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October 24, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

VIA FEDERAL EXPRESS

001064-EI

In re: Petition for Determination of Need of Hines Unit 2 Power Plant
Docket No: 00164-EI

Dear Ms. Bayo:

Florida Power Corporation ("FPC" or the "Company") is filing herewith an original and fifteen (15) copies of Appendix to Florida Power Corporation's Motion for Reconsideration of the Prehearing Officer's Order Granting Its Motion to Strike Staff's Preliminary Issue Number 6 and Denying Its Motion to Strike the Direct Testimony of Billy R. Dickens.

We request you acknowledge receipt and filing of the above by stamping the additional copy of this letter and returning it to me in the self-addressed, stamped envelope provided.

If you or your Staff have any questions regarding this filing, please contact me at (727) 821-7000.

Very truly yours,

Gary L. Sasso
Gary L. Sasso
gs

- APP _____
- CAF _____
- CMP 1
- COM 3
- CTR _____
- ECR 3 Enclosure
- LEG 2
- OPC _____
- PAI 1
- RGO _____
- SEC 1
- SER 1
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DOCUMENT NUMBER-DATE

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for Determination)
of Need of Hines Unit 2 Power Plant.)
)
_____)**

Docket No.: 001064-EI
Submitted for Filing: October 24, 2000

**APPENDIX TO
FLORIDA POWER CORPORATION'S MOTION FOR RECONSIDERATION
OF THE PREHEARING OFFICER'S ORDER GRANTING ITS MOTION TO STRIKE
STAFF'S PRELIMINARY ISSUE NUMBER 6 AND DENYING ITS MOTION
TO STRIKE THE DIRECT TESTIMONY OF BILLY R. DICKENS**

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DOCUMENT NUMBER-DATE
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PPSC-RECORDS/M PORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need of Hines Unit 2 Power Plant.)
)
_____)

Docket No.: 001064-EI

Submitted for Filing: October 3, 2000

**FLORIDA POWER CORPORATION'S MOTION
TO STRIKE STAFF'S PRELIMINARY ISSUE NUMBER 6 AND
THE DIRECT TESTIMONY OF BILLY R. DICKENS**

Florida Power Corporation ("FPC" or the "Company"), pursuant to Florida Rule of Civil Procedure 1.140(f) and Rule 28-106.204, F.A.C., respectfully moves the Florida Public Service Commission ("PSC" or the "Commission"), to strike Staff's preliminary issue number 6 and the Direct Testimony of Billy R. Dickens on the grounds that the issue and the testimony supporting that issue are immaterial and impertinent to any issue properly before the Commission in this need determination proceeding.

Staff asks the Commission to take up under preliminary issue number 6 the unknown impact on ratepayers of potential deregulation at some point in time in the future if the costs of the Hines 2 power plant are placed in FPC's rate base over the course of the expected life of the Hines 2 plant. As Staff's sole witness, Mr. Dickens, put it, he will "address issue 6" and explain the "potential risks for Florida ratepayers" resulting from economic uncertainty "due to the advent of electric generation restructuring."

With all due respect to the Commission Staff and Mr. Dickens, this is a matter outside the Commission's jurisdiction in this proceeding and wholly within the realm of the Florida Legislature. Consideration of this alleged "issue" as a matter of "cost recovery" would further violate the well established, fundamental principle that hindsight review of a utility's cost

decisions is improper, even if the Commission had jurisdiction to consider this “issue” and this need determination proceeding was the appropriate forum, which is not the case.

FPC objected to this issue for these reasons when Staff raised it for the first time at the Issues Conference. But Staff refused to withdraw the issue, necessitating this motion.

For all of the foregoing reasons, as more fully explained below, the Commission should grant FPC’s motion and strike Staff’s preliminary issue number 6 and Staff’s testimony on that issue from this proceeding.

SUPPORTING MEMORANDUM

A Need Determination Proceeding is Not the Proper Forum to Address Policy Issues.

Staff’s preliminary issue number 6 is not one of the specific statutory criteria that the Commission must consider in this need determination proceeding. It is a “policy” issue. This is made clear by the testimony of Staff’s sole witness on issue number 6, Mr. Billy R. Dickens of the Commission’s Bureau of Policy Analysis. As noted above, he purports to explain the potential risks for Florida ratepayers -- albeit in this case only FPC’s ratepayers are singled out -- from the alleged “advent of electric generation restructuring.” (Dickens Testimony, p. 2). The Commission does not need to reach the issue of whether it has jurisdiction to consider this particular “policy” issue -- which it does not --- because the Commission has long recognized that a need determination proceeding is an inappropriate forum to address such “policy” issues. For this reason alone, the Commission should strike Staff’s preliminary issue number 6 and the accompanying testimony of Mr. Dickens on this issue.

In the case of FPC’s last petition for a determination of need for the Polk County units 1 through 4, now called Hines 1, the Commission was asked to consider (i) whether FPC’s self-

build generation option must meet the same cost and performance obligations that FPC imposed on Qualifying Facilities (“QFs”) and (ii) whether FPC was obligated as a matter of law to purchase QF capacity in lieu of its self-build option. The Commission deferred ruling on such “policy” questions, explaining that they were “beyond the scope of this proceeding” and “more properly addressed in a generic rulemaking docket or ratemaking proceeding.” In re: Petition for Determination of Need for a Proposed Electrical Power Plant and Related Facilities, Polk County Units 1-4, by Florida Power Corp., Order No. 25805, Docket No. 910759-EI, February 25, 1992. (emphasis added).

Likewise, the Commission denied Florida Power & Light Company’s (“FP&L”) rehearing motion in the need determination proceeding for FP&L’s Martin units 3 and 4 in part because “the appropriate forum to discuss [the cogeneration issue raised by FP&L] is in the cogeneration rules docket, planning hearing docket, and conservation/cogeneration programs docket.” In re: Florida Power and Light Co., Order No. 23080, Docket No. 890974-EI, June 15, 1990. The Commission explained that “[t]hese are the dockets in which it is appropriate for this body to discuss and resolve the often conflicting policy issues surrounding cogeneration.” (Id.).

The Commission Staff has taken the same position. In the need determination proceeding for FPC’s Polk County Units 1 through 4 (Hines 1), Staff rejected Destec’s objection to the conclusion that the issue whether FPC should be held to the same cost and performance standards with its self-build option that it imposed on QFs was beyond the scope of the need determination proceeding. Staff was clear that it was inappropriate to consider this “policy” issue in such a proceeding.

As discussed in the Recommended Order, issues related to the recovery of costs incurred in the construction of power plants are considered in a utility’s rate case.

If Destec is asking that the Commission change its regulatory policy to require utilities to be held to the same cost and performance standards as that of QFs, this would have to be done in rulemaking.

Order No. 25805, Docket No. 910759-EI, February 25, 1992. (emphasis added).

As both the Commission and the Commission Staff have held, a need determination proceeding is an inappropriate forum to consider changes in regulatory policy. Rather, proposed “policy” changes “would have to be done in rulemaking.” (Id.). The past positions by the Commission and Commission Staff that such issues should not be considered in a need determination proceeding reflects the directive that agencies must use rulemaking procedures to promulgate important regulatory policy. See, e.g., Department of Highway Safety and Motor Vehicles v. Schluter, 705 So. 2d 81, 86 (Fla. 1st DCA 1997) (noting that the 1991 legislature had “expressed, in no uncertain terms, its selection of rulemaking over adjudication as the primary means of policy development”); McCarthy v. Dept. of Ins. and Treasurer, 479 So. 2d 135, 137 (Fla. 2d DCA 1985) (reversing department’s order rescinding a certification for failure to comply with prerequisites set forth in department letter because the department “cannot avoid the rulemaking requirements ... by merely adopting non-rule policies”).

It is beyond dispute that the “reasonableness” of future cost recovery because of the alleged “advent of electric generation restructuring” raised by Staff’s preliminary issue number 6 contemplates changes to existing regulatory policy. Setting aside for the moment the fact that this is a policy matter for the Florida Legislature to consider --- as made evident by the appointment and operation of a Study Commission on this very issue --- the impact of restructuring affects all public utilities, not just FPC, and would involve a host of decisions that must be made strictly on “policy” grounds. FPC’s petition for a determination of need for a

single power plant clearly is not the appropriate forum for the resolution of such a “policy” issue --- as the Commission and its Staff have consistently ruled in the past. There is no good reason for the Commission and its Staff to deviate now from their prior holdings. Accordingly, FPC’s motion to strike Staff’s preliminary issue number 6 and its accompanying testimony should be granted, if for no other reason than that this is not the appropriate venue to consider the issue.

The Commission Does Not Have the Power to Consider Staff’s Preliminary Issue Number 6 (and the accompanying supporting testimony of Mr. Billy R. Dickens).

Section 403.519, Florida Statutes, sets forth what the Commission may properly consider in a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act. The Commission must take into account (i) the need for electric system reliability and integrity, (ii) the need for adequate electricity at a reasonable cost, (iii) whether the proposed plant is the most cost effective alternative available, (iv) the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the proposed plant, and (v) “other matters within its jurisdiction which it deems relevant.” § 403.519, Fla. Stat. Staff’s proposed preliminary issue number 6 does not address issues (i), (ii), (iii), or (iv) under Section 403.519 -- these subjects are raised by Staff in its proposed preliminary issues numbers 3, 4, 7, and 8. Proposed issue number 6, therefore, must address “other matters within [the Commission’s] jurisdiction” to be properly raised by the Staff and considered by the Commission in this proceeding. It does not.

Section 366.04(1) gives the Commission the power to regulate public utilities with respect to their rates and service. § 366.04(1), Fla. Stat. Neither “rates” nor “service” are defined by the Legislature. The Commission, however, has defined both terms. “Rates” means “the price or charge for utility service.” Rule 25-9.002(4), F.A.C. See also City of Tallahassee

v. Mann, 411 So. 2d 162, 163 (Fla. 1981) (“Rates’ refers to the dollar amount charged for a particular service or an established amount of consumption.”). “Service” is defined as “[t]he supply by the utility of electricity to the customer, including the readiness to serve and availability of electrical energy at the customer’s point of delivery at the standard available voltage and frequency whether or not utilized by the customer.” Rule 25-6.003(6), F.A.C. The power to regulate “rates” and “service,” therefore, contemplates an obligation on the part of public utilities to supply electricity to their customers with the corresponding commitment that they will be paid a reasonable amount for it.

Indeed, under the current regulatory scheme, public utilities submit to regulation with respect to their “rates and service” with the promise that they “shall not be denied a reasonable rate of return upon [their] rate base.” See, e.g., § 366.04, Fla. Stat. (the Commission “shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service ...”) and § 366.041, Fla. Stat. (listing matters the Commission can consider in setting “just, reasonable, and compensatory rates, charges, etc.” provided that the public utility “shall not be denied a reasonable rate of return upon its rate base ...”). Cf. United Telephone Co. of Florida v. Mann, 403 So. 2d. 962, 966 (Fla. 1981) (ruling that “[a] regulated public utility is entitled to an opportunity to earn a fair or reasonable rate of return on its invested capital,” noting that this amount “should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain credit and to attract capital.”). This quid pro quo -- accepting an obligation to serve at a regulated price in return for a reasonable rate of return -- underlies the entire regulatory scheme and represents the fundamental regulatory compact that exists between the Legislature and the public utilities.

In preliminary issue number 6, Staff asks the Commission to reconsider the regulatory compact and renege on its part of the bargain at any point in time in the future when the Commission deems it prudent to do so under the then-existing circumstances. Indeed, apart from, and even in spite of, a determination under Section 403.519 that the Hines 2 power plant is needed to provide FPC's ratepayers adequate electricity with the optimum technology and at a reasonable cost, Staff would have the Commission reconsider at a future time whether FPC should continue to recover its incurred costs in meeting its obligation to provide electrical service to its ratepayers. The Florida Legislature obviously never intended such an outcome as part of the existing regulatory scheme; accordingly, the Commission simply does not have this power.

The Commission's power to determine what the public utility will be paid for its service clearly is not absolute. Rather, the Florida Legislature provided that the rates paid public utilities shall be "just, reasonable, and compensatory" and that "no public utility shall be denied a reasonable rate of return upon its rate base." § 366.041, Fla. Stat. Further, the Florida Legislature set forth the procedures by which a public utility's rates are to be fixed, adjusted, or changed, providing for separate proceedings initiated either by the utility, by complaint, in writing, or by motion of the Commission so that the public utility was given notice of the nature of the dispute over its rates and the right to be heard. E.g., §§ 366.041, .06, .07, Fla. Stat. In such proceedings, what is properly at issue, according to the Florida Legislature, is the rate proposed or demanded "by the public utility." In determining the "justness and reasonableness" of the rate proposed or demanded by the utility, the Commission must take into account the costs actually incurred and the investments actually made, as well as the services actually rendered.

Id.

In this way and in this manner, the Florida Legislature has circumscribed the Commission's jurisdiction over the rates proposed or charged by public utilities for its service. The Commission cannot expand its power to regulate each public utility with respect to "its rates and service" beyond what has been explicitly provided by the Florida Legislature. See Towerhouse Condominium, Inc. v. Millman, 475 So. 2d 674, 676 (Fla. 1985) (the Court reasoned that, if the Legislature had intended the condominium association's power to purchase real property to be unlimited, it would not have specified circumstances under which the association would be authorized to make such a purchase; accordingly, the Court held that by granting authority in specific situations, the Legislature intended to limit the authority only to those situations); PW Ventures, Inc. v. Nichols, 533 So. 2d 281, 283 (Fla. 1988) (applying the doctrine that the mention of one thing in a statute implies the exclusion of others).

Nowhere is the Commission given the power by the Florida Legislature to propose on its own an issue that goes to "rates" based not on actual costs incurred or investments made and services actually provided but on unknown and unspecified future market forces in a proceeding that has nothing to do with the rates actually being proposed or charged by the public utility. Yet, that is exactly what the Commission Staff purports to do here.

