BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of	Docket No. 890148-EI
Petition of the Florida Industrial Power Users Group to Discontinue Florida Power and Light Company's Oil Backout Cost Recovery Factor.	HEARING FIRST DAY - AFTERNOON SESSION VOLUME - II Pages 188 through 327

FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0871

Tuesday, August 22, 1989

Met pursuant to notice at 9:30 a.m.

BEFORE: COMMISSIONER MICHAEL McK. WILSON, Chairman
COMMISSIONER GERALD L. GUNTER
COMMISSIONER JOHN T. HERNDON
COMMISSIONER THOMAS M. BEARD
COMMISSIONER BETTY EASLEY

APPEARANCES:

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I N D E X

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P R O C E E D I N G S

(Hearing resumed at 1:45 p.m.)

CHAIRMAN WILSON: All right, let's come back to order in 148.

MS. RULE: Mr. Chairman, the parties have come to an agreement subject to your ruling. Would you like me to go through the particular issues?

CHAIRMAN WILSON: Why don't you tell me the five that are remaining?

MS. RULE: Well, it's five that they don't agree whether or not they would remain.

CHAIRMAN WILSON: Well, the five that you all don't agree. We are going to make a determination anyway because that's our job, and we have that privilege. But I would like to know what the opinions of the parties are as to the five issues that they can't agree are taken care of by motion.

MS. RULE: The five issues that they cannot agree whether they stay in or out are Nos. 1, 5, 10, 14 and 20.

CHAIRMAN WILSON: That's 1, 5, 10, 14 and 20?

MS. RULE: Yes, and I can go through the other issues and tell you whether they agreed to be in or agreed to be out, if you like.

COMMISSIONER GUNTER: I'm surprised they agreed on 6.

MS. RULE: Would you like me to go through them issue by issue and tell you which ones the parties --

CHAIRMAN WILSON: Sure, let's go through it real quickly. The ones that she indicated are the ones that could potentially stay in. They agree but those issues would be disposed of by the motion to dismiss? No?

MS. RULE: No.

CHAIRMAN WILSON: Then explain that to me again.

MS. RULE: On Issue No. 1 the parties don't agree what would happen. There are differing opinions of what would happen upon your ruling.

Issue No. 2, both parties agree that Issue No. 2 would remain.

CHAIRMAN WILSON: Issue 2 would remain?

MS. RULE: Yes. Issue No. 3 would be disposed of.

CHAIRMAN WILSON: Okay.

MS. RULE: Issue No. 4 would remain. (Pause) On Issue No 5 there is disagreement whether it would be disposed of or not.

CHAIRMAN WILSON: All right.

MS. RULE: Issue No. 6 would remain. Issue No. 7 would be disposed of, as would Issues No. 8 and 9.

CHAIRMAN WILSON: All right.

MS. RULE: There would be disagreement on the disposition of Issue No. 10. (Pause) Issue No. 11 would remain. (Pause) Issue No. 12 would remain. (Pause) Issue No. 13 would remain. (Pause) There is disagreement on Issue No. 14. Issue 15 would remain, as would Issue 16.

CHAIRMAN WILSON: All right.

MS. RULE: Issue 17 would be disposed of. Issue 18 would remain.

COMMISSIONER GUNTER: How about saying "in" or "out".

MS. RULE: Pardon me? Sure.

COMMISSIONER GUNTER: Pardon me, in or out.

MS. RULE: 19, in. 20, disagreement.

COMMISSIONER GUNTER: Is that out?

MS. RULE: No, disagreement. Nobody can agree whether it's in or out.

COMMISSIONER GUNTER: All right.

MS. RULE: 21, in; 22 and 23, out.

MR. GUYTON: With a caveat, Commissioners.

COMMISSIONER BEARD: Hold.

COMMISSIONER EASLEY: Hold the phone. A caveat on which one?

MR. GUYTON: On 22 and 23. We are not waiving arguments of administrative finality and res judicata on this, but we think the underlying issue that we raised those to would be removed by the motion to dismiss.

If we are only talking -- if the Motion to Dismiss denies their argument that the cost recovery should be terminated, and we are no longer at issue as to whether the capacity costs should be continued to be collected through the cost recovery factor, then these issues can drop out. If there is still a continuing issue as to whether or not the UPS capacity costs would be recovered, then we simply -- we can drop these issues as identified issues but we just simply don't want it indicated that we have waived the argument.

COMMISSIONER HERNDON: What was 24 then, Marsha?

MS. RULE: 24, out.

CHAIRMAN WILSON: What about 23?

MS. RULE: 23 was with the caveat.

CHAIRMAN WILSON: 23 is out, all right. And 24 is out?

MS. RULE: 24 and 25, out. 26, in; 27, in; 28, in; 29 and 30, in. (Long pause)

CHAIRMAN WILSON: Why is there disagreement on Issue 4? (Pause) never mind; never mind. (Long pause)

COMMISSIONER HERNDON: What was the dispute about Issue 14, and why does it matter?

MS. RULE: The parties will need to address that. In the interest of time I just went through and got whether or not there was agreement or disagreement.

MR. GUYTON: Commissioner Herndon, I can address that, and we suggest it should stay.

As part of its allegations of its petition in this case, in what I call Count 4 of their petition where they suggested that FPL use the oil backout factor to evade regulatory scrutiny, and it has to do largely with the equity issue and the tax savings issue, they have suggested, and I think a fair reading of the petition is that we have some how evaded your scrutiny and not kept you apprised of what we are recovering through the factor.

We raised this issue because we thought it was going to be an issue in the petition. We will gladly drop the issue if FIPUG no longer considers that general overview to not be at issue in the proceeding. It doesn't go to our motion, but we will gladly drop it if FIPUG considers there to be no issue as to whether we kept you regularly apprised or our oil backout cost recovery factor.

COMMISSIONER HERNDON: I thought you said you had raised the issue, that you raised it in response to their petition.

MR. GUYTON: We raised it in response to their petition. Quite frankly, they have really not pressed the issue at hearing.

COMMISSIONER HERNDON: Mr. McGlothlin, is that your position, that power and light has not kept the Commission informed or has attempted to evade our scrutiny?

