caused errors such as relying on outdated projections

 8 for SO2 emissions instead of actual costs, a very topic

 9 that your own staff took him to task on in his

 10 deposition, but you will also hear him admit time and

 11 time again the thing he did not do to perform a proper

 12 analysis. And as you will see, Commissioners, sometimes

 13 what witnesses fail to do is just as bad as what they do

 14 affirmatively to make mistakes.

 15 In conclusion, Commissioners, PEF's witnesses

 16 and PEF's evidence will show that if you look at the

 17 coal you actually told the parties to address in your

 18 last order, we saved customers over $3 million by not

 19 burning PRB coal blends in 2006 and 2007. And no one

 20 else has challenged that; no one sitting at this table

 21 has filed testimony to challenge that.

 22 Next the evidence will show that even if OPC's

 23 coal from Montana and Indonesia was economic, which it

 24 was not, we couldn't have burned it anyway until after

 25 2006 and after 2007. And you will hear evidence that

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 1 for the Indonesian coal it wasn't even available, they

 2 couldn't even sell it to us. They were out.

 3 Lastly, our witnesses will pick apart OPC's

 4 case dollar by dollar. And even though OPC has already

 5 picked their own case apart 45 percent before we even

 6 get started, our witnesses will show that if we could

 7 have burned these coals in 2006 and 2007, on the best

 8 day it would have hurt our customers by over

 9 $1.5 million and on a bad day up to $176 million in

 10 additional capital costs that could have been necessary

 11 to burn these coals. Thank you, Commissioners.

 12 CHAIRMAN CARTER: Thank you.

 13 Mr. McGlothlin.

 14 MR. McGLOTHLIN: Commissioners, frequently the

 15 Commission is called on to determine whether the utility

 16 before it has acted imprudently or prudently. This case

 17 is different. Here the Commission has already decided

 18 that Progress Energy was imprudent when it failed to

 19 conduct tests and obtain a permit to burn sub-bituminous

 20 coal in Crystal River 4 and 5 prior to 2003. The

 21 Commission has already determined that the imprudence

 22 resulted in overcharges in 2003, 2004 and 2005 because

 23 Progress Energy could not take advantage of the most

 24 economical coal available. Progress Energy did not

 25 obtain a permit to burn sub-bituminous coal until mid

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 1 2007, long after procurements to supply the units during

 2 '06 and '07 had been made.

 3 The question before you today is whether the

 4 same established imprudence that led to overcharges in

 5 2003, 2004 and 2005 continued to do so in 2006 and 2007.

 6 The evidence you will hear says yes. Our witness, David

 7 Putman, compared the lowest cost of alternative

 8 sub-bituminous coal that was offered to Progress Energy

 9 at the time Progress Energy made its procurement

 10 decisions against the actual cost of the bituminous coal

 11 that was delivered in 2006 and 2007. He concludes that

 12 Progress Energy could have saved ratepayers significant

 13 dollars in each year if it had been able to burn the

 14 alternative sub-bituminous coal legally.

 15 In its final order in the prior case the

 16 Commission stated that the appropriate way to make the

 17 comparison against known costs is to use the evaluated

 18 cost of the alternative coal. The evaluated cost is the

 19 result of an analysis that takes into account the cost

 20 of coal, the cost of transportation and the impacts of

 21 the coal on the units' operations, impacts whether they

 22 be positive or negative when measured against a

 23 baseline.

 24 For each of the years 2006 and 2007 Mr. Putman

 25 used the bid that won top ranking in Progress Energy's

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 1 evaluation contest. For 2006, he identified the low

 2 bids of Kennecott PRB coal that would have saved in the

 3 range of $14 to $15 million in 2006.

 4 While these were the lowest bids, one of

 5 Mr. Putman's exhibits, which is Progress Energy's own

 6 summary of all bids to the 2004 RFP, shows that other

 7 PRB producers also offered more economical coal and were

 8 not far behind the Kennecott bids in terms of evaluated

 9 cost. For 2007, he identified two Indonesian

 10 sub-bituminous bids that Progress Energy ranked numbers

 11 one and two in terms of the evaluated cost. Those would

 12 have saved about $13 million in 2007. Mr. Putman did

 13 not adjust any of Progress Energy's evaluations. He

 14 used the utility's own analyses and adopted the

 15 utility's own evaluated costs.

 16 About his comparisons you will hear Progress

 17 Energy make some interesting arguments. First, as

 18 you've already heard, Progress Energy will claim that

 19 the intent of the Commission in the prior case was to

 20 designate the specific Wyoming coal that was used as the

 21 alternative in the prior case as the only alternative

 22 coal that can be legitimately used to compare against

 23 the actual costs in '06 and '07. I'm going -- I'll

 24 wager that's news to you.

 25 Consider the implications. If you decide in

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 1 this case that a different alternative was available and

 2 would have saved money in '06 and '07, Progress Energy

 3 says you can't disallow any of the actual costs.

 4 Progress Energy says a sub-bituminous coal isn't okay to

 5 blend 20/80 with bituminous coal until the Commission

 6 says it's okay two to three years after we had the

 7 chance to buy it. That would be a utility fuel

 8 procurement program like no other. The argument makes

 9 sense only to those who are defending against a refund.

 10 Next, Progress Energy will say effectively no

 11 fair using the coals that won first place in our

 12 contest. This one is especially interesting because

 13 Mr. Putman consciously used Progress Energy's analyses

 14 and Progress Energy's values without change wherever

 15 possible in an attempt to reduce the number of arguments

 16 over assumptions. It appears that he did not anticipate

 17 Progress Energy's willingness to discredit its own

 18 evaluation process in order to resist a refund.

 19 With respect to the reasons Progress Energy

 20 gives for now challenging the coals that won first place

 21 in its evaluation, the evidence will show that the

 22 potential issues that Progress Energy predicts,

 23 principally the sodium content of the Kennecott coal and

 24 the very low sulfur content of the Indonesian coal, are

 25 not problems at all. Progress Energy is ignoring the

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 1 impressive and expensive flexibility to burn a wide

 2 range of coals that was built into the superconservative

 3 Crystal River Units 4 and 5 for which customers have

 4 been paying since the mid 1980s. They also ignore the

 5 fact that under the parameters of the Commission's

 6 decision in the prior case, the alternative coal would

 7 constitute only 20 percent of a blend containing

 8 80 percent bituminous coal. What might appear to be a

 9 material difference on the surface when comparing two

 10 coals becomes diffused to the point of insignificance

 11 when those coals are placed in a blend containing

 12 80 percent bituminous coal.

 13 Progress Energy will claim that it might have

 14 needed as long as nine to 12 months to test alternative

 15 coals and that by then the window of opportunity would

 16 have been closed either, either because the price would

 17 have increased in the case of the Kennecott coal or

 18 because a portion of the Indonesian coal might have been

 19 sold to others. Here the evidence will show that

 20 Progress Energy is ignoring and contradicting its own

 21 past history and practices with respect to the length it

 22 conducts test burns.

 23 Finally, Progress Energy will assert that in

 24 any event the coal might have required expensive capital

 25 costs. We've been here before. Progress Energy is

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 1 ignoring this case, not only the capital costs being

 2 borne by customers to provide the initial fuel

 3 flexibility, but also the capital costs that the

 4 Commission assumed in the last case would have been

 5 spent by now to prepare the units to burn the 20 percent

 6 blend.

 7 As you listen, consider that under Progress

 8 Energy's view the utility would never be exposed to a

 9 disallowance because it would never be able to react

 10 quickly enough to take advantage of an opportunity to

 11 save fuel costs, coupled with the idea that the only

 12 coal that was the subject, that only the coal that was

 13 the subject of the last case can be an alternative here,

 14 Progress Energy has fashioned a theory of regulatory

 15 review which if accepted would insulate it from

 16 virtually any risk of disallowance. Nice work if you

 17 can get it.

 18 But consider the irony in their position --

 19 the imprudence that the Commission found, essentially

 20 that Progress Energy failed to respond timely to market

 21 changes. Progress Energy's defense is that there were

 22 no consequences to that imprudence because it would not

 23 have been able to respond timely to market changes.

 24 It's precisely because Progress Energy failed to

 25 position itself through testing and permitting that it

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 1 can now engage in self-serving speculation with respect

 2 to predictions of difficulties, predictions of time

 3 requirements and potentially high costs.

 4 CHAIRMAN CARTER: Mr. McGlothlin, you're over

 5 time, sir. Can you just wrap it up, your concluding

 6 statement, please, sir?

 7 MR. McGLOTHLIN: Yes, sir. The evidence will

 8 show that this situation for 2006 and '07 is just like

 9 that of the prior case. More economical sub-bituminous

 10 coal was available and customers paid too much as a

 11 result of the utility's inability to burn it legally at

 12 the time.

 13 CHAIRMAN CARTER: Thank you. Good morning,

 14 Mr. McWhirter, you're recognized.

 15 MR. McWHIRTER: Good morning to you, sir. And

 16 I'll be very short, as I always am, you know.

 17 CHAIRMAN CARTER: Yes, sir.

 18 MR. McWHIRTER: Why did FIPUG intervene in

 19 this case? There are two essential reasons. One is

 20 customers must rely very heavily upon the Office of

 21 Public Counsel and the Public Service Commission's

 22 advocacy staff when it comes to fuel matters. That's

 23 because most of the information concerning the purchase

 24 of fuel that's submitted is secret and not available to

 25 the general public and we don't go in behind what is

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 1 filed with this Commission to ferret out the details.

 2 You have the staff to do it, OPC has the staff to do it,

 3 and they find things, hidden defects and a myriad of

 4 information, secret information that's available to you.

 5 For this reason we supported the OPC in this case and

 6 his case.

 7 The second and most important reason that we

 8 get involved in this case is because fuel recovery is

 9 one of the guaranteed cost recovery clauses that is now

 10 eminently available to utilities. With these guaranteed

 11 cost recovery clauses all the risk of loss is shifted

 12 away from the investors of the utility on to the

 13 consumer. And when you have a shift of that nature

 14 where customers bear all of the risk, it's very

 15 important that we look at these cases with very serious

 16 scrutiny.

 17 I'd like to applaud Order 070816. It was

 18 entered in this case in 2007. I applaud it first

 19 because it gives a better background of the development

 20 of the fuel clause than I've ever seen before by this

 21 Commission. It should be mandatory reading for all

 22 aspirants to the Commission office and by all new

 23 Commissioners because it tells you where we've been and

 24 how we got to where we are today.

 25 That order had factual conclusions, some of

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 1 which we do not agree with, but here are the facts that

 2 were in the order that you should be aware of as you

 3 consider the testimony in this case.

 4 The first case, the first is that back in

 5 1982 and '84 when these power plants were built,

 6 Progress or Florida Power Corporation at that time made

 7 a much larger investment in the plant in order to be

 8 able to burn cleaner Powder River coal. It improved the

 9 environment and it would benefit customers by lower fuel

 10 costs. There's no dispute about that. Customers have

 11 been paying over the years a much higher return to

 12 Progress Energy or Florida Power and its successor

 13 Progress Energy Florida because of that investment that

 14 was made for customers' benefit. But the rest of the

 15 story, as you found in Order 816, was that customers did

 16 not receive these benefits. You didn't look behind the

 17 years 2003, but you determined that Progress Energy had

 18 a duty to, now that it had built a much more expensive

 19 power plant for the benefit of customers, it had a duty

 20 to customers to see that that was environmentally

 21 permitted, but it failed to do it. And even after you

 22 entered your order, Progress Energy has continued to

 23 fail to make the test because, as Ms. Stenger testified

 24 in her deposition, somebody in North Carolina told her

 25 it was not necessary to go forward with it.

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 1 We are very concerned about that. You found

 2 that Progress Energy was imprudent, as Mr. McGlothlin

 3 has already told you. That is behind us. That is a

 4 determination you've made: It was imprudent to do what

 5 it needed to do to protect consumers, and that

 6 imprudence has not been cured.

 7 To determine the damages staff used a cost of,

 8 a cost-effectiveness test that was most favorable to

 9 Progress Energy. Progress Energy in this case has

 10 elevated that to a matter of policy by the Commission

 11 that you must use the cost-effectiveness test that is

 12 most favorable to PEF.

 13 In addition to those factual determinations

 14 you made in that fine order, you also reiterated two

 15 very important findings of law that bind your

 16 deliberations in this case.

 17 First is that there's no administrative

 18 finality to fuel cost proceedings because of their

 19 nature. You can't get all the information until many

 20 years later in some event. And the second is the burden

 21 of proof is not on the Public Counsel and his witnesses

 22 to prove that Progress Energy did wrong. The burden is

 23 heavily, because it's a cost recovery item, the burden

 24 is heavily on Progress Energy to prove that it did the

 25 right thing, that it did right when it did not perform

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 1 the test that it was chided for not performing in your

 2 last order, and that its failure to accept less

 3 expensive Indonesian coal for which they had a bid and

 4 for which they qualified as the best bid available, that

 5 when they did that, they have to tell you what it is

 6 that happened that caused them not to accept that bid

 7 which benefited customers and yet chose to continue to

 8 deal with their old allies in the Appalachian region.

 9 We strongly recommend to you that you listen

 10 carefully to the testimony, but at all times remember

 11 the burden is heavily on Progress Energy because of the

 12 nature of this proceedings and it's not on the Public

 13 Counsel to present anything other than the elements that

 14 give us cause for concern. Thank you. I hope I made

 15 it, Mr. Chairman.

 16 CHAIRMAN CARTER: Outstanding. Outstanding.

 17 Six minutes.

 18 Good morning, Ms. Bradley. You're recognized.

 19 MS. BRADLEY: Thank you, Mr. Chairman,

 20 Commissioners. We talked a lot about this the last

 21 time, and I think it's important to know that the

 22 customers of Progress paid extra to have a plant that

 23 would burn the sub-bituminous coal. They could have

 24 saved a lot of money by not building that plant to burn

 25 the more profitable coal, the sub-bituminous coal, but

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 1 instead the customers suffered that extra added expense.

 2 And then when it came time to burn it and profit from

 3 it, the company failed to do the correct permitting,

 4 they failed to do the correct testing, they limited

 5 their testing. And had they tested the higher blend,

 6 maybe they could have saved a lot more, but they failed

 7 to do that.

 8 They say that they saved their customers money

 9 by not using this coal. But other companies, there was

 10 testimony last time and I believe there will be again

 11 today about other customers thought the sub-bituminous

 12 coal was so beneficial to their customers that they

 13 actually went back and retrofitted their plant so they

 14 could burn that. And, you know, plants don't go to that

 15 kind of expense unless they think there's a valid

 16 benefit, and unfortunately these customers lost out on

 17 that opportunity.

 18 Now the Office of Public Counsel came in and

 19 they have adjusted their recommendations and their

 20 testimony. And rather than condemning that, I can't

 21 tell you how many times I've been in litigation with

 22 parties that no matter what the evidence is, they won't

 23 budge from their position and we spend a lot of, we

 24 waste a lot of money trying to get them around to the

 25 right position.

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 1 For Public Counsel to come in today in these

 2 proceedings and say we've looked at our analysis, we've

 3 compromised some and this is our position today, that

 4 speaks to their candor. And I hope, rather than

 5 condemning them for that candor, that you will applaud

 6 them for that because I think that really speaks to the

 7 type office that is and the work that they do. Thank

 8 you.

 9 CHAIRMAN CARTER: Thank you.

 10 Mr. McWhirter, I'm sorry. You lost the

 11 record.

 12 (Laughter.)

 13 Thank you, Ms. Bradley.

 14 Staff, we've had the opening statements of the

 15 parties. You had another matter I think with exhibits;

 16 is that correct?

 17 MS. BENNETT: That's correct.

 18 CHAIRMAN CARTER: You are recognized.

 19 MS. BENNETT: We'd ask that you mark and move

 20 the comprehensive, Comprehensive Exhibit List as Exhibit

 21 1, and Staff's Composite Exhibit as Exhibit 2 into the

 22 record at this time.

 23 CHAIRMAN CARTER: Any objections?

 24 MR. BURNETT: No objection.

 25 CHAIRMAN CARTER: Any objections?

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 1 MR. McWHIRTER: No objection.

 2 CHAIRMAN CARTER: Without objection, show it

 3 done.

 4 (Exhibits 1 and 2 marked for identification

 5 and admitted into the record.)

 6 Staff, anything further before we swear in the

 7 witnesses?

 8 MS. BENNETT: Just that all the other exhibits

 9 on the list should be numbered as indicated and moved

 10 into the record during the sponsoring witness's

 11 testimony.

 12 CHAIRMAN CARTER: Okay. Also, too, we --

 13 there must have been a typo in terms of the witnesses.

 14 Your witnesses do their presentations up to five

 15 minutes, is that what it says?

 16 MS. BENNETT: It's up to seven minutes.

 17 CHAIRMAN CARTER: Really?

 18 MR. McGLOTHLIN: It's seven minutes.

 19 CHAIRMAN CARTER: It is?

 20 MR. McGLOTHLIN: Yes, sir.

 21 CHAIRMAN CARTER: Okay. You guys -- all

 22 right. Well, up to seven minutes then. That will be

 23 fine. Let's do this. Staff, anything further before we

 24 do that? Anything, I mean any other technical matters

 25 that we may have overlooked before we swear in the

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 1 witnesses?

 2 MS. BENNETT: No, Mr. Chairman.

 3 CHAIRMAN CARTER: The parties, anything

 4 further before we swear in the witnesses? Anything

 5 further?

 6 MR. BURNETT: No, sir.

 7 CHAIRMAN CARTER: Hearing none, I'd like to

 8 swear in all the witnesses as a group. Would you please

 9 stand, all of those that will be testifying today, would

 10 you please stand and raise your right hand?

 11 (Witnesses collectively sworn.)

 12 Thank you. You may be seated.

 13 Okay. And then based upon staff and the

 14 parties, each witness has up to seven minutes to

 15 summarize their testimony. At this point in time we

 16 will follow the witness, the order of witnesses as

 17 presented in the pretrial order. I think all the

 18 parties have that; correct?

 19 Okay. Mr. Burnett, you're recognized.

 20 MR. BURNETT: Thank you, sir. We would call

 21 Sasha Weintraub.

 22 SASHA WEINTRAUB

 23 was called as a witness on behalf of Progress Energy

 24 Florida and, having been duly sworn, testified as

 25 follows:

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 1 DIRECT EXAMINATION

 2 BY MR. BURNETT:

 3 Q. Good morning, Mr. Weintraub. Would you please

 4 introduce yourself to the Commission and provide your

 5 business address?

