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 1 BEFORE THE

 FLORIDA PUBLIC SERVICE COMMISSION

 2

 DOCKET NO. 070703-EI

 3

 In the Matter of:

 4

 REVIEW OF COAL COSTS FOR PROGRESS

 5 ENERGY FLORIDA'S CRYSTAL RIVER

 UNITS 4 AND 5 FOR 2006 AND 2007.

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 9 VOLUME 2

 10 Pages 163 through 351

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 12 A CONVENIENCE COPY ONLY AND ARE NOT

 THE OFFICIAL TRANSCRIPT OF THE HEARING,

 13 THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

 14

 PROCEEDINGS: HEARING

 15

 BEFORE: CHAIRMAN MATTHEW M. CARTER, II

 16 COMMISSIONER LISA POLAK EDGAR

 COMMISSIONER KATRINA J. McMURRIAN

 17 COMMISSIONER NANCY ARGENZIANO

 COMMISSIONER NATHAN A. SKOP

 18

 DATE: Monday, April 13, 2009

 19

 TIME: Commenced at 9:30 a.m.

 20 Concluded at 5:14 p.m.

 21 PLACE: Betty Easley Conference Center

 Room 148

 22 4075 Esplanade Way

 Tallahassee, Florida

 23

 REPORTED BY: JANE FAUROT, RPR

 24 Official FPSC Reporter

 (850) 413-6732

 25

 APPEARANCES: (As heretofore noted.)

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 1 I N D E X

 2 WITNESSES

 3

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 JAMES N. HELLER

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 1 EXHIBITS

 2 NUMBER: ID. ADMTD.

 3 54 Coal Cost/Quantity Gradient 245

 4 7-13 264

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

 2 CHAIRMAN CARTER: We are back on the record.

 3 And when we last left, I think, Mr. Burnett,

 4 you're recognized.

 5 MR. BURNETT: Thank you, sir.

 6 We would call Mr. Jamie Heller.

 7 CHAIRMAN CARTER: Okay. Mr. Heller.

 8 JAMES N. HELLER

 9 was called as a witness on behalf of Progress Energy

 10 Florida, and having been duly sworn, testified as

 11 follows:

 12 DIRECT EXAMINATION

 13 BY MR. BURNETT:

 14 Q. Sir, will you please introduce yourself to the

 15 Commission and provide your business address.

 16 A. My name is James N. Heller. My business

 17 address is 4803 Falstone Avenue, Chevy Chase, Maryland.

 18 Q. And you have already been sworn in as a

 19 witness, sir?

 20 A. Yes, I have.

 21 Q. Who do you work for and what is your position?

 22 A. I work for Hellerworx, and I am the President.

 23 Q. And have you filed prefiled direct testimony

 24 and exhibits in this matter?

 25 A. Yes, I have.

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 1 Q. Do you have a copy of your prefiled direct

 2 testimony and exhibits with you now?

 3 A. I do.

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

 5 prefiled direct testimony?

 6 A. No, I don't.

 7 Q. If I asked you the same questions in your

 8 prefiled direct testimony today, would you give the same

 9 answers that are in your prefiled testimony?

 10 A. Yes, I would.

 11 MR. BURNETT: Sir, we request that the

 12 prefiled direct testimony be entered in the record as if

 13 it were read today.

 14 CHAIRMAN CARTER: The prefiled testimony of

 15 the witness will be inserted into the record as though

 16 read.

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 1 BY MR. BURNETT:

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

 3 prefiled direct testimony?

 4 A. I do.

 5 Q. Will you please provide that summary to the

 6 Commission.

 7 A. Good day, Commissioners.

 8 The purpose of my direct testimony is to

 9 compare the delivered cost that PEF actually incurred by

 10 using Central Appalachian and imported bituminous coal

 11 at Crystal River Units 4 and 5 during 2006 and 2007 with

 12 the evaluated cost that would have been incurred if a

 13 20 percent blend of Powder River Basin coal had been

 14 used at Crystal River 4 and 5 during the same time

 15 period.

 16 In performing this analysis, I have used the

 17 cost-effectiveness test performed by Staff in their

 18 primary staff recommendation in Docket 060658, which the

 19 Commission implemented in its October 10th, 2007, order.

 20 The results of my analysis show that PEF saved its

 21 customers several million dollars by burning blends of

 22 Central Appalachian and imported bituminous coal instead

 23 of Powder River Basin coal in 2006 and 2007.

 24 In performing my analysis, I relied on actual

 25 purchases and other objective factual information. For

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 1 example, I relied upon PEF's actual historical coal

 2 price data, PEF's real cost of transporting Central

 3 Appalachian and imported coals for 2006 and 2007, PRB

 4 coal bids actually received by PEF during this period,

 5 as received coal quality analysis for PRB coal received

 6 at Crystal River, actual SO2 allowance prices and

 7 information from industry-recognized coal publications

 8 and databases, the report "Powder River Basin Coal

 9 Market Prices and Transportation Rates in 2006 and

 10 2007".

 11 With this data, I compared the cost of coal

 12 actually delivered to CR4 and 5 with the cost of PRB

 13 coal on an as-burned basis. I then calculated the

 14 difference between these costs. I performed the

 15 comparison on an as-burned or an evaluated price basis

 16 just as the Commission did in Docket 060658. Consistent

 17 with the procedure used in Docket 060658, my review

 18 focused on waterborne deliveries of compliance coal,

 19 since these are the coals that could potentially have

 20 been displaced by PRB coal.

 21 My analysis assumed that if PRB coal had been

 22 used at Crystal River 4 and 5 during 2006 and 2007, the

 23 PRB coal deliveries would have displaced the most

 24 expensive deliveries of waterborne compliance coal that

 25 actually occurred during each year. I then added the

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 1 incremental capital cost of three cents per million Btu

 2 associated with burning PRB coal according to the

 3 Commission's methodology. Using the coal price

 4 comparison methodology in the Commission's October 10th

 5 order, the all-in cost of burning a 20 percent blend of

 6 PRB coal at Crystal River 4 and 5 during the 2006 and

 7 2007 time frame is about $3.1 million more expensive

 8 than the cost of burning the Central Appalachia and

 9 imported coals that were actually used at Crystal River

 10 4 and 5 during this period.

 11 Based on the results of the Commission's

 12 cost-effectiveness test, Progress Energy should not have

 13 elected to burn PRB coal in 2006 and 2007. That

 14 concludes my summary, and I'm happy to answer any

 15 questions.

 16 MR. BURNETT: We tender Mr. Heller for

 17 cross-examination, sir.

 18 CHAIRMAN CARTER: Thank you.

 19 Commissioner Skop, you're recognized.

 20 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 21 Good afternoon, Mr. Heller.

 22 THE WITNESS: Good afternoon.

 23 COMMISSIONER SKOP: Just a few quick questions

 24 with respect to your prefiled testimony and your

 25 exhibits. If you could please turn to Exhibit JNH-3,

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 1 please.

 2 THE WITNESS: Yes.

 3 COMMISSIONER SKOP: And I think on that

 4 exhibit, and correct me if I'm wrong, I think that

 5 you're trying to show the delivered price for CAPP coal

 6 in the year 2007 and then doing a comparison that

 7 evaluated price for using PRB, and then calculating or

 8 showing that the -- basically, the CAPP coal would have

 9 been more cost-effective than having to use the PRB, is

 10 that correct?

 11 THE WITNESS: For 2006 and 2007, that's

 12 correct.

 13 COMMISSIONER SKOP: Okay. With respect to the

 14 numbers that you used to derive your evaluated price for

 15 PRB coal, those numbers, are those based in any part on

 16 a spot price quote or on actual delivery that was made?

 17 THE WITNESS: The Powder River Basin prices

 18 that I used are different in 2006 and 2007. In 2006, I

 19 used the actual delivery of the test coal from Peabody

 20 Coal Trade and used that as the basis for the Powder

 21 River Basin coal pricing.

 22 In 2007, I had a bid from the 2006 RFP that

 23 was provided by Louis Dreyfus and I used that actual bid

 24 as the basis of the calculation for the delivered PRB

 25 price in 2007.

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 1 COMMISSIONER SKOP: Okay. Let's focus on the

 2 2006 price which was based on actual delivery. I guess

 3 to me, in this case, and obviously any refund amount

 4 would turn on whether it was prudent to burn PRB, or

 5 whether to burn a blend of bituminous coal, or whatever

 6 was the most cost-effective option, but at least if PRB

 7 is called into question, then, you know, the evaluated

 8 price and the source of that, I think, becomes the

 9 driver in determining what refund, if any, would be

 10 required.

 11 On that spot price delivery, that was for a

 12 small quantity, is that correct?

 13 THE WITNESS: That's correct.

 14 COMMISSIONER SKOP: And that was approximately

 15 3300 tons?

 16 THE WITNESS: That's exactly right.

 17 COMMISSIONER SKOP: Okay. And on that spot

 18 price, I guess in trying to analogize a spot price

 19 small quantity versus a large price or a purchase in

 20 volume, and it would just, I guess, kind of seem to me

 21 that a coal mine really wouldn't engage in price gouging

 22 on a small quantity of coal in the expectation that it

 23 might gain a long-term customer. Has that generally

 24 been your experience?

 25 THE WITNESS: In terms of the pricing for the

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 1 test shipment, they might be aggressive on that in order

 2 to gain a long-term contract.

 3 COMMISSIONER SKOP: Okay. So they wouldn't

 4 just artificially inflate the price for a spot delivery

 5 on a small quantity.

 6 THE WITNESS: It actually depends on where

 7 they are in the process. But generally in a test

 8 shipment, when you are looking at the prospect of

 9 obtaining a new customer, they are likely to be pretty

 10 aggressive in terms of making sure that at least the

 11 test coal gets burned.

 12 COMMISSIONER SKOP: Okay. And to that point,

 13 assuming for the sake of discussion that $3.63 price is

 14 a good spot price indicative of a long-term delivery,

 15 but for a small quantity, should that spot price be

 16 adjusted downward slightly to account for increased

 17 volume, if there were to be a long-term contract?

 18 THE WITNESS: No, I wouldn't do that. I

 19 actually had a -- when I took a look at how to set the

 20 price for 2006 or what to use, there were a number of

 21 factors that I thought about. I knew no matter what I

 22 did I was going to get criticized. If I used a small

 23 volume of coal, I would be criticized for using

 24 something that wasn't indicative of a much larger

 25 contract. And if I were to ignore that and use a price

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 1 that I would choose, it is particularly difficult

 2 because during the period of time when I would be

 3 looking for prices, Progress Energy actually did solicit

 4 in 2005 and got no responses.

 5 And I know what was going on in the market in

 6 2005 and the first part of 2006. There were record

 7 prices being paid for Powder River Basin coal. So if I

 8 used a high price, I would have been criticized for

 9 that. If I were to go back nine months, the price would

 10 be lower. And it turned out that the spot shipment is

 11 reflective of the pricing that was going on during that

 12 period, and it was also able to be shipped, which was no

 13 mean feat, because in 2005 and the beginning of 2006

 14 getting Powder River Basin transportation was difficult.

 15 So it was able to be arranged by the producer,

 16 and the pricing looked to me to be indicative of what

 17 pricing would be during that period. And it was an

 18 actual transaction, and that's what I chose to use when

 19 I had data available.

 20 COMMISSIONER SKOP: Okay. And would you also

 21 agree that within the record evidence there is some

 22 evidence to suggest that for a larger quantity of coal,

 23 a much larger tonnage delivery, that the pricing during

 24 that period would be lower in terms of dollars per

 25 MMBtu?

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 1 THE WITNESS: If you're referring to the

 2 evidence this morning about the Triton bid?

 3 COMMISSIONER SKOP: Yes.

 4 THE WITNESS: Again, that was the result of a

 5 2004 solicitation. And the market price for Powder

 6 River Basin coal changed dramatically between 2004 and

 7 2005 and 2006. So that evidence is relevant, I think.

 8 The difference in prices is not so much the result of a

 9 difference in quantity as it is a difference in the time

 10 at which the price was solicited.

 11 COMMISSIONER SKOP: Okay. And I appreciate

 12 that. And I'm not being critical. Just from my

 13 perspective, I'm trying to ascertain what the, you know,

 14 appropriate decision would be supported by the record

 15 evidence in terms of how the Commission should address

 16 the issue before it.

 17 If I understand, you know, I have heard OPC's

 18 argument, and I'm familiar with that, and it seems like

 19 the Progress argument is two-fold, or a two-pronged

 20 argument. First and foremost, that the evaluated price

 21 of PRB during the time in question was prohibitive over

 22 and above using the straight CAPP coal, and then also,

 23 too, the Indonesian coal in 2007 was not available. And

 24 it seems like the crux of that, too, is a showing that I

 25 think Mr. Weintraub just mentioned on Staff

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 1 Interrogatory 29A and 29B, showing how the blend of

 2 bituminous coals was, in itself, more cost-effective

 3 than having to seek PRB or other coals. Is that your

 4 general understanding?

 5 THE WITNESS: Yes. What Mr. Weintraub does in

 6 terms of the bid evaluation and the decision process is,

 7 and what the timing is that they choose to go out and

 8 get coal, is something I have to -- as the analyst I

 9 live with, I don't drive that decision. So during the

 10 time that they went out for coal in late 2005, which

 11 would have been for 2006 delivery, there was no PRB coal

 12 bid into them, which isn't a surprise to me, given what

 13 was going on in the marketplace.

 14 COMMISSIONER SKOP: And I think probably three

 15 more questions and, again, I'm trying to keep this

 16 short. I want to go back and focus on the 2006, and I

 17 know that that is about the best record evidence we have

 18 to actual delivery in the time frame in question,

 19 although the volume is small. But am I to correctly

 20 understand that if I look at Column 5 on that exhibit,

 21 which is the 3.63, and then the delivered price during

 22 that period for CAPP coal was $3.30, so would it be

 23 correct to understand that anything above $3.30 for

 24 alternate coal would be cost prohibitive?

 25 THE WITNESS: Anything that was above $3.30

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 1 would have made it to the detriment of the company to

 2 have burned the alternative coal, that's correct.

 3 COMMISSIONER SKOP: So if $3.30 was the

 4 threshold mark, at or below that price Progress would be

 5 prudent for burning CAPP coal alone, and actually -- I'm

 6 sorry, I'm getting myself confused, because I'm looking

 7 at the data. Hold on for one second.

 8 So anything above $3.30 would have made

 9 burning PRB cost prohibitive, is that correct?

 10 THE WITNESS: It would have been a loser. And

 11 so there is quite a bit of margin in there in 2006 in

 12 terms of the cost of PRB versus the alternative.

 13 COMMISSIONER SKOP: Okay. I'm going to, if I

 14 may, and I think I have cleared this with our legal

 15 staff; basically, I'm trying to discern what's going on

 16 between the actual physical price we have and the chart

 17 that was shown this morning. And what I did is a simple

 18 straight-line graph to kind of show the two data points

 19 that I think have been at issue this morning. And I

 20 would like to distribute that to my colleagues, and also

 21 the witness and counsel, if we could, please.

 22 And this is not for the record, this is just

 23 for purposes of discussion. And while they are doing

 24 that, it's my understanding, too, from reading the

 25 testimony that the approximate tonnage of PRB and,

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 1 again, the 80/20 blend, subject to the constraints of

 2 the waterborne delivery, subject to all the things that

 3 have been articulated, the maximum amount of coal that

 4 could have been PRB in any given year would have been

 5 about 450,000 tons, is that correct?

 6 THE WITNESS: That's correct.

 7 COMMISSIONER SKOP: Okay. I'll wait for this

 8 is be passed out, and I'll try and draw at least some

 9 sort of conclusion whether you can help me out with

 10 this.

 11 I guess if you could please look at this

 12 chart, and I guess what's attempted to have been done to

 13 accomplish by this chart is to plot the data point from

 14 this morning, which would have been about

 15 three million tons at the stated price, and then also to

 16 plot the spot delivery that you mentioned, which is the

 17 3.63 for about 3300 tons. And, again, the scale is not

 18 as good as it could be, but I think that it shows an

 19 illustration. And I guess if you could look at the --

 20 since 450,000 tons was the maximum PRB that could have

 21 been delivered, if you could interpolate where that

 22 would reflect on that straight line in terms of a

 23 delivered coal cost in dollars per MMBtu, and roughly

 24 estimate that, where that would fall on that line or the

 25 intersection of the line.

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 1 THE WITNESS: It would be somewhere around

 2 $3.40.

 3 COMMISSIONER SKOP: That's about the same

 4 number I would get to. I guess we interpolate the same.

 5 So, basically, if you were trying to correct between a

 6 large volume purchase of PRB and the spot price,

 7 although I think you have testified that no such

 8 correction would be necessary. But if you wanted to

 9 take the further step to try and look at that and

 10 articulate where you might make some sort of adjustment

 11 to account for the spot price at a small volume, even

 12 with that correction, that cost would still be

 13 prohibitive and above the $3.30 price for CAPP coal, is

 14 that correct?

 15 THE WITNESS: It would be, according to the

 16 analysis that you have given me. Again --

 17 COMMISSIONER SKOP: So if CAPP coal -- you

 18 evaluated the cost of PRB at $3.63; the price for CAPP

 19 coal at that time was $3.30.

 20 THE WITNESS: Correct.

 21 COMMISSIONER SKOP: If you were to correct for

 22 a larger volume where you would hope the price would go

 23 down from that which you found, even doing that

 24 correction, according to the straight line data points

 25 between the two actual data points we have, that price

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 1 would be roughly $3.40, which would still be in excess

 2 of the delivered price for CAPP coal in that period, is

 3 that correct?