MR. McGLOTHLIN: As Mr. -- let me just check the issue that you are talking about.

COMMISSIONER HERNDON: Sure. (Pause)

MR. McGLOTHLIN: As Charles has pointed out, this is

FPL's issue. We have never maintained that they were not reporting or filling out forms the right way. We have maintained that by segregating the oil backout project from the offer to use a lower return on equity, they have diminished the amount of savings, tax refund savings, available to customers and have diluted the vehicle the Commission has used to address the difference between embedded and prevailing income tax rates. So there is a return on equity issue, but I don't think it arises from any contention on our part that reports have been incomplete or that they haven't made the calculations required of it.

CHAIRMAN WILSON: You are just saying that they kept more money than you thought they ought to?

COMMISSIONER HERNDON: Where does this leave us then, Mr. Guyton?

MR. GUYTON: Commissioner Herndon, I think we can drop it. I just point out why we raised it, that they had a statement that FPL has used the oil backout cost recovery mechanism to evade the Commission's ability to monitor and regulate the Utility's earned rate of return.

COMMISSIONER HERNDON: So I'm going to move it from the disputed column to the out forever column?

MR. GUYTON: I think we can.

COMMISSIONER EASLEY: Could I ask the same question about Issue No. 1? What is the dispute on Issue No. 1 as to its effect here?

MR. McWHIRTER: I'm not sure I'm smart enough to fully comprehend Mr. Childs' motion, but as I comprehend it he says that the Commission is obligated to strictly adhere to the oil backout recovery rule. And therefore, what we are asking you to do is to not follow the rule. And once a project has been qualified there is no way of getting out of collecting for that project under the rule. That's my understanding, and I don't think I have a good understanding.

COMMISSIONER EASLEY: Is that what you understood his motion to be?

MR. McWHIRTER: That's what I understood his motion to be.

Now, the rule says that the oil backout project cannot be used to meet load growth; in other words, if you have more customers and greater demand on your system you collect for that through a regular rate case. You don't collect for that by buying energy from the Southern Company. So we say in applying the rule strictly, if you look at this project the capacity that is used, the portion that is used to meet load growth does not qualify under the oil backout proceeding and, therefore, should be excluded -- or is not excluded by his motion.

COMMISSIONER EASLEY: Well, let me ask you a question on this specific issue. Because once you said that I no longer understood the motion. I thought the motion simply was to dismiss anything relating to a determination that the project no longer qualified. Am I oversimplifying your motion, Mr. Childs?

MR. CHILDS: That's the essence of the motion.

COMMISSIONER EASLEY: Having said that, and that alone, it does not to me say anything other than that; it doesn't talk about strict, or relaxed interpretation of the rule, but it just talks about whether or not the project qualifies, right?

MR. McWHIRTER: I guess it is a matter of time, and the question here is in 1982 it qualified. In 1988 Florida Power and Light, which at that time had a contract with Southern Company that ended in 1995, extended that contract to the year 2010. Once it has done that, it's using this capacity for a different reason than it was back in 1982. So we say under the rule, as it is strictly interpreted, they are now using this transmission line to meet load growth and they are not using it to displace oil.

CHAIRMAN WILSON: So you want to revisit the primary purpose determination under the rule? That's what I am hearing you say.

COMMISSIONER EASLEY: That's right.

CHAIRMAN WILSON: That the oil displacement is no longer the primary purpose so we have got to requalify the project to determine whether it's primarily an oil backout project or whether it's something else.

COMMISSIONER HERNDON: From this point forward.

MR. McWHIRTER: I guess so. Because I think under the

-- what you do, if you don't maintain the flexibility of this Commission to provide oversight of the Utility's operations, you lose your regulatory power, and the Statute won't let you give that regulatory power up.

COMMISSIONER EASLEY: All right. Help me with the logic of this then. The project was qualified to begin with in order to avoid additional oil-fired generation, right?

MR. McWHIRTER: No. It was in order to displace existing oil-fired generation.

COMMISSIONER EASLEY: Okay. But the end result then -- that was done to displace it -- the end result of that is that you had less oil-fired generation, whether it's by displacement or avoidance.

MR. McWHIRTER: Right.

COMMISSIONER EASLEY: The end result in the out years is that there is less of it.

MR. McWHIRTER: That's correct.

COMMISSIONER EASLEY: Okay. In those out years then you have displaced, you have not permitted, you have discouraged any oil-fired generation. The load increases. How are they supposed to meet it?

MR. McWHIRTER: Well, that's the problem, you see. Florida Power and Light, let's say that have 1000 megawatts of oil-fired power.

COMMISSIONER EASLEY: Okay.

MR. McWHIRTER: And they say, "We are going to go to Southern Company, and because oil is getting so expensive we are going to have an oil backout project. So we are going to shut down 500 megawatts of capacity and we are going to buy 500 megwatts of coal-by-wire," and the energy savings justify that, okay?

COMMISSIONER EASLEY: Okay.

MR. McWHIRTER: In the passage of time there are new customers. The existing customers are using more electricity. And what's happening is that that 500 megawatts of oil-fired capacity that was previously being used and displaced by the project is now being used to meet the demands of those customers.

COMMISSIONER EASLEY: But if you didn't have the coal-by-wire, would they have had to build an oil-fired generation? That's my whole question. If you have avoided oil-fired, or you have displaced oil-fired, how can you then argue that they shouldn't be meeting load with what they've got?

MR. McWHIRTER: Well, that's the evidence that we want to give to you through Mr. Pollock, and let them cross examine him on that subject. He says you would not have needed them.

CHAIRMAN WILSON: The two Martin units?

MR. McWHIRTER: Yes.

CHAIRMAN WILSON: 3 and 4?

MR. McWHIRTER: Say it again?

CHAIRMAN WILSON: That you would not have needed Martin

3 and 4 anyway.

MR. McWHIRTER: That's right.

COMMISSIONER EASLEY: But that isn't the answer in Issue 1, that you have given in Issue 1.

COMMISSIONER BEARD: May we please do one thing, first, okay, the statement that --

CHAIRMAN WILSON: Get rid of this feedback.