 6 A. Good morning. My name is, my legal name is

 7 Alexander Weintraub. I'm also known as Sasha Weintraub.

 8 And I work at 410 South Wilmington Street, Raleigh,

 9 North Carolina.

 10 Q. And also you've been sworn just now as a

 11 witness; correct?

 12 A. I have.

 13 Q. What is your position with Progress Energy,

 14 sir?

 15 A. I'm the Vice President of Fuels and Power

 16 Optimization.

 17 Q. And have you filed prefiled direct testimony

 18 and exhibits in this matter?

 19 A. I have.

 20 Q. Do you have your prefiled direct testimony and

 21 exhibits with you?

 22 A. I do.

 23 Q. Do you have any changes to make to your

 24 prefiled direct testimony?

 25 A. I do not.

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 1 Q. Sir, if I asked you the same questions in your

 2 prefiled direct testimony today, would you give the same

 3 answers that are in your prefiled testimony?

 4 A. I would.

 5 MR. BURNETT: Mr. Chairman, we request that

 6 the prefiled direct testimony of this witness be entered

 7 into the record as if it was read here today.

 8 CHAIRMAN CARTER: The prefiled testimony of

 9 the witness will be inserted into the record as though

 10 read.

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 1 BY MR. BURNETT:

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

 3 prefiled direct testimony?

 4 A. I do.

 5 Q. Will you please summarize your prefiled direct

 6 testimony for the Commission?

 7 A. Good day, Commissioners. I'm the Vice

 8 President of Fuels and Power Optimization for Progress

 9 Energy. In this role and in my former position I have

 10 been ultimately responsible for PEF's coal procurement

 11 decisions since 2005.

 12 In September 2005, PEF issued an RFP seeking

 13 coal bids for Crystal River Units 4 and 5 for 2006 and

 14 no PRB producer provided bids for PRB coals. PEF

 15 presented this RFP and the results of the solicitation

 16 in Docket 060658.

 17 In January 2006, PEF issued another RFP

 18 solicitation seeking coal for delivery in 2007, eight

 19 and nine. The company received bids from 22 suppliers

 20 with over 100 unique proposals which included only one

 21 PRB proposal, and that bid was not the most economical

 22 choice for Crystal Rivers 4 and 5. Nonetheless, PEF has

 23 analyzed PRB coal blends as a possible alternative to

 24 bituminous coal, including coals that PEF may have been

 25 able to purchase in 2004 for delivery during the '06/'07

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 1 time period. By blending high quality bituminous coal

 2 with lower quality bituminous coal that was available

 3 for delivery in '06 and '07, PEF achieved pricing that

 4 was more favorable than any potential PRB coal blend

 5 that could have been bought and delivered between '04

 6 and '07. Said simply, any way you slice it, the coal

 7 that PEF actually bought for 2006 and 2007 beat the

 8 prices of PRB blends that PEF otherwise could have

 9 bought when properly compared on an apples-to-apples

 10 basis.

 11 Even though PRB coal blends have not proved to

 12 be an economic choice for PEF's customers in '06 and

 13 '07, PEF continues to monitor the market and will

 14 continue to strive for the best and most cost-effective

 15 fuel options for Crystal River Units 4 and 5 now and in

 16 the future. If PRB coal blends ever become a reliable

 17 economic choice for PEF's customers, then PEF will

 18 continue with its process to test and integrate PRB coal

 19 blends, but to date the evaluated cost of burning PRB

 20 coal at units, Crystal River 4 and 5 does not make

 21 economic sense for PEF's customers.

 22 This concludes the summary of my direct

 23 testimony, and I'm happy to answer any questions that

 24 you may have.

 25 MR. BURNETT: Thank you. Mr. Chairman, we

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 1 tender Mr. Weintraub for cross-examination.

 2 CHAIRMAN CARTER: Thank you. One second.

 3 Commissioner Skop, you're recognized.

 4 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 5 Good morning, Mr. Weintraub.

 6 THE WITNESS: Good morning.

 7 COMMISSIONER SKOP: I have a few questions and

 8 I'm trying to figure out which would be the best witness

 9 to ask those of. It's my understanding that you're

 10 responsible for the procurement of coal but not

 11 necessarily the subject matter expert in terms of the

 12 technical questions or an engineer; is that correct?

 13 THE WITNESS: That's correct.

 14 COMMISSIONER SKOP: Okay. And I believe I

 15 just have one question. I guess I reviewed the prefiled

 16 testimony, but subsequent to filing your testimony you

 17 took a deposition on April 1st, 2009; is that correct?

 18 THE WITNESS: That's correct.

 19 COMMISSIONER SKOP: Okay. And on Page, and,

 20 again, I don't have a real complete copy, but I believe

 21 on Page 49 spanning over to Page 50 of that deposition

 22 on or about Line 24 and 25 on Page 49 continuing on to

 23 the next page you were asked about an e-mail dealing

 24 with the availability of Indonesian coal; is that

 25 correct?

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 1 THE WITNESS: That's correct.

 2 COMMISSIONER SKOP: Okay. And in that e-mail

 3 apparently a representative from the Indonesian coal

 4 company was approached in an unsolicited manner by I

 5 guess the Public Counsel's witness Mr. Putman in

 6 relation to questions he may have had with respect to

 7 Indonesian coal; is that correct?

 8 THE WITNESS: That's the way I understand the

 9 e-mail. That's correct.

 10 COMMISSIONER SKOP: Okay. And basically in

 11 his response in terms of acknowledging back to Progress

 12 that he had been contacted, I believe that he provided a

 13 letter which is a late-filed exhibit attached to your

 14 deposition, or if staff could perhaps help me, but there

 15 is a late-filed exhibit. I think, staff, is it --

 16 MR. YOUNG: Five, Late-Filed Exhibit 5.

 17 COMMISSIONER SKOP: Late Exhibit 5, which

 18 basically provided that letter. Is that correct?

 19 THE WITNESS: That's correct.

 20 COMMISSIONER SKOP: Do you have that letter

 21 with you by any chance?

 22 MR. BURNETT: Mr. Chair, if I may approach, I

 23 believe I do have copies available.

 24 CHAIRMAN CARTER: You may approach. Make sure

 25 Mr. Weintraub has one first, then you can get one to the

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 1 rest of us. We'll take a moment, Commissioners, to make

 2 sure that everyone has a copy so we're all on the same

 3 page.

 4 MR. BURNETT: Mr. Chairman, this is a

 5 collection of documents. It's the next to the last

 6 document in this package. I've cleared it with

 7 Mr. McGlothlin and he has no objections to me ultimately

 8 giving these out. So if it's appropriate, we could

 9 reference them or I could pull them apart and just give

 10 you the e-mail at this time.

 11 CHAIRMAN CARTER: Sure. Let's go ahead on

 12 with that. That's fine.

 13 MR. BURNETT: It should be the second to the

 14 last document in this packet.

 15 CHAIRMAN CARTER: Okay.

 16 COMMISSIONER SKOP: Thank you.

 17 CHAIRMAN CARTER: Mr. Burnett, you're

 18 referring to the e-mail here, is that what you're

 19 referring to, the second to the last document?

 20 MR. BURNETT: Yes, sir.

 21 CHAIRMAN CARTER: All right. Commissioners,

 22 are we all on -- do we all have it? Okay.

 23 COMMISSIONER SKOP: Thank you, Mr. Chair.

 24 CHAIRMAN CARTER: You may proceed.

 25 COMMISSIONER SKOP: Sure. Back to

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 1 Mr. Weintraub, I believe you have that e-mail in front

 2 of you now; is that correct?

 3 THE WITNESS: That's correct.

 4 COMMISSIONER SKOP: And that is from the

 5 company that produces the Indonesian coal; is that

 6 correct?

 7 THE WITNESS: That's correct.

 8 COMMISSIONER SKOP: Okay. And can you speak

 9 briefly to the representation made within that e-mail as

 10 to whether Indonesian coal was available during the time

 11 in question?

 12 THE WITNESS: I think in this e-mail the

 13 content backs up what we always suspected; that the

 14 Indonesian coal bids that we received, they did not have

 15 the coal to offer. And they specifically say that in

 16 the middle paragraph and I quote, "However, at that

 17 time, we were sold out in Indonesia, and it is possible

 18 that we responded to any inquiry that we would be

 19 unresponsive."

 20 COMMISSIONER SKOP: All right. Thank you.

 21 With respect to the evaluated price for coal that your

 22 organization goes through, does the evaluated price

 23 incorporate basically some sort of premium for delivery

 24 of, delivery interruption risk or is that not evaluated

 25 in terms of the evaluated price?

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 1 THE WITNESS: That's not explicitly evaluated

 2 in the RFP process.

 3 COMMISSIONER SKOP: Okay. And I think that,

 4 you know, part of that will come into a question that's

 5 probably better left for the technical witness, but I

 6 just wanted to make sure that that was not encompassed

 7 with an evaluated price. I mean, Indonesia is across

 8 the world and, again, I think that some of the other

 9 questions that I have deal with being able to use coal

 10 as a direct market substitute because it seems to be

 11 pretty mine specific.

 12 But getting to that one point in terms -- are

 13 you familiar with the Black and Veatch documents

 14 regarding the design spec for the CR4 and CR5 units in

 15 question?

 16 THE WITNESS: Just what I've read off this

 17 docket.

 18 COMMISSIONER SKOP: Okay. So I'll probably

 19 refer that to the technical witness. But I guess, if

 20 you have knowledge, would you also be aware that

 21 Indonesian coal was never specified as a design fuel for

 22 the plant in question?

 23 THE WITNESS: I don't recall that ever being

 24 specified as a design fuel for Crystal River Units 4 &

 25 5.

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 1 COMMISSIONER SKOP: And subject to check,

 2 would you agree that the design fuel specifically

 3 referenced Wyoming PRB coal from Campbell County in

 4 terms of the specified design fuel?

 5 THE WITNESS: I believe it did.

 6 COMMISSIONER SKOP: All right. Thank you.

 7 CHAIRMAN CARTER: Commissioners, anything

 8 further from the bench?

 9 Mr. McGlothlin, you're recognized, sir.

 10 CROSS EXAMINATION

 11 BY MR. McGLOTHLIN:

 12 Q. Mr. Weintraub, let's continue with the

 13 discussion of the e-mail that's been passed out.

 14 In your testimony you allude to an RFP process

 15 that began in February of 2006; is that correct?

 16 A. That's correct.

 17 Q. Now looking at the -- first of all, when were

 18 the bids received for the 2006 RFP?

 19 A. On the due date for the RFP, which was some

 20 time in February was the specific due date. I don't

 21 recall.

 22 Q. Okay. And the, the intent of the RFP was to

 23 solicit bids for deliveries in '07, '08 and '09;

 24 correct?

 25 A. That's correct.

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 1 Q. Now looking at the e-mail -- I'm looking at

 2 this and it says, "The question was about whether we had

 3 offered coal in the past, 2007, I believe." When the

 4 2006 RFP was initiated in February of 2006, did the

 5 bidders offer coal at that time?

 6 A. They responded to the RFP with a bid. That's

 7 correct.

 8 Q. So the year of the RFP is 2006; correct?

 9 A. The RFP was issued in 2006. That's correct.

 10 Q. And this individual was speaking in terms of

 11 whether he had offered coal in 2007; correct?

 12 A. I don't know what question Mr. Putman asked

 13 him that he's specifically alluding to in this e-mail.

 14 Q. Well, let's look at what the author of this

 15 said about it. "The question was about whether we had

 16 offered coal in the past - 2007, I believe." Does he

 17 refer to 2007?

 18 A. "The question was about whether we had offered

 19 coal in the past - 2007." In the past.

 20 Q. And does he also say that he doesn't have any

 21 independent memory of what happened?

 22 A. He says, "I don't remember the specifics

 23 independently. However, at that time, we were sold out

 24 in Indonesia." And like we talked about in my

 25 deposition, this seems to back up the fact that when we

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 1 did contact Indonesian suppliers about moving forward,

 2 they at some point became very unresponsive. Their one

 3 representative -- one of their representatives was let

 4 go by the company. The fact that Indonesian coal was

 5 really focusing on the Asian market, it seems like

 6 they've, for lack of a better term, packed up shop here

 7 in the U.S. and focus, continued to focus on their

 8 primary market.

 9 Q. Yes. And the bids were submitted in February

 10 of 2006. Isn't it true that this additional contact

 11 that you mentioned took place in the May 2006 time

 12 frame?

 13 A. That was the second meeting. We also

 14 contacted them and they came to our office, I think I

 15 mentioned, around March, thereabout, within a few weeks

 16 of the RFP to contact them about additional information

 17 about their coal.

 18 Q. Did they ever tell you that they were

 19 withdrawing their bid?

 20 A. No.

 21 Q. Did they ever tell you they had no coal to

 22 sell?

 23 A. They implied it by not responding to our

 24 inquiries and ultimately not being responsive.

 25 Q. Did you, did you ever offer to buy coal from

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 1 them?

 2 A. We offered to do additional inquiries to see

 3 what it would take for us to buy their coal.

 4 Q. Did you ever offer to buy coal from them?

 5 A. No.

 6 Q. So it's possible that the bids were firm at

 7 the time they were made, but by the time that you

 8 contacted them some other arrangements were made.

 9 MR. BURNETT: Objection. Calls for

 10 speculation.

 11 CHAIRMAN CARTER: Mr. McGlothlin.

 12 MR. McGLOTHLIN: I don't think it calls for

 13 speculation to, to deduce that from -- that there was an

 14 opportunity between February and the March/May frame,

 15 time frame for something to have happened.

 16 CHAIRMAN CARTER: Ms. Helton.

 17 MS. HELTON: It seems appropriate to me,

 18 Mr. Chairman, for him to ask the question. And if the

 19 witness doesn't know, then he can respond that he

 20 doesn't know.

 21 CHAIRMAN CARTER: Okay. Thank you.

 22 You may proceed.

 23 THE WITNESS: Can you ask the question again,

 24 please?

 25 MR. McGLOTHLIN: I'll withdraw that question.

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 1 I want to pass out an exhibit for use.

 2 CHAIRMAN CARTER: Okay. Okay. Just one

 3 second.

 4 Ms. Bradley, did you get one? Do you have a

 5 copy? Make sure you get one to the Attorney General's

 6 Office. Okay. Make sure the Attorney General's Office

 7 gets a copy. Okay.

 8 Nice tie.

 9 MR. McGLOTHLIN: Chairman Carter, could we

 10 have a number assigned to this?

 11 CHAIRMAN CARTER: Hang on one second. Let's

 12 make sure Ms. Bradley gets a copy before we go further.

 13 Okay. All right. You want a number marked

 14 for identification. Let me flip through, Commissioners,

 15 and this will be --

 16 MS. BENNETT: Number 49.

 17 CHAIRMAN CARTER: Number 49?

 18 MS. BENNETT: Uh-huh.

 19 CHAIRMAN CARTER: Number 49. 49. Give me one

 20 second here. Let me get a short title, Mr. McGlothlin.

 21 MR. McGLOTHLIN: Excerpt Weintraub Testimony

 22 060658.

 23 CHAIRMAN CARTER: Excerpts of Weintraub

 24 Testimony. Okay. You may proceed.

 25 (Exhibit 49 marked for identification.)

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 1 BY MR. McGLOTHLIN:

 2 Q. Mr. Weintraub, you appeared on behalf of

 3 Progress Energy in the Docket 060658, did you not?

 4 A. I did.

 5 Q. Do you recognize this as, to be an excerpt of

 6 the prefiled testimony that you sponsored in that case?

 7 A. I do.

 8 Q. I'd direct you to the question and answer that

 9 appear at the bottom of Page 14. Do you refer to the

 10 same Indonesian sub-bituminous coal offers there that

 11 we're speaking of in this case?

 12 A. Yes, I do.

 13 Q. The question was, "Was the sole PRB offer in

 14 response to the January 2006 RFP a better value than the

 15 bituminous coals that the Company purchases as a result

 16 of the RFP?" Would you read the answer that appears at

 17 Lines 18 through 23?

 18 A. Sure. "No, it was not. But there were two

 19 Indonesian sub-bituminous coal offers that ranked ahead

 20 of the bituminous coal bids we purchased. We did not

 21 purchase the Indonesian sub-bituminous coal product

 22 because the plant had no prior experience with this type

 23 of coal, the CR4 and 5 units were undergoing

 24 modifications to safely handle the PRB coals for a test

 25 burn as recommended by our outside engineering

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 1 consultant, and the test burn of PRB sub-bituminous

 2 coals had not yet occurred."

 3 Q. And would you agree that that question and

 4 answer reflect everything that you had to say about the

 5 Indonesian bids in 060658?

 6 A. I think I would say that my answer responds to

 7 the question that was asked on Lines 16 and 17.

 8 Q. And in the answer you gave the reasons why you

 9 didn't buy the Indonesian coal; correct?

 10 A. The reason why we didn't buy the Indonesian

 11 coal was because we didn't have any prior experience

 12 with the coal, we were still undergoing modifications,

 13 and we had not yet done a test burn on the PRB

 14 sub-bituminous coal. Just the fact that we haven't even

 15 had any experience with this type of coal would not have

 16 allowed us to just go out and purchase it.

 17 Q. Okay. In your testimony in this case you

 18 describe the 2006 RFP in some detail, do you not?

 19 A. I do.

 20 Q. You did not mention the Indonesian bids at all

 21 in your direct case, did you?

 22 A. No. In my direct case we were specifically

 23 following the Commission order.

 24 Q. At Page 8 of your prefiled direct testimony,

 25 referring to this February 2006 RFP, you note that the

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 1 company received only one PRB bid, do you not?

 2 A. I do.

 3 Q. And then at Page 9 in response to the

 4 question, "Was it unusual to receive so few PRB

 5 proposals," you say, "In response to PEF's

 6 September 2005 RFP, no PRB producer provided a bid for

 7 PRB coals." Then you add, "This is consistent with

 8 historical responses to prior RFPs."

 9 It's true, is it not, sir, that in response to

 10 the 2003 RFP, Progress Energy received bids from

 11 producers of Powder River Basin coal?

 12 A. I'm not sure about the 2003 RFP.

 13 Q. Is it true that the PRB producers bid into the

 14 April 2004 RFP?

 15 A. In April 2004 there was some PRB bids.

 16 Q. And in that RFP the company was soliciting

 17 offers for deliveries in '05, '06 and '07?