 4 THE WITNESS: Yes, following your methodology.

 5 COMMISSIONER SKOP: Okay. It was not mine.

 6 I'm just trying to rationalize where the truth lies, and

 7 so I thought that that would be a graphical way to kind

 8 of illustrate and help me talk through between trying to

 9 rationalize the small spot delivery that you are citing

 10 versus the large delivery that OPC was quoting and

 11 trying to adjust accordingly for delivery volume. But

 12 even in making that adjustment, which goes a step beyond

 13 what you are suggesting, I think you are still above

 14 that $3.30 cut-off point.

 15 THE WITNESS: I think the way you have done

 16 this would be highly punitive in terms of the manner in

 17 which volume would be adjusted with price. But I see

 18 what you're trying to do, and I think the answer would

 19 be somewhere in the 3.40 range, and it would still make

 20 Powder River Basin coal more expensive than the

 21 alternative, and I think it would be.

 22 COMMISSIONER SKOP: So under the scenario you

 23 would still in 2006 burn 100 percent CAPP coal, because

 24 it would be the most cost-effective alternative?

 25 THE WITNESS: CAPP or import. You would not

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 1 be burning PRB coal.

 2 COMMISSIONER SKOP: Thank you.

 3 CHAIRMAN CARTER: Mr. McGlothlin.

 4 CROSS EXAMINATION

 5 BY MR. McGLOTHLIN:

 6 Q. By way of clarification, Mr. Heller, your

 7 responses to the Commissioner in which you conclude that

 8 the PRB coal would not be cost-effective proceeds from

 9 the assumption that you have chosen the right proxy for

 10 what the PRB would have cost in '06 and '07, correct?

 11 A. I think the fundamental understanding of the

 12 question was based on what I used as the proxy.

 13 Q. And you understand that's something that is

 14 very much in dispute in this case, do you not, sir?

 15 A. I understand that OPC has an objection to it.

 16 Q. I have some questions about your testimony. I

 17 want to start with a few just to frame the conversation

 18 to ensue. As I understand it, in your testimony you set

 19 about to compare the cost of the bituminous coal that

 20 was actually delivered in 2006 and separately for 2007

 21 with the cost of what a blend containing 20 percent

 22 sub-bituminous coal would have cost had it been

 23 substituted for the most expensive bituminous coal

 24 delivered, correct?

 25 A. More precisely, what I'm doing is looking at

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 1 the coal you displace, which is bituminous coal, with

 2 the Powder River Basin coal that would become the blend

 3 coal. That's how I look at what the impact is as to

 4 whether or not there is a savings.

 5 Q. And to do that you first quantified the most

 6 expensive 20 percent of the tons of bituminous coal that

 7 were actually delivered in this period, correct?

 8 A. Yes. The way I do it is the same way I did it

 9 in the original methodology, which is if the company

 10 were to go out and purchase Powder River Basin coal to

 11 blend, then they would eliminate coals that were already

 12 being delivered to the plant. And, logically, if they

 13 could, I assume they would eliminate the most expensive

 14 coals first, which creates the greatest gap relative to

 15 the Powder River Basin coal and produces the maximum

 16 amount of savings, if you will, that the Powder River

 17 Basin coal would generate. That's how you would do it.

 18 Q. Now, you have read Mr. Putman's testimony, and

 19 I'm sure you are familiar with the fact that with

 20 respect to the quantification of the cost of the

 21 bituminous coal actually delivered, there is little to

 22 no difference between your results and his, correct?

 23 A. I think that's the way it began, yes.

 24 Q. So the central debate concerns the choice of

 25 the appropriate value to represent what the blend would

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 1 have cost had the company acquired that to displace the

 2 top 20 percent most expensive tons of the bituminous

 3 coal, correct?

 4 A. No. I think there is actually two areas of

 5 difference. One is the selection of the replacement

 6 coal, and second is the methodology for doing the Btu

 7 replacement.

 8 Q. Okay. Bearing on the first aspect of that,

 9 for 2006 you had a choice to make, and you chose to use

 10 the spot purchase of 3300 tons, correct?

 11 A. I'm using the pricing for that as the

 12 surrogate for the pricing for the year, that's correct.

 13 Q. You could have used the bids to the 2004 RFP

 14 which were received at the time the company was making

 15 decisions for volume quantities of coals to be delivered

 16 in 2006, correct?

 17 A. Well, the deliveries that would have come from

 18 the 2004 RFP extended into 2006, but they would have

 19 been -- they were all, I think, 2005/2006 or

 20 2005/2006/2007 deliveries. So the way that I did the

 21 methodology was I would look at the bids that came in

 22 for what would be the logical next time period, which

 23 would have been the September 2005 RFP, but there were

 24 no PRB bids that came in for that.

 25 Q. But there were --

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 1 A. That would have been the one I would have

 2 chosen.

 3 Q. There were bids received in the 2004 RFP for

 4 delivery in 2006, am I right?

 5 A. Again, there would have been -- there would

 6 have had to have been -- I assume they would have been

 7 delivered in 2005, and then those deliveries would have

 8 continued into 2006.

 9 Q. So that was available to you, was it not, that

 10 information?

 11 A. That information was certainly available, but

 12 that option, to me, doesn't -- isn't consistent with the

 13 methodology that I had been following to try and develop

 14 a market price in the proceeding for what would be the

 15 surrogate coal.

 16 Q. With respect to 2007, you did use an RFP that

 17 was issued in 2006, did you not?

 18 A. That's correct, and the first year of

 19 deliveries under that RFP would have been 2007. That

 20 was the year in which it was intended to be delivered.

 21 Q. Okay. So with respect to each of those RFPs,

 22 2004 and 2006, each encompassed a time frame that

 23 included one of the years under consideration, am I

 24 right?

 25 A. They did both consider 2006. But I think as

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 1 Mr. Weintraub pointed out, there were probably

 2 left-overs from prior RFPs who would also have gone into

 3 2006.

 4 My difficulty as an analyst, and I know I

 5 would take -- there would be criticism of this, is what

 6 is the most appropriate surrogate price to use that

 7 would be representative of what likely would have

 8 happened. And the 2005 RFP, which was designed for

 9 2006, had it produced a price is what I would have used.

 10 The 2004 one, which would have had to have gotten

 11 through 2005 to get to 2006, didn't strike me as the

 12 best surrogate to use.

 13 Q. But didn't you consider using the proposal

 14 submitted to the 2004 RFP as the basis for the 2006

 15 value?

 16 A. No. I think I answered that the 2005 is what

 17 I would have used, that was the RFP that was closest.

 18 2004, to me, did not seem appropriate. The market

 19 changed a world during this period of time, as I said

 20 before. And so I don't want to be -- it was -- if the

 21 market is relatively flat over this period of time it is

 22 easy. The period of time in which I pick a Powder River

 23 Basin price doesn't matter very much, and that applied

 24 to many of the years during which the analysis was done.

 25 During the period of 2004, '05, '06, and it

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 1 actually continued into '07, Powder River Basin prices

 2 spiked and became essentially unavailable during part of

 3 this period of time, came down again, and have gone back

 4 up again. So timing is important, and I don't -- it's

 5 really Progress Energy that chooses when they go out for

 6 RFPs.

 7 And, again, the RFP, which would have been

 8 intended for the 2006 deliveries, would have been the

 9 2005 RFP, and there weren't bids submitted. So I could

 10 have picked the prices at the end of 2005, which would

 11 be in the 20-something dollar range, probably, or high

 12 teens. I could have picked an average of the year. I

 13 could have picked something in early 2006. It was

 14 difficult, and I picked what I considered to be

 15 representative of what the coal price would have been

 16 during the period, recognizing that the volume is small.

 17 Q. Mr. Heller, do you have the transcript of the

 18 deposition of January 16th available to you there, sir?

 19 A. I do.

 20 Q. Please turn to Page 39 of the transcript. At

 21 Line 21 I asked this question, "Did you consider using

 22 the proposal submitted to the 2004 RFP as the basis for

 23 the 2006 PRB blended price when you set out to conduct

 24 your analysis?"

 25 Would you read the answer that follows it,

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 1 beginning on Line 24?

 2 A. I said, "I thought about that as an option,

 3 actually any year that I had a bid, a PRB bid that ran

 4 into a future year was a possibility. But I thought in

 5 terms of being able to defend the logic of -- in other

 6 words, without the benefit of hindsight, how would I

 7 judge what the utility did. The method I chose I

 8 thought was the most defensible."

 9 Q. So you did consider the 2004 information, but

 10 you thought hindsight would be involved in your use of

 11 that?

 12 A. Again, I looked at that, I looked at what the

 13 RFPs were, but that wasn't what I considered to be the

 14 appropriate metric to use for this.

 15 Q. And the reason you gave during the deposition

 16 was that you thought hindsight would be involved, isn't

 17 that correct?

 18 A. I also said I thought -- what I said at the

 19 end is I chose the method that I thought was the most

 20 defensible. And I did say that if I choose a prior

 21 period without a good basis for it, then as the nature

 22 of this exercise is that there is an opportunity to use

 23 hindsight, and that isn't -- what I have done is try and

 24 follow a methodology originally to try and avoid that.

 25 Q. I want to ask some questions about your use of

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 1 the word hindsight in this context. In terms of looking

 2 for a good basis to use the information, consider that

 3 in April of 2004 Progress Energy issued an RFP for the

 4 purpose of making a decision with respect to a

 5 substantial portion of the deliveries to Crystal River 4

 6 for the years '05, '06, and '07. Wouldn't that be a

 7 good basis for reviewing and using the information

 8 received during that RFP?

 9 A. That is a possible basis. The problem is you

 10 have got a 2004 price decision, and I skipped 2005

 11 because I'm not looking at that. So what you

 12 essentially end up with in 2006 is a residual of the

 13 2005 contract. That isn't what I understand is the --

 14 that isn't what I think is the best way to look at what

 15 the pricing would be in 2006.

 16 Q. In 2006 looking at 2007, you chose as a proxy

 17 the Louis Dreyfus bid, correct?

 18 A. Yes, and I explained that the 2006 bid was for

 19 2007. That was the first year of delivery.

 20 Q. But that was a two-year proposal, was it not?

 21 A. It was a two-year, but the first year of

 22 delivery was the target year, 2007, and the pricing was

 23 -- again, I described in my testimony the manner in

 24 which the pricing is done. That was not difficult,

 25 actually, to use the 2006 bid for an RFP intended for

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 1 2007 and the bid for beginning in 2007.

 2 Q. You say 2007 was the target year. Do you mean

 3 by that that 2007 was one of the years that was included

 4 in the term of the offer?

 5 A. Not one of the years, it was the first year.

 6 Q. Okay. With respect to the April 2004 RFP, you

 7 are aware, are you not, that some of the Powder River

 8 Basin producers offered to supply coal to CR4 and 5

 9 during all three years of the term for which the company

 10 was soliciting bids?

 11 A. I'm aware of that.

 12 Q. So with respect to a target year, would it be

 13 equally defensible to assume that the deliveries began

 14 in '05 and continued through '06?

 15 A. No. I was looking for an '06 price, that is

 16 what I was tasked to do, not '05. If somebody bids in

 17 '04, and you ask them to skip '05, if you will, and

 18 quote a price which is going to be almost two years in

 19 the future, I have no idea if that is something that a

 20 producer would generally do. My experience is that's

 21 almost a different kind of a request.

 22 Q. Well, with respect to your use of the word

 23 hindsight, again, referring to Mr. Putman's testimony,

 24 you are aware, are you not, sir, that Mr. Putman used

 25 the values for '06 that were bid by the producers of

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 1 sub-bituminous coal there, but did not assume that

 2 Progress Energy should have purchased coal for delivery

 3 in '07, even though it was offered at the time?

 4 A. I'm not sure I understood your question. I'm

 5 sorry.

 6 Q. All right. Let me break it down to a couple

 7 of smaller questions. You recall that the term of the

 8 RFP was for deliveries in '05, '06, and '07?

 9 A. That's correct.

 10 Q. And you are aware that Mr. Putman uses for

 11 purposes of his proxy the bids for the '06 time frame?

 12 A. He uses the 2004 bids, and he uses the prices

 13 from those to develop the 2006, his 2006 price.

 14 Q. Yes. You're aware that the time period

 15 encompassed by this proceeding includes both '06 and

 16 '07?

 17 A. I'm aware of that.

 18 Q. And relating back, again, to the 2004 RFP, the

 19 RFP solicited bids for all three years, correct?

 20 A. It solicited bids covering 2005, 2006, 2007;

 21 not 2006/2007. In other words, they were for getting

 22 delivery in 2005.

 23 Q. Yes, sir. And you're familiar with the fact

 24 that Progress Energy elected not to purchase coal from

 25 that RFP for delivery in '07?

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 1 A. I don't recall what they -- which ones they

 2 selected, but -- that, actually, is an example of the

 3 prerogative that I think belongs to the people who are

 4 doing the soliciting as to their perception of the

 5 market, when to go out for an RFP. Even though they're

 6 offered for three years, they may not not take the third

 7 year, or -- but it doesn't, it's something quite

 8 different when you, essentially, push the bid, the

 9 starting bid out almost two years. That, to me, is

 10 something quite different.

 11 Q. Well, if you'll accept for the purpose of the

 12 question that Progress Energy elected not to purchase

 13 from that RFP for deliveries in '07, and my point to you

 14 is that to have attributed to Progress Energy a purchase

 15 in '07 from that 2004 RFP simply because those were

 16 attractive prices relative to what happened next, that

 17 would have been hindsight, would it not?

 18 A. Frankly, the distinction between that and what

 19 you're doing in 2006 isn't quite clear to me. Both of

 20 them take advantage of the -- of a delay in the, you

 21 know, receipt of the coal which is over an extraordinary

 22 long period, I think.

 23 Q. But with respect to the 2004 RFP, we know --

 24 and it is not a matter of hindsight, we know that

 25 Progress Energy had established 2004 at a decision point

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 1 for the purpose of securing portions of the 2006

 2 deliveries to Crystal River 4 and Crystal River 5,

 3 correct?

 4 A. Where deliveries also occurred in 2005, they

 5 also went into 2006. Those two years together, that's

 6 correct.

 7 Q. Okay. With respect to your choice of the spot

 8 purchase, by 2006, do I understand correctly that the

 9 market price of Powder River Basin coal had increased

 10 beyond what it had been at the time of the 2004 RFP?

 11 A. It increased above the price it had been at

 12 the 2004 RFP, and it had also declined substantially

 13 from the peak it had been at prior to the time they took

 14 the spot delivery in 2006.

 15 Q. Now that's information that was not known to

 16 Progress Energy at the time it conducted the RFP,

 17 correct?

 18 A. That's correct, they wouldn't have known what

 19 the market price was going to be.

 20 Q. But it is known to you at the time that you

 21 are selecting your proxy, correct?

 22 A. That's correct. The question, though, is what

 23 constitutes a reasonable proxy for what Progress Energy

 24 would have -- what they would have received had they

 25 purchased coal for delivery during 2006. And, again,

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 1 there was no response to the 2005 RFP, which is to say

 2 it wasn't available. There is very high pricing during

 3 that period of time, substantially higher than what I

 4 used. There is also pricing during that period of time

 5 which was lower than what I used. I think it's a very

 6 peculiar and difficult situation to do 2006, and I think

 7 the way it is done is appropriate. I think going back

 8 to 2004 and using that bid solicitation for beginning

 9 deliveries in 2006 is inappropriate.

 10 Q. Would you agree that the purchase of the

 11 3,300 tons of the test burn coal, that transaction was

 12 not even on the table at the time the utility made

 13 commitments with respect to purchases from the 2004 RFP

 14 for deliveries in 2006?

 15 A. Right. That was -- there was nothing offered

 16 in 2005, so I could have said there was nothing

 17 available, and that it wasn't possible to get coal in

 18 2006. But recognizing that this process that the

 19 Commission uses benchmarks each year relative to what

 20 the PRB deliveries would have been, and that -- so I

 21 needed a price that to me was the most appropriate price

 22 to use, and that is how I have cast it and defended it.

 23 Q. Now, what happened to the price of Powder

 24 River Basin coal between 2005 and 2006, the time of the

 25 2006 RFP?

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 1 A. Between 2005 and early 2006, pricing came down

 2 a bit and availability appeared, because they had a

 3 bidder in the 2006 RFP. But they didn't get a lot of

 4 bids; it was clearly still a pretty difficult market.

 5 Q. Now, with respect to the choice of the proxy

 6 for 2007, you chose the bid submitted by Louis Dreyfus,

 7 the coal broker for delivery of Powder River Basin coal

 8 in 2007, did you not?

 9 A. That coal was bid for 2007. That was the

 10 response to the RFP. I thought that was clearly the

 11 appropriate price to use.

 12 Q. And you did not consider the less expensive

 13 bids for Indonesian coal because Progress Energy told

 14 you to limit your consideration to Powder River coal,

 15 correct?

 16 A. Progress Energy told me to take the

 17 methodology that the Commission had established up

 18 through 2005 and apply it to 2006 and 2007. That

 19 methodology focused on Powder River Basin coal, and

 20 that's what I did.

 21 Q. My question is did Progress Energy tell you to

 22 limit your consideration to Powder River coal?

 23 A. Effectively by telling me to extend the

 24 Commission order, they did. To consider the Indonesian

 25 coal is a totally -- and there is other testimony, but

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 1 it is totally different coal than the Powder River Basin

 2 coal.

 3 Q. My question is simply did the utility instruct

 4 you to limit your consideration to Powder River Basin

 5 coal?

 6 MR. BURNETT: Mr. Chairman, if the witness

 7 could finish his answer. I don't believe he was

 8 finished.

 9 MR. McGLOTHLIN: It seems to me he has

 10 answered a very different question, Chairman Carter. My

 11 question was limited.

 12 CHAIRMAN CARTER: I'm going to help you out.

 13 If you can answer the question yes or no, answer it yes

 14 or no. And you will be allowed to explain your answer,

 15 but if you can answer yes or no, let's do that.