COMMISSIONER BEARD: -- Commissioner Herndon made about going forward was not the case at all, what their intent is, if I read the testimony properly, is to go back and say that the project was never valid in the first place.

MR. McWHIRTER: I think that's where I got in trouble.

COMMISSIONER BEARD: Wait a minute. If you're going to give it all back. If you are going to go back and take everything that was allocated through depreciation -- yes, just a minute, let me finish -- through accelerated depreciation, and you are going to give all that back and then you are going to depreciation it on a going-forward basis, is that not what you're recommending to be done; give all of the accelerated depreciation back and then accelerate it over a normal term? Isn't that what the testimony was?

MR. McWHIRTER: There are two issues --

COMMISSIONER BEARD: Answer that part, isn't that part of the testimony?

MR. McWHIRTER: We're not going back to '82, we're going to '87, which is the first time they started collecting the accelerated depreciation. The Commission said in '82 that you want to get accelerated depreciation now but we're not going to give it to you now, we're going to look at it when those plants would have come on line, which is at '87. So in '87 Florida Power and Light came back and said, "We now want accelerated depreciation," and we're saying in '87 they should not have gotten that and that was a mistake.

CHAIRMAN WILSON: But it was done appropriately according to the rule, is that right?

MR. McWHIRTER: No, we say that it was not done according to the rule because in the '87-88 time frame the relationship with Southern Company changed. Whereas before we were meeting a coal bubble and this contract was going to expire in '95 and these plants were going to come on a little bit later. What happened in the relationship with Southern Company is that they extended that contract to until 2010.

CHAIRMAN WILSON: If they hadn't extended that contract would we be here today?

MR. McWHIRTER: If they hadn't extended that contract I think under your rule we probably would not have as strong an argument as we have now.

CHAIRMAN WILSON: We'd still be here today? I just asked you whether they did that in conformance with the rule and you said, "No, because the relationship with Southern Company had changed." If you have hadn't changed the relationship with Southern Company, would it have been done in conformance with the rule?

MR. McWHIRTER: Yeah, I think we'd still be here fussing of the application of the rule.

CHAIRMAN WILSON: What's the answer to my question? You would still maintain, regardless of the relationship with Southern that changed or didn't change, that it would be in violation of the rule or in conformance with the rule?

MR. McWHIRTER: They are coming in under the legal parameters but the facts are different. They are saying that what we are deferring is something that's worth $2,000 a kilowatt, and, therefore, we get X amount of accelerated depreciation. We would be here fussing because we say, wait a minute, it's not worth $2,000 a kilowatt and you wouldn't have spent that because you went in asking for 19% return on equity and then went to 15.6, and that's still too high. It's only $1,000 a kilowatt. So you're entitled to accelerated depreciation under the rule, but the amount of money would still be in dispute.

CHAIRMAN WILSON: So you are contesting the calculation of the costs and benefits under the rule?

MR. McWHIRTER: Yes. Yes.

COMMISSIONER EASLEY: That's the bottom line.

CHAIRMAN WILSON: Okay. I have been trying to get there since early this morning, is exactly what we're doing here and what your position is. And a moment ago what I thought I heard you saying is that we want to re-examine the primary purpose of the project to requalify. You are not saying that?

MR. McWHIRTER: I don't want to re-examine it as of '82. I'm acceding to your position in '82. But something has happened since '82.

CHAIRMAN WILSON: When do you want to re-examine?

MR. McWHIRTER: Something has happened since '82 that affects the primary purpose and that is it is now the primary purpose of this oil backout or of this transmission line is to meet load growth and no longer to meet displaced oil.

COMMISSIONER EASLEY: So Issue 1 should be a primary purpose issue effective what date?

MR. McWHIRTER: I guess as of the date we file our petition for you to act on.

COMMISSIONER EASLEY: Not the date of the new contract?

MR. McWHIRTER: No. No.

CHAIRMAN WILSON: And not in 1987?

MR. McWHIRTER: Well, now we're not talking about accelerated depreciation. We're only talking about the application of the oil backout, and this would be prospective, prospective only. What they've collected now I don't think we can go back and deal with retroactively. What we're saying is that from the future you have to collect for these monies through base rates, and don't go back and do anything in the past except with accelerated depreciation which was improperly --

CHAIRMAN WILSON: Okay, that is enforce the rule.

MR. McWHIRTER: That is enforce the rule.

CHAIRMAN WILSON: You're saying enforce the rule with respect to future collections on this project through base rates.

MR. McWHIRTER: That's correct.

CHAIRMAN WILSON: You're saying re-examine the primary purpose determination --

MR. McWHIRTER: Yes, sir.

CHAIRMAN WILSON: From what date, the date you filed your petition? From 1982, 1985, '86, '87, '89, when?

MR. McWHIRTER: Well, since you're going to apply it prospectively I don't think that that date makes a difference. At the point in time you consider this, we see that the primary purpose no longer is oil backout; you're going to apply these rates in the future, so it's prospective. I don't think it makes a difference at what time that it failed. It's just what time you implement the new rates.

CHAIRMAN WILSON: All right, now, I've got to pin this down for my understanding. So that's not an issue. We're not re-examining primary purpose. I think you just told me we weren't.

MR. McWHIRTER: We're not examining it as of '82 but we're examining it as of now, whether it now does not meet the --

if it's not now economically displacing oil, then for the future you ought to collect this in a different fashion.

COMMISSIONER BEARD: We're examining it as of if you accept August of '89, which is Florida Power and Light's position, we're examining it at the same point in time that the transmission lines are fully recovered? Or are we going to go back in time? My question is --

MR. McWHIRTER: Now, you're getting into this other issue.

COMMISSIONER BEARD: My second question is on accelerated depreciation, I'm assuming that depreciation terminates in either August or October of '89, if I understand Issue No. 4, correctly. The depreciation was over what length of time, the accelerated depreciation?

MR. McWHIRTER: We agree with them that August is collected. But all their oil backout expenses haven't been recovered, they still say --

COMMISSIONER BEARD: Please, okay, answer my question.

MR. McWHIRTER: Yes, sir

COMMISSIONER BEARD: I know the expenses haven't. I'm talking about depreciation. Okay. When did the depreciation start, in '87?

MR. McWHIRTER: Yes, sir.