 18 A. They were soliciting coal out in those years.

 19 MR. McGLOTHLIN: Okay. I want to distribute

 20 an exhibit at this point.

 21 CHAIRMAN CARTER: Okay. You may proceed.

 22 MR. McGLOTHLIN: Chairman Carter --

 23 CHAIRMAN CARTER: Yes, sir.

 24 MR. McGLOTHLIN: -- this particular document

 25 has already been identified --

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 1 CHAIRMAN CARTER: Mr. McGlothlin, turn your

 2 mike on, please, sir, and begin -- start all over.

 3 MR. McGLOTHLIN: I'm sorry. This particular

 4 document has already been identified as an exhibit.

 5 It's attached to the testimony of David Putman. It's

 6 his DJP-6.

 7 CHAIRMAN CARTER: Okay.

 8 MR. McGLOTHLIN: I've distributed this

 9 additional copy for --

 10 CHAIRMAN CARTER: Just for cross-examination

 11 purposes? So it's already into, marked with Witness

 12 Putman's --

 13 MR. McGLOTHLIN: Yes.

 14 CHAIRMAN CARTER: Okay. You may proceed.

 15 BY MR. McGLOTHLIN:

 16 Q. Mr. Weintraub, do you recognize this as the

 17 summary of the bids that were received and evaluated as

 18 a result of the 2004 RFP?

 19 A. I do.

 20 Q. There is a -- in the left column under the

 21 caption Supplier there is a subcaption or subset called

 22 Western Coals. Do I understand correctly that the one,

 23 two, three, four, five, six, seven, eight, nine

 24 suppliers listed there are producers of Powder River

 25 Basin coal?

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 1 A. Other than the very last one which is Oxbow.

 2 That's a Colorado bituminous coal which is not

 3 sub-bituminous.

 4 Q. Okay. So the top eight were producers of

 5 Powder River Basin coal. In terms of the rest of the

 6 information there, on the right-hand column there's a

 7 caption called Evaluated Utilized Cost. Do you see

 8 that?

 9 A. I do.

 10 Q. And as I understand it, that is the value that

 11 Progress Energy assigns to a particular coal under

 12 consideration after taking into account the cost of the

 13 commodity, the cost of the transportation and the

 14 measured impacts of the coal under consideration on unit

 15 operation; is that correct?

 16 A. That's correct. Many of those are forecasted

 17 transportation prices and so forth, but that's correct.

 18 Q. This is, this is the value that is the result

 19 of the evaluation process at the time the bids to an RFP

 20 are being considered; correct?

 21 A. That's correct.

 22 Q. Now with respect to the -- let me back up.

 23 The second column from the left-hand side is, is

 24 captioned Term. And do I understand correctly that this

 25 indicates the years during which the bidder was offering

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 1 to deliver coal?

 2 A. That is correct. That's typically what's the

 3 term offered on the bid from the coal supplier.

 4 Q. So several of the western providers were

 5 offering to deliver coal during the '06 and '07 time

 6 frame that is the subject of this docket; correct?

 7 A. That's correct.

 8 Q. And would you agree with me, and take a moment

 9 if you need it, as compared with the other categories,

 10 the Central Appalachian coals and the foreign coals, and

 11 limiting the question to those offers that would have

 12 been applicable to '06 and '07, the, some of the Powder

 13 River Basin producers offered the lowest evaluated and

 14 utilized cost that the company received in the RFP?

 15 A. Off of that spreadsheet, that's correct,

 16 given, given the forecasted transportation, the

 17 forecasted emission prices and so forth, not taking into

 18 account any of the capital upgrades that would be

 19 required and so forth. So this is really looking at

 20 just particular, the bid itself, not taking into account

 21 any other considerations.

 22 Q. It takes into account those, all those

 23 considerations that the company encompasses at the time

 24 it evaluates bids in an RFP; correct?

 25 A. This process encompasses the commodity and the

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 1 transportation cost to evaluate bids.

 2 Q. Does it take into account all the

 3 considerations that the, that, that the utility includes

 4 at the time it is evaluating and scoring bids to an RFP?

 5 A. Maybe I can help answer that question if you

 6 can give me some examples of what else you're referring

 7 to.

 8 Q. I'm referring to the process that Progress

 9 Energy follows at the time it issues an RFP, receives

 10 bids and then evaluates, scores and ranks those bids and

 11 then arrives at the results of the RFP process. Does

 12 the evaluated utilized cost shown on the right-hand

 13 column reflect the end result of every consideration

 14 that is involved in the preparation of the RFP, the

 15 receipt of the bids, the evaluation of the bids and the

 16 preparation of an evaluated utilized cost?

 17 A. In the bid process, yes, it does.

 18 Q. One of the entries there is for the, under the

 19 origin there is a reference to the PRB North Rochelle

 20 mine. Do you see that?

 21 A. I do.

 22 Q. Do you recognize that as the same mine that

 23 provided the, the coal for the attempted 2004 test burn

 24 that was avoided by the company?

 25 A. I believe it is.

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 1 CHAIRMAN CARTER: Mr. McGlothlin, would you

 2 yield for a moment, please?

 3 MR. McGLOTHLIN: Yes.

 4 CHAIRMAN CARTER: Thank you.

 5 Commissioner Skop, you're recognized.

 6 COMMISSIONER SKOP: Could Mr. McGlothlin --

 7 thank you, Mr. Chair. Could Mr. McGlothlin please read

 8 back the name of that one mine and where it is on the,

 9 on the handout?

 10 MR. McGLOTHLIN: In the column called Western

 11 Coals under the column called Origin, it says PRB N,

 12 standing for North, Rochelle, R-O-C-H-E-L-L-E.

 13 COMMISSIONER SKOP: Okay. And that would be

 14 from the Triton mine; is that correct?

 15 MR. McGLOTHLIN: It was at the time, yes.

 16 COMMISSIONER SKOP: Okay. After

 17 Mr. McGlothlin is through I have some additional

 18 questions on that. Thank you.

 19 CHAIRMAN CARTER: Okay. Mr. McGlothlin, you

 20 may proceed.

 21 BY MR. McGLOTHLIN:

 22 Q. And what is the evaluated utilized cost of the

 23 North Rochelle coal that's reflected on the right-hand

 24 column?

 25 A. $2 per MMBtu.

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 1 Q. Would you agree with me that like the

 2 Kennecott offers that are also reflected there, the

 3 North Rochelle, North Rochelle value of $2 is less than

 4 any of the Central Appalachian coals or foreign coals on

 5 an evaluated basis?

 6 A. On this, for this particular spreadsheet it

 7 is, it is lower cost than some of the Central

 8 Appalachian coals and foreign coals that are on here.

 9 But as I said in my testimony, this will not be cheaper

 10 than some of the blend coals that were purchased in '06

 11 and '07.

 12 Q. But the decision point of the process of

 13 supplying deliveries in '06 was in April of 2004, was it

 14 not?

 15 A. It was part of as well as in 2005 and 2006 as

 16 well as in 2003. So there's a time frame of when all

 17 the coal that arrives at Crystal River in '06, there's a

 18 history there, including coals that were purchased in

 19 the '06 time frame.

 20 Q. Okay. Do you know --

 21 CHAIRMAN CARTER: Mr. McGlothlin, would you

 22 yield for a moment, please?

 23 MR. McGLOTHLIN: Yes.

 24 CHAIRMAN CARTER: Commissioner Skop.

 25 COMMISSIONER SKOP: Thank you, Mr. Chairman.

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 1 Just as a point of information, Mr.

 2 McGlothlin, are we speaking now strictly to the refund

 3 in question for the 2006 year and not the 2007?

 4 MR. McGLOTHLIN: Yes.

 5 COMMISSIONER SKOP: Thank you.

 6 CHAIRMAN CARTER: You may proceed.

 7 BY MR. McGLOTHLIN:

 8 Q. Isn't it a fact, sir, that as a result of the

 9 RFP process that began in April 2004 and based upon the

 10 evaluation of the bids received in that RFP process,

 11 Progress Energy did contract for deliveries of a portion

 12 of the requirements for Crystal River 4 and 5 in 2006?

 13 A. I'm sorry. Can you repeat the question?

 14 Q. Yes. Isn't it true that after receiving the

 15 bids to the April 2004 RFP, many of which encompassed

 16 offers to deliver coal in the years '06 and '07, and

 17 after evaluating those bids Progress Energy entered into

 18 contracts with several of these entities for delivery of

 19 coal to Crystal River 4 and 5 in 2006?

 20 A. Correct.

 21 Q. Is it true that at the time Progress Energy

 22 conducted the April 4, April 2004 RFP, it was not, it

 23 did not have a permit authorizing it to burn any of the

 24 sub-bituminous coals listed on this document?

 25 A. That fact came during the PRB test burn itself

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 1 that there was not a permit required to burn

 2 sub-bituminous coal. So it was in the middle of the

 3 test burn when it came to the attention that the air

 4 permit did not have sub-bituminous coal listed

 5 specifically on that, on the air permit.

 6 Q. But you would agree that at the time of the

 7 evaluation process Progress Energy had no ability to

 8 contract with any of the producers of the sub-bituminous

 9 coal that are, that submitted bids to this RFP.

 10 A. Well, we started the testing process, we did

 11 the '04 test burn that ultimately came and showed that

 12 we did not have a permit.

 13 Q. And didn't that more or less coincide with the

 14 evaluation process? Progress Energy became aware of its

 15 limitations during the evaluation process associated

 16 with the 2004 RFP.

 17 A. Again, they became aware on, in the middle of

 18 the test burn. I don't have the exact dates of what

 19 that test burn was, and we can figure out exactly when

 20 it compares to when these coal prices were evaluated.

 21 Q. So I think you're agreeing with me -- would

 22 you agree that at the time Progress Energy was

 23 evaluating bids and contracting for deliveries of coal

 24 in 2006 to Crystal River 4 and 5, as a result of the

 25 information gained in the RFP it was unable to purchase

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 1 any of the sub-bituminous coals that were offered in

 2 that RFP?

 3 A. We started the testing process for

 4 sub-bituminous coals off of this particular RFP. And we

 5 would -- as for coals that we're not familiar with, we'd

 6 start the testing process to get familiarity with the

 7 coal. And then after the test burn, if we're

 8 successful, we can then go forth and procure the coal.

 9 Q. Yes, sir. I think in your answer you are

 10 trying to establish the point in time at which the

 11 persons in the procurement department were alerted by

 12 the persons in environmental that there were some

 13 limitations on your ability.

 14 Regardless of when that became known company

 15 wide, it's true, is it not, that at the time the RFP was

 16 issued and the bids received, Progress Energy was unable

 17 to purchase any of the sub-bituminous coal offered by

 18 the sub-bituminous producers?

 19 A. I don't know exactly what would have stopped

 20 us from purchasing the sub-bituminous coal if we thought

 21 we had a permit and therefore we also did the test burn.

 22 Q. All right. Would you agree with me that

 23 Progress Energy had no ability to burn any of the

 24 sub-bituminous coal it might have purchased under the

 25 mistaken notion that it could do so?

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 1 A. We would have started the testing process. We

 2 did a test burn without the proper air permit.

 3 MR. BURNETT: Mr. Chairman, excuse me. If it

 4 helps, I'll be, I'll be willing to stipulate that we

 5 didn't have the proper permits at this time, nor had we

 6 completed the testing process. I can stipulate that, if

 7 it helps move things along.

 8 MR. McGLOTHLIN: And would you also stipulate

 9 that as a consequence Progress Energy could not have

 10 purchased and burned any of the offers received from

 11 sub-bituminous producers in the 2004 RFP?

 12 MR. BURNETT: Sir, I could certainly stipulate

 13 that because we didn't have a permit, we couldn't have

 14 burned it pursuant to a permit we didn't have. We could

 15 have certainly purchased it and planted flowers in it or

 16 something, if we wanted to.

 17 CHAIRMAN CARTER: Mr. McGlothlin, are you

 18 comfortable with that?

 19 MR. McGLOTHLIN: Yes. And --

 20 CHAIRMAN CARTER: Yes and no.

 21 MR. McGLOTHLIN: -- planting flowers would

 22 pretty the place up.

 23 I have another exhibit to distribute.

 24 CHAIRMAN CARTER: While you're doing that,

 25 Commissioner, you -- is this an appropriate time before

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 1 we go to another subject?

 2 COMMISSIONER SKOP: Yeah. I guess this would

 3 be a good time, Mr. Chair.

 4 Mr. Weintraub, I guess --

 5 CHAIRMAN CARTER: You're recognized.

 6 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 7 I just had a couple of questions for Mr.,

 8 Mr. Weintraub. I guess on the exhibit that OPC has just

 9 provided it lists suppliers of western coal. And if you

 10 could help me out, I guess OPC was referring to the

 11 PRB North Rochelle from the Triton mine. And I believe,

 12 I thought I heard them say that that was the coal that

 13 Progress had procured for the test burn. Am I mistaken

 14 on that?

 15 THE WITNESS: I believe that's correct.

 16 COMMISSIONER SKOP: Okay. And the coal from

 17 the Triton mine, and, again, I'll go back to

 18 Mr. Sansom's prior exhibits and testimony that have

 19 been, I believe, entered in -- or do we need to enter

 20 them in formally? But I guess Mr. Sansom is now

 21 deceased. And during the last iteration of this I

 22 thought a lot of his testimony, so that's what I'm

 23 familiar with. But he had, very similar to like a tour

 24 of Napa Valley, he had a chart of the PRB Powder River

 25 Basin type coal mines. And I guess, subject to check,

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 1 and I'll get into that with the technical witness, but

 2 at least from the exhibit that he had provided it seemed

 3 to me that the design fuel blend was for Campbell

 4 County, Wyoming, coal, and I just wanted to see if you

 5 had an understanding whether the PRB from North Rochelle

 6 from the Triton mine was, was in that county. I believe

 7 it is, but I just --

 8 THE WITNESS: I believe it is as well.

 9 COMMISSIONER SKOP: Okay. Whereas, the -- I

 10 guess the other question I would have is that on that

 11 same basis Mr. Putman has done an evaluation as to what

 12 fuel should have been chosen on a basis, an evaluated

 13 basis. And I think that in your rebuttal testimony you

 14 characterize that as cherrypicking, if I read correctly.

 15 But I believe -- do you know which of the western coals

 16 on that chart that he picked to use for his analysis?

 17 THE WITNESS: Yes. It was the second from the

 18 top of the western coals, the Kennecott.

 19 COMMISSIONER SKOP: Okay.

 20 THE WITNESS: And the second from the bottom,

 21 which is Kennecott. And that one was a blend of

 22 Illinois Basin coal and the Montana sub-bituminous coal.

 23 COMMISSIONER SKOP: Okay. And subject to

 24 check, would you agree that neither of those mines are

 25 located in Campbell County, Wyoming?

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 1 THE WITNESS: That's correct.

 2 COMMISSIONER SKOP: Okay. So they would not

 3 be mines that were, that the plant was -- I guess the

 4 design fuel blend was not specified to those two

 5 particular mines.

 6 THE WITNESS: That's correct.

 7 COMMISSIONER SKOP: Okay. And on those two

 8 particular mines, subject to check, but would you agree

 9 that the sulfur content on both of those mines is much

 10 higher than that of the Triton mine from Campbell

 11 County, Wyoming?

 12 THE WITNESS: It is higher.

 13 COMMISSIONER SKOP: All right. Thank you.

 14 One more question.

 15 And would you also agree that based on the

 16 Kennecott pricing that Mr. Putman has used at the far

 17 right column the evaluated price is significantly lower

 18 than the other mines that have better or lower sulfur

 19 content; is that correct?

 20 THE WITNESS: That's correct.

 21 COMMISSIONER SKOP: All right. Thank you.

 22 CHAIRMAN CARTER: Thank you. Anything further

 23 from the bench?

 24 Mr. McGlothlin, you may proceed.

 25 MR. McGLOTHLIN: We have -- we distributed a

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 1 document that is captioned 2005/2007 Request for

 2 Proposals Purchase Activity.

 3 CHAIRMAN CARTER: Do you need a number for

 4 that?

 5 MR. McGLOTHLIN: This also is attached to

 6 Mr. Putman's testimony.

 7 CHAIRMAN CARTER: Okay. Thank you.

 8 BY MR. McGLOTHLIN:

 9 Q. Sir, do you recognize this as the report that

 10 was prepared by the person who was then in charge of

 11 fuel procurement to management with respect to the

 12 purchases made as a result of the 2004 RFP?

 13 A. Yes.

 14 Q. I want to direct your attention, first of all,

 15 to the bottom paragraph of the first page, which refers

 16 to the results from the 2005/2007 RFP and the Drummond

 17 Colombian coal purchase noted above. And those

 18 purchases and negotiations took place contemporaneously,

 19 did they not, in the 2004 time frame?

 20 A. They took place in 2004 after the RFP.

 21 Q. Now if you'll turn the page, you'll see on the

 22 second page the caption 2005/2006 Purchases, and the

 23 first entry is called Foreign Water. And there's a

 24 reference to purchasing 800,000 tons for 2005 and one

 25 million tons for 2006 from Drummond's, I'll probably

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 1 mispronounce this, Pribbenow mines. Do you see that

 2 reference?

 3 A. Yes.

 4 Q. And it says this is delta coal. Do I

 5 understand correctly that this was, particular purchase

 6 was for Crystal River 4 and 5?

 7 A. That's correct. These are particular

 8 purchases that came through the Mobile port that were

 9 then ultimately going on to Crystal River 4 and 5.

 10 Q. And then it says, "The delivered cost to

 11 Crystal River" --

 12 CHAIRMAN CARTER: Mr., Mr. -- before you move

 13 to your next point there, Commissioner Skop.

 14 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 15 Just, Mr. McGlothlin, a point of

 16 clarification. With respect to the coals we're talking

 17 about now, is that foreign bituminous coal as opposed to

 18 sub-bituminous?

 19 MR. McGLOTHLIN: The Drummond is, yes.

 20 COMMISSIONER SKOP: All right. So strictly

 21 foreign bituminous coal.

 22 MR. McGLOTHLIN: The Drummond is. Yes, sir.

 23 COMMISSIONER SKOP: All right. Thank you.

 24 CHAIRMAN CARTER: You may proceed.

 25 BY MR. McGLOTHLIN:

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 1 Q. You see there that the entries are for a cost

 2 of $2.509 per MMBtu and $2.531 per MMBtu.

 3 A. Yes.

 4 Q. And the other item of interest is the domestic

 5 water. Again there's a reference there to delta coal.

 6 Does that signify a purchase for Crystal River Units 4

 7 and 5?

