

STEEL ■
HECTOR
■ DAVIS
INTERNATIONAL™

ORIGINAL

Steel Hector & Davis LLP
200 South Biscayne Boulevard
Suite 4000
Miami, FL 33131-2398
305.577.7000
305.577.7001 Fax
www.steelhector.com

Monica Ferradaz
305.577.2872
mf@steelhector.com

September 30, 2002

VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED- FPSC
CC SEP 30 PM 12:27
COMMISSION
CLERK

Re: Docket Nos. 020262-EI and 020263-EI

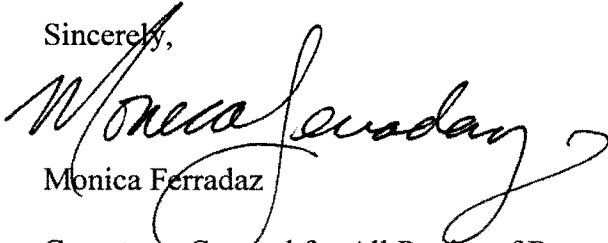
Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and seven (7) copies of FPL's Motion in Limine to Exclude New Testimony by Florida Partnership For Affordable Competitive Energy Witness Kenneth J. Slater.

As provided in the Certificate of Service, please note that electronic service of this Motion was provided on Friday, September 27, 2002, at approximately 7:00 P.M.

If there are any questions regarding this transmittal, please contact me at (305) 577-2872.

Sincerely,



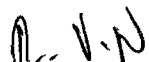
Monica Ferradaz

Copy to: Counsel for All Parties of Record

AUS
CAF
CMP
COM 5
CTR
ECR
GCL
OPC
MMS
SEC I
OTH

MIA2001 160654v1 4006.1312

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

10449 SEP 30 2002

003786
FPSC-COMMISSION CLERK

Miami West Palm Beach Tallahassee Naples Key West Buenos Aires Caracas London

Rio de Janeiro Santo Domingo São Paulo

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need)
for Proposed Electrical Power Plant in)
Martin County of Florida Power and)
Light Company)

DOCKET NO. 020262-EI

In re: Petition for Determination of Need)
For Proposed Electrical Power Plant in)
Manatee County of Florida Power and)
Light Company)

DOCKET NO. 020263-EI

Filed: September 30, 2002

**FLORIDA POWER & LIGHT COMPANY'S MOTION IN LIMINE
TO EXCLUDE NEW TESTIMONY BY FLORIDA PARTNERSHIP FOR
AFFORDABLE COMPETITIVE ENERGY WITNESS KENNETH J. SLATER**

Pursuant to Rules 28-106.204 and 28-106.303 of the *Florida Administrative Code*, Florida Power & Light Company ("FPL") moves to exclude from the hearing in this docket any opinion testimony by Kenneth J. Slater for the Florida Partnership for Affordable Competitive Energy ("PACE") that is new or different from Mr. Slater's prefiled testimony. In support, FPL states.

INTRODUCTION

1. On virtually the eve of the hearing in these proceedings, PACE's outside consultant, Mr. Slater, has advised FPL in deposition that his opinion will materially and substantially change from his prefiled testimony, and indeed that he may pursue entirely new lines of testimony.

2. The Commission has set forth a carefully crafted schedule for prefiled testimony for this case, the purpose of which is to avoid the type of "trial by ambush" that PACE seems

DOCUMENT NUMBER-DATE

10449 SEP 30 8

FPSC-COMMISSION CLERK

intent on pursuing. With respect to witness Slater, PACE prefiled his testimony by the applicable deadline, and FPL filed detailed rebuttal testimony.

3. PACE now seeks to move the target and have Mr. Slater recast his opinions and craft entirely new ones, with little or no advance notice to FPL and certainly without the opportunity for FPL to file testimony rebutting Mr. Slater's new opinions. The Commission should not allow such surprise tactics, nor depart from its longstanding practice of requiring parties to adhere to a schedule for prefiling testimony. It should therefore exclude any new or materially different opinion testimony by Mr. Slater.