 16 Mr. McGlothlin, you may proceed.

 17 THE WITNESS: The instructions given to me

 18 were to take the Commission's methodology and extend it

 19 forward, and that meant Powder River Basin coal. The

 20 Indonesian coal is different, the Kennecott coal is

 21 different. There was much testimony in the prior

 22 proceeding about the technical issues around burning

 23 other coals. That wasn't what I was asked to address

 24 here. I was asked to address moving this forward into

 25 the next two years. That was not a new technical

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 1 assessment of different types of coal, so that is what I

 2 did.

 3 MR. McGLOTHLIN: With respect to the --

 4 CHAIRMAN CARTER: One moment, Mr. McGlothlin.

 5 Would you yield for a moment?

 6 Commissioner Skop.

 7 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 8 Mr. Heller, you just spoke about your review

 9 of the prior docket and the testimony about the coal.

 10 Did you review that testimony in its entirety in

 11 preparing your testimony?

 12 THE WITNESS: That would be a difficult -- I

 13 have read all that, because I participated in the

 14 docket. I did read everything at the time. I looked at

 15 sections before I testified to it.

 16 COMMISSIONER SKOP: So you're familiar,

 17 generally, with Witness Sansom's testimony, Witness

 18 Barsin's -- I think I'm saying his name right --

 19 Barsin's testimony, and also Mr. Putman's testimony, is

 20 that correct?

 21 THE WITNESS: I was certainly focused on Mr.

 22 Sansom's testimony.

 23 COMMISSIONER SKOP: Okay. And in that prior

 24 proceeding, did they ever raise the issue of using

 25 alternate coal in terms of Indonesian coal or Springhill

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 1 coal? I reviewed that testimony extensively, but I

 2 don't remember seeing that. Is that your recollection?

 3 THE WITNESS: That is my clear recollection.

 4 They did not raise Indonesian coal, and they focused on

 5 Wyoming Powder River Basin coal, and there was extensive

 6 technical discussion about what it would cost to burn

 7 that coal in the boiler. And that -- if you want to

 8 look at a different coal, then you need to hear

 9 testimony, I guess, on what the different coal would do

 10 in the boiler, and that wasn't what I was asked to do

 11 here.

 12 COMMISSIONER SKOP: Okay. So your, I guess,

 13 direction was basically keying off what the Commission

 14 discussed in the prior docket, and not expanding the

 15 scope of that to consider coal from places outside of

 16 what was discussed in the prior docket, is that correct?

 17 THE WITNESS: Actually, I couldn't do that.

 18 If they -- I was involved heavily in one of the first

 19 uses of Spring Creek coal, and the company that bought

 20 it couldn't burn it. I'm well aware of the problems

 21 that surround Spring Creek coal. I'm also aware of the

 22 difficulties associated with Indonesian coal. So they

 23 are different coals. And the focus of the testimony

 24 last time wasn't on those coals, it was on the Wyoming

 25 PRB type coals.

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 1 COMMISSIONER SKOP: Okay. And I see my copies

 2 came in, so I'm going to just ask one more question and

 3 I'll be done with my questions and turn it over to Mr.

 4 McGlothlin.

 5 Again, the issue I'm struggling with here is

 6 looking at what the Commission discussed in the prior

 7 docket. And, again, I took a very strong aggressive

 8 approach in my concurring opinion, I think a very strong

 9 approach. But in the interest of trying to be fair, I'm

 10 looking at issues in this docket that were not

 11 previously raised, and trying to understand how those

 12 fit into the scheme of things in terms of whether they

 13 just were merely used to maximum the amount of the

 14 refund, and obviously each party has its own position.

 15 Progress would say no refund at all, where OPC

 16 would seek to maximize the amount of the refund, but I

 17 don't recall those issues being an issue in the prior

 18 docket, and so I'm trying to gain a better appreciation

 19 and understanding, you know, of what the notion of

 20 fairness holds in this docket. And that's where

 21 initially I had looked at some of the concerns that we

 22 got into this morning, and I'm trying to better

 23 understand the positions of each of the respective

 24 parties.

 25 I know OPC has articulated their position, and

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 1 Progress has articulated their position, so my final

 2 question, I guess, to you would be, I know that you --

 3 there has been a lot of discussion here and on the

 4 cross-examination of where the appropriate evaluated

 5 price or PRB would be, whether you should have used a

 6 2004 RFP, or whether you should use the spot price in

 7 2006. Assuming -- and I know that we talked about this

 8 little graph that we prepared, or I prepared, just as a

 9 demonstrative exhibit to try to rationalize, well, if I

 10 don't agree with your point, and if I adopted OPC's

 11 point, where does that leave me in the grand scheme of

 12 things under the required tonnage of coal?

 13 But just for the sake of discussion, there has

 14 been a document that was previously discussed by Mr.

 15 Weintraub, and that was the Progress response to staff

 16 Interrogatory 29 in Part A where Progress alleges that

 17 basically the numbers supporting this show that a blend

 18 of bituminous coal, domestic and foreign, still would

 19 have been cheaper than the PRB.

 20 And so I guess what I'm asking, if you could

 21 take a look at that document briefly, and assuming for

 22 the sake of discussion that I reject your contention of

 23 the spot price in its entirety and I adopt the OPC

 24 position, which is basically shown by the upper point of

 25 that graph, which is about $2.38 per MMBtu, in relation

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 1 to the staff interrogatory response of 29A, is each of

 2 those prices with the exception of one price lower than

 3 the point that OPC had made in terms of trying to say

 4 that the 2004 RFP price should have been used? So I

 5 guess what I'm saying is this the fallback, assuming

 6 that -- and I'm not doing a good job of this, because

 7 I'm having to do this on the fly. I didn't have a year

 8 and a half to prepare for this case.

 9 But I guess what I'm looking at is generally

 10 we reject your contention, we adopt the OPC contention

 11 that the 2004 RFP price should have been used. Progress

 12 didn't buy coal in 2004, so they covered. But, in

 13 effect by covering in the manner in which they did as

 14 shown on 29A, each of those prices seemed to be, in my

 15 mind, with the exception of one, lower than what OPC is

 16 contending the 2004 RFP price would be. So maybe you

 17 could shed some light on that for me because, again, I'm

 18 trying to understand how these pieces fit together.

 19 THE WITNESS: You're correct, that they all

 20 are lower. You are also correct in that I am -- my job

 21 is sort of an artificial one. The real answer is when

 22 Progress Energy and Mr. Weintraub make judgments as they

 23 go along about what the cheapest alternative for the

 24 company is each time they do a procurement and decide

 25 what their cheapest alternative or set of alternatives

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 1 are, that's really where the decision gets made about

 2 what is optimal for the company.

 3 What I have been asked to do, which is what

 4 leads to some of these difficulties, is to try and

 5 create a hypothetical construct of what if they had done

 6 something different, which is what the Commission asked

 7 through this methodology that we go back and test. But

 8 that's not, I don't think, really the way prudence would

 9 normally be looked at. It would be looked at on these

 10 piecemeal decisions as to what these, you know,

 11 individual decisions as to what the cheapest alternative

 12 is for the company at the various decision points in

 13 time when there is an RFP that they get responses for,

 14 when they make a spot purchase. So I think you're

 15 correct in -- I'm sorry.

 16 COMMISSIONER SKOP: And, again, I guess the

 17 last time it was clear cut to me. This time not so

 18 much. And I'm trying to discern the position of the

 19 parties in the interest of fairness, and I'm seeing a

 20 lot of contradictory evidence. And I think that it's

 21 going to fall on staff's shoulders to kind of flesh that

 22 out. But I'm trying in my own mind to prepare, and

 23 understand, and give each witness and their testimony,

 24 you know, the due credit, and try and integrate those

 25 between the conflicting viewpoints. But, I guess, you

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 1 know -- I tend to -- I'm struggling.

 2 THE WITNESS: The answer to 29 is really a

 3 description of when they had a decision to make, when

 4 Progress Energy had a decision to make did they choose

 5 an option that was less expensive than the PRB option

 6 that opened to them. And the way I understood Mr.

 7 Weintraub describing what he does, he looks for

 8 flexibility, he looks for other options, and they

 9 developed some. They developed an option of a very low

 10 quality bituminous coal. And so if that is cheaper than

 11 the PRB alternative, that is what they chose to do, and

 12 it's what they should have chosen to do.

 13 COMMISSIONER SKOP: Like I say, I'm not very

 14 happy with the fact that, again, if you had the

 15 capability to burn it to begin with, you should have

 16 burned it. But, again, it seems to me from the

 17 interrogatory response to 29, even if we don't get there

 18 with your testimony, falling back to 29A, they still

 19 covered at a lower cost, even though they didn't buy it

 20 in 2004, in 2006 and 2007 they covered using a

 21 bituminous coal blend at a lower cost than they could

 22 have locked in on PRB in 2004.

 23 THE WITNESS: That's correct. Those are the

 24 decisions they made, and that's what to look at. You're

 25 correct in looking at that.

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 1 COMMISSIONER SKOP: Thank you.

 2 CHAIRMAN CARTER: Mr. McGlothlin, you may

 3 proceed.

 4 BY MR. McGLOTHLIN:

 5 Q. Mr. Heller, with respect to your proposed

 6 treatment of capital costs in the overall scheme of

 7 things, would you agree with me that the Commission

 8 determined in the last case that had the capital

 9 improvements associated with the 20/80 blend been in

 10 place no later than 2003, the company would have been

 11 able to accomplish fuel savings during the period '03,

 12 '04, and '05 by virtue of being positioned to burn a

 13 blend of coal during those years?

 14 A. That's my understanding.

 15 Q. With respect to your -- as I understand your

 16 testimony, you contend that the quantified capital costs

 17 should be something of an adder to the cost of the

 18 sub-bituminous coal for comparison purposes, do you not?

 19 A. Yes, because that was a necessary investment

 20 in order to be able to burn the coal.

 21 Q. Now, isn't it true that, first of all, your

 22 testimony is written in August 2008, is that correct?

 23 A. Yes.

 24 Q. Isn't it true that as of January 16th, 2009,

 25 which was the date of your deposition, until that date

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 1 you were not aware that the refund calculated by the

 2 Commission excluded capital costs as a component?

 3 A. I think what I said in my deposition, I

 4 believe, is that I focused on how they had used capital

 5 costs as a surrogate, but I wasn't familiar with the

 6 details of how the refund worked relative to the capital

 7 cost component.

 8 Q. If you would, turn to your deposition, Pages

 9 84 and 85.

 10 And you will see in the middle of Page 84 I

 11 asked you the question with which I began this line, and

 12 you said as you said today, I think that was the

 13 conclusion. And then I asked in terms of calculating

 14 the refund to customers, after quantifying the capital

 15 costs, the Commission removed the capital costs from the

 16 refund amount based on its conclusion that those costs

 17 would be recovered through base rates and not through

 18 fuel costs. And would you read your answer on Page 85?

 19 A. I said, "I have read what you said, I haven't

 20 really studied that. I'd rather -- I just haven't

 21 studied that. I read that part of the order; I just

 22 haven't studied how that is done."

 23 Q. And the next question and answer, please.

 24 A. "If you know, are you aware that the final

 25 refund amount was exclusive of any capital cost?"

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 1 And I said, "I'm not."

 2 Q. With respect to your Exhibit JEH-6 --

 3 A. Yes.

 4 Q. Give me a moment to shuffle papers.

 5 On JH-6 you have set out certain items of

 6 plant that would be what you described as capital driven

 7 revenue requirements associated with burning PRB at

 8 Crystal River Units 4 and 5, correct?

 9 A. That's correct.

 10 Q. Would you agree with me that if those capital

 11 items were added prior to 2003, they would be in place

 12 today?

 13 A. If they were added -- yes. Obviously if they

 14 were spent earlier, you would still have the costs, but

 15 they would have been spent. The question is when you do

 16 the evaluation of whether or not you consider Powder

 17 River Basin coal or a blend as being competitive with

 18 the alternative, should you include in that the cost,

 19 the capital cost associated with that. And I think it's

 20 appropriate that you do that, even though the capital

 21 has already been spent.

 22 And if it was to be done differently, then I

 23 presume the Commission in their order would have

 24 included the capital costs only in the first year, and

 25 then not done it in 2004 and 2005, but they included it

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 1 each year. So, again, and my job is extending what the

 2 Commission did, I include it in 2006 and 2007.

 3 Q. Well, I think you agreed with an earlier

 4 question --

 5 CHAIRMAN CARTER: Excuse me, Mr. McGlothlin,

 6 if you would yield for a moment, please, sir.

 7 Commissioner Skop.

 8 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 9 Just a quick question, Mr. Heller. On this

 10 question, I guess I had looked at your testimony and

 11 also looked at Mr. Putman's direct testimony. I guess

 12 he has some issues to this exact point. I just want to

 13 make sure I understand that when you're speaking about

 14 capital costs that you did in Exhibit JNH-6, that those

 15 are the incremental capital costs in terms of, you know,

 16 ancillary, making sure that the housekeeping things, and

 17 making sure you keep dust at a minimum. They are not

 18 major capital retrofits necessary to burn the coal, is

 19 that correct?

 20 A. The best I can say is I think that's so,

 21 because the Commission only took 10 percent of what was

 22 presented in there as the actual capital costs. And so

 23 the retrofits were not nearly as major as were discussed

 24 originally.

 25 COMMISSIONER SKOP: Okay. All right. Thank

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 1 you.

 2 CHAIRMAN CARTER: Mr. McGlothlin.

 3 MR. McGLOTHLIN: Yes.

 4 BY MR. McGLOTHLIN:

 5 Q. With respect to your treatment of capital

 6 items -- let me back up for just a second. I think in

 7 response to an earlier question you agreed that had the

 8 money been spent and the plant put in service as of

 9 2003, that investment would have been made and that

 10 plant would be in service from that point forward,

 11 including the time frames encompassed by this

 12 proceeding, correct?

 13 A. The capital would have been spent.

 14 Q. And, in fact, with respect to the treatment of

 15 accumulated depreciation, your exhibits take into

 16 account the fact that the depreciation expense would be

 17 incurred each year and that the accumulated depreciation

 18 would increase each year, correct?

 19 A. Yes. Again, I was following the Commission's

 20 methodology as I understood it.

 21 Q. If we assumed that those costs had been

 22 incurred and were in place and are reflected in base

 23 rates over the useful life of the related items, would

 24 you agree that they take on the nature of fixed costs?

 25 A. Well, it depends on what they are for. If

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 1 they are, you know, if it's fixed investment in the

 2 plant, then, yes, they are fixed costs. The carrying

 3 costs of them become on-going. The decision that you

 4 make each year as to whether or not those -- it was

 5 prudent for the company to burn Powder River Basin coal

 6 or not I think appropriately includes what that

 7 incremental cost is. That's the threshold you would

 8 have to get over in order to make it economic.

 9 Q. Well, fixed costs take on the nature of sunk

 10 costs, do they not?

 11 A. That's where we disagree. It's sunk in the

 12 sense that the money was spent, but I think it's

 13 inappropriate to treat it as a sunk cost for the purpose

 14 of this kind of analysis where each time you're looking

 15 at whether or not the company made the appropriate

 16 decision in terms of burning Powder River Basin coal or

 17 not. In order for them to have the option, they would

 18 have had to have spent the money.

 19 Q. Well, take the scenario in which it does not

 20 burn Powder River Basin coal. Does the company still

 21 incur those fixed sunk costs?

 22 A. Had they spent the money --

 23 Q. Yes.

 24 A. -- they would have incurred the costs.

 25 Q. Now, take the scenario in which they do burn

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 1 PRB coal. Do they incur the same costs?

 2 A. If they do burn PRB coal, they incur the same

 3 portion of those fixed costs, but the threshold question

 4 that you are asking as to whether or not there was a

 5 savings, whether or not it was appropriate to have spent

 6 the money and you recover it through the savings in the

 7 fuel costs, if that's the analysis you're looking at,

 8 and that's my understanding of the Commission

 9 methodology, then you need to consider it.

 10 Q. Well, if the costs are incurred in either

 11 scenario, don't they have the effect of canceling each

 12 other out?

 13 A. No. Because you are looking at whether or not

 14 it was worth it to spend the capital to be able to burn

 15 the PRB coal. If it turns out there is no savings

 16 there, in other words, the two fuels are identical, then

 17 in that year you would judge that it wasn't worthwhile

 18 to have spent the capital to be able to burn PRB coal,

 19 because there would be no benefit. The customer would

 20 be behind, or somebody would be behind.

 21 Q. Well, I think we've established that with

 22 respect to those components of the capital items that

 23 are fixed in nature, the utility is going to incur those

 24 in either scenario. If it burns the coal, it incurs

 25 them; it doesn't burn the PRB coal, it incurs them,

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 1 correct?

 2 A. That's correct. The costs would be incurred

 3 whether or not they burn the PRB coal.

 4 Q. And under the approach that the Commission

 5 took in the order, the company would recover those costs

 6 through base rates, whether or not it burned PRB coal in

 7 a given period, correct?

 8 A. I think those are your questions to me about

 9 the refund, and I said I focused on the test here. And

 10 the test that they use is would there be sufficient

 11 savings to, essentially, pay for the capital that has

 12 been spent. And they looked at it each year. They

 13 didn't stop that test after 2004. They applied it again

 14 in 2005, as well. They didn't stop after 2003, they

 15 applied it each year. Because what you're looking for

 16 is is it incrementally -- is there a savings to be had

 17 each year by moving to Powder River Basin coal, and I

 18 think this is the appropriate way to analyze it.

 19 Q. If the question is is there a savings, doesn't

 20 that imply that there is to be a cost/benefit

 21 comparison?

 22 A. I think that's correct.

 23 Q. And in the case of fixed costs that have been

 24 quantified and included in base rates, the fixed costs

 25 are going to be incurred whether or not the coal is

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 1 going to be burned, correct?

 2 A. The Commission could have developed that

 3 methodology, that wasn't what they did. At least that's

 4 my understanding that wasn't what they did.