 8 A. That's correct.

 9 Q. And do I understand correctly that with

 10 respect to 2006 the company purchased 180,000 tons of

 11 delta coal from Massey Energy?

 12 A. That's what is on this memo. That's correct.

 13 Q. And then there's this sentence that says,

 14 "This coal will be rail-delivered to the Ohio River and

 15 will deliver into Crystal River at $2.698 per million

 16 Btus." Does rail-delivered to the Ohio River mean that

 17 it's going to be delivered to Crystal River by water?

 18 A. Yes.

 19 Q. Now would you agree with me that the delivered

 20 cost of these purchases, both of Drummond and Central

 21 Coal Company, when measured against the evaluated

 22 utilized costs shown on the prior document I gave you

 23 are higher than any of the evaluated utilized costs

 24 shown for the producers of sub, Powder River Basin

 25 sub-bituminous coal?

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 1 A. They are. This is the base coal that you

 2 would be blending the blend coal with.

 3 Q. At Page 6, Line 22 of your testimony --

 4 A. Yes.

 5 Q. -- at the bottom of the page this question is

 6 posed: "How were coals burned at Crystal River 4 and 5

 7 during 2006 and 2007 procured?" And in the answer that

 8 follows you say, "Some of the coals were procured under

 9 competitive bid processes which occurred in 2005 and

 10 earlier. Additionally, new coal purchases were procured

 11 through the January 2006 solicitation or through spot

 12 purchases."

 13 Is that reference to competitive bid processes

 14 which occurred in 2005 and earlier, does that constitute

 15 your entire reference to the 2004 RFP during which the

 16 sub-bituminous producers provided the lowest bids?

 17 A. Well, I think I'm responding as to when the

 18 coal that was received in '06, how it was procured. And

 19 I do -- to respond specifically to your question, the

 20 spot purchases that were made in '06 will beat PRB coal

 21 for blending purposes at Crystal River.

 22 Q. My question is this. This reference to

 23 competitive bid processes which occurred in 2005 and

 24 earlier, that's everything you had to say in your direct

 25 testimony with respect to the RFP.

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 1 A. It was all the previous RFPs prior to '05 that

 2 had contracts. There could be some delivery makeups and

 3 so forth that would show up as to the coals that arrived

 4 in 2006 at Crystal River.

 5 Q. But this is everything you had to say about it

 6 at that time; right?

 7 A. As far as the question of how were the coals

 8 burned procured for '06 and '07, that's correct.

 9 Q. You do discuss in some detail the 2006 RFP,

 10 did you not?

 11 A. I do discuss the 2006 RFP.

 12 Q. And in that RFP the company sought bids for

 13 deliveries in 2007, 2008 and 2009; is that correct?

 14 A. That's correct.

 15 Q. You note that only one producer of Powder

 16 River Basin coal participated in the RFP; correct?

 17 A. No. I respond that only one PRB -- that no

 18 PRB producers provided a bid for PRB coals and that a

 19 broker provided a bid for PRB coal.

 20 Q. Okay. A broker as distinguished from a

 21 producer. I take, I take your point. But the one

 22 broker did submit a bid to provide Powder River Basin

 23 sub-bituminous coal.

 24 A. Yes.

 25 Q. Okay. But as you're aware, there were the two

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 1 bids from producers of Indonesian sub-bituminous coal;

 2 correct?

 3 A. That's correct.

 4 Q. The next handout I have has been flagged by

 5 Progress Energy as a confidential document. I'm going

 6 to provide you with a red folder containing that

 7 document.

 8 CHAIRMAN CARTER: You may proceed.

 9 While they're doing that, I want to take a

 10 moment to thank staff for being able to put our, all of

 11 the data on a CD for us. It makes it easier to read.

 12 Thank you.

 13 Commissioner Skop.

 14 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 15 Just I found the specific references to the prior

 16 testimony documents that I referred to. So for the

 17 court reporter, it was Mr. Sansom's testimony and

 18 Exhibit RS-23, Page 4 of 7, cross-referencing back to

 19 Exhibit RS-5, Page 1 of 4, which shows the Powder River

 20 Basin mines.

 21 CHAIRMAN CARTER: Thank you.

 22 Mr. McGlothlin.

 23 MS. HELTON: Mr. Chairman.

 24 CHAIRMAN CARTER: One second.

 25 MS. HELTON: Can I just ask a point of

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 1 clarification? Is all the information on this document

 2 confidential, because I don't see anything highlighted

 3 in yellow, or is it just certain parts of it? I just

 4 want to --

 5 MR. McGLOTHLIN: Only parts of it. The,

 6 the -- this is again attached to David Putman's prefiled

 7 testimony. And in the public version there are certain

 8 columns that have been blacked out, and this is the

 9 unredacted version of that.

 10 MS. HELTON: I'm just a little bit concerned

 11 about how people will know what to keep confidential,

 12 which, which parts of it.

 13 MR. BURNETT: Mr. Chair.

 14 CHAIRMAN CARTER: Mr. Burnett.

 15 MR. BURNETT: If I could take maybe 60 seconds

 16 with Mr. Weintraub, I may be able to make life easy, if

 17 I could just --

 18 CHAIRMAN CARTER: Okay. Let's do -- let's

 19 take a five-minute break. We're on recess.

 20 (Recess taken.)

 21 We're back on the record. And when we left,

 22 Mr. McGlothlin, you're recognized, sir.

 23 MR. BURNETT: Thank you, sir. With your

 24 permission, Mr. Chairman, I'll continue to stipulate

 25 when we can and try to do this just to keep things

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 1 moving along throughout the process here.

 2 I've consulted with Mr. Weintraub and where

 3 we're at in the year now with this, we can go ahead and

 4 declassify all of this. So we can, we can lose the red

 5 envelopes.

 6 CHAIRMAN CARTER: Okay. Mr. McGlothlin, you

 7 may proceed.

 8 BY MR. McGLOTHLIN:

 9 Q. Mr. Weintraub, we have distributed for

 10 convenience one of the exhibits attached to Mr. Putman's

 11 testimony. You should have a two-page document that's

 12 captioned DJP-8. Do you have that, sir?

 13 A. I do.

 14 Q. Do you recognize this as the summary of bids

 15 to the 2006 RFP that you describe in your testimony?

 16 A. I do.

 17 Q. And would this be a counterpart to the summary

 18 that was distributed earlier with respect to the outcome

 19 of the 2004 RFP?

 20 A. Similar, yes.

 21 Q. Yes. And, Commissioners, if you'll regard

 22 this as one wide page as opposed to Pages 1 and 2, that

 23 would help you navigate the columns. I'll direct your

 24 attention to the two bids from the Indonesian producers

 25 of sub-bituminous coal. In the middle of the left-hand

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 1 column under Supplier there's a reference to PT Adaro

 2 Indonesia. Do you see that?

 3 A. I do.

 4 Q. And the very last one, PT Kideco, do you see

 5 that one?

 6 A. PT Kideco. That's correct.

 7 Q. Kideco. Thank you. And if you'll move across

 8 the page to the far right side of Page 2 of 2, there's a

 9 column that says Evaluated Utilized Rank. Do you see

 10 that --

 11 A. Yes.

 12 Q. -- with respect to the 2007? Do I understand

 13 correctly from what's depicted here that the number one

 14 ranking was given to the PT Adaro Indonesian coal?

 15 A. That's correct.

 16 Q. And the second ranking was given to the other

 17 Indonesian producer, PT Kideco.

 18 A. From the evaluated utilized rank, that's

 19 correct.

 20 Q. Yes. And, again, the evaluated utilized rank

 21 was the mechanism by which the utility compared the, all

 22 of the bids submitted to it and displayed them on what

 23 it attempts to be an apples-to-apples comparison;

 24 correct?

 25 A. Well, in my testimony I talk about that as one

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 1 of the inputs. So, for example, cash cost ranking as

 2 well, utilized ranking. We now take a lot of, like a

 3 credit history, how, how much coal. That is one, one

 4 particular aspect of the RFP process. In particular, if

 5 you look at the PT Kideco bid from a cash cost basis, it

 6 ranks number 18. So when you're ranking it on cash

 7 outlay, it ranks 18th compared to the utilized rank.

 8 Q. And for purposes of identifying the most

 9 desirable coals when one considers not only cash but

 10 also transportation and the impacts on operations, is it

 11 correct that you turn to the evaluated utilized column

 12 to do that?

 13 A. The cash cost does include transportation.

 14 And then we also utilize the evaluated utilized rank to

 15 address other operational issues with those particular

 16 coals.

 17 Q. And is that the value that one -- that the

 18 utility regards as the most meaningful with respect to

 19 the value of the coal being offered to it?

 20 A. It is, it is meaningful, correct. But it's

 21 part, it's part of the entire process of looking at many

 22 different factors.

 23 I lay out in my testimony on Page 5 that when

 24 we take into consideration factors such as

 25 specifications of the bid, you know, conformity to what

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 1 we're looking for, coal quality and quantity, unit

 2 prices, any exceptions, supplier reliability, supplier

 3 operations, previous performance with that supplier and

 4 any other considerations more -- to give you an example

 5 would be credit right now is very important when you're

 6 looking at how creditworthy is a supplier.

 7 Q. Okay. Now in your testimony you do not refer

 8 at all to the Indonesian bids, do you?

 9 A. No. In this testimony I'm following the

 10 Commission order dealing with Powder River Basin coal.

 11 Q. Okay.

 12 A. In my rebuttal testimony I'll address the

 13 Indonesian coal and the Kennecott coal that you bring

 14 up.

 15 Q. And as I understand it, your contention is

 16 that the order limited the company to a consideration of

 17 Powder River Basin coal in Campbell County, Wyoming; is

 18 that correct?

 19 A. My contention is the Commission order stands

 20 on itself that this was to evaluate Powder River Basin

 21 coal, the 8,800.8 pound coal that we talked about for

 22 roughly a week last time we were here.

 23 Q. Yes. And did I understand you to say in

 24 response to an earlier question that you were interested

 25 enough in the Indonesian coal to attempt to arrange to

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 1 purchase a portion of it for test purposes?

 2 A. We were interested in looking at more of the

 3 Indonesian coal. That's correct.

 4 MR. McGLOTHLIN: No further questions.

 5 CHAIRMAN CARTER: Thank you.

 6 Commissioner Skop, you're recognized.

 7 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 8 I just want to get back to I guess a couple of

 9 questions that just came up as a result of the exhibit.

 10 I guess, Mr. Weintraub, would your interpretation of the

 11 prior Commission order on the other docket basically

 12 indicate that the, it was the Commission's finding that

 13 at a minimum that an 80/20 fuel blend of bituminous/PRB

 14 sub-bituminous coal was appropriate for the CR4 and CR5

 15 units?

 16 THE WITNESS: Correct.

 17 COMMISSIONER SKOP: Okay. And in terms of the

 18 design specification, and I have actually the references

 19 which I'll get to in a second, but the design spec again

 20 references PRB from Campbell County, Wyoming. And that

 21 is domestic PRB; is that correct?

 22 THE WITNESS: That's correct.

 23 COMMISSIONER SKOP: Okay. So if we were

 24 evaluating the price of doing what was under the design

 25 spec to the letter of the design, if you will, there

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 1 would be, as in any case, delivery risk associated with

 2 procuring coal from, you know, such distance across

 3 country.

 4 THE WITNESS: Correct.

 5 COMMISSIONER SKOP: Okay. Because I've had

 6 that happen to me when I had a co-gen plant or, you

 7 know, force majeure events happen. I think that was at

 8 issue in the last docket.

 9 Certainly I think that you stated that in

 10 terms of evaluated basis that the delivery, I mean, that

 11 the delivery risk was not evaluated or priced into the

 12 evaluated cost; is that correct?

 13 THE WITNESS: That's correct.

 14 COMMISSIONER SKOP: Okay. Now all things

 15 being equal, where you have domestic supply and

 16 international supply, and I don't know how far Indonesia

 17 is away but I imagine about 10,000 miles or more,

 18 certainly would it be reasonable to expect that, you

 19 know, if there were a delivery interruption, that would

 20 preclude Progress from being able to burn an 80/20

 21 blend?

 22 THE WITNESS: Yes. The Indonesian coal -- PT

 23 Kideco is a good example. Their offices were based in

 24 Jakarta on the island of Bali or the island of Jaya,

 25 Indonesia. Just contacting them was almost impossible

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 1 to do.

 2 COMMISSIONER SKOP: Okay. I need to do some

 3 external research, but I think that they have like

 4 revolutionary stuff going on over there.

 5 But I guess my point that I'm trying to make

 6 is that under the design spec you had to procure coal

 7 domestically, and that was the performance guarantee,

 8 what the performance guarantee was based on. And I

 9 guess the problem I'm struggling with, and perhaps you

 10 might be able to help me better understand it, if

 11 Progress was supposed to do something and they didn't do

 12 it, obviously I'm not happy about that and I think that

 13 was clearly articulated in my concurring opinion to the

 14 last order. But at least it seems to me that the -- if

 15 you're supposed to do something and the probability of

 16 being able to do it and subjecting yourself to delivery

 17 risk, obviously the closer the source of the fuel, the

 18 less chance, I would think, that you would have of, of

 19 being able to have supply interrupted. Is that

 20 generally true?

 21 THE WITNESS: It's true. I'll give you an

 22 example. In the last fuel hearing we had a supplier

 23 from Venezuela, a coal supplier, and the Venezuelan

 24 government didn't like the contract and just did not

 25 perform. And our ability to, to seek damages was

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 1 severely limited by the fact that they were a foreign

 2 government.

 3 COMMISSIONER SKOP: Okay. And I guess, let

 4 me, if I may, and I'll look to our legal counsel the

 5 proper way to do this, on Mr. Sansom's prior exhibit --

 6 and, again, Mr. Sansom is now deceased is my

 7 understanding.

 8 THE WITNESS: Unfortunately so.

 9 COMMISSIONER SKOP: Unfortunately. He was a

 10 pretty good witness, at least from my eyes. But what

 11 I'd like to do is I have two pages from his prior

 12 exhibit, and I'd like to ask the witness to read, to

 13 answer a question from those. Is that possible?

 14 MS. BENNETT: I think with the permission of

 15 the Chair.

 16 COMMISSIONER SKOP: Mr. Chair.

 17 CHAIRMAN CARTER: Let's do this. Let's take

 18 this under advisement. Ms. Helton, why don't we just

 19 take a moment for you to look that over and kind of give

 20 us some guidance on that.

 21 Commissioner Argenziano, you're recognized.

 22 COMMISSIONER ARGENZIANO: Yes. Just in all

 23 fairness, because I'm not so sure that -- I mean, I

 24 understand the points that Commissioner Skop was trying

 25 to make, but I'm not so sure that that pans out. Are

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 1 there other companies who use foreign coal?

 2 THE WITNESS: We use a lot of foreign coal,

 3 predominantly Colombian and Venezuelan coal.

 4 COMMISSIONER ARGENZIANO: Well, wouldn't the

 5 same thing apply to any other country?

 6 THE WITNESS: They would. Indonesian coal,

 7 the Indonesian coal typically flows to the Asian market.

 8 And for a brief period of time -- one of the main

 9 reasons why Indonesian coal briefly had a, had a window

 10 of opportunity here in the United States was because the

 11 PRB disruptions that occurred in the '05/'06 time frame,

 12 that severely limited sub-bituminous Powder River Basin

 13 companies from, utilities from getting the coal, and so

 14 they were looking at Indonesian coal. But Indonesian

 15 coal flows to China and to Japan. It is an

 16 Asian-specific market. And the opportunity for

 17 Indonesian coal came and went very quickly and it's not

 18 a fuel that's utilized --

 19 COMMISSIONER ARGENZIANO: But I'm not -- and

 20 maybe taking that into consideration, I'm trying to

 21 figure out Commissioner Skop's point. If -- I guess the

 22 interruption maybe more so is what you're saying with

 23 Indonesian coal.

 24 THE WITNESS: Yes.

 25 COMMISSIONER ARGENZIANO: And not so much with

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 1 foreign coal and --

 2 THE WITNESS: The foreign coals, the South

 3 American coals, there's a history there of them

 4 providing utilities along the Gulf Coast, a history of

 5 providing reliable supply.

 6 COMMISSIONER ARGENZIANO: Have there ever been

 7 interruptions in the other countries for foreign coal?

 8 THE WITNESS: Well, for example, the

 9 Venezuelan government just did -- they didn't like their

 10 contract, said it was illegal and they pulled it. The

 11 Indonesian coal, because it typically is going to the

 12 Chinese market, that if they saw a Chinese buyer willing

 13 to pay more, they could very easily just flip back to

 14 their historical coal flows.

 15 COMMISSIONER ARGENZIANO: But would they do

 16 that if you had a contract with them?

 17 THE WITNESS: They would.

 18 COMMISSIONER ARGENZIANO: They would still do

 19 that?

 20 THE WITNESS: Sure.

 21 COMMISSIONER ARGENZIANO: So doesn't that then

 22 say to me or to other people looking that any foreign

 23 coal anywhere could be subject to that type of

 24 volatility in a sense?

 25 THE WITNESS: There is that risk. I think the

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 1 fact that some suppliers, such as OPC pointed out, with

 2 Drummond coal, we have a history with the Drummond coal,

 3 that Southern Company uses them, other people use them.

 4 So there is a history. They're based in the United

 5 States. So some foreign coal mines do have U.S.

 6 subsidiaries with U.S. headquarters. These particular

 7 ones were based predominantly out of Indonesia.

 8 COMMISSIONER ARGENZIANO: But of course then

 9 if we really looked into it, anything could happen in a

 10 foreign country to change that history or that

 11 relationship.

 12 THE WITNESS: Absolutely.

 13 COMMISSIONER ARGENZIANO: And I guess what I'm

 14 trying to get at is if Commissioner Skop is saying that

 15 the Indonesian coal is subject to this possible here and

 16 there, not there, all foreign coal would be then.

 17 THE WITNESS: There's definitely risk with

 18 foreign coal that we take into consideration. The

 19 Indonesian coal being so far away and the fact that,

 20 that they predominantly don't come to the U.S., there's

 21 probably more risk with Indonesian coal.

 22 COMMISSIONER ARGENZIANO: Uh-huh. Sure.

 23 THE WITNESS: But any foreign coal has a

 24 particular risk.

 25 COMMISSIONER ARGENZIANO: And was there any

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 1 other -- maybe staff can answer this. Is there any

 2 other countries that were using Indonesian coal at that

 3 time? Let's say in 2006 when the bidding was taking

 4 place.