BACKGROUND

4. Although FPL initiated these proceedings on the 22nd of March 2002, and although PACE was fully aware that FPL had done so, PACE waited until August 16, 2002, to file its petition to intervene in these proceedings and then amended its petition on August 22, 2002. Accordingly, the Public Service Commission (the "PSC" or the "Commission") did not grant PACE intervention until September 4, 2002. *See Order No. PSC-02-1205-PCO-EI*. Simply put, PACE intervened late, was accordingly allowed to intervene late, and now must take these proceedings as it found them. *See Rule 25-22.039, F.A.C.*

5. Prefiled direct testimony for all intervenors' witnesses was due to be filed in the Commission on August 20, 2002, a full four weeks after the Prehearing Officer issued the Scheduling Order on July 23, 2002. *See Order No. PSC-02-0992-PCO-EI (the "Scheduling Order")* at 9. This date for prefiling testimony was agreed to by PACE's attorney, while he was representing Reliant Energy, before FPL issued its Supplemental RFP in April. Pursuant to the Scheduling Order, on August 20, 2002, PACE filed the Direct Testimony of Kenneth J. Slater.

On September 11, 2002, FPL filed the testimony of Steven R. Sim, William E. Avera, William L. Yeager and Alan S. Taylor, rebutting Mr. Slater's prefiled testimony.

6. On September 24, 2002, FPL deposed Mr. Slater. During his deposition, Mr. Slater acknowledged receiving the compact disc containing confidential bid information and EGEAS runs on September 23, 2002, and explained that upon his review of the disc he will likely modify his prefiled testimony to include new opinions. He also indicated that his new opinions could likely be substantially different than the opinions provided in his prefiled testimony. Mr. Slater further indicated that he could not provide FPL with his opinions until "about an hour before [he goes] on the witness stand." *See Transcript of Deposition of Kenneth J. Slater at 22:11-17, and generally at 18:19-24:19, attached as Exhibit A.*

7. Mr. Slater's comments at deposition were the first indication to FPL of Mr. Slater's intent to update his testimony. No such intent was suggested in PACE's responses to FPL's written discovery requests. In fact, when FPL asked PACE in its first set of interrogatories to identify all witnesses PACE anticipated calling and provide a description of such testimony, PACE's response was limited to the facts and conclusions set out in Mr. Slater's pre-filed testimony and exhibits. *See PACE's Response to FPL's First Set of Interrogatories, Response to Interrogatory No. 1, attached Exhibit B.*

8. Once it was aware of Mr. Slater's intent to change his testimony, FPL requested that Mr. Slater make himself available for a subsequent deposition prior to the hearing. But as of Friday, September 27, 2002, (three business days before the hearing), PACE still had not committed to making Mr. Slater available for a subsequent deposition, nor would PACE commit to disclosing whether Mr. Slater would be offering any new opinions at the hearing or what those new opinions would be.

ARGUMENT

9. The Commission has held that “[p]refiled testimony affords parties, the Commission Staff, and the Commission the opportunity to review and prepare for the hearing.” *See In re Application for Amendment of Certificates in Lake County by JJ’s Mobile Homes, Inc., Order No. PSC-95-0208-PCO-WS (“Lake County”).* Consistent with this concern, the Prehearing Officer in these proceedings required in the Scheduling Order that “[e]ach party shall prefile, in writing, all testimony that it intends to sponsor Failure to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.” *See Scheduling Order* at 6.

10. PACE has decided to completely disregard this requirement. Although it prefiled testimony for Mr. Slater, that testimony will be largely mooted by the new options and analyses he intends to develop and disclose at trial. Those opinions will likely be very different from those reflected in Mr. Slater’s prefiled testimony and, indeed, will likely reflect entirely new lines of analysis. There is little difference between this tactic and CPV’s misguided attempt to introduce new witnesses for the first time at hearing, which the Prehearing Officer has determined that CPV may not do. *See Order No. PSC-02-1282-PCO-EI.* In either case the opportunities for full discovery and careful development of prefiled rebuttal testimony are lost due to abusive trial tactics.

11. PACE may argue that special circumstances apply because it intervened so late. But this is a problem of PACE’s own creation. There is no reason that PACE could not have intervened sooner, conducted the discovery it needed, and included all of Mr. Slater’s opinions in his prefiled testimony. Instead, PACE and its members created a situation of their own accord whereby Mr. Slater was not able to form his opinions until the eve of trial with the “unfortunate”

result of preventing FPL from having the opportunity for rebuttal and counter analysis that PACE was afforded with respect to FPL's testimony.