 5 Q. Well, do you understand that -- as of

 6 January 16th of this year, do you understand that the

 7 Commission ruled that fixed costs would be collected

 8 through the base rates and then excluded those costs

 9 from the calculation of the refund amount?

 10 A. That may all be true. My focus here is on the

 11 test, the cost-effectiveness test that the Commission

 12 asked for, and these costs appropriately belong in the

 13 cost-effectiveness test.

 14 MR. McGLOTHLIN: Could I have a moment,

 15 please?

 16 CHAIRMAN CARTER: While Mr. McGlothlin is

 17 looking over his notes, I would advise staff and the

 18 parties to make sure that your mikes are off. I'm

 19 getting some feedback, and I want to make sure that our

 20 court reporter is able to transcribe without getting

 21 that. So just out of an abundance of caution.

 22 Let's take five minutes.

 23 (Recess.)

 24 CHAIRMAN CARTER: We are back on the record.

 25 When last we left, Mr. McGlothlin was looking over his

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 1 notes.

 2 You're recognized, sir.

 3 MR. McGLOTHLIN: I have no further questions.

 4 CHAIRMAN CARTER: Ms. Bradley.

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

 6 CROSS EXAMINATION

 7 BY MS. BRADLEY:

 8 Q. I just have one brief question for you. When

 9 you are looking at your coal procurement, do you just

 10 look at the coal that you bought the last time, or do

 11 you look at all available options that might give you

 12 the cheapest best coal at that particular time?

 13 A. Are you asking me in terms of the job I did

 14 here, or are you asking what Mr. Weintraub would do in

 15 his job as actually buying the coal?

 16 Q. To the extent you are looking at it and making

 17 a judgment on it, what would a person do?

 18 A. What I'm doing in this exercise is I am

 19 looking at the price of the coal that would have been

 20 bought or was bought for the period of time in question.

 21 And I'm looking only at the PRB mix relative to what

 22 they actually took deliveries for during that period.

 23 Mr. Weintraub, I would think in his job would

 24 look at the PRB mix not relative to what was actually

 25 delivered during that time period, but the other options

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 1 he had available to him. So I may find that PRB

 2 delivered in 2006 is cheaper than the cost of coal that

 3 was actually delivered in 2006, but there may have been

 4 another option available to Mr. Weintraub of cheap

 5 Central Appalachian coal that may have been a better

 6 option. I am only looking at the one I was asked to,

 7 which is the 20 percent PRB blend. I'm looking at that

 8 relative to what was actually delivered.

 9 Q. So in evaluating coal procurement, you would

 10 look to see whether or not they looked at all the

 11 options available to them?

 12 A. Yes, I think that's the appropriate thing.

 13 Mr. Weintraub said there was benefit in flexibility, and

 14 so he looks at all different kinds of things, all

 15 different options, and I think that's appropriate.

 16 Q. And he's not limited to what he bought the

 17 last time. He has an open field, so to speak?

 18 A. Well, there are limitations, which is I don't

 19 think he was saying he would never look at Indonesian

 20 coal. I think what he was saying is if you look at

 21 Indonesian coal, then there is a process you need to go

 22 through to see if you can burn it. I described a case

 23 of somebody who didn't do that and ended up with a

 24 long-term contract they couldn't burn coal for. So

 25 that's an important process which has to do with test

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 1 burning and figuring out how the coal actually performs

 2 and performs relative to the other coals that you have

 3 got.

 4 That is a whole different process than what I

 5 was asked to do here, which was to look at a 20 percent

 6 Powder River Basin coal as part of a blend, and I'm not

 7 questioning whether or not that works, that has pretty

 8 much been decided, and then I look at the relative

 9 prices of those two. Mr. Weintraub may look at other

 10 options and should.

 11 MS. BRADLEY: Okay. Thank you.

 12 CHAIRMAN CARTER: Thank you.

 13 Mr. McWhirter.

 14 CROSS EXAMINATION

 15 BY MR. McWHIRTER:

 16 Q. Mr. Heller, I understand your educational

 17 training is in the area of electrical engineering?

 18 A. Yes, sir.

 19 Q. And I also understand your area of expertise

 20 is in coal and coal transportation?

 21 A. Yes, sir.

 22 Q. Have you proffered yourself in this case as an

 23 expert qualified to render opinions with respect to

 24 other regulatory matters such as the criteria to be used

 25 in establishing base rates or rate design?

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 1 A. No.

 2 Q. Do you have available to you a copy of the

 3 order entered in Docket 060658, Order Number 816?

 4 A. I don't have it here with me.

 5 Q. I'm going to -- I don't have one to hand you,

 6 but I'm going to read you the first full sentence on

 7 Page 40, and so counsel can look at that along with us

 8 to be sure that I'm reading it correctly.

 9 That first full sentence says, "For purposes

 10 of cost-recovery, we removed the operational and capital

 11 costs required to upgrade CR4 and CR5 to burn PRB

 12 because these types of costs are normally recovered via

 13 base rates." Do you want me to read that again or were

 14 you able to --

 15 A. This is at the top of Page 40?

 16 Q. The top of Page 40, the first full sentence,

 17 it starts on the first line.

 18 A. I see.

 19 Q. Why don't you read it.

 20 A. I see that.

 21 Q. Now, did you remove capital costs and

 22 operational costs of CR4 and CR5 from your analysis?

 23 A. Can I take a look at the first part of the

 24 paragraph?

 25 Q. Beg your pardon?

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 1 A. I want to look at the first part of the

 2 paragraph. (Pause.)

 3 Is there a question?

 4 Q. Well, my question to you was did you remove

 5 capital costs and operating costs of CR4 and CR5 from

 6 your analysis?

 7 A. Not from the cost-effectiveness test.

 8 Q. All right. PRB coal has to be blended so that

 9 it's only 20 percent of the mix as I understand it, and

 10 that's what you did?

 11 A. That's correct.

 12 Q. And where does that blending take place?

 13 A. It would -- the assumption is it would occur

 14 in New Orleans either at IMT or UBT, the two terminals

 15 there.

 16 Q. And where are those terminals located with

 17 respect to the terminal that Progress Energy used to

 18 own?

 19 A. IMT is the one that they owned an ownership

 20 interest in.

 21 Q. So Progress Energy sold the facilities to IMC

 22 and now pays for that blending on the facilities they

 23 used to own, is that correct?

 24 A. I don't believe they ever owned all of it.

 25 IMT is International Marine Terminals, which was a joint

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 1 venture, and I believe it involved Progress Energy and

 2 two other companies, one of which was a coal company,

 3 and I can't remember the third. And so they only ever

 4 had, I believe, a partial interest in it.

 5 Q. Did you do any analysis to determine whether

 6 those prices were reasonable or whether they were prices

 7 that were established to be high enough to cover the

 8 cost of buying Progress Energy's facility?

 9 A. Are you talking about --

 10 Q. The IMC charges.

 11 MR. BURNETT: Mr. Chairman, I'm going to

 12 object. I think, from the best I could understand, Mr.

 13 McWhirter is trying to ask this expert if he did an

 14 analysis on what we sold an interest in a dock for. If

 15 that is the case, that is wholly outside of this.

 16 CHAIRMAN CARTER: Mr. McWhirter.

 17 MR. McWHIRTER: Well, I probably asked a

 18 garbled question. What I really want to know is if he

 19 did an analysis to determine if the prices being charged

 20 for blending the coal were reasonable and proper based

 21 upon customary standards in the industry.

 22 CHAIRMAN CARTER: That's an excellent

 23 question.

 24 MR. McWHIRTER: Thank you.

 25 THE WITNESS: There are two terminals down

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 1 there that compete and their prices are quite similar.

 2 And I believe, based on the work that I do looking at

 3 other terminals, that they would be -- you would call

 4 them competitive rates. I also would note that I put

 5 zero in there for blending at the terminal which I was

 6 incredulous about, but -- (simultaneous conversation) --

 7 charged for blending.

 8 Q. You can't do better than zero, and I

 9 appreciate that.

 10 A. There is nothing charged for it, even

 11 though -- if there were a large quantity of coal moved

 12 through there, I believe they would, but they don't.

 13 Q. Did --

 14 A. I'm sorry. If a large quantity of PRB coal

 15 moved through there, I think would be a charge. But

 16 there is no charge now, so I include none.

 17 Q. Good. Thank you.

 18 CR4 and 5 were built about 20 years ago in the

 19 mid-'80s, is that correct?

 20 A. I believe that's correct.

 21 Q. And have they operated continuously since

 22 then? For instance, did they operate, except for time

 23 when they were down for maintenance, through the years

 24 2003, 2004, 2005, 2006, and 2007?

 25 A. To the best of my knowledge.

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 1 Q. And when the utility goes out to bid for coal,

 2 it does multiyear bids irrespective of the regulatory

 3 regimen of this Commission, isn't that correct?

 4 A. I believe they choose what the vintage is if

 5 they want; one-year coal, two-year coal, two years with

 6 an option for a third year. That's part of the art of

 7 how they buy coal.

 8 Q. And Mr. Putman's testimony, as I understand

 9 from that testimony and from Mr. McGlothlin's questions,

 10 dealt with the bid that was received in 2004 which you

 11 determined was not appropriate for your analysis, is

 12 that correct?

 13 A. That's correct, that's what they focused on.

 14 Q. If you had deemed that bid to be appropriate

 15 for your analysis, would it have changed the results in

 16 your analysis?

 17 A. If I had taken the Kennecott bid which they

 18 used, I would have -- I know enough about that coal that

 19 I would have had to have stopped and asked them could

 20 you burn it. And if -- my understanding was that it

 21 wasn't, again, in the role of what I was asked to do,

 22 which is to look at the, you know, kinds of coals that

 23 were discussed in the last docket and burning those,

 24 then if that were the coal that they had, you know,

 25 selected, then I would have used it in my analysis. But

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 1 it would have been -- I couldn't -- it wouldn't have

 2 been appropriate for me to have done what you're saying,

 3 because that coal I know is not the same as the coals

 4 that were considered previously.

 5 Q. Well, now, you said you would have asked them

 6 can you burn this coal. What would have prohibited them

 7 from burning this coal?

 8 A. You'll get out of my art very quickly, but

 9 it's a very high sodium content coal. And I have

 10 clients who have had difficulty burning that coal.

 11 Q. Is it an air permit problem or is it some

 12 other problem?

 13 A. You will have a better witness than me, but

 14 there is slagging and fouling problems there.

 15 Q. In other words, you would have asked that

 16 question, but you don't know the answer?

 17 A. I know enough to ask the question and know

 18 that it's not like the coals that were considered as

 19 blend coals.

 20 Q. But if utilities buy coal on multiyear

 21 contracts, coal prices change from year to year, do they

 22 not? In fact, the reason there is a cost-recovery

 23 clause is because they are volatile, is that not

 24 correct?

 25 A. Coal prices do change year to year, that's

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 1 correct.

 2 Q. So if there was a three-year bid, and you are

 3 asked to examine only the years 2006 and 2007, you said

 4 you ignored that bid because, as I understand it, there

 5 was no appropriate other contract for that period, is

 6 that correct?

 7 A. No, I think I said two things.

 8 Q. Okay.

 9 A. One, with regard to the Kennecott bid, I said

 10 there was an issue surrounding the quality of the coal.

 11 The question on the vintage of the bid is if you get a

 12 bid in 2004 for delivery in 2005, 2006, and 2007, it's

 13 the company's decision whether or not they contract for

 14 one year or two year or three years, and whether they

 15 solicit a bid for one year or two years or three years.

 16 I'm not dealing with 2005. I am asked the

 17 question each year did the company act -- in terms of

 18 the methodology that the Commission has asked to test

 19 cost-effectiveness, I have to look and see in that year

 20 does it look like it was cost-effective for them to have

 21 burned Powder River Basin coal in a blend versus the

 22 alternative.

 23 Since they didn't take any bids -- let me say

 24 something that may be helpful. The other coals that I

 25 am comparing against, which are the coals -- the

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 1 high-priced coals I'm bumping off may be the result of

 2 older solicitations where they actually bought coal, so

 3 it's kind of easy. I know what happened.

 4 Here I'm dealing in a hypothetical world.

 5 They didn't buy Powder River Basin coal. If they had

 6 bought it, they could have bought it, you know, maybe in

 7 2002 if they had a bid that was five years or maybe they

 8 could have bought it in 2003. I know they couldn't have

 9 bought it in 2005, because they tried, and it wasn't

 10 available for 2006. So I'm stuck in this hypothetical

 11 world of what would have happened in 2006.

 12 And I have discussed the way I have dealt with

 13 it as clearly as I can, and I've explained that -- take

 14 a 2004 solicitation for delivery in 2005, '06, and '07,

 15 and skip the first year, which is what I would have to

 16 do, because I'm not dealing with 2005, to me is not a

 17 reasonable thing to do. To have had a bid in 2005 and

 18 selected that for delivery in 2006, just like I did when

 19 there was a 2006 bid for delivery in 2007, would have

 20 worked fine, but there weren't any responses in 2005.

 21 Q. Well, if you had a bid a year earlier and they

 22 could have bought and used coal if they had had the

 23 proper permits in 2005, '06, and '07, wouldn't it be

 24 inappropriate, in your opinion, to disregard the year

 25 2005? It looks to me like if they did the wrong thing

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 1 in 2005, that carries over to 2006 and 2007, and 2006

 2 and '07 shouldn't be forgiven just because they did the

 3 wrong thing in 2005. It sounds like I'm testifying, but

 4 I'm thinking out loud with you, and I would like you to

 5 correct my thinking where it is wrong.

 6 MR. BURNETT: Mr. McWhirter read my mind.

 7 Objection to his testimony; ambiguous, vague, and

 8 confusing, and I'm not even sure if it was a question.

 9 MR. McWHIRTER: Well, I can break it down into

 10 several questions and go a little bit longer, I just

 11 thought you could test my thinking and show where it's

 12 wrong.

 13 BY MR. McWHIRTER:

 14 Q. The plant was operating in 2005, is that

 15 correct?

 16 A. That's correct.

 17 Q. And the Public Service Commission had a

 18 hearing that dealt with the period up to 2005, is that

 19 correct?

 20 A. That's correct.

 21 Q. And do you know whether this Powder River

 22 Basin coal bid was examined by the Commission in the

 23 earlier proceeding that dealt with 2005?

 24 A. It was not.

 25 Q. And do you know why it was not?

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 1 A. Again, the Kennecott bid was not what was

 2 being considered. It was not considering Montana coal.

 3 Q. So your opinion is that in this hearing when

 4 you examine Progress Energy's fuel prices, you can only

 5 examine their purchases based upon the availability of

 6 Powder River Basin coal, and if they made mistakes in

 7 other areas, that can't be considered?

 8 A. No, that's hardly what I'm saying. What

 9 I'm -- the Commission, I think, can consider whatever it

 10 chooses to. But what I was asked to do here is to look

 11 at what was done in the prior years to test a Powder

 12 River Basin blend where the technical issues,

 13 apparently, had been settled, and then look at whether

 14 or not the company, had they burned PRB coal in a blend,

 15 would have saved money relative to what they actually

 16 did burn.

 17 Q. That's a fair response. You were only asked

 18 to look at the Powder River Basin comparison, and,

 19 therefore, you ignored all other purchases whether they

 20 be foreign purchases, domestic purchases, or otherwise

 21 that might have been cheaper, is that correct?

 22 A. Not quite. To the extent that the actual

 23 deliveries included foreign purchases that were made,

 24 they are part of what I compare against. To the extent

 25 that, you know, Mr. Weintraub chose to look at

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 1 Indonesian coal, that's, you know, perfectly -- that's

 2 what he should do. That's perfectly appropriate. But

 3 in the context of introducing Indonesian coal here and

 4 saying it's the blend coal, and there's no capital cost

 5 associated with it is not what I read -- it's not what I

 6 understood my assignment to be. So I didn't consider

 7 the Indonesian coal. That isn't to say Mr. Weintraub

 8 shouldn't have considered it, he did. But for purposes

 9 of what I'm doing here, no, it doesn't belong.

 10 Q. All right. That fairly answers my question.

 11 At the beginning of your testimony you were handed a

 12 piece of paper that doesn't have a number or a name on

 13 it, but at the top of it it says coal cost/quantity

 14 gradient. Do you still have that piece of paper?

 15 A. I do.

 16 Q. And did you prepare that?

 17 A. No.

 18 Q. Was that prepared under your direction and

 19 supervision?

 20 A. No.

 21 Q. Did you independently examine the information

 22 contained in it?

 23 A. No, I didn't prepare this. I understand what

 24 it's doing, but I didn't prepare it.

 25 Q. Have you seen this exhibit any time before

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 1 today?

 2 A. No.

 3 MR. McWHIRTER: Mr. Chairman, can we give a

 4 number to that exhibit?

 5 CHAIRMAN CARTER: Do you want to mark this

 6 one?

 7 MR. McWHIRTER: It's called "Coal

 8 Cost/Quantity Gradient."

 9 CHAIRMAN CARTER: Number 54. Okay.

 10 (Exhibit 54 marked for identification.)

 11 BY MR. McWHIRTER:

 12 Q. Do you know who prepared this exhibit so that

 13 we can put them on examination by voir dire?

 14 A. Is that a question?

 15 MR. McWHIRTER: Commissioner Skop raised his

 16 hand, let the record reflect.

 17 I have no further questions.

 18 CHAIRMAN CARTER: Thank you, Mr. McWhirter.

 19 Commissioner Skop, you're recognized.

 20 COMMISSIONER SKOP: Thank you, Mr. Chairman.

 21 I just want to go again briefly through, and I

 22 guess since Mr. McWhirter brought it up, I think I'll

 23 speak to it briefly and try and gain an understanding

 24 while I have this opportunity, and then I'll speak to

 25 the OPC witness when they present their testimony. But

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 1 with respect to this chart that was prepared by myself

 2 and my aide based upon record evidence just to show a

 3 visual representation about the two data points that I

 4 think that we have. We have the OPC point which came

 5 from OPC DJP-6, I think, for the most part, and then the

 6 spot price, which is at the bottom right point of that

 7 chart that shows Mr. Heller's spot price evaluation.