 5 And then I guess -- and I understand the

 6 history and the comfort of that, but I also am trying to

 7 figure out because of Commissioner Skop's points as to

 8 if it makes a difference in what we're discussing today

 9 at all. If it was available, does it make a difference

 10 that somewhere down the line, ten years from now or two

 11 years from now, it wouldn't be available? Is that what

 12 the company is charged in looking at? I mean, I know

 13 risk is important, but I need to understand the whole

 14 picture. And since Commissioner Skop brought that up --

 15 MS. BENNETT: I -- staff does not know, but I

 16 think this witness has some information or maybe

 17 Mr. Putman has some information of some other utilities

 18 in Florida that have had experience with Indonesian

 19 coal. And you might ask this witness and then again I

 20 think there's --

 21 COMMISSIONER ARGENZIANO: Other witnesses.

 22 Okay. We can do that.

 23 MR. McGLOTHLIN: Mr. Putman does have some

 24 information on that subject, Commissioner.

 25 COMMISSIONER ARGENZIANO: Okay. And I'll look

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 1 forward to that too. And anything you might want to add

 2 to that.

 3 THE WITNESS: Sure. There was, as I

 4 mentioned, the Powder River Basin coal burners couldn't

 5 even get Powder River Basin coal particularly in the

 6 '05/'06 time frame due to weather issues that occurred

 7 on the, what's called the join line, one of the rail

 8 lines going into the Powder River Basin region. Because

 9 of that there's, there's evidence of the Scherer plant,

 10 which is a Southern 100 percent PRB burner, did seek

 11 coal to do a test burn and go and seek Indonesian coal

 12 to supplement their deliveries that they were unable to

 13 get during this time frame.

 14 So there are some utilities that looked at it

 15 but they have stopped doing that. I think that you'll

 16 see that the cost of doing that, of moving the coal

 17 across, halfway around the world is very -- is not the

 18 most cost-effective. And I think you'll see in my

 19 rebuttal testimony even this Indonesian coal is not

 20 cost-effective.

 21 COMMISSIONER ARGENZIANO: To your knowledge,

 22 did anyone actually use that coal and were there any

 23 realized savings to the consumers?

 24 THE WITNESS: I think in, for, for the Scherer

 25 plant in particular the cost of the Indonesian coal was

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 1 significantly higher than the costs that they were

 2 typically burning. It was, from what I've seen it's

 3 even, it was more expensive than any of the coals that

 4 Crystal River was burning.

 5 COMMISSIONER ARGENZIANO: Were they using any

 6 of the Indonesian coal?

 7 THE WITNESS: They were for a brief period of

 8 time, for roughly a year.

 9 COMMISSIONER ARGENZIANO: Why would they if it

 10 was higher cost?

 11 THE WITNESS: They couldn't get the Powder

 12 River Basin coal delivered to them. During this time

 13 frame the railroads basically had an embargo. So

 14 because of this rail delivery constraint the suppliers

 15 were running out of coal.

 16 There was a utility in Arkansas that sued one

 17 of the railroad companies for the avoided or, excuse me,

 18 for the excess cost for generating from less economical

 19 resources because they were running out of coal.

 20 So there's, there's many issues in this

 21 '05/'06 time frame where because Powder River Basin coal

 22 plants couldn't get their coal they had to go to much

 23 more costly means of providing reliable electricity for

 24 their customers.

 25 COMMISSIONER ARGENZIANO: Then that would,

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 1 that would stand to reason then that the Indonesian

 2 coal, although higher than what they were used to using,

 3 was cheaper than other countries at the time?

 4 THE WITNESS: It was, it was what was

 5 available at the time.

 6 COMMISSIONER ARGENZIANO: What was available.

 7 THE WITNESS: Yeah.

 8 COMMISSIONER ARGENZIANO: Okay. Okay. Thank

 9 you.

 10 THE WITNESS: Sure.

 11 CHAIRMAN CARTER: Thank you.

 12 Commissioner Skop.

 13 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 14 I think hopefully I'm going to try and

 15 articulate my point a little bit more succinctly. I

 16 have a document that we're going to hand out to the

 17 Commissioners, the parties, as well as the witness.

 18 I guess -- and I'll wait until they hand that

 19 out. But I guess my central premise is that the design

 20 fuel and the performance guarantee associated with, with

 21 this, the units in question procured domestically

 22 produced coal, and that, you know, the source of the

 23 fuel was from the United States.

 24 Now when there are opportunities to, to save

 25 money, you know, certainly that's, that's a good thing,

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 1 but you also want to ensure adequate supply. I think

 2 some of the issues that have come up have been the

 3 nationalization by the Venezuelan government on just

 4 rescinding, unilaterally rescinding a contract, which

 5 leaves you dead in the water, as well as trying to sue a

 6 foreign government is an exercise in futility, as some

 7 of our other IOUs have experienced.

 8 But I think to, to hit this point home, and,

 9 Mr. Weintraub, if you can't answer these questions, then

 10 I'll look to Witness Stenger to do it because she's

 11 technical, but generally speaking is it true that the

 12 coal from any given coal mine has a unique chemical

 13 composition analogous to a genetic marker that differs

 14 from that of another coal mine?

 15 THE WITNESS: That's not only true, it's even

 16 the same coal in the same coal seam could have different

 17 quality characteristics.

 18 COMMISSIONER SKOP: Okay. And is it also true

 19 that power plants in terms of boilers and, and such are

 20 very sensitive and very temperamental to changes in the

 21 fuel burned to the extent that emissions profiles can be

 22 dramatically changed by just merely throwing in, you

 23 know, even pet coke?

 24 THE WITNESS: I think based upon the number of

 25 phone calls I get from plant managers at times

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 1 complaining, I think that's very true.

 2 COMMISSIONER SKOP: Okay. So if you were

 3 going to source coal from a specific mine consistent

 4 with the design specification for the units that were

 5 built, based on your two prior answers there would be no

 6 direct market substitute for PR coal sourced from a

 7 given mine. I mean, you'd have to go out and conduct

 8 test burns. You know, if there were interruption, you

 9 would have to, to do things to, to make sure that, you

 10 know, your emissions profile didn't swing wildly or

 11 you'd just be forced in the alternative to business as

 12 usual burn 100 percent CAPP coal; is that correct?

 13 THE WITNESS: That's correct. There's a,

 14 there's an entire list of things that we need to take

 15 into consideration that Witness Stenger will be diving

 16 into.

 17 COMMISSIONER SKOP: Okay. And then the

 18 exhibit that you have before you that our attorneys have

 19 just handed out, this was from the prior testimony of

 20 Witness Sansom from RS-4. And my understanding is that

 21 it came from the Babcock & Wilcox specification of the

 22 performance guarantee and the design fuel.

 23 If you could please look at Page 3 of 9. And

 24 at the bottom of the third paragraph, can you read that

 25 last sentence, please?

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 1 THE WITNESS: Sure. "A 50/50 weight blend of

 2 Eastern Province and Campbell County, Wyoming, coals,

 3 Numbers 1 through 7, were selected as the basis for the

 4 performance guarantee."

 5 COMMISSIONER SKOP: And the next sentence,

 6 please.

 7 THE WITNESS: "At the rated output 695

 8 megawatt gross, and the design blend coal heating value

 9 of approximately 23,923 kJ/kilograms, 10,285 Btu per

 10 pound, the coal consumption will be approximately

 11 294,000 kilograms or 648,000 pounds per hour for each

 12 unit."

 13 COMMISSIONER SKOP: And so it would be correct

 14 to understand that that performance guarantee was set on

 15 a specific Btu per pound or a heat content of the

 16 blended coals; correct?

 17 THE WITNESS: That's what I'm reading. That's

 18 correct.

 19 COMMISSIONER SKOP: Okay. And if you could

 20 skip to the third page in that attachment for Type 7

 21 fuel, can you please tell me what that specifies in

 22 terms of the location of where that Type 7 fuel came

 23 from specifically?

 24 THE WITNESS: Campbell County, Wyoming.

 25 COMMISSIONER SKOP: And that is PRB coal; is

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 1 that correct?

 2 THE WITNESS: That is correct.

 3 COMMISSIONER SKOP: Okay. I think, and this

 4 is just for the benefit of my colleagues, I think the

 5 point that I'm trying to articulate is that the design

 6 specification specified domestically procured coal. And

 7 it's good to have alternate supply. But if you're

 8 procuring domestically as your primary and you have

 9 interruption and you're able to use foreign procured

 10 coal if you make it work or maybe it's cheaper, maybe

 11 have some on hand and use it as, you know, as an

 12 additive similar to pet coke, but, you know, you're not

 13 going to be able to burn 80/20 like you should if your

 14 supply chain gets interrupted. And we've seen that

 15 happen historically with flooded mines or railroad

 16 strikes or what have you.

 17 And what I'm trying to get at is that, you

 18 know, I could understand perhaps, and maybe you can shed

 19 some light on this, was Progress looking at Indonesia as

 20 an alternative, a sole alternative or a, just as an

 21 alternative to domestically sourced PRB?

 22 THE WITNESS: We were, we were looking at

 23 Indonesian coal as, I'll call it an arrow in our quiver

 24 to look at potential fuel flexibility. What was -- from

 25 a procurement standpoint what looked attractive about

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 1 Indonesian coal is the low sulfur content. So what that

 2 would allow us to possibly do is to buy higher sulfur

 3 noncompliance coal. Compliance coal typically sells at

 4 a premium compared to noncompliance coal. So,

 5 therefore, if your base coal can be a little bit less,

 6 lesser quality and you can use this blend coal possibly

 7 to keep it within the air permit specifications for the

 8 plant, there might be a cost savings there.

 9 So that was one of the things that was

 10 attractive to us about this Powder River Basin coal,

 11 besides the fact that in many of the documents that we

 12 provided compliance coal is getting tougher and tougher

 13 to find. So we're also looking at just other, other

 14 means of finding some sort of compliance coal to be able

 15 to do some blending with.

 16 COMMISSIONER SKOP: Okay. So if I correctly

 17 understood what you said, and correct me if I'm wrong,

 18 it wasn't as a sole source for the, for the

 19 sub-bituminous coal, it was to supplement and burn when

 20 it was cost-effective. If you had some on hand or you

 21 could get there, you weren't so necessarily concerned

 22 about interruption risk because you had your domestic

 23 procured source.

 24 THE WITNESS: That's correct.

 25 COMMISSIONER SKOP: But when you're able to

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 1 get it, you're able to burn it just like pet coke; is

 2 that correct?

 3 THE WITNESS: That's correct. I can give you

 4 a great example.

 5 When Katrina and Rita really hit the Gulf

 6 Coast and damaged these coal terminals, they had no

 7 means of blending. They were underwater just trying to

 8 survive. We were basically taking coal direct off of

 9 river barges, direct off of import vessels and going

 10 directly to Crystal River. We had no means of doing any

 11 type of blending.

 12 So blending was at the time something that we

 13 would have liked to do, but because of some of the

 14 actual real-world experiences we were unable to do for a

 15 period of time.

 16 COMMISSIONER SKOP: Okay. And then just two

 17 final questions.

 18 I guess with the -- I guess one of the

 19 concerns with, and you may not know this and this may be

 20 better directed to the technical witness, but I guess

 21 one of the concerns with sub-bituminous coal is, is the

 22 propensity for spontaneous combustion with the, with the

 23 dust and the such like that. Is that an issue during

 24 transport?

 25 THE WITNESS: It is.

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 1 COMMISSIONER SKOP: Okay. So if you're

 2 transporting large distances on a barge, I guess I'm

 3 wondering for my own because I don't know, but I know

 4 that, you know, grooming, and even Witness Sansom said

 5 that housekeeping and grooming of the coal is important.

 6 I wonder how that's accomplished in transit on a barge

 7 on the high sea.

 8 THE WITNESS: Well, not just the barge, but

 9 also at the coal terminals. So at the coal terminals in

 10 the New Orleans area where they'll be doing much of the

 11 blending themselves and storing coal for a period of

 12 time, how would they handle it? Would they have any

 13 additional costs that they would pass on to us for any

 14 additional material handling systems? That was some of

 15 the arguments that we made in the previous docket. What

 16 would, what would they be charging us to be able to

 17 blend offsite Powder River Basin coal that does have a

 18 combustion, spontaneous combustion aspect to it?

 19 COMMISSIONER SKOP: Okay. And just, just one

 20 final question. With respect to the Indonesian coal, I

 21 think that you previously stated, but I want to make

 22 sure that this is clear for the record, that the

 23 evaluated price of these internal documents did not

 24 include or account for delivery risk; is that correct?

 25 THE WITNESS: They -- specifically on that

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 1 spreadsheet, if you think about the time of contract to

 2 actual delivery, that spreadsheet is just one snapshot

 3 in time looking at the bids that were evaluated, of the

 4 transportation costs and some of the boiler impacts of

 5 that coal, what would be the cost of buying that coal.

 6 It doesn't take into account any of the, of the, of the

 7 risk of it not showing up. It's just the information

 8 that we have at the time and ranking it to other coals

 9 off that RFP process.

 10 COMMISSIONER SKOP: So if you don't have the

 11 PRB on hand, then you're not able to achieve the cost

 12 savings for consumers by blending, by burning the 80/20

 13 blend when it's cost-effective to do so; is that

 14 correct?

 15 THE WITNESS: We try to, we try to do, we try

 16 to do the 80/20 blend when it is cost-effective to do

 17 that.

 18 COMMISSIONER SKOP: Thank you.

 19 CHAIRMAN CARTER: Commissioner Argenziano.

 20 COMMISSIONER ARGENZIANO: Thank you,

 21 Mr. Chair.

 22 I'm not sure, I guess it's a combination of

 23 questions for the witness and for staff and to try to

 24 again, I guess -- see, that's why it's good to have a

 25 discussion and not limit it, okay, because there's a lot

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 1 of things you, you get out in the open and understand

 2 better.

 3 But when it comes to -- Commissioner Skop had

 4 mentioned design specifics and you had also mentioned

 5 that you would have liked to have done the blending of

 6 the coals or the alternatives and get a better mix, I

 7 guess, at a better cost but you couldn't for whatever

 8 the reason is. But wouldn't design specs be a problem

 9 then if you would have liked to have done that or would

 10 you modify?

 11 THE WITNESS: Well, we would definitely start

 12 the testing process, which is what we lay out, and

 13 understand what would the impact of this coal be on the

 14 total power plant.

 15 COMMISSIONER ARGENZIANO: Right. And I

 16 understand that, and that's part of the question that we

 17 have is how long it took to do the testing process. But

 18 what I'm trying to say is Commissioner Skop is saying

 19 there was a design -- and he comes from an engineering

 20 background, so he's more focused on engineering.

 21 THE WITNESS: Right.

 22 COMMISSIONER ARGENZIANO: I'm more focused on

 23 what we're here for today. And to me what that is if

 24 he's right, that is a design spec, well, that means you

 25 could never go outside, any company could ever go

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 1 outside using a certain coal. And you said it's very

 2 limited and very hard to find, that the -- what was the

 3 term you used, the compliance coal?

 4 THE WITNESS: Compliance coal.

 5 COMMISSIONER ARGENZIANO: So compliance coal

 6 meaning for the design specs; right? So if, if you know

 7 this as a utility company, then you always have to be

 8 thinking of change. Because if you're running out of

 9 compliance coal, what happens to those, those

 10 generators, those coal plants? So that argument to me

 11 doesn't stand unless you know ahead of time, especially

 12 if you know that the compliance coal is running out.

 13 And I believe that you would adjust, as you said, using

 14 a mix; is that correct? Would it --

 15 THE WITNESS: Yeah. So, so --

 16 COMMISSIONER ARGENZIANO: I mean, providing

 17 you do the test and all that and see how it runs and how

 18 you can work it. It can be done though; right?

 19 THE WITNESS: Scrubbers are a great example.

 20 The fact that we're going to be putting scrubbers on

 21 Crystal River Units 4 and 5 will open up the basket of

 22 coals that that plant can now burn. It won't be limited

 23 by the 1.2 pound SO2 and the air permit. We'll be able

 24 to go out and have a much higher, much higher basket of

 25 fuels that we can evaluate and procure.

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 1 COMMISSIONER ARGENZIANO: And of course there

 2 are costs to putting the scrubbers in, and I understand

 3 that.

 4 THE WITNESS: Yes.

 5 COMMISSIONER ARGENZIANO: It's just to

 6 understand. Because the way Commissioner Skop had said

 7 it it would be like, well, because there's a design spec

 8 you could never change, and I didn't think that was the

 9 case.

 10 THE WITNESS: Well, but --

 11 COMMISSIONER ARGENZIANO: And I don't think

 12 that's what he meant. Excuse me. My turn. But, but so

 13 that can be done. And a test, and a test case would

 14 indicate whether it would be beneficial, what you had to

 15 do, and if it could even run on that type of coal; is

 16 that correct?

 17 THE WITNESS: That's, the test takes into

 18 consideration all those factors and many others. The

 19 material handling system that may be required, any, can

 20 you make full load, any of the operational details, any

 21 of the maintenance and O&M practices, all that would go

 22 into, into a test burn to evaluate does it still make

 23 sense considering all these other factors other than the

 24 fact that I just say, hey, from a coal procurement

 25 standpoint, this looks good. Let's go do it.

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 1 COMMISSIONER ARGENZIANO: Right. And it

 2 could, at the end of the test could wind up costing more

 3 for the modifications or costing less.

 4 THE WITNESS: Correct.

 5 COMMISSIONER ARGENZIANO: Okay. But it's not

 6 precluded because of design specs.

 7 THE WITNESS: It's not precluded.

 8 COMMISSIONER ARGENZIANO: Okay. And can I ask

 9 what happens if compliance coal runs out and you do have

 10 to change things for other coal? Or are the compliance,

 11 I mean, or are the design specs so limited right now

 12 that only a certain geographical type or certain type of

 13 coal, composite type coal can be used?

 14 THE WITNESS: Sure. Compliance coal is

 15 getting tougher to find. You know, we've -- when this

 16 case first started, we were dealing with a lot of import

 17 or, excuse me, a lot of domestic coal and we were

 18 talking about import coal. For a period of time we were

 19 burning -- almost the majority of the coal at Crystal

 20 River Units 4 and 5 were foreign coal. And that quickly

 21 switched over -- back in '07 and '08 with China building

 22 two coal plants a week, import coal really dried up for

 23 the United States, export coal was actually leaving, and

 24 we switched over to burning everything from low quality

 25 Central App coal, doing some blends with some other

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 1 types of coal that are very similar to Central App but

 2 lower quality, we were going after Colorado coal. So

 3 that's my job is to try to make sure we don't run out.