12. As confirmed by its executive director, Mr. Green, PACE is an association of six member companies: Constellation Power, Inc ("Constellation"); Calpine Eastern Corp. ("Calpine"); PG&E National Energy Group ("PG&E"); Mirant Americas Development, Inc. ("Mirant"); Reliant Energy Power Generation Inc. ("Reliant"); and Competitive Power Ventures, Inc. ("CPV"). *See Amended Petition ¶ 4; Transcript of Deposition of Michael Green at 55:5-16*, attached as Exhibit C. Four of the six either are, or until recently were, intervenors in these proceedings in their own right. Another PACE member, Reliant Energy, while a bidder in FPL's Initial RFP and at one time a party to these proceedings, did not submit a bid in response to the Supplemental RFP and subsequently withdrew voluntarily from the proceedings.¹

13. PACE may also argue that Mr. Slater must be allowed to change his opinions at this late date because he only recently has had access to the information on which his opinions are based. But this argument too is belied by the facts. On September 12, 2002, PACE entered into a Confidentiality Agreement with FPL. On September 13, 2002, PACE entered into a Limited Sublicense and Nondisclosure Agreement regarding EPRI's EGEAS model and PACE's counsel indicated that Mr. Slater did not intend to run the EGEAS model but wanted to review the operating manual. Counsel for FPL informed PACE's counsel on September 16 or 17, 2002 that the sublicense agreement had been executed by FPL and would be forwarded to PACE's counsel but that PACE could go ahead and share the EGEAS materials with Mr. Slater.

¹ In essence, PACE replaced Reliant Energy in these proceedings. As disclosed in PACE's interrogatory responses, **Reliant Energy is funding PACE's legal expenses in these proceedings.** *See PACE's Response to FPL's First Set of Interrogatories, Response to Interrogatory No. 9, 12, and 16, attached Exhibit B.*

14. Moreover, PACE member CPV, a current intervenor, executed the agreement in July 2002.² Consistent with its execution, confidential bid information was immediately forwarded to CPV, and inquiry was made as to whether CPV desired to execute the EGEAS sublicense agreement.

15. Thus, either through PACE member CPV, or through other PACE members which have signed the confidentiality agreement and either did sign or could have signed the EGEAS sublicense agreement, Mr. Slater could have been provided confidential bid information, EGEAS input and output results and access to EGEAS far earlier than it appears he was given access. Withholding access to the information from Mr. Slater was a trial strategy by counsel for PACE. Regardless of whether it was an attempt to frustrate potential discovery or simply a function of slow decision making by PACE regarding intervention, it is clear that Mr. Slater could have been given access to FPL data earlier and prefiled testimony so that he would not been in the position of attempting an eleventh-hour substantive change to his testimony.

16. Were the Commission to allow Mr. Slater to testify to new opinions, FPL would be prejudiced. Among other things, FPL would be unable to prepare rebuttal testimony, to prepare its own witnesses, or to prepare an adequate cross examination of the new opinion testimony. In short, FPL would be unable to prepare properly for these proceedings. Florida courts, like the Commission, have recognized that parties should not be prejudiced by surprise tactics of their adversaries. *Pipkin v. Hamer*, 501 So. 2d 1365, 1370 (Fla. 4th DCA 1987) (“[W]e think it clear that here plaintiffs would have been prejudiced by admission into evidence of last minute expert opinion . . .”). The Commission should not permit FPL to be prejudiced by

² CPV Cana executed the confidentiality agreement on August 5, 2002 and FPL executed same on August 9, 2002. CPV Cana and Gulfcoast executed a copy of the confidentiality agreement on July 1, and from that point forward FPL provided confidential documents to CPV pursuant to the agreement.

PACE's surprise tactics, and should accordingly exclude any new or materially different opinion testimony by Mr. Slater.³

CONCLUSION

PACE should not be allowed to advance expert opinion testimony that FPL has not had adequate time to review and rebut. Although Mr. Slater can be allowed to testify, he should be precluded from testifying as to any new or different opinions than those prefiled. Wherefore, FPL requests that this Commission exclude any new or different expert opinion testimony by Kenneth J. Slater than that provided in the prefiled testimony.

Respectfully submitted this 30th day of September 2002.