COMMISSIONER BEARD: So we have accelerated depreciation over the sum total of two years.

MR. McWHIRTER: Yes, sir. Two and a half I think, yes.

COMMISSIONER BEARD: Two and a half years, the whole project.

MR. McWHIRTER: Started in June of '87.

COMMISSIONER BEARD: And it's just coincidental that the depreciation started at the same time as you determined that it no longer became an oil backout recovery project but was actually just meeting growth?

MR. McWHIRTER: As of the date of the petition, on the load growth issue. January of '89.

COMMISSIONER BEARD: Well, we might need to go back and look at some discussion that's gone on today because my ears are hearing 9s and 7s transposed.

MR. McWHIRTER: No. You're talking about accelerated depreciation and we're talking about oil backout recovery, and they are two separate issues. That's why --

COMMISSIONER BEARD: I understand that and I just find it an amazing coincidence, okay. My understanding of the testimony is that the oil backout recovery project, if it wasn't -- multiple positions, it's the old standard "I didn't do it, but if I did it, I didn't mean to and if I meant to I didn't know what I was doing when I did it. Okay, I understand how that works. That if, in fact, it should have been qualified in '82, which I'm not sure is you all's position, okay, that, in fact, it should have become unqualified at some point in time because it ceased to be oil backout recovery. My understanding of the testimony is that's in '87, approximately the same time that accelerated depreciation started. Interesting coincidence.

MR. McWHIRTER: That is an unimportant date, really. At some point in time before now it started meeting load growth and not oil backout. It's unimportant because we're not asking you to do anything about the oil backout recovery factor before now. We're asking you to do something about it as of October 1, 1989.

COMMISSIONER BEARD: So that takes depreciation out of the issue then, right?

MR. McWHIRTER: That's on the oil backout. Now the separate issue is depreciation. They recovered, improperly recovered the depreciation, and we want to get all of that back.

COMMISSIONER EASLEY: Let me come to that --

CHAIRMAN WILSON: And that is under the rule you're saying that their calculation of the cost/benefit savings is improper.

MR. McWHIRTER: Yes, sir.

CHAIRMAN WILSON: So there is no question in this that we're going to revisit the primary purpose and you're not talking about getting outside the rule. Everything that you're requesting in this case is per the terms of the rule.

MR. McWHIRTER: Yes, sir.

CHAIRMAN WILSON: Am I misremembering or did I hear something different this morning?

MR. HOWE: Commissioners, I think the point is, and I'm sorry to belabor this --

CHAIRMAN WILSON: Mr. McWhirter, have you ever considered public office?

MR. HOWE: Taking it in stages, we have first the oil backout cost recovery factor. Now, if we assume that there is nothing wrong with that factor and there never has been, the Company could collect that pursuant to the rule.

Now, the rule itself allows for a separate increment of recovery, which if during the time that the factor is in effect there are net savings based on a total basis, the cost of the unit -- the cost of the project and everything, and --

CHAIRMAN WILSON: Including all the costs. And all the benefits including deferral of units if that, in fact, occurs.

MR. HOWE: Right, and if I might clarify a point there, Commissioner Easley. The Martin units are coal-fired units, they are not oil-fired. I think you have been assuming they are oil-fired units.

COMMISSIONER EASLEY: I haven't been assuming anything. I haven't dared.

MR. HOWE: All right. Okay. If I could still -- so under the rule, if the rule state "in full force and effect," you would have recovery as an oil backout project, and our position, and I believe FIPUG's also, would be so be it but they had no business collecting any accelerated depreciation because under the rule that accelerated depreciation was based on two-thirds of net savings and there weren't any net savings, so they are within the rule.

The separate issue is on a going-forward basis are there changed circumstances such that that project is no longer oil backout project.

CHAIRMAN WILSON: So the question is whether you collect the operation and maintenance --

MR. HOWE: Yes, sir.

CHAIRMAN WILSON: -- cost, expenses, and through fuel adjustment or through oil backout clause on a monthly basis, six month revision, or is it done through base rates.

MR. HOWE: Yes, sir.

CHAIRMAN WILSON: And that number is $8 million plus or minus.

MR. HOWE: Keep in mind that if the utility was imprudently, improperly allowed to recovery that accelerated depreciation and you returned it to the customers, that the investment base in the project would then escalate back to where it would have been had they not taken accelerated depreciation.

CHAIRMAN WILSON: I understand that and the position that FIPUG takes that you don't agree with is that when you allocate those costs -- if it goes back into the rate base, and the allocation would be, according to the cost of service methodology, that it was either used in the last rate case or whatever would be used in the future, which would mean a different basis of recovery than a per kWh basis.

MR. HOWE: Yes, sir.

CHAIRMAN WILSON: And assuming all other things being equal that would mean an increase for that customers you represent.

MR. HOWE: Yes, sir. In that instance if the Company is going to be able to continue with the oil backout project as an oil backout project, we would prefer to have it recovered on a energy basis as it is now; if it is to be continued as is.

CHAIRMAN WILSON: Now, if the accelerated depreciation is refunded, and the project is then put into the rate base, back up at the level that would have been had the accelerated depreciation not occurred, and those costs are allocated according to the last cost of service methodology, would the additional costs, investments put in rate base, affect the amount of refund that would have been due under the calculations under the tax rule?

MR. HOWE: Yes, sir.

CHAIRMAN WILSON: Now, the argument I heard you make the other day on the Tampa Electric Company case is that you objected because the way costs are being allocated you got less than you would have gotten otherwise. Are you waiving that objection then in this case?

MR. HOWE: No, sir.

COMMISSIONER EASLEY: Could I please come back to Issue 1. I don't understand why you all are in disagreement on this. It seems to me to be relatively straightforward. It's either in or it's out.

Now, I understand, Mr. McWhirter, where you took us. Maybe I need to ask Mr. Childs what his position is because I think I understand where FIPUG's is.

MR. CHILDS: Our position is that the issue should be dropped.

The question as to qualification, the first test, was whether the primary purpose was to displace oil-fired generation. And they have used that as the -- that argument, that the purpose has changed, to suggest a continued cost recovery under the oil backout factor is improper. And this is just an attempt to raise the issue again about what the primary purpose is.