 4 COMMISSIONER ARGENZIANO: Right.

 5 THE WITNESS: Right.

 6 COMMISSIONER ARGENZIANO: Hopefully we don't.

 7 THE WITNESS: Right. Absolutely.

 8 COMMISSIONER ARGENZIANO: Now let me ask you,

 9 when you say that you were primarily using imported

 10 coal -- I was going to say gold. That would really cost

 11 a lot of money. Imported gold. But everybody, you

 12 know, you send your gold in the mail today, gold in the

 13 mail today. (Laughter.)

 14 If you were -- were the design specs then

 15 created for that imported coal?

 16 THE WITNESS: Well, the design specs, we did

 17 lots of testing to make sure that we were okay with that

 18 import coal. And we've had a history for over five,

 19 six, seven years of burning that type of import coal.

 20 And it acts -- it's a bituminous coal. It acts very

 21 similar to it. So you have to design, in the

 22 engineering world you have to design to something. Then

 23 the question is if you're going to deviate from that,

 24 what is the impact?

 25 COMMISSIONER ARGENZIANO: And then when you

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 1 had to go to other coals, domestic coals, did you have

 2 to modify the plant to do that?

 3 THE WITNESS: No. Because those are

 4 typically -- many of those are bituminous coal that do

 5 not have some of the different natures of sub-bituminous

 6 coal.

 7 COMMISSIONER ARGENZIANO: Okay. Thank you.

 8 THE WITNESS: Sure.

 9 CHAIRMAN CARTER: Commissioner Skop.

 10 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 11 And, again, just, just for clarity because,

 12 you know, I want the record to be clear and I don't want

 13 to be misunderstood. And I think that my suggestion or

 14 what I was trying to get at with my point was that, you

 15 know, certainly not holding someone to a higher standard

 16 over and beyond the requirement to produce, over and

 17 beyond the requirement to procure domestically produced

 18 or procured compliance coal. And I guess at least the

 19 way I look at it is, and I think history would probably

 20 show, and I'll ask Mr. Weintraub, but I think that the

 21 domestic coal is sourced first as a primary source. And

 22 then the foreign coal is, is there as a secondary source

 23 in case of, you know, not being able to find compliance

 24 coal or what have you. But can you briefly speak to

 25 that? I know on the, at least with the bituminous coal,

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 1 I mean, that's not been a problem. You guys roll that

 2 down and barge that down like it's going out of style,

 3 but --

 4 THE WITNESS: Well, and that's, that has

 5 changed a little bit over, in the '07/'08 time frame

 6 when, with a weak U.S. dollar, with a global economy

 7 that was, not too long ago was really booming, coal was

 8 leaving the U.S. at rates that we haven't seen in a long

 9 time. So it was difficult to find -- I shouldn't say

 10 difficult, but there, you had to pay more for it, which

 11 is one of the reasons why fuel prices went up is that

 12 more people were willing to pay more for it.

 13 We do buy import coal. For a while it was, it

 14 was cost-effective compared to domestic, so we bought

 15 more of that from suppliers that we have a history with.

 16 And that quickly switched. We, we quickly -- '07, I

 17 believe, we had roughly 630,000 tons. This is by barge,

 18 not necessarily rail. So we still have over

 19 three million tons coming by rail. But by barge we only

 20 had 600,000 tons coming down on the river and roughly

 21 two million tons of import coal coming up from South

 22 America, and that quickly switched going into '08.

 23 COMMISSIONER SKOP: Okay. So just, I guess

 24 from what I'm hearing, and correct me if I'm wrong

 25 though, I guess part of your role in the organization is

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 1 to continuously seek out innovative ways to save

 2 consumers money in terms of the fuel blends; is that

 3 generally correct?

 4 THE WITNESS: That's absolutely job one of

 5 what I do.

 6 COMMISSIONER SKOP: So, so I guess then would

 7 it be fair to hold you to a standard and second guess

 8 that you should have done this when typically you are

 9 only required to procure domestically and the

 10 initiatives that you're embarking upon are only used in

 11 an effort to try and find cost-effective alternatives?

 12 THE WITNESS: Yeah. As to the fairness, yeah,

 13 we, we spend a lot of money for fuel. That's what we

 14 do. And we come forth and through the fuel hearings and

 15 through these dockets, we do have hindsight review to

 16 say did we or did we not do a good job? And that's why

 17 we're here to answer the questions. I believe we have.

 18 And I think the record will show even when you look at

 19 the Indonesian coal and the actual cost that would have

 20 done, which you'll see in my rebuttal testimony, it was

 21 not going to be cost-effective for PEF's customers.

 22 When you look at the Powder River Basin coal and compare

 23 that to some of the blend coals that we purchased, it

 24 would have beaten the blend coals that we purchased.

 25 The Central App low quality beats Powder River Basin

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 1 coal that Mr. McGlothlin shows on this sheet. So we

 2 strive to get the lowest cost fuel for Crystal River

 3 Units 4 and 5 every day.

 4 COMMISSIONER SKOP: Okay. Thank you. I

 5 probably will have some more questions about the PRB

 6 because I'm not so sure I agree with what you just said,

 7 but at least for the Indonesian coal. You know, at

 8 least from the testimony you've given, having delivery

 9 risk not priced into the evaluated cost I think seems to

 10 be somewhat significant. But thank you.

 11 CHAIRMAN CARTER: Commissioner Argenziano.

 12 COMMISSIONER ARGENZIANO: Thank you. I forgot

 13 to ask staff the question that I probably would like to

 14 hear now and have on the record, if you can.

 15 Our central or primary goal here as the Public

 16 Service Commission, is it, in this case, and is it to

 17 determine if the company is seeking the best prices?

 18 And that incorporates all these other things -- is it

 19 going to be more cost-effective? And, of course, they

 20 have to, everybody has to make their arguments and they

 21 have to convince what job they're doing. But from the

 22 PSC, from the statutes, from the rules that we have in

 23 front of us, what is our primary objective when we look

 24 at the company when they're purchasing the fuel

 25 supplies?

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 1 MS. BENNETT: I lost my button under the

 2 papers. I'm going to try and be short on my, on my

 3 answer.

 4 The -- for this case in the prior docket,

 5 060658, you instructed Progress Energy to tell you about

 6 their coal cost for 2006 and 2007. You told them to

 7 come back and prove that they were prudent. They

 8 brought testimony to you to tell you what they did as

 9 far as purchasing and why they did it.

 10 COMMISSIONER ARGENZIANO: I'm sorry. I

 11 understand what we did and what we're doing.

 12 MS. BENNETT: Okay.

 13 COMMISSIONER ARGENZIANO: What I'm trying to

 14 get from you is our statutory obligation as the Public

 15 Service Commission, what we are really looking at. We

 16 can't determine certain things that are business

 17 practices or what design this is or what design that is.

 18 What I'm trying to find out is what are we really

 19 looking for? Is it not that we are looking for to make

 20 sure that the company -- and that's what they're here

 21 telling us, that they did the best job they could in

 22 their opinion, that they have, they have spent their

 23 money wisely, and OPC here is telling us in their

 24 opinion that they didn't feel so. Isn't our, sitting

 25 here, our Commission sitting here, aren't we to

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 1 determine that fact?

 2 MS. BENNETT: Yes.

 3 COMMISSIONER ARGENZIANO: If money was spent

 4 wisely and prudently?

 5 MS. BENNETT: Yes.

 6 COMMISSIONER ARGENZIANO: And that's what I --

 7 I don't want us to get so far away from that in all the

 8 technical stuff. And I, and people who are watching,

 9 because I'm finding out more and more that more people

 10 are watching, and, and I want to make sure they know

 11 what our primary function is here. Not let's get --

 12 let's not get lost in everything else. Even though

 13 everything is important as to the conversation at hand,

 14 but we're to look at -- we're here, as I think

 15 Mr. McWhirter said it before, since there have been cost

 16 recoveries for fuel allowed to the company, then the

 17 burden is kind of on the company to make sure that they

 18 make their case to us, that they have, in their opinion

 19 they bought the best coal they could at the time or the

 20 cheapest they could find. And our determination is of

 21 looking at whether that's the case; is that true?

 22 MS. BENNETT: Yes. Your, your job is to look

 23 at whether they were prudent in their procurements for

 24 2006 and 2007.

 25 COMMISSIONER ARGENZIANO: Okay. I just don't

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 1 want to get lost in everything. Thank you very much.

 2 CHAIRMAN CARTER: Thank you, Commissioner.

 3 Anything further from the bench?

 4 Okay. Mr. McWhirter, you're recognized.

 5 MR. McWHIRTER: Are you hungry at all yet?

 6 CHAIRMAN CARTER: Oh, no. Oh, no. I had some

 7 saltines.

 8 (Laughter.)

 9 CROSS EXAMINATION

 10 BY MR. McWHIRTER:

 11 Q. Mr. Weintraub, from your testimony I

 12 understand you're employed by Progress Energy Carolinas,

 13 Inc. You're not employed by the service corporation or

 14 the parent corporation, but by the Carolina utility

 15 company; is that correct?

 16 A. That's correct.

 17 Q. I see. And the Carolina utility company, does

 18 it have any coal burning plants?

 19 A. They do.

 20 Q. I see. And how many do they have?

 21 A. They have, they burn 14 million tons a year at

 22 its eight total plants, roughly 22 coal units.

 23 Q. Uh-huh. Is it your testimony in this case

 24 that all the coal that you bought for Florida is equal

 25 to or less in cost than the coal you bought for the

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 1 Carolina operation?

 2 MR. BURNETT: Mr. Chairman, I'm going to

 3 object at this point. Having a short but intense

 4 history with Mr. McWhirter, we're now talking about

 5 Carolina coal costs, and we only have three days for

 6 this hearing. So I just want to object up-front and say

 7 I don't think that's relevant in any way, shape or form.

 8 CHAIRMAN CARTER: Mr. McWhirter.

 9 MR. McWHIRTER: Well, this gentleman is

 10 testifying that he was prudent in his expenditures for

 11 buying coal for the Florida operation. He's also

 12 responsible for buying coal for the Carolina operation.

 13 And I would think if he has the burden of proving that

 14 he treated the Florida customers fairly, he can tell us

 15 that he treated us fairly. There's some kind of Chinese

 16 wall or some other operation that keeps him from, his

 17 company from discriminating in favor of North Carolina

 18 residents as opposed to Florida residents. I think

 19 that's certainly a fair area of inquiry to, to deal with

 20 the credibility of this witness, if nothing else.

 21 CHAIRMAN CARTER: Ms. Helton.

 22 MS. HELTON: Can I confer with Ms. Bennett for

 23 one minute, please?

 24 CHAIRMAN CARTER: Okay. We'll kind of take a

 25 break in place. Nobody leaves.

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 1 (Pause.)

 2 MS. HELTON: Thank you, Mr. Chairman. I

 3 recognize that we're talking about two different

 4 companies and I recognize that there are probably

 5 differences in expenses especially with respect to

 6 transportation, but it seems to me that it would be

 7 relevant to know what price the company paid for coal

 8 for the Florida operations and what price the company

 9 paid for coal for the North Carolina operations. So

 10 perhaps Mr. McWhirter can keep his questioning short,

 11 but it seems to me that that would be relevant.

 12 CHAIRMAN CARTER: I'm sure he will. Right,

 13 Mr. McWhirter?

 14 MR. McWHIRTER: Would you repeat the question

 15 for me? I can't remember what it was.

 16 CHAIRMAN CARTER: To our court reporter.

 17 (Foregoing question read by the court

 18 reporter.)

 19 THE WITNESS: You asked me a very similar

 20 question when we did this originally.

 21 BY MR. McWHIRTER:

 22 Q. Did I really? I guess that thought just --

 23 A. Yes. And what I said then was we do do them

 24 completely separate. The Carolinas coal plants are

 25 predominant on the Norfolk Southern Railroad, which is a

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 1 railroad that does not travel to Crystal River. Crystal

 2 River has the opportunity of having barge, and only one

 3 coal plant has, and a small coal plant has, is on the

 4 water and has barge opportunities.

 5 So we do separate RFPs, we have separate rail

 6 contracts, we have separate coal contracts. Everything

 7 is separate as far as Florida and the Carolinas go.

 8 I am an employee of Progress Energy Carolinas

 9 and allocate time to Florida. Some companies have their

 10 fuel procurement group in a service company and allocate

 11 it that way.

 12 So we do things very separately. I don't have

 13 here today what the cost of the Carolina coal is. Most

 14 of those units are scrubbed, so they're able to take

 15 advantage of some of those other coals I talked about.

 16 But I don't have the cost today of what the Progress

 17 Energy Carolina plants are compared to Florida.

 18 CHAIRMAN CARTER: Okay. Mr. McWhirter, would

 19 you yield for a moment?

 20 Commissioner Argenziano.

 21 COMMISSIONER ARGENZIANO: Just one minute.

 22 Forgive me. The Crystal River plants do get coal via

 23 rail.

 24 THE WITNESS: By the CSX Railroad.

 25 COMMISSIONER ARGENZIANO: Right.

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 1 THE WITNESS: And only the CSX Railroad. And

 2 for the Carolinas, they're -- over, over 11 million of

 3 their 14, 15 million tons is on the Norfolk Southern

 4 Railroad. So completely distinct mines that are on

 5 those different railroads, different companies, very

 6 distinct in terms of the coal supply in those two

 7 particular railroads.

 8 COMMISSIONER ARGENZIANO: Okay. Thank you.

 9 CHAIRMAN CARTER: Thank you.

 10 Mr. McWhirter, you may proceed.

 11 BY MR. McWHIRTER:

 12 Q. Does the holding company still own the

 13 blending facilities on the Mississippi River?

 14 A. They do not.

 15 Q. And when were those sold?

 16 A. Those were sold in the '05/'06 time frame.

 17 Q. What significance, if any, does that have to

 18 do with your ability to blend coal for delivery to

 19 Florida?

 20 A. It has no relevance since most -- all the

 21 blending that we do is in the New Orleans area with the

 22 two coal terminals in the New Orleans area, and those

 23 have nothing to do with what was owned by some of the

 24 affiliates for Progress Energy up on the Ohio and the

 25 Kanawha River.

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 1 Q. So how do you blend the coal now that you

 2 receive for Crystal River?

 3 A. So we blend the coal offsite at the two coal

 4 terminals that we have contracts with in the New Orleans

 5 area. So we'll bring in coal either by import vessel or

 6 by inland river barges into IMT, and we'll store them in

 7 different piles and then blend them as appropriate to

 8 have the best blend mix to bring across to Crystal River

 9 on our Gulf barges.

 10 Q. Uh-huh. Did Florida consumers receive any

 11 benefit from the sale of the blending facilities that

 12 was owned by the holding company?

 13 MR. BURNETT: Mr. Chairman, I'm going to

 14 object. We're way out in outer space with these

 15 questions.

 16 CHAIRMAN CARTER: Mr. McWhirter.

 17 MR. McWHIRTER: I'll go on to another subject.

 18 CHAIRMAN CARTER: Okay.

 19 BY MR. McWHIRTER:

 20 Q. At the outset of your testimony Mr. Skop asked

 21 you some questions about a memo. Do you, do you have

 22 that memo?

 23 A. Yes, I do.

 24 Q. Now that was given to me in a, in a blue

 25 folder that had a lot of other stuff, and I'm not quite

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 1 sure I know what that is. I haven't seen any ID number

 2 on it. But are you testifying about, in your direct

 3 testimony are you testifying about any of this other

 4 stuff or only about this memo?

 5 A. This memo was filed as an, as an exhibit to my

 6 deposition April 1st of this year. And the other

 7 particular items in this blue folder, I think you'll

 8 see, are attachments to other parts of testimony.

 9 Q. In your direct -- does it relate -- do any of

 10 these other papers relate to your direct testimony or do

 11 they relate only to your rebuttal testimony?

 12 A. I believe we're only pulling out this e-mail.

 13 Q. Okay.

 14 A. And that is not part of, none of the rest is

 15 part of the direct testimony.

 16 Q. Okay. So all we're talking about is this and

 17 this?

 18 A. We can close the blue folder for everything

 19 else.

 20 Q. This is an exhibit to the deposition, which is

 21 in the staff's composite exhibit. Is that what the deal

 22 is?

 23 A. It was part of my deposition that was entered

 24 into the record.

 25 Q. Now this memo as I read it was sent from, by a

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 1 guy named Frederick Murrell to a guy named Brett Phipps.

 2 Who is Frederick Murrell?

 3 A. Frederick Murrell is a representative of PT

 4 Adaro, the Indonesian coal supplier.

 5 Q. And it -- he was notifying Mr. Phipps that the

 6 Public Counsel's Office had contacted him. Is that what

 7 the purpose of the memo is?

 8 A. That's correct.

 9 Q. And who is Brett Phipps? Does he work --

 10 A. Brett Phipps works for me. He is the Director

 11 of Coal, so he has responsibility for the coal

 12 activities within the department that I run.

 13 Q. Are you attempting to prove anything with this

 14 document?

 15 MR. BURNETT: Object to the question. It

 16 calls for a legal conclusion. If Mr. McWhirter is

 17 trying to indirectly make some sort of hearsay

 18 objection, it's already in evidence. He's missed his

 19 chance. But I'm happy to address that, if the

 20 Commission wants to hear it.

 21 CHAIRMAN CARTER: Mr. McWhirter.

 22 MR. McWHIRTER: Well, this is patent hearsay

 23 evidence, and at some point in time I guess I'll have

 24 the opportunity to object to it. But I -- well, maybe

 25 I've lost that opportunity since I agreed to the staff's

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 1 composite thing. But I'm trying to figure out what this

 2 is all about and how it should affect the Commissioners

 3 in their judgment. And obviously it must have some

 4 importance, and I'm asking him what the importance of

 5 this thing is.

 6 CHAIRMAN CARTER: One moment, please.

 7 MR. McWHIRTER: Isn't that fair?

 8 CHAIRMAN CARTER: Ms. Helton.

 9 MS. HELTON: I agree with Mr. McWhirter's

 10 assessment that he has lost his opportunity to object to

 11 the exhibit on the nature of it being hearsay. And as

 12 always, the Commission will, you know, give any exhibit

 13 that comes before it the weight that it deserves.

 14 MR. McWHIRTER: Does that mean I can ask

 15 questions about it or not?