The Commission's prior rulings in need determination proceedings when even legitimate cost recovery issues have come up -- those dealing with the costs actually incurred or investments made in the construction of a power plant -- have been consistent with the legislative scheme limiting the manner in which the Commission may consider and fix rates. The Commission has refused to entertain such cost recovery issues in need determination proceedings. In Order No. 25805, the Commission refused to consider whether FPC should be

held to the same cost and performance standards as that of QFs because “issues related to the recovery of costs incurred in construction of power plants are considered in a utility’s rate case.” Indeed, the Commission concluded that “if FPC’s construction, non-fuel operating, and maintenance costs were substantially higher than what was claimed in this docket, the increase in costs will have to be justified in some future rate case to obtain cost-recovery. That is the risk the company assumes by constructing its own units.” Order No. 25805, Docket No. 910759-EI, February 25, 1992. (emphasis added).

In the same docket, the Commission accepted as a finding of fact that (i) it would determine if ratepayers bear the burden of cost overruns on utility projects and that (ii) customers receive the benefits of all costs savings from utility generation construction projects but concluded this finding was “not material to the ultimate decision” in the need determination proceeding. Likewise, in Order No. PSC-99-1478-FOF-EI, the Commission addressed Gulf Power’s failure to provide backup fuel for its proposed power plant and warned that “any future purchased power costs associated with a natural gas fuel interruption will be reviewed for prudence at subsequent fuel adjustment proceedings.” In re: Gulf Power Co., Order No. PSC-99-1478-FOF-EI, Docket No. 990325-EI, August 2, 1999. See also In re: Florida Power and Light Co., Order No. 24165, Docket No. 900796-EI, January 26, 1991. (holding that “by necessity” the Commission must make a determination of need for the additional capacity that will be provided before a determination of prudence is made).

Of course, what Staff proposes to raise here is not even a legitimate cost recovery issue. Instead, Staff wants the Commission to consider as a matter of “policy” the propriety of the whole concept of cost recovery under the existing regulatory scheme because of anticipated but

currently unknown changes in this scheme at some point in the future. On its face, Staff's proposed preliminary issue number 6 raises a "policy" issue that goes to the very heart of the existing legislative scheme providing for the regulation of public utilities that provide the State of Florida with electricity.

Staff's sole witness, Mr. Billy R. Dickens, is in the Commission's Bureau of Policy Analysis. (Dickens Testimony, p. 2). He addresses only Staff's preliminary issue number 6 in order to explain, in his words, "why economic uncertainty, due to the advent of electric generation restructuring, raises potential risks for Florida ratepayers." (Id. at p. 3). His proposal is that the Commission should allow FPC to include the costs of the Hines 2 power plant in its rate base only so long as those costs are below market prices and exclude them when they exceed the market. (Id. at p. 8). In other words, Mr. Dickens would impose on FPC the "lesser of" the regulated cost-based rate recovery and market driven prices.

Mr. Dicken's proposal is antithetical to both the regulatory scheme and market economics. **No market participant would agree to accept market prices below its cost if it had to forego the benefits when the market price exceeded its costs.** Yet, that is exactly what Mr. Dicken's proposes the Commission should impose on FPC under the guise of advancing "market efficiency." (Id. at p. 7). His proposal certainly is not "just, reasonable, and compensatory"; it is confiscatory. And it violates the legislative prohibition that "no public utility shall be denied a reasonable rate of return upon its rate base." § 366.041, Fla. Stat.

The Commission clearly does not have this power and, therefore, should not consider this issue or the testimony of Staff's witness on the issue. See Mathis v. Florida Dep't of Corrections, 726 So. 2d 389, 391 n. 4 (Fla. 1st DCA 1999) (indicating that agencies are

“creatures of statute and only have such powers as statutes confer”); Southern States Utilities v. Florida Public Service Comm’n, 714 So. 2d 1046, 1051 (Fla. 1st DCA 1998) (“the PSC, like other administrative agencies, is a creature of statute [and] the Commission’s powers, duties, and authority are those and only those that are conferred expressly or impliedly by statute of the State”). See also Consumers Power Co. v. Michigan Public Service Comm’n, 596 N.W. 2d 126, 1999 WL 462507 (Mich. June 29, 1999) (holding that “PSC exceeded its authority in ordering the electric utilities to transmit electricity produced and sold by other suppliers to customers in the service area of the utility”). FPC’s Motion to Strike Staff’s Preliminary Issue Number 6 and the Direct Testimony of Billy R. Dickens should be granted.

Consideration of Staff’s Preliminary Issue Number 6 would Violate the Fundamental Principle that Hindsight Review of a Utility’s Cost Decisions is Improper.

Staff’s proposed answer to its preliminary issue number 6 would require periodic reconsideration of the “cost recovery” for the Hines 2 power plant by the Commission. (Dickens Testimony, p. 8). Even assuming this proceeding were the proper forum and the Commission had jurisdiction to entertain the issue (which is not the case), such periodic reconsideration of Hines 2’s costs by the Commission would unfairly and impermissibly charge FPC with the benefit of hindsight.

In Florida Power Corp. v. Public Service Comm’n, 424 So. 2d 745, 747 (Fla. 1982), the Florida Supreme Court held that the Commission may not do this. At issue was the refund of replacement fuel costs that FPC collected during an outage of its nuclear plant, which the Commission ultimately ordered. The Court reversed the Commission because it relied on reports prepared after the accident that were critical of FPC’s management decisions, ruling that

“[h]indsight should not serve as the basis for liability in this instance.” See also Florida Power Corp. v. Public Service Comm’n, 456 So. 2d 451, 452 (Fla. 1984) (reversing Commission order with respect to rates for the same nuclear outage because “[t]he lack of procedures which might have prevented the accident, suggested by the [Commission], amounts to an application of the 20-20 vision of hindsight” and, therefore, the Commission’s findings were unsupported by competent substantial evidence.). “Hindsight” proof, simply put, is a totally inappropriate basis for evaluating the costs of management decisions.

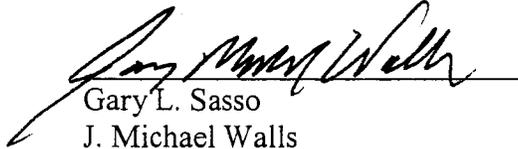
Yet, “hindsight” proof is exactly what Mr. Dickens proposes the Commission should consider in evaluating the costs of FPC’s Hines 2 power plant. Accepting the fact that Hines 2 is the most cost effective means of meeting FPC’s reliability needs at this time by recommending that the Commission “should allow” the inclusion of Hines 2’s costs in FPC’s rate base, Mr. Dickens suggests, nevertheless, that the Commission should periodically review those costs and deny recovery “[i]f a more cost effective alternative becomes apparent” in the future. (Dickens Testimony, p. 8). Such “second-guessing” of FPC’s decision to build Hines 2 based entirely on hindsight is impermissibly unfair --- a point the Florida Supreme Court has made abundantly clear to the Commission before. It is no less clear now, and accordingly, the Commission cannot “second guess” FPC’s decision to build Hines 2, even if “a more cost effective alternative becomes apparent” at some point in the future, if it is the most cost effective alternative available to FPC now.

CONCLUSION

For all of the foregoing reasons, FPC respectfully requests the Commission grant its motion to strike Staff’s preliminary issue number 6 from consideration in this proceeding and,

accordingly, strike the testimony of Staff's witness, Mr. Billy R. Dickens, who provides testimony only on Staff's preliminary issue number 6.

Respectfully submitted this 3RD of October, 2000.



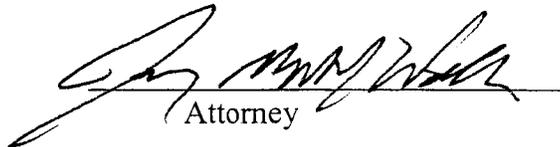
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to Deborah Hart, Esq., as counsel for the Public Service Commission, and by U.S. Mail to all other interested parties of record as listed below on this 2nd day of October, 2000.



Attorney

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for
Determination of Need of
Hines Unit 2 Power Plant.

DOCKET NO. 001064-EI

DEPOSITION OF: BILLY R. DICKENS
TAKEN AT THE INSTANCE OF: Florida Power Corporation
PLACE: Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Room 362
Tallahassee, Florida
TIME: Commenced at 10:03 a.m.
Concluded at 12:25 p.m.
DATE: October 10, 2000
REPORTED BY: MARY ALLEN NEEL, RPR
Notary Public, State
of Florida at Large

ACCURATE STENOTYPE REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850) 878-2221

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STIPULATIONS

IT IS STIPULATED that this deposition was taken pursuant to notice in accordance with the applicable Florida Rules of Civil Procedure; that objections, except as to the form of the question, are reserved until hearing in this cause; and that reading and signing was not waived.

IT IS ALSO STIPULATED that any off-the-record conversations are with the consent of the deponent.

2

APPEARANCES:

DEBORAH HART, ESQUIRE, and KATRINA WALKER, ESQUIRE, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, on behalf of the Commission Staff.

GARY E. SASSO, ESQUIRE, Carlton Fields, Post Office Box 2861, St. Petersburg, Florida 33731-2861, and R. ALEXANDER GLENN, Florida Power Corporation, P.O. Box 2861, St. Petersburg, Florida 33731, on behalf of Florida Power Corporation.

I N D E X

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4

1 Thereupon,
2 BILLY R. DICKENS
3 appeared as a witness and, after being duly sworn by
4 the court reporter, testified as follows:

EXAMINATION

BY MR. SASSO:

Q State your name, please.

A Billy R. Dickens.

Q And give us your business address, please,
Mr. Dickens.

A Florida Public Service Commission, Bureau of Policy Analysis, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

Q Are you employed by the Public Service Commission?

A Yes, I am.

Q What is your position?

A My position is regulatory analyst in the Bureau of Policy Analysis.

Q Mr. Dickens, we had asked you and your counsel to provide us with some documents this morning, and your counsel has kindly obliged, and she has given us some documents that we had asked for, including your answers to interrogatories that we served on you and a curriculum vitae. Is this a

5

1 **current curriculum vitae?**

2 A That is correct.

3 **Q This is up to date with all of your**
4 **publications and professional activities?**

5 A That is correct.

6 **Q She has also provided us with several**
7 **publications. One appears to be a chapter from**
8 **Intermediate Microeconomics, Third Edition. The**
9 **chapter is entitled "Risky Assets." Another is a**
10 **document that appears to have been downloaded from the**
11 **Internet called "Electricity in Economic Growth." And**
12 **then we have another chapter, Chapter IV.3, captioned**
13 **"The Identification of Technical Change in the**
14 **Electricity Generating Industry." And then we have**
15 **perhaps a chapter, or maybe it's a paper, entitled**
16 **"Managing Total Corporate Electricity/Energy Market**
17 **Risks." And finally, something from EPRI, E-P-R-I,**
18 **Electricity Technology Roadmap, 1999 Summary and**
19 **Synthesis, again, apparently Chapter 2, "The Power**
20 **System Challenge." Can you tell us what these are?**

21 A Those were background materials that I read
22 and reviewed and studied in the development of my
23 testimony that you have before you.

24 **Q Now, did you actually sit down and review**
25 **these once you understood that you would be preparing**

7

1 Mr. James Dean, next is Mr. James Breman, next is
2 Mr. Thomas Ballinger, and I think that's it. I'm
3 sorry. If I may, just for the record, it's the
4 reverse. The first comments were Mr. Breman, not
5 Mr. Dean, and the second comments were by Mr. Dean,
6 not Mr. Breman.

7 **Q Okay. Mr. Dickens, you have filed prefiled**
8 **testimony in this case; is that right?**

9 A That's correct.

10 **Q And do I understand that your testimony is**
11 **directed to what staff has identified as preliminary**
12 **Issue No. 6?**

13 A That's correct.

14 **Q Can you tell me what benefit you found in**
15 **these five publications that we reviewed earlier this**
16 **morning in the development of your testimony? Let's**
17 **take them one by one, Chapter 13, "Risky Assets."**

18 A "Risky Assets" is essentially the basic
19 economic model that describes how the market treats
20 and allocates risk. It essentially develops a
21 probabilistic framework for measuring risk, where risk
22 is interpreted and used in the framework of standard
23 deviations, and looking at any type of assets with
24 regards to the dispersion around the mean as capturing
25 the degree of risk that that particular assets holds.

6

1 **and filing testimony in this case?**

2 A Once I understood I would be filing
3 testimony, then I went and pursued what I felt were
4 some important materials that would be in support of
5 that; that's correct.

6 **Q Counsel has also provided us with what**
7 **appears to be draft testimony for the Hines 2 need**
8 **determination. Can you tell us what this is and who**
9 **prepared it?**

10 A The draft testimony was prepared by
11 myself. It represents a type of evolutionary product
12 from its inception to the final date when filing was
13 due of September 18th.

14 **Q All right. And I notice that there are**
15 **some markings on this testimony. There are three sets**
16 **here in different fonts. The first has no**
17 **handwriting. The second has red handwriting. Can you**
18 **identify that handwriting?**

19 A Yes, I can. This is my handwriting.

20 **Q And the third appears to be a Xerox copy**
21 **with printing, or maybe handwriting in more than one**
22 **hand. Can you identify the handwriting on this**
23 **document?**

24 A Yes. These were comments from my
25 colleagues here on my first draft. The first is by

8

1 **Q Okay. Now, when you're talking about how**
2 **the market evaluates risk, are you talking about a**
3 **free market?**

4 A That's correct.

5 **Q A competitive market?**

6 A That is correct.

7 **Q And this material is taken from an**
8 **intermediate textbook on microeconomics; is that**
9 **right?**

10 A That is correct, by a very prominent
11 microeconomist, Hal Varian.

12 **Q Can you tell us what the study of**
13 **microeconomics involves?**

14 A Microeconomics is the analytical branch of
15 economics that looks at how markets essentially serve
16 the twofold function of allocation and distribution of
17 various resources.

18 **Q What is macroeconomics?**

19 A Macroeconomics is the focus of looking at
20 how the aggregation of all these individual markets go
21 about their task of generating wealth and maintaining
22 economic stability.

23 **Q Isn't it fair to say that microeconomics**
24 **focuses on the theory of the firm?**

25 A That is a fundamental feature of

1 microeconomics.