And Commissioner, I'm getting a little confused with those statements as well, but if you look at the original qualification the Commission was well aware that commencing in 1987 there would be capacity deferral benefits. FIPUG makes much of that, but when you look at it as FIPUG suggests, not back to '82 but simply starting in '87, you're going to see very substantial capacity deferral benefits. So to now say that the purpose has changed because we finally got to where we really thought we were going to be all along I think it is ludicrous.

The Commission new that in the beginning.

MS. WALSH: Commissioners, if I may, I have detected some confusion over this magic 1987 year. '87 would have been the in-service dates of the deferred Martin units. That's where that year is coming from and that's why there are capacity deferral benefits. No other reason. So FIPUG is quite correct in that if you go back to '82 nothing happened until '87, everyone knew it wasn't going to happen until '87.

COMMISSIONER EASLEY: What is this magic thing that happened in '87? Is this the fact that you do have the -- the units would have come on line.

CHAIRMAN WILSON: That's when the calculation of the savings occurred because of the deferral and the accelerated depreciation was able to be taken in that year.

COMMISSIONER EASLEY: Right, and in which case isn't the fact that there are 500 kV transmission lines out there, and the statement by FIPUG in the issue, Issue No. 1, that FP&L doesn't have sufficient oil-fired generating capacity to meet present system demand, isn't that a natural progression, a natural result of the action that was taken? I would absolutely be amazed if you sat here and told me that FP&L had the oil-fired generating capacity after the whole purpose in this exercise was to get rid of it. I would not expect the transmission lines to be doing anything else. This is why I don't understand why the issue is even here. And your explanation got us back into depreciation. I'm not talking about depreciation.

MR. McWHIRTER: Remember the illustration of the thousand megawatts; in the oil backout you're replacing 500 of those megawatts with coal-by-wire.

COMMISSIONER EASLEY: All right. And sooner or later --

MR. McWHIRTER: Sooner or later --

COMMISSIONER EASLEY: -- it's going to pick up demand.

MR. McWHIRTER: -- people are going to come and use those units that are being displaced. When that happens you have load growth, and what your rule says and what we're talking about is a strict application of this rule is that --

COMMISSIONER EASLEY: Mr. McWhirter, if you want a strict application of this rule there are several arguments you could not have made today. You can't have strict application only when it applies to them and you start playing with it when it applies to the argument that you want.

MR. McWHIRTER: I'm not asking for that. He's asking for it. And all I'm saying is if he wants strict application then you've got to utilize strict application.

COMMISSIONER EASLEY: Well, if he wants strict application do I utilize it for your arguments too?

MR. McWHIRTER: Say that again.

COMMISSIONER EASLEY: If he wants strict application of the rule, does that man I use strict application of the rule all the way down the line?

MR. McWHIRTER: Well, I think that's the logical conclusion of the Motion to Dismiss.

CHAIRMAN WILSON: But didn't you about 15, 20 minutes ago say that all you were asking for was application of rule? That all the arguments that you made --

MR. McWHIRTER: Yes.

CHAIRMAN WILSON: Come strictly under the terms of application of this rule.

MR. McWHIRTER: I think that's it --

CHAIRMAN WILSON: So you are both asking for application.

COMMISSIONER EASLEY: The trouble is, Mr. Chairman, and forgive me, I think, my frustration with this is that I'm trying to read what I've got in front of me, and I thought the whole purpose and that everybody knew in '82 that in 1987 there would be a load demand factor in these transmission lines. I don't think -- from everything I've heard I don't think anybody finds that surprising. I'm finding it surprising that this is a major issue that nobody can agree on, as to whether it stays in or out as a result of the motion. It would seem to me that it's one way or the other. And we're spending a lot of time on this and I'm spending a lot of time trying to understand it and you all are making it real difficult.

CHAIRMAN WILSON: My view of Issue 1 is revisiting the primary purpose. The determination that this Commission has made in the past, confirmed in the past on a number of occasions. And it has already been voted up and down ad infinitum.

COMMISSIONER EASLEY: It eithers goes away or it's revisiting the primary purpose. It's one or the other. I don't think it's a --

COMMISSIONER BEARD: Can I ask something that might be simple arithmetic? The original oil backout recovery was to displace, if you will, the two Martin units, which was how many, what size, 600?

WITNESS POLLOCK: 700. Two 700 megawatt.

COMMISSIONER BEARD: 1,400, okay. And so once you do the 1,400, okay, and growth is occuring because those units were due to come on line, and those 1,400 megawatts are used up, and are continued to be used up by those same people that got it in the first place, beyond that perhaps you could make an argument for growth. Okay. Future growth that aren't associated with those lines.

Am I somewhere missing that maybe there really is a blend and expected blend as Commissioner Easley was saying, okay, otherwise you would have put the units on line and when the 1,400 megawatts associated with the two Martin units were used up, you'd have gone and built some more; probably not oil units because we weren't building oil units.

MR. HOWE: Excuse me, Commissioner Beard, did you state that it was your understanding that the purpose of the oil backout in the first instance was to displace the generation from the Martin units.

CHAIRMAN WILSON: No. Well, he may have said that, but I don't think that's --

COMMISSIONER BEARD: Displacement of oil was the oil backout recovery, right.

CHAIRMAN WILSON: The deferral of the Martin units is one of those other benefits --

MR. HOWE: Exactly.

CHAIRMAN WILSON: -- that occur, and which the rule specifically addresses and says should be included in the calculation.

MR. HOWE: But there would have been an oil backout whether there had been any Martin units at all.

COMMISSIONER BEARD: Yes. I understand that. I reversed them. I'm sorry. I'm trying to get --

CHAIRMAN WILSON: Well, where are we now? I know we have a motion. The question is what is the result of the motion? Well, the parties have some agreements but I don't agree with the parties agreements. (Pause)

Okay. It seems to me, Commissioners, that if we grant the motion to dismiss, that Issue 1 is out; Issue 2, as I read the latest current comments by Mr. McWhirter, Issue 2 relates to whether the calculation of benefits under the rule has been appropriately made. 2 would be in. 3 would be out. 4, I understand, Mr. McWhirter, that you now agree that August '89 is the correct date?

