

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of)
Arrangement to Mitigate Impact of)
Unfavorable Cedar Bay Power Purchase)
Obligation, by Florida Power &)
Light Company.)
_____)

DOCKET NO. 150075-
FILED: June 29, 2015

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CEDAR BAY GENERATING COMPANY'S REVISED
EIGHTH REQUEST FOR CONFIDENTIAL CLASSIFICATION

Cedar Bay Generating Company, Limited Partnership ("Cedar Bay"), by and through undersigned counsel, and pursuant to Rule 25-22.006, Florida Administrative Code ("F.A.C."), and Section 366.093, Florida Statutes ("F.S."), hereby requests confidential classification for: (a) portions of the prefiled testimony and exhibits of the Florida Industrial Power Users Group ("FIPUG") witness Michael G. Lane and (b) portions of the deposition transcripts of Clifford D. Evans and Stephen Mark Rudolph (collectively "FIPUG's Testimony and Exhibits") which were filed with the Commission on June 8, 2015. Please note that on June 19, 2015, Cedar Bay filed its Fifth Request for Confidential Classification which included a blanket request for confidential treatment of Mr. Rudolph's deposition transcript and on June 24, 2015, Cedar Bay filed its Sixth Request for Confidential Classification which included a blanket request for confidential treatment of Mr. Evans' deposition transcript. Cedar Bay's original Eighth Request for Confidential Classification, filed on June 29, 2015, identified and requested confidential

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classification for specified information contained in FIPUG's Testimony and Exhibits, and was intended to supersede the blanket requests for confidential treatment with respect to the deposition transcripts of Mr. Rudolph and Mr. Evans (excluding the indices to Mr. Rudolph's and Mr. Evans' deposition transcripts, which will remain covered by the blanket request).

The documents submitted with Cedar Bay's original Eighth Request for Confidential Classification on June 29, 2015 included complete versions of the deposition transcripts of Mr. Rudolph and Mr. Evans, as filed by FIPUG. Since that date, Cedar Bay has prepared revised versions of the depositions from which the material that FIPUG does not intend to use as testimony has been excised; the remaining material, i.e., FIPUG's proffered testimony, plus the additional information submitted by FPL under cover of its pending Motion to Include Counter-Designations of the Deposition of Witness Rudolph, filed on July 1, 2015, is identical to the material contained in the original Eighth Request for Confidential Classification. This REVISED Eighth Request for Confidential Classification covers these excised versions of the deposition transcripts of Mr. Rudolph and Mr. Evans, and for convenience, also includes the same redacted and public versions of the testimony of Michael G. Lane, which was covered by Cedar Bay's original Eighth Request.

In support of its request, Cedar Bay states as follows:

1. On June 8, 2015, Cedar Bay filed its Eighth Notice of Intent to Request Confidential Classification (the "Eighth Notice") related to FIPUG's Testimony and Exhibits. Accordingly, pursuant to Rule 25-22.006(3), F.A.C., Cedar Bay's original Eighth Request for Confidential Classification was timely. Since this REVISED Eighth Request only covers information that was already covered by Cedar Bay's Eighth NOI and Eighth Request, there has been and can be no lapse in confidential protection of the information covered by this REVISED Eighth Request. Please note that the Eighth Notice requested confidential treatment for the testimony and exhibits of Jeffry Pollock. Cedar Bay reviewed Mr. Pollock's testimony and exhibits and determined that no confidential information is contained therein. Accordingly, Cedar Bay will not be filing a request for confidential classification concerning Mr. Pollock's testimony and exhibits.

2. The following exhibits are included and made a part of this request:

- a. Exhibit A is FIPUG's Testimony and Exhibits on which all information for which Cedar Bay is requesting confidential treatment is highlighted. Exhibit A is submitted separately in a sealed envelope marked "CONFIDENTIAL."

- b. Exhibit B consists of two redacted copies of FIPUG's Testimony and Exhibits on which all information for which Cedar Bay is seeking confidential treatment has been redacted.
- c. Exhibit C is a table that identifies the specific statutory bases for the claims of confidentiality.
- d. Exhibit D is the affidavit of Jacob A. Pollack, Vice President and Secretary of Cedar Bay.

3. Section 366.093(1), F.S., provides that "Upon request of the public utility or other person, any records received by the Commission which are shown to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1)." Section 366.093(3), F.S., defines proprietary confidential business information to mean information that is (i) intended to be and is treated as private confidential information by the company, (ii) because disclosure of the information would cause harm, (iii) to the company's business operation, and (iv) the information has not been voluntarily disclosed to the public. Additionally, section 366.093(3)(e) defines as proprietary confidential business information "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

4. Cedar Bay is requesting confidential classification of FIPUG's Testimony and Exhibits because FIPUG's Testimony and Exhibits contain Cedar Bay's proprietary, confidential, and competitively sensitive business information, including information concerning internal business plans, projected capital expenditures, confidential contractual negotiations, contractual arrangements, internal budget projections, financial forecasts, plant operations, and other competitively sensitive commercial information, the disclosure of which would harm or otherwise adversely impact Cedar Bay's and/or its affiliates' competitive business interests. Cedar Bay has treated the information contained in FIPUG's Testimony and Exhibits as confidential and Cedar Bay has not voluntarily disclosed the information contained in FIPUG's Testimony and Exhibits to the public.

5. Upon a finding by the Commission that the material in Exhibit A for which Cedar Bay seeks confidential treatment is proprietary confidential business information within the meaning of Section 366.093(3), F.S., such information should not be declassified for a period of at least eighteen (18) months. Additionally, the material provided should be returned to Cedar Bay as soon as the information is no longer necessary for the Commission to conduct its business, pursuant to Section 366.093(4), F.S.

WHEREFORE, for the above and foregoing reasons, as more fully set forth in the supporting materials and affidavit included herewith, Cedar Bay Generating Company, Limited Partnership respectfully requests that its REVISED Eighth Request for Confidential Classification be granted.

Respectfully submitted this 10th day of July, 2015.



Robert Scheffel Wright
Florida Bar No. 966721
schef@gbwlegal.com
John T. LaVia, III
Florida Bar No. 853666
jlavia@gbwlegal.com
Gardner, Bist, Bowden, Bush,
Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
(850) 385-0070 Telephone
(850) 385-5416 Facsimile

Attorneys for Cedar Bay
Generating Company, Limited
Partnership

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 10th day of July, 2015.

Martha Barrera
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Jon C. Moyle, Jr./Karen Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301

Mr. Ken Hoffman
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, Florida 32301

J.R. Kelly / John J. Truitt
Office of the Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

John T. Butler / Maria J. Moncada
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408

Anna H. Upton, Esq.
Anna H. Upton, P.L.
9005 Eagles Ridge Drive
Tallahassee, Florida 32312



Attorney

EXHIBIT B - REVISED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of)
Arrangement to Mitigate Impact of) DOCKET NO. 150075-EI
Unfavorable Cedar Bay Power Purchase)
Obligation, by Florida Power &) FILED: July 10, 2015
Light Company.)
_____)

**CEDAR BAY GENERATING COMPANY'S REVISED
EIGHTH REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Two Redacted Versions of
FIPUG's Testimony and Exhibits
are attached.

**TESTIMONY
OF
MICHAEL G. LANE**

1 01. Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Michael G. Lane and my business address is NewGen Strategies and
3 Solutions, 5115 Maryland Way, Brentwood, TN 37024.

4 02. Q. **BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by the firm of NewGen Strategies and Solutions, LLC. I am a
6 Director, an LLC Member, and an Accredited Senior Appraiser.

7 03. Q. **BRIEFLY DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL
8 BACKGROUND.**

9 I received an Associate's Degree in Applied Science and Nuclear Engineering
10 Technology from Thomas Edison State College, in Trenton, New Jersey in 1994. In
11 1999, I earned a Bachelor of Business Administration Degree from Belmont
12 University in Nashville, Tennessee, and in 2003 I earned a Masters of Business
13 Administration (finance) from the Jack Massey Graduate School of Business at
14 Belmont University, Nashville, Tennessee. Also, in 2003, I earned the designation
15 of Accredited Senior Appraiser from the American Society of Appraisers.
16 Accredited Senior Appraisers are required to have passed required appraisal
17 education classes, to have a minimum of five years full time experience appraising
18 and valuing utility property, and to pass an 8-hour comprehensive public utility
19 appraisal exam administered by the American Society of Appraisers. Attached as
20 Exhibit MGL-1 is a list of independent appraisals that I have performed.

1 From 1985 to 1994, I was with the United States Navy as a submarine-based
2 nuclear power plant operator. From 1994 until 1998 I was employed by Hartford
3 Steam Boiler Inspection and Insurance Company as a boiler inspector. I joined R.
4 W. Beck in 1998. R. W. Beck changed its name to SAIC Energy Environment and
5 Infrastructure (SEE&I) in 2010. I am currently an LLC Member at NewGen
6 Strategies and Solutions, LLC.

7 04. Q. **PLEASE DESCRIBE NewGen Strategies and Solutions, LLC**

8 A. NewGen Strategies and Solutions, LLC was formed in 2012 by a group of
9 consultants that had constituted the core of R.W. Beck's rates, financial, appraisal
10 and economic consulting practices for the last 25 years of R. W. Beck's existence.
11 Since its founding it has expanded rapidly and has offices in Austin, TX, Dallas, TX,
12 Nashville, TN, Denver CO, and Seattle, WA. The firm started with 8 employees in
13 2012 and now employs 35 consultants with clients throughout the United States.

14 05. Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
15 **PROCEEDING?**

16 A. I am providing testimony regarding my review of certain documents related to the
17 valuation of the 250 MW Cedar Bay coal fired generating facility in Jacksonville,
18 Florida. I am filing this testimony on behalf of the Florida Industrial Power Users
19 Group ("FIPUG").

20 06. Q. **HAVE YOU PREPARED APPRAISALS OF OTHER UTILITY PROPERTY**
21 **PRIOR IN THE PAST?**

1 A. Yes. I have prepared appraisals of generation assets as well as electric, water,
2 wastewater and gas utility facilities throughout the country. Exhibit MGL-1 is a
3 listing of utility appraisals that I have prepared or participated in preparing.

4 07. Q. **What documents did you review as a part of this testimony?**

5 A. I reviewed the following documents:

6 -April 5, 2013 Duff and Phelps document entitled "Valuation of Certain Tangible
7 and Intangible Assets & Liabilities of Cogentrix Power Holdings LLC"

8 -August 9, 2013 Memorandum TO: Cogentrix Power Holdings II LLC 2013
9 accounting files FROM: Phil Gegerich regarding [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 - Agreement for the purchase of Firm Capacity and Energy between AED Cedar
13 Bay, Inc. and Florida Power and Light Company

14 -The deposition of Stephen Mark Rudolph taken on May 15, 2015.

15 -The March 4, 2015 Duff & Phelps report entitled "Valuation of Certain Tangible
16 and Intangible Assets of CBAS Power, Inc."

17 08. Q. **WHAT FINDINGS DID YOU DISCERN FROM YOUR REVIEW OF THESE**
18 **DOCUMENTS RELATED TO THE VALUE OF CEDAR BAY**
19 **GENERATING STATION?**

20 A. The Goldman sale of the Cedar Bay generating assets (the assets) in 2013 represents
21 an arm's length transaction and provides a strong market comparable transaction that
22 is useful in the valuation of the Cedar Bay generating assets. In the deposition of
23 Mr. Rudolph on page 31, Mr. Rudolph implies that the Duff and Phelps report dated

1 April 5, 2013 was simply an “allocation” of the purchase price that had been set by
2 the transaction and not really a valuation of the assets. I disagree with that statement
3 in that, the purpose of the Purchase Price Allocation is to establish a Fair Market
4 Value for the assets to first check for the presence of identifiable and unidentifiable
5 intangible assets as well as goodwill that would have to be accounted for properly.
6 The secondary purpose of a Purchase Price Allocation is to then allocate the value to
7 assets for accounting purposes. The Duff & Phelps report is clearly titled “Valuation
8 of Certain Tangible and Intangible Assets & Liabilities of Cogentrix Power
9 Holdings, LLC”.

10 09. Q. **ARE THERE ANY OTHER FINDINGS OF NOTE?**

11 A. Yes. The arm’s length transaction and valuation of the assets in 2013 both provide a
12 strong starting point for valuation of the assets. Based on Duff & Phelps’ valuation,

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] (see Duff & Phelps Valuation of Certain Tangible and Intangible
16 Assets & Liabilities of Cogentrix Power Holdings, LLC [REDACTED]).

17 [REDACTED] (see Duff & Phelps Valuation of Certain
18 Tangible and Intangible Assets & Liabilities of Cogentrix Power Holdings, LLC

19 [REDACTED]). Since the PPA has a defined term, the value of the PPA will generally go
20 down over time unless it is extended or there is some dramatic change in the gas and
21 power markets over the life of the PPA.

22 10. Q. **ARE YOU ABLE TO RECONCILE THE DIFFERENCE BETWEEN DUFF &
23 PHELPS 2013 AND 2015 VALUATIONS OF THE CEDAR BAY**

1 **GENERATING STATION?**

2 In part, yes. The 2013 report relied on a [REDACTED] based on market-
3 based inputs to the cost of capital analysis, which is appropriate for determining the
4 fair market value of the asset. The 2015 report relied on a discount rate of 7%, based
5 on the cost of capital of Florida Power and Light, which is appropriate for an
6 investment value analysis of the assets, but not for a fair market value analysis of the
7 assets. The appropriate discount rate for estimating fair market value would utilize
8 market based inputs. In fact, Duff & Phelps prepared a market based cost of capital
9 analysis for the 2015 report (see the March 4, 2105 Duff & Phelps report Valuation
10 of Certain Tangible and Intangible Assets of CBAS Power, Inc. Exhibit D.2) that
11 resulted in an [REDACTED] discount rate. The difference in value resulting from using the
12 more appropriate discount rate accounts for about [REDACTED] (See exhibit MGL-2)
13 of the total difference between 2013 and 2015 valuations of [REDACTED]
14 [REDACTED]. Additionally, there was a tax amortization benefit
15 included in the 2015 valuation that was not included in the 2013 valuation that
16 accounts for [REDACTED] of the difference. Those two items account for
17 approximately [REDACTED] of the increase in value from 2013 to 2015. The remaining [REDACTED]
18 appears to be related to differences in assumptions related to the revenues produced.

19 11. **Q. Do you believe the \$520,000,000 fair market value suggested by the Duff and**
20 **Phelps March 4, 2015 report is overstated? If so, why?**

21 A. Yes, I believe that the \$520,000,000 value suggested by Duff and Phelps' March 4,
22 2015 report is overstated. The premise of value was intended to be Fair Market
23 Value and the discounted cash flow analysis upon which the March, 2015 valuation

1 is based utilizes a discount rate more appropriate for an Investment Value premise of
2 value. Utilizing the lower, Florida Power and Light specific, discount rate
3 inappropriately adds at least [REDACTED] to the valuation results. Additionally, the
4 truly arm's length transaction that occurred when the Assets were purchased by
5 Carlyle in 2013 is a better indicator of value and a better market comparable than
6 Florida Power and Light's purchase of the assets in 2015. Since Florida Power and
7 Light is compelled by the Purchased Power Agreement (the Agreement for the
8 purchase of Firm Capacity and Energy between AED Cedar Bay, Inc. and Florida
9 Power and Light Company) to pay higher than market rates for the power purchased
10 from Cedar Bay, the purchase price appears to have been affected by undue
11 stimulus. A common definition of Market Value is: *Market value means the most*
12 *probable price which a property should bring in a competitive and*
13 *open market under all conditions requisite to a fair sale, the buyer and seller each*
14 *acting prudently and knowledgeably, and assuming the price is not affected by*
15 *undue stimulus.* Based on that definition, Florida Power and Light's ability to cease
16 purchases of power at higher than market rates after the purchase of Cedar Bay
17 appears to meet the definition of undue stimulus and the purchase price does not
18 reflect Fair Market Value.

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20 12. Q. **DOES THIS CONCLUDE YOUR PREPARED TESTIMONY?**

21 A. Yes, it does.
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Petitioners' Exhibit MGL-1

- 1
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- 3 Indianapolis Water and Wastewater Asset Appraisal
- 4 City of Falls Church, VA Water and Wastewater Asset Appraisal
- 5 Eastman Chemical Company
- 6 Hull, Massachusetts
- 7 Volunteer Army Ammunition Plant
- 8 Hemphill Light and Power (Bio Mass)
- 9 Upper Occoquan Sewer Authority
- 10 Mass Development (Electric and Gas)
- 11 North VA Electric Coop (power portfolio)
- 12 Key Equipment Finance (coal fired power)
- 13 Alcoa Power Generating (Hydro)
- 14 Alcoa Power Generating (Cogen)
- 15 Citipower (gas field and gas distribution)
- 16 Key Equipment Finance
- 17 Smurfit Stone Container (cogen)
- 18 Williams Power Company (Combined Cycle generating)
- 19 Wheelabrator (Waste energy facility)
- 20 Capstar Partners Capital (wind generating facility)
- 21 Bank of America (coal fired generating)
- 22 Ky. Governor's Office for Local Development (gas distribution)
- 23 Mesirrow Financial (Wind generating)
- 24 Competitive Power Ventures (geothermal)
- 25 South Kentucky RECC (electric distribution)
- 26 AES (coal fired generation)
- 27 Southeastern Public Service Authority (waste to energy)
- 28 Currituck County, NC (water distribution)
- 29 GE Capital (cogen)
- 30 Louisville Water Company (water transportation valuation)
- 31 Key Equipment Finance (coal generation)
- 32 Kill Devil Hills, NC (waste water appraisal)
- 33 Brownsville Public Utility Board (water distribution)
- 34 Brownsville Public Utility Board (wastewater)
- 35 Concord, NC (water appraisal)
- 36 Greater Ouachita Water Company (water distribution)
- 37 Greater Ouachita Water Company (wastewater)
- 38 St. Tammany Parrish (wastewater)
- 39 Geneva, Ohio (water distribution)
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1 The following deposition of CLIFFORD D. EVANS, JR.,
2 was taken on oral examination, pursuant to notice, for
3 purposes of discovery, and for use as evidence, and for
4 other uses and purposes as may be permitted by the
5 applicable and governing rules. Reading and signing is
6 not waived.

* * *

8 THE COURT REPORTER: Do you solemnly swear or
9 affirm the testimony you are about to give in this
10 cause will be the truth so help you God?

11 THE WITNESS: I do.

12 Thereupon,

13 CLIFFORD D. EVANS, JR.
14 the witness herein, having been first duly sworn, was
15 examined and testified as follows:

16 MR. MOYLE: Good morning. I'm Jon Moyle. I
17 represent Florida Industrial Power Users Group. I
18 will be asking you some questions today, along with
19 the Office of Public Counsel.

20 For the record, please state your name and
21 business address.

22 THE WITNESS: My name is Clifford David
23 Edwards, Jr. My business address is 9405 Arrow
24 Point Boulevard, Charlotte, North Carolina, 28273.

25 MR. MOYLE: And you're a resident of North
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 Carolina?
2 THE WITNESS: I am.
3 MR. MOYLE: And that's more than 100 miles
4 from Florida; correct?
5 THE WITNESS: Yes.
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8 So I'll ask, how long have you worked for your
9 current employer, sir?
10 A Since 2004.
11 Q Okay. And what is your current job title?
12 A I'm senior vice-president of operations.
13 Q And how long have you been in that current
14 position?
15 A Since December of last year.
16 Q Okay. Could you give us a description of the
17 duties that go along with your current position,
18 please.
19 A I'm responsible for the operations and
20 maintenance of all the generating facilities under the
21 control of Cogentrix Energy Power Management. That
22 includes all the staff and personnel in the plants.
23 Q Okay. And how many direct reports do you
24 have?
25 A I have seven direct reports.
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 Q Okay. And then who do you report to?
2 A I report to the president of the company,
3 Douglas Miller.
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19 **Q** Were you involved in any way with the
20 negotiations with FPL regarding its proposed purchase?
21 **A** I was.
22 **Q** How so?
23 **A** I participated on a team that met with Florida
24 Power & Light to discuss various terms of the
25 agreement. I did not participate in discussions
ACCURATE STENOGRAPHY REPORTERS, INC.