2 **Q The theory of the firm in a world of**
3 **perfect competition; correct?**

4 A The theory of the firm under perfect
5 competition, but not just limited to perfect
6 competition. There are other market alternatives that
7 microeconomics stresses.

8 **Q Does this chapter address regulation of the**
9 **electric industry?**

10 A No, sir.

11 **Q The second document that we have here is**
12 **"Electricity in Economic Growth." And again, it looks**
13 **like this was downloaded from the Internet. Can you**
14 **tell me what the source of this material was?**

15 A Yes, sir. This was a project that was
16 supported by the National Science Foundation, and it
17 looked at the linkage between electricity and economic
18 growth and how technological change is viewed as the
19 important vehicle in fostering U.S. economic growth
20 between the time frame 1967, I believe, and 1985. It
21 was sponsored by a Harvard economist, Dale Jorgenson,
22 who is one of the premier experts in technological
23 change in this country.

24 **Q Okay. So when we're talking about economic**
25 **growth, electricity in economic growth, is it fair to**

1 understanding the importance of technological change
2 and its role in that process.

3 **Q All right. And how did you rely on this,**
4 **if at all, in developing your opinions in this case?**

5 A My opinions -- well, technological change
6 plays a key role, and because of its importance, I
7 feel that the work that economists have done in
8 looking at the role and contributions of technological
9 change in the electric industry warranted my becoming
10 more closely familiar with their analysis.

11 **Q Okay. And what about Mr. Belinfante's**
12 **analysis appeared to be relevant to you? Did you**
13 **reach any conclusions upon which you rely?**

14 A Tangentially, with respect to again the
15 fact that technological change is something which
16 occurs fairly rapidly, and that type of rapid change,
17 given the different techniques described in electric
18 generation, was the type -- was the only contribution
19 that I kind of gleaned from that. The bulk of the
20 analysis I was not -- it was not incorporated into my
21 testimony.

22 **Q All right. And just to look at the very**
23 **first line of this paper, he says, "In recent years**
24 **there have been a number of empirical studies**
25 **analyzing technical change." So do I understand from**

1 **say that the focus of this article is how the electric**
2 **industry contributes to the general growth of the**
3 **economy?**

4 A That's correct, yes.

5 **Q And in what sense, if any, was this**
6 **important to your work in this case?**

7 A In looking at the empirical contribution
8 that technological change within the electric industry
9 has been an important vehicle in assisting economic
10 growth.

11 **Q All right. Now, do you offer any opinions**
12 **in this case about economic growth as such?**

13 A No, I do not.

14 **Q The third document is taken from Production**
15 **Economics: A Dual Approach to Theory and Applications**
16 **Contributions to Economic Analysis, Chapter IV.3,**
17 **entitled "The Identification of Technical Change in**
18 **the Electric Generating Industry." Can you tell me**
19 **what this addresses and how you used it in developing**
20 **your work in this case?**

21 A Yes. That article was written by Alexander
22 Belinfante, who advanced at that time one of the first
23 important econometric contributions in looking at how
24 again technological change impacts on electric demand
25 and electric supply. So it was the framework for

1 **this -- or perhaps you can tell me whether the thrust**
2 **of this study was to review empirical data concerning**
3 **technical change in the industry, in the electric**
4 **utility industry.**

5 A That's correct, yes.

6 **Q So it would be fair to say that basically**
7 **what Mr. Belinfante has done is to look back and**
8 **review the type of technological change that has**
9 **occurred in the industry; is that right?**

10 A That's correct.

11 **Q And he has drawn some observations based on**
12 **that; right?**

13 A That's correct.

14 **Q And this is information that is available**
15 **to all of us if it's empirical and historical; is that**
16 **right?**

17 A That's correct.

18 **Q And you took note of the fact that there**
19 **has been technological change and it does occur in**
20 **this industry, and you took that into account in**
21 **developing your opinions in this case; right?**

22 A That is correct.

23 **Q And that was the significance of this paper**
24 **to your conclusions?**

25 A That is correct.

1 **Q All right. Now, we also have something**
 2 **called "Managing Total Corporate Electricity/Energy**
 3 **Market Risks." Can you tell what this is about?**

4 A Yes. This is an article that appeared in
 5 the Electricity Journal recently in which a group of
 6 analysts looked at managing electricity market risk by
 7 borrowing some concepts in the banking and financial
 8 literature, essentially, looking at electricity as a
 9 type of derivative. And in looking at the way in
 10 which banks and financial intermediaries manage risk,
 11 it was a proposal that was being brought forth for
 12 electric companies.

13 **Q Can you describe the proposal?**

14 A It's a banking concept that uses the
 15 acronym of VAR, which is value added -- reduction of
 16 value added. I forget what the R represents, but it
 17 essentially --

18 **Q Well, according to this document, it's**
 19 **value at risk, VAR, value at risk.**

20 A Yes, thank you. That is the key concept,
 21 in terms of if you approach electric markets as
 22 markets that have this type of volatility, much like
 23 derivative instruments, then the sellers of this
 24 particular instrument can, in a sense, hedge against
 25 the price fluctuations via this value at risk

1 cited. For my purposes, it provides the important
 2 information about how EPRI is looking at generation
 3 technology, what we know now, what we can expect in
 4 the short-term and long-term future as generation
 5 technologies evolve and change.

6 **Q Well, doesn't this paper really concern**
 7 **transmission and distribution and not generation?**

8 A Transmission and distribution is a key
 9 focus of it, that's true.

10 **Q Well, isn't that what it's about? Isn't it**
 11 **all about transmission and distribution?**

12 A My reading of the chapter, the focus is on
 13 transmission and distribution. There are some
 14 inferences that I was able to read about generation;
 15 hence, that's why I thought it was noteworthy to
 16 include it in my reading collection.

17 **Q All right. And what inferences did you**
 18 **derive from this study about generation?**

19 A Specifically in terms of changes that are
 20 occurring in microturbines, generation in the area of
 21 distributed resources. These are the specific type of
 22 generation technology areas that had been mentioned,
 23 and as a result, it was just something that I wanted
 24 to investigate further, and I did.

25 **Q So the article just tangentially mentioned**

1 approach.

2 **Q And how do they hedge against price**
 3 **fluctuations by this value at risk approach?**

4 A By essentially using a range of
 5 sophisticated financial instruments that essentially
 6 more or less protect the investment and the value of
 7 the investment from the increases or decreases or the
 8 price fluctuations, in this case, for electricity.

9 **Q Of course, in this case, you're not**
 10 **proposing that the utility, Florida Power Corporation,**
 11 **or that the Commission adopt this VAR model for**
 12 **managing risk, are you?**

13 A No, I'm not.

14 **Q So to what extent was this study or this**
 15 **analysis relevant to your opinions in this case?**

16 A It was, quite frankly, just largely
 17 curiosity. It looked like a good concept, and I just
 18 read it.

19 **Q Now, the last study or paper that we have**
 20 **here is apparently taken from Electricity Technology**
 21 **Roadmap, 1999 Summary and Synthesis, "The Power System**
 22 **Challenge," subtitled "Building the Infrastructure of**
 23 **a New Industry." Can you us what this is about?**

24 A Yes, sir. This particular chapter is an
 25 excerpt from the EPRI publication that you just

1 **the availability of certain technologies for**
 2 **generation; right?**

3 A That would be correct.

4 **Q And do you understand that in this case,**
 5 **Florida Power Corporation reviewed a wide variety of**
 6 **technologies before deciding to go forward with the**
 7 **Hines 2 plant?**

8 A Yes.

9 **Q And that included distributed generation?**

10 A Yes.

11 **Q So apart from the fact that you were able**
 12 **to see in this article or chapter some references to a**
 13 **couple of available technologies, did this have any**
 14 **other value to your opinions in this case?**

15 A No, it did not.

16 **Q Now, looking at your curriculum vitae,**
 17 **Mr. Dickens, you have provided us with a background of**
 18 **your employment, and let me just review this briefly**
 19 **for the record.**

20 Going back to your education, it looks like
 21 you received a certificate in economics from
 22 Northwestern University in Evanston in 1978; is that
 23 right?

24 A That's correct.

25 **Q What is a certificate in economics?**

- 1 A This was a special honors program in
2 economics that I was fortunate to be a part of with 30
3 students from around the country.
- 4 **Q This was a summer program?**
- 5 A Yes, it was during the summer of 1978.
- 6 **Q How long did this take place during the
7 summer?**
- 8 A It was for the duration of the summer, two,
9 two and a half months.
- 10 **Q And about 30 students participated?**
- 11 A That's correct, yes.
- 12 **Q Were you an undergraduate at the time?**
- 13 A That's correct.
- 14 **Q At the University of the District of
15 Columbia?**
- 16 A Correct. I was doing that concurrently.
- 17 **Q And you were majoring in economics at D.C.;**
18 **right?**
- 19 A The University of the District of Columbia;
20 that is correct.
- 21 **Q And you had a minor in mathematics and
22 history?**
- 23 A That's correct.
- 24 **Q And you're working on a Ph.D. at this time?**
- 25 A That's correct, yes.

- 1 **Q At American University?**
- 2 A That's correct.
- 3 **Q And your thesis is "The Economic Effects of
4 Wage Subsidy Programs"; is that right?**
- 5 A That is correct.
- 6 **Q Now, do any of these programs affect the
7 electric utility industry?**
- 8 A No, sir, none.
- 9 **Q Now, looking at your professional work
10 history, you indicate that after your graduation from
11 the University of the District of Columbia, you were
12 an economic research assistant at the Department of
13 Transportation and the Department of Treasury; is that
14 right?**
- 15 A That's correct.
- 16 **Q And that was from '79 to '82?**
- 17 A Correct. That's correct.
- 18 **Q And during that time, you had no occasion
19 to do any work about the electric industry; is that
20 right?**
- 21 A That is correct.
- 22 **Q And then you were a junior economist at the
23 National Commission for Employment Policy in
24 Washington, D.C. from November of '82 to August of
25 '83; is that right?**

- 1 A That is correct.
- 2 **Q What were your responsibilities there as a
3 junior economist?**
- 4 A I was responsible for working with the
5 senior economists on econometric models in the labor
6 market, primarily looking at the youth labor market.
7 That was my primary responsibility.
- 8 **Q Is it fair to say that you didn't do any
9 work concerning the electric industry at that time?**
- 10 A That is correct.
- 11 **Q Then you moved to a position -- well, it
12 looks like at the same time, from October of '82
13 through June of '83, you were an economic associate
14 with the Teamsters Union in Washington, D.C.; is that
15 right?**
- 16 A That is correct, yes.
- 17 **Q And what were your responsibilities with
18 the Teamsters?**
- 19 A I worked in the economics department that
20 helped develop the three-year master agreements with
21 the trucking industry.
- 22 **Q Collective bargaining agreements?**
- 23 A That's correct, yes.
- 24 **Q And then you were an assistant professor of
25 Economics at Hampton University from September of '83**

- 1 **through May of '89; is that right?**
- 2 A That is correct, yes.
- 3 **Q And did your teaching responsibilities at
4 Hampton involve anything concerning the electric
5 industry?**
- 6 A Not directly, only indirectly. In courses
7 that I taught about microeconomics, industry examples
8 were typically used, electric, telephone industry,
9 like trucking and railroads. Because I came from the
10 Teamsters, those were the prominent industries. But
11 it was more just kind of a superficial overview with
12 regards to how those particular industries operated
13 within this microeconomic framework.
- 14 **Q And, of course, between September of '83
15 and May of '89, there wasn't much talk about electric
16 industry restructuring, was there?**
- 17 A No, there was not.
- 18 **Q Then from May of '89 through September of
19 '92, you were a HBCU faculty fellow at the Office of
20 Economic Adjustment at the Department of Defense. Can
21 you tell us what an HBCU faculty fellow was?**
- 22 A Yes, I can. This was a fellows program
23 that the Department of Defense had set up through
24 faculty members or individuals who were staff at
25 historically black colleges and universities. That's

21

1 where the HBCU comes from. So I was selected to
2 participate in that program, and my appointment was in
3 the Office of Economic Adjustment within the
4 Department of Defense, which looked specifically at
5 economic adjustment and transition issues for
6 communities that were impacted by either military base
7 closures or cutbacks in major weapons system programs.

8 **Q And in fact, you've published in that area;
9 is that right?**

10 A That's correct.

11 **Q And again, in this capacity, had you no
12 occasion to do any work concerning the electric
13 industry; would that be right?**

14 A That would be correct.

15 **Q Then from January of 1990 through May of
16 1994, you became an adjunct lecturer of economics and
17 business at Bowie State University; is that correct?**

18 A That is correct, yes.

19 **Q And can you tell us generally what subjects
20 you taught and addressed as an adjunct lecturer at
21 Bowie?**

22 A Yes. Production and operations management,
23 international business, and microeconomics.

24 **Q Okay. And again, would it be fair to say
25 that you had no occasion to deal with issues involving**

23

1 A That's correct.

2 **Q And again, would it be fair to say that you
3 were not dealing with electric industry issues at the
4 Pentagon?**

5 A No, sir, that would not be correct for
6 that, because my appointment in the Department of Army
7 for those years essentially revolved around looking at
8 how the Department of Army was grappling with a very
9 important area regarding how it was essentially going
10 to be selling off much of its generation assets in
11 order to meet specific budgetary savings. The Army
12 had decided that it was no longer cost-effective to
13 maintain these aging assets at the military bases
14 around the country, like Fort Hood up in Washington
15 State or Fort Monroe in Virginia. So the generals and
16 the top civilian brass decided to look at some ways in
17 which there could be some cost savings by spinning off
18 those particular assets.