MR. McWHIRTER: 4, I think we all say is in.

CHAIRMAN WILSON: I am sorry, what?

MR. McWHIRTER: 4 is in.

CHAIRMAN WILSON: It may be in, but is it true that under current conditions with accelerated depreciation that it will be August of '89 and not October of '89. That's the only disagreement I see between the two of you.

MR. McWHIRTER: Yes, yes; August, yes.

CHAIRMAN WILSON: So it is August. So that's a stipulated issue there, that date.

CHAIRMAN WILSON: 5. I suppose 5 would stay in. 6 would stay in. I'm not sure it's worded properly. 6 would stay in. 7 is out, 8 is out, 9 is out, 10 is out; I would say 11 would be out as well.

COMMISSIONER GUNTER: 11 is out.

COMMISSIONER BEARD: 11 tries to revisit the original issue.

CHAIRMAN WILSON: 12 has to do with the calculation of savings, I think.

MR. McWHIRTER: Didn't we stipulate that 11 was in?

COMMISSIONER GUNTER: Out.

CHAIRMAN WILSON: You all did but we're not talking about your stipulation anymore. We're talking about my understanding of what the affect of the motion to dismiss would be, and my understanding is that I think it would dispose of Number 11.

MR. CHILDS: Commissioner, I think that Issue 11 goes to their argument about whether the accelerated depreciation is calculated correctly. I did not interpret that as to be a challenge to the qualification or the purpose of the project.

COMMISSIONER BEARD: Mr. Childs, if I can just read the words, "with Martin coal units 3 and 4 deferred as a result of the project, and the original UPS purchases."

MR. CHILDS: Right

COMMISSIONER BEARD: Okay. That's the words that are on the paper.

MR. CHILDS: We think they were. But I'm only saying it relates to the issue before you; I thought that related to accelerated depreciation. I may be wrong.

MR. McGLOTHLIN: It does relate to the issue of accelerated depreciation. What is the deferred capacity of Martin 3 and 4 units in the configuration that was assumed in '82, or was it some different capacity with a different in-service date.

COMMISSIONER EASLEY: Mr. Chairman, if the issue were restated to be specific as to depreciation, because the answer -- or the FIPUG position in this issue doesn't talk about that.

There is some reference to it, but that's all, in the FP&L -- it's indirect.

CHAIRMAN WILSON: If that's your pleasure to leave it in, we can leave it in.

COMMISSIONER EASLEY: Only to the extent that it has to do with depreciation.

CHAIRMAN WILSON: 11 will be in. 12 will be in. 13, I'm not sure it's really worded appropriately. It relates to Issue 6. So to the extent that it's covered in Issue 6 it's in, to the extent it isn't it's out. 14 is out. 15, I don't see any disagreement on the responses to the issue. It almost looks like it's a -- I just don't see any disagreement on that issue so it's really irrelevant whether it's in or out.

16 is -- that's tied to Issue 6 and 13. 17 is out.

COMMISSIONER HERNDON: 17 are all issues of law. There are not going to be any witnesses scheduled to discuss 17 to be on, if they want to argue them in their brief.

CHAIRMAN WILSON: 18 is out.

MR. McWHIRTER: 18 we think is in. That's an accelerated depreciation issue.

COMMISSIONER GUNTER: Isn't that a legal issue? You're talking about striking some of the legal issues.

CHAIRMAN WILSON: Well, I don't want to get into a big argument over this, but as I look at Number 18 what it says is is your rule illegal? That's a challenge. Issue 18 is challenging the rule. The rule has already been challenged and upheld by the Supreme Court.

MR. McWHIRTER: An aspect of it was challenged in the Supreme Court. Not this aspect.

CHAIRMAN WILSON: If this is a challenge to the rule, it's an inappropriate challenge to the rule.

MR. McWHIRTER: I think you're right. I don't know that it's inappropriate -- I think it's a matter of the application of the rule as opposed to the phraseology of the rule. Not unconstitutional ab initio but in its application.

COMMISSIONER GUNTER: Well, you certainly hit the intent on your issue as one of the folks that was here and voted on it.

MR. McWHIRTER: Sir?

COMMISSIONER GUNTER: You certainly hit the intent was to have the accelerated capital recovery and then it would be there for the benefit of the customers. If you want to go back and read some of the comments that were made, you certainly hit the intent, was to encourage people to do it, provide an incentive, and yet it would be not included in the rate base so that there would have to be an earning on it over those 25 years; be there for the benefit of the customers. You know, the last part of your issue you certainly hit the intent of the Commission. At least one of the Commissioners participated in that vote.

MR. McWHIRTER: My understanding was that when the accelerated depreciation was offset by fuel cost savings I don't think we'd have any problem with it. When it's not offset by fuel cost savings is when we have the problem with it.

COMMISSIONER EASLEY: Mr. Chairman, on Issue 18, if we are taking out of the issues things that are a matter of law, Issue 18 begins, "As a matter of law can the Public Service Commission" do certain things. Does that not frame it in such a way as to make it a legal issue.

CHAIRMAN WILSON: Oh, it is, there is no question as to legal issue. No question at all.

COMMISSIONER EASLEY: Is it coming out?

MR. McWHIRTER: I think it's a legal issue, it's one we're asking you to address.

COMMISSIONER HERNDON: But not on the basis of any evidence that you've presented thus far?

MR. McWHIRTER: We filed a Motion to Dismiss before we got --

COMMISSIONER HERNDON: Well, I know. But Mr. Pollock is not going to testify to that issue anyway, is he? As a matter of law.

MR. McWHIRTER: No, he would not.

CHAIRMAN WILSON: I don't care. We can leave 18 in, it doesn't matter. Issue 19 -- Well, it's a legal issue to be briefed, but I don't know that you can take any testimony.

19, I don't mind answering these, so we can. I think the parties also agreed that Issues 21 through 25 are out. Is that right?

MR. HOWE: No, sir. I believe 21 was in.

COMMISSIONER EASLEY: 22 through 25.

When you say in or out, for purposes of this versus briefing on these legal issues, Mr. Chairman, help me, are we going to be hearing testimony on this or are these issues going to be dealt with only in the briefs?