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11 **Q** Okay. Okay. To go back just a second,
12 regarding the negotiation, when you mentioned spring
13 of 2014, do you know if that's when the entire process
14 with Cogentrix negotiating with FPL started?
15 **A** That was the beginning of the discussions.
16 **Q** Okay. Spring of 2014, so I'm going to try to
17 narrow it down a little bit.
18 Can you put a month on that roughly?
19 **A** I'm not sure. I think it was April.
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23 How many coal-fired plants are in Cogentrix's
24 fleet?
25 **A** Three.
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 **Q** And can you tell me where they are?
2 **A** One is in Hopewell, Virginia; one is in
3 Norfolk, Virginia; and one is Cedar Bay in
4 Jacksonville, Florida.
5 **Q** Okay. And can you tell me the size in terms
6 of megawatts?
7 **A** The Hopewell and Portsmouth facilities are
8 pretty much identical, and they're about 120 megawatts
9 in electrical capacity. And Cedar Bay is nominally a
10 250 megawatt plant.
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<p style="text-align: right;">13</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 MR. TRUITT: Not per megawatt or anything like</p> <p>6 that. Kind of the big picture. I want to see</p> <p>7 where Cedar Bay fits in Cogentrix's portfolio.</p> <p>8 THE WITNESS: Cedar Bay's revenues to us</p> <p>9 currently are larger. The other two plants are</p> <p>10 currently merchant plants and are not under</p> <p>11 contract.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">15</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">14</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 Q I'm going to look back at some exhibits that</p> <p>7 we had last time. I'm going to start with Exhibit 1.</p> <p>8 And as a refresher, since it's been a little while,</p> <p>9 this is from CB 0001517, which was provided by</p> <p>10 Cogentrix to FIPUG, so it's a discovery request. It's</p> <p>11 a summary page of a workbook regarding Cedar Bay and</p> <p>12 monthly operations. It happens to be April 2013.</p> <p>13 Do you recognize this type of report?</p> <p>14 A Yes.</p> <p>15 Q Okay. Do you, in your position, look at</p> <p>16 reports like this?</p> <p>17 A I do.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">16</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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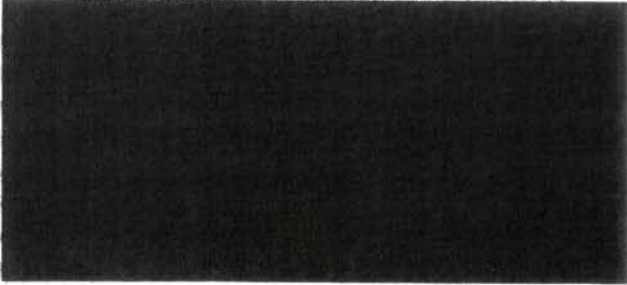
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13 Q And then our understanding, that the price of
14 coal is indexed to the St. Johns River Power Park,
15 according to the PPA?
16 A No. The price that we get paid for our
17 electricity is indexed to the price of coal at St.
18 Johns River Power Park. The price we pay for coal is
19 completely disconnected from our revenue stream.
20 Q Okay. And so the way you worded that, I
21 assume that is different.
22 Can you explain what the difference is -- not
23 in terms of numbers. Do you -- is St. Johns River
24 lower or higher than the coal from Appalachia?
25 A St. Johns River Power Park does a great job
ACCURATE STENOGRAPHY REPORTERS, INC.

22

1 Q Okay. Does running at low loads, is that
2 more -- is it inefficient as compared to running at
3 full loads?
4 A It's less efficient than running at full load.
5 Q Okay. How so? Would you just explain how
6 that works.
7 A If you look at the heat rate numbers provided
8 on Exhibit 1, and you -- you see the generation-only
9 heat rate at 14,845, and you compare that to the
10 average full load heat rate at 12,065, the major
11 difference there is the increased heat rate when you
12 operate at partial loads.
13 When you blend that in together for the full
14 plant operation during this particular month, you see
15 that the heat rate is much -- is much higher when
16 you're factoring in those partial load periods.
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1 buying coal, and they buy coal at a lower price than
2 we're able to get it.
3 Q Okay. So then this, where it says, sourced
4 and delivered coal from more economical sources, just
5 for the record, can you explain to us what that bullet
6 meant, why you put that in the slide here?
7 A One of the things we discovered is that part
8 of the reason why St. Johns River Power Park can buy
9 their coal so much less expensively than we can is
10 because they source a lot of their coal from Columbia,
11 International coal, and have it shipped in.
12 And our facility has traditionally been
13 landlocked. It doesn't have a port facility. We've
14 had to receive our coal by rail, so that kind of
15 limited us to domestic sources of coal within a
16 reasonable rail distance.
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8 Q Okay. Now --

9 A Excuse me. Let me clarify that.

10 Q Uh-huh.

11



15 Q Okay. Now, we had a discussion just a couple
16 minutes ago about the difference in what you actually
17 paid for the coal and then in terms of the
18 electricity, what you're paid back, so there's that
19 difference in the fuel.

20 Do other Cogentrix facilities have similar
21 differences, that you're aware of? I'm trying to see
22 if that term which is in this PPA appears anywhere
23 else in your fleet.

24 A I don't think we have any PPAs at any of the
25 other facilities in our fleet. So the -- these type

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1 of terms don't exist in other facilities.

2 Q Okay. In your industry experience, is that
3 term unusual -- and by "unusual," I'm just meaning in
4 your experience, have you seen those types of terms
5 before? How common are they if you have?

6 A I don't think I've seen another facility that
7 was indexed to a -- to another generator in this
8 state. It's common for the electric price to be
9 indexed off of some fuel standard, so that aspect of
10 the Cedar Bay contract is not unusual. But the fact
11 that it's indexed against a price that they're
12 actually paying for -- for coal in a facility is a
13 little unique.

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Can you look at Exhibit 18. We'll do it that way. We're going to come right back to this one, so ...

A Okay. Okay.

Q Do you recognize this valuation?

A No, I've never seen it before.

Q Okay. Now, what it says on the cover, it's a valuation of certain tangible and intangible assets and liabilities, Cogentrix -- prepared for Cogentrix on the cover by Duff & Phelps; correct?

A Yes.

Q In terms of the materials that were given to FPL, do you know if this was ever provided to FPL?

A I do not know.

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Q You stated you had never seen this before. Had you ever heard of this report before?

A I've heard it discussed.

Q Okay. In what context?

A Well, it had been explained to me that this was a process that was followed to divide the purchase price that Carlyle -- the Carlyle Group paid -- or the investors in the Carlyle Group paid to Goldman Sachs for five entities, as well as our home office organization. And this was the method that was used to apportion that purchase cost up against the various assets.

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Q Now, not the values of the number, but the fluctuation is what I'm talking about. Is that normal when you're looking at what a generating facility puts out every year, that it's going to vary somewhat, in your experience?

A The capacity factor very often varies year to year, yes.

Q Would that be the same for the heat rate?

A The heat rate will also vary year to year, oftentimes because of the capacity factor or because of changes in steam load to our thermal host.

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9 Q Okay. In terms of future projected heat rates, how do you guys normally -- when you're doing a chart like that, how would you predict what the heat rate is going to be?

10 A We basically use our historical information and see what the heat rate was at similar capacity factors historically, and we'll use those going forward.

11 Q Okay. Now, I'm not going to go back to that anymore. Thank you for indulging me on that one.

12 Are you aware of any contract disputes between Cedar Bay and any -- or Cogentrix and any entities it has contracts with regarding the Cedar Bay facility?

13 A There were -- there were times when we made claims for *force majeure* because of storm damage or other things, and -- and FPL hasn't always agreed with us. So there have been -- have been some

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1 disagreements historically over that point.

2 My understanding is that sometime before my arrival at Cogentrix and my participation in the management of Cedar Bay, that there was actually, you know, some larger dispute that was ultimately settled through legal action.

3 Q Okay. Are you aware of any currently ongoing contract disputes in the same context?

4 A No. I'm not aware of any disputes currently.

5 Q Okay. And I know previously during the presentation in some of the previous depositions, am I correct in my assumption in saying that Cedar Bay, the less it runs, the more profitable it is?

6 A That's correct.

7 Q Okay. And can you explain why that statement is an accurate statement?

8 A Because Cedar Bay loses money on every megawatt hour that it sells to Florida Power & Light. We have a negative energy margin, which means it costs us more to produce that megawatt hour than we get paid for it.

9 Q Okay. And what's the main driver for that negative energy margin?

10 A The main driver for that is the fuel cost and the fact that what we're paid for energy isn't based

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1 on what we pay for fuel; it's based on what's paid for fuel by St. Johns River Power Park.

2 Q Right. Okay. And so, again, assuming the sale doesn't go through, and the PPA exists as it stands right now, you know, that's how we move forward; in some of the previous depositions, there were discussions that it would be predicted that Cedar Bay would actually operate less going into the future.

3 Is that correct?

4 A That's our assumption.

5 Q Okay. So the less it operates and the more profitable it is, why does Cogentrix want to sell Cedar Bay?

6 MR. WRIGHT: I'm going to object. Cogentrix isn't selling Cedar Bay; CBAS Power Holdings is. And additionally, I'm not sure you have foundation to ask this witness that question. But you can ask it again, clearly, and he can answer if he can answer.

7 BY MR. TRUITT:

8 Q Okay. Given that prediction, it will operate less, and the less it operates, the more profitable it is, in your opinion, what is the incentive to sell CBAS, rather than operating as it stands right now?

9 A Well, we now work -- you know, the work we now

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1 do is on behalf of investors in a fund, in the Carlyle Group. And working for a fund is a lot different than all of my previous experience where we owned the facility for the long haul, and we would have been very happy just continuing to operate Cedar Bay.

2 And so there are some dynamics in the fund world and in returning money to investors and in avoiding operational risks that -- I don't participate in those discussions, but it's my belief that -- that those conditions incentivize the investors to avoid operational risk and to -- and to get a return of their invested capital and a return on it at the earliest opportunity.

3 Q Okay. Sorry. Just a second.

4 So based on that answer, it leads me to the question of, are you aware whether FPL approached Cogentrix regarding the sale, or did some other entity approach FPL with the proposal of the sale?

5 A FPL approached us.

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Q Okay. And then the steam contract with RockTenn -- you're aware of what I'm talking about; correct?

A Yes.

Q It's my understanding that -- was the contract amended recently -- by recently, in the last couple of years?

A Yes.

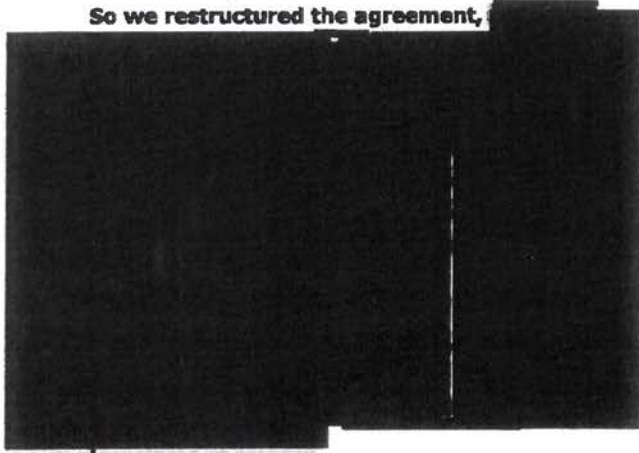
Q Okay. Can you explain what the amendments did for the contract? Like, what was the intent of that?

A The -- the contract was amended -- and I think it was early 2013 -- to extend its term. It was due to expire at the end of 2060, and so we extended its

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1 term through the full term of the purchase agreement.
2 We also changed the pricing structure of that
3 agreement. The original agreement had a very high
4 fixed price, like a capacity price, and a low energy
5 price. What that did was, it encouraged RockTenn mill
6 to consume as much steam as they could.
7 And if you looked at the underlying economics,
8 the mill could actually produce -- on an overall
9 basis, it could produce its own steam in its gas-fired
10 boilers at a lower price than what it was paying
11 overall to Cedar Bay for that steam.

12 So we restructured the agreement,



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5 So the net effect was that it lowered the --
6 it lowered the mill's total energy cost for steam, and
7 it extended the contract throughout the term of the
8 PPA for us.

9 Q Okay. Now, based on that answer, if the steam
10 contract had expired, you hadn't extended it, would
11 Cedar Bay have remained a qualifying facility?

12 A Cedar Bay would have had to take some
13 additional actions to maintain a qualified facility.
14 We would have had to develop a different steam host.

15 Q So that steam contract was the contract that
16 made you a qualifying facility?

A Yes.

18 Q And then just to be clear, it's -- you stated
19 today that no one in Cogentrix management approached
20 FPL about selling CBAS?

21 A This time. There have been multiple times in
22 the past when either Cogentrix or -- you know, where
23 Cogentrix had approached FPL.

24 Q Regarding this facility?

A Yes.

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1 Q Okay. When was the last time that occurred;
2 are you aware?
3 A It was many years ago, maybe 2010, 2009. I'm
4 not sure. We were never able to really develop a --
5 an interest on both sides to do anything.
6 Q But roughly five years ago would have been the
7 most recent attempt?
8 A Something like that.

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Q Just tell me.

A I was living in Houston, working for El Paso Energy when El Paso Energy sold the Linden Cogeneration Facility to Goldman Sachs. That was in October of 2003. When they completed that sale, I -- I essentially went with the transaction and became an employee of Goldman Sachs.

In December of 2003, Goldman Sachs acquired
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1 if you would.
2 A Well, Goldman Sachs is a large investment
3 bank, and they also had a significant commodities
4 trading group. They were trying to enhance and build
5 up their energy trading desk at the time they acquired
6 Linden Cogeneration, and they thought that -- with the
7 belief that having physical assets in the market would
8 help their trading position.
9 And so they -- when they acquired Linden and
10 then subsequently Cogentrix, they did it on their
11 balance sheet. So we were actually owned by Goldman
12 Sachs.

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Cogentrix Energy, and in late January of 2004, Goldman Sachs decided that they were going to manage the Cogentrix business from Cogentrix's home offices in Charlotte. So I was relocated to the Charlotte area.

Q Were you still an employee of Goldman at the time?

A At the time, I was.

Q And how long did you remain an employee of Goldman?

A I think until about October of 2004. They -- they asked me to move onto the Cogentrix payroll.

Q Would you just briefly characterize Goldman -- I guess Goldman Sachs, it's an investment company; they have energy interests? Just give me a narrative,

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4 Q Do you have in front of you Exhibit 17 that	4
5 was previously marked?	5
6 Would you please identify that document.	6
7 A It's a memorandum to -- to file from Phil	7
8 Gregorich.	8
9 Q Are you familiar with this document?	9
10 A It's the first time I've looked at it.	10
11 Q You didn't see it last week or two weeks ago	11
12 when it was introduced as an exhibit to the	12
13 depositions?	13
14 A I was -- I did not look at the exhibits at	14
15 that time.	15
16 Q At the bottom it says: Purchase price. Total	16
17 consideration from Goldman to CPH2 for the acquisition	17
18 was [REDACTED]	18
19 Do you know that to be true, false, have no	19
20 information about it?	20
21 A I don't have any information to counter that.	21
22 Q Who -- and you know Phil Gregorich; right?	22
23 A Yes.	23
24 Q Who is he?	24
25 A Phil was our controller, the controller at	25
ACCURATE STENOTYPE REPORTERS, INC.	
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1 Cogentrix.	1
2 Q You wouldn't have any reason to doubt that he	2
3 got it right?	3
4 A No.	4
5 Q And indeed he -- as comptroller, that was his	5
6 job to get it right; correct?	6
7 A As a controller, yes.	7
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15 Q Please describe the negotiations.
16 A I was in two face-to-face negotiating sessions
17 in which we sat around a table like this and
18 negotiated the nonfinancial terms.
19 Q And who was in those meetings?
20 A From my side, asset manager that worked for me
21 at the time, Collin Franceschi; Tracy Patterson, at
22 the time the general manager of Cedar Bay; Jim
23 Larocque from Carlyle; Dan Barbosa, also from Carlyle;
24 and Tom Hartman from FPL.
25 Occasionally Tim Gerrish from FPL;
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1 occasionally Sam Forest from FPL; an attorney with
2 FPL, Charlie Landy was in most of the conversations.
3 There were some operational folks and fuels folks from
4 FPL, but I don't recall their names.
5 Q So there were two meetings that you recall; is
6 that right?
7 A I attended two, yeah.
8 Q You said Sam Forest was in and out. Was he in
9 one meeting, both meetings?
10 A I only remember seeing him in the second
11 meeting.
12 Q Where did these meetings take place?
13 A Florida Power & Light's offices in Juno Beach.
14 Q Who negotiated the financial deal points?
15 A I believe Jim Larocque had the conversations
16 from our side, but I don't know who he was
17 corresponding with.
18 Q I'm sorry. Jim is?
19 A He's -- I think his title is principal at the
20 Carlyle Group. He managed the fund that acquired
21 Cedar Bay.
22 Q Do you interact with him?
23 A Yes.
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21 Q Who made the decision to accept the offer; was
22 it you?
23 A It was not me.
24 Q Was it anybody within Cogentrix?
25 A No.
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 Q Who was it?
2 A I don't know for certain.
3 Q But you know it was someone with Carlyle;
4 correct?
5 A Within Carlyle.
6 Q And who did Jim negotiate with on the other
7 side of the transaction, the financial terms?
8 A I don't know.
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5	Q The PPA really has the only value, because
6	when you run the plant, you lose money; right?
7	A We -- we lose money on each megawatt hour we
8	sell, yes. So with low price gas displacing us in the
9	queue, our -- the fact we ran less meant we lost less
10	money on the energy side. The project always made
11	money on the capacity side.
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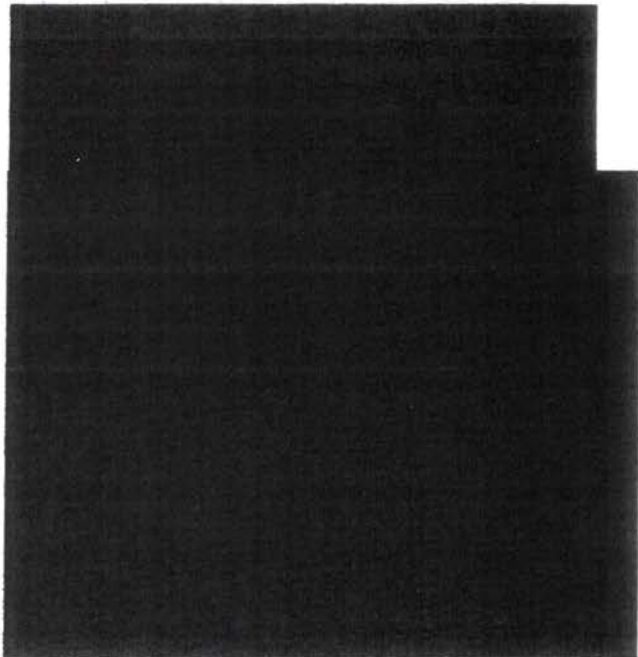
1 A Hopewell, Virginia.
2 Q Hopewell?
3 A Hopewell.
4 Q Would you just briefly describe how those
5 plants are being dispatched currently in today's
6 market?
7 A They're merchant facilities selling to the PJM
8 interchange.
9 Q Given the price of natural gas and some of the
10 other things we discussed, are they -- are they in the
11 market? Are they making money? Or are they even run?
12 A [REDACTED]
13 Q What's the plan for those assets?
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Q What about the other -- which one is that?
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 A Yes.
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24 Q Cogentrix has two other coal plants, one in
25 Norfolk, and where was the other one?
ACCURATE STENOGRAPHY REPORTERS, INC.

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24 [REDACTED]
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ACCURATE STENOGRAPHY REPORTERS, INC.

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21 Q Who did they have purchase power agreements
22 with?
23 A Northern Virginia Electric Co-op.
24 Q Both of them?
25 A Both of them.