19 **Q So do I understand that the Army was
20 generating its own power at several bases at that
21 time?**

22 A That's correct.

23 **Q They were not purchasing from a utility; is
24 that right?**

25 A That's correct.

22

1 **the electric industry in that capacity?**

2 A That would be correct, yes.

3 **Q Then you were a visiting professor of
4 business at Florida A&M University in Tallahassee; is
5 that right?**

6 A That is correct, yes.

7 **Q From August of '94 through May of '96;
8 correct?**

9 A That is correct.

10 **Q What subjects did you teach as a visiting
11 professor of business?**

12 A My subjects were applied economics and
13 international business.

14 **Q Did you have any occasion to focus on or
15 study the electric industry during your tenure at
16 Florida A&M?**

17 A No, that was not one of my industry
18 responsibilities.

19 **Q Then it looks like you may have gone to the
20 U.S. Army at the Pentagon.**

21 A That is correct.

22 **Q June '96 through September '96, and June
23 '97 through September '97; is that right?**

24 A That is correct, yes.

25 **Q And again, you were an HBCU faculty fellow?**

24

1 **Q And they were contemplating spinning off or
2 selling those assets and then purchasing power from a
3 utility or other provider?**

4 A That's correct.

5 **Q Did you have any occasion to look at
6 electric industry restructuring issues when you were
7 working at the Pentagon?**

8 A Yes, sir, for the Army. I've had several
9 Pentagon appointments. I just don't want to confuse
10 the two. But for the Army, I did.

11 **Q In what sense?**

12 A In terms of -- at that time, that's when a
13 lot of attention had been directed in terms of the
14 industry was bracing for institutional economic
15 change, and the Army wanted to know exactly how that
16 change -- whether it was going to be beneficial or
17 would not be beneficial in terms of the Army being a
18 key player in that change.

19 **Q In terms of whether the Army should
20 continue to self-generate?**

21 A That is correct. That was the basic
22 question that was being tossed around.

23 **Q And what conclusion did you reach?**

24 A The recommendation that I submitted to my
25 superiors was that it was in the best economic

1 self-interest for the Army to sell off those aging
2 assets at these military locations. They were not in
3 the best interest for the Army.

4 **Q Why not?**

5 A Because they were not able to generate the
6 type of power in the cost-effective manner that the
7 generals and the civilian brass had expected, plus the
8 fact that there were many environmental factors at
9 these bases which -- communities and the military
10 populations surrounding were at risk.

11 **Q And how the Army replace those assets
12 ultimately? Do you know?**

13 A No. Actually, after I left -- because my
14 appointment was to basically survey the situation and
15 come up with some type of plausible recommendation,
16 and that's what I did.

17 **Q So you have no idea whether the Army would
18 up purchasing power like any other customer in their
19 particular regions from the area utilities?**

20 A The expectations when I left was that they
21 would, but I have no definitive knowledge of that.

22 **Q Then you became a regulatory analyst at the
23 Florida Public Service Commission.**

24 A That's correct.

25 **Q Beginning in June '98 up until the current**

1 policy recommendations that impact on those key
2 industries.

3 **Q Okay. Now, again, just completing a review
4 of your curriculum vitae, you list journal
5 publications, economic monographs and unpublished
6 articles, books, newspaper and magazine articles, and
7 paper presentations.**

8 **Putting aside for the moment paper
9 presentations, would it be fair to say that all of
10 your publications in journals, monographs, unpublished
11 articles, books, newspapers, and magazines which you
12 listed in the page and a half here in your CV do not
13 concern the electric industry?**

14 A With the exception of one paper
15 presentation where I was part of a panel in Las Vegas,
16 Nevada, a couple of years ago in which I gave a
17 presentation about forecasting electric demand.

18 **Q Okay. Apart from that paper presentation,
19 the other publications you've listed here do not
20 concern the electric industry; is that right?**

21 A That would be correct.

22 **Q Okay. And the paper presentation is listed
23 on page 3 at the top of your CV, and it's captioned
24 "Forecasting Electric Demand, Problems, Paradigms,
25 Practice and Patience, Institute of Business**

1 **date; is that right?**

2 A That would be correct.

3 **Q And what positions have you held at the
4 Florida Public Service Commission?**

5 A I have held the position of regulatory
6 analyst first, in the AFAD, Auditing and Financial --
7 it changed recently, and I can't remember the acronym.
8 Auditing and Financial Analysis Division. I was in
9 the office under -- Paul Stallcup was my supervisor
10 under Economic Forecasting.

11 **Q Okay. And what position do you currently
12 hold again?**

13 A Now I'm a regulatory analyst here in the
14 Bureau of Policy Analysis, PAI.

15 **Q Okay. Did you have any positions between
16 the first one and this current one?**

17 A No, I did not.

18 **Q And can you tell us what your duties and
19 responsibilities are in the policy division, if I can
20 call it that?**

21 A Sure. As an analyst in the policy
22 division, my responsibilities essentially revolve
23 around looking at and having a pretty good working
24 knowledge of the key industries that I'm assigned to
25 and providing the necessary type of analysis and

1 **Forecasting, Telecommunications and Gas and Electric
2 Conference Manual." Is that what you're referring to?**

3 A Yes, sir, that's correct.

4 **Q And what did you discuss at that
5 conference?**

6 A I essentially just discussed the current
7 state of the art of electric forecasting and some of
8 the conundrums and pitfalls that that is typically
9 associated with, and why, despite the heavy criticism
10 that economists have that's directed at them in terms
11 of forecasting, why we should persevere and continue
12 to be able to do the modeling activities.

13 **Q You're talking about modeling demand for
14 electricity?**

15 A That's correct, yes.

16 **Q And as I understand it, you're not
17 recommending that the Public Service Commission adopt
18 in this proceeding any particular model for
19 forecasting demand for electricity; is that right?**

20 A That is correct.

21 **Q Now, again, you have submitted prefiled
22 testimony addressing Issue 6; correct?**

23 A That is correct.

24 **Q What is the origin of Issue 6? Can you
25 tell us how this came about?**

1 A The origin, I would define it as the date
2 on which essentially we had our issue ID meeting for
3 Hines 2. And at that time, that's when the idea was
4 initially broached about, you know, a type of -- an
5 issue like this that would be perhaps forthcoming.
6 And that's where the issue got its genesis or start.
7 **Q Okay. You recall that's when the issue was**
8 **broached to Florida Power Corporation; correct?**
9 A That's correct.
10 **Q That's when it was first mentioned to us;**
11 **correct?**
12 A That's correct.
13 **Q But staff came into that issues ID**
14 **conference with this issue on its list; correct?**
15 A That's correct.
16 **Q Of course, it wasn't on the list that had**
17 **previously been provided to Florida Power Corporation;**
18 **correct?**
19 A That would be correct.
20 **Q Can you tell us what happened between the**
21 **time the staff initially prepared its issue list which**
22 **did not include Issue 6 and the time of the issues ID**
23 **conference that caused staff to suggest or propose the**
24 **addition of Issue 6?**
25 A I would be unable to respond to that,

1 **testimony?**
2 A Initially I was approached by Mr. Robert
3 Trapp.
4 **Q All right. Now, Issue 6 is worded as**
5 **follows: Is it reasonable -- I'm reading from your**
6 **prefiled testimony at page 2. "Is it reasonable to**
7 **obligate Florida Power Corporation's retail customer**
8 **for the costs of the Hines 2 Unit for the expected**
9 **life of the unit?" And, of course, your testimony**
10 **addresses this issue.**
11 **Is it your understanding that you were**
12 **presenting the position of the Public Service**
13 **Commission staff on this issue?**
14 A It has always been my understanding that
15 these are essentially my specific views and comments,
16 so it's essentially -- although staff understandably
17 has an interest in what I have proposed and written,
18 these are my own private views and comments.
19 MR. SASSO: Okay. Let's mark this as an
20 exhibit, please.
21 MS. HART: No objection.
22 (Deposition Exhibit 1 was marked for
23 identification.)
24 BY MR. SASSO:
25 **Q Mr. Dickens, I've just marked as Deposition**

1 because I was not privy to those levels of
2 deliberation.
3 **Q When were you asked to become involved in**
4 **developing testimony directed to Issue 6?**
5 A The exact date I don't recall, but it was
6 shortly before the issue ID meeting that I referenced
7 earlier.
8 **Q Okay. So by the time that we went into the**
9 **issues ID conference, you already had an internal**
10 **discussion about the possibility that you might**
11 **provide testimony on that issue?**
12 A I didn't have a discussion. I just had an
13 idea that had been floating around that, you know,
14 perhaps we may need your analysis at some subsequent
15 future time.
16 **Q Is it fair to say that this idea was born**
17 **in the policy division of the Public Service**
18 **Commission?**
19 MS. HART: I'm going to object to that. He
20 has asked and answered it. He said that he
21 didn't know.
22 MR. SASSO: Can you answer it?
23 MS. HART: You can answer it.
24 A That would be my understanding.
25 **Q Who talked to you about possibly providing**

1 **Exhibit 1 a copy of a newspaper article that appeared**
2 **in The Tampa Tribune on October 5th about your**
3 **testimony and about Florida Power Corporation's**
4 **response. And I would like to call your attention to**
5 **a quote at the second page of this exhibit in the**
6 **middle of the first column, right about there**
7 **(indicating.)**
8 A Yes.
9 **Q Now, this purports to quote from you, where**
10 **you state, "I'm just putting forth a suggestion, kind**
11 **of like my own private musings; Dickens said**
12 **Wednesday." Do you recall stating that to the**
13 **reporter who wrote this article?**
14 A Yes, sir, I do.
15 **Q And you went on to say, "Markets are**
16 **changing, which is why it's something we want to bring**
17 **to the attention of the Commission." Is that right?**
18 A That would be correct.
19 **Q And that's what you told the reporter?**
20 A That's correct.
21 **Q If staff wants to bring policy issues to**
22 **the attention of the Commissioners, apart from filing**
23 **testimony in a docket such as this, do you have other**
24 **vehicles open to you to do that?**
25 A None to my knowledge.

1 **Q Can you provide information to the**
2 **individual Commissioners about market changes or ideas**
3 **you have about market changes?**

4 A I would think it would inappropriate for me
5 to approach a sitting Commissioner in any framework
6 other than the formal forum for doing that.

7 **Q Has staff ever requested a workshop to**
8 **discuss evolving issues in the industry?**

9 A I have no knowledge of that.

10 **Q Has staff ever recommended the commencement**
11 **of an investigation, a generic investigation to**
12 **address changing issues in the industry?**

13 A I have no knowledge of that also.

14 **Q Have you ever participated in a rulemaking**
15 **proceeding?**

16 A No, sir, I have not.

17 **Q Do you know that the Governor has a Study**
18 **Commission in place right now dealing with**
19 **restructuring issues?**

20 A Yes, I'm aware of that.

21 **Q Are you a participating in meetings of the**
22 **Study Commission or the activities of the Study**
23 **Commission?**

24 A I am not specifically involved in that
25 particular activity.

1 **Q Does that surprise you?**

2 A I care not to speculate.

3 **Q Now, looking at your testimony closely,**
4 **beginning at page 2, line 13, you say, "It is my**
5 **intention to explain why economic uncertainty due to**
6 **the advent of electric generation restructuring raises**
7 **potential risks for Florida ratepayers." Do you see**
8 **that?**

9 A Yes, sir.

10 **Q Can you tell us what you mean by that?**

11 A Yes. My basic thinking about this issue is
12 one in which I'm attempting to apply what I would like
13 for others to consider as kind of a forward-looking
14 methodology, forward-looking in the sense that we're
15 looking at what the impact of Hines 2 will be for
16 ratepayers, and essentially asking ourselves, given
17 how this type of fundamental change has occurred, is
18 that change that will understandably result in
19 ratepayers being put at more risk or less risk with
20 regards to the adoption of a generation technology
21 today and the obligation of ratepayers to essentially
22 be responsible for the ultimate financing of that over
23 the life span of that particular unit.

24 So the economic uncertainty that I address
25 is no more than the uncertainty about whether or not

1 **Q Is the Public Service Commission staff**
2 **involved in that activity?**

3 MS. WALKER: Object. Calls for
4 speculation.

5 BY MR. SASSO:

6 **Q Do you know?**

7 A Well, I just know that the staff has been
8 identified that will be working with Mr. Billy Stiles
9 providing perfunctory information to the Energy 2020
10 Commission Task Force.

11 **Q And will the Commissioners be represented**
12 **there in some way?**

13 A I have no knowledge about that.

14 **Q And what is your understanding about the**
15 **work of the study Commission? What are they**
16 **attempting to address?**

17 A Basically, I'm totally out of the loop on
18 that, so I can't really address anything specific
19 concerning their current activities.

20 **Q Have you read staff's Prehearing Statement**
21 **in this docket?**

22 A No, I have not.

23 **Q Are you aware that the staff has taken no**
24 **position on Issue 6?**

25 A No, I did not know.

1 during the interim, are there any specific areas
2 whereby ratepayers could be benefited by adopting
3 technology that may be more cost-effective between
4 time, T; O, today; and perhaps T25, some time period
5 in the future.

6 **Q Okay. Now, of course, the statement of the**
7 **issue, is it reasonable to obligate Florida Power**
8 **Corporation's retail customers for the costs of the**
9 **unit for the expected life of the unit, assumes, does**
10 **it not, that under current regulatory policy,**
11 **customers would in fact be obligated for the costs of**
12 **the unit for the life of the unit?**

13 A That would be correct.

14 **Q So what you're talking about is proposing a**
15 **change from current regulatory policy; correct?**

16 A That would be correct.

17 **Q Now, you mentioned that there has been a**
18 **fundamental change, and you are seeking to take this**
19 **into account. What fundamental change has occurred?**

20 A Well, perhaps I was using "fundamental" a
21 bit loosely. But I was simply making reference to the
22 fact that we are in the midst of embracing change on
23 the generation side of the market whereby those type
24 changes, even though the change may be incremental,
25 but nonetheless, I feel there is sufficient evidence

1 that it's right around the corner, and all signals are
2 still going to be pointing in the same direction, and
3 it would be only wise and prudent to make the
4 necessary preparations now so that when this really
5 becomes saturated in the market, then planners as well
6 as ratepayers will know how to make these type of
7 adjustments.