COMMISSIONER GUNTER: Only in the briefs.

CHAIRMAN WILSON: In the briefs, except there are a couple of questions that I want to ask about some of these but nobody else can; Parties. Commissioners can.

COMMISSIONER EASLEY: We've had testimony by all the lawyers, I don't know why we can't ask them anyway.

COMMISSIONER HERNDON: Mr. McWhirter has got more testimony in the record than his witness.

CHAIRMAN WILSON: Let's see there are a couple of people in the audience that haven't testified yet today, but we will get them in before the end of the day. So 22 through 25 are out. 26 is still in. 27 is in. 28, 29, 30 are in. And that's the ruling. Anyone disagree?

COMMISSIONER BEARD: That's the motion.

CHAIRMAN WILSON: No, that's the ruling. No, that's my determination of what the effect of granting the motion to dismiss would affect in terms of the issue. We have not had a motion -- we have the Motion to Dismiss before us; we have not disposed of it.

COMMISSIONER BEARD: Now, I want to know what the alternative is to chunk the whole thing, what's the effect there? I mean all of it.

CHAIRMAN WILSON: Go home early today I guess.

COMMISSIONER BEARD Well, beyond that. I'm not being facetious. Okay. I'll tell you quite frankly that I've listened to it, read a bunch about it; 90% of what I have seen appears to be a rehash of son-of-oil backout if not son-of-son-of-oil backout, and I see a significant change in return on equity that probably could be dealt with in multiple ways. I've heard sufficient testimony from the attorneys to cover just about everything. I just want to know what those ramifications are because I'm almost at the point where if I've got to listen to half of it we might as well just leave them all in and we can rehash son-of-oil-backout again.

I'm sorry, but some of the arguments in here, there has been enough teflon positioning today to last me a lifetime. Okay, we talk about issues that slid off and on the plate, they have done it today until I'm one, I'm to here with it. So I just -- some one of the attorneys can help me or something, because that is an alternative to me. I don't know that I'm ready to do it and that's why I'd like to ask the question. Because I'm not going to be subtle about it. I would like to know.

CHAIRMAN WILSON: Well, if I can jump in here just a minute. The motion to dismiss puts us in a position of saying some of the allegations in the issues in this Prehearing Order that have been put forward by the parties cannot survive a motion to dismiss. There simply isn't the grounds to proceed on those issues. There are some other issues that parties have raised which ask questions absent another motion to dismiss, just dealing with this single motion to dismiss we have here. Those remaining issues, the parties have a right to ask and have an answer to and the Commission -- have the Commission address them. And, I think that's what remaining before us.

COMMISSIONER BEARD: Well, I'm searching for the issue -- because it was the Company's issue because FIPUG brought this thing forward then they put in a issue, that says -- Oh, I know what it was, it the one where have they kept the Commission informed. I think you did finally though that one out, but the point is that that issue is in there simply because they said that they did something bad or didn't do and so they said we'll put an issue in here that did. And it's posturing, quite frankly, on the party's part, and I see no meat on those bones. I hate to use your dog analogies, you warned me about that. No meat on the bones of my cows.

CHAIRMAN WILSON: Don't use any dog analogies. Those are reserved exclusively for the Chairman.

COMMISSIONER GUNTER: We're all getting our own animal. Mr. Chairman, if it's appropriate to -- this very enlightening discourse that's only gone on about two hours so I'm going to move to grant the motion to dismiss.

COMMISSIONER HERNDON: I'll second that motion, Mr. Chairman, with the understanding if I might just for the sake of clarification, that would leave remaining in the case Issues 2, 5, 6, 12, 13, 16, 18, 19, 21, 25 -- and 26 through 30.

CHAIRMAN WILSON: Yes. I believe that's what the effect of the motion to dismiss would do.

COMMISSIONER HERNDON: And furthermore, 18 through 30, those -- 18, 19, 21, 26 through 30 are going to be briefed by the parties.

COMMISSIONER GUNTER: Those are all the legal issues.

COMMISSIONER HERNDON: I'll second that motion.

CHAIRMAN WILSON: Is there any discussion Commissioners? All in favor

COMMISSIONER GUNTER: Aye.

COMMISSIONER EASLEY: Aye.

COMMISSIONER HERNDON: Aye.

COMMISSIONER BEARD: Aye.

CHAIRMAN WILSON: All opposed? So the motion to dismiss is granted.

CHAIRMAN WILSON: Mr. Childs, I believe that you were inquiring.

MR. CHILDS: Commissioner, in view of your ruling could I have about two minutes? Because I am going to cut cross and I've got to get some other documents, and I have to cut a long line of cross examination.

CHAIRMAN WILSON: Okay, let's take a five-minute recess.

MR. CHILDS: Thank you

(Brief recess)

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COMMISSIONER GUNTER: All right, let's get started. Mr. Childs, you were inquiring.

MR. CHILDS: Yes, sir.

JEFFRY POLLOCK

was called as a witness on behalf of Florida Industrial Power Users Group, having been previously sworn, resumed the stand and testified as follows:

CONTINUED CROSS EXAMINATION

BY MR. CHILDS:

Q Mr. Pollock, you are a system planner, are you not?

A No, I am not a planner of utility systems. However, I have had occasion to work with utility systems planners, both in our office and in discussions in various rate case.

Q Have you ever been called upon to formulate for a utility a generation expansion plan?

A Called upon by whom?

Q Anyone.

A Yes.

Q Okay. Who was that?

A A number of our clients have from time to time asked us to review generation expansion plans of various utility companies.

Q No, sir, I don't mean review, I said formulate. (Pause)

A I am not trying to be coy, but the request was to formulate an opinion as to the reasonableness of the utility expansion plan and to determine if it is not reasonable what would a reasonable alternative be under the cirsumstances.

Q All right. You have reviewed FPL's 10-year site plans for the years 1983 through 1989?

A Yes.

Q What was FPL's stated reserve margin requirements in the 1983 10-year site plan?

A The 1983 10-year site plan, I believe, still had a minimum 20% reserve criteria.

Q Was it in the range of 20 to 25%?

A I think the range was defined that way, the minimum being 20.