ACCURATE STENOGRAPHY REPORTERS, INC.

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13 **Q** Mr. Truitt asked you about the link to the
14 St. Johns River Power Park coal pricing. And I was
15 not clear with your answer with respect to what is
16 tied to what.
17 **Q** Could you explain, with respect to the Cedar
18 Bay facility, how your link to the St. Johns River
19 Power Park pricing -- I wasn't clear whether it was
20 the price that they pay for coal or it was the price
21 that electricity is sold. Just explain the linkage to
22 the St. Johns River Power Park, please.
23 **A** **There's a formula within the power purchase**
24 **agreement -- and I don't remember all the exact**
25 **specifics of that formula. But one element of that**
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 **formula that tells us what we get paid for megawatt**
2 **hours includes the price paid for coal by St. Johns**
3 **River Power Park. It includes some heat rate for what**
4 **I believe was a historical avoided cost unit and some**
5 **discount factored to that.**
6 **And the combination of those determines what**
7 **Cedar Bay gets paid for each megawatt hour that it**
8 **delivers.**
9 **Our price of fuel never comes into that**
10 **equation. And so whether we have a negative or a**
11 **positive energy margin depends on how well we do with**
12 **buying coal versus how well St. Johns River Power Park**
13 **does. It depends on how well we operate our plant.**
14 **Historically it's varied between -- you know,**
15 **we've had some positive margin in some years and --**
16 **but for most years it's a negative margin.**
17 **MR. MOYLE: Would you read back his answer,**
18 **please?**
19 **(Last answer read.)**
20 **BY MR. MOYLE:**
21 **Q** So out of the three elements you gave me in
22 the formula, is it your understanding that the only
23 one that varies is the coal price?
24 **A** **That's correct.**
25 **Q** And who owns St. Johns River Power Park, if
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 you know?
2 **A** **I think it's a joint venture between Florida**
3 **Power & Light and Jacksonville Electric Authority.**
4 **Q** Do you know which of the two is responsible
5 for procuring coal?
6 **A** **No.**
7 **Q** But you do know that they're able to do it
8 very efficiently and effectively and typically are
9 below the price that you pay for coal?
10 **A** **Yes.**
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Q So what prompted you to do a [REDACTED]

[REDACTED]

ACCURATE STENOTYPE REPORTERS, INC.

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[REDACTED]

Q Okay. So the [REDACTED] was sort of prompted by Cogentrix and its affiliated entities looking at, what are our options with respect to the future of Cedar Bay; is that fair?

A Yes.

Q And stated conversely, you -- you didn't do the [REDACTED] because FPL wanted it done; you were doing it on your own?

A We did it for Cogentrix's purposes, yes.

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16 Q Do you have an understanding of how FPL
17 dispatches the Cedar Bay unit?

18 A I don't know all the factors that go into
19 their dispatch decisions.

20 Q Do you know any of them?

21 A I know some of them, I think.

22 Q Tell me what you know.

23 A Economics is certainly a driver. And I think
24 reliability of the power grid is also a driver in
25 terms of when we get dispatched and when we don't.

ACCURATE STENOTYPE REPORTERS, INC.

1 And I think the terms of the power purchase
2 agreement also govern how many opportunities FPL has
3 to shut us down during the year.

4 Q What's your understanding of that?

5 A They can turn us off six times.

6 Q But there's no limit on how long they can turn
7 you off for?

8 A No limit.

9 Q So they in theory could shut you down for the
10 whole -- whole year? They could do one shutoff and
11 say we're not going to need you and leave you sitting
12 for 12 months?

13 A They can.

14 Q You told Mr. Truitt that FPL approached you,
15 but there had been previous times where you had
16 approached FPL about selling the unit or reworking the
17 purchase power agreement.

18 Were you involved in those previous
19 discussions?

20 A I was.

21 Q And tell me -- tell me, how many were there?

22 A I believe there were two different -- two
23 different times when we approached FPL about a
24 potential contract renegotiation or modification.

25 Q And tell me, just a time frame on the first

ACCURATE STENOTYPE REPORTERS, INC.

1 one, roughly.

2 A I -- I don't remember -- all I know is
3 somewhere between 2004 and 2010. We were under
4 Goldman ownership at the time.

5 Q And then with respect to the second, when was
6 the second? It was later in time; right?

7 A Yes. I'm guessing. I mean, 2010 time frame.
8 I don't know exactly when they occurred. We didn't
9 gain any traction. I don't think the economics of the
10 market at that time were enough to drive an agreement.

11 Q Right. Let me ask it this way: There was a
12 span of years between the first and second --

13 A I think so.

14 Q -- approach?

15 A Yeah.

16 Q And why was the first approach made?

17 A Because the president of our company at that
18 time had had a lot of success historically in
19 renegotiating power purchase agreements that he
20 believed were, quote, out of the money, unquote, for
21 our counterparties. And he wanted to pursue that same
22 type of opportunity at Cedar Bay.

23 Q And who was that?

24 A Larry Kellerman.

25 Q Was he a Goldman person or a Cogentrix person?

ACCURATE STENOTYPE REPORTERS, INC.

1 A Yes. (Laughter.)

2 He was -- I think he was a partner, managing
3 director at Goldman, but he was also president of
4 Cogentrix.

5 Q So he wore two hats?

6 A Yes.

7 Q K-E-L-L-E-R-M-A-N?

8 A Yes.

9 Q And what was your role in that first approach?

10 A I was the asset manager for the project. So I
11 was the one that had the firsthand knowledge of what
12 the project could do and couldn't do.

13 Q And what was proposed?

14 A I don't even remember the terms of the deal.

15 Q Was it basically cashing out of the PPA?

16 A It was more complicated than that. You'd have
17 to know Larry Kellerman to understand how complicated
18 it was.



23 Q And was that because, at that point in time,
24 in effect, Cedar Bay was still having negative
25 margins? So you were -- it was costing you money to

ACCURATE STENOTYPE REPORTERS, INC.

1 generate megawatts?

2 A Yeah.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 A That was the concept.

7 Q And what did -- how did FPL react?

8 A Well, they talked with us about it, but it
9 never got anywhere.

10 Q Would -- was part of that to extinguish the
11 PPA?

12 A I -- I don't think that the intent was to
13 necessarily extinguish the PPA. I think what our -- I
14 think what the hope was on our part was that we would
15 be able to source the power from an alternate facility
16 and share those savings with FPL, but still collect
17 the capacity payment, or the major piece of that.

18 Q Was part of that proposal to reduce the
19 capacity payment?

20 A I don't remember whether it included any
21 reduction in the capacity payment. Certainly we
22 weren't -- our preference would be not to reduce the
23 capacity payment, but just to save money on the energy
24 loss.

25 Q Was there ever an indication or an offer or
ACCURATE STENOGRAPHY REPORTERS, INC.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 Q In effect, it was another way of getting to
7 your megawatt output equivalent. [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 A Right.

12 Q And where did that conversation go?

13 A Nowhere.

14 Q And who led it? Was Mr. Kellerman still
15 involved, or no?

16 A Yes.

17 Q Where is Mr. Kellerman now?

18 A I don't know.

19 Q Is he still with Goldman?

20 A No.

21 Q Is he on an island?

22 A He could be.

23 Q And then this deal that is before the
24 commission, this was different in that FPL approached
25 Cogentrix?

ACCURATE STENOGRAPHY REPORTERS, INC.

1 discussion about reducing the capacity payment?

2 A I don't know whether that -- that might have
3 been a part of the conversations, but...

4 Q Again, that was at a financial level that
5 probably wouldn't have included you?

6 A Or just a number of years ago, and I just
7 don't recall now.

8 Q All right. So tell me about the 2010
9 approach. I say 2010. That was roughly, not to hold
10 you to that, but the same -- same deal?

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 And, again, that got so tangled up and
20 convoluted that it wasn't possible to come to a deal
21 on that.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

ACCURATE STENOGRAPHY REPORTERS, INC.

1 A Yes.

2 Q And how do you know that?

3 A I received the call from Tom Hartman asking if
4 we would engage.

5 Q Was it a cold call?

6 A Yes.

7 Q So nobody -- nobody told you, hey, Hartman's
8 going to be calling you?

9 A No.

10 Q So tell me about that conversation with
11 Mr. Hartman.

12 A It was pretty short and sweet.

13 Q What did he say?

14 A He wanted to know if we were interested in
15 engaging in conversations about restructuring,
16 amending, perhaps terminating the power purchase
17 agreement. I said I'd talk to the powers that be and
18 let him know.

19 Q And so who did you talk to? Who were the
20 powers that be that you ran that by?

21 A Well, naturally, I run it by my boss, Doug
22 Miller. But ultimately those kinds of decisions are
23 made at the Carlyle Fund level. So I notified Jim
24 Larocque that -- that FPL was interested in engaging
25 about -- in discussions about the PPA.

ACCURATE STENOGRAPHY REPORTERS, INC.

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1 Q How did you notify Jim?
2 A **Probably by telephone.**
3 Q What do you recall about that conversation?
4 A **I don't recall anything specific about it.**
5 Q He didn't say, holly smokes. We reached out
6 to them twice and have gotten nowhere; now they're
7 calling us?
8 A **Well Jim had never been involved in any of**
9 **those previous conversations with FPL. That was all**
10 **under Goldman.**
11 Q But he probably was aware of them; right? He
12 was the president of the company.
13 A **He was.**
14 Q He didn't express surprise or --
15 MR. WRIGHT: Object. That assumes a fact not
16 in evidence. You used the term "president of the
17 company," and I'm not sure of whom you were
18 speaking. If you're referring to Mr. Larocque, I'm
19 sure that fact is not in evidence. Try again.
20 MR. MOYLE: I'm sorry. I get confused about
21 who has what title.
22 BY MR. MOYLE:
23 Q Mr. Larocque is the Carlyle guy; right?
24 A **Yes.**
25 Q And the president of the company is Tom --

ACCURATE STENOGRAPHY REPORTERS, INC.

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1 A **Doug Miller.**
2 Q Doug Miller. So you called Doug and said,
3 Doug, I just got a call from Mr. Hartman?
4 A **I probably walked down the hall and talked to**
5 **Doug.**
6 Q What was Doug's reaction?
7 A **That's good. Let's engage. Talk to Carlyle;**
8 **make sure they're interested, and we'll engage.**
9 Q So then you called Jim?
10 A **I did.**
11 Q And his reaction was, great?
12 A **Precisely.**
13 Q That was it?
14 A **Pretty much. It was, you know, let's get back**
15 **to them and figure out when we can start a**
16 **conversation.**
17 Q So tell me what happened after that.
18 A **I don't remember specifically. But, you know,**
19 **I -- I did reach out to Tom, and we arranged a time to**
20 **talk about it.**
21 Q Did you-all have internal discussions about,
22 how are we going to handle these discussions or
23 negotiations? Or did you just get on a plane and go
24 down to Juno and sit around the table? Kind of help
25 me with the next steps.

ACCURATE STENOGRAPHY REPORTERS, INC.

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1 A **I don't remember actual planning sessions or**
2 **how we may have decided to do that. I do know that,**
3 **you know, Jim told me that he was going to take the**
4 **lead position in terms of negotiating with FPL but**
5 **that I'd be -- I'd continue to be involved in the**
6 **process.**
7 **And so from that point forward, I think there**
8 **were -- there were phone conversations between Jim**
9 **Larocque and Tom Hartman that I wasn't a part of,**
10 **but...**
11 Q Do you have the impression that Tom Hartman
12 did the financial negotiations for FPL, or --
13 A **I don't know who did.**

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23 Q The pending question was, how did the timing
24 of the Cedar Bay closing relate to what's being
25 discussed in this e-mail?
ACCURATE STENOGRAPHY REPORTERS, INC.

1 MR. WRIGHT: To be clear, in this paragraph
2 with the highlighting; correct?
3 MR. MOYLE: Right.
4 [REDACTED]
5 [REDACTED] at some point up the
6 corporate ladder is owned -- has come into ownership.

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 BY MR. MOYLE:

15 Q And do you know how?

16 MR. WRIGHT: I'm going to object as to
17 relevance as anything that has to do with [REDACTED]
18 or any other project, other than Cedar Bay.

19 A Yeah. I don't know what the consequences of
20 that are, how that ties into it.

21 BY MR. MOYLE:

22 Q To get into it, I will tell you the relevancy
23 of it.

24 Is there anything pressing that says, hey,
25 we've got to hurry up and get this deal closed or else

ACCURATE STENOGRAPHY REPORTERS, INC.

1 bad things are going to happen to Cedar Bay?

2 MR. WRIGHT: I'm going to object that that's
3 vague. You can answer the question if you
4 understood it.

5 A The -- the proposed transaction, the sale, was
6 negotiated around a point in time with certain
7 conditions, certain financial conditions present at
8 that time.

9 The longer -- the more amount of time passes
10 between when we sign that deal and if and when it gets
11 approved, the more danger there is that that deal no
12 longer makes sense for either party. And so do we have
13 an interest in having this deal close soon? Yes. Can
14 I tell you that there's some particular cliff that
15 we're going to fall off at some point in time? No.

16 But the longer this progresses without this
17 deal being approved, the more money we make at Cedar
18 Bay, and the less value there is to the shareholders.

19 BY MR. MOYLE:

20 Q With whose shareholders?

21 A I shouldn't say shareholders. The ratepayers.
22 I mean, the less value there is for FPL to provide to
23 its ratepayers.

24 Q So given your answer, then I assume that, in
25 effect, time is on your side with respect to this

ACCURATE STENOGRAPHY REPORTERS, INC.

1 deal. The longer the deal percolates along, the more
2 value to Cogentrix, the less value to FPL; correct?

3 A Well --

4 Q Isn't that what you just said?

5 A Yes. But the danger is, if that balance that
6 was constructed at a certain point in time, if we fall
7 out of balance, if too much of the benefit accrues to
8 our side and not enough to the other side, the deal
9 falls apart, and there's no benefit to us.

10 Q That's all --

11 A So I don't know when that happens.

12 Q Okay. I just -- understand, I mean, the
13 contract covers -- that you covered it with OPC today,
14 you've got to close by September, and there's an
15 extension period following that.

16 I guess I'm just trying to understand from
17 your perspective -- I think you've answered it --
18 there's no pressing, compelling, we got to close by
19 date certain or everything falls apart; correct?

20 A As I mentioned before, the -- the motivations
21 of a fund are different than the motivations that I'm
22 used to as being a part of a long-term owner of a
23 power project. So clearly one of the elements that
24 goes into the evaluation for the fund of whether to do
25 a deal -- a sale like this or not has to do with how

ACCURATE STENOGRAPHY REPORTERS, INC.

1 long you continue to wear the operational risk and how
2 long it takes before you can return your investors'
3 money into capital.

4 So the longer this goes without being approved
5 and consummated, the less value there is there for the
6 fund, in those terms.

7 Q Do you know what the return will be to the
8 people who have ownership interest in the fund?

9 A No.

10 Q But you do know it will be less value as time
11 goes forward?

12 A I know that the factors that go into their
13 decision to sell involve wearing operational risk and
14 how much time it takes -- the longer we hold -- the
15 longer the Carlyle Fund holds the investors' money,
16 the more return they have to pay them. It's interest
17 on the money.

18 If you can -- if you can pay a set purchase
19 price tomorrow instead of next year, that's a much
20 better return for the investors tomorrow.

21 Q Time value of money?

22 A Time value of money.

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18 MR. MOYLE: I have another document. I will
19 mark this one. What will it be?
20 THE REPORTER: 25.
21 (Exhibit No. 25 was identified for the
22 record.)
23 BY MR. MOYLE:
24 Q I'm handing you an exhibit that's been marked
25 as Exhibit 25. I want to reference you to -- It's an
ACCURATE STENOTYPE REPORTERS, INC.

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1 e-mail string, but the point I want to reference is
2 that it appears that you sent an e-mail on October
3 15th, 2014, to Collin Franceschi.
4 You said, quote, the purpose of this is to
5 push some value to us prior to closing the deal. FPL
6 would run their month ahead projection and allow us to
7 opt to keep Cedar Bay offline by buying market price
8 power from FPL to substitute for our lost generation.
9 They would still pay us our contract price. Our
10 savings would be the difference between our cost of
11 production and their month ahead price forecast,
12 paren, the price at which they would sell us the
13 replacement.
14 What -- what prompted this arrangement?
15 A As we were going through the negotiations, we
16 were trying to find a way of giving FPL, you know, as
17 low a price as possible in the transaction to make it
18 work for FPL. And in return for doing that, we were
19 trying to determine if there was some way in the
20 interim for us to kind of share the savings that could
21 be realized by not having to run Cedar Bay for
22 dispatch while still meeting all the conditions -- the
23 terms of the -- the other terms of the PPA.
24 In other words, if it costs -- I'll give you
25 just rough numbers. These aren't real numbers; I'm
ACCURATE STENOTYPE REPORTERS, INC.

1 making them up for illustration purposes.
 2 If it costs us \$75 to produce a megawatt hour,
 3 but we're getting paid \$35 for it, we're losing \$40.
 4 If we signed some sort of a deal with FPL that said,
 5 If you want the power from Cedar Bay for that \$35
 6 power, let us buy it from someplace else in the market
 7 for -- If it's available -- for \$45, and we'll still
 8 sell it to you at the -- the PPA price of \$35. And
 9 that way, we only lose \$10 on a megawatt hour instead
 10 of losing \$45 on a megawatt hour.

11 And so this was a concept we were trying to
 12 decide -- to determine whether it was feasible or not
 13 for us to still provide FPL with the deal that they
 14 wanted -- you know, the deal that they had struck on
 15 Cedar Bay, while not forcing us to lose as much money
 16 during the interim process, because if -- if we could
 17 envision some return for our project that way, we
 18 could accept the lower sale price.

19 Q Wasn't this in essence what Mr. Kellerman had
 20 proposed previously, just going into the market to --

21 A In general concept. It's not terribly far
 22 off. This ultimately went the same path as the
 23 Kellerman proposals. It didn't have legs, and it
 24 wasn't workable.
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22 (Exhibit No. 26 was identified for the
 23 record.)

24 BY MR. MOYLE:

25 Q I'm handing you an exhibit that's been marked
 ACCURATE STENOGRAPHY REPORTERS, INC.

1 as Exhibit 26 to your deposition. I'd ask you, if you
 2 would, to identify this document.

3 A It appears to be an e-mail exchange between
 4 Collin Franceschi and myself.
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16 BY MR. MOYLE:

17 Q So you were involved in tax discussions with
 18 Mr. Franceschi; is that right?

19 A I was trying to find out whether a tax
 20 question had been resolved that was going to determine
 21 how we proceeded with the -- you know, what structure
 22 this deal took, whether it was a buyout of the power
 23 purchase agreement or whether it was a sale of the
 24 facility.

25 Q And what was contemplated here with respect to
 ACCURATE STENOGRAPHY REPORTERS, INC.

1 FPL being able to hold the plant, quote, for an
 2 instant before returning it to us for closure or
 3 redevelopment, end quote?
 4 A I wasn't -- I wasn't in that conversation. I
 5 just -- the extent of my understanding is very, very
 6 general. And that is that a purchase for -- or a
 7 payment for the termination of the power purchase
 8 agreement is treated differently for tax purposes than
 9 the purchase of an asset.
 10 And so there was some discussion about how --
 11 how to achieve the -- the termination of the power
 12 purchase agreement, which drives most of the -- you
 13 know, the value of this project, you know, without
 14 having to -- without having to sell the facility or to
 15 transfer its ownership for a moment in time. And I
 16 think the moment in time was determined as an
 17 unworkable concept.
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10 **Q** I thought that's what you told me earlier this
11 morning when I was asking you about the dismantlement.
12 You did it independently of the FPL deal; it was
13 something you were looking at the same way you were
14 looking at Norfolk.
15 Did I get that wrong?
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ACCURATE STENOTYPE REPORTERS, INC.