8 **Q When you're talking about change right
9 around the corner, is that what you mean in your
10 testimony by the advent of electric generation
11 restructuring?**

12 A That would be correct.

13 **Q And this change right around the corner or
14 this advent of restructuring, by that do you mean to
15 suggest that you anticipate that there will be some
16 legislation in Florida that will restructure the
17 industry?**

18 A No, sir.

19 **Q All right. What are you talking about when
20 you talk about the advent of electric generation
21 restructuring?**

22 A I'm making reference to economic forces
23 that will ultimately determine the direction of
24 change.

25 **Q And what are these economic forces that**

1 **making your best judgment about what the future will
2 look like?**

3 A That would be correct.

4 **Q And is it also fair to say that you can't
5 describe precisely what that future will look like?**

6 A Not with 100% precision, no.

7 **Q Well, can you do it with 50% precision?
8 I'm trying to get a little more definite than the
9 general term "electric generation restructuring."**

10 A Well, unfortunately, I can understand your
11 difficulty in terms of trying to grasp this. It is a
12 conceptual idea that I have, and I'm attempting to try
13 to take the information that I know and understand and
14 look at that and apply it to a situation like what we
15 have here with Hines 2. And given what I think is the
16 rather imminent possibility about change in electric
17 generation, these steps just lead me to make that type
18 of broad inference.

19 **Q I understand what process mentally you're
20 trying to go through here, but I'm trying to figure
21 out the information that you're using to get there.**

22 **Now, listening to you, I think I heard you
23 say that you were talking about a concern about moving
24 from ownership to procurement. Is that one
25 consideration?**

1 **will determine the direction of change?**

2 A They will be the forces that are resulting
3 from the important decoupling of electric generation
4 from transmission and distribution. Those are kind of
5 the seeds of change that I'm specifically making
6 reference to.

7 **Q Can you be more specific? What kind of
8 electric generation restructuring has occurred that
9 raises this issue in your mind about the obligation of
10 the ratepayers over the future?**

11 A Well, I don't have any specific, you know,
12 prima facie evidence to point to about the generation
13 change. I'm looking at it within a conceptual
14 framework. Again, since I am now in this place here,
15 the PSC, in which I am for all practical purposes a
16 policy wonk, I'm looking at these issues and asking
17 these type of important questions. And based on what
18 I see and what I understand, I think it's more than
19 reasonable and plausible to draw the inference that
20 we're actually going to be witnessing a change on the
21 generation side away from the ownership of generation
22 towards more the procurement of generation.

23 **Q Okay. Is it fair to say then that you're
24 not talking about any situation that exists
25 currently? You're looking out into the future and**

1 A That's correct, yes.

2 **Q Are there other changes that you can
3 describe that you see coming down the road or that you
4 see taking place now that you're attempting to
5 address?**

6 A No. That would be -- the issue about
7 ownership versus procurement is where I really kind of
8 draw my general broad conclusions as it relates to
9 this issue about electric generation restructuring.

10 **Q So is it fair to say that the central
11 change driving your opinions in this case is your
12 anticipation that the industry will move from
13 ownership to procurement?**

14 A That would be true.

15 **Q Okay. When we talk about procurement,
16 who's procuring what from whom?**

17 A The fact that power can be purchased from
18 other alternative sources, not necessarily from the
19 integrated IOUs.

20 **Q Okay. Do you anticipate that merchant
21 plants will be permitted to be developed in Florida?**

22 A I'm sorry, Mr. Sasso. I didn't --

23 **Q Are you anticipating that there will be a
24 change in the law that will permit the development of
25 merchant plants in Florida?**

1 A That at this point would be speculative on
2 my part.

3 **Q Well, is there anything that you are
4 relying on that is not speculative?**

5 A Yes. I would point to the type of issues
6 that we're looking at in the wholesale power market
7 today.

8 **Q Such as?**

9 A With regards to the fact that power is now
10 being made greater, greater availability, through the
11 landmark FERC orders that have been passed that have
12 facilitated a robust wholesale market. I do believe
13 that that's an important indicator about what lies
14 ahead for the future.

15 **Q Well, what evidence do you see that the
16 electric industry in Florida is moving from ownership
17 to procurement?**

18 A I have no specific evidence to point to
19 other than the fact again of my type of general
20 perception of the overall idea.

21 **Q Have you taken a look at the need cases
22 that have been filed and decided by the Public Service
23 Commission during this decade?**

24 A No, sir, I have not.

25 **Q Would it surprise you to learn that those**

1 **generation of power is executed will be based on
2 entrepreneurial ingenuity and market incentives"?**

3 A Well, entrepreneurial ingenuity is just a
4 catch-all phrase for looking at the internal planning
5 decisions within the actual company itself. It just
6 refers to the combination of the engineers and the
7 planners and the financial analysts all working
8 together in unison to bring forth the best possible
9 service that is consistent with the needs and the
10 wants of their customers.

11 **Q So do I understand then that this term can
12 encompass decision-making by regulated utilities?**

13 A That would be correct, yes.

14 **Q You don't mean to exclude regulated
15 entities?**

16 A That would be correct, yes.

17 **Q So then a regulated utility like Florida
18 Power Corporation may be expected to make decisions
19 about whether and how to generate power based on
20 entrepreneurial ingenuity and market incentives; is
21 that right?**

22 A That is correct, yes.

23 **Q And from all that appears, that's exactly
24 what happened in this case; right? People at Florida
25 Power Corporation sat down and looked at planning**

1 **need cases all involve a determination by utilities
2 and agreement by the Commission that self-build was
3 the most appropriate alternative?**

4 A It would not surprise me.

5 **Q You go on to say that decisions concerning
6 how generation of power is executed are based on
7 entrepreneurial ingenuity and market incentives. Can
8 you tell us what you mean by that?**

9 A Yes. This is a statement which essentially
10 captures from an economics perspective how power gets
11 created, that is, in response to the fundamental
12 question of what's going to be produced and how. And
13 in order to answer the second question about how, once
14 we know what's going to be produced, how it's going to
15 be done will be essentially the work based on
16 intelligent decisions made by power planners at the
17 plant level. And those planning decisions are going
18 to be a function of what the market essentially will
19 be communicating through various prices.

20 **Q Do you anticipate then that the decision
21 about how power is going to be generated and supplied
22 is going to be made by independent power producers in
23 the market?**

24 A No, not necessarily.

25 **Q Well, what do you mean by the phrase "how**

1 **alternatives and market conditions and tested the
2 market and made a decision about how to generate power
3 in this case and then brought that to the Public
4 Service Commission for review and approval; correct?**

5 A With one exception about considering this
6 type of forward-looking proposal that I feel is
7 plausible, everything else would be true.

8 **Q Okay. And so the one exception was that
9 Florida Power did not sit down and say, "We will build
10 this plant, but we will agree to review the decision
11 five years from now and eat the cost of the plant if
12 it turns out that there's something that appears at
13 that time to be a more cost-effective alternative."**

14 MS. HART: I'm going to object. He can't
15 know what Florida Power has done.

16 BY MR. SASSO:

17 **Q Well, that's you suspect we have not done;
18 right?**

19 A Based on what I've read, my conclusion is
20 that Florida Power Corporation has not incorporated a
21 periodic prudence review.

22 **Q Okay. Now, are you familiar with the way
23 prudence review is conducted in Florida?**

24 A No. I have not had an opportunity to be
25 formally involved in any prior prudence reviews.

1 **Q** Do you have any understanding about whether
 2 when the Commission, for example, is reviewing
 3 management decisions of Florida Power Corporation, the
 4 Commission is confined to reviewing information and
 5 circumstances known to the company at the time it made
 6 the decisions? Do you know whether that's an
 7 important aspect of prudence review?

8 A I'm sure it is, but I have no prior
 9 knowledge of that.

10 **Q** Again, still at page 2, you address the
 11 question, "Do long-term assets represent a potential
 12 economic burden for Florida Power Corporation's
 13 ratepayers?" And you answer that yes; is that right?

14 A That's correct, yes.

15 **Q** Would you agree that long-term assets may
 16 also represent a potential economic benefit to
 17 ratepayers?

18 A That would also be correct too.

19 **Q** Now, again, looking at this issue of
 20 whether retail customers ought to pay the costs of the
 21 plant, would you agree that if an independent power
 22 producer sells power to a utility such as Florida
 23 Power Corporation, the independent power producer
 24 would expect to recover -- in the price of power it
 25 provides to Florida Power Corporation, it would expect

1 A Correct.

2 **Q** And you're basically asserting here that
 3 the dynamics of electric restructuring suggest
 4 long-term commitments for large scale power projects
 5 might be incompatible with future technology changes.

6 Now, you would agree that they also might
 7 not be incompatible with future technology changes;
 8 right?

9 A That would be correct.

10 **Q** And in fact, even if Florida Power
 11 Corporation goes ahead and builds Hines 2, there will
 12 still be a role in its system for its coal plants;
 13 correct?

14 A That's correct.

15 **Q** There will still be a role in its system
 16 for its oil plants; correct?

17 A That's correct.

18 **Q** And for its nuclear plant; correct?

19 A Correct.

20 **Q** Would you agree with the proposition that a
 21 utility like Florida Power Corporation actually needs
 22 to have a diversity of fuel sources on its system?

23 A I specifically have not addressed that
 24 particular issue in my testimony, so whatever opinion
 25 I would have about that would just be based on how I

1 to recover the costs of building and operating the
 2 plant?

3 A That's correct.

4 **Q** So one way or the other, retail customers
 5 in Florida are going to be expected to pay for the
 6 costs of building generating facilities and operating
 7 them in supplying energy; correct?

8 A That's correct.

9 **Q** Okay. You go on in your testimony at pages
 10 2 to 3 to say that the dynamics of electric
 11 restructuring suggest long-term commitments and/or
 12 obligations for ratepayer financing of large scale
 13 power construction projects might be incompatible with
 14 future technology changes. Are you following me
 15 there?

16 A Yes, sir. Can you just refer me to the
 17 line?

18 **Q** Okay. The very bottom of 2, beginning at
 19 line 23.

20 A Oh, I'm sorry. I'm on page 3.

21 **Q** At the bottom of 2, carrying over to 3.

22 A Okay.

23 **Q** The dynamics of electric restructuring.

24 A Yes, I see --

25 **Q** Do you see that?

1 look at this issue about fuel diversity.

2 **Q** Right. With that caveat, would you agree
 3 that a utility needs to have a diversity of fuel
 4 sources on its system?

5 A Yes, I would.

6 **Q** And that enables the utility to operate its
 7 system in the most cost-effective manner for the
 8 benefit of its ratepayers; correct?

9 A That would be correct.

10 **Q** And the diversity that we've been
 11 discussing actually provides flexibility to the
 12 utility to turn from one type of unit to another type
 13 of unit, depending upon fuel costs and other
 14 considerations; right?

15 A That would be correct.

16 **Q** You go on to say that captive ratepayers
 17 may be subject to economic penalty if they are unable
 18 to reap the benefits of positive market change. Now,
 19 of course, that assumes that the future would present
 20 positive alternatives to currently available
 21 alternatives; correct?

22 A That would be correct.

23 **Q** In fact, a long-term commitment or the
 24 building of a plant can actually protect ratepayers
 25 from future trends that would adversely affect them;

1 correct?

2 A That is my full understanding.

3 Q Okay. It could protect them, for example,
4 from price volatility; correct?

5 A That would be correct.

6 Q Have you taken any steps to review the
7 marketing practices of merchant plant developers in
8 connection with developing your work in this case?

9 A No, sir, I have not.

10 Q Do you have any idea what their practices
11 are in terms of how they build their portfolios and
12 what type of commitments they prefer to make or prefer
13 not to make?

14 A No, I do not.

15 Q You go on to say at page 3, line 5,
16 "Technological advance, fuel price escalation and
17 relative price changes collectively imply that
18 ratepayers committed to long-term assets involuntarily
19 forfeit efficient alternatives." Do you see that?

20 A Yes, sir.

21 Q Now, of course, when we talk about fuel
22 price escalation, do you mean to say that ratepayers
23 can avoid the impact of fuel price escalation if their
24 utility, like Florida Power Corporation, buys power
25 from an independent power producer?

1 currently; is that right?

2 A That's my understanding, that's correct.

3 Q How was that developed? Do you know?

4 A I was not here when it was developed. My
5 colleagues, Robert Trapp, along with Wayne Makin, were
6 instrumental in developing the algorithm that was used
7 in order to provide the specific type of monetary
8 incentives for electric utilities when they met
9 certain efficiency standards, like the heat rates,
10 et cetera.

11 Q Okay. And the third risk you identify is
12 the risk associated with building a long life asset
13 and having fuel costs exceed the forecast scenarios;
14 is that right?

15 A That would be correct.

16 Q Is that the risk you're essentially
17 attempting to address by your proposal in this
18 proceeding?

19 A That would be correct. That's the risk
20 that I find most problematic.

21 Q But again, would you agree that an
22 independent power producer who might sell power to a
23 company like Florida Power Corporation would be
24 affected by fuel costs exceeding forecast scenarios?

25 A That would be correct.

1 A No, I'm not making that assertion.

2 Q In fact, an independent power producer
3 would be affected by fuel price escalation; correct?

4 A Yes. It's the same market.

5 Q And they would seek to pass along that
6 escalated price to Florida Power's customers; right?

7 A That would be correct.

8 Q Now, again, at the bottom of page 3, you
9 address three kinds of risk associated with building
10 Hines 2; correct?

11 A That's correct.

12 Q And the first risk is the risk of cost
13 overruns or the failure to meet the in-service date;
14 is that right?

15 A That's correct.

16 Q But you say that's not a likely risk based
17 on past industry performance; is that right?

18 A That's correct.

19 Q The second risk you identify is that the
20 plant will perform below expectations, but again you
21 say that's mitigated by the fact that there are
22 incentives created under the Generation Performance
23 Incentive Factor methodology; is that right?

24 A That's correct.

25 Q In fact, that program, GPIF, is in place

1 Q And they would attempt to pass those costs
2 along to Florida Power's ratepayers; correct?

3 A Yes, sir.

4 Q And again, as we've discussed, having a
5 diverse system involving plants with a variety of fuel
6 sources would enable a utility to mitigate that risk
7 by enabling the utility to call upon, say, a coal
8 plant to produce power when gas prices are higher, and
9 a gas plant to produce power when coal prices are
10 higher; correct?

11 A That would be correct, yes.

12 Q Now, at page 4, line 5, the question is
13 posed, "Do current FPSC policies regarding long-term
14 generation assets foster cost-effective results for
15 FPC ratepayers?" And you've answered that in line 7
16 with, "The orthodox regulatory compact has approached
17 need determination based on a hedging strategy with
18 capital cost recovery guaranteed over a fixed
19 long-term time horizon"; correct?