R. Wade Litchfield, Esq.
Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: 561-691-7101

Steel Hector & Davis LLP
Attorneys for Florida Power & Light
Company
200 South Biscayne Boulevard
Suite 4000
Miami, Florida 33131-2398
Telephone: 305-577-7000
Facsimile: 305-577-7001

By: 

Gabriel E. Nieto
Florida Bar No. 47559
Monica Ferradaz
Florida Bar No. 0523844

³ FPL is not requesting that Mr. Slater's testimony be excluded altogether. Instead, FPL seeks to exclude any new or different opinion testimony than that in Mr. Slater's prefiled testimony. *Keller Indus. v. Volk*, 657 So. 2d 1200, 1203 (Fla. 4th DCA 1995) (holding that, where an expert had no opinion when deposed but formulated an opinion at trial, the expert would be precluded from testifying about the subject of his opinion formulated at trial but would not be precluded from testifying altogether). Accordingly, FPL's request would permit Mr. Slater to testify but not as to any new opinions that FPL did not have adequate time to review and rebut.

CERTIFICATE OF SERVICE
Docket Nos. 020262-EI and 020263-EI

I HEREBY CERTIFY, that a copy of Florida Power & Light Company's Motion In Limine To Exclude New Testimony By Florida Partnership For Affordable Competitive Energy Witness Kenneth J. Slater, was served electronically (*) on the 27th day of September, 2002, and by United States Mail (**) or hand delivery on September 30, 2002 to the following:

Martha Carter Brown, Esq.*
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
mbrown@psc.state.fl.us

Jon C. Moyle, Jr., Esq.*
Cathy M. Sellers, Esq.
Moyle Flanigan Katz Raymond &
Sheehan, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
jmoylejr@moylelaw.com

D. Bruce May, Jr., Esq.*
Karen D. Walker, Esq.
Holland & Knight LLP
315 S Calhoun Street, Ste. 600
Tallahassee, Florida 32301
dbmay@hklaw.com

R.L. Wolfinger**
South Pond Energy Park, LLC
c/o Constellation Power Source
111 Market Place, Suite 500
Baltimore, Maryland 21202-7110

Michael B. Twomey, Esq.*
Post Office Box 5256
Tallahassee, Florida 32314-5256
miketwomey@talstar.com

Ernie Bach, Executive Director* **
Florida Action Coalition Team
P.O. Box 100
Largo, Florida 33779-0100
ernieb@gte.net

John W. McWhirter* **
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, P.A.
400 North Tampa Street, Suite 3350
Tampa, Florida 33602
jmcwhirter@mac-law.com

Vicki Gordon Kaufman, Esq.*
Timothy J. Perry, Esq.
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
vkaufman@mac-law.com

Joseph A. McGlothlin, Esq.*
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
jmclglothlin@mac-law.com

By: 

Monica Ferradaz, Esq.

EXHIBIT A

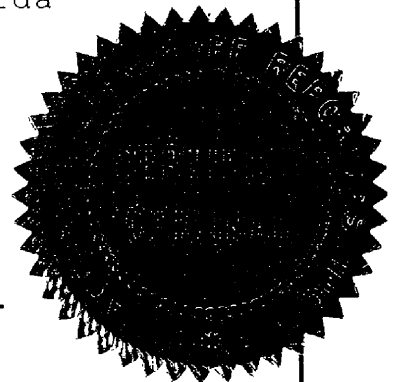
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for)
Determination of Need for)
Proposed Electrical Power)
Plant in Martin County of) DOCKET NO. 020262-EI
Florida Power and Light)
Company,)
-----)

In re: Petition for)
Determination of Need for)
Proposed Electrical Power)
Plant in Manatee County of) DOCKET NO. 020263-EI
Florida Power and Light)
Company,)
-----) Filed: 9-11-02

DEPOSITION OF: KENNETH J. SLATER
TAKEN ON BEHALF OF: Florida Power & Light
DATE: Tuesday, September 24, 2002
TIME: Commenced at 12:35 p.m.
Concluded at 4:50 p.m.
LOCATION: 215 South Monroe
Tallahassee, Florida
REPORTED BY: TERRY WILHELMI, CSR
Notary Public in and for
the State of Florida
at Large

ACCURATE STENOGRAPHY REPORTERS, INC.
100 Salem Court
Tallahassee, Florida 32301
850/878-2221



1
2 APPEARANCES:

3
4 FOR FLORIDA POWER & LIGHT:

5 GABRIEL E. NIETO, ESQUIRE
6 Steel, Hector & Davis LLP
200 South Biscayne Boulevard
Miami, Florida 33131

7
8 FOR FLORIDA PACE:

9 JOSEPH A. MCGLOTHLIN, ESQUIRE
McWhirter, Reeves, McGlothlin, et al.
117 South Gadsden Street
10 Tallahassee, Florida 32301

11
12 FOR FACT: (by phone)

13 MICHAEL B. TWOMEY, ESQUIRE
P.O. Box 5256
14 Tallahassee, Florida 32314-5256

15 FOR FLORIDA PUBLIC SERVICE COMMISSION: (by phone)

16 MARTHA CARTER BROWN, ESQUIRE
Legal Division, PSC
17 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

18 * * * * *

I N D E X

6	WITNESS	PAGE
7	KENNETH J. SLATER	
8	Direct Examination by Mr. Nieto	4
	Cross Examination by Ms. Brown	145
9	Cross Examination by Mr. McGlothlin	148
	Redirect Examination by Mr. Nieto	154
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21	CERTIFICATE OF OATH	157
	CERTIFICATE OF REPORTER	158
22	ERRATA SHEET	159

1 question?

2 A I only got permission to use the manual this
3 morning, EGEAS manual, so starting today, I could not
4 possibly translate all that EGEAS data into PROMOD
5 data and run analyses, so the answer is no.

6 Q You prefiled testimony consisting of 14
7 pages in this proceeding, correct?

8 A That's right.

9 Q To your knowledge, is everything in your
10 testimony still true and correct?

11 A There is probably one piece that's not.

12 Q Okay, what would that be?

13 A Where I say there's been a dozen -- that if
14 you remove the equity penalty or whatever it's
15 called, that there is a dozen alternatives that are
16 better than the old FPL alternative, because I
17 understand that a number of alternatives have been
18 withdrawn.

19 Q Have you gone back and revised your
20 testimony?

21 A I haven't revised my testimony for that. It
22 is still true relative to the material I examined,
23 but in fact it may not be true because the material I
24 examined is out of date.

25 Q Right, the facts have changed on you

1 somewhat?

2 A The facts have changed, therefore, I would
3 have to say that that is not as reported in my
4 testimony anymore. It used to be, but it's not
5 anymore.

6 Q Is that something that you plan to correct
7 when you testify?

8 A Sometime between now and next week, I shall
9 -- the 2nd is next Tuesday, is that right?

10 Q Yes.

11 A Okay. I shall have a look and see, readjust
12 the numbers of projects that I see in certain groups,
13 based upon the revised exhibit by Simms.

14 Q At this point, do you have any idea of what
15 your revised testimony will say? I realize that you
16 haven't done this yet completely.

17 A Well, the one thing that I did notice at
18 lunchtime was that there was at least one alternative
19 that came within \$2 million of the best alternative
20 in FPL's analyses, if you removed the equity penalty,
21 but that's just a first look, I haven't gone through
22 it in detail, but I shall.

23 Q Fair enough. To your knowledge, at this
24 point, taking into account the changing facts if you
25 will of the E.P.'s being dropped, is there any

1 alternative that's more cost effective in the FPL
2 plan, even removing the equity penalty issue?

3 A Removing the equity penalty issue, there may
4 well be, because as I have also expressed in my
5 testimony, I don't like some of the FPL data.

6 Q Okay. So if I understand what you're saying
7 correctly, your view that there may be something more
8 cost effective is based on a combination of removing
9 the equity penalty and then revising the FPL data?

10 A Yes.

11 Q Are there any other changes that you intend
12 on making to your testimony?

13 A That's not a change really, it's not a
14 different opinion, the opinions are still in here.

15 Q I wasn't being pejorative by saying changes,
16 are there any other updates or modifications or
17 whatever adjective you want to call them?

18 A Well, I don't know, because I haven't yet
19 had a look for certain things that I want to see in
20 FPL's EGEAS data and that's something I'll be doing
21 during the week.

22 Q What will be looking at specifically in
23 FPL's EGEAS data?

24 A How the FPL new alternatives have been
25 modeled and how the bids have been modeled.

1 Q Do you consider -- I'm just trying to get a
2 feel for what the changes may be, do you consider
3 that a new line of testimony or a potential revision
4 to something you have already said?