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9 **So we started to do that work, not because of**
10 **FPL's request, but because we had started -- we had**
11 **engaged with FPL about a possible power purchase**
12 **agreement buyout.**
13 **Q** So all this work was -- in effect, wasn't
14 something --
15 options that you were considering because you were in
16 conversations with FPL?
17 **A** That's right.
18 **Q** Why would you do that if FPL is buying the
19 plant?
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ACCURATE STENOTYPE REPORTERS, INC.

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12 Q He made a statement, he said, quote, low gas

13 prices are responsible for this wave of coal plant

14 closures, period.

15 Do you disagree with that statement?

16 A Low gas prices are certainly a -- a large

17 component, you know, one of the large drivers of coal

18 plant closures. It's not the only one, but --

19 Q What are the others?

20 A Pending environmental regulations and age.

21 Q And that the generating fleet is getting

22 older?

23 A Uh-huh.

24 Q That was a yes; right?

25 A Yes. Sorry.

ACCURATE STENOGRAPHY REPORTERS, INC.

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1 Q So you had talked about operational risk

2 associated with running a coal plant. It would be

3 fair to say there's also regulatory risk and risk of

4 obsolescence that are risks of operating coal plants?

5 A Yes.

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12 MR. MOYLE: All right. I've got another.

13 This will be 29.

14 (Exhibit No. 29 was identified for the

15 record.)

16 BY MR. MOYLE:

17 Q I asked you some questions about this earlier.

18 Here's a document -- you weren't sure of the employee

19 retention payment, but I've given you a document that

20 says it's [REDACTED] It appears you were copied on this

21 document. Is that -- is that true --

22 A Yes.

23 Q -- that you were copied?

24 A Yes.

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1 market price, our analysis of historical dispatch
2 suggested that, you know, if power was available at
3 that price from somebody else, we could -- we could --
4 we could save money by delivering the, you know, power
5 from the market to Florida Power & Light.

6 And also our analysis suggested that, because
7 Florida Power & Light has limited opportunities to
8 turn -- turn down our facility, you know, they -- you
9 can't turn a coal plant on and off with regularity;
10 they get six opportunities a year.

11 So when the project -- when the -- when our
12 power is, quote, out of the market, more expensive
13 than what the market price is, at night they typically
14 turn us down to minimum load, which is 90 megawatts
15 for this facility, and operate us there so that we're
16 available the next morning when they -- when they do
17 need the power, and we would be in the money for them.

18 They -- our analysis suggested that they may
19 be losing money by continuing to run us at minimum
20 load at night. So it pointed out somewhat of a -- to
21 us, you know, our expectation was there was a little
22 dilemma there.

23 They had to balance off how many times they
24 could shut us down versus how often we were really in
25 the money for them. It seemed to us like these

ACCURATE STENOTYPE REPORTERS, INC.

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8 Q Okay. I'm showing you an exhibit that will be
9 marked as Exhibit 30 to your depo. Could you please
10 identify this document?

11 A It's an e-mail from me to Jim Larocque.
12 (Exhibit No. 30 was identified for the
13 record.)

14 BY MR. MOYLE:

15 Q Why did you send him this e-mail?

16 A To relay to him the results of an analysis
17 that was performed by Collin Franceschi.

18 Q Why was this analysis performed?

19 A We were trying to determine what the potential
20 savings would be if energy was provided to FPL from
21 the market instead of from the Cedar Bay facility.

22 The analysis is -- is somewhat crude, because
23 the only proxy we had for market prices was the
24 projected as-available rates from Florida Power &
25 Light. And so just -- if indeed that reflected the

ACCURATE STENOTYPE REPORTERS, INC.

1 numbers suggested that there was great benefit to both
2 sides by coming to some sort of an agreement to
3 provide the power from the market instead of from the
4 Cedar Bay facility.

5 Q Did you share this conclusion with FPL?

6 A We didn't share this analysis with them, no.

7 Q How about with respect to the fact that you
8 believe they would have saved money? Isn't this the
9 same thing we've been talking about three times?

10 A We suggested that -- you know, we told them we
11 thought it would save money. I'm not sure that they
12 agreed with us. Again, as I mentioned, we were using
13 a proxy price of the as-available rates, since the
14 Florida market isn't -- doesn't really have a, you
15 know, kind of an open and visible trading market.

16 Q But if you look at the dates -- if you look at
17 the dates of this e-mail, it says from November 2011
18 through August 2014, and the e-mail was sent on
19 October 20th, 2014; right?

20 A Right.

21 Q So to me that doesn't look like it was
22 projected as available pricing; it's a historical
23 look-back, I'd assume; correct?

24 A This was looking at a historical period, but
25 we don't have historical market prices. The only

ACCURATE STENOTYPE REPORTERS, INC.

1 thing we had to go on was FPL's projected,
 2 as-available rates for the next day. And we -- you
 3 know, we kept those records each day and used that as
 4 a proxy for the market price. The actual market price
 5 often varies widely from the projected as-available.

6 Q Do you ever get paid as-available pricing for
 7 any energy you generate?

8 A There is the possibility, but I don't think
 9 we've ever availed ourselves of that. If FPL asks us
 10 to decommit -- in other words, to shut down -- I
 11 believe that under the terms of the power purchase
 12 agreement, Cedar Bay has the ability to continue to
 13 operate it and receive some discount from the
 14 as-available rates. We wouldn't actually get the
 15 as-available rate. I think it's some discount to
 16 that.

17 Q Less than the as-available rate?

18 A Uh-huh.

19 Q You said you don't think FPL agreed with this
 20 general proposition.

21 Why do you say that?

22 A It may have just been the negotiating
 23 positions of each party. And they suggested that --
 24 you know, that they wouldn't save by doing that. I --
 25 we didn't have any information to challenge that,

ACCURATE STENOGRAPHY REPORTERS, INC.

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(Exhibit No. 31 was identified for the
 record.)

BY MR. MOYLE:

Q I've handed you an exhibit that's been marked
 as 31. Could you please identify it.

A This is an e-mail from me to Tom Hartman,
 copying Jim Larocque.

Q So you're familiar with it?

A Yes.

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1 Q Did they make an offer to you to start the
2 conversation? That's typically how it works.
3 Somebody calls up and says, hey, I'd like to talk to
4 you about buying your plant or buying down the PPA.
5 Did they offer...
6 A They didn't come and offer a number, but they
7 said that they were interested in exploring -- they
8 were interested in exploring opportunities to
9 restructure or terminate the power purchase agreement.
10 Because at that time their projections were that low
11 gas prices were going to persist and that the dispatch
12 of the facility was going to drop off further.
13 I think I remember hearing numbers of like 16
14 or 17 percent at our -- at our contract price is what
15 our dispatch would have been, which would have made
16 the plant further and further out of the money for
17 the -- for FPL and the ratepayers.
18 Q So who put the first number on the table?
19 A I don't know, because I wasn't involved in the
20 number conversations.
21 Q Did you -- were you made privy of offers
22 communicated in writing back and forth between the
23 Carlyle Group and Florida Power & Light?
24 A I may have seen numbers at some point. Like I
25 said, I wasn't engaged in a give-and-take on that, but
ACCURATE STENOTYPE REPORTERS, INC.

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23 Q Do you know what the -- you said FPL -- FPL
24 approached you-all about doing this deal; correct?

25 A Correct.

ACCURATE STENOTYPE REPORTERS, INC.

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4 Q I'm handing you an exhibit that has been
5 marked as 32 to your deposition. Would you please
6 identify it.
7 A This appears to be an e-mail string between
8 Collin Franceschi and Mark Rudolph. Further down in
9 the string, I was involved in that conversation.
10 Q Again, the subject is Cedar Bay financials;
11 right?
12 A Yes.
13 Q And it appears that there was a telephone
14 conference where FPL had Cedar Bay's 2013 financials,
15 and you were not aware how they obtained them; is that
16 right?
17 A That's right.
18 Q Okay. When -- you-all have shared all the
19 financial information of Cedar Bay with Florida Power
20 & Light; correct?
21 A I'm not sure of the full extent of the
22 financial transmittals. I wasn't focussed on that.
23 (Exhibit Nos. 32 and 33 were identified for
24 the record.)
25 MR. WRIGHT: I was just going to observe, this
ACCURATE STENOTYPE REPORTERS, INC.

1 appears to be highly sensitive -- this may or may
2 not be highly sensitive information. Let's see if
3 that can be determined. Actually it probably
4 isn't.

5 BY MR. MOYLE:

6 Q I've handed you an exhibit that's been marked
7 Exhibit 33 to your deposition.

8 Would you identify it, please.

9 MR. WRIGHT: Just to be clear, we're asking my
10 colleagues from FPL, that they treat this as highly
11 sensitive information.

12 Thanks, Jon.

13 MS. BARRERA: Highly sensitive. Is that what
14 you're saying?

15 MR. WRIGHT: Highly sensitive, yes. It
16 doesn't make any difference to y'all, but it's in
17 the confidential bucket.

18 MR. MOYLE: You used to call it super-super
19 secret.

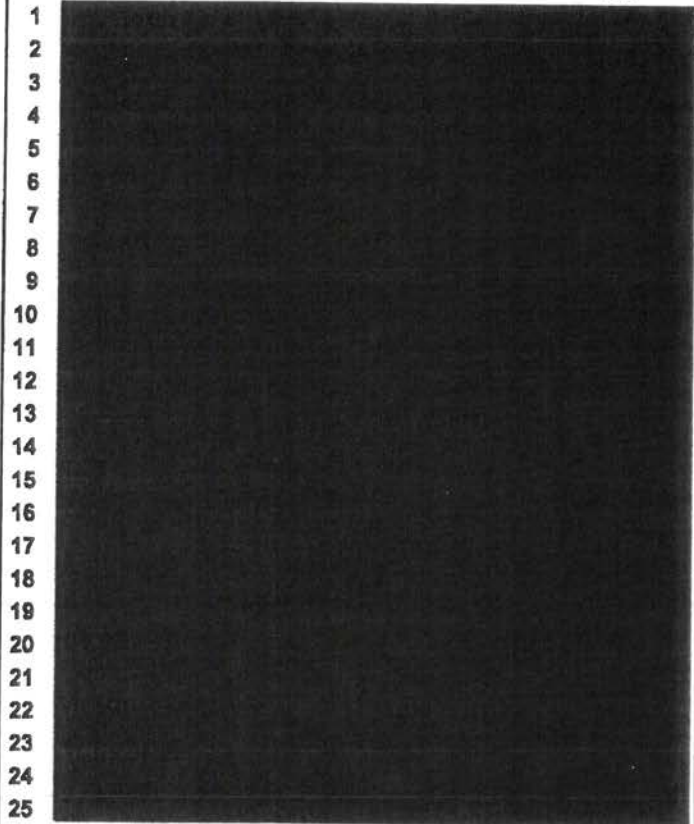
20 MR. WRIGHT: I always called it the double --
21 (Discussion off the record.)

22 BY MR. MOYLE:

23 Q Go ahead and identify it if you can.

24 A This looks like a corporate structure chart
25 for Cedar Bay Generating Company.

ACCURATE STENOGRAPHY REPORTERS, INC.

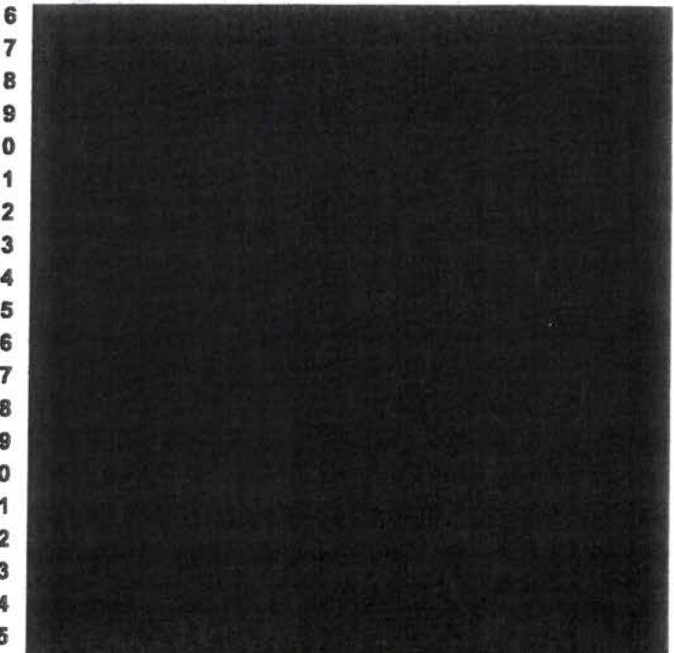


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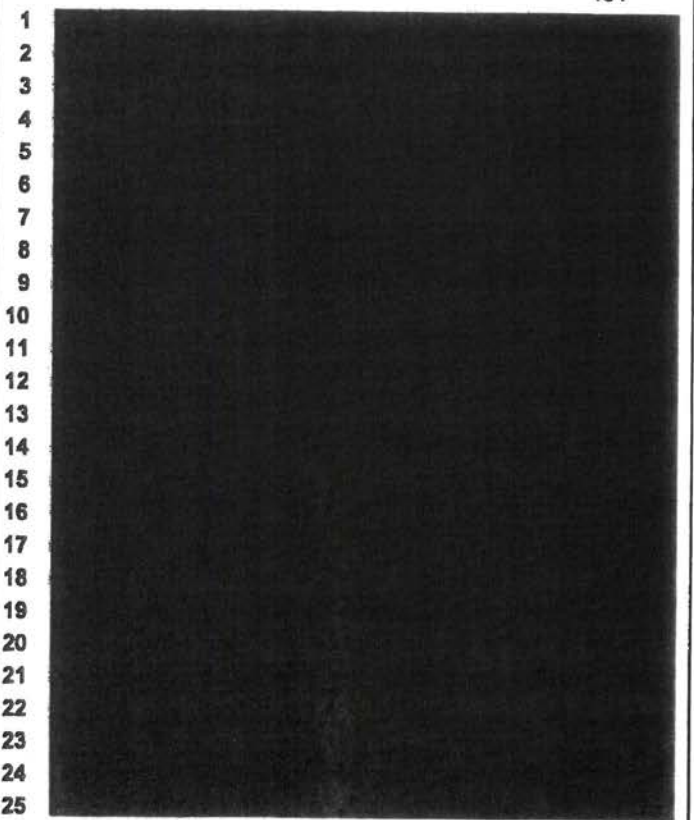
1 Q If I asked you to describe this, could you do
2 that?

3 A I'm not sure that I can. Yes, okay. I think
4 I can -- I can try.

5 Q Okay. Go ahead.



ACCURATE STENOGRAPHY REPORTERS, INC.



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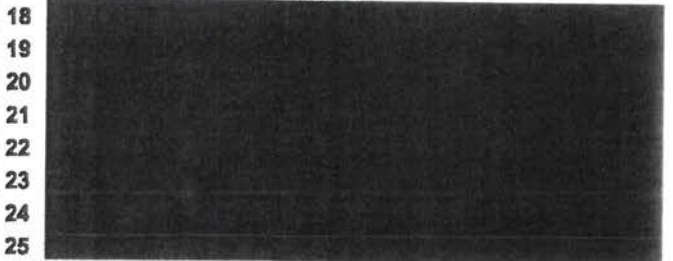
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1 Could you identify this document, please.
2 **A** This appears to be an e-mail that I wrote to
3 various folks at Carlyle and to my boss at the time,
4 Tom Bonner.
5 **Q** And the subject says what?
6 **A** Says Cedar Bay Indicative offer, draft.
7 **Q** Keep going.
8 **A** Version 7dm.doc. I don't know exactly what
9 that is.
10 **Q** Does that suggest it was a seventh draft?
11 **A** I don't know -- I don't know how that
12 terminology was developed. That's not a terminology
13 that I commonly use.
14 **Q** So maybe you were looking at something when
15 you typed in the subject?
16 **A** It appears so. It appears that there was an
17 attachment to this file, yes.



ACCURATE STENOGRAPHY REPORTERS, INC.

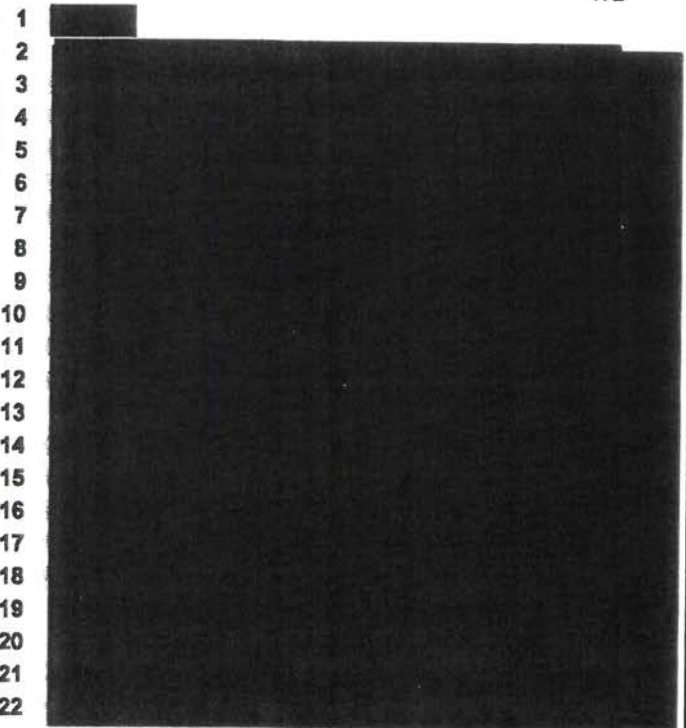
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(Exhibit No. 37 was identified for the record.)

BY MR. MOYLE:

Q I'm showing you what's been marked as Exhibit 37.

ACCURATE STENOGRAPHY REPORTERS, INC.



Q So what's your understanding of Carlyle or Cogentrix receiving any interest in the plant, assuming the PSC approves it, and the deal closes?

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **A My understanding --**
 2 MR. WRIGHT: I'm going to object that's vague.
 3 Are you asking forward looking based on the PSA
 4 that's in front of the PSC today?
 5 MR. MOYLE: For the first question.
 6 MR. WRIGHT: Okay. I wanted to make sure we
 7 didn't have an ambiguous antecedent between that
 8 and this consideration from a year and a half ago
 9 or a year and two months ago.



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 12 BY MR. MOYLE:
 13 Q But you are going to operate it; right?
 14 A We're going to operate it under the terms of
 15 an O&M contract, yes.
 16 Q But FPL said it's not going to operate very
 17 long; right?
 18 A That's correct.
 19 Q All right. All right. I'm going to hand you
 20 what I think may have been attached to it, but, again,
 21 you're in a better position than I am. When I say
 22 attached, to your e-mail.
 23 A Okay.
 24 (Exhibit No. 38 was identified for the
 25 record.)

ACCURATE STENOGRAPHY REPORTERS, INC.

1 BY MR. MOYLE:
 2 Q So I've handed you a document. At the bottom
 3 of the first page of the document, it says CB 0044938,
 4 which is the next number -- the next consecutive
 5 number after Exhibit 37; right?

6 A Right.
 7 Q Does that tell you anything about whether that
 8 was the attachment to your e-mail?

9 A I don't know how the whole Bates-stamping
 10 process works, so...

11 Q What I've given you as 38, have you seen this
 12 document before?

13 A I'm trying to determine that.

14 MR. BUTLER: Jon, are you suggesting Cedar Bay
 15 initiative -- I'm sorry, indicative offer draft v7,
 16 et cetera, that's referenced in Exhibit 37?

17 MR. MOYLE: I don't know, John.
 18 But it also has a bunch of highlights and
 19 scratches out, and it's signed. I was going to ask
 20 the witness what he knows about this document.