 8 And I guess from what I was looking at is on Mr.

 9 Heller's Exhibit JNH-3, you indicated the evaluated

 10 price for PRB was $3.63 for 2006 based upon the actual

 11 coal that was purchased. Is that correct, again?

 12 THE WITNESS: That is correct.

 13 COMMISSIONER SKOP: And what I attempted to

 14 do, and I had asked you previously if an adjustment

 15 should be made or was appropriate to be made for

 16 differences in small volume versus a large multiyear

 17 volume purchase. And you said, I believe, no adjustment

 18 was required, is that correct?

 19 THE WITNESS: I said in this case I thought no

 20 adjustment was required.

 21 COMMISSIONER SKOP: So then I went a step

 22 beyond that and asked you to interpret the point that

 23 would lie at the intersection of the slope of the line

 24 of the two points between OPC's number and your number

 25 for the volume of coal subject to the waterborne

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 1 delivery constraint which would correspond to

 2 approximately 450,000 tons per year. Do you remember

 3 that?

 4 THE WITNESS: I do.

 5 COMMISSIONER SKOP: And you, I believe,

 6 testified that to the best of your knowledge, and

 7 granted this scale is not the best in the world, that

 8 the intercept on that slope would approximately

 9 correspond to a price of $3.40 per MMBtu, is that

 10 correct?

 11 THE WITNESS: It is.

 12 COMMISSIONER SKOP: And that price was still

 13 in excess of the delivered price for CAPP coal, is that

 14 correct?

 15 THE WITNESS: It is. The top point which

 16 is -- is that 233 MMBtu?

 17 COMMISSIONER SKOP: I believe it is like 228

 18 or 226. We've got, I think, some backup numbers behind

 19 the data, but I would have to look at the Excel

 20 spreadsheet to determine that; but I think 228, subject

 21 to check, is a rough number.

 22 THE WITNESS: I'm not sure if that is

 23 delivered to IMT or if it is delivered all the way to

 24 the plant. If it's not delivered all the way to the

 25 plant, then that data point would move to the right.

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 1 COMMISSIONER SKOP: Yes. Okay. I understand.

 2 Fair enough. But I think the point I was trying to

 3 make, assuming that your spot price controls, CAPP coal

 4 is still the most cost-effective alternative.

 5 THE WITNESS: Yes. And that adjustment, if

 6 it's needed, would make your point more strongly.

 7 COMMISSIONER SKOP: Assuming we do

 8 interpolation, CAPP coal is still the most

 9 cost-effective alternative based on the slope of that

 10 line, is that correct?

 11 THE WITNESS: Yes.

 12 COMMISSIONER SKOP: Okay. Now, assuming for

 13 the sake of discussion that we completely ignore your

 14 testimony in itself and adopt the OPC position in the

 15 light most favorable to OPC, which is the top point.

 16 So, therefore, OPC alleges that the price for PRB based

 17 on the 2004 RFP was the price that should be used. Is

 18 that your understanding of what OPC is alleging?

 19 THE WITNESS: Yes. For 2006, that's what they

 20 are alleging.

 21 COMMISSIONER SKOP: Okay. And I guess where

 22 that is putting me, and I'm trying to walk through how

 23 to understand this in my mind, if we reject your

 24 testimony, accept OPC's in the light most favorable to

 25 them, then by virtue of the evaluated data in the

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 1 Progress response to Staff Interrogatory 29A, then those

 2 costs in that column of dollars per MMBtu delivered to

 3 terminal are still lower than the price that we would

 4 assume for the 2004 RFP, is that correct?

 5 THE WITNESS: That's correct.

 6 COMMISSIONER SKOP: Okay. So, basically, in a

 7 nutshell, although Progress probably should have bought

 8 some coal in 2004 and didn't do so, they effectively

 9 covered later at a lower cost, lower than what they

 10 could have bought the PRB for to begin with, is that

 11 correct?

 12 THE WITNESS: Except for the first part. I

 13 can't agree with, you know --

 14 COMMISSIONER SKOP: Okay.

 15 THE WITNESS: But the rest you are correct,

 16 they covered in a way that was cost-effective relative

 17 to that.

 18 COMMISSIONER SKOP: So, again, the numbers

 19 shown in 29A, and this is where I will ask the OPC

 20 witness, the numbers in 29A, basically, would suggest

 21 that the price is lower than the price of the PRB. I'm

 22 not so sure whether those numbers need to account for

 23 the differences in SO2 allowances or not, because,

 24 again, that is based on a blend of bituminous coal

 25 versus, you know, a blend. So there may be some

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 1 difference in SO2 allowances, but I guess would it be

 2 your understanding based upon the data that you have

 3 seen that the blend of bituminous coal that was used in

 4 those years is cheaper than the 80/20 blend of using

 5 Powder River Basin coal?

 6 THE WITNESS: Yes. If the decisions that were

 7 made to burn a relatively low-cost alternative coal was

 8 cheaper than the PRB alternative, that is correct.

 9 COMMISSIONER SKOP: Okay. I am just trying to

 10 fit the pieces of the puzzle together. I mean, this

 11 hadn't really dawned on me until today trying to --

 12 because, again, the last time it was pretty crystal

 13 clear. This one is a little bit more difficult.

 14 But, again, the graphical representation of

 15 Mr. McWhirter was just merely an attempt by myself to

 16 kind of graphically illustrate the relative different

 17 positions of the parties. And then if we need to

 18 interpolate, we can interpolate. But, again, based on

 19 29A, interpolation may not be necessary. But, again,

 20 I'll go from that. Thank you.

 21 CHAIRMAN CARTER: Commissioners, I'm going to

 22 go to staff unless there is anything further from the

 23 bench.

 24 Staff, you're recognized.

 25 MS. BENNETT: Thank you.

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 1 CROSS EXAMINATION

 2 BY MS. BENNETT:

 3 Q. Good afternoon, Mr. Heller. My first few

 4 questions focus on the most accurate way to evaluate the

 5 all-in production costs of coal when comparing CAPP to

 6 PRB. And when I use the term all-in production costs, I

 7 mean all of the costs involved in bringing the coal to

 8 plant, and I'm going to include in that definition SO2

 9 allowances. Are you with me so far?

 10 A. Yes.

 11 Q. Okay. If I wanted to accurately compare the

 12 all-in production cost of using one Btu of PRB with one

 13 Btu of CAPP, would that comparison include just the SO2

 14 allowances for one Btu of PRB, or would -- let me

 15 continue -- or would it also include the one Btu of CAPP

 16 with its SO2 allowances? Did I confuse you?

 17 A. I think so.

 18 Q. Okay. If I wanted to accurately compare the

 19 all-in production costs, would SO2 allowances be

 20 included in the CAPP costs as well as the PRB costs?

 21 A. They should be, if that is -- they should be

 22 in that comparison.

 23 Q. Okay. And where in your schedules do you show

 24 the SO2 costs for the CAPP coal that is being displaced

 25 by PRB coal?

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 1 A. The analysis of the -- in the bid sheet is

 2 done relative to a standard which has in it an SO2

 3 target, which I think is 1.2 pounds or very close to

 4 that. It's basically a compliance coal is what is being

 5 looked at. So when you evaluate each of the -- when you

 6 evaluate the Powder River Basin coal relative to the

 7 standard Central Appalachian coal, in their bid analysis

 8 they penalize it or reward it in the comparison with the

 9 difference between the SO2 content of the standard

 10 Central Appalachian coal and then the actual SO2 content

 11 of the Powder River Basin coal. If they are looking at

 12 a Central Appalachian coal, in their analysis they will

 13 also penalize that Central Appalachian coal or reward it

 14 if the SO2 amount varies from the target.

 15 Q. Okay. I guess I'm being a lot more nit-picky.

 16 I'm talking about specifically in your schedules, do you

 17 include SO2 allowances for the CAPP coal?

 18 A. No. All I am including is the penalty

 19 implicitly -- or benefit implicitly assigned to the

 20 Powder River Basin coal because of the difference

 21 between its SO2 content and the SO2 content of the

 22 target Central Appalachian coal.

 23 Q. So then back to my original question, are you

 24 comparing the SO2 allowances for PRB, one Btu of PRB

 25 with one Btu of CAPP?

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 1 A. There's two ways to do that analysis. One is

 2 to start with zero SO2 and assign the total amount of

 3 the SO2 allowance cost to both the CAPP coal and to,

 4 let's say, the Powder River Basin coal and run the

 5 analysis that way. Or you could assign a zero cost, if

 6 you will, to the Central Appalachian coal and then a

 7 plus or minus adder to the Powder River Basin coal.

 8 This analysis does the latter.

 9 Q. Okay. Would you agree that the actual market

 10 prices for SO2 allowances is a reasonable proxy for

 11 emission allowances for 2006 and 2007?

 12 A. For the purposes of determining whether or not

 13 there is a damage, you could look at the actual SO2

 14 allowance prices that would have been paid. In trying

 15 to look at whether or not it was the right decision, the

 16 evaluation for -- that was done, you would take a look

 17 at what you thought the price of SO2 allowances would be

 18 at the time you do the evaluation. So they're kind of

 19 two different purposes.

 20 Q. For the purpose of the damages portion, did

 21 you look at the actual market prices?

 22 A. I didn't have a damage, so I was just looking

 23 at whether or not -- I was looking at the threshold

 24 test. And so the threshold test had in it what was the

 25 perception of SO2 allowance prices at the time the

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 1 comparison was made.

 2 Q. And so I take it from your answer then you

 3 used the forecast SO2 allowances, is that correct?

 4 A. Yes, because those were implicit in the bid

 5 evaluations.

 6 Q. Okay. These next few questions deal with some

 7 very specific questions on the methodology of

 8 calculating the revenue requirements associated with

 9 burning PRB coal at Crystal River, so I want you to turn

 10 to your Schedule JNH-7. Let me know when you get there.

 11 A. I am.

 12 MS. BENNETT: And, Commissioners, I think it

 13 is probably easiest in your books with the testimony, it

 14 is JNH-7 of his direct testimony.

 15 BY MS. BENNETT:

 16 Q. Specifically, I want you to look at Rows 11

 17 and Rows 12. And, first, I want to make certain that I

 18 understand correctly. The dollars per MMBtu in Row 12,

 19 they're derived from multiplying the dollar amount in

 20 Row 11 by the heat content of the coal, is that correct?

 21 A. Did you say dividing by?

 22 Q. I'm sorry, I meant multiplying.

 23 A. You take the dollars per ton in Row 11, and

 24 you divide by the heat content of the PRB coal, and that

 25 gives you the number in 12.

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 1 Q. So I should have meant divide, not multiply?

 2 A. Yes.

 3 Q. And in your schedule, what is the heat content

 4 of the coal on a Btu per pound basis for 2006 which is

 5 used to go from 11 to 12?

 6 A. It's about 8,500. I think it is 8,585.

 7 Q. Okay. What about for 2007?

 8 CHAIRMAN CARTER: While he's doing that,

 9 Commissioners, just FYI for planning purposes, I know I

 10 didn't say this to you earlier, but in view of I didn't

 11 give you a heads up, we probably won't go beyond 5:00 or

 12 5:30, in that range. And plus with the tornado warning,

 13 we probably are going to -- instead of bringing in

 14 another court reporter, we're probably going to -- I

 15 would like to see where we are around 5:00, and we may

 16 just break at that point in time.

 17 Staff, you may continue.

 18 MS. BENNETT: Okay. I think he's still

 19 calculating.

 20 THE WITNESS: It's about 8,000. It's a little

 21 over 8,000, but I will get that for you exactly.

 22 BY MS. BENNETT:

 23 Q. Okay. Are the heat contents of these coals

 24 found somewhere else in your schedules?

 25 A. Yes, they are.

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 1 Q. Could you show me where those are?

 2 A. The heat content of the Louis Dreyfus bid,

 3 which is the one that was used for 2007, is an 8200 Btu

 4 coal, and the Btu that was used for 2006 was the 8,585,

 5 which is the test shipment of Peabody coal.

 6 Q. I'm sorry, would you repeat that?

 7 A. I'm sorry. It's the test shipment of Peabody

 8 coal.

 9 Q. If the Commission were to use a different heat

 10 content, would that change your number in Row 12?

 11 A. Yes. If they were to use a different heat

 12 content, it would change the number calculated in cents

 13 per million Btu.

 14 Q. Okay. So if the Commission uses a higher heat

 15 content, then the dollars per MMBtu in Row 12 would be

 16 lower, is that correct?

 17 A. That is correct.

 18 Q. Okay. My next set of questions deals with

 19 some differences in your testimony and Witness

 20 Weintraub's testimony as it relates to the tonnage that

 21 should be shipped in Crystal River. Do you happen to

 22 have a copy of Mr. Weintraub's testimony SAW-5 with you?

 23 If not, I have a copy.

 24 A. I don't.

 25 MS. BENNETT: Commissioners, this question

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 1 will deal with JNH-5 and SAW-5, if you want to follow.

 2 THE WITNESS: I have SAW-5.

 3 BY MS. BENNETT:

 4 Q. In SAW-5, Column 1 for 2006, the tonnage is

 5 440,000, is that correct?

 6 A. 440,600, yes.

 7 Q. And in 2007 it is 462,000, is that correct?

 8 A. That's correct.

 9 Q. But in your Schedule JNH-5, Column 9, you

 10 report the tons for 2006 as 490,000; and for 2007 as

 11 520,000, is that correct?

 12 A. That's correct.

 13 Q. For the purposes of the Commission's

 14 determination of whether PRB would be more

 15 cost-effective than the coal actually burned, which

 16 tonnage is accurate?

 17 A. The tonnage that's presented in JNH-5 follows

 18 the Commission methodology of targeting the 20 percent

 19 of the 2.4 million tons of coal to be delivered each

 20 year. And rating that at 17.6 million Btus per ton,

 21 that produces a target of 8.448 trillion Btus in Column

 22 8. The PRB tons in Column 9 tell you how many tons of

 23 that particular quality of coal are going to be needed

 24 in order to deliver the total number of Btus to the

 25 plant that are being displaced by the Powder River Basin

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 1 coal. So because the Btu content of the actual coal

 2 being used as a replacement coal in 2007 is different

 3 than 2006, you end up with different numbers of tons.

 4 In Mr. Weintraub's testimony, which I believe

 5 is rebuttal to Mr. Putman, there were some other items,

 6 I think, that he considered. One of them was whether or

 7 not -- his column is marked delivered via IMT or UBT,

 8 which means it was not delivered to Mobile. And when I

 9 did my analysis, I didn't exclude the Mobile tonnage,

 10 even though it would probably be -- it would certainly

 11 produce a better result for the company to exclude it,

 12 but the order was silent on that kind of an adjustment.

 13 In addressing Mr. Putman's way of dealing with

 14 tonnage and displaced tonnage, it's necessary to take

 15 account of what's shipped through Mobile and what isn't.

 16 So that would be -- that would be one of the reasons

 17 there would be a difference.

 18 Also, the coals that were being addressed, the

 19 Btu of the coals that Mr. Putman was addressing, but

 20 that is a different issue, were different than the Btus

 21 of the coals that I was looking at. But particularly

 22 it's the actual tonnages delivered by water to IMT or

 23 UBT is what Mr. Weintraub was looking at. And when I

 24 followed the Commission's methodology, I didn't look at

 25 the actual waterborne tonnage, I looked at what the

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 1 target was, which was this 8.448 trillion Btus. That's

 2 the 20 percent of the 4.2 million tons of coal delivered

 3 by water at the 17.6 million Btu level.

 4 Q. Okay. I think that answers my question. I do

 5 have some additional questions in reference to your

 6 April 1st deposition -- and do you have that with you?

 7 A. Yes.

 8 Q. In your April 1st deposition, we talked about

 9 the cost of spot prices in 2006 and 2007. Do you recall

 10 that? Spot PRB coal prices.

 11 A. Yes, I think you asked me that.

 12 Q. And you stated that you reviewed the prices of

 13 coal, PRB coal in several different publications, is

 14 that correct?

 15 A. Yes.

 16 Q. And as a result of your review of those

 17 publications, I asked for some late-filed exhibits. Do

 18 you recall those?

 19 A. I do.

 20 Q. And the late-filed exhibits were for 2006/2007

 21 spot purchases of PRB for 8,800 Btu at .8 SO2. And I

 22 wanted to know what the dollar per ton FOB mine basis --

 23 I've got myself confused now. Do you have those

 24 late-filed exhibits with you that are attached to the

 25 deposition?

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 1 A. Yes.

 2 Q. Okay. The first one, Late-filed Exhibit

 3 Number 1, could you tell the Commission what the average

 4 for 2006 for 8,800 Btu of .8 pounds of SO2 spot PRB coal

 5 price in dollars per ton FOB mine, the average price for

 6 2006?

 7 A. $12.84.

 8 Q. Okay. And turning to Late-filed Exhibit 3,

 9 what was the range of prices for 2006 for that same kind

 10 of coal?

 11 A. It ranged from a low in 2006 of $9.45 and a

 12 high in 2006 of $20.66.

 13 Q. Then we also discussed the 2007 average 8,800

 14 Btu, .8 pounds of SO2 spot PRB coal prices and a dollar

 15 per ton FOB mine. What was the average price for 2007?

 16 A. The average spot price was $9.65 a ton.

 17 Q. And the range for those?

 18 A. The range of those prices was a low of $8.35 a

 19 ton and a high of $11.50 a ton.

 20 Q. Okay. And my final question, Mr. Heller, is

 21 do you believe the Vista model results from 2004 and

 22 2005 are a reasonable proxy for PRB actual costs?