 16 CHAIRMAN CARTER: Sure. Yes. Yes, you can.

 17 MR. McWHIRTER: Oh, good.

 18 THE WITNESS: That's exactly what it means.

 19 You can ask questions.

 20 BY MR. McWHIRTER:

 21 Q. Are you attempting to prove anything with this

 22 exhibit?

 23 A. Well --

 24 MR. BURNETT: Objection. Calls for a legal

 25 conclusion as to -- that's a legal conclusion as to what

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 1 the evidence is offered for.

 2 MS. HELTON: Can we back up for one minute,

 3 Mr. Chairman?

 4 CHAIRMAN CARTER: Yes, ma'am. Backing up is

 5 okay for now just temporarily.

 6 MS. HELTON: As I understand it, this was a

 7 deposition exhibit that was produced during the course

 8 of his deposition and that staff asked for the exhibit

 9 to be included in the record. Is that correct? So I'm

 10 not sure that Progress is attempting to prove anything,

 11 so I'm not sure that it is an appropriate question.

 12 CHAIRMAN CARTER: Mr. McWhirter?

 13 MR. McWHIRTER: That's well-taken. I agree

 14 with that.

 15 BY MR. McWHIRTER:

 16 Q. Do you totally disavow this and you think it

 17 has no importance whatsoever?

 18 CHAIRMAN CARTER: Try another question,

 19 Mr. McWhirter.

 20 MR. McWHIRTER: All right. What does this

 21 mean?

 22 MR. BURNETT: Object. Objection, Mr.

 23 Chairman. He's now asking this witness to divine what

 24 the writer of an e-mail from one person to another said.

 25 It speaks for itself, and I think Ms. Helton has made

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 1 that clear.

 2 MR. McWHIRTER: Well, with respect to that,

 3 Mr. Chairman, this gentleman got this memo from a broker

 4 who sent it to one of his employees. And he was asked

 5 to produce it because -- for some reason in his

 6 deposition. And I think it's fair to ask him if he

 7 keeps this as a business record for some reason, what

 8 the purpose of the record is and what it's supposed to

 9 tell us if you have to make a decision concerning it.

 10 It seems only fair to me.

 11 CHAIRMAN CARTER: I'm not sure. Ms. Helton?

 12 Because I think from, from what, what the status of it

 13 is that it's an exhibit presented by the staff. I don't

 14 think he's offering it to prove anything. It's just a

 15 document that was within the context of communications.

 16 Am I, Ms. Helton, am I in the weeds on this one?

 17 MS. HELTON: Well, perhaps Mr. McWhirter could

 18 ask why, to what question or what line of questioning

 19 the document was responsive during the course of the

 20 deposition. That may help shed some light.

 21 Also, too, if Mr. McWhirter is concerned about

 22 the hearsay nature of the exhibit, perhaps Mr. McWhirter

 23 could ask if this information contained in the e-mail

 24 supplements any information otherwise in the record, and

 25 maybe that would give Mr. McWhirter some guidance about

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 1 the appropriate lines of questioning.

 2 MR. McWHIRTER: Thank you.

 3 CHAIRMAN CARTER: Mr. McWhirter, does that,

 4 does that help you kind of bring it in?

 5 MR. McWHIRTER: Thank you. It's good to have

 6 somebody to help you along with this kind of stuff.

 7 CHAIRMAN CARTER: Thank you. Kind of limit it

 8 down to that, please, sir.

 9 BY MR. McWHIRTER:

 10 Q. All right. Well, is this an official business

 11 record of your department?

 12 A. It's an e-mail that Mr. Fred Murrell gave to

 13 Mr. Phipps talking about the contact that he had with a

 14 representative of the Office of Public Counsel.

 15 Q. Do y'all keep a copy of this for some reason

 16 or another?

 17 A. It was recently -- it was rather recent, so

 18 March 18th of 2009.

 19 Q. Why did you keep a copy of it?

 20 A. In the line of questioning that, that this

 21 document was discussed we were talking about how the PT

 22 Adaro suppliers, Indonesian coal suppliers were very

 23 unresponsive to us; that when we asked about them

 24 providing us more information for a particular test

 25 burn, they were being unresponsive. We concluded that

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 1 they must have never really had the coal to sell. That

 2 was back in '07. This e-mail came up just recently to

 3 confirm what we thought all along, which said that they

 4 for, for all intents and purposes did not have the coal.

 5 Quote, we were sold out in Indonesia. So we suspected

 6 they never really had the coal when they offered us the

 7 bid. They became unresponsive. That was what the line

 8 of questioning in the depo was, and this confirms that.

 9 Q. Okay. If I understand what you just said, you

 10 told me back in, whenever it was that you got this bid,

 11 although you ranked the bid, you concluded independently

 12 that that bid was a fallacious bid. Did you preserve

 13 any records that demonstrate why you reached that

 14 conclusion back at a time that was contemporaneous with

 15 the receipt of the bid?

 16 MR. BURNETT: Objection, Mr. Chairman. He's

 17 mischaracterizing evidence. He's saying that

 18 Mr. Weintraub said the word fallacious. I believe

 19 Mr. Weintraub's testimony was that the Indonesian

 20 suppliers became unresponsive. So that's not a fair

 21 characterization.

 22 MR. McWHIRTER: I don't know that I understand

 23 that, Mr. Chairman.

 24 CHAIRMAN CARTER: Well, let's, let's zero it

 25 in, Mr. McWhirter. He did say unresponsive.

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 1 BY MR. McWHIRTER:

 2 Q. Do you have any other records that show that

 3 the Indonesian coal bid was inaccurate?

 4 A. We provided all the records around all the RFP

 5 for, for fuel hearings and for this docket. And we, we

 6 met with them twice and they became un, very

 7 unresponsive. They let go one of their U.S.

 8 representatives who worked here. So we suspected all

 9 along that they did not have the coal to sell since they

 10 were being unresponsive to us. Two years later after

 11 the contact that seems to be confirmed by them saying

 12 that we were sold out and didn't have the coal to sell.

 13 Q. You have no concurrent written documentation

 14 of that representation you just made other than this?

 15 A. Well, other than the, the bids that we

 16 received, the fact that we met with them and the fact

 17 that they were not being responsive to us. That's my

 18 testimony.

 19 Q. All right. Who did you talk with that was not

 20 responsive?

 21 A. Fred Murrell.

 22 Q. This is the guy in Bradenton?

 23 A. Uh-huh.

 24 Q. And he's the representative for somebody in

 25 Indonesia. Did you attempt to talk to anybody there?

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 1 A. We did attempt to talk to the other coal

 2 supplier. The Indonesian, the second Indonesian coal

 3 supplier, PT Kideco, they were located in Indonesia

 4 themselves, and they were completely unresponsive to us,

 5 to our phone calls and e-mails back and forth.

 6 Q. Do they speak the English language?

 7 A. I couldn't -- they -- their bid was in

 8 English. I've, I've been to Indonesia. They do speak

 9 English in Indonesia.

 10 Q. And what was the name of the person you called

 11 and spoke to? Did you personally talk to them?

 12 A. No.

 13 Q. So the information you're getting is from

 14 somebody in your organization?

 15 A. Correct.

 16 Q. Is it from Brett Phipps?

 17 A. Brett Phipps was in charge of the RFPs and

 18 that information was predominantly coming from Brett.

 19 Q. And you're the witness that is here to prove

 20 the prudency of your transaction. Do you have any other

 21 witness for coal purchases other than you that's in this

 22 case?

 23 A. No.

 24 MR. McWHIRTER: I have no other questions.

 25 CHAIRMAN CARTER: Thank you.

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 1 Commissioner Argenziano.

 2 COMMISSIONER ARGENZIANO: Just a quick

 3 question, and it's just, just to get it on the record, I

 4 guess.

 5 The -- you're saying they were not responsive

 6 to I guess your attempts to negotiate a bid. Could

 7 it -- is there any possibility that they were under the

 8 impression that you really weren't going to buy from

 9 them or anything like that in there or --

 10 THE WITNESS: I don't think so. We were

 11 specifically asking them for additional information to

 12 go and do, when we might be able to do some test burns,

 13 when they might have some available. So we were being

 14 very proactive. It's not uncommon for coal suppliers to

 15 sell coal what's called subject to prior sell, meaning

 16 that if they can sell it, they can sell it right

 17 underneath from you. It's -- you know, they could put

 18 in a bid and not have the coal at all. For all I know,

 19 someone, one of their representatives in Indonesia sold

 20 it to someone in China and this representative never had

 21 it to sell. That, that could be a very likely case.

 22 COMMISSIONER ARGENZIANO: But there was

 23 nothing from the company indicating that you know of to

 24 the, to the other side that, you know, we're really not

 25 going to buy from you.

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 1 THE WITNESS: Oh, no.

 2 COMMISSIONER ARGENZIANO: Or we don't want to

 3 buy from you. We're going to stick to a traditional

 4 source or --

 5 THE WITNESS: No. We had them, we met with

 6 them twice. We were, we were very proactive trying to,

 7 trying to meet with them and see what we can do to look

 8 at their coal.

 9 COMMISSIONER ARGENZIANO: Okay. Thank you.

 10 CHAIRMAN CARTER: Thank you.

 11 Ms. Bradley.

 12 MS. BRADLEY: Thank you, sir.

 13 CROSS EXAMINATION

 14 BY MS. BRADLEY:

 15 Q. You said something earlier about you all did a

 16 test burn and then discovered that you didn't have a

 17 permit for the sub-bituminous coal; is that correct?

 18 A. That's correct.

 19 Q. Do you have somebody that's designated to get

 20 permits for your company?

 21 A. We do.

 22 Q. And do you talk with them as this process is

 23 ongoing?

 24 A. The 2004 test burn that was done, the, the,

 25 I'm trying, I'm going from memory here as to record as

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 1 to when the representative of the air permit became

 2 aware that the air permit didn't allow for

 3 sub-bituminous coal. I believe he was aware of the test

 4 burn. I think that it was in the process of the test

 5 burn that they realized that the air permit itself

 6 doesn't say coal, it says bituminous coal, and therefore

 7 sub-bituminous coal is not allowed on the air permit.

 8 So I'm going from memory here as to, as to all the

 9 testimony that went on around the '04 permit and who

 10 became aware and when, and that's what I can recall

 11 right now.

 12 Q. Is that a typical procedure for the

 13 procurement folks to talk with the permitting folks and

 14 all?

 15 A. It is typical to have a procedure, and we'll,

 16 we'll put on the testing procedure that we have. And

 17 for the '06 test burn of Powder River Basin coal that we

 18 filed and for others we have a process that will be a

 19 part of witness testimony.

 20 Q. Do you know -- I'm not sure whether, from what

 21 you just said whether you have knowledge of all of that.

 22 But how long does it usually take that process?

 23 A. Can you be more specific as to what process?

 24 Q. Well, in other words, how long would you talk

 25 to the permitting folks before you started testing the

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 1 coal or using the coal?

 2 A. It usually starts rather quickly. I'm going

 3 from -- I'll go from memory on the Powder River Basin

 4 test burn. But there's requirements to get a test

 5 permit, there's requirements to put stuff in, to put

 6 information in the local newspaper for people to comment

 7 on. So there's a whole litany of requirements that are

 8 involved around air permitting that would be a part of

 9 our testimony in the rebuttal process.

 10 Q. In terms of -- is this a period of months or

 11 years or weeks or --

 12 A. It's months. It's months.

 13 MS. BRADLEY: Okay. I don't think I have

 14 anything further.

 15 CHAIRMAN CARTER: Thank you, Ms. Bradley.

 16 Commissioner Skop.

 17 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 18 Just two final questions, Mr. Weintraub.

 19 I guess looking at the other witnesses -- I'm

 20 going to shoot this one at you, and if, if another

 21 witness is more appropriate, please preserve the right

 22 to tell me. But what steps, if any, has Progress taken

 23 since our last order to remedy the inherent ability to

 24 burn PRB coal in an 80/20 blend?

 25 THE WITNESS: Well, we've done a test burn,

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 1 we've modified our air permit to be able to do up to

 2 20 percent sub-bituminous blends in the air permit, and

 3 we continue to monitor the market to see if the

 4 opportunity of PRB blends are cost-effective versus the

 5 type of blends that we're doing today. We would

 6 continue to go forth with the process to do some of the

 7 capital upgrades that would be required, to do a much

 8 longer test burn that we lay out in Witness Stenger's

 9 testimony. We did the short-term three-day test burn.

 10 We would then have to go forth and do a much longer

 11 process and continue if it is cost-effective to do those

 12 burns.

 13 COMMISSIONER SKOP: Okay. And, secondly, I

 14 guess a lot of discussion in this instant case turns on

 15 alternate coal opportunities, and at least I guess the

 16 source of the coal as well as the evaluated cost is

 17 going to factor prominently into any refund that may or

 18 may not be warranted.

 19 But in that sense, if a refund is indeed

 20 warranted, why would that not be in this case strictly

 21 limited to the differential cost between burning

 22 100 percent CAPP coal and the 80/20 blend in terms of

 23 any cost differences that may or may not arise from,

 24 from burning the blended fuel?

 25 THE WITNESS: Well, I think in some of the

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 1 calculations that is what the penalty is doing. It's

 2 basically saying if you take the most expensive portion

 3 of your 100 percent CAPP burn and replace that with

 4 sub-bituminous coal or other coals, in this case

 5 Indonesian and the Kennecott Northern Powder River Basin

 6 coal, that is, that delta would be the, would be the

 7 refund that, that OPC is alleging.

 8 COMMISSIONER SKOP: And that's the

 9 cherrypicking you're referring to in your rebuttal

 10 testimony to the extent that --

 11 THE WITNESS: What I'm referring to is the

 12 fact that you have actual coal costs and you're using a

 13 sheet of paper that has forecasted emission allowances,

 14 forecasted transportation costs that have many other

 15 things that I lay out in my rebuttal testimony. And

 16 those actual costs that you're then saying there's a

 17 delta don't have the same forecasted prices that were

 18 entered into at the time when they were in an RFP.

 19 COMMISSIONER SKOP: Okay. And I guess in that

 20 sense I'm aware of what OPC is asking for. I know that

 21 OPC -- I guess Mr. Heller's testimony will speak to the

 22 other aspects of Progress's position. But, you know, in

 23 terms of some of the testimony that's been filed about,

 24 you know, the appropriate manner to, to consider this

 25 conceptually, it would seem to me that, you know, a

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 1 straightforward approach would be looking at that cost

 2 savings, if any, looking at the western PRB, and I was

 3 wondering if you would agree that it should be limited

 4 to the PRB.

 5 THE WITNESS: Well, I do think it should be

 6 limited to the PRB. But I also think some of the coals

 7 that we've been able to purchase and do blending with

 8 during this time frame are more cost-effective than the

 9 Powder River Basin coal that we could have purchased.

 10 COMMISSIONER SKOP: All right. Thank you.

 11 And that's -- I'm sorry. One final. On that, on that

 12 note though, when you refer to those coals, that would

 13 be strictly bituminous coals, not sub-bituminous.

 14 THE WITNESS: Those coals, I'm referring to

 15 the sub -- the bituminous coals. We've been able, we

 16 were able to blend with bituminous low quality coal at a

 17 better blend than doing sub-bituminous Powder River

 18 Basin coal.

 19 COMMISSIONER SKOP: All right. Thank you.

 20 CHAIRMAN CARTER: Thank you.

 21 Staff.

 22 MS. BENNETT: I have three questions.

 23 CROSS EXAMINATION

 24 BY MS. BENNETT:

 25 Q. First of all, Mr. Weintraub, when you were

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 1 responding to Commissioner Argenziano's question about

 2 the design blend, you expressed a concern about perhaps

 3 running out of compliance coal. But isn't it true that

 4 compliance coal, that terminology is in reference to the

 5 air emissions quality?

 6 A. Compliance coal is reference to the 1.2 pound

 7 or less around the air permit. And I think my

 8 classification was that it's becoming harder and harder

 9 to find the compliance coal.

 10 Q. Okay. My second question I'm going to refer

 11 you back to the DJP-6. It's the handout that OPC passed

 12 out earlier and we had some discussion on.

 13 A. Yes.

 14 Q. In the final column you've got an evaluated

 15 utilized cost in dollars per million, I believe. Does

 16 that evaluation include any capital additions that may

 17 be required for those coals?

 18 A. It does not.

 19 Q. Okay. Then let me refer you to the DJP-8 that

 20 the Office of Public Counsel also handed out. You've

 21 got an evaluated utilized rank of the coals. Does that

 22 include any capital requirements?

 23 A. It does not.

 24 MS. BENNETT: That's all the questions I have.

 25 CHAIRMAN CARTER: Okay. Commissioner Skop.

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 1 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 2 Just one more question and I guess it gets to

 3 another witness. But with respect to the capital costs

 4 that our staff just referred to, would it be -- I guess

 5 in your view would it not be appropriate to recover

 6 those capital costs to the extent that this unit had the

 7 inherent capability designed and built into it to burn

 8 PRB?

 9 THE WITNESS: Well, I think when we talked

 10 about this in the original docket, that the plant, the

 11 boiler was designed to burn a specific type of coal.

 12 But what we're talking about a lot of times is the

 13 material handling system, dust supression system, many

 14 other portions of the plant that were not designed and

 15 were not ever built at Crystal River. Much of what we

 16 talked about around the design specifications is around

 17 the boiler itself and not other parts of the plants that

 18 capital upgrades would be required for.

 19 COMMISSIONER SKOP: Thank you.

 20 CHAIRMAN CARTER: Thank you.

 21 Mr. Burnett.

 22 MR. BURNETT: Thank you, sir. I'll try to

 23 keep it to a minimum.

 24 REDIRECT EXAMINATION

 25 BY MR. BURNETT:

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 1 Q. Mr. Weintraub, please get DJP-6 in front of

 2 you. Now for the purpose of this I want to be clear, I

 3 want you to assume that at the time this, you had this

 4 DJP-6 in your hand, that Progress Energy Florida was

 5 completely permitted to burn PRB coal. Are you with me

 6 so far?

 7 A. I am.

 8 Q. And also assume for me that we could purchase

 9 it, we could burn it, everything would have been legal,

 10 we were good to go for PRB. Are you with me?

 11 A. I'm with you.

 12 Q. All right. Mr. McGlothlin asked you some

 13 questions about the Triton PRB Rochelle bid that's on

 14 there. Do you recall that?