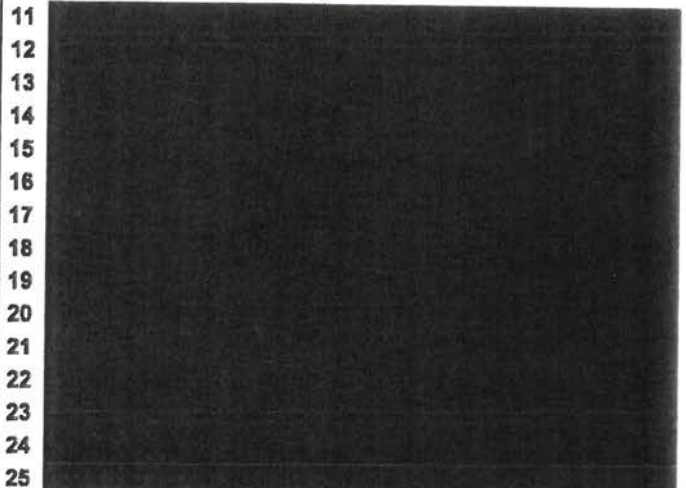
21 THE WITNESS: I believe I did see this
 22 document. I believe the comments A1 and A2 are my
 23 comments.

24 BY MR. MOYLE:

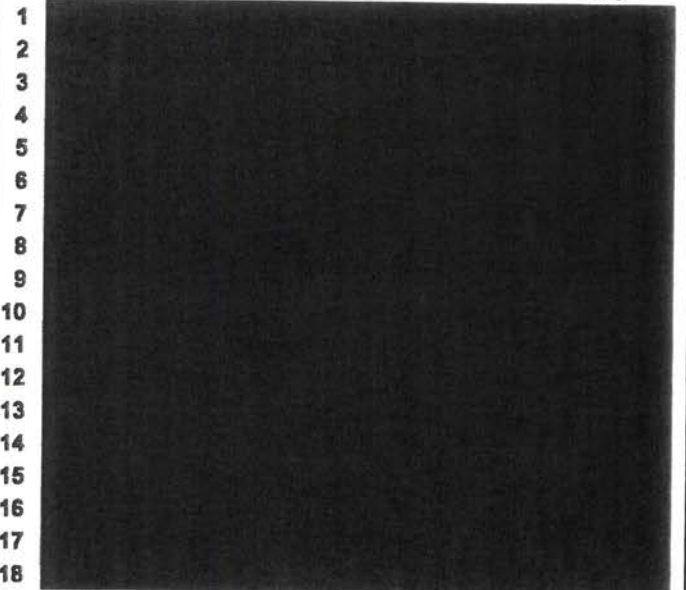
25 Q Do you know why it was signed and comments
 ACCURATE STENOGRAPHY REPORTERS, INC.

1 were still being made?
 2 A No. I don't recall whether it was signed
 3 before I made comments or whether I was just late to
 4 the party and was commenting on a document that was
 5 already formalized.

6 Q I hate when that happens.
 7 A Get used to it.
 8 Q So let me just reference you to page 44940.
 9 And I think it may tie in to the previous exhibit, 37.
 10 I think it tracks your thought in 37.



ACCURATE STENOGRAPHY REPORTERS, INC.



19 Q If it was going to happen, would you have
 20 knowledge of that, or would that be maybe one of the
 21 financial people?

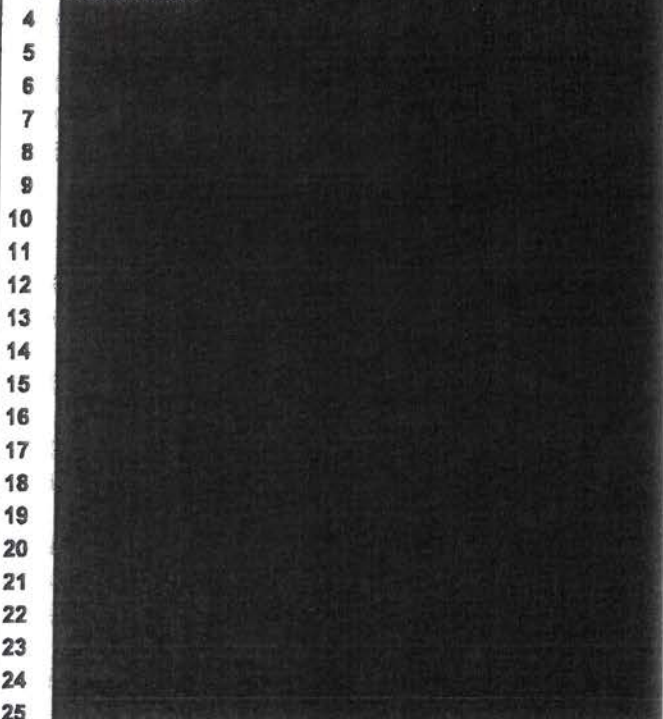
22 A If that was going to happen, it would be
 23 reflected in the purchase and sale agreement.

24 Q Well, sometimes people can have other
 25 agreements; can't they? I mean, not everything is

ACCURATE STENOGRAPHY REPORTERS, INC.

1 necessarily in this agreement.

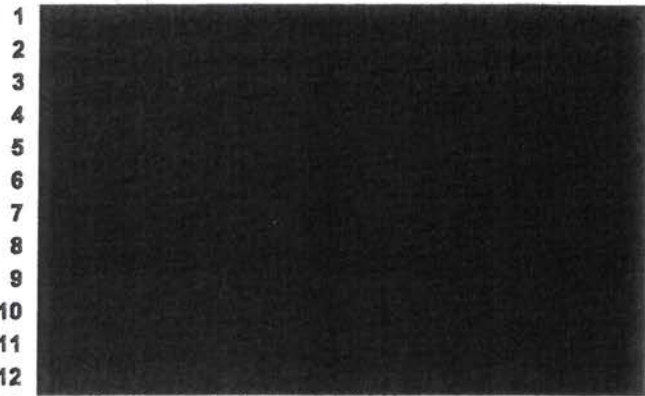
2 **A It's the only one I know of regarding this**
3 **transaction.**



ACCURATE STENOGRAPHY REPORTERS, INC.

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<p style="text-align: right;">198</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">200</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1 The following deposition of STEPHEN MARK RUDOLPH was
2 taken on oral examination, pursuant to notice, for
3 purposes of discovery, and for use as evidence, and for
4 other uses and purposes as may be permitted by the
5 applicable and governing rules. Reading and signing is
6 not waived.

* * *

8 THE REPORTER: Do you solemnly swear or affirm
9 the testimony you are about to give in this cause
10 will be the truth so help you God?

11 THE WITNESS: I do.

12 Thereupon,

13 STEPHEN MARK RUDOLPH
14 was called as a witness, having been first duly sworn,
15 and was examined as follows:

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9 BY MR. TRUITT:
10 Q To start with, could you please state your
11 name and spell your last name for the record.
12 A **Stephen Mark Rudolph, R-U-D-O-L-P-H.**
13 Q And state the company you work for and your
14 business address please.
15 A **Cogentrix Energy Power Management, 9405**
16 **Arrowpoint Boulevard, Charlotte, North Carolina,**
17 **28273.**
18 Q And how long have you worked for your current
19 employer?
20 A **Ten years.**
21 Q What is your current job title?
22 A **Senior vice-president, chief financial**
23 **officer.**
24 Q How long have you been in that position?
25 A **Five years.**

ACCURATE STENOGRAPHY REPORTERS, INC.

6

1 Q And could you give us a description of the
2 duties that go along with your current position?
3 A **I'm in charge of all the accounting, corporate**
4 **finance, and tax functions. I think that's all.**
5 Q And could you please give us a brief overview
6 of your work history, including other positions with
7 your current employer.
8 A **I started out with Cogentrix in 2005 as the**
9 **controller. My background is accounting. I got my**
10 **bachelor's and master's in accounting from the**
11 **University of Florida.**
12 **Prior to working at Cogentrix I worked at the**
13 **independent power subsidiary of TECO Energy. Prior to**
14 **TECO, I worked in public accounting, primarily at**
15 **Deloitte & Touche.**
16 Q What are your specific responsibilities with
17 regards to the Cedar Bay plant specifically?
18 A **I oversee the people in my group who do the**
19 **accounting; they do financial management, which**
20 **includes reporting on the debt, includes internal**
21 **management reporting; the tax group does any required**
22 **tax filings.**
23 **So I indirectly oversee all of that.**
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18 Q Would it be a fair statement to say that,
19 prior to signing off on the purchase and sale
20 agreement, that your approval of the way it was set up
21 was required?
22 A **My -- I wouldn't characterize it like that.**
23 **It was circulated for review. And I didn't approve**
24 **it. But the way it would generally work is, we need**
25 **to sign off that we have reviewed it and that**

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9

1 everything -- that we don't know that anything is
 2 incorrect about it.

3 And that, when I say "we," that wouldn't
 4 include just me. It would include really all the
 5 functional areas within Cogentrix, which could include
 6 my area as well as engineering, environmental, legal,
 7 et cetera.

8 So I would be one, quote, unquote, reviewer,
 9 and I would sign off that I had, in fact, reviewed it.

10 Q Okay. You speak about areas that make me ask.
 11 How many direct reports do you have?

12 A I was counting back, I think, after you asked
 13 Rick that. I think it's 15 now.

14 Q Okay. And who do you direct report to?

15 A Doug Miller, who is the president of the

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9 Q That's fine. When did you become aware that
10 that was the figure that these parties were settling
11 on?
12 A I'm not quite sure. I'm not sure when that
13 was.
14 Q Okay.
15 A It might have been when it actually got
16 written into the agreement.
17 Q Okay. I'm going to try and narrow it down. I
18 understand it might not be precise, but it might help
19 me. I know in the purchase and sale agreement, it
20 says "dated as of December 10th, 2014," is the exhibit
21 that FPL submitted.
22 Do you know if it was before that you were
23 aware of it?
24 A Yes. I think it was before that.
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13 Q What's the benefits to Cogentrix selling the
14 facility versus keeping the PPA as it stands?

15 A I think the main benefit is just to reduce the
16 operating risk of realizing that [REDACTED] a year.

17 As you've gone through the operating
18 depositions here, there is a lot of work that goes
19 into earning that and keeping the facility running
20 with, you know, the coatings programs that Tracy
21 Patterson went through and all the work that the plant
22 has done to improve operations.

23 All that has been done, but it's a lot of work
24 going through that. And you will always have
25 operating risks to try and keep the plant available

ACCURATE STENOGRAPHY REPORTERS, INC.

1 memorandum, dated August 9th, 2013. And 18 is going
2 to be a Duff & Phelps valuation of assets of 2013.
3 I'll give you a second, if you could look over
4 those briefly as he's passing them out, and we will
5 have a conversation about them.

6 A I'm familiar with the Duff & Phelps report.

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1 and running as well as it has.

2 Q Okay. Now, you mentioned on page 16 of
3 Exhibit 3 the -- I'm sorry, 15, the refinancing of
4 debt, \$250 million. And you had stated, I believe,
5 based on the strength of the PPA, I think that was the
6 line that you used.

7 A Yes.

8 Q So then it's accurate to say that the PPA was
9 a strong reason that that financing -- was that the
10 main support for that financing to occur?

11 A Absolutely.

12 Q Okay. In your position, do you do internal
13 valuations of the PPA?

14 A No.

15 Q No. Did you -- or did Cogentrix have a third
16 party do valuations of the PPA?

17 A No.

18 Q No. Okay. I've got two exhibits. I'm going
19 to keep them separate. So it's going to be -- what
20 are we at, 17 and 18?

21 (Exhibit Nos. 17 and 18 were identified for
22 the record.)

23 BY MR. TRUITT:

24 Q All right. So 17 -- both of these came in
25 discovery from Cedar Bay. 17 is a Cogentrix

ACCURATE STENOGRAPHY REPORTERS, INC.

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9 Q I do want to start with 17 first. So I will
10 ask the question essentially for the record.

11 Are you familiar with 17, this memorandum?

12 A The memorandum?

13 Q Yeah.

14 A I haven't seen it in a while. So I haven't
15 read it in a while. But I'm familiar with the gist of
16 it, I believe.

17 Q Okay. I will ask, do you know who Phil
18 Gregorich is?

19 A Yes.

20 Q Okay. Can you explain for the record who he
21 is?

22 A He previously worked for Cogentrix as our
23 controller.

24 Q Previously. Okay. When did he leave; do you
25 know that?

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **A December 2014.**
 2 **Q** Okay. I was -- I was wanting to look at this.
 3 And is it -- I guess if you can skim it, and you can
 4 either say you don't know, or if skimming it you do
 5 know, it's up to you. It appears to be a memorandum
 6 that, one, references this transaction. But the
 7 specific thing I was looking for is that on the second
 8 page it mentions, in the middle section, following key
 9 conclusions of Cedar Bay are included in the Rhea
 10 valuation report.
 11 Do you see that kind of in the middle?
 12 **A Uh-huh.**
 13 **Q** The second bullet?
 14 **A Uh-huh.**
 15 **Q** It mentions there, "Cedar Bay PPA with FPL
 16 Group had a [REDACTED]
 17 [REDACTED]
 18 And it appears that this memo discusses the
 19 value of the PPA and how it supported this
 20 transaction.
 21 Am I generally correct in that idea?
 22 **A And how it supported this trans -- can you**
 23 **describe this transaction?**
 24 **Q** Well, the memorandum is regarding acquisition
 25 by Carlyle, this membership in CBAS Power Holdings.
 ACCURATE STENOTYPE REPORTERS, INC.

1 **the parties to allocate the purchase price to the**
 2 **acquired assets and liabilities --**
 3 **Q** I'm sorry. Let me stop you for a second.
 4 Just for the record, purchase and sale agreement,
 5 exactly which one are you talking about when you say
 6 purchase and sale agreement at this time?
 7 **A I was saying generally at this time. So it is**
 8 **generally a requirement in purchase and sale**
 9 **agreements for both parties to agree on the allocation**
 10 **of the purchase price.**
 11 **Q** Okay.
 12 **A In the case where Carlyle purchased the**
 13 **portfolio from Goldman, we agreed to perform the**
 14 **purchase price allocation and hired Duff & Phelps to**
 15 **do so.**
 16 **Q** You say "we hired Duff & Phelps to do so."
 17 Now I notice, if you look at page 2 of this report,
 18 which is CB 0042860, it appears to be a cover letter,
 19 the second page right after the first cover itself.
 20 I'm sorry.
 21 **A Yes.**
 22 **Q** And it appears that that letter is written to
 23 you. So by "we," was it you specifically engaged Duff
 24 & Phelps, or is Duff & Phelps just giving the report
 25 to you because of your position?
 ACCURATE STENOTYPE REPORTERS, INC.

1 And, I guess, in terms of the acquisition, they wanted
 2 to know the assets, liabilities, et cetera, and that a
 3 valuation of the PPA which kind of came along with
 4 that acquisition would be included. So a valuation
 5 was done; is that correct, or am I off base?
 6 **A This valuation -- I guess it's easier for me**
 7 **to start with the Duff & Phelps report. This**
 8 **valuation was done. It's not -- it says valuation.**
 9 **It's a purchase price allocation as a part of the**
 10 **purchase that Carlyle did of the entire Cogentrix**
 11 **portfolio that they purchased from Goldman, a**
 12 **component of which is Cedar Bay and its assets and**
 13 **liabilities.**
 14 **Q** Okay. All right. So then let's look at what
 15 we have in 18, the valuation.
 16 **A Uh-huh.**
 17 **Q** Now, it goes through, as you've just stated,
 18 it goes through kind of a portfolio type evaluation.
 19 Can you give us an overview of what this
 20 report is, and then we will get to some specific
 21 questions. But I want to get for the record your
 22 understanding of exactly what this is.
 23 **A Yeah. When -- when the -- the purchase and**
 24 **sale agreement was drafted, which is common in most**
 25 **purchase and sale agreements, there is agreement among**
 ACCURATE STENOTYPE REPORTERS, INC.

1 **A Giving the report to me because of my**
 2 **position.**
 3 **Q** So when Duff & Phelps was engaged, what was
 4 the request for them to do exactly?
 5 **A To take the purchase price paid by Carlyle to**
 6 **Goldman for the entire portfolio and allocate it among**
 7 **the different assets and liabilities acquired.**
 8 **Q** Okay. Now it discusses the PPA between Cedar
 9 Bay and FPL in here.
 10 **A Uh-huh.**
 11 **Q** If you could please explain to me your
 12 understanding of this report's valuation of the PPA?
 13 If you're able to point out pages, that's great, but
 14 I'm not hoping for something more than just a cursory
 15 overview.
 16 **A Sure.**
 17 **Q** I want to walk through.
 18 **A Sure. What they -- what Duff & Phelps would**
 19 **have done is taken the model that Goldman provided to**
 20 **Carlyle, a cash flow model, and taken the adjusted --**
 21 **if Carlyle made any adjustments to it, taken the**
 22 **adjusted model that Carlyle based its purchase price**
 23 **on, and looked at that model and applied discounted**
 24 **cash flow analysis based on their understanding of**
 25 **markets to sort of separate the different assets**
 ACCURATE STENOTYPE REPORTERS, INC.

1 **acquired into -- break the purchase price into**
 2 **different assets acquired by -- by the cash flows**
 3 **associated with each one.**

4 **Q** Okay. Now, I'm going to look at -- I'm
 5 looking at specifically page -- the section starting
 6 on page 44 of the report, Section 7, entitled
 7 "Valuation of the Intangibles and Other Assets and
 8 Liabilities."

9 Are you there?

10 **A Uh-huh.**

11 **Q** Okay. On 45 they have a listing chart. And
 12 you see the Cedar Bay PPA on that; correct?

13 **A Yes.**

14 **Q** And it goes through a discussion of the power
 15 purchase agreements. And then go to page 47. And
 16 there is a little chart right above that that says,
 17 "valuation concluded, agreements for the sum of
 18 present cash flows is positive" --

19 Then it says Cedar Bay nets [REDACTED] in
 20 its valuation they gave it; correct?

21 **A Yes.**

22 **Q** So am I correct, if I remember reading this
 23 report, because that's a fair market value is what
 24 they did in terms of the valuation?

25 **A Yes.**

ACCURATE STENOTYPE REPORTERS, INC.

1 **A** In that transaction, yes. But it's all a
 2 function of what Carlyle paid for the entire
 3 portfolio, which included other assets and which also
 4 included an operating platform at Cogentrix, which
 5 included a long-term run rate of costs in there.

6 **So the starting point is what Carlyle paid for**
 7 **the basket of assets and liabilities that it**
 8 **purchased. So once you apply that, then that's how**
 9 **much comes out to the Cedar Bay PPA.**

10 **Q** Okay. Now, I know there's some worksheets
 11 toward the back. And they go kind of through all
 12 these -- there is a bunch of different exhibits in the
 13 back. And they go through different analyses. And
 14 let's see, I'm going to look at page -- it's

15 Exhibit D.2. The CB number is going to be CB 0042948.

16 **MR. MOYLE:** Would you mind repeating that,
 17 please?

18 **MR. TRUITT:** CB 0042948, Exhibit D.2.

19 **BY MR. TRUITT:**

20 **Q** Are you there?

21 **A Yeah.**

22 **Q** Okay. At the top here it says "valuation of
 23 Cedar Bay PPA." It does say purchase price allocation
 24 analysis, so I get that.

25 And then you would agree they did this chart

ACCURATE STENOTYPE REPORTERS, INC.

1 **Q** Okay. And can you explain fair market value;
 2 it's my understanding it has a specific meaning; it's
 3 not a general term. Can you explain to us what you
 4 understand the meaning of "fair market value" when you
 5 hear it in your business capacity to be?

6 **A** **The price paid between two willing parties in**
 7 **an arm's length transaction.**

8 **Q** Okay. So when this report was done -- I know
 9 it's dated April 5th, 2013, on the cover --

10 **A Uh-huh.**

11 **Q** -- but I believe someone -- again, I'm not
 12 sure exactly -- it had a specific date -- this
 13 valuation is effective as of -- you know, most of
 14 these valuations --

15 **A Exactly.**

16 **Q** -- they put a date on it.

17 Do you know the exact date?

18 **A** **It would have been done as of the closing date**
 19 **of Carlyle's purchase of the portfolio from Goldman.**

20 **Q** Okay. Do you know when that was?

21 **A** **I want to say -- I don't know the exact**
 22 **date -- December of 2012.**

23 **Q** Okay. So in theory, as of December 2012,
 24 whenever that date is in there, the PPA was worth [REDACTED]

25 [REDACTED]

ACCURATE STENOTYPE REPORTERS, INC.