 23 MR. McGLOTHLIN: Could I ask for some

 24 clarification of that? When you say Vista model, are

 25 you referring to a complete model run or the spreadsheet

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 1 that's used sometimes? There has been some confusion on

 2 that.

 3 MS. BENNETT: I'm referring to the results,

 4 the spreadsheet results.

 5 THE WITNESS: The process that's used, that

 6 the model uses to adjust for ash Btu, sulfur,

 7 grindability, I doubt those would change much, and the

 8 sulfur we discussed before in terms of the sulfur

 9 adjustment, the price that goes in there is the price

 10 that they do at the time of the bid evaluation. And,

 11 so, if you are using the 2006 forecast to evaluate the

 12 bid evaluation, I think that's appropriate.

 13 MS. BENNETT: Okay. I have no further

 14 questions.

 15 CHAIRMAN CARTER: Thank you. Commissioners,

 16 before I go back to Mr. Burnett, is there anything

 17 further from the bench?

 18 Mr. Burnett.

 19 MR. BURNETT: Thank you, sir.

 20 REDIRECT EXAMINATION

 21 BY MR. BURNETT:

 22 Q. Mr. Heller, if you would turn with me to your

 23 Exhibit 3 in your direct testimony. Just let me know

 24 when you are there.

 25 A. Yes.

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 1 Q. Mr. McGlothlin spent a substantial amount of

 2 time asking you questions about capital costs and the

 3 like. I'd like to draw your attention to damages. You

 4 have got there on JM-3, damages excluding Commission's

 5 estimated capital recovery requirement. What does that

 6 mean?

 7 A. That's Column 10 of the sheet, and it is the

 8 calculation excluding the capital component that I was

 9 being asked about before. So it says that rather than

 10 the company having avoided having spent $3.1 million

 11 more than -- burning PRB coal than it would have burned

 12 in the alternative, it says that it would have spent

 13 2.6 million more burning PRB coal than it would have in

 14 the alternative. That excludes all the capital costs.

 15 Q. So let me just make sure I understand the

 16 bottom line. Is what you are saying that even if you

 17 take out the capital costs, all the capital costs Mr.

 18 McGlothlin was asking you about, the refund amount is

 19 still a negative number?

 20 A. That's correct.

 21 Q. I'd like to also ask you about what is now

 22 marked as Exhibit 54, which is the Coal Cost/Quantity

 23 Gradient sheet. Do you still have that?

 24 A. I do.

 25 Q. The top point on that sheet that is around the

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 1 3 million-ton range, if that cost is the cost just to

 2 get the coal to IMT, the International Marine Terminal,

 3 would that be the total cost to get that coal to Crystal

 4 River?

 5 A. No, that would be a portion of the cost.

 6 Q. And if you added -- assuming there was a cost

 7 to get it to Crystal River, if you added that cost would

 8 that make those lines go closer together or farther

 9 apart?

 10 A. It would make the upper point move to the

 11 right. The line would be more vertical, and the effect

 12 of that would be that the impact of tonnage would be

 13 even less.

 14 Q. So the approximate $3.40 per MMBtu number that

 15 Commissioner Skop roughly came up with, would that

 16 number increase or decrease?

 17 A. That number would increase.

 18 MR. BURNETT: That's all I have, sir.

 19 CHAIRMAN CARTER: Thank you. All right.

 20 Let's get ourselves together here, boys and

 21 girls. Let's deal with exhibits. Mr. Heller is back

 22 for cross-examination -- I mean, excuse me, for

 23 rebuttal, so you will be on recess as opposed to ending

 24 the school day.

 25 Mr. Burnett, exhibits.

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 1 MR. BURNETT: Yes, sir. We would move his

 2 prefiled testimony as well as Exhibits 7 through 13 into

 3 evidence, sir.

 4 CHAIRMAN CARTER: Are there any objections?

 5 Without objection, show it done.

 6 (Exhibit Numbers 7 through 13 admitted.)

 7 CHAIRMAN CARTER: Now, let's do this,

 8 Commissioners -- Commissioner Skop is not here. I'm

 9 inclined not to -- Mr. McWhirter, I'm inclined not to

 10 move this document into --

 11 MR. McWHIRTER: I think that's a good idea,

 12 Mr. Chairman.

 13 CHAIRMAN CARTER: I beg your pardon?

 14 MR. McWHIRTER: I say I think that's a good

 15 idea.

 16 CHAIRMAN CARTER: Okay, good. So we will

 17 just -- it still will be a placeholder, Commissioners

 18 and staff, but it will just not be entered. Okay.

 19 You're on recess.

 20 Call your next witness.

 21 While they are calling the next witness,

 22 Commissioners, my goal tomorrow is -- I mean, I didn't

 23 give you a heads up today, so tomorrow we can kind of

 24 crank it and make some progress and get on through. I

 25 think we can knock the ball out of the park tomorrow.

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 1 So bring your sandwich, and we're going to work on. I

 2 believe we can bring this in for a landing tomorrow.

 3 Call your next witness. Actually I'm talking

 4 to Mr. McGlothlin.

 5 MR. McGLOTHLIN: We call David Putman.

 6 CHAIRMAN CARTER: Okay. Mr. Putman.

 7 MR. McGLOTHLIN: While Mr. Putman is taking

 8 the stand, could I ask staff to ID the numbers in the

 9 Comprehensive Exhibit List that are associated with his

 10 prefiled testimony.

 11 CHAIRMAN CARTER: Okay. Fourteen through 29,

 12 is that correct? That's what I'm showing, 14 through

 13 29.

 14 MS. BENNETT: That's correct.

 15 MR. McGLOTHLIN: Okay. Thank you.

 16 DAVID J. PUTMAN

 17 was called as a witness on behalf of the Citizens of the

 18 State of Florida, and having been duly sworn, testified

 19 as follows:

 20 DIRECT EXAMINATION

 21 BY MR. McGLOTHLIN:

 22 Q. Mr. Putman, were you sworn previously?

 23 A. I was.

 24 Q. Please state your name and address.

 25 A. My name is David Putman. The address is 2236

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 1 Royal Crest Drive, Birmingham, Alabama.

 2 Q. Mr. Putman, on behalf of the Office of Public

 3 Counsel, did you prepare and submit testimony and

 4 amended testimony in this proceeding?

 5 A. Yes, I did.

 6 Q. And did you also prepare the exhibits that

 7 have been marked 14 through 29?

 8 A. Yes, I did.

 9 Q. Do you have any -- bearing in mind that the

 10 amended testimony has the effect of modifying the first

 11 submission, do you have any additional changes to make

 12 at this point?

 13 A. Not beyond the amended testimony.

 14 MR. McGLOTHLIN: I request that the original

 15 testimony and the amended testimony be entered into the

 16 record at this point.

 17 CHAIRMAN CARTER: The prefiled testimony of

 18 the witness will be inserted into the record as though

 19 read along with the amended testimony as presented.

 20 MR. McGLOTHLIN: Yes. And let me ask the

 21 court reporter to include only the revised exhibits when

 22 we get to that point.

 23

 24

 25

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 1 BY MR. McGLOTHLIN:

 2 Q. Mr. Putman, have you prepared a summary of

 3 your testimony in this proceeding?

 4 A. Yes, I have.

 5 Q. Please give the Commissioners your summary.

 6 A. How are you this afternoon? It's raining

 7 outside, but we will go on.

 8 In my testimony, I support my conclusion that

 9 the same imprudence that the Commission determined in

 10 Docket 060658 that began in 2003 continued to effect

 11 customers' coal costs adversely in 2006 and 2007.

 12 In my testimony, I describe the manner in

 13 which I compared the costs of coal actually delivered to

 14 Crystal River 4 and 5 during 2006 and 2007 with the

 15 costs of alternative sub-bituminous coal that was

 16 available to Progress Energy at the time of its

 17 procurement decisions.

 18 I also compare and contrast my approach with

 19 that of Progress Energy's Witness Jamie Heller, and

 20 explain why the alternatives he selected are

 21 inappropriate for the purpose. In my analysis I did not

 22 question or adjust the timing of Progress Energy's

 23 procurement decisions. I limited my review to

 24 considerations of whether Progress Energy purchased the

 25 most economical fuel available at the time of those

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 1 decisions.

 2 Also, I did not alter or adjust any aspect of

 3 Progress Energy's evaluation assumptions, their methods,

 4 or computations. Where Progress Energy concluded a

 5 particular coal was the most economical on an evaluated

 6 basis, which encompasses the coal cost, transportation

 7 of the coal, and the impacts of the coal on unit

 8 operations I accepted Progress Energy's conclusions and

 9 Progress Energy's evaluated cost value.

 10 Not surprisingly, Mr. Heller and I using the

 11 same actual data from FERC sources reached the same

 12 conclusion with respect to the cost of the bituminous

 13 coal that was actually delivered in '06 and '07. The

 14 differences between his testimony and mine lie

 15 principally in the identification of the alternative

 16 coal that should be compared to those actual costs.

 17 I will begin with 2006. Progress Energy made

 18 the procurement decisions for a significant portion of

 19 the 2006 supply of coal to Crystal River 4 and 5 in

 20 early 2004. In early 2004, several producers of Powder

 21 River Basin coal responded to Progress Energy's April

 22 RFP and offered to supply coal in 2005, '06, and '07.

 23 All of their bids were far more economical than the cost

 24 of the coal that Progress Energy procured for delivery

 25 in 2006.

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 1 Of these several PRB offers, I chose the bids

 2 that Progress Energy identified as the lowest cost on an

 3 evaluated basis. These were two bids by Kennecott coal.

 4 Compared to the cost of the 100 percent bituminous coal

 5 that was actually delivered by barge in 2006, a blend

 6 consisting of 20 percent Kennecott coal and 80 percent

 7 bituminous coal would have saved customers $14.7 million

 8 or $15.4 million, depending on how you make up the Btus

 9 between the coal purchased and the coal displaced.

 10 For 2006, Mr. Heller chose to use as his

 11 alternative coal the purchase of 3,300 tons of Peabody

 12 coal in 2006 that Progress Energy acquired for the

 13 May 2006 test burn. The choice is inappropriate. The

 14 Peabody coal was not even on the table in 2004 when

 15 Progress Energy made its decision for 2006 deliveries.

 16 The tiny quantity is not representative of the terms

 17 Progress Energy could obtain with a typical quantity

 18 purchase. The Peabody coal contained more sulfur than

 19 typical for PRB coal, and the Peabody purchase was a

 20 spot transaction, not a contract purchase. Most

 21 significant of all, the Peabody purchase was not the

 22 most economical coal that was available to Progress

 23 Energy during the relevant time frame. By ignoring the

 24 most economical source, Mr. Heller overstated the cost

 25 of alternative sub-bituminous coal in his comparison.

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 1 For alternative 2007 deliveries, I used two

 2 bids of sub-bituminous coal submitted by Indonesian

 3 producers, PT Adaro and PT Kideco, to Progress Energy's

 4 February 2006 RFP. Progress Energy rated the bids

 5 number one and number two on an evaluated basis. The

 6 coals are extremely low in sulfur content and extremely

 7 low in ash content, both very desirable characteristics.

 8 And the bidders are substantial, significant producers

 9 of coal in the international market. Their bids were

 10 substantially lower than the bids by bituminous

 11 producers.

 12 In addition, this was an opportunity for

 13 Progress Energy to establish relationships with coal

 14 producers in one of the major coal basins of the world

 15 in order to maximize competition and to diversify

 16 transportation risk. Compared to the cost of the

 17 bituminous coal actually delivered by barge in 2007, a

 18 blend containing 20 percent Indonesian sub-bituminous

 19 coal and 80 percent bituminous coal would have saved

 20 customers over $13 million, or $14.7 million, again,

 21 depending on what you use to substitute, either more

 22 bituminous coal or the 20/80 blend.

 23 By contrast, for his 2007 comparison, Mr.

 24 Heller used a bid by Louis Dreyfus, a coal broker, to

 25 supply PRB coal that was submitted to the same

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 1 February 2006 RFP in which Progress Energy received the

 2 Indonesian offers. He did so because Progress Energy

 3 instructed him to limit his consideration to coal from

 4 the Powder River Basin when he made his comparison.

 5 Again, by ignoring the most economical alternatives that

 6 were available to Progress Energy, Mr. Heller overstated

 7 the cost of the alternative.

 8 Following the methodology set forth in the

 9 final order of the prior case, after quantifying the

 10 difference in actual and alternative coal costs, I

 11 calculated the cost of the additional SO2 emission

 12 allowances that Progress Energy had to purchase because

 13 they could not avail itself of sub-bituminous coal in

 14 '06 and '07. Based on the same source of the prices of

 15 allowances that the Commission used in the last case,

 16 the extra costs are 6.2 million or 6.5 million, again

 17 depending on the assumption one chooses for replacing

 18 the different Btus. The total overcharges that were

 19 passed on to the Progress Energy customers are

 20 $33.9 million with all bituminous coal makeup, or

 21 $35.6 million using a 20/80 blend.

 22 That is my testimony, and I am prepared to

 23 answer questions.

 24 MR. McGLOTHLIN: Before we tender the witness,

 25 I would like to make this request of the Commission.

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 1 Several questions were directed to company witnesses in

 2 areas for which Mr. Putman is also qualified and on

 3 which he has a very different take, so I hope you will

 4 have him -- give him an equal opportunity.

 5 We tender the witness for cross-examination.

 6 CHAIRMAN CARTER: Thank you.

 7 Commissioner Skop.

 8 COMMISSIONER SKOP: Thank you, Mr. Chair.

 9 And, Mr. McGlothlin, you read my mind, so

 10 equal opportunity. Good afternoon, Mr. Putman.

 11 THE WITNESS: How are you?

 12 COMMISSIONER SKOP: Pretty good. I just had a

 13 few questions. Again, I'm trying to follow along here

 14 and be fair to both sides, so I'm going to ask you some

 15 of the same pointed questions that I directed to

 16 Progress witnesses, and hopefully I guess you will offer

 17 your perspective.

 18 I guess you had mentioned in your opening

 19 statement how Mr. Heller limited his focus strictly to

 20 evaluation of PRB coal, is that correct?

 21 THE WITNESS: That's correct.

 22 COMMISSIONER SKOP: Okay. And in that regard,

 23 I guess reading your prefiled testimony, and I believe

 24 it was on page -- let me get to it. Give me one second.

 25 I believe it was -- there's so much testimony. What I

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 1 am looking for is the page that has the response from

 2 the Indonesian coal firm on it, if you could help me

 3 out, or staff. It's here somewhere. I apologize. Oh,

 4 here it is, on Page 19 of the prefiled testimony.

 5 I guess you had looked at Indonesian coal, and

 6 on Page 19, Line 23 of your testimony, you indicated

 7 that the Indonesian coal company was established in

 8 1992, is that correct?

 9 THE WITNESS: 1982, yes.

 10 COMMISSIONER SKOP: I'm sorry, 1982. Is that

 11 correct?

 12 THE WITNESS: That's correct.

 13 COMMISSIONER SKOP: So that would have been

 14 before these plants were built, is that correct?

 15 THE WITNESS: That's correct.

 16 COMMISSIONER SKOP: Okay. I guess in

 17 reviewing your testimony in the previous docket, both

 18 yourself, Mr. Barsin, and Mr. Sansom did not bring the

 19 issue of Indonesian coal into the analysis. So I guess

 20 one of my questions would be if it were allegedly

 21 cheaper in 2006 or 2007 -- or 2007, as you state in your

 22 testimony, then why would that not have been at issue or

 23 previously brought up in the prior cases?

 24 THE WITNESS: My answer to that is that I came

 25 into this case, both then and now, with the issue of

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 1 determining what is the cheapest fuel available to

 2 Progress Energy to buy that would operate in their

 3 plants. It was not to look at any one particular coal,

 4 but it was to look at the cheapest coal. That is sort

 5 of an answer to an earlier question today. That I think

 6 is the duty of the Commission.

 7 And so when we had the case a couple of years

 8 ago, the question was what coals were currently at that

 9 point in time for the years being covered available.

 10 And at that time they had not received any bids from

 11 Indonesia, so those were not considered, they were not

 12 discussed. That doesn't mean that in earlier years,

 13 prior to the time period that was looked at, that they

 14 were not available.

 15 My experience is Southern Company is that we

 16 met and had long discussions with the same Fred Merrill

 17 that we have talked about today about buying Indonesian

 18 coal. It was available. It was cheap. We looked at it

 19 hard. We did not end up buying it, but we did look at

 20 it. It was at that point cheap, and it was -- but it

 21 was not brought up because in the time period we looked

 22 at in the last docket it was not viewed as an economical

 23 source.

 24 COMMISSIONER SKOP: Okay. Fair enough.

 25 With respect to the Spring Hill coal from

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 1 Montana, why was that not brought up in the previous

 2 case?

 3 THE WITNESS: Again, it was my view of the

 4 testimony presented last time that it was about Powder

 5 River Basin coal. And as the order itself says on Page

 6 2 that the Commission defined Powder River Basin coal as

 7 coal mined in Montana and Wyoming. That's the only

 8 definition of where Powder River Basin coal comes from,

 9 so it was never my opinion that we did not discuss all

 10 Powder River Basin coal. And so, I mean, in my opinion

 11 it was presented as part of a Powder River Basin coal.

 12 COMMISSIONER SKOP: Okay. To further

 13 accentuate the point I made earlier in terms of the

 14 Powder River Basin coal, is the designed fuel for this

 15 plant based on a specific mine or a specific region of

 16 the Powder River Basin in terms of the PRB coal?

 17 THE WITNESS: Based on one document that I saw

 18 today, yes, it was based on a county-wide set of coals.

 19 But other documents say it was just based on Powder

 20 River Basin coal.

 21 COMMISSIONER SKOP: Okay. And would you agree

 22 that the coal from a given mine has unique chemical

 23 properties that vary from mine to mine so that,

 24 essentially, if you are used to using coal from a given

 25 mine, and that is your source, and you have got your

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 1 unit tuned to that particular mine, then you really

 2 couldn't go out and bring in other coal without doing a

 3 test burn to see how that might affect your operations?