5 A It's probably just an extension of something
6 I have already said. The same areas -- I'm looking
7 at the same areas. For example, I'll give you an
8 example, I have talked about the variable O & M
9 issue, okay, I will be wanting to see all of the
10 O & M costs, total O & M, not just variable O & M,
11 there's variable O & M and there's fixed O & M in
12 EGEAS. I'll be looking at both of those and the
13 combination of those when I look at FPL's resources
14 and the bid alternatives.

15 Q Am I correct that as you sit here today, you
16 can't tell me what those changes or modifications
17 will be?

18 A I haven't had a look at the data yet.

19 Q That's what I was getting at.

20 A But I'll just tell you, that's one of the
21 areas I'll be looking at. Other areas I'll be
22 looking at is the heat rate and capacity state
23 modeling for the alternatives. I'll be looking at
24 that as well.

25 Q Anything else you will be looking at?

1 A Probably looking at fuel costs as well.

2 Q So we have got the variable O & M, the heat
3 rate and capacity state modeling and fuel costs,
4 anything else beyond that?

5 A The total O & M situation, if you like, to
6 see where the O & M is. It's got to be in one place
7 or the other but, yeah, O & M generally, heat rates,
8 capacity states, fuel costs.

9 Q Anything else?

10 A I can't think of anything at the moment.

11 Q When do you anticipate having these analyses
12 or these evaluations completed?

13 A Oh, about an hour before I go on the witness
14 stand.

15 Q Is it possible for you to complete them at
16 some point before you go on the witness stand?

17 A I doubt it. Very seriously, I doubt it. I
18 have other testimony due to be filed on -- well, an
19 expert report due on the 11th that I have got to do a
20 fair bit of work on and some testimony that's got to
21 be ready on the 16th.

22 Q Are you planning --

23 A I don't have a lot of alternatives except to
24 just chug along and do it as I can.

25 Q Just so I understand your intent of

1 scheduling of your activities, do you intend to look
2 at these issues sequentially or all at once?

3 A I have no intention of how I look at them at
4 all at this point in time.

5 Q Do you know when you would begin looking at
6 them?

7 A I'll probably begin on Thursday.

8 Q At this point, you have all the data that
9 you would need to do that analysis, correct?

10 A I have a disk of data. I don't know exactly
11 what's on that disk at this point. I don't even know
12 whether I'll see any bid -- I suppose I'll see bidder
13 alternatives with just letters after them, describing
14 them, I assume I will see that. If I see that, then
15 I will have enough data.

16 MR. NIETO: Let's go off the record for a
17 second.

18 (Discussion held off the record.)

19 BY MR. NIETO:

20 Q At this point as you sit here today, you are
21 not in a position to state whether you believe that
22 any one proposal is more cost effective than another,
23 because you haven't reviewed the data yet, correct?

24 A That's right. That's why there was a
25 sentence in my testimony which said that the best

1 alternative may not have been chosen. That's why, I
2 haven't looked at that data yet.

3 Q Is it your intention to offer an opinion on
4 that issue?

5 A Not to say that alternative P-42 is the best
6 thing going or something like that, but I may well be
7 able to offer an opinion to say that I don't think
8 that the old -- for example, this is just a for
9 example, I may be able to say that I don't think the
10 old FPL alternative is in fact better than
11 alternative so and so which contains this FPL unit in
12 this bid offer. I may be in a position to say
13 something like that, that I don't think it is.

14 Q And, again, that's something that you won't
15 know until you complete your --

16 A Until I look at the data and see, as I say,
17 see the capacities and heat rates and all that have
18 been claimed, as well as the O & M's that have been
19 claimed in that.

20 Q We talked very briefly a few minutes ago
21 regarding start-up costs and in your testimony, you
22 indicate that it's your opinion that start-up costs
23 were not properly or adequately, in your opinion,
24 reviewed. Why is it important to review such costs?

25 A Combined cycle units are quite susceptible

EXHIBIT B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need)
for Proposed Electrical Power Plant in)
Martin County of Florida Power and)
Light Company)

DOCKET NO. 020262-EI

In re: Petition for Determination of Need)
For Proposed Electrical Power Plant in)
Manatee County of Florida Power and)
Light Company)

DOCKET NO. 020263-EI

**FLORIDA PARTNERSHIP FOR AFFORDABLE COMPETITIVE ENERGY'S
RESPONSES TO FLORIDA POWER & LIGHT COMPANY'S
FIRST SET OF INTERROGATORIES (NOS. 1-30)**

The Florida Partnership for Affordable Competitive Energy (PACE), pursuant to Rule 28-106.206, Florida Administrative Code and Rules 1.340 and 1.280(b), Florida Rules of Civil Procedure, hereby provides the following Responses to Florida Power & Light Company's First Set of Interrogatories to the Florida Partnership for Affordable Competitive Energy (Nos. 1 – 30).