1 here; it looks like they went from the point in time
 2 of valuation, 2012, to the end of the PPA?

3 **A Uh-huh.**

4 **Q** Is that what that says?

5 **A Yes.**

6 **Q** I'm looking here, and they have capacity
 7 factor varies every single year.

8 I looked across this chart, and I see capacity
 9 factor is 250 megawatts.

10 So you guys weren't planning on changing the
 11 capacity factor of the plant; is that correct?

12 **A Correct.**

13 **Q** Okay. Now I see the capacity factor varies
 14 through all these years. Do you know why that is?

15 **A** **It's an estimate based on -- I don't know what**
 16 **it's exactly based on, but that's what -- well,**
 17 **actually, let me think back. I believe what that**

18 **comes from is when Carlyle purchased the portfolio**
 19 **from Goldman, they had an independent engineer come in**
 20 **and help them with capacity factor and analysis of the**
 21 **plant. And then I believe that capacity factor is**
 22 **what they got from their independent engineer.**

23 **Q** Okay. So was it your understanding that they
 24 looked at past operations of the plant and tried to
 25 project the future or tried to make a -- an assumption

ACCURATE STENOTYPE REPORTERS, INC.

1 on what it would do in the future? Or what was your
 2 understanding? I guess I will put it that way.
 3 **A I wasn't part of that process, because at the**
 4 **time I was on the other side of the transaction.**
 5 **Q** Okay.
 6 **A I was employed by a subsidiary of Goldman.**
 7 **Q** All right. In terms of your professional
 8 experience, have you seen other valuation reports
 9 before?
 10 **A Yes.**
 11 **Q** Okay. Is that common practice in the
 12 valuation reports you've had experience with that they
 13 attempt to predict what's going to happen in the
 14 future?
 15 **A Yes.**
 16 **Q** Okay. Now, we see a bunch of the numbers;
 17 they change, vary from year to year. And it would be
 18 logical that a lot of that changes depending on the
 19 capacity factor and the output and everything else; am
 20 I correct in that assumption? A lot of these numbers
 21 are trickling out from how much they anticipate the
 22 plant is going to be used, et cetera?
 23 **A Absolutely, yes.**
 24 **Q** Okay. Now we're getting -- all the way -- we
 25 trickle down all the way to the bottom left-hand
 ACCURATE STENOGRAPHY REPORTERS, INC.

1 column, and it comes up with that [REDACTED] number.
 2 Now when I look at the chart, they've put in -- you
 3 know, they have the steam revenue here, and the total
 4 revenues, and the total variable costs, all these
 5 different lines. And they come down to [REDACTED]
 6 I'm trying to understand how the [REDACTED]
 7 is part of the total allocation of the purchase price,
 8 because it appears by this chart that they took in all
 9 the revenues, and they took out all the costs. And
 10 then they said that's what this PPA is going to make
 11 you in 12 years.
 12 And I'm not an accountant. I'm just old
 13 infantry playing a lawyer, so I'm hoping to understand
 14 that.
 15 So I don't understand that difference, because
 16 you were saying it's the allocation. But it looks to
 17 me -- when I look at this chart, it looks like they
 18 said, we think the plant is going to do this for 12
 19 years. Based on the revenues that come in and the
 20 expenditures that go out, it's worth [REDACTED]
 21 How is that part of this price allocation that
 22 they paid for this whole portfolio? What's the
 23 differences here?
 24 **A It's not -- it's not a big difference. But**
 25 **the -- I guess the premise is, unless there is**
 ACCURATE STENOGRAPHY REPORTERS, INC.

1 **extenuating circumstances, they can't come up with a**
 2 **value that's greater than the purchase price for the**
 3 **portfolio in total.**
 4 **And so they've got to use -- in some respects**
 5 **they've got to backsolve for some of the value, in**
 6 **that if they -- for instance, if they used capacity**
 7 **factors, and they used a discount rate, they came up**
 8 **with a value that was higher than the purchase price**
 9 **of the portfolio in total, it is likely that they**
 10 **would assume one of their variables was incorrect and**
 11 **attempt to backsolve for either some variable that may**
 12 **have been off, because, again, in the absence of**
 13 **extenuating circumstances, they've got to get back to**
 14 **that purchase price, because it's an allocation of a**
 15 **purchase price. It is not specifically a valuation**
 16 **for purposes of making a deal.**
 17 **The deal has already been made. The purchase**
 18 **price has already been set for what -- the**
 19 **transaction. So they've got that number to work with;**
 20 **they've got to allocate it.**
 21 **So when they do this cash flow analysis for**
 22 **all of the assets in the portfolio, they've got to do**
 23 **a certain amount of backsolving in order to come up**
 24 **with the actual purchase price paid.**
 25 **Q** Okay. So is that -- I think you were saying,
 ACCURATE STENOGRAPHY REPORTERS, INC.

1 I know we were talking about this specific scenario,
 2 that they had the purchase price, and then they had to
 3 backsolve and tweak some variables.
 4 Again, in your experience, prior history of
 5 valuations, is that how it normally works in the
 6 deals, or was that just specific to this deal?
 7 **A No. I think that's how it normally works**
 8 **because, again, the notion that the -- that the**
 9 **accountants are driving this a lot of times, that**
 10 **they're trying to get away from is negative goodwill,**
 11 **meaning there is one party at the outset that has --**
 12 **it was a bargain purchase. There has to be**
 13 **extenuating circumstances in order to come to a**
 14 **bargain purchase.**
 15 **And so unless those extenuating circumstances**
 16 **exist, you know, something extreme like buying it out**
 17 **of bankruptcy, then the assumption is it's a fair**
 18 **market value; it's a transaction between willing**
 19 **parties. And so that purchase price, whatever it was,**
 20 **has to be allocated.**
 21 **And so in order to make everything fit into**
 22 **that bucket, there has to be some backsolving and**
 23 **manipulation of the numbers. Again, it's not a**
 24 **determination of value in order to make the deal. The**
 25 **deal has already been done. It's just a mechanical**
 ACCURATE STENOGRAPHY REPORTERS, INC.

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1 **process in order to do the accounting and do the tax**
 2 **filings.**
 3 **Q** Okay. Just a second. Sorry.
 4 Based on what you just said there, the deal
 5 has been done, and you're doing some, you know,
 6 back -- what did you say, backfilling?
 7 **A Backsolving.**
 8 **Q** Backsolving. I'm sorry. Thank you. Trying
 9 to make sure you didn't run into the goodwill problems
 10 in all of the numbers.
 11 So then if the valuation is done in that
 12 order, you have the deal, and then you do this
 13 valuation for allocation purposes.
 14 **A Uh-huh.**
 15 **Q** Am I correct in saying it that way? Is that
 16 an accurate way to say it?
 17 **A Yeah. I think so.**
 18 **Q** Okay. Okay. It seems illogical to me that
 19 you would use a valuation like this to support the
 20 purchase price; am I correct in that? Because you're
 21 doing it after the fact.
 22 **A You're not necessarily supporting -- that's**
 23 **correct. You're not supporting the purchase price.**
 24 **All you're doing is allocating what was there.**
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4 Q Okay. Where do you -- where do you live?
5 A Charlotte, North Carolina.
6 Q Okay. And that's more than 100 miles from
7 Tallahassee; right?
8 A Yes.
9 Q And in your previous employment history, you
10 said you were with TECO, the nonregulated arm of TECO
11 for a while --
12 A Correct.
13 Q -- is that right?
14 A Correct.
15 Q And where did you go after that?
16 A Cogentrix.
17 Q Cogentrix? And then did you leave
18 Cogentrix or -- how did you end up at Goldman? I
19 guess it was before TECO?
20 A No. I was not at Goldman. I was -- when
21 Goldman was the seller to Carlyle, Cogentrix was still
22 a wholly-owned subsidiary of Goldman Sachs. So we
23 didn't -- we weren't on the Carlyle side negotiating a
24 deal with Goldman.
25 So this -- the information I was pointing to
ACCURATE STENOGRAPHY REPORTERS, INC.

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9 Q Don't know. So Goldman owns it in 2003, and
10 then they sell it to Carlyle in 2012; is that right?
11 A Yes.
12 Q Okay. How much did Goldman sell it for?
13 A I think it's in this document.
14 Q When you say "this document" are you referring
15 to 18?
16 A This is the Duff & Phelps report, yes.
17 Q Why don't you point me to it.
18 A Well, it's not stated in here actually that I
19 could find. But if you look on page -- the second
20 page of the report, that's how they've allocated all
21 of the value. So in other words, they've allocated
22 ██████████ to property, plant, and equipment.
23 Q Okay. Hold on a second. The second page of
24 the report that I have at the bottom is CB 0042860,
25 and that's the --
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1 was -- that was Carlyle information, what I came to
2 know of it after the fact.
3 Q Okay. I'm not that familiar with the
4 transactions. But maybe just walk me through a
5 history of Cogentrix, if you would.
6 A A history of Cogentrix?
7 Q Right.
8 A Like I said, that's -- I've only worked there
9 since 2005. So, I mean, I know anecdotally kind of
10 where Cogentrix came from. Is that --
11 Q You know, go ahead and just tell me what you
12 know.
13 A I think it was founded in 1983 as an
14 independent power company and family-owned through
15 2003, I think, when Goldman bought them.
16 And then through 2003 through 2012 Goldman
17 owned Cogentrix as a wholly-owned subsidiary. And
18 then in 2012, Carlyle bought Cogentrix, and I guess
19 what -- what hasn't come out yet in this is that
20 Cogentrix now -- the assets of the former Cogentrix
21 are owned by funds managed by Carlyle. So Cogentrix
22 is no longer -- Cogentrix Energy Power Management is
23 no longer an owner of assets. We manage the assets
24 for Carlyle, operate them via contract.
25

1 A Oh, sorry. I'm on 862, which is a table.
2 Q Okay.
3 MR. WRIGHT: Before we can continue, I'd just
4 like to interpose an objection as to the relevancy
5 of this information to anything having to do with
6 this case. But you can continue the question.
7 A So the answer to your question specifically, I
8 would have to go back to the purchase and sale
9 agreement and actually look. I can't remember. But
10 what this implies is the values on this page, 862
11 here.
12 BY MR. MOYLE:
13 Q So you're the -- you have a -- you're a CPA;
14 is that right?
15 A Yes.
16 Q Are you licensed presently?
17 A Yes.
18 Q What states?
19 A Florida.
20 Q So if I was going to look at CB 0042862, which
21 is a page in this Duff & Phelps report, to get the
22 purchase price, what would I -- what column would I
23 add up?
24 MR. WRIGHT: I'm just going to object to the
25 form to the extent that -- that it's not clear that
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1 you can get the purchase price from this table. If
 2 you can, then he can answer the question.
 3 **A I wouldn't try to do that, honestly, unless I**
 4 **had the purchase and sale agreement in front of me,**
 5 **and I could reconcile what was stated in there as the**
 6 **purchase price to what was in this table, to be honest**
 7 **with you.**
 8 **If I tried -- If I just told you, well, just**
 9 **add up in the fair value owned column, I'm not certain**
 10 **that would be accurate.**
 11 BY MR. MOYLE:
 12 **Q I'm confused, because when I initially asked**
 13 **you the question, it was just a straight out question:**
 14 **How much did Goldman sell it for?**
 15 **A I don't -- the answer to that is, I don't**
 16 **remember.**
 17 **Q Okay. But then you went to this table and**
 18 **said, I look at this table. So that tells me, I mean,**
 19 **if we're allocating -- allocating a purchase price,**
 20 **you don't pay Duff & Phelps to allocate only a portion**
 21 **of the purchase price; right?**
 22 **A Correct.**
 23 **Q So wouldn't the logic follow that this table,**
 24 **if you add it all up, it gets you to the purchase**
 25 **price, if it's 100 percent allocation?**

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1 **A Because the one on the left is fair value at**
 2 **100 percent. And at the time of the purchase, not all**
 3 **of the assets in the portfolio were 100 percent owned.**
 4 **You can see two were 50 percent owned.**
 5 **Q But the Cedar Bay facility was 100 percent**
 6 **owned?**
 7 **A Yes.**
 8 **Q So in doing this calculation, would I -- I**
 9 **subtract the numbers that are in parentheses?**
 10 **A Yes. Those are liabilities.**
 11 **Q Do you -- do you know the -- the number? If I**
 12 **asked you, what does the number add up to, could you**
 13 **tell me, or do you have a calculator --**
 14 **A No.**
 15 **Q -- or I could give --**
 16 **A No.**
 17 **Q -- you a calculator?**
 18 **A No, not without doing the math, no.**
 19 **A (Performing calculations.) I can round,**
 20 **hopefully.**
 21 **Q Yeah, round.**
 22 **A The phone calculator is not what I'm used to.**
 23 **Q [REDACTED]**
 24 **Q [REDACTED]**
 25 **A Uh-huh.**

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1 **A Yes. But I want to qualify that in that I**
 2 **wouldn't say that that's the purchase price unless I**
 3 **reconciled it to the document that was an actual**
 4 **purchase and sale agreement.**
 5 **Q And you would -- you would reconcile it for**
 6 **the purchase and sale as a double-check; correct?**
 7 **A Yes.**
 8 **Q It's not because you don't have confidence in**
 9 **these --**
 10 **A Correct.**
 11 **Q -- numbers?**
 12 **A Correct. I would want to make sure. Again,**
 13 **this document was prepared a while ago. I haven't**
 14 **looked at it in a while. And so I would want to make**
 15 **sure that I was able -- If I added up the numbers in**
 16 **one of these columns, it actually equaled what was**
 17 **said in the purchase and sale agreement.**
 18 **Q Which -- which column would you add up? And**
 19 **for the purposes of the record, there's two columns;**
 20 **one that is more to the left of the page and one**
 21 **that's more to the right of the page.**
 22 **So if you would tell me which column you would**
 23 **add up to determine the --**
 24 **A The one on the right.**
 25 **Q And why would you do that?**

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1 **Q Thank you.**
 2 **A Uh-huh.**
 3 **Q And do you know why there were parentheses**
 4 **around the two Cedar Bay numbers, Cedar Bay MSA and**
 5 **Cedar Bay OMA?**
 6 **A Yes. The Cedar Bay, the -- that stands for**
 7 **MSA agreement and operations and management agreement.**
 8 **Those agreements are legacy agreements at the plant.**
 9 **And so those -- they date back to I think the**
 10 **beginning of when the plant went in service. And the**
 11 **fees associated with those contracts are what the**
 12 **accountants would call out of market at this point in**
 13 **time, because they're -- you can't charge as much as**
 14 **you were able to in the early '90s for those types of**
 15 **contracts.**
 16 **Q And the MSA stands for what?**
 17 **A Management services agreement.**
 18 **Q Okay. And the OMA stands for operations and**
 19 **maintenance agreement?**
 20 **A Yeah.**
 21 **Q And do you know the term of those two**
 22 **agreements as we sit here today?**
 23 **A I don't. I don't know whether they're for the**
 24 **entire term or they renew, you know, periodically with**
 25 **an evergreen clause of some sort.**

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1 Q And how is the determination made that they
2 were out of market at the point in time this Duff &
3 Phelps valuation was prepared?

4 A I would have to read their methodology. But
5 we have been asked that a number of times. It's very
6 difficult to determine, because there isn't a ready,
7 available market for these types of contracts. So
8 it's -- it's -- you know, from their valuation
9 standpoint, it's -- it's difficult.

10 Q Right. But you don't question it? I mean,
11 you hired them; they're the experts on valuation?

12 A Right. Again, in this type of study, you
13 know, that's how it's done. If the assumptions are
14 generally reasonable, you know, there is a -- it's
15 okay.

16 Q And the discussion you had with Mr. Truitt
17 about allocation, is there an IRS regulation that
18 requires you to do that? I mean, is it for tax
19 purposes? Why do you do the allocation?

20 A It can be for tax purposes, and it can be for
21 accounting purposes.

22 Q Why was it done in this case?

23 A I would have to look at the -- the purchase
24 and sale agreement and see whether -- why it's
25 stipulated that it would be done. Sometimes it
ACCURATE STENOGRAPHY REPORTERS, INC.

1 numbers are correct.

2 If you're going to use it in financial
3 statements, you probably have to certify in the
4 financial statements that the numbers are correct and
5 reasonable. If you have to provide it to, you know, a
6 seller or a buyer, there is probably some
7 certification in there.

8 So there has to be some degree of
9 reasonableness assumed.

10 Q And the deal between Goldman and Carlyle, that
11 was an arm's length transaction, a fair market value
12 deal; correct?

13 A As far as I know, yes.

14 Q And you -- the position you were in at the
15 time was what?

16 A I was the CFO of Cogentrix.

17 Q Okay. So if there was some situation which
18 suggested maybe it wasn't a fair market value deal,
19 you would know of that?

20 A Yes.

21 Q What is the -- what is -- well, what is --
22 presently do you know what your basis is? When I say
23 "your basis," the basis in the plant? Does this
24 establish the basis?

25 MR. WRIGHT: I'm just going to object to the
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1 stipulates in accordance with tax regulations.
2 Sometimes it stipulates it needs to be done in
3 accordance with GAAP.

4 Sometimes it's silent and just says the
5 parties agree that one will be done.

6 Q Why do you have to get an appraiser to do it?

7 A You don't. It's just usually more efficient
8 to do that, because they are used to doing it. And
9 obviously it involves a lot of data crunching. And
10 it's easy to make errors. It's better to have an
11 expert do it.

12 Q All right. It seems to me -- I don't know
13 much about this, I will confess. But it seems to me
14 that you don't have a lot of discretion with respect
15 to allocation. I mean you couldn't kind of do it
16 randomly and say, you know, let's kind of reallocate
17 it this way, put all the value on, you know, ██████
18 and none of the value on the other assets, and we just
19 agreed with it, and that works?

20 A That's right.

21 Q And that's right why?

22 A Well, I guess it also depends on -- on how
23 you're going to use the allocation once it's been
24 done. If you're going to use it to file a tax return,
25 obviously you have to certify the tax return that the
ACCURATE STENOGRAPHY REPORTERS, INC.

1 form, because I think it's ambiguous as to what you
2 mean by "basis," Jon.

3 BY MR. MOYLE:

4 Q Do you understand what I meant by "basis"?

5 A I understand, but I -- the basis could occur
6 at many levels, you know, within the organization.

7 Q So does the basis get reset after a deal like
8 this is consummated? So now all of a sudden Carlyle
9 owns it; they paid a certain amount for it, for
10 capital gains purposes, or other they take it at a
11 certain basis; right?

12 A They do. But, again, Carlyle, you know, it's
13 owned by funds. And I don't know what happens from a
14 fund accounting level.

15 And so the basis that you're talking about,
16 from the purchase, gets -- gets pushed down into the
17 financials at -- you know, they didn't get pushed into
18 Cedar Bay Generating; they got pushed into upper level
19 entities. And so the basis is reset there based on
20 this.

21 And if Carlyle has further adjusted it, I have
22 no knowledge of that.

23 Q Right. I understand how it could be split
24 going upstream to funds that own it, they could
25 allocate it this way or that way. I'm just trying to

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1 understand. Let's just say you kept it at this level,
 2 and you didn't upstream it or force it up. Would it
 3 be [REDACTED] or would it be close to that? Or you just --
 4 there is nothing in this report that would tell you
 5 that?

6 **A No. It would be, based on this report, at the**
 7 **entitles that were -- that the purchase price was**
 8 **allocated to, it would be in that particular instance**
 9 **[REDACTED], and it would be amortized through to the end of**
 10 **the PPA.**

11 MR. WRIGHT: I'm just going to note a
 12 continuing objection to this line of questioning as
 13 to its relevance to this proceeding.

14 MR. MOYLE: And I would just note that I think
 15 we've had a discussion about what this report is
 16 and done by appraisers, and I think it has
 17 information related to value that is relevant. But
 18 we will probably -- none of us in this room can
 19 decide that today, so we will move on.