 15 A. I do.

 16 Q. Have you had occasion to compare what would

 17 have happened in real life had Progress Energy bought

 18 that Triton coal and blended it versus what Progress

 19 Energy actually did in 2006 and 2007?

 20 A. I have.

 21 Q. What are the results of that?

 22 A. This might be best, Mr. Chairman, if I can

 23 write this on a board and just lay out a little bit some

 24 of the, some of the --

 25 CHAIRMAN CARTER: You may proceed.

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 1 THE WITNESS: If I speak loudly, maybe if I

 2 speak loudly. Do I need a mike?

 3 CHAIRMAN CARTER: We're taking five minutes

 4 and getting a microphone. Nobody leaves.

 5 (Pause.)

 6 We're back on the record. You may proceed,

 7 Mr. Burnett.

 8 BY MR. BURNETT:

 9 Q. Mr. Weintraub, I believe you were about to

 10 explain the analysis you said you had occasion to

 11 perform.

 12 A. Yes. So if you look at the DJP-6, in

 13 particular the Triton coal which had for term '05

 14 through '07, the coal itself costs $8.25 a ton off the

 15 bid sheet. The rail cost to bring that then to the

 16 river, if you use in Mr. Heller's testimony an industry

 17 standard of 19 cents per mill (phonetic) mile and you

 18 talk about the distance to move the coal to the river,

 19 that equates to $21.36 to bring that to the river.

 20 There's a fee to take it out of the railcar and put it

 21 in the barge. In the testimony that's $1.16. The barge

 22 rate to bring that down from the terminal up the

 23 Mississippi River down to New Orleans would be $7.62.

 24 You then also have a $2.10 once you make it to New

 25 Orleans to take it out of the inland barge. You put it

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 1 to ground where you would then blend it into the Gulf

 2 barges going to Crystal River. That's $2.10.

 3 And for the railcars, you'd have to go out --

 4 this is in company-owned or supplied railcars, you would

 5 have to provide a lease or, and maintenance of those

 6 railcars for a brief period of time. Typically that's

 7 about 2 cents per mill mile that Mr. Heller can, has

 8 talked about as an industry standard, which equates to

 9 roughly $2.50 a ton.

 10 So when you add up all those costs, you come

 11 up with $42.99 to bring the Triton coal delivered into

 12 the facility being the Gulf, the coal terminal on the

 13 Gulf. This is before you put it on the barge and bring

 14 it over to Crystal River. When you do that on a cents

 15 per million basis because it's 8,800 Btu, that comes out

 16 to $2.44 per million.

 17 We were asked several questions on some staff

 18 interrogatories, in particular on their first set,

 19 question number 29, that looked at some of the blending

 20 coals that we purchased in '06 and '07. And there's not

 21 one of the coals that we purchased in '06 and '07 that's

 22 higher than $2.44. The lowest one we purchased was

 23 $1.81 for some low quality Central App bituminous coal

 24 that we were blending into the barges, so $1.81, and the

 25 highest was $2.33. So even if you look at what we could

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 1 have purchased in '04 for Powder River Basin coal and in

 2 hindsight compare that to what we did purchase in '06

 3 and '07, what we purchased in '06 and '07 for blending

 4 purposes beats the Powder River Basin coal in '04.

 5 And in staff's question number 29 I also

 6 compare the coals that we purchased at the time just

 7 doing spot PRB. So if you -- in May -- in February of

 8 '07 we bought coal for $2.21 delivered into the coal

 9 terminal. And if you take Powder River Basin coal off

 10 broker sheets at the same time frame and used the same

 11 costs, I also, I compare and show that even on a

 12 spot-to-spot basis what we purchased was more

 13 cost-effective than Powder River Basin coal.

 14 During this time frame when we also purchased

 15 the PRB coal for the May '06 test burn, I also compared

 16 to what we purchased to that actual PRB test movement.

 17 And if you recall during that test burn, the PRB coal

 18 itself was more expensive than the coal that it was

 19 being blended with. So, therefore, it was destroying

 20 value instead of adding value for the customer.

 21 So everything in my testimony really circles

 22 around the fact that when you compare PRB coals off of

 23 the RFP, when you compare PRB coals off of what we

 24 actually procured for the test burn, when you also

 25 compare some of the spot opportunities for PRB coals,

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 1 that what we purchased beats PRB coal. And I think in

 2 my summary I talk about it -- any way you slice it, what

 3 we purchased beats PRB coal.

 4 Q. Mr. Weintraub --

 5 CHAIRMAN CARTER: Yield for a moment,

 6 Mr. Burnett. Would you yield for a moment?

 7 MR. BURNETT: Yes, sir.

 8 CHAIRMAN CARTER: Commissioner Skop.

 9 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 10 Mr. Weintraub, I guess the, I guess the

 11 benchmarch from the chart that you've created is a, a

 12 breakeven point of $2.44 delivered, and you referenced

 13 that all of the purchases that Progress made in the time

 14 periods in question were below that threshold number.

 15 Can you please refer me to generally the specific

 16 exhibits? That's the one part I didn't hear too well

 17 from, from down here.

 18 THE WITNESS: It was the staff's set of,

 19 question 29A. Also in that set of interrogatories as

 20 Attachment B, I believe, we also applied the

 21 Commission's methodology to everything that we purchased

 22 in the '06/'07 time frame. And when you add all those

 23 up, everything that we purchased using the methodology

 24 that we're talking about today, it was more

 25 cost-effective to, to do what we did than to buy Powder

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 1 River Basin coal.

 2 COMMISSIONER SKOP: Okay. Thank you.

 3 CHAIRMAN CARTER: Mr. Burnett.

 4 BY MR. BURNETT:

 5 Q. Thank you, Mr. Weintraub. And to break that

 6 down to the bottom line, all these analyses that you

 7 just talked about -- are you with me, Mr. Weintraub?

 8 A. I am.

 9 Q. Okay. All the analyses that you just talked

 10 about, the ones you did on the board and the further

 11 analyses that you just mentioned that staff asked you to

 12 do in discovery, in any of those scenarios did, did the

 13 actions that PEF actually took in real life versus any

 14 of those scenarios hurt our customers, help our

 15 customers by saving them money or have no effect?

 16 A. They helped our customers by saving them

 17 money.

 18 Q. Thank you.

 19 CHAIRMAN CARTER: Mr. Burnett, yield for a

 20 moment.

 21 Commissioner Skop.

 22 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 23 Mr. Weintraub, then so would it be correct to

 24 assume that based upon the Progress responses both to

 25 staff interrogatory I believe 29A and 29B that Progress

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 1 has made a sufficient showing that would rebut that any

 2 refund at all would be necessary?

 3 THE WITNESS: Absolutely.

 4 COMMISSIONER SKOP: Thank you.

 5 CHAIRMAN CARTER: Mr. Burnett.

 6 BY MR. BURNETT:

 7 Q. And has, Mr. Weintraub, has Mr. Putman --

 8 after your analysis of his testimony, has Mr. Putman

 9 filed testimony in this case asserting that PRB coal

 10 blends could have beat the prices of the coal blends

 11 that PEF actually burned at CR4 and 5 in 2006 and 2007?

 12 A. He has not.

 13 Q. Has any party in this table or otherwise filed

 14 testimony in this case making those allegations?

 15 A. They have not.

 16 Q. Have you seen any evidence in this case at all

 17 refuting the evidence that you just put forward?

 18 A. No, I have not.

 19 Q. Has anyone here asked you, anyone here today

 20 asked you any questions that caused you as you sit here

 21 now to challenge the accuracy of the testimony you just

 22 put forward?

 23 A. No.

 24 Q. I want to, to follow up on something you said

 25 as well. When Mr. McGlothlin was asking you questions

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 1 about DJP-6 -- and in his opening statement he, he made

 2 some comments about that we are so happy to discredit

 3 our own evaluation process. But I want to ask you is

 4 what is shown here in DJP-6 the only part of our

 5 evaluation process?

 6 A. No.

 7 Q. And when you were referring the Commission to

 8 Page 5 of your direct testimony where there are several

 9 items there, are those some of the items that are also a

 10 part or are they not?

 11 A. Those are some of the items that make up the

 12 decision-making process of what coals to purchase.

 13 Q. So for OPC to pick one sliver of paper out of

 14 the entire process and assert that we owe them money

 15 because of this paper, is that fair to Progress Energy

 16 or unfair to Progress Energy?

 17 A. I believe it's unfair.

 18 Q. My last question is Mr. McGlothlin was asking

 19 you some questions about your testimony in the last case

 20 and made some references to your testimony where you

 21 said that you had no prior experience with this

 22 Indonesian coal. Do you recall that?

 23 A. Yes.

 24 Q. If the Commissioners were interested in

 25 hearing further testimony on that, is that something

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 1 they could ask you or could Ms. Stenger provide further

 2 testimony on the importance or lack of importance of

 3 that?

 4 A. Lack of, lack of what?

 5 Q. Of the importance of having no, the importance

 6 or lack of importance of having no prior experience with

 7 the coal from an operational perspective.

 8 A. From an operational perspective that would be

 9 Witness Stenger.

 10 MR. BURNETT: Thank you. No further

 11 questions.

 12 CHAIRMAN CARTER: Thank you.

 13 Commissioner Skop.

 14 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 15 Just, I assume that we'll probably be breaking

 16 shortly for lunch. But if staff -- it's probably on the

 17 CD somewhere, but the interrogatory responses that

 18 Mr. Weintraub mentioned, if I could get a hard copy of

 19 those. And perhaps my colleagues might like that also.

 20 But while it's fresh in my mind, I'd like to take a look

 21 at that and compare Mr. Weintraub's testimony to, to the

 22 interrogatory responses.

 23 MS. BENNETT: We'll be providing them after

 24 lunch.

 25 COMMISSIONER SKOP: Thank you.

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 1 CHAIRMAN CARTER: Okay. What's all this talk

 2 about lunch? I mean, you guys just got here.

 3 MR. BURNETT: We're ready, sir. We can drive

 4 on.

 5 CHAIRMAN CARTER: Okay. Okay. Commissioners,

 6 anything further for this witness? Okay.

 7 MR. McGLOTHLIN: Chairman Carter, there's, I

 8 think I need to put a number on the declassified version

 9 of --

 10 CHAIRMAN CARTER: I'll come back to you. You

 11 hold that thought. Hold that thought. Okay? Because

 12 that will be, that would be Number 50. But hang onto

 13 that. Okay? Just for, for your records just hold on to

 14 Number 50. We'll come back to you on that.

 15 Okay. Mr. Weintraub, when you go to show and

 16 tell to your children's school, they ask you what do you

 17 do and you say you buy coal, huh?

 18 THE WITNESS: Among other things, yes.

 19 CHAIRMAN CARTER: So where is your little

 20 miner's hat and your -- what is the other stuff they

 21 wear? Pick, yeah, your pick and all and your head lamp.

 22 Yeah. Anyway, we'll be seeing you later on rebuttal.

 23 (Laughter.)

 24 THE WITNESS: Yes, you will.

 25 CHAIRMAN CARTER: Exhibits, Mr. Burnett,

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 1 you're recognized.

 2 MR. BURNETT: Yes. Yes, sir. We move the

 3 prefiled testimony of Sasha Weintraub, the direct

 4 prefiled testimony into evidence, as well as Exhibits 3,

 5 4, 5 and 6.

 6 CHAIRMAN CARTER: Exhibits 3 through 6, any

 7 objections? Without objection, show it done.

 8 (Exhibits 3, 4, 5 and 6 marked for

 9 identification and admitted into the record.)

 10 You may -- you're on recess until we get to

 11 rebuttal.

 12 THE WITNESS: Thank you.

 13 CHAIRMAN CARTER: Mr. McGlothlin, you're

 14 recognized, sir.

 15 MR. McGLOTHLIN: Since Progress Energy agreed

 16 to declassify the evaluation sheet, I think it might be

 17 helpful to the hearing process to assign it a separate

 18 number.

 19 CHAIRMAN CARTER: Okay. Let's call that

 20 Exhibit 50, Commissioners. And we'll just call it an

 21 RFP Evaluation Sheet. Does that sound good to you,

 22 Mr. McGlothlin?

 23 MR. McGLOTHLIN: That's fine.

 24 CHAIRMAN CARTER: Okay. RFP. Mr. Burnett,

 25 any objection?

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 1 MR. BURNETT: No objection, sir.

 2 CHAIRMAN CARTER: Let's do this then, let's

 3 say as it relates to -- okay. Any of the other parties,

 4 any objections to Exhibit 50 which has been marked as

 5 RFP Evaluation Sheet? Without objection, show it done.

 6 (Exhibit 50 marked for identification and

 7 admitted into the record.)

 8 Number 49, Mr. McGlothlin, which is the

 9 excerpt, excerpt of the Weintraub testimony, a separate

 10 number.

 11 MR. McGLOTHLIN: Like the other documents I

 12 distributed, that's attached to Mr. Putman's.

 13 CHAIRMAN CARTER: It's attached, so we don't

 14 need to enter that.

 15 MR. McGLOTHLIN: Yes.

 16 CHAIRMAN CARTER: So, well, then -- okay then.

 17 What we need to do is back up on our numbers then. No.

 18 Okay. We'll just leave that as, just say it wasn't

 19 entered. How about that? Okay?

 20 MS. BENNETT: Mr. Chairman?

 21 CHAIRMAN CARTER: Yes, ma'am.

 22 MS. BENNETT: I probably should have done this

 23 earlier, but Commissioner Skop had asked that the

 24 testimony of Mr. Putman, Mr. Barsin and Mr., I'm sorry,

 25 Mr. Sansom, Mr. Barsin and Mr. Putman from 060658 be

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 1 entered into the record. I would suggest that item,

 2 Exhibit Number 51 be Robert Sansom's direct and rebuttal

 3 testimony and exhibits from Docket Number 060658.

 4 CHAIRMAN CARTER: Hang on a second. Hang on a

 5 second. Back up for a moment before we go there.

 6 Now on 49, what did we say we were doing on

 7 that since they're not, he's not going to enter that in?

 8 It's an exhibit that was part of a document that's

 9 already been marked for identification; is that right?

 10 MR. McGLOTHLIN: Yes, sir.

 11 CHAIRMAN CARTER: That's correct; right? It's

 12 already been marked for identification.

 13 MR. McGLOTHLIN: Yes.

 14 MS. BENNETT: And I think you said that we

 15 would just --

 16 CHAIRMAN CARTER: Just hold it.

 17 MS. BENNETT: -- indicate that it's not

 18 entered into the record.

 19 CHAIRMAN CARTER: Okay.

 20 MS. BENNETT: And so we would not have an

 21 Exhibit Number 49.

 22 CHAIRMAN CARTER: Okay. Okay. I just wanted

 23 to make sure I don't have any over.

 24 Okay. Now 51, you were saying -- let's go to

 25 51.

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 1 MS. BENNETT: 51 would be Mr. Sansom's direct

 2 and rebuttal testimony and exhibits from Docket 060658.

 3 CHAIRMAN CARTER: 060658?

 4 MS. BENNETT: Correct.

 5 CHAIRMAN CARTER: Okay. Before we go further,

 6 let's hear from the parties. Any objections,

 7 Mr. Burnett?

 8 MR. BURNETT: No, sir.

 9 CHAIRMAN CARTER: Mr. McGlothlin?

 10 MR. McGLOTHLIN: No, sir.

 11 CHAIRMAN CARTER: Mr. --

 12 MR. McWHIRTER: No, sir.

 13 CHAIRMAN CARTER: Okay. Without objection,

 14 show it done.

 15 (Exhibit 51 marked for identification and

 16 admitted into the record.)

 17 Ms. Bennett, you're recognized.

 18 MS. BENNETT: And then item or Exhibit

 19 52 would be Joseph Barsin's rebuttal testimony and

 20 exhibits from Docket --

 21 CHAIRMAN CARTER: Say again. Joseph.

 22 MS. BENNETT: I think it -- let's just call

 23 him Mr. Barsin.

 24 CHAIRMAN CARTER: Okay. Barsin's. Okay.

 25 MS. BENNETT: Rebuttal testimony and exhibits.

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 1 CHAIRMAN CARTER: Okay.

 2 MS. BENNETT: From Docket 060658.

 3 CHAIRMAN CARTER: 060658. Okay. Any

 4 objections?

 5 MR. BURNETT: No, sir.

 6 MR. McGLOTHLIN: None.

 7 CHAIRMAN CARTER: Without objection, show it

 8 done.

 9 (Exhibit 52 marked for identification and

 10 admitted into the record.)

 11 Okay. Ms. Bennett.

 12 MS. BENNETT: And then finally Number 53,

 13 Exhibit Number 53, and I will have to have

 14 Mr. McGlothlin refresh my memory, but I believe

 15 Mr. Putman filed direct and rebuttal testimony in, and

 16 exhibits in Docket 060658.

 17 MR. McGLOTHLIN: Rebuttal only.

 18 MS. BENNETT: Rebuttal only?

 19 CHAIRMAN CARTER: Rebuttal only?

 20 MS. BENNETT: So Mr. Putman's rebuttal

 21 testimony and exhibits from Docket 060658.

 22 CHAIRMAN CARTER: 060658. Okay. Rebuttal and

 23 exhibits? Are there any objections?

 24 MR. BURNETT: No objection.

 25 CHAIRMAN CARTER: Any objection? Without

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 1 objection, show it done.

 2 (Exhibit 53 marked for identification and

 3 admitted into the record.)

 4 Ms. Bennett.

 5 MS. BENNETT: That would be it. Thank you.

 6 CHAIRMAN CARTER: Commissioners, anything

 7 further? I think this seems close enough to a jumping

 8 off point that we want to probably give staff and the

 9 parties an opportunity for lunch, and us to come back --

 10 I started to say 2:00, but it's only 1:53, so that would

 11 be only like seven minutes.

 12 How about 1:45, Commissioners? 1:45. We're

 13 on recess.

 14 (Recess taken.)

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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

 5 proceeding was heard at the time and place herein

 stated.

 6

 IT IS FURTHER CERTIFIED that I

 7 stenographically reported the said proceedings; that the

 same has been transcribed under my direct supervision;

 8 and that this transcript constitutes a true

 transcription of my notes of said proceedings.

 9

 I FURTHER CERTIFY that I am not a relative,

 10 employee, attorney or counsel of any of the parties, nor

 am I a relative or employee of any of the parties'

 11 attorneys or counsel connected with the action, nor am I

 financially interested in the action.

 12

 DATED this \_\_\_\_\_ day of April, 2009.

 13

 14

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 15 LINDA BOLES, RPR, CRR

 FPSC Official Commission Reporter

 16 (850) 413-6734

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