20 A That's correct.

21 Q What do you have in mind when you speak of
22 the orthodox regulatory compact?

23 A The orthodox regulatory compact within the
24 framework for a need determination is nothing more
25 than an implied agreement and understanding that's

1 based on a matching process. Power companies are
2 essentially providing what they do best in terms of
3 delivery of electric services to ratepayers, who in
4 return for receiving these services will essentially
5 be paying for this particular benefit or service over
6 a given time frame.

7 So the regulatory compact is intact,
8 because it allows for the PSC to exercise its
9 oversight duties and responsibilities by providing for
10 an allowed rate of return that's fair and equitable to
11 the company, with ratepayers receiving the benefits of
12 these services that also reflect fair and reasonable
13 rates as well.

14 **Q Okay. And you're attempting by your
15 proposal to suggest a significant revision to this
16 regulatory compact; correct?**

17 A I would not characterize it as significant,
18 but I would agree that my private musings on this
19 matter would suggest that perhaps we need to rethink
20 the way in which we go about evaluating need
21 determinations.

22 **Q So we need to make a change from that
23 regulatory compact you just described?**

24 A Yes, a change, but not necessarily
25 significant.

1 **traditionally been in place in Florida, a utility who
2 builds a power plant can expect and is entitled to
3 recover the costs reasonably incurred in building that
4 plant; is that right?**

5 A That's correct.

6 **Q And traditionally, the reasonableness of
7 that decision to build the plant has been tested on
8 the basis of circumstances that exist and information
9 available at the time the decision is made to build
10 the plant; correct?**

11 A That's correct, yes.

12 **Q And would you agree that this regulatory
13 compact has been in place and followed by the Public
14 Service Commission in Florida for decades?**

15 A Yes, sir.

16 **Q Now, you go on to say that you are
17 proposing a change based on an observation that
18 long-term assets preclude economic change and disguise
19 the significance of risk; is that right?**

20 A That's correct.

21 **Q Why do long-term assets preclude economic
22 change?**

23 A Within the context of what we're discussing
24 here, economic change that would occur, the commitment
25 to the long-term asset unfortunately does not allow

1 **Q I guess that depends upon who's looking at
2 it; right?**

3 A It would be fair to say that, yes.

4 **Q Now, let me see if we can break down this
5 idea of a regulatory compact. To begin with, when we
6 talk about a compact, we're basically talking, as you
7 said, about an agreement; is that right?**

8 A That's correct.

9 **Q And the agreement is among the regulated
10 utilities, the State, and the ratepayers; is that
11 right?**

12 A That would be correct.

13 **Q And under this compact, the utilities
14 assume an obligation to serve the ratepayers; is that
15 right?**

16 A Yes, sir.

17 **Q Under the oversight and regulation of the
18 Public Service Commission; is that correct?**

19 A That's correct.

20 **Q And pursuant to that obligation to serve, a
21 utility such as Florida Power Corporation may take on
22 the responsibility to build power plants to provide
23 power; right?**

24 A That's correct.

25 **Q And under this compact that has**

1 for sufficient adjustment, and that's the conclusion
2 of economic change. Long-term assets essentially do
3 not allow much variability when change occurs, because
4 that's the nature of it. You are essentially
5 obligated or committed to that particular fixed
6 stream.

7 The significance of risk, therefore,
8 becomes somewhat disguised or marginalized, because
9 that means that essentially the decision has been
10 made, and it has not taken into proper consideration
11 that in the interim, if there are efficient
12 alternatives that are available, and if those
13 alternatives are forfeited because of the obligation
14 to the long-term asset, hence, the risk has been
15 disguised or marginalized.

16 **Q Of course, I think we've already agreed
17 that a long-term commitment can protect ratepayers
18 against future adverse conditions; is that right?**

19 A That's correct. And I'm only addressing
20 the other side of the issue here.

21 **Q The downside. You're focused only on
22 downside risk?**

23 A That's correct, yes. That would be a
24 proper characterization.

25 **Q Okay. Now, you understand, of course, that**

1 even after Florida Power Corporation builds Hines 2
2 that its demand will continue to grow; is that right?
3 A That's my understanding, yes.
4 Q And in fact, in the future, under its
5 current ten-year site plan, it will be looking to add
6 additional capacity in the year 2005; is that right?
7 A That's correct.
8 Q And 2007; is that right?
9 A That's correct.
10 Q And is there anything that would prevent
11 Florida Power Corporation from adding contracts to its
12 portfolio in the future if it goes ahead and builds
13 Hines 2 now?
14 A I honestly don't know. I would expect not,
15 but I have no prior knowledge.
16 Q In fact, if the existing laws and
17 regulations and policies stay in place, you would
18 expect that in 2005, Florida Power Corporation will
19 test the market by issuing an RFP at that time,
20 deciding whether to build Hines 3, for example, or
21 entering into procurement contracts; right?
22 A I would be agreeable with that, yes.
23 Q So we're not talking about an all or
24 nothing decision in terms of Florida Power
25 Corporation's ratepayers; correct?

1 A That's correct.
2 Q They can build Hines 2 and have procurement
3 contracts; is that right?
4 A That's right.
5 Q And in fact, do you understand that Florida
6 Power Corporation does have power purchase agreements
7 in place as part of its portfolio of generation
8 resources?
9 A Yes, that's my understanding.
10 Q And would you agree that it is appropriate
11 for a utility to have a mix of generation resources,
12 both contract and utility-owned resources?
13 A I would think that's a managerially prudent
14 direction to take.
15 Q Okay. Now, you go on to say that failure
16 to properly adjust for risk creates market distortions
17 due to inadequate recognition of both current and
18 future events. Now, can you tell us what you mean by
19 market distortions in the context of a regulated
20 industry?
21 A Well, this concept about market distortion
22 really refers to and is limited to those particular
23 industries that are essentially operating within an
24 unregulated environment. Surely, within a regulated
25 environment, that would not be an appropriate guide to

1 make such an economic conclusion or judgment. I'm
2 using that framework within the context that five or
3 ten years from now, if these type of incremental
4 changes have now accelerated and we're looking at much
5 more wider activities in the procurement of
6 generation, then that's the line of reasoning that I
7 would use to reach that.
8 Q So you're really talking about the
9 possibility that the electric industry in Florida may
10 become unregulated at some point in the future?
11 A As it relates to that particular sentence
12 that you just quoted, yes.
13 Q And as long as this industry is regulated
14 in Florida, the Public Service Commission in some
15 sense is taking the place of the market and
16 determining how utilities operate in the state; is
17 that right?
18 A That would be correct. The PSC is
19 essentially participating in the management of the
20 overall risk.
21 Q And in a sense, the system of regulation
22 replaces the market to govern how utilities operate;
23 is that right?
24 A Regulation works in a cooperative way with
25 the market. I would not go so far as to say that it

1 replaces it. But regulation is viewed as an ally in
2 helping markets work better.
3 Q Well, in fact, there is not retail
4 competition in Florida; is that right?
5 A That's correct.
6 Q We really don't have a market in that
7 sense, do we, in Florida?
8 A Not in the strict sense of the term.
9 Q And in fact, even the generation of
10 electricity is regulated, as evidenced by this need
11 proceeding; is that right?
12 A That would be correct.
13 Q Now, you go on to mention at page 4 that
14 generation and fuel risks suggest this Commission may
15 want to look at the feasibility of performance based
16 incentives as a means to ensure ratepayers are not
17 penalized for favorable market shifts. Do you see
18 that?
19 A Yes, sir.
20 Q When we talk about performance based
21 incentives, aren't we really talking about ratemaking?
22 A No. That's not my thinking in using this
23 particular concept here.
24 Q Well, aren't we talking about structuring
25 the rates by which utilities are compensated in

1 **Florida and in that manner providing them with**
2 **incentives?**

3 A Again, that's not the way in which I use it
4 in this context.

5 **Q Well, how would these incentives be**
6 **provided to regulated utilities in Florida if not**
7 **through rates?**

8 A Well, what I'm specifically referencing is
9 something that would be tantamount to a risk sharing
10 arrangement whereby under this type of periodic
11 review, there would be some type of stop and see, or
12 let's look at where we are, you know, now, and if it
13 clearly looks like the generation technology for Hines
14 2 is still state-of-the-art and fuel forecasts have
15 been very good, then the type of performance based
16 incentive that I see is something that could possibly
17 be extended, you know, perhaps in the form of an
18 adjustment in the company's weighted cost of capital,
19 you know, something that would provide a pecuniary
20 incentive that would reward the company for its
21 managerial oversight with regards to the unit itself.

22 **Q Okay. Now, we're going to talk about that**
23 **risk sharing more in a moment, but you go on at this**
24 **page to say, "Given the peculiar nature of current**
25 **market dynamics and long-term contracts, FPC's**

1 A There's no specific state that I have in
2 mind in penning these words here. I look at the
3 market in a very generic sense. It's not the market
4 here in Florida or Illinois or California. But
5 today's economy is just that, today's economy, with no
6 specific geographic reference.

7 **Q But it might include Florida?**

8 A Perhaps.

9 **Q And so you're suggesting that maybe Florida**
10 **Power Corporation ought to be using the market as a**
11 **benchmark for determining how well services are being**
12 **delivered to its customers?**

13 A It would be presumptuous on my part to say
14 that for Florida Power Corp. I would think that based
15 on everything I've read since I've been here that
16 their planning managers do in fact do this pretty
17 much.

18 **Q But in fact, there aren't any retail**
19 **providers of electricity in the state; right?**

20 A That's correct.

21 **Q There is no market for that in Florida?**

22 A Currently, that's correct.

23 **Q You go on to say, "Unlike long-term assets,**
24 **short-run assets are more flexible and can reflect**
25 **market changes quicker."**

1 **ratepayers could be held financially liable for an**
2 **asset which may not be the least cost alternative in**
3 **the not too distant future."**

4 **Would you agree with me that whether a**
5 **generation resource is the least cost alternative is**
6 **not the same thing as whether it is the most**
7 **cost-effective alternative?**

8 A Not necessarily, at least from my
9 particular economic way of looking at it.

10 **Q Well, wouldn't you agree that there may be**
11 **an alternative that is literally a few pennies**
12 **cheaper, but it's not an effective generation**
13 **technology, or it has a number of other negatives**
14 **associated with it that would make it prudent for the**
15 **utility to pass up that alternative and take the**
16 **alternative that costs a bit more?**

17 A Yes, I would agree.

18 **Q Okay. At page 5 you assert that what's**
19 **important in today's economy is that generation**
20 **planning decisions should use the market as a**
21 **benchmark for evaluating how well services are being**
22 **delivered to the end user. When you talk about**
23 **today's economy, can you tell us geographically what**
24 **market you have in mind or what state you have in**
25 **mind?**

1 A That's correct.

2 **Q Now, that could be a good thing or a bad**
3 **thing; right?**

4 A True.

5 **Q In fact, if there's a bad market change a**
6 **few years down the road and we come out of short-term**
7 **contract, we're going to be confronting that bad**
8 **market when we come out of the contract; right?**

9 A That would be correct.

10 **Q You say that under short-term contracts, a**
11 **power provider would be able to better adjust price**
12 **and technology decisions induced by market forces.**

13 A That's correct.

14 **Q What do you mean by power provider? Do you**
15 **mean an IPP who might sell power to us, or do you mean**
16 **a retail provider, or which?**

17 A I'm not making any specific reference to
18 any provider here, just any company that's in the
19 market for power in which that particular company has
20 been designated on the supply side. That would be the
21 company that would be in a much better position to
22 adjust the price and technology decisions. So the
23 short answer to your question is that it could be a
24 composite of all power providers.

25 **Q So it might include a wholesale provider**

1 **who sells power to Florida Power Corporation; right?**
 2 A That would be correct.
 3 **Q And under a short-term contract, the**
 4 **wholesale provider of power would be better able to**
 5 **adjust price decisions induced by market forces; is**
 6 **that right?**
 7 A That would be logically correct.
 8 **Q Which means that at the expiration of a**
 9 **short-term contract, they could hike up the prices?**
 10 A That possibility is there.
 11 **Q Now, you go on at page 5 and over to page 6**
 12 **to talk about Tom Hernandez's presentation at the 1997**
 13 **ten-year site plan workshop. Do you stand by this**
 14 **testimony?**
 15 A Do I stand by my testimony or
 16 Mr. Hernandez's?
 17 **Q Your testimony characterizing**
 18 **Mr. Hernandez's presentation.**
 19 A Yes, I do. My -- I'm sorry. You didn't
 20 ask a question.
 21 **Q Yes, I did. I just want to know if you**
 22 **continue to stand by what you said in your prefiled**
 23 **testimony about Mr. Hernandez's presentation.**
 24 A Oh, yes, sir.
 25 **Q Were you present in 1997 when the**

1 **Commission and the staff evaluated the 1997 ten-year**
 2 **site plan filing?**
 3 A No, I was not. I was not here at the PSC
 4 at that time.
 5 **Q Do you appreciate that Mr. Hernandez was**
 6 **attempting to explain to the Commission that in view**
 7 **of the technology changes you mentioned, that a**
 8 **utility can now build a plant in under five years?**
 9 **Do you understand that that was the thrust of his**
 10 **remarks?**
 11 A That's correct, yes.
 12 **Q And do you understand that he was also**
 13 **attempting to explain to the Commission that that gave**
 14 **utilities the flexibility to defer those planning**
 15 **decisions in the out years of the ten-year period?**
 16 A That's correct.
 17 **Q So that if there were some lower reserve**
 18 **margin numbers in the last five years of the ten-year**
 19 **site plan period, the Commission should not be too**
 20 **concerned, because the utilities had plenty of time to**
 21 **build a unit to meet those needs; is that right?**
 22 A That's correct.
 23 **Q And do you understand and agree with me**
 24 **that that was the thrust of what he was attempting to**
 25 **explain to the Commission?**