 4 THE WITNESS: I would have to politely

 5 disagree with that, because as Progress Energy

 6 demonstrates, they buy coal from all over the world to

 7 burn at their plant, not just from one mine. They buy

 8 it from Columbia, they buy it from Venezuela, they buy

 9 it from the Central Appalachian, they buy it from lots

 10 of places and they are able to burn it.

 11 COMMISSIONER SKOP: Okay. But I guess what

 12 I'm asking before they do that do they do a test burn

 13 before they just utilize that on a regular basis? Would

 14 that be prudent engineering practice?

 15 THE WITNESS: Again, I don't believe for all

 16 of those coals they do not test burn. They buy Central

 17 App coals over the years from lots of different mines,

 18 lots of different suppliers. And for bituminous coal

 19 they have never run a test burn since the very beginning

 20 until they got into international bituminous coal.

 21 COMMISSIONER SKOP: Okay. Fair enough.

 22 With respect to, I guess, Mr. Weintraub in his

 23 deposition provided a late-filed exhibit that, I guess,

 24 Mr. McGlothlin has referred to as hearsay evidence, and

 25 the Commission will give whatever weight, but that has

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 1 been admitted as a late-filed exhibit. How would you

 2 respond to the contention that the Indonesian coal was

 3 not available in the 2007 time frame?

 4 THE WITNESS: I mean, based on that letter, I

 5 agree with the comments that were made earlier. I did

 6 talk to Fred Merrill, and we had a discussion, and he

 7 said to me the same things he said in that. He did not

 8 that have independent recollection of the timing of that

 9 deal. As he said in his letter, he focused on a bid

 10 made in 2007. What we were talking about is a bid made

 11 in 2006. There was no evidence of that bid being

 12 withdrawn, so, I mean, I think that Fred is a great guy,

 13 but I think he was confused about what the timing was of

 14 the issue.

 15 COMMISSIONER SKOP: Okay. And with respect to

 16 the evaluated price of PRB coal with respect to the

 17 Indonesian coal, does your understanding of the

 18 methodology that Progress uses, does that methodology as

 19 part of the evaluated price include a premium for

 20 delivery interruption risk? For instance, if you are

 21 trying to import coal all the way from Indonesia and you

 22 were required to have a constant supply so that you

 23 could blend it 80/20 as the previous -- as the

 24 Commission has previously established as what would be

 25 prudent when it is cost-effective to do so, would supply

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 1 interruption risk factor into the analysis?

 2 THE WITNESS: It's my understanding that it

 3 does not factor in whether that is from around the

 4 corner or across the world. It does not take risk into

 5 the evaluation that shows up on that spreadsheet.

 6 COMMISSIONER SKOP: Okay. So if you were

 7 evaluating domestic procurement of sub-bituminous coal

 8 from the PRB region in Montana -- not Montana, but in

 9 Wyoming, versus looking at sourcing the coal either as a

 10 primary or a secondary source from Indonesian, certainly

 11 delivery would be a concern in the evaluation, is that

 12 correct?

 13 THE WITNESS: I would agree that risk is

 14 always a concern, and we have had a lot of testimony

 15 today that Progress -- I mean, that Powder River Basin

 16 coal rail delivery became very questionable in the 2005

 17 time period, and hurricanes bringing coal across the

 18 Gulf are a risk, rail strikes, union strikes coming out

 19 of the Central Appalachian are a risk. There is always

 20 risk in deliveries. And should it be taken into

 21 account? Absolutely. But it is my understanding they

 22 are not taken into account in that evaluation process

 23 that we have been shown.

 24 COMMISSIONER SKOP: Okay. And, Mr. Chair, I

 25 think I have about five more brief questions, hopefully.

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 1 With respect to looking at the Springhill

 2 mine, I guess a previous exhibit today that I believe

 3 OPC provided, JS-9, showed a comparison of the Peabody

 4 PRB versus the Spring Creek coal. How would you respond

 5 to the contention that the sodium content of the Spring

 6 Creek coal is far in excess of what would be the norm

 7 and would cause problems in using the Spring Hill coal,

 8 the Spring Creek coal?

 9 THE WITNESS: I would agree that it is higher

 10 than most Powder River Basin coals. I would also point

 11 out, though, that these plants, these units were

 12 designed to burn a wide range of coal, including special

 13 design attention spent to slagging and fouling issues.

 14 And that this plant, again, paid for by the customers of

 15 Progress Energy, was built to burn this kind of coal.

 16 COMMISSIONER SKOP: Okay. Then also, too, in

 17 a separate statement you stated that the Peabody coal

 18 was not a good proxy and was high in -- on Page 25 of

 19 your prefiled testimony, Lines 14 through 20, generally,

 20 you criticized the quality of the Peabody coal making

 21 specific reference to the sulfur level, and indicating

 22 that that was not what would be expected for PRB

 23 sub-bituminous coal. And you also further stated on

 24 Line 17 that Peabody coal was at or above the baseline

 25 value that PEF employs in its evaluation.

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 1 Can you, I guess I'm looking at the exhibit

 2 that OPC provided on cross-examination, and that was

 3 DJP-6, and it shows that the sulfur content in

 4 percentage for the various mines including the Peabody

 5 mine, and assuming that is the same Peabody mine that

 6 you reference in your testimony, how would that sulfur

 7 be out of -- above what would be expected for PRB coal?

 8 THE WITNESS: Well, I think actually this --

 9 the Peabody bid, if you're looking at DJP-6, the Peabody

 10 bid out of the Antelope mine shows an SO2 number -- let

 11 me find it.

 12 COMMISSIONER SKOP: I'm seeing a sulfur

 13 percentage of .27 percent.

 14 THE WITNESS: Okay. The Peabody coal that was

 15 used in the test burn was well over that. So, I mean,

 16 it proves the point that the test coal used from Peabody

 17 is higher than all of these other numbers shown on this

 18 list of PRB coal.

 19 COMMISSIONER SKOP: Well, again, going back to

 20 JS-9. If this is the Peabody PRB, I'm showing a

 21 percentage of sulfur there of .4, which, again, seems to

 22 fall in the general range of some of the Campbell County

 23 coal. So, again, I'm trying to have a better

 24 understanding and appreciation of what do you find to be

 25 offensive about the sulfur level of the Peabody PRB.

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 1 THE WITNESS: Well, it may not seem like much,

 2 but the difference between .4 and 3.4 is money going out

 3 the stack in emission allowances.

 4 COMMISSIONER SKOP: I understand. Moving on

 5 to, again, your analysis, and initially I think that you

 6 had looked at offsetting against the 20 percent of the

 7 highest incurred bituminous coal, but then, I guess, in

 8 your amended direct testimony you changed that to

 9 conform to the Commission's evaluation, is that correct?

 10 THE WITNESS: I changed it to balance the

 11 Btus, yes.

 12 COMMISSIONER SKOP: Okay. And I guess I'm

 13 going to ask the same questions I asked to Mr. Heller.

 14 I guess the controversy in this, as I understand your

 15 testimony, centers around the choice of coal for 2006,

 16 which in your opinion they should have used the Spring

 17 Creek coal from Montana, and in 2007 they should have

 18 used the Indonesian coal. Is that generally correct?

 19 THE WITNESS: Generally correct. For 2006, I

 20 picked the lowest cost evaluated price off of their

 21 list, but in reality there was a whole list of other

 22 Powder River Basin coals that they could have picked any

 23 of and would have been better off than what they did do.

 24 COMMISSIONER SKOP: Would the fact that the

 25 performance guarantee for the design fuel blend was

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 1 specified for Campbell County in the PRB, which would be

 2 Wyoming Campbell County coal versus the use of Montana

 3 or northern PRB coal have any difference in the analysis

 4 or be relevant to the extent that you are picking on the

 5 lowest basis of cost, but how does that correspond to

 6 what the specified design fuel blend was?

 7 THE WITNESS: Again, I think the design fuel

 8 does not mention the sodium content of the coal. It

 9 does mention a geographic location. I'm not sure that's

 10 as significant as the quality of the coal coming out of

 11 the ground. So what the design specs do show is that

 12 that plant was designed for a severe slagging and

 13 serious fouling design, indicating that it was built to

 14 burn high sodium kind of coals.

 15 COMMISSIONER SKOP: Okay. In the interest of

 16 time, I'm not going to reference the Babcock and Wilcox

 17 statement for the performance guarantee about the

 18 slagging and the fouling. I think that is slightly

 19 different, but not enough to spend the time on.

 20 I want to go back to the evaluated price that

 21 Mr. Heller used, and he suggested for 2006 that the spot

 22 purchase should be used as the appropriate price point

 23 for consideration of the Commission to show or

 24 illustrate that the PRB was more expensive than the CAPP

 25 coal. And how would you respond to Mr. Heller's choice

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 1 of using that spot price?

 2 THE WITNESS: I would respond by saying what I

 3 did, which was that I looked as this as a continuum

 4 review of the prudency of Progress Energy. The

 5 Commission last time said that in 2001 and 2002 that

 6 there was notice to the company that the Powder River

 7 Basin was now possibly an economic alternative, and that

 8 Progress Energy should have gotten ready. And that they

 9 gave them two years, the years 2001 and 2002, to run a

 10 test, get a permit approval, make the changes in the

 11 unit necessary to be able to burn Powder River Basin

 12 coal.

 13 From 2003 through 2005, the Commission said

 14 they were imprudent because they had not done any of

 15 that. In 2006, they still had not done any of that. In

 16 2007, only very late in the game after all of the

 17 procurements were done did they make those changes. So

 18 I view it as a continuum. When 2005 came along, I know

 19 we are not testifying about 2005, but when 2005 came

 20 along there was an opportunity to buy at very low cost

 21 Powder River Basin coal. Because they didn't have a

 22 permit, they couldn't buy it. In 2006 and 2007, on that

 23 same inquiry they couldn't buy it because they were not

 24 in a position with permits and other things to buy it.

 25 So I view that the imprudency began in 2003

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 1 and was a continuum all the way through the time period

 2 we are looking at now through 2007.

 3 CHAIRMAN CARTER: Would you yield for a

 4 moment, please, sir.

 5 COMMISSIONER SKOP: Yes.

 6 CHAIRMAN CARTER: Commissioner Argenziano.

 7 COMMISSIONER ARGENZIANO: Thank you, Mr.

 8 Chair.

 9 And I hate to interrupt, but, Commissioner

 10 Skop, I'm kind of confused, because you had indicated in

 11 much of your line of questioning that the sodium content

 12 was important to the design.

 13 COMMISSIONER SKOP: (Inaudible. Microphone

 14 off.)

 15 COMMISSIONER ARGENZIANO: I heard that all

 16 along. It was kind of like, I guess, your line of

 17 questioning. Let me finish it, and then you can

 18 maybe -- because I kept hearing you indicate that the

 19 type of coal was very important to this plant and may

 20 factor into why the company wouldn't look for that type

 21 of coal. And this witness just indicated that in his

 22 opinion, I didn't hear anybody else's at this point, but

 23 in his opinion that the plant was kind of designed for

 24 the high sodium. Is that what you indicated?

 25 THE WITNESS: That is correct.

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 1 COMMISSIONER ARGENZIANO: And you didn't care

 2 about that, and now I want to know why.

 3 COMMISSIONER SKOP: The only thing -- again, I

 4 was looking at sulfur, I was looking at the design

 5 specification of the mine. But looking at JS-9, which

 6 was the exhibit that was provided earlier today, I guess

 7 it accentuates the difference in the sodium, which is a

 8 metal, between the PRB coal from Peabody and the Spring

 9 Creek coal, and some of the properties vary. Some

 10 significantly, some more than others. Again, the Btus

 11 per pound is much higher.

 12 COMMISSIONER ARGENZIANO: Right.

 13 COMMISSIONER SKOP: Some of the other

 14 properties change. But one of the things that, again,

 15 that I believe Mr. Putman spoke to, and I have not found

 16 it, but the sodium level obviously is somewhat higher,

 17 or substantially higher than that of the PRB coal from

 18 Wyoming. I don't know if that is a big difference or

 19 not. It's just something that I'm trying to kind of

 20 articulate because, again, I think that would somehow

 21 factor or it seems there has been some testimony to

 22 suggest that that factors into the evaluated cost. That

 23 is not my primary premise, I'm just trying to understand

 24 the position of each of the parties.

 25 COMMISSIONER ARGENZIANO: So then all those

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 1 questions about the sodium, or mention of that, and I

 2 think in one of these schedules here you had mentioned

 3 that, and that is not -- you are not saying that because

 4 it was higher sodium would eliminate the company from

 5 using that in this particular plant?

 6 COMMISSIONER SKOP: What I'm suggesting is I

 7 think my prior questions related -- and I have got a

 8 twang, so maybe I was saying -- I was saying sulfur, not

 9 sodium. I did remember mentioning sodium in one

 10 specific question, but I think generally my comments

 11 focused on the sulfur content, because he suggested that

 12 the Peabody mine -- their witness suggested the Peabody

 13 mine was much higher in sulfur than standard PRB coal,

 14 and that is what I was trying to flesh out. Because,

 15 again, some of the documents that OPC had presented

 16 earlier today, DJP-6, that statement seemed somewhat

 17 inconsistent with the data I was seeing.

 18 But, generally speaking, I think a lot of my

 19 questions that focus on -- and just from my operational

 20 experience was not at issue here, but when I ran a

 21 coal-fired cogen plant we had a force majeure event.

 22 The mine flooded. We couldn't get coal. And then all

 23 of a sudden we had to, you know, scramble. And then as

 24 soon as we burned something different our mission

 25 profiles went whacko. So, again, I'm trying to

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 1 articulate from the witnesses what they feel in terms of

 2 the chemical composition as it varies from mine to mine,

 3 and how important that is to the extent that you -- if I

 4 run out of milk, I can't go to Publix and just get a jug

 5 of milk and just pour it on the cereal. It doesn't kind

 6 of work that way, you have to do other things, and that

 7 is what I'm trying to get the witnesses to discuss the

 8 significance of whether you can just use any given coal

 9 or whether you have to do a test burn first to make sure

 10 that --

 11 COMMISSIONER ARGENZIANO: Yes, I got that.

 12 And I know you have to do a test burn. But what I was

 13 getting out of your comments from early on was that if

 14 it wasn't a particular type of coal it couldn't be used.

 15 And I understand the test burns, and that's where my

 16 questions came in earlier about the specified design,

 17 specific design didn't disallow a higher sodium or other

 18 coals to be used as indicated by Progress' witness, too,

 19 that they use other coals. I was trying to figure out

 20 if you were saying that only a specific coal could be

 21 used, forget test years and all that stuff.

 22 COMMISSIONER SKOP: Right.

 23 COMMISSIONER ARGENZIANO: And, Mr. Chair, when

 24 he is done with his questions, I have some. But, thank

 25 you.

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 1 COMMISSIONER SKOP: And I will try and wrap

 2 mine up. And just in response to that question, what I

 3 was trying to articulate is that if the design heat

 4 content is based on fuels and blending from CAPP coal

 5 and then a specific vein of coal in the PRB region to

 6 get the heat content per pound, and that kind of

 7 suggests -- I mean, if they went to the trouble of

 8 specifying a certain region in the design specs,

 9 certainly you can use other coals if you are able to,

 10 perhaps, do so, but the design of the units centered

 11 around specific designation to the Campbell County,

 12 Wyoming, PRB. But I won't make too much of that.

 13 The points I'm trying to go to is that Mr.

 14 Heller's testimony -- and these are the same questions I

 15 asked Mr. Heller -- Mr. Heller suggested using a spot

 16 price for a 3300-ton purchase of coal as the proxy to

 17 use to be a benchmark to evaluate whether it was more

 18 cost-effective to use CAPP coal versus PRB. And I guess

 19 you disagreed because it was a continuum of when they

 20 could have bought coal, getting back to a line of

 21 questioning.

 22 The next point I asked Mr. Heller to address

 23 was because of the small quantity of coal in that spot

 24 purchase, should that be adjusted or interpolated

 25 through two data points that the Commission has, based

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 1 on the record evidence, to adjust for the volume that

 2 might be purchased. I think in your testimony you

 3 suggest that on an annual basis that the CR4 and CR5

 4 units would be expected to burn, subject to waterborne

 5 delivery constraints, just over, you know, 500,000 tons

 6 of coal per year, is that correct?

 7 THE WITNESS: The total tonnage burned is

 8 somewhere around 4.2 million tons for the two units.

 9 What we're talking about is the 20 percent kind of

 10 number, which is 5 to 5.5 million -- 500 to 550,000

 11 tons.

 12 COMMISSIONER SKOP: Okay. All right. So if

 13 we have that chart, and I don't know if our legal staff

 14 has the same copy, maybe we can give to the witness. We

 15 do have one more copy? Can you please give that to the

 16 witness.

 17 CHAIRMAN CARTER: It has been marked as Number

 18 50, I believe. Number 54.

 19 COMMISSIONER SKOP: Marked as Exhibit 54.

 20 CHAIRMAN CARTER: Only for identification

 21 purposes.

 22 COMMISSIONER SKOP: And, again, to

 23 Commissioner Argenziano, I just have two more questions

 24 and then I'm done. I'll be happy to turn it over.

 25 Mr. Putman, on that graphical representation

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 1 between Mr. Heller's point of the spot purchase, and,

 2 generally speaking, the OPC position of the large

 3 quantity purchase at a much lower cost in dollars per

 4 MMBtu, assuming that we were going to interpolate at the

 5 quantity that you suggest subject to delivery

 6 limitations of 500,000 tons per year. It would seem to

 7 suggest the intersection of the point -- and correct me

 8 if I'm wrong, or give me your opinion, that that

 9 intersection of the point in the slope of the line or

 10 the intercept would be higher than the delivered price

 11 of CAPP coal. Would you generally agree with that?