20 BY MR. MOYLE:

21 Q What do you know about Duff & Phelps?

22 A Just generally?

23 Q Yeah.

24 A I just know them as a valuation firm that we
 25 have used in the past.

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1 Q Did you select them for this, or did someone
 2 else select them, or do you remember?

3 A No. I selected them.

4 Q I was trying to understand your answer to a
 5 question from Mr. Truitt. You said that you believed
 6 that the value of the PPA may have increased as time
 7 has gone forward. Did I get that right?

8 A What I was saying is that he was asking to
 9 reconcile between [REDACTED] and 520, and I was providing
 10 factors that could change the value.

11 I wasn't really reconciling between the two,
 12 because, again, you have an arm's length deal between
 13 two parties determining value. I was citing some
 14 factors that have changed positively since their
 15 Carlyle purchase.

16 Q And those factors that you cited in terms of
 17 positively changing, those were all factors that are
 18 important to the current owner; correct?

19 A Yes.

20 Q Do you have a belief as to their level of
 21 importance to the purchaser?

22 A I don't.

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18 Q And is that because your payment for energy is
 19 fixed?

20 A No. Our payment for energy isn't fixed.

21 Q What is it pegged to?

22 A The St. Johns River Power Park cost of fuel.

23 Q Well, if gas went to 15 bucks, and coal stayed
 24 the same, wouldn't that help you economically, or, no,
 25 it would be indifferent -- you would be indifferent to

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1 that?
 2 **A I don't think you can simplify it like that.**
 3 **If -- if gas went to 15 bucks, it depends on what**
 4 **the -- what the coal purchase price at St. Johns River**
 5 **Power Park is versus our own coal purchase price, what**
 6 **that differential is, and then how much Cedar Bay is**
 7 **going to run. Again, the best scenario is don't run**
 8 **at all.**

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9 **Q** And the reason that's the best scenario is, is
 10 you very nicely said it. I was floundering around
 11 with it for a couple of days trying to understand the
 12 point.

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12

13 But I think you said it was because of the
 14 production margin differential; is that right?

13
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15 **A Right.**

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16 **Q** And does that, in effect, mean that it costs
 17 you -- you know, when you're running you're losing
 18 money, because it costs you more to run than the
 19 revenue you receive?

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20 **A If the coal price differential is what it has**
 21 **been in the recent past, yes. It fluctuates, because**
 22 **the cost at St. Johns River Power goes up and down**
 23 **based on what we buy coal for, and ours goes up and**
 24 **down based on the timing of our reopeners in our coal**
 25 **contract. It's been narrow at times; it's been wide**

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ACCURATE STENOGRAPHY REPORTERS, INC.

1 **at times.**

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2 **Q** Do you track that pretty regularly, whether
 3 you're in the money or out of the money? And when I
 4 say "in the money or out of the money," do you
 5 understand what I mean by that?

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6 **A Generally. I mean I don't track the cost at**
 7 **St. Johns River Power Park versus our costs in that**
 8 **level of detail regularly. But you can look at the**
 9 **financial statements and see where we are relative to**
 10 **that from a broad perspective.**

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14 **Q** Sure. I'm just trying to get your impression
15 or ask you to agree with me that to the extent that
16 the RockTenn steam agreement de-risks the deal from
17 your perspective, because it gave you greater
18 certainty that you would continue to be a QF, you
19 continue to be a QF, you get your capacity payments,
20 with FPL buying it, the fact that this RockTenn
21 agreement is there may not be that significant?
22 **MR. WRIGHT:** I object to the form.
23 **A** Yeah, in terms of significant, I'm not sure
24 significant to whom? I mean --
25 **BY MR. MOYLE:**
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 **Q** To FPL.
2 **A** I don't know in terms of what their -- what
3 their intent is, how they look at that steam
4 agreement. I just don't know -- I can't speak for
5 them.
6 **Q** Do you have an idea as to how long that steam
7 agreement continues to run for?
8 **A** It runs through the PPA length now.
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22 **BY MR. MOYLE:**
23 **Q** Do you know -- do you know who negotiated the
24 acquisition of the ownership interest and stock as it
25 relates to the Cedar Bay project on behalf of
ACCURATE STENOGRAPHY REPORTERS, INC.

1 Cogentrix or Carlyle?
 2 **A Not specifically.**
 3 **Q Generally?**
 4 **A Not persons. As far as I know, it took place**
 5 **at what I will call the Carlyle level.**
 6 **Q What does that mean?**
 7 **A That people at Carlyle spoke with people at**
 8 **FPL and negotiated a deal.**
 9 **Q Who would the people at Carlyle typically be**
 10 **that would be arranging such a deal?**
 11 **A Potentially Jim Larocque.**
 12 **Q How do you spell his last name?**
 13 **A L-A-R-O-Q-U-E [sic], I think.**
 14 **Q What position does he hold?**
 15 **A I don't know specifically within Carlyle.**
 16 **Q Who else?**
 17 **A I don't know.**
 18 **Q Why do you say you think Jim Larocque would**
 19 **have been involved in this deal?**
 20 **A From a Carlyle perspective, he is the person**
 21 **who is most involved in Cedar Bay.**
 22 **Q What is your involvement with Carlyle? How do**
 23 **you interact with them?**
 24 **A Mostly to provide information -- you know,**
 25 **information requests, monthly financial statement**
 ACCURATE STENOTYPE REPORTERS, INC.

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 9 **Q Okay. Have the covenants ever not been**
 10 **complied with at any point in time, as far as you**
 11 **know?**
 12 **A Of the current loan?**
 13 **Q Or the preceding loan.**
 14 **A The current loan I don't know of any -- any**
 15 **defaults in the covenants. In the preceding loan**
 16 **there was a -- I believe a payment default. But I**
 17 **don't know of other covenant defaults.**
 18 **Q And what prompted that payment default?**
 19 **A I think that -- I was in a different position**
 20 **at the time, so I wasn't as involved in the financing**
 21 **aspect. I was the controller, in charge of the**
 22 **accounting only.**
 23 **But as far as I know, the loan, as structured**
 24 **at that time, had high fixed payments. And so when**
 25 **Cedar Bay had operational issues in the 2007-2008 time**
 ACCURATE STENOTYPE REPORTERS, INC.

1 **reviews, you know, any requests for historical**
 2 **information that they have kind of thing.**
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 8 **Q Who did Mr. Larocque negotiate with on the**
 9 **other side for FPL; do you know?**
 10 **A I don't.**
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 15 **Q I think you already testified you weren't**
 16 **involved in the negotiations; right?**
 17 **A Correct.**
 18 **Q Was Doug Miller?**
 19 **A I don't know.**
 20 **Q Who is Doug?**
 21 **A He's the president of Cogentrix.**
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1 **frame that created a cash flow issue, and high fixed**
 2 **payments on that debt created obviously a payment**
 3 **issue on that debt, so there was a restructuring that**
 4 **had to occur.**
 5 **Q And was that the restructuring that took**
 6 **place, the 250 million?**
 7 **A No. That was prior to that.**
 8 **Q So -- so the debt was restructured prior to**
 9 **the 250 million refinancing?**
 10 **A Yes. The debt was restructured in, I believe**
 11 **late 2008, and the payment schedule was changed from a**
 12 **fixed amortization schedule to a minimum amortization**
 13 **schedule, where the fixed amortization was low, and**
 14 **100 percent of the cash was swept, I believe it was**
 15 **100 percent, to allow for volatility in cash flow.**
 16 **And by doing so, all of the debt was paid down**
 17 **to roughly -- something less than [REDACTED] I want**
 18 **to say, by the time that it was refinanced in 2013.**
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Q Do you know the genesis -- and I will -- I will say the deal, but the purchase of the stock interests that we described previously, do you know the genesis of that arrangement?

A What I know, I believe FPL called Cliff Evans and asked about the potential of reworking the economics of the deal somehow.

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Q You were given a document that -- I think it's marked as Exhibit 17; it's that memorandum from Phil Gregorich.

A Uh-huh.

Q Do you have it?

A Yes.

Is that the same transaction for which the Duff & Phelps valuation report was prepared?

MR. WRIGHT: Just to be clear, you mean the -- what's Exhibit 18?

MR. MOYLE: Right.

A (Examining document.) This is addressing the purchase price allocation of the [REDACTED] that Carlyle bought -- subsequently bought from Goldman post the trans -- after the trans -- the Cedar Bay originally, in the original transaction between Goldman and Carlyle, Carlyle bought [REDACTED] and then subsequently acquired the rest of it, [REDACTED]

This memo addresses the [REDACTED] subsequent
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 acquisition.

2 BY MR. MOYLE:

3 **Q** And did they pay [REDACTED] for [REDACTED]
4 interest in the asset?

5 **A** They paid that for Goldman's interest in an
6 entity.

7 **Q** And that entity had --

8 **A** For a minority interest in an entity.

9 **Q** Right.

10 **A** For the rights associated with that minority
11 interest.

12 **Q** So now Carlyle has 100 percent of all of the
13 Goldman assets; right?

14 **A** Yes.

15 **Q** Okay. And they picked up -- they picked up [REDACTED]
16 [REDACTED] as referenced here for [REDACTED]: right?

17 **A** [REDACTED] of what I guess is the question,
18 because what they picked up was Goldman's interests.
19 So you would have to look at what Goldman's
20 membership interest afforded them in that LLC --

21 **Q** Well, you tell me, because you were there.

22 **A** I don't know. I would have to go back to the
23 LLC agreement and see exactly what rights Goldman had
24 or did not have with respect to the interests. I do
25 not believe it is as simple as straight math of [REDACTED]

ACCURATE STENOGRAPHY REPORTERS, INC.

1 [REDACTED] of Cedar Bay is what they purchased, because
 2 they purchased a membership interest of these [REDACTED]
 3 membership interests in this entity.

4 So you would have to go back to specifically
 5 what [REDACTED] was and what it -- what it meant to
 6 purchase that.

7 Q Do you have any idea?

8 A I don't, without rereading the agreement.

9 Q So there may be other interests out there that
 10 we're not aware of that have interest in the Cedar Bay
 11 generating facility?

12 A No. There is [REDACTED] and [REDACTED] at the
 13 time, and so they bought out [REDACTED]. And to
 14 determine what they bought, I think you have to look
 15 at the rights and obligations of [REDACTED].

16 Q What -- what does this memo represent, [REDACTED]
 17 is that right?

18 A Is that right? I think it is.

19 Q It's in the re, it says [REDACTED]

20 A (Examining document.) Yes, [REDACTED]

21 Q And [REDACTED] then would have [REDACTED]

22 A Along with other assets. They bought an
 23 entity, which the [REDACTED] owned a portion -- owned
 24 [REDACTED] of Cedar Bay and [REDACTED]
 25 [REDACTED]

ACCURATE STENOGRAPHY REPORTERS, INC.

1 Q I mean you would know; right?

2 A I have no reason to believe it wasn't.

1 Q Okay. So if you take -- if you take the
 2 [REDACTED] interests and combine them with the [REDACTED]
 3 interests, those are all of the interests that
 4 comprise the ownership of Cedar Bay; correct?

5 A Yes. But [REDACTED] owns other interests as
 6 well.

7 Q Okay. So if you asked me, what would you
 8 rather have; would you rather have one share of [REDACTED]
 9 [REDACTED] or one share of [REDACTED] if I asked you that
 10 question, I assume you would say [REDACTED] because I
 11 get one share of Cedar Bay plus some other assets,
 12 whereas [REDACTED] I only get one share of Cedar Bay; is
 13 that correct?

14 A Depends on the other assets.

15 Q If they were liabilities you might not say
 16 yes?

17 A Right.

18 Q Assuming they had value, the answer to my
 19 question would be, I'd rather have the [REDACTED]

20 A It would depend on how much value.

21 Q So tell me why I can't do this. If [REDACTED]
 22 only represents the interest in Cedar Bay, and it's [REDACTED]
 23 [REDACTED], I assume this was an arm's length
 24 transaction; wasn't it?

25 A I believe so.

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17 Q The property tax assessment, do you have
18 information about that that is ongoing?
19 A Yes.
20 Q Tell me what you know about that, please.
21 A The Cedar Bay facility, from a property tax
22 perspective, the Duval County taxes, the tangible
23 value of the facility. And as we have been talking
24 about, you can -- from a value perspective, you split
25 the facility into its tangible components and
ACCURATE STENOTYPE REPORTERS, INC.

1 A On the property tax rolls. As far -- as far
2 as my memory serves, yes, the tangible personal
3 property that's taxable.
4 Q Right. And did you have -- you had
5 conversations with them about how they got to the 120
6 number, I assume?
7 A No, I did not. Gary Heichel had meetings with
8 them. But it's a -- it's -- that number, as far as I
9 know, has been on the tax rolls for a long time. And
10 so I'm not sure there is direct information about how
11 it got to 120.
12 Q And where does that stand as we sit here
13 today?
14 A It is in litigation, as far as I know, because
15 we filed an appeal. There was a hearing. They denied
16 the appeal. And then through attorneys, we have -- we
17 made a claim. And it's not resolved at this point.
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1 Intangible components.
2 And as we have said, I think in FPL's filing,
3 all the value is in the intangible component, which is
4 the PPA, which is not taxable from a property tax
5 perspective.
6 And so the -- for whatever reason, the
7 tangible personal property on the tax rolls I think is
8 on there for \$120 million. And so our appeal involved
9 reducing the tangible value because of the argument
10 that all of the value of the facility, from a taxing
11 standpoint, is in the PPA, which should not be taxable
12 by Duval County.
13 Q Did you argue that -- that the proper value
14 for taxation purposes is zero?
15 A No, we did not.
16 Q What did you argue?
17 A We went for -- it's more of a strategic call
18 in terms of the -- rather than going to zero, in terms
19 of negotiating with Duval County, we sought a
20 reduction, rather than an elimination of property
21 taxes, knowing the importance of tax revenue to the
22 county. So I can't recall a specific reduction we
23 asked for, but perhaps 50 percent.
24 Q So it's currently on the books at 120; is that
25 right?
ACCURATE STENOTYPE REPORTERS, INC.

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4 **Q** What information, if any, do you have about
5 the two budgets for 2015, the skinny budget and the
6 other budget?
7 **A** I know about them.
8 **Q** And what is your understanding of the request
9 from Carlyle?
10 **A** I'm not sure what request you're talking
11 about.
12 **Q** There was a request that says, the only issue
13 with the high level model is the request from Carlyle,
14 as I understand it, is to have a working budget that
15 could be used in the event of closing.
16 **MR. WRIGHT:** Jon, are you referring to a
17 document that we can show the witness?
18 **MR. MOYLE:** I am. It's a document that's
19 dated November 12, 2014. I think it's already in.
20 **MR. WRIGHT:** I was hoping that and hoping that
21 we could identify it.
22 **MR. MOYLE:** I think it's Exhibit 14. Exhibit
23 14.
24 **MR. WRIGHT:** Thanks. Looks like that might be
25 it.

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **A** Sure.
2 **Q** Yeah. I've handed you a document that we will
3 mark as Exhibit 21.
4 (Exhibit No. 21 was identified for the
5 record.)
6 **BY MR. MOYLE:**
7 **Q** It's entitled "Cedar Bay Generating Company,
8 Limited Partnership, Financial Statements December 31,
9 2014, and 2013."
10 Are you familiar with this document?
11 **A** Yes.
12 **Q** The first question, what -- why do you have a
13 financial statement when it says 2014 and '13? Are
14 they two years' worth of financial statements, or is
15 that something in the industry that --
16 **A** No, that's a standard GAAP convention of
17 comparative financial statements; GAAP meaning
18 Generally Accepted Accounting Standards.
19 **Q** Okay. Page 3, I sometimes, with financial
20 statements, like to try to go to the bottom line. And
21 if I were to do that with this financial statement,
22 would -- would that -- would the bottom line be found
23 on page 3, where it says, net income and comprehensive
24 income?
25 **A** That's where that caption is, yes.

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **MR. MOYLE:** It's Exhibit 14. Thank you.
2 **THE WITNESS:** What's the question?
3 **BY MR. MOYLE:**
4 **Q** So the question is, why were two budgets being
5 prepared for 2015?
6 **A** The first part -- the first budget for six
7 months was for operating as usual. The second would
8 have been, had the sale closed in the second half of
9 the year, what a budget might have looked like if --
10 under FPL's ownership.
11 **Q** And why would there be a change?
12 **A** If they chose to dispatch the plant less than
13 it was being dispatched.
14 **Q** Did that assume that they would be
15 communicating that to you or -- I mean, did you all
16 know that? It seems -- why -- why did you make that
17 assumption?
18 **A** I didn't have any direct knowledge of
19 communicating about that. But I think that's what, in
20 terms of the people who were talking to FPL, I think
21 that's why the budget was constructed is, what would
22 it look like if it was dispatched -- how much cost
23 would you have if it was dispatched less.
24 **Q** And after -- those costs would be borne by
25 FP&L, correct, after the closing?

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **Q** Okay. So -- so for 2014, after everything has
2 been addressed, the plant made [REDACTED] is that
3 right?
4 **A** That's the net income and comprehensive
5 income. It doesn't -- the part there that can be a
6 bit misleading is what I addressed in my original
7 presentation, which is the interest expense there,
8 over 55 percent of it is owed to an affiliate.
9 **Q** In the form of debt?
10 **A** Yes.
11 **Q** Is the affiliate going to be made whole if the
12 commission approves this transaction?
13 **A** No. The debt will be canceled.
14 **Q** Why?
15 **A** Because it's -- it really just represents our
16 historical equity in the project. It was an
17 alternative to equity.
18 **Q** Will -- will there be an equity payout, people
19 that have equity, will they get money if this deal
20 closes?
21 **A** I'm not sure equity --
22 **Q** I'm trying to understand, you know, if the 520
23 million or 30 million is approved, and there is a
24 closing, it seems to me logically that if I was on the
25 Cogentrix side of the table, and I had some debt

ACCURATE STENOGRAPHY REPORTERS, INC.

1 instruments where money was owed, I would kind of say,
2 hey, I would like to get paid. But you're telling me,
3 no, that's not how it's going to happen.

4 And so, are those people just going to be
5 told, you don't have any money coming, or you have
6 money, but we're going to pay it as a return on
7 equity? What's going to happen?

8 **A No. This debt is owed within the group of**
9 **companies that FPL is buying. It's the owners of the**
10 **generating company have loaned the generating company**
11 **money over time, which really represents their equity**
12 **in the project. And so that's not Cogentrix or**
13 **anybody else.**

14 **That's within a group of companies that FPL is**
15 **buying. And so that will go away with the**
16 **transaction, because they will own both sides of the**
17 **debt and the investment in the debt.**

18 **Q So those entities will have a capital gain**
19 **likely; is that right?**

20 **A Which entity?**

21 **Q The entities that hold the debt, the**
22 **intercompany entities that hold the debt.**

23 **A I don't think so. I'm not a tax expert, but**
24 **that is going with the transaction. I would have to**
25 **look back in the PSA and see exactly what is happening**

ACCURATE STENOGRAPHY REPORTERS, INC.

1 about the [REDACTED]

2 On page 3 there is a very simple statement
3 that says, "Cedar Bay is a 250 megawatt coal fired
4 generation facility located in Jacksonville, Florida,
5 paren, the project, [REDACTED] owned by [REDACTED]
6 [REDACTED] and [REDACTED] owned by [REDACTED]"

7 Is that accurate?

8 **A That's what's included in this, yes.**

9 **Q And you have a provision that talks about the**
10 **proceeds of the term loan, what they're going to be**
11 **used to do?**

12 **A Yes.**

13 **Q Senior secured indebtedness at Cedar Bay, what**
14 **was that? Was that the paper that was on it that you**
15 **had to get kind of --**

16 **A The existing debt, yes.**

17 **Q Okay. And then cash collateralized security**
18 **obligations, what's that?**

19 **A Cash collateralize, any debt service reserve,**
20 **anything like that that we needed security for.**

21 **Q Did you need to do that?**

22 **A Yeah. That's standard. You can either cash**
23 **collateralize or use a letter of credit.**

24 **Q And how had you done it prior to that? Was**
25 **there cash -- had it been cash collateralized?**

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **at closing. But it's both sides of the debt are being**
2 **purchased. So it effectively goes away.**

3 **Q And these financial statements correctly state**
4 **the financial condition of the company; correct?**

5 **A Yes.**

6 **MR. WRIGHT: Were you done with 21 for now,**
7 **Jon?**

8 **MR. MOYLE: I am.**

9 **BY MR. MOYLE:**

10 **Q I'm handing you a document that we will mark**
11 **as Exhibit 22 and ask if you can identify this**
12 **document, please.**

13 (Exhibit No. 22 was identified for the
14 record.)