1 A Yes, I would agree.
 2 **Q What was the staff's reaction to the FRCC's**
 3 **presentation and the presentations by the utilities**
 4 **that year?**
 5 A Unfortunately, Mr. Sasso, I have no
 6 knowledge, because I wasn't there, and I haven't
 7 spoken with anyone about their reaction.
 8 **Q Would it surprise you to know that the**
 9 **staff was very, very troubled by the lower reserve**
 10 **margin numbers in the out years, the last five years**
 11 **of the ten-year planning horizon, and very disturbed**
 12 **that a couple of utilities were relying on unspecified**
 13 **power purchases to meet their needs in those years?**
 14 A Was I surprised?
 15 **Q Would you be surprised to know that?**
 16 A No, I would not be.
 17 **Q Did you review the excerpts from the**
 18 **presentation that you attached to your testimony?**
 19 A Yes, I did.
 20 **Q Do you recall the statement by Commissioner**
 21 **Deason at page 4 of 6 of this transcript, where he**
 22 **stated to Mr. Hernandez, "What you need to -- I'm**
 23 **going to be very polite, but what you need to realize**
 24 **-- you're sitting there saying, 'Well, this is an**
 25 **aggregate and each individual utility needs to make**

1 **economic decisions' and all that. That's fine and**
 2 **dandy, but this Commission has the responsibility to**
 3 **make sure that there is adequate capacity for the**
 4 **entire state, not each individual utility, and it's**
 5 **not going to do a lot of good if one utility has**
 6 **adequate capacity and another doesn't and there's no**
 7 **way for there to be sharing of that capacity, and when**
 8 **there are brownouts and blackouts and things of that**
 9 **nature, that's where the rubber meets the road and**
 10 **that's where we have failed in our responsibility."**
 11 **Do you agree with that? Do you remember**
 12 **Commissioner Deason making that statement?**
 13 A No, sir, I do not.
 14 **Q Did you review that?**
 15 A I read it and I reviewed it.
 16 **Q Would you agree that in proposing to build**
 17 **this plant, Florida Power has stepped up to the plate**
 18 **to meet the concern that Commissioner Deason was**
 19 **discussing?**
 20 A Based on these comments that Commissioner
 21 Deason has provided, I would agree, yes.
 22 **Q Did you come to learn that the staff had**
 23 **initially classified Florida Power & Light's ten-year**
 24 **site plan and JEA's ten-year site plan as unsuitable**
 25 **because they were relying in the latter five years of**

1 their ten-year site plan on unspecified power purchase
2 procurements?

3 A No, I'm not knowledgeable of that.

4 Q Do you know that they withdrew their plans
5 and inserted at a later time plans to build plants to
6 meet the Commission staff's concerns?

7 A No, I was not aware of that.

8 Q At page 6 of your testimony, you discuss
9 the PURPA contracts in answer to the question, "Are
10 there any experiences in Florida where commitment to
11 long-term assets has resulted in inefficient outcomes
12 for ratepayers?" You give here as an example
13 cogeneration and PURPA contracts; correct?

14 A That's correct.

15 Q And you point out that the ex post market
16 price for wholesale market power is now lower than the
17 ex ante price reflected in the negotiated QF contract;
18 is that right?

19 A That's correct.

20 Q Ex post means after the fact; right?

21 A That's correct.

22 Q That means after the utilities entered into
23 these agreements and with the passage of years, we can
24 now look back and conclude that the utilities actually
25 have paid more for power over the course of these

1 independent power producers in this country; is that
2 right?

3 A That's correct.

4 Q Including the National Energy Policy Act;
5 is that right?

6 A That's correct.

7 Q And would you agree that the jury is still
8 out on whether that's going to prove to be a good
9 policy or not?

10 A I would agree with that, essentially.

11 Q And in fact, there have been some very
12 negative results in some other states that have
13 embraced independent power producers aggressively,
14 like California and New York; correct?

15 A Based on a few states that I've studied,
16 that would be correct.

17 Q Now, back again to your statement about
18 this ex post market price for wholesale power being
19 lower now than the ex ante price reflected in the
20 negotiated QF contract. If we were to apply your
21 proposal of periodic review of utility decisions to QF
22 contracts, would that suggest that the Commission
23 ought to be denying cost recovery for QF contracts
24 based on your finding?

25 A I would argue that denying recovery for QF

1 agreements than it appeared would be the case at the
2 time they entered into the contracts?

3 A That would be correct.

4 Q Now, would you agree that -- I guess it
5 appears to be your characterization that PURPA
6 represents a failed regulatory effort by the Federal
7 Government; is that right?

8 A No, I would not go to that extreme. But as
9 it relates to this doctrine of avoided costs, I think
10 there are clearly some well documented cases whereby
11 the degree of economic myopia that I allude to in the
12 testimony is true not only nationally, but here in
13 Florida as well.

14 Q So basically, that aspect of the policy has
15 failed in practice; is that right?

16 A I would argue that that aspect of the
17 policy has shown a significant shortcoming.

18 Q Would you agree that what PURPA was
19 attempting to do, among other things, was to promote
20 the development of independent power producers in this
21 country?

22 A I would agree with that; that's correct.

23 Q Now, the Federal Government went on to
24 develop some other regulatory policies that you
25 discussed today also promoting the development of

1 contracts would be appropriate when there has been
2 this pattern, this persistent disequilibrium by market
3 price and avoided costs. And that's essentially the
4 framework that I kind of draw from the lessons learned
5 from what companies like Florida Power Corp. have
6 experienced in the past. It was clearly the right
7 thing to do then for the QFs, and the fact that there
8 was an important provision that would allow for an
9 important buyout that would be passed on to FPC's
10 ratepayers, that type of linkage I find to be the
11 right type of framework to use in evaluating QF
12 contracts. So the extension of that to something like
13 the Hines 2 unit I find particularly appealing.

14 Q So if I understand what you're saying, even
15 if it was the right decision at the time that the
16 utility entered into a QF contract, if it turns out
17 after the fact that the contract proved to be more
18 costly than the company could acquire power for later,
19 the utility ought to be denied cost recovery? Is that
20 your suggestion?

21 A No, I'm not suggesting that.

22 Q You're not suggesting that the utility
23 should be denied cost recovery?

24 A No, no, no. I'm not suggesting that.

25 Q That would be inappropriate; right?

1 A That's correct.

2 Q If the utility made the right decision at
3 the time to make that commitment for that generating
4 resource, it would be inappropriate and unfair to
5 later deny that utility cost recovery for costs
6 associated with that resource; correct?

7 A That would be correct.

8 Q Now, you state point blank at page 7 that
9 utilities were correct to recognize this degree of
10 economic myopia in avoided cost, speaking about the
11 cogen contracts; is that right?

12 A That's correct.

13 Q Isn't that the real lesson of these cogen
14 contracts, that utilities are in the best position to
15 know their own business? I mean, isn't that the
16 lesson to be learned from these cogen contract
17 experiences?

18 A I would agree generally that that is the
19 case.

20 Q And they were made to enter into these
21 commitments by PURPA, as implemented by federal and
22 state regulators; right?

23 A That would be correct.

24 Q Now, at the middle of page 7, beginning at
25 line 13 and 14, you say, "The lessons from recent

1 history are clear. Long-term fixed price contracts
2 retard market efficiency."

3 Is it fair to speak of a regulated
4 utility's decision to construct its own plant as a
5 market decision or an issue of market efficiency?

6 A It would not be fair for a regulated entity
7 to speak of its plant in that type of market
8 efficiency parameters.

9 Q Okay. And in fact, you would agree that
10 when we're talking about the cogen experience, we're
11 really talking about contracts, right, not decisions
12 by utilities to build their own plants; is that right?

13 A Yes, that's correct.

14 Q And would you agree that in general, it's
15 very difficult for a utility to acquire through a
16 contract the type of optionality and control over the
17 resource that they would have if they build their own
18 unit?

19 A Right.

20 Q And for every type of optionality or
21 flexibility or attribute of ownership the utility
22 attempts to negotiate, they're going to have to pay a
23 price to the wholesale provider; correct?

24 A That would be correct.

25 Q Now, you go on to say, "If QF contracts are

1 counter-intuitive to economic efficiency, a similar
2 argument can be made that the same holds true for
3 situations involving need determinations for
4 retail-serving utility generation." Do you see that?

5 A Yes, sir.

6 Q Are you suggesting that need determinations
7 are detrimental to economic efficiency?

8 A No, sir, I'm not.

9 Q You're not criticizing the process of need
10 determinations or the Commission's role in acting upon
11 need determinations, are you?

12 A Absolutely not.

13 Q And you're not criticizing necessarily a
14 utility's decision to come forward and seek a need
15 determination for its own plant; is that right?

16 A Absolutely not.

17 Q You conclude this paragraph at page 7 by
18 saying, "Competitive markets are more likely to result
19 in the best set of mutually beneficial outcomes for
20 all parties." Do you see that?

21 A Yes, sir.

22 Q Are you advocating deregulation?

23 A No, I'm not advocating deregulation. I'm

24 again in the type of forward-looking apparatus that I
25 view from page 1 throughout this particular document.

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2 retard market efficiency."

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19 A Right.

20 Q And for every type of optionality or
21 flexibility or attribute of ownership the utility
22 attempts to negotiate, they're going to have to pay a
23 price to the wholesale provider; correct?

24 A That would be correct.

25 Q Now, you go on to say, "If QF contracts are

1 I'm just simply looking ahead, reading the tea leaves,
2 so to speak. As a policy wonk, this is what I'm hired
3 to do. And based on that particular framework that,
4 you know, we're moving, we're making this type of
5 change or transition into a generation market that
6 would be more reflective of competitive forces, then
7 with that, this is how I kind of draw the conclusion
8 here that, given that likely outcome of competitive
9 forces driving the generation out of the market, that
10 it's consistent with the standard economic theory that
11 competitive markets typically result in the best set
12 of mutually beneficial outcomes.

13 Q We're talking about economic theory, and
14 again we're talking about principles of microeconomics
15 and macroeconomics; is that right?

16 A That would be correct.

17 Q Which assume perfect competition; is that
18 right?

19 A For perfect markets; that's correct.

20 Q Now, at the bottom of page 7, you answer
21 the question, "How would you propose that the
22 Commission address the risks associated with the
23 construction of the Hines 2 unit?" You start by
24 saying, "Assuming Hines 2 is constructed on budget and
25 on time," and then you go on with your proposal. Do

1 you mean to suggest that there is a risk to the
2 utility associated with not being able to build its
3 unit on time, to have it in place in time to meet its
4 need?

5 A Yes. There's a risk obviously associated
6 when you don't do things on time because of either
7 expectations on the demand side that have to be taken
8 into consideration, and obviously the risk that -- or
9 at least a portion of that particular risk has to be
10 taken into consideration as meeting the necessary 20%
11 reserve margin.

12 Q And what type of events could bring about a
13 delay in the construction of this plant?

14 A I would not have any specific reasons other
15 than the normal things, you know, weather delays,
16 labor disputes, typically all the exogenous factors
17 that impact on planning and operations decisions.

18 Q Beginning with regulatory delay; correct?

19 A As well as regulatory delay would be a
20 component as well.

21 Q If we got embroiled in appeals and that
22 type of thing, that could prevent the company from
23 building its plant on time?

24 A That's a possible culprit here.

25 Q Now, you say that assuming that the unit is

1 A Okay.

2 Q That's what we're talking about?

3 A Thank you for the refresher.

4 Q That's the need provision; right?

5 A Right.

6 Q So before the Commission would get around
7 to allowing the company to put these costs into rate
8 base, it would first have to determine that Florida
9 Power had demonstrated a need and satisfied the
10 requirements of 403.519; correct?

11 A That's correct.

12 Q And is it fair to say that you agree that
13 Florida Power Corporation has demonstrated that it has
14 met all the conditions appropriate for the Public
15 Service Commission to grant a favorable determination
16 of need?

17 A With the exception of considering what I
18 have proposed, I would agree with that.

19 Q So you would agree that they've met those
20 conditions, but with this caveat that you would like
21 the Commission to consider your proposal; is that
22 right?

23 A If the Commission accepts it.

24 Q Now, you say that the Commission should
25 require FPC to periodically, say every five years,

1 constructed on budget and on time, the Commission
2 should allow the capital and O&M costs of the unit to
3 be included in rate base for surveillance purposes
4 upon its commercial in-service date; correct?

5 A Correct.

6 Q Now, before the Commission would get around
7 to allowing the capital and O&M costs to be put in
8 rate base, the Commission would first have to
9 determine that the plant was needed; correct?

10 A That would be correct, yes.

11 Q And that Florida Power Corporation had
12 satisfied the requirements of Section 403.519;
13 correct?

14 A Unfortunately, I would have to defer to my
15 attorney. I don't know what section --

16 MS. HART: That's the need determination
17 statute.

18 THE WITNESS: Oh, okay.

19 BY MR. SASSO:

20 Q It's in your interrogatory answers.

21 You say in response to interrogatory 1, "The factual
22 and legal framework accepted in formulating my
23 opinions are based on an economic theory of risk
24 management with risky assets and Section 403.519,
25 Florida Statutes."

1 review current market conditions to determine whether
2 the continued operation and rate base recovery of
3 Hines 2 is in the best interest of FPC's ratepayers.
4 That's your proposal; correct?

5 A This is my sentence here, that's correct,
6 yes.

7 Q Okay. Now, why five years? How did you
8 pick five years?

9 A Well, five years is a number which was
10 looked at as a proxy for really a short term. There's
11 no magic algorithm that put all this information into
12 some kind of model and just kicked out the number five
13 years. So I do not want to project the view that
14 somehow this is an optimal interim review period.
15 It's just a number which, you know, was less than ten
16 that I just kind of used for thinking purposes in
17 developing my testimony.

18 Q And in fact, there's no way that we can
19 determine today looking at the tea leaves, as you say,
20 what the optimal time might to be take another look at
21 this project; correct?

22 A That would be very problematic, yes.

23 Q You would have to speculate whether there
24 might be a more advantageous condition in three years
25 or five years or seven years or nine years; right?

1 A That's correct.

2 **Q Or 15 years, for that matter?**

3 A I would not go that far. I would like to
4 see something a little closer in, but still the task
5 would be coming up with this optimal number.