 12 THE WITNESS: I'm going to have to

 13 respectfully say that this graph, I'm not sure what it

 14 represents, because it has two different times

 15 associated with those points.

 16 COMMISSIONER SKOP: Okay.

 17 THE WITNESS: And, in my opinion, based on my

 18 experience, time is much more important than quantity.

 19 And until the time component is put in there, I can't

 20 really honestly respond to it.

 21 COMMISSIONER SKOP: Two more questions, then.

 22 So assuming for the sake of discussion we reject Mr.

 23 Heller's testimony in its entirety and adopt the

 24 position that is most favorable to OPC to the extent

 25 that they should have purchased PRB coal based on the

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 1 2004 RFP, which I believe represents the upper left

 2 point on that graphical representation to the extent

 3 that, you know, you are talking about large quantity of

 4 coal at a lower cost. But assume that we accept that

 5 premise, then in response to that, and that's taking it

 6 in the light most favorable to OPC's position, the

 7 interrogatory response to Staff Interrogatory 29A, and I

 8 don't know if we can get Mr. Putman a copy of that also,

 9 too, please.

 10 And this is my last question, I promise.

 11 THE WITNESS: I've got a copy of it now.

 12 COMMISSIONER SKOP: Okay. All right. Thank

 13 you. If you could just look at that, and on 29A in the

 14 column entitled dollars per MMBtu delivered to terminal,

 15 I guess, if I understand this correctly, and, again,

 16 throwing out Mr. Heller's testimony for the sake of

 17 discussion and merely focusing on OPC's position versus

 18 the response on Interrogatory 29A, it would seem to me

 19 that Progress is alleging that the delivered price of a

 20 blend of bituminous coal, whether it be domestic and

 21 foreign or blend that they covered with is actually

 22 cheaper than the 2004 RFP quotation price that they

 23 could have otherwise procured coal at.

 24 So how would you respond to that? And I guess

 25 I'd like to generally understand.

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 1 THE WITNESS: I've got several comments to

 2 make about it. First, when I look at the PRB delivered

 3 to terminal and I see prices in the 2.4, 2.3, I'm not

 4 sure where those numbers came from. Again, what I used

 5 was the evaluated price on the 2004 bids that were put

 6 together by Progress Energy. And they take the price

 7 all the way to the plant. And the proposals that I

 8 brought forward were in the $1.90 to $2.00 range for the

 9 coals that I offered. So I'm not sure. The numbers I

 10 saw up here were very different than the numbers that

 11 Progress Energy produced back in 2004. So in 2004 they

 12 were different. They were in the $2.00 range. That's

 13 one point. So I don't agree with the PRB delivered to

 14 terminal number.

 15 COMMISSIONER SKOP: Just one brief follow-up,

 16 then, to that point.

 17 If Progress were, in fact, as it alleges, able

 18 to burn a blend of bituminous coals that was cheaper

 19 than burning an 80/20 blend of PRB coals, in your

 20 professional judgment and upon a showing supported by

 21 evidence, then would it not be prudent to burn the

 22 bituminous blend over doing the 80/20 blend?

 23 THE WITNESS: And my response to that is I'm

 24 not ready to be brought into an either/or situation. I

 25 think what you have -- and I commend Progress Energy for

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 1 doing this. Progress Energy did not buy the Powder

 2 River Basis coal, but they went out and came up with

 3 another idea which was to buy low quality bituminous

 4 coal to blend, and that became cheaper than what they

 5 were buying. And that was a good thing.

 6 It doesn't mean they couldn't do that and that

 7 they could not have also bought the Powder River Basin

 8 coal and blended that and brought that into the plant.

 9 And in my evaluation that would be cheaper than the

 10 blend with the bituminous coal, and both of those

 11 blends would have been cheaper than the coal actually

 12 purchased and delivered. So they could have done both.

 13 The customers would have been better off. Again, I

 14 commend Progress Energy for doing that they did, but I

 15 don't say that they did a good thing by skipping the PRB

 16 coal.

 17 COMMISSIONER SKOP: And I promise, Mr. Chair,

 18 just two more brief ones, and then I'm done, because

 19 I've over-extended my questions.

 20 To your point, though, about they could have

 21 done both, and maybe that's an alternative, but if they

 22 came up with an innovative solution to blend bituminous

 23 coal versus doing the alternative you suggested, would

 24 you agree that the blended bituminous coal had a higher

 25 heat content than the blend of the 80/20, which would

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 1 have resulted in having to use less overall coal?

 2 THE WITNESS: It they had used the Kennecott

 3 coal which had a Btu content of 9300 compared to the

 4 9,000 Massey coal that they used for their blend, then

 5 the PRB/Kennecott blend would have had a high Btu

 6 probably.

 7 COMMISSIONER SKOP: And that's a good point.

 8 One final point on those numbers. I know that

 9 you haven't seen those, and you may agree or disagree

 10 with them, but if those numbers are truly accurate in

 11 terms of the solution that Progress came up with to use

 12 a blend of bituminous coal, would you -- and, again,

 13 this is a question I will ask to Mr. Weintraub on

 14 rebuttal, but if those numbers -- bituminous coal has

 15 higher sulfur content than the blend, so certainly those

 16 numbers, if accurate, would probably need to be adjusted

 17 or an explanation given as to whether that affected the

 18 overall SO2 allowances, is that correct?

 19 THE WITNESS: That would be correct.

 20 COMMISSIONER SKOP: All right. Thank you.

 21 CHAIRMAN CARTER: Thank you.

 22 Commissioner Argenziano, you're recognized.

 23 COMMISSIONER ARGENZIANO: Thank you, Mr.

 24 Chair. Just a few questions.

 25 Because to me, all this comes down to

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 1 availability and what costs less if it can be used. And

 2 let me ask you, you have actually operated a coal plant?

 3 THE WITNESS: I have.

 4 COMMISSIONER ARGENZIANO: For how long?

 5 THE WITNESS: I would say various jobs at

 6 Plant Barry for seven years, including the assistant

 7 plant manager.

 8 COMMISSIONER ARGENZIANO: And you had coal

 9 procurement experience?

 10 THE WITNESS: I had 17 years of coal

 11 procurement.

 12 COMMISSIONER ARGENZIANO: Okay. Then I can

 13 ask you this question, and I'll ask others, too.

 14 If you have a plant, a coal plant, is it

 15 designed or is it an understanding that at some point

 16 you may have to change coal sources that you use?

 17 THE WITNESS: They're designed -- and, again,

 18 depending on how much money you want, you design them

 19 generally for a type of coal, a coal region, a coal

 20 supply source, yes.

 21 COMMISSIONER ARGENZIANO: So you're saying

 22 that it's designed for a particular region's coal?

 23 THE WITNESS: Correct.

 24 COMMISSIONER ARGENZIANO: And what if that

 25 region runs out of that coal?

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 1 THE WITNESS: Then you would do something

 2 different. Southern Company, also, they designed their

 3 plants for certain kinds of coal, but then they found

 4 out about Powder River Basin coal, and their supply

 5 didn't run out, but they found a cheaper supply, and so

 6 they changed and began burning at two plants significant

 7 Powder River Basin coal.

 8 COMMISSIONER ARGENZIANO: So in the change,

 9 what are we talking about in layman's terms? What type

 10 of equipment changes? How extensive, and I know just

 11 kind of in a nutshell, if you can, do you have to go

 12 about doing in order to switch coals, if it is an

 13 extreme switch? Like you indicated that this coal plant

 14 may be able to take a higher -- may have been designed

 15 for higher sodium, but if it's a different type of coal

 16 entirely that prompts a change, is it usually a very

 17 extensive change?

 18 THE WITNESS: It can be a very extensive

 19 change. It can cost a lot of money. You can pay for

 20 that up front, which is what Progress Energy did. They

 21 built a plant that could burn a wide range of coals at

 22 the Crystal River plant. They paid for it up front and

 23 they've been paying for it ever since. Miller and

 24 Scherer came along later and had to change, and so they

 25 did have to make some significant changes in both the

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 1 coal handling equipment and in some of the stuff inside

 2 the plant, sub-blowers and other things like that.

 3 They did their evaluation and came out that,

 4 yes, you're going to have to spend millions of dollars,

 5 but you are going to save so much more than that in fuel

 6 costs that it vastly jumped over that hurdle, and you

 7 would be saving that money for years and years. But,

 8 yes, it's expensive, it can be expensive.

 9 COMMISSIONER ARGENZIANO: Okay. To be fair.

 10 But now you're saying that in your opinion the Crystal

 11 River plant was designed to handle different types of

 12 coal?

 13 THE WITNESS: Yes.

 14 COMMISSIONER ARGENZIANO: Up front?

 15 THE WITNESS: Up front and paid for.

 16 COMMISSIONER ARGENZIANO: Which is a wise

 17 thing to, I think.

 18 THE WITNESS: If you use it, it's wise.

 19 COMMISSIONER ARGENZIANO: Right. Hang on one

 20 second.

 21 The mention of availability of the Indonesian

 22 coal, I'm having a hard time trying to figure out a

 23 basis on both sides. One side says it wasn't available,

 24 and another side says it could have been if you did the

 25 actual bidding in 2006. Could you just be a little bit

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 1 more specific for me? Sometimes it takes a little

 2 longer to penetrate a thick skull.

 3 THE WITNESS: I want to make two points about

 4 the Indonesian coal and it's availability. In my

 5 opinion, it was a chance opportunity in 2006 when those

 6 bids were received that they received bids for

 7 Indonesian coal. Unless Progress Energy made a real

 8 effort to make a long-term relationship, it came, it was

 9 there, it could have been bought, but probably would not

 10 have been there a year later. But, again, that sort of

 11 says you have got to be ready.

 12 The other point is in 2006, February of 2006

 13 when those inquiries went out, and those bids came in,

 14 it is possibly a coincidence, but I don't think so, that

 15 in that same time period right after that, Plant Scherer

 16 and Georgia Power began to buy sub-bituminous coal out

 17 of Indonesia. So there is a very strong possibility, I

 18 don't know it for a fact, but that coal that was offered

 19 to Progress Energy got sold to Plant Scherer. And that

 20 is why in May when discussions were going on, it may not

 21 have been available. But, again, it's a question of you

 22 have got to be ready.

 23 COMMISSIONER ARGENZIANO: Timing.

 24 THE WITNESS: Timing is everything.

 25 COMMISSIONER ARGENZIANO: So you allege timing

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 1 was maybe asleep at the switch, or whatever, and I'm not

 2 putting words in your mouth. Your issue there was

 3 timing, unavailability. And you had mentioned before

 4 that other coals were available also that would be --

 5 and I don't know word-for-word what you said, but

 6 basically was that other coals could have been bought by

 7 the company that would have been cheaper than what they

 8 did use. Could you elaborate?

 9 THE WITNESS: The plant, again, is a wonderful

 10 plant. It was bought to burn a wide range of coal by

 11 wise people back in the '80s. They built the capability

 12 to receive coal by water, and they built the capability

 13 to receive coal by rail. Because of where they are on

 14 the Gulf of Mexico, through water they can buy coal from

 15 South America, they can buy coal from Indonesia, they

 16 can buy coal from South Africa. Another Florida utility

 17 did that for ten years, Gulf Power. So they've got,

 18 really, the whole world on the ocean.

 19 And then in United States they've got Central

 20 Appalachian, they have got Illinois Basin, they've got

 21 Powder River Basin, all that coal can flow down river

 22 systems and rail systems and be there at the plant. So

 23 the plant can buy coal from almost anywhere in the world

 24 when it's offered to them.

 25 COMMISSIONER ARGENZIANO: So the time that we

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 1 are talking about, the time frame that we're talking

 2 about here, let's say -- let's take out the Indonesian

 3 component for a moment. In your opinion, there was

 4 other coals at that time that could have been purchased

 5 that would have been cheaper than what they ultimately

 6 used?

 7 THE WITNESS: At that time, based on those

 8 bids, those were the cheapest bids.

 9 COMMISSIONER ARGENZIANO: Okay, so those were

 10 the cheapest. But let's say those weren't there. Were

 11 there others that would have been cheaper than what the

 12 company did use? Because I thought I heard you say that

 13 before, and I just want to make sure.

 14 THE WITNESS: Okay. I'm not sure I said that.

 15 Based on the bids received, the Indonesian bids were the

 16 cheapest, and there were some other Central App coals

 17 which they bought, and then there was some Powder River

 18 Basin coal that was down below that. Depending on how

 19 far down that list they wanted to go, they could have

 20 gotten into the Powder River Basin coal, if they had had

 21 the right permits to do that.

 22 COMMISSIONER ARGENZIANO: Okay. Thank you.

 23 CHAIRMAN CARTER: Thank you. Commissioner

 24 Skop.

 25 COMMISSIONER SKOP: Just one more question I

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 1 forgot to ask, I believe, Mr. Heller.

 2 I know that in the previous docket the issue

 3 about using sub-bituminous coal center around the need

 4 for additional housekeeping and grooming to prevent

 5 spontaneous self-combustion. I was wondering, and maybe

 6 there is an explanation that I don't know of, and you

 7 might be able to add to, based on your experience, but

 8 in transporting such large quantities of coal, of

 9 sub-bituminous coal great distances, is spontaneous

 10 combustion an issue, and how is that dealt with?

 11 THE WITNESS: The best way to deal with that

 12 in a ship is compaction. You've got to compact the coal

 13 in the ship hold in order to drive out the opportunity

 14 for oxygen to get to that coal. Just like on a

 15 stockpile, you need to compact the stockpile of

 16 sub-bituminous coal so that oxygen is forced away.

 17 Because it's the oxygen in pockets that cause heating,

 18 and then that heating begins to burn the coal, and you

 19 get the spontaneous combustion.

 20 Again, Indonesia is the first or second

 21 largest exporter of coal in the world, depending on the

 22 year. So they ship huge amounts of sub-bituminous coal

 23 by ship around the world, and you don't hear about them

 24 blowing up ships.

 25 COMMISSIONER SKOP: Okay. Thank you.

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 1 CHAIRMAN CARTER: Thank you.

 2 Mr. McWhirter.

 3 MR. McWHIRTER: I have no questions of the

 4 witness, Mr. Chairman.

 5 CHAIRMAN CARTER: You're a gentleman and a

 6 scholar, Mr. McWhirter. Thank you.

 7 Staff?

 8 MS. BENNETT: I believe Mr. Burnett has

 9 questions.

 10 CHAIRMAN CARTER: Sorry, Mr. Burnett.

 11 MR. BURNETT: Mr. Chairman, I think you may

 12 have the right idea. I have a substantial amount of

 13 questions for this witness. It may make sense to go

 14 with staff first, and maybe pick me up tomorrow.

 15 MR. YOUNG: Staff actually has two questions

 16 right now.

 17 CHAIRMAN CARTER: Why don't we that, and then

 18 we can let Mr. Burnett start fresh in the morning.

 19 You're recognized.

 20 MR. YOUNG: All right.

 21 CROSS EXAMINATION

 22 BY MR. YOUNG:

 23 Q. Good afternoon, Mr. Putman.

 24 A. Good afternoon.

 25 Q. Just two questions. First, earlier you heard

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 1 Ms. Bennett's exchange with Mr. Heller about the Vista

 2 model spreadsheet results, correct?

 3 A. Yes, I did.

 4 Q. The same question. Do you believe the Vista

 5 model results from the spreadsheet from 2004 and 2005

 6 are reasonable proxies for the PRB actual costs?

 7 A. I have become aware that it does not appear to

 8 have done a good job in dealing with sodium, so I do not

 9 know that. I can say that the Vista as applied, and I'm

 10 not sure the Vista model was ever run for the 2004 bids,

 11 that's my feeling. But it does not appear to have

 12 handled sodium well, because it allows the coal from

 13 Spring Creek to be the number one evaluated bid, and it

 14 is clear both to me based on my experience as well as

 15 everything that has been said about that coal that maybe

 16 all the costs involved burning that coal were not

 17 considered.

 18 Q. And the final question is are you aware of

 19 other companies who have burned Indonesian coal?

 20 A. I know that Tampa Electric burned Indonesian

 21 coal for about six years in the late '90s, right down

 22 the road. I also know that that coal was burned in

 23 plants in Dominica, the Virginia utility, and up in the

 24 New Jersey utility, Constellation. So it is being

 25 burned today in Virginia and in New Jersey.

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 1 MR. YOUNG: Okay. No further questions.

 2 CHAIRMAN CARTER: Thank you.

 3 And what we will do tomorrow, Commissioners,

 4 we'll begin with Mr. Burnett doing his

 5 cross-examination. And, as I said earlier, our goal

 6 tomorrow is to press on. So just kind of eat your

 7 Wheaties tomorrow. And with that we are adjourned until

 8 tomorrow.

 9 (The hearing adjourned at 5:14 p.m.)

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 1 STATE OF FLORIDA )

 2 : CERTIFICATE OF REPORTER

 3 COUNTY OF LEON )

 4

 I, JANE FAUROT, RPR, Chief, Hearing Reporter

 5 Services Section, FPSC Division of Commission Clerk, do

 hereby certify that the foregoing proceeding was heard

 6 at the time and place herein stated.

 7 IT IS FURTHER CERTIFIED that I

 stenographically reported the said proceedings; that the

 8 same has been transcribed under my direct supervision;

 and that this transcript constitutes a true

 9 transcription of my notes of said proceedings.

 10 I FURTHER CERTIFY that I am not a relative,

 employee, attorney or counsel of any of the parties, nor

 11 am I a relative or employee of any of the parties'

 attorney or counsel connected with the action, nor am I

 12 financially interested in the action.

 13 DATED THIS 29th day of April, 2009.

 14

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 JANE FAUROT, RPR

 16 Official FPSC Hearings Reporter

 (850) 413-6732

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