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all fact witnesses you anticipate calling in this proceeding, and for each witness provide a description of the facts and conclusions to which each witness will testify.

RESPONSE: PACE will call Kenneth J. Slater as a witness. The facts and conclusions to which Mr. Slater will testify are set out in his testimony and exhibits filed in this matter on August 20, 2002.

INTERROGATORY NO. 7: Please list the names and addresses of each PACE officer in office during the past three years, the term of such office, how long each officer has held the relevant position, and explain how each officer came into office.

RESPONSE: PACE has objected to this interrogatory. Notwithstanding that objection and without waiving it, PACE states the organization was formed in 2001. The Board of Directors elected the first officers, who were:

Mike Green – President
Tim Eves – Vice President
Frank Stallworth – Secretary/Treasurer

During the third quarter of 2001, Frank Stallworth resigned as Secretary/Treasurer; the Board of Directors elected Leah Gibbons to that office.

In May of 2002, Duke Energy North America, LLC withdrew from the organization and Mike Green resigned as President. The Board elected Tim Eves as President and Rick Wolfinger as Vice President. Leah Gibbons remained Secretary/Treasurer.

INTERROGATORY NO. 8: Has PACE financially assisted any intervenor, current or former, in these proceedings, at any time during these proceedings? If so, identify the intervenor, current or former, and describe the financial relationship, its history, its current status, and the type and total amount of financial assistance.

RESPONSE: PACE has objected to this interrogatory. PACE continues to believe the question is an inappropriate use of discovery and is objectionable. Notwithstanding that objection and without waiving it, PACE states the answer is “no.”

INTERROGATORY NO. 9: Please describe PACE’s financial condition, including but not limited to, a detailed description of each source of funding for PACE, including (a) general funding and (b) funding for PACE’s pending intervention in these proceedings.

RESPONSE: PACE has objected to this interrogatory. Notwithstanding the objection, and without waiving it, PACE answers as follows:

Each member is required to pay annual dues, which are used to pay general administrative expenses and fund some basic activities. From time to time, PACE undertakes special projects. While the decision to engage in a special project must be made by PACE's Board, participation by members in the funding of special projects established by the Board is voluntary, and funding for a special project approved by the Board may come from as few as one or as many as all of PACE's members. PACE's participation in this proceeding is an example of a special project.

INTERROGATORY NO. 10: Please list the approximate percentage of PACE's budget that is derived from each of the funding sources listed in Interrogatory No. 6.

RESPONSE: PACE has objected to this interrogatory.

INTERROGATORY NO. 11: Please discuss in detail the history of PACE's involvement in PSC proceedings and other types of regulatory proceedings over the last five years.

RESPONSE: Pursuant to a conversation with counsel for FPL, during which counsel modified the scope of Interrogatory 11, PACE answers as follows:

PACE has been involved in Docket No. 020398-EQ, *Proposed Revisions to Rule 25-22.082, F.A.C., Selection of Generating Capacity*.

INTERROGATORY NO. 12: Please describe any conference, meeting, or communication in which PACE's membership discussed, voted or approved PACE's pending intervention in these proceedings.

RESPONSE: PACE has objected to this interrogatory. Notwithstanding that objection, and without waiving it, PACE states that at approximately the time when FPL filed its petition for determination of need, PACE's Board requested and received a memorandum of law pertaining to PACE's ability to intervene as a party. In July of 2002, the PACE Board considered a proposal for intervention and comprehensive participation. It was not adopted due to cost considerations. When PACE member Reliant Energy offered to provide funding for a more focused PACE intervention and presentation, the Board discussed the matter during a conference call on August 15, 2002. Five members voted in favor of intervening. The sixth member, Calpine, was not represented on the call; Calpine subsequently indicated it was not in favor of the intervention.

INTERROGATORY NO. 13: Please describe in detail each and every way in which PACE believes that FPL has failed to demonstrate that the proposed Manatee and Martin units are the most cost-effective means of meeting FPL's capacity needs.