6 **Q In fact, if we picked five years, let's
7 say, and the Commission agreed that they ought to put
8 something in the need order that says we've got to
9 take a look in five years, suppose there were a market
10 phenomenon the sixth year, maybe price spikes, or
11 there may be a price trough. We would miss it by a
12 year; right?**

13 A Yes.

14 **Q Or suppose it were something that happened
15 in the third year, there was some opportunity
16 available then, or the world might have looked
17 different then. We would miss it if we did it in five
18 years; right?**

19 A That would be correct.

20 **Q So we would be constantly chasing around
21 trying to find just the right short-term market window
22 maybe to make a reassessment of this plan; right?**

23 A Yes. And that's why I really choose not to
24 focus so much on the number, five years, or as you
25 correctly pointed out, these other contingencies that

1 **time? Might it issue an RFP to get proposals?**

2 A That would be one particular way in which
3 it could be pursued. But other than the RFP route,
4 quite honestly, I didn't spend a lot of thoughtful
5 time in looking at the other strategies by which this
6 could be done.

7 **Q Would you agree that the RFP route is the
8 method by which the Commission currently expects
9 utilities like Florida Power Corporation to test the
10 market before deciding what option to pursue?**

11 A That's correct.

12 **Q And in fact, in this case, Florida Power
13 Corporation did test the market. It did issue an RFP,
14 and they got some proposals and evaluated them;
15 correct?**

16 A That's correct.

17 **Q And decided to build its own unit; correct?**

18 A That's correct.

19 **Q Now, you also include as an option that the
20 company might pursue five years out replacement
21 construction; right?**

22 A That's correct.

23 **Q So if we did this review five years out and
24 tested the market, issued an RFP, looked at options,
25 you might conclude it's perfectly appropriate for the**

1 could occur in the sixth year or perhaps in the third
2 year. It's the concept of short-term or interim
3 review that's more important to me.

4 **Q Okay. And you say that this market review
5 should explore all alternatives including, but not
6 limited to, conservation, load management, distributed
7 generation technologies, short-term and long-term
8 purchased power options, and replacement construction;
9 correct?**

10 A That's correct.

11 **Q So let's just take an example. Let's
12 suppose that we've conducted this review five years
13 out. You're suggesting that it might be appropriate
14 at that time for the company to enter into a long-term
15 purchased power option; right? That's one of the
16 alternatives you listed.**

17 A That would be one of the alternatives, yes,
18 just putting everything on the table, so to speak.

19 **Q So you would concede that it might be
20 perfectly appropriate five years out for the company
21 to enter into, say, a 20, 25-year contract?**

22 A That would be true, based on the fact that
23 that was chosen as the best one at that time.

24 **Q And how would the company go about
25 determining whether that's the best option at that**

1 **company to decide to build a different plant?**

2 A If that's what we know at that time five
3 years from now, that would be a logically correct
4 conclusion to make.

5 **Q And the company might make a decision to
6 build a different plant which it would own and operate
7 for 25 or 30 years; right?**

8 A That's a possibility, yes.

9 **Q And it might be perfectly appropriate to
10 obligate the company's ratepayers to pay for the cost
11 of that plant if that's what the market looked like
12 five years from now?**

13 A That would be a distinct possibility.

14 **Q Now, you go on to say, "If a more
15 cost-effective alternative becomes apparent, then the
16 Commission could deny future cost recovery or
17 authorize an accelerated writeoff"; right?**

18 A That's correct.

19 **Q Now, you're contemplating the possibility
20 that five years out, a more cost-effective alternative
21 might become apparent; is that right?**

22 A That's right.

23 **Q And you would agree that at this point in
24 time, based on the analysis that Florida Power has
25 conducted and the RFP results, that Florida Power has**

1 **elected the most cost-effective alternative available**
2 **to it today; right?**

3 A Today, that's correct.

4 **Q Now, you're anticipating that there might**
5 **be a situation five years out where a more**
6 **cost-effective alternative becomes apparent, but we**
7 **won't know that until we do that review five years**
8 **out; right?**

9 A Well, it's not like I'm anticipating it.

10 **Q It might happen?**

11 A There is a probability that it might be
12 there. So I'm not, you know, perched in my lofty
13 tower and actually wishing for these things to
14 happen. But as a responsible policy analyst, I have
15 to take that into consideration.

16 **Q And you're not prepared to say whether that**
17 **probability is 1% or 100% or any number in between?**

18 A Absolutely not.

19 **Q So there is some probability that there**
20 **might be a more cost-effective alternative in the**
21 **future, and we'll do this review five years out, and**
22 **if we identify something five years out, based on the**
23 **information available then, you're suggesting the**
24 **Commission might want to deny future cost recovery; is**
25 **that right?**

1 the type of technology that's embedded in Hines 2
2 today which gives it a superior least cost position
3 relative to other alternatives that were pointed out
4 in the RFPs, five years from now, or seven years from
5 now, or eight years from now, that could still very
6 well hold, and then obviously ratepayers would be
7 given the benefit of that efficient technology.

8 **Q Okay. Let's talk about what happens the**
9 **first five years. Do I understand correctly that for**
10 **the first five years, you would propose that the**
11 **company could put this in rate base and get full cost**
12 **recovery?**

13 A Yes. In the general broad scheme of
14 things, that would be correct.

15 **Q Okay. So the company would get cost**
16 **recovery through its cost of service rates; is that**
17 **correct?**

18 A That would be correct.

19 **Q It would not get market pricing on the**
20 **plant; right?**

21 A Currently, no, not now.

22 **Q Okay. So let's suppose that for the first**
23 **five years, it cost \$30 a megawatt-hour to produce**
24 **power. The company would get some cost recovery based**
25 **on a rate based on that cost of providing the power;**

1 A That would be an option that the Commission
2 could take.

3 **Q Even though the decision Florida Power**
4 **makes today to build the plant is perfectly**
5 **appropriate, given what we know today; right?**

6 A That's correct.

7 **Q And who would eat the cost of the plant**
8 **from that day forward?**

9 A Well, you know, I want to avoid pejorative
10 language like eating the cost --

11 **Q How about absorb the cost? Is that better?**

12 A The costs would clearly have to be assumed
13 by the company that has made a decision, a management
14 decision on the basis of its available information,
15 knowledge, skills, and capital. But if the market has
16 now provided the definitive information about, you
17 know, what's truly the economically best way to
18 produce power, then the company would, at least in my
19 framework, be responsible for assuming that decision
20 which proved to be uneconomic.

21 But on the flip side, however -- and this
22 is why I stress that this is kind of a risk sharing
23 arrangement. You know, it could very well be the
24 opposite holding true, that where we are five years
25 from now, using the market as a benchmark, that again

1 **right?**

2 A \$30 an megawatt-hour?

3 **Q Let's say \$30 is hypothetical.**

4 A Yes, uh-huh.

5 **Q Okay. Let's suppose market prices went up**
6 **and down and swung between \$30 and \$60 or \$75 or**
7 **\$1,000 an hour. You're not suggesting that the**
8 **company would be able to benefit from those higher**
9 **market prices during that five-year period; correct?**

10 A That -- well, no, I'm not.

11 **Q So we would be required to continue to get**
12 **recovery on a cost of service basis for these five**
13 **years, even though market prices might be**
14 **substantially higher; correct?**

15 A Correct.

16 **Q Now, the next five years, let's suppose the**
17 **market prices are a bit lower than the cost of**
18 **producing energy from the plant. You would suggest**
19 **that we would be denied cost recovery for the**
20 **difference between those market prices and the cost of**
21 **producing energy out of this plant; right?**

22 A That would be an option.

23 **Q The Commission could do that?**

24 A Could do that, yes.

25 **Q And you're suggesting that the Commission**

1 **should consider doing that seriously?**

2 A Should consider that as one of its options.

3 **Q So, in other words, Florida Power**
4 **Corporation would not get the upside of market risk,**
5 **but would be expected to bear the downside risk; is**
6 **that right?**

7 A That would be correct. And in the
8 framework that's outlined here, there would be the
9 risk exposure that I have fundamentally addressed, the
10 downside risk for ratepayers as reflected in Issue 6.

11 **Q Now, let's suppose that an IPP, independent**
12 **power producer, were contemplating building a plant.**
13 **Do you think the investors of an independent power**
14 **producer would agree to build a plant on that basis,**
15 **where they would be saddled with price controls when**
16 **the market is up and not be able to benefit from it,**
17 **but would be expected to sell at those prices when the**
18 **market is down? Do you think investors of an IPP**
19 **would go forward with a project on that basis?**

20 A I would have no doubt that there would be
21 some reservation that would be expressed by investors
22 for either IPPs or IOUs. But the basic idea, however,
23 is that where we are five or ten years from now, given
24 our commitment to a specific generation technology
25 today to meet those needs in the short term, you know,

1 **discourage Florida Power Corporation from building**
2 **this plant for some reason?**

3 A That's not my understanding.

4 MR. SASSO: Let's just take a few minutes'
5 break. I would like to take a minute to look
6 through some of these documents, and then we may
7 be able to wrap up.

8 MS. HART: Sure.

9 (Short recess.)

10 MR. SASSO: That's all I have for now.

11 CROSS EXAMINATION

12 BY MS. HART:

13 **Q Mr. Dickens, I do have a few questions to**
14 **follow up on some things that Mr. Sasso asked you.**
15 **First of all -- and these are in no**
16 **particular order. You talked about the fact that**
17 **staff did not have a position on Issue 6 in its**
18 **Prehearing Statement. Are you aware that staff**
19 **typically does not take positions, nontestifying staff**
20 **does not take positions on issues?**

21 A Yes, I am.

22 **Q These articles that Mr. Sasso went through**
23 **with you one at a time, is it fair to say that you**
24 **considered these as a group in approaching your --**
25 **helping you to delineate your position in this matter?**

1 if things move along as I think they may in my crystal
2 ball of sorts, then the market will be the ultimate
3 arbiter that will provide the necessary information
4 for individuals that are interested in providing power
5 at the given prevailing prices at that time.

6 **Q But that's not the way the market works, is**
7 **it? When an IPP developer is looking out at market**
8 **opportunities, they can project that they will get**
9 **high prices and low prices; correct?**

10 A That's right, yes.

11 **Q But you're not proposing that Florida Power**
12 **corporation would actually participate in the market**
13 **in that sense; right?**

14 A That's not my analysis of it. My concern
15 is basically just looking at this kind of snapshot,
16 taking a snapshot picture, and given the snapshot
17 picture in the interim, asking ourselves, this
18 particular technology that has been committed to
19 provide power, does that still reflect the best
20 available technology whereby ratepayers can have the
21 best power at the most economical rates. If in five,
22 seven, eight, nine years that's true, fine. If not,
23 then there are alternatives.

24 **Q Is part of the intent of your proposal or**
25 **part of staff's intent, to the extent you're aware, to**

1 A That would be correct. In helping me to
2 formulate my ideas, my thinking, I attempted to try to
3 identify that body of literature that I thought would
4 be most helpful, given the rather short window that I
5 had to work with to pull all this together.

6 **Q Okay. Going to the question of whether**
7 **Florida Power Corporation has in the rest of its need**
8 **determination case shown the need, is it part of your**
9 **job description to review all aspects of that need**
10 **determination petition and make a determination of**
11 **whether it's met or not?**

12 A No, it's not. My specific contribution in
13 this particular exercise is narrowly defined as it
14 relates to Issue 6.

15 **Q Okay. At one point you stated that the**
16 **idea of things moving from ownership to procurement of**
17 **generation assets is the basis for a lot of your**
18 **analysis here. Is it really the only basis for your**
19 **analysis, or are there other conditions happening at**
20 **this point that are contributing to your opinions?**

21 A I would characterize my statement about the
22 transition from ownership to procurement as really
23 reflective of that being the primary mover. There are
24 some other issues involved, but they're more
25 peripheral. But for my purposes, that's the primary

1 issue that I focused on throughout the development of
2 my testimony.

3 **Q Okay. Forgive me for my lack of intimate**
4 **knowledge of all the issues here, but is there**
5 **anything in what's happening in the wholesale market**
6 **or at the federal level that contributes to your**
7 **opinions?**

8 A Yes, that's what I was alluding to. There
9 are some other peripheral issues that are involved.
10 That would be part of it. But still, in the wholesale
11 market, this is a market which is -- it would be more
12 correct to characterize it as in its kind of infancy
13 of development as opposed to a mature, robust
14 wholesale market now. So that's why I purposely did
15 not give it that much attention.

16 **Q You talked at some length about five years**
17 **not being something that's set in stone as far as a**
18 **choice for a number. Are there underlying economic**
19 **theories, if you would, that use five years as a time**
20 **period in which change can be observed?**

21 A There is no acceptably standard theory in
22 economics that pinpoints an interim time frame, like
23 five years. That's just a number that I bear
24 responsibility for concocting, five years, and I have
25 no supporting theory that suggests that as the optimal

1 CERTIFICATE OF OATH

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4 STATE OF FLORIDA)
5 COUNTY OF LEON)

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7
8 I, the undersigned authority, certify that
9 BILLY R. DICKENS personally appeared before me and was
10 duly sworn.

11 WITNESS my hand and official seal this 12th day
12 of October, 2000.

13
14
15
16 MARY ALLEN NEEL, RPR
17 100 Salem Court
18 Tallahassee, Florida 32301
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1 number.

2 **Q Would it be fair to say that various**
3 **changes could be observed in the span of five years?**

4 A That would be correct.

5 MS. HART: I think that's all I've got.

6 MR. SASSO: Nothing further. Thank you
7 very much.

8 (Deposition concluded at 12:25 p.m.)
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1 CERTIFICATE OF REPORTER

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4 STATE OF FLORIDA)
5 COUNTY OF LEON)

6
7 I, MARY ALLEN NEEL, do hereby certify that I was
8 authorized to and did stenographically report the
9 foregoing deposition of BILLY R. DICKENS.

10 I FURTHER CERTIFY that this transcript,
11 consisting of 96 pages, constitutes a true record of
12 the testimony given by the witness.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties,
15 nor am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am
17 I financially interested in the action.

18 DATED THIS 12th day of October, 2000.
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MARY ALLEN NEEL, RPR
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