15 **A This is a presentation that we gave to**
16 **potential lenders regarding financing for the 2013**
17 **refinancing.**

18 **BY MR. MOYLE:**

19 **Q You were involved in the preparation of this**
20 **document?**

21 **A Yes.**

22 **Q So you're familiar with it?**

23 **A Generally, yes.**

24 **Q All right. I want to walk through some**
25 **questions with you. We were talking back and forth**

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **A Yes.**

2 **Q So couldn't you just keep that cash there, and**
3 **you wouldn't need to take the new money and take out**
4 **the old money?**

5 **A No. The previous lenders were different. So**
6 **all that had to be cleared out and a new collateral**
7 **agent set up, new accounts, et cetera.**

8 **Q Pay previously deferred operator and manager**
9 **fees; what's that?**

10 **A The project had -- the operator and manager**
11 **fees and the MSA and O&M agreements that we previously**
12 **discussed were subordinated to the debt service in the**
13 **previous loan. And as I said, the cash on the**
14 **previous loan was all swept to the lenders. So there**
15 **wasn't cash available to pay the fees on those**
16 **contracts.**

17 **So when we refinance, that cash freed up, and**
18 **we were able to pay the accrued fees.**

19 **Q Were there -- were there other obligations**
20 **that you deferred besides -- besides the operator and**
21 **manager fees?**

22 **A When you say "deferred," I'm not sure what you**
23 **mean.**

24 **Q You didn't have enough -- just to respond to**
25 **your answer, you didn't have enough cash to make the**

ACCURATE STENOGRAPHY REPORTERS, INC.

1 payment presently; you said, we will defer it and get
 2 you later.
 3 **A They weren't deferred in that they were**
 4 **accrued and owed. They weren't paid, because of where**
 5 **they came, and the cash waterfall for the project,**
 6 **which is the set of accounts that the project has to**
 7 **pay out of, all of the cash, before it reached the**
 8 **point that it could be paid to the holders of the MSA**
 9 **and O&M contracts, went to the banks first.**
 10 **They were still -- they were not deferred;**
 11 **they were still accrued and owed.**
 12 **Q What's the present waterfall of cash?**
 13 **A It -- the waterfall is just -- it's just a**
 14 **term for a system of accounts that the collateral**
 15 **agent holds.**
 16 **Q And here, the last one, repay a portion of the**
 17 **subordinated debt, accrued interest held by certain**
 18 **sponsor affiliates with Cedar Bay. Who is that?**
 19 **A That's the same debt that we talked about.**
 20 **That's essentially quasi equity which is to make the**
 21 **accrued interest payment to the upstream entity that**
 22 **is essentially equity.**
 23 **Q So I have seen the term "sponsors" used in**
 24 **other documents to refer to either [redacted] or [redacted]**
 25 **is that consistent with your recollection of the use**
 ACCURATE STENOTYPE REPORTERS, INC.

1 **A It didn't wipe out the accrued interest. It**
 2 **paid an amount of the accrued interest.**
 3 **Q A portion of it?**
 4 **A Yes.**
 5 **Q How much did it pay?**
 6 **A To the best of my knowledge, I think in the**
 7 **2014 financial statements we have got it disclosed as**
 8 **[redacted]**
 9 **Q It left, what did you say, [redacted] or [redacted] how much**
 10 **is remaining of that obligation?**
 11 **A I'm not sure how much it is now. The**
 12 **principal is [redacted]. I'm not sure what the**
 13 **accrued interest is. I would have to look on what --**
 14 **you know, the financial statements for whatever period**
 15 **we're looking at.**
 16 **Q Would it be in the documents I've shown you?**
 17 **A Yes.**
 18 **Q The financing structure, on page 4.**
 19 **A Yes.**
 20 **Q If I were to ask you to, say, make changes to**
 21 **this to show the current organizational structure,**
 22 **what would you do besides -- I guess you would scratch**
 23 **out [redacted] right? Put an X through that, and**
 24 **then the [redacted] is a wholly owned**
 25 **subsidiary, along with [redacted]**
 ACCURATE STENOTYPE REPORTERS, INC.

1 of the term "sponsor" in these documents?
 2 **A I think we named the sponsors in here.**
 3 **So a sponsor is really just something --**
 4 **somebody who the lenders can look to as, you know, the**
 5 **primary contact with respect to the offer, who is**
 6 **going to sign their engagement letter, et cetera.**
 7 **Q So who are the sponsors in this offer?**
 8 **A On this particular overview, I'm listed, and**
 9 **[redacted] at [redacted] is listed.**
 10 **Q Okay. And on page 8, I appreciate the**
 11 **individuals, but that lists the overview of the**
 12 **sponsors being [redacted] and [redacted]**
 13 **right?**
 14 **A Yes.**
 15 **Q Okay. So back to that bullet point, repay a**
 16 **portion of the subordinated debt accrued interest held**
 17 **by certain sponsor affiliates of Cedar Bay.**
 18 **Did debt held by [redacted] or [redacted] get paid**
 19 **off with the proceeds from the 250?**
 20 **A No. What was paid off was accrued interest on**
 21 **the intercompany debt between the Cedar Bay affiliated**
 22 **entities within the -- I don't have an org chart in**
 23 **front of me -- but within the group.**
 24 **Q Okay. So it wiped out the accrued interest,**
 25 **didn't touch the principal?**
 ACCURATE STENOTYPE REPORTERS, INC.

1 [redacted] that are investment funds sponsored by The
 2 Carlyle Group; is that right?
 3 **A I think so. But this is -- as identified in**
 4 **01, this is a simplified organizational structure. So**
 5 **I would want to look at our real active organizational**
 6 **structure to say that. It's a lot of entities in it,**
 7 **so I wouldn't want to speculate. But [redacted] is**
 8 **no longer in the picture.**
 9 **Q Correct. Okay. It's a fair representation of**
 10 **the structure in a general sense?**
 11 **A Generally.**
 12 **Q Somebody loaned you 250 on it; right?**
 13 **A Right. It says we have ref'd to this**
 14 **document, yes.**
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8 **Q** Okay. I'm assuming that this PPA, that --
9 that the value of the PPA is -- declines as time goes
10 on; is that right, because there is less capacity
11 payments, and every year that rolls by so the value
12 would decline?
13 **A** Yeah, cash flows roll off.
14 **Q** Page 14. The MPV of contracted cash flows,
15 what is that?
16 **A** That's just showing the different discount
17 rates, what the value of the cash flows from FPL would
18 be if you chose these different discount rates.
19 **Q** And so if we were doing this calculation
20 today -- this was done on March 20th, 2013; that was
21 two years before. If you did this same calculation
22 today, the numbers would be lower; right?
23 **A** Not necessarily. It depends on the discount
24 rate you use, which is a function of operating risk.
25 This is showing the lenders what their collateral
 ACCURATE STENOTYPE REPORTERS, INC.

1 value is at the time that they're making the loan and
2 showing some scenarios where it ranges from [REDACTED]
3 [REDACTED] to [REDACTED]

4 Q Is this valuing the PPA, the cash flows of the
5 PPA?

6 A Yes.

7 Q And if you -- when you say that you use
8 different discount rates, that means the [REDACTED]
9 [REDACTED]

10 A Yes.

11 Q Okay. So the issue is the [REDACTED]
12 [REDACTED], and you ran the numbers today,
13 the PB of FCF would be lower; wouldn't they?

14 MR. WRIGHT: I'm going to object that that is
15 a potentially ambiguous.

16 A That's not an accurate statement, because
17 it's -- these numbers are a function of the model that
18 was used in this financing, which includes a certain
19 dispatch rate. It includes certain assumptions of
20 St. Johns River Power Park. It includes certain
21 assumptions about our cost of coal.

22 So to the extent that any of those factors
23 have changed, then applying these same discount rates
24 will not yield the same numbers. This was based on a
25 model that was presented to lenders at the time. If

ACCURATE STENOGRAPHY REPORTERS, INC.

1 from a third party regarding dispatch, inputs from a
2 third party regarding coal costs, St. Johns River
3 Power Park, et cetera.

4 Q Okay. Page 19. That capacity factor I've
5 highlighted in there, it falls off precipitously from
6 '11 to '12. Why is that?

7 A The plant ran less; it was dispatched less by
8 FP&L.

9 Q And that's a good thing economically?

10 A Yes.

11 Q Page 21, your modeling assumptions. We were
12 just talking about the modeler. Are those the
13 assumptions that went into it?

14 A Some of them.

1 you applied these discount rates, this is what the
2 value of the PPA, their collateral would be.

3 BY MR. MOYLE:

4 Q Okay. That's helpful. So the model may have
5 inputs that have changed in effect. It's not as
6 simple as just running math at [REDACTED]
7 [REDACTED]

8 A That's correct.

9 Q -- on a cash stream?

10 A That's correct.

11 Q Because there are a bunch of other independent
12 variables?

13 A Yes.

14 Q What's the model that you used to run this?

15 A It's just an Excel-based set of spreadsheets
16 that has all the different variables rolled into
17 essentially a long-term cash flow.

18 Q Is it -- do you have a name for it?

19 A Just a base case model. It may be in here
20 somewhere. It may be -- the financial projections may
21 be in here. I think it was provided in the materials.

22 Q All right. So would it be fair to say at this
23 point in time this is what the cash flows represented,
24 depending on the discount rate used?

25 A Yeah. This, again, it was based on inputs

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1 THE WITNESS: Yes.
2 BY MS. BARRERA:
3 Q Yes. And would you turn to page 2 and scroll
4 down to where it says property and equipment, less of
5 accumulated depreciation and the amount on -- under
6 that for 2014 is [REDACTED]?
7 A Yes.
8 Q Okay. What does this amount represent?
9 A That's the historical cost of the facility
10 less accumulated depreciation and any capital
11 expenditures since then.
12 Q Okay. Now is this the net book value of the
13 plant as of December 31st, 2014?
14 A Of the property plant. I'm not sure what you
15 mean by "plant" specifically. But it's the net book
16 value of the property plant and equipment, yes.
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23 Q Let me ask you to get your copy of Exhibit 3
24 and then also your copy of the Duff & Phelps valuation
25 report, Exhibit 18.

ACCURATE STENOGRAPHY REPORTERS, INC.

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1 A Okay.
2 Q And on the Duff & Phelps exhibit, most, if not
3 all, of my questions are going to be in the -- on the
4 page that ends in 948, the Exhibit D.2 you were asked
5 about earlier.
6 A Yes.
7 Q First of all, you have -- this shows, I think,
8 a discount rate being used of [REDACTED] is that
9 right, down near the bottom of the column before the
10 2012 entries?
11 A Yes.
12 Q Okay. And would you agree that if a lower
13 discount rate were used, that it would result in a
14 higher calculated fair value?
15 A Yes.
16 Q Okay. Let me ask you to turn to, in your
17 Exhibit 3, to page 15. Do you have that?
18 A Yes. Sorry.
19 Q And the table there is showing the EBITDA -- I
20 have trouble saying that -- for various years
21 historically, including 2012 through 2014; is that
22 right?
23 A Yes.
24 Q Okay. Now, I would like to look at what is
25 shown as the EBITDA on -- excuse me -- that were

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CROSS EXAMINATION

BY MS. BARRERA:

Q Mr. Rudolph, would you take a look at Exhibit 21, the Cedar Bay, Limited, financial statements?

MR. WRIGHT: You should have that.

THE WITNESS: I think you took them back from me.

MR. WRIGHT: Here it is. You took it back from me.

ACCURATE STENOGRAPHY REPORTERS, INC.

1 projected here for 2012, 2013, and 2014 on the
2 Exhibit D.2 of the Duff & Phelps valuation.

3 **A Yes.**

4 **Q** Okay. And your actual for 2012 was 82.7
5 million; correct?

6 **A Yes.**

7 **Q** Okay. And that compares to what on the
8 Exhibit D.2?

9 **A I think it's** [REDACTED]

10 **Q** So something like [REDACTED] on the --
11 excuse me -- excuse me -- projections in the Duff &
12 Phelps report compared to your actuals --

13 **A Yes.**

14 **Q** -- is that correct?

15 **A Uh-huh.**

16 **Q** Okay. And then for 2013 you show actuals of
17 50.6 million; correct?

18 **A Correct.**

19 **Q** And that compares to a projection for 2013 in
20 the Duff & Phelps report of, what do you see -- what
21 do I see there?

22 **A I think it's** [REDACTED] --

23 **Q** [REDACTED] So something like [REDACTED]
24 in the -- excuse me -- projections than the actuals;
25 correct?

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **MR. BUTLER:** I'm sorry. Page 6 of Exhibit 3.
2 I'm still looking to Exhibit D.2 in the Duff &
3 Phelps.

4 **MR. WRIGHT:** Could you show me what you're
5 looking at?

6 **MR. BUTLER:** The section entitled "reliable
7 operating performance."

8 (Discussion off the record.)

9 **BY MR. BUTLER:**

10 **Q** So, again, focussing on the 2012 through 2014
11 actuals versus Duff & Phelps 2012 through 2014
12 projections, this shows an actual capacity factor of
13 31 percent for 2012; is that right --

14 **A Correct.**

15 **Q** -- on Exhibit 3?

16 **A Yes.**

17 **Q** And then the figure, it looks like, as
18 capacity factor for 2012 projected with something like

19 [REDACTED]?

20 **A Yes.**

21 **Q** Okay. And then for 2013, there is a -- an
22 actual capacity factor of 36.1 percent. And that
23 compares to projections. Is that [REDACTED]?

24 **A Yes. Yes.**

25 **Q** Okay. And finally, 2014 actual of 40.2

ACCURATE STENOGRAPHY REPORTERS, INC.

1 **A Yes.**

2 **Q** And then finally, for 2014 you have 53.8
3 million actual, and it looks like about [REDACTED]
4 is that right?

5 **A Yes.**

6 **Q** Something like roughly [REDACTED] or [REDACTED] --

7 **A Yes.**

8 **Q** -- less?

9 Okay. Would lower EBITDA figures in the
10 projection, if that carried through as a trend
11 throughout the analysis, would that tend to result in
12 a lower fair value than higher figures for that EBITDA
13 in -- same projection?

14 **MR. MOYLE:** I'm going to object to the form.

15 **BY MR. BUTLER:**

16 **Q** If the EBITDA in Exhibit D.2 for each of these
17 years were higher than it shows here, would that
18 result in a higher fair value calculated for the PPA?

19 **A Yes.**

20 **Q** Okay. Can I ask you to turn to page 6, page 6
21 in Exhibit 3.

22 **A Yes.**

23 **Q** Okay. And this shows -- excuse me -- one of
24 the things it shows in the table on page 6 are the --

25 **MR. WRIGHT:** Excuse me. Where are you?

ACCURATE STENOGRAPHY REPORTERS, INC.

1 percent, and that compares to -- I have a hard time
2 reading that. I guess it's --

3 **A** [REDACTED]

4 **Q** -- or something like that?

5 **A Yes.**

6 **Q** All right. Excuse me. So in each of those
7 years where one can compare actuals to what was
8 projected by Duff & Phelps, we were seeing a -- excuse
9 me -- a lower actual capacity factor than what had
10 been projected; is that right?

11 **A Yes.**

12 **Q** Okay. The lower -- the lower projected -- I'm
13 sorry, the lower --

14 **MR. WRIGHT:** Excuse me. We're getting some
15 fairly loud vibrations that the microphone is
16 picking up that's causing some difficulty hearing
17 down at this end.

18 **MR. BUTLER:** Sorry about that.

19 **MR. WRIGHT:** That's okay.

20 **BY MR. BUTLER:**

21 **Q** As you had discussed earlier on -- because of
22 the phenomenon of the relationship between energy
23 payments and cost of generation for Cedar Bay
24 facility, lower capacity factors are actually good in
25 terms of earnings for the facility; is that correct?

ACCURATE STENOGRAPHY REPORTERS, INC.

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1 **A Yes.**
2 MR. MOYLE: Object to the form.
3 THE WITNESS: Sorry.
4 BY MR. BUTLER:
5 **Q** Would you please comment on whether or not
6 lower capacity factors are likely to result in higher
7 or lower income for the Cedar Bay facility in a
8 particular year?
9 **A Lower capacity factors are likely to result in**
10 **higher income for the facility in a particular year.**
11 **Q** If you look out at the capacity factors that
12 were reflected in the Duff & Phelps valuation for the
13 years after 2014, the figures, it looks like they are
14 all ranking from a low of mid [REDACTED] up into the
15 [REDACTED]
16 Is that consistent with your current
17 expectation of capacity factors for the Cedar Bay
18 facility in the years from 2015 through 2024?
19 **A No.**
20 **Q** Do you expect -- your current expectation is
21 that the capacity factors would be lower or higher
22 than those values projected by Duff & Phelps?
23 MR. MOYLE: Object to the form.
24 BY MR. BUTLER:
25 **Q** You can answer the question.
ACCURATE STENOGRAPHY REPORTERS, INC.

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 **Q** That the -- [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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EXHIBIT D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of)
Arrangement to Mitigate Impact of) DOCKET NO. 150075-EI
Unfavorable Cedar Bay Power Purchase)
Obligation, by Florida Power &) FILED: July 10, 2015
Light Company.)
_____)

**AFFIDAVIT OF JACOB A. POLLACK IN SUPPORT OF
CEDAR BAY GENERATING COMPANY'S REVISED
EIGHTH REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jacob A. Pollack, who being first duly sworn, on oath deposes and says that:

1. My name is Jacob A. Pollack. I am over the age of 18 years old and I have been authorized by Cedar Bay Generating Company, Limited Partnership ("Cedar Bay") to give this affidavit in the above-styled proceeding on Cedar Bay's behalf and in support of Cedar Bay's REVISED Eighth Request for Confidential Classification. I have personal knowledge of the matters stated in this affidavit.

2. I am Vice President and Secretary for Cedar Bay. I am also Senior Vice President and General Counsel for Cogentrix Energy Power Management, LLC ("CEPM"), which (1) is an affiliate of Cedar Bay, and (2) employs S. Mark Rudolph and Clifford D.

Evans, who have been deposed in connection with this proceeding. My business address is 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273. I am responsible for all legal, corporate governance, and corporate records matters for Cedar Bay and CEPM.

3. Cedar Bay is seeking confidential classification for portions of the prefiled testimony and exhibits of Florida Industrial Power Users Group's witness Michael G. Lane as well as portions of the deposition transcripts of Clifford D. Evans and Stephen Mark Rudolph, as more specifically identified in Exhibits A and C of Cedar Bay's REVISED Eighth Request for Confidential Classification.

4. Cedar Bay is requesting confidential classification of this information because it is competitively sensitive confidential business information, in that it contains information concerning internal business plans, projected capital expenditures, confidential contractual negotiations, contractual arrangements, internal budget projections, financial forecasts, plant operations, and other competitively sensitive commercial information. The disclosure of this information to third parties would adversely impact Cedar Bay's and/or its affiliates' competitive business interests and otherwise harm Cedar Bay and/or its affiliates.

5. The information identified in Exhibit A and Exhibit C is intended to be and is treated as confidential by Cedar Bay and has not been disclosed to the public.

6. This concludes my affidavit.



Jacob A. Pollack
Vice President and Secretary
Cedar Bay Generating Company, LP
9405 Arrowpoint Boulevard
Charlotte, North Carolina 28273

SWORN TO AND SUBSCRIBED before me this 10th day of July, 2015, by Jacob A. Pollack who is personally known to me or who has produced _____ (type of identification) as identification and who did take an oath.


Notary Public, State of North Carolina

My Commission Expires:

My Commission Expires April 24, 2016