RESPONSE: PACE has objected to this interrogatory. Notwithstanding that objection and without waiving it, PACE states:

- (a) FPL has used an analytical tool (EGEAS) which does not model unit start-up and shut-down cycles and has a less than satisfactory ability to model unit commitment;
- (b) FPL's "independent" analyst has relied on results from the same EGEAS model;
- (c) FPL's treatment of variable O&M costs does not apply equally to FPL options and bid options;
- (d) FPL compares firm bids with non-firm proposals regarding the Manatee and Martin units;

(Because PACE's witness has focused on FPL's evaluation, the above answer is not intended to be exhaustive.)

INTERROGATORY NO. 16: Please explain how and when PACE engaged the services of Kenneth J. Slater, including but not limited to, the basis for his compensation and the members, persons and/or entities responsible for compensating him.

RESPONSE: At the same time PACE's Board voted to intervene, it voted to engage Mr. Slater and sponsor his testimony. Mr. Slater is being compensated on the basis of his firm's standard hourly rate, subject to a cap. PACE is responsible for compensating Mr. Slater's firm. PACE member Reliant Energy has agreed to provide the necessary funds to PACE for this purpose.

INTERROGATORY NO. 17: Is Kenneth J. Slater's testimony offered as expert testimony on the subject of corporate or project finance, utility capital structure, cost of capital, or other related subject? If so, identify and describe in detail any and all relevant qualifications and expertise possessed by Mr. Slater.

RESPONSE: Mr. Slater does not hold himself out as an expert in financial matters. However, he has relevant education, in that his M.A.Sc. degree in Management Sciences is akin to a very technical MBA. He also has worked at a senior staff level at a utility regulatory commission (the Ontario Energy Board). Further, in his consulting activities he has often dealt with utility financial matters, including performing and presenting information to rating agency representatives.

INTERROGATORY NO. 18: Please explain and describe in detail any and all risks to FPL and its customers of non-performance by a supplier under a power purchase contract.

EXHIBIT C

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of
Need for Proposed Electrical Power Plant
in Martin County of Florida Power & Light
Company

In re: Petition for Determination of
Need for Proposed Electrical Power in
Manatee County of Florida Power & Light
Company

DEPOSITION OF MICHAEL GREEN

Tuesday, September 17, 2002
801 North Magnolia Avenue, Suite 210
Orlando, Florida 32803
12:33 p.m. - 2:20 p.m.

APPEARANCES:

GABRIEL E. NIETO, ESQUIRE
Steel Hector & Davis LLP
215 South Monroe Street, Suite 601
Tallahassee, Florida 32301-1804

JOSEPH A. MCGLOTHLIN, ESQUIRE (telephonically)
McWhirter, Reeves, McGlothlin, Davidson, Decker,
Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

BILL HOLLIMAN, ESQUIRE (telephonically)
Moyle Flanigan Katz Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301

(Note: There could have been various other parties
participating telephonically that did not announce their
appearance during the proceedings.)

I N D E X

TESTIMONY OF MICHAEL GREEN

Direct Examination by Mr. Nieto.....	3
CERTIFICATE.....	69
ERRATA.....	71

E X H I B I T S

Exhibit No. 1.....	37
Exhibit No. 2.....	66

1 MR. NIETO: Why don't I ask the question and
2 then at least we'll have them on the record and we can
3 go -- we can evaluation these issues question by
4 question. That may be the best way.

5 And the first question was who are Pace's
6 current members to your knowledge?

7 THE WITNESS: And I'm going to answer that
8 question. Calpine (phonetic) Corporation, Merit,
9 Competitive Power Adventures, Constellation Energy,
10 National Energy Group, Reliant.

11 Is that six?

12 BY MR. NIETO:

13 Q: That is six, yes.

14 Is an affiliate of PG&E, or Pacific Gas &
15 Electric, a member at this point?

16 A: That is National Energy Group. Yes.

17 Q: Were all six of these members founding members of
18 Pace?

19 A: No.

20 Q: To your knowledge, is Pace funding any of its
21 members participations in these proceedings?

22 MR. MCGLOTHLIN: I object to the question and
23 instruct the witness not to answer. We have an
24 objection to discovery in another form, and I believe
25 it's inappropriate and -- (inaudible) -- for him to