Q Okay. And was it the same range of 20 to 25% in the 1984 plan?

A I believe by that time the Company had begun reviewing that policy and, yes, there was a statement in the '84 plan.

However, other studies which the Company provided to us in discovery suggested that that policy was being reviewed.

Q How about the '85 plan? What was the stated reserve margin requirement there? (Pause) Would you look at Page 11 of that site plan?

A I'm sorry, I have to get a copy. (Pause) Could you cite the page reference again, please?

Q Yes, that's Page 11, and I would ask you if that page, if you could review it quickly, would give you any information as to what the Company's reserve margin requirements, if any, were in that 10-year site plan?

A The plan says that previous studies have shown Peninsular Florida LOLP level of one day in 10 years is achieved with a state reserve margin in the range of 20 to 25%.

Q Okay. Would you agree that at the time FPL signed its contract with the Southern Company that all parties expected that the differential, that is all parties to the proceeding for qualification, expected that the differential between oil and coal would more than justify the cost of the line in entering into the UPS agreements?

A I would say that the expectation was that the coal/oil cost differential would substantially offset the costs associated with the project, including the unit power capacity charges.

Q And, similarily, wasn't it the parties' expectation that the power and total cost would be more economical to purchase that would be the case if FPL had to rely on a its own oil-fired generation?

A Yes.

Q So would you agree that in the early 1980s that FPL had a choice, that is a choice to contract for the UPS energy in capacity or not?

A Yes. There was an option to do that or not.

Q But once it elected that option, would you agree that it was stuck with it for the term of the contract?

A Well, "stuck with it," I think is somewhat of a permanent-sounding term. I think that, at least to this point in time, there is some question as to whether or not a customer is stuck with a committment under a unit power sales agreement. But FPL made the committment in 1982; they made it with the thought that that capacity would be available for a period of time through mid-1985; made the committment to purchase a certain amount of capacity in that time frame.

Q Okay. On Page 12 of your testimony, this is your rebuttal, you comment on reduced load forecasts. Let me ask you this: Are you familiar at all with the conservation programs offered by electric utilities in Florida, the conservation rule of Florida Public Service Commission, and the goals that utilities are expected to meet under that rule?

A I am not totally conversant with all the intricacies of the conservation rules and the objectives. I am aware that they exist.

Q Why were the load forecasts presented by FPL declining; that is '83, '84 and '85? (Pause)

A I don't have specific reasons for why the load forecast would decline.

Q Isn't one of the reasons identified on Page 20 of your testimony, on Lines 16 and 18? In the introduction of the material you cite says, "In recent years Florida Power and Light has not produced a long-range generation expansion plan. This has been due to a combination of several factors"? Number 2?

A Okay, yes, I see that.

Q So it was expected, in fact, contemplated, by the company that conservation would have the effect of reducing forecasted load in future years?

A Yes, conservation and other demand site activities.

Q Okay. Now, when you reviewed the 10-year -- in fact, you relied upon FPL's 10-year site plans, did you not, in preparing your analyses in your rebuttal testimony as to reserve margins for 1987?

A Yes.

Q And did you rely on the FPL Form 7A for those computations, that's the summer computation of installed capacity purchases and forcasted load? I don't think that I have that title correct but I am trying to summarize the contents. (Pause)

A The analysis was based on FPL Form 4s contained within the 10-year site plans.

Q What form?

A FPL Form 4. (Pause)

Q Okay. That's FCG Form 4, isn't?

A Some of the copies say FCG and others say FPL.

Q Okay. Do you happen to know whether the data that's shown here is different from that shown in Form 7A? (Pause)

A Those numbers appear to be the same. I am looking at the 1988 reports as an example.

Q Okay. What were the conservation effects, or the effects of conservation, in reducing, or on FPL's forecasted 1987 and 1989 summer peak load in the 1982 10-year site plan? (Pause)

A The worksheet that I have does not show the conservation effect on it. I relied on the Form 4, which simply summarizes the summer peak and winter peak loads between retail, wholesale and total.

Q Would you look to Page 50 of that 10-year site plan?

A I don't have the '82 site plan here, Mr. Childs.

(Supplied)

Q Mr. Pollock, we're going to show you a document and ask you if you would agree that that is the 10-year site plan for 1982?

A Okay. I have been handed the 1982 10-year power plant site plan.

Q Would you look at Page 50, please?

A Page 50?

Q Yes, sir.

A I have it.

Q Does that discuss -- there is the summary of the effects of conservation, and tell what is included in the load forecast for the effects of conservation on peak demand?

A It talks about the uncertainties regarding the implementation of time of use rates.

Q Yes, sir.

A And also the fact that the residential load control program is addressed in another section of the report.

Q Right. Doesn't it also say that, therefore, they are not reflected in FPL's load and energy forecast?

A Well, the impact of the time of use rates, that is correct.

Q Right. But it does say that residential load control is addressed in the generation plan section of the report, does it not?

A Yes, it does.

Q Would you turn to Page 85 of that report? (Pause)

A Yes.

Q Would you agree that that shows that the residential load control impact on peak load is shown to be a 77 megawatt reduction in '87 and 154 megawatts in 1989?

A Yes.

Q Okay.

Commissioners, I have pulled Pages 50, 51 and 85 from that 1982 10-year site plan. I would like to distribute that and have it marked for identification as an exhibit, please.

CHAIRMAN WILSON: Give me the next exhibit number, please.

MR. PRUITT: 615.

CHAIRMAN WILSON: All right, we will mark this as Exhibit 615.

(Exhibit No. 615 marked for identification.)

Q (By Mr. Childs) Mr. Pollock, turning now to the 1983 10-year site plan, how much was the summer peak load for Florida Power and Light Company reduced as a result of forecasted conservation in 1987 and 1989?

A Excuse me, the '82 site plan or the -- '83?

Q No, sir, we are moving to 1983. (Pause) I'll give you a reference. Would you turn to Page 43 of that 10-year site plan?

A Okay. I don't have the '83 plan in front of me here. Could you supply me a copy?

Q Okay, we will give you one. (Supplied)

Would you agree that that is the 1983 10-year site plan for Florida Power and Light Company?

A Yes.

Q Would you please turn to Page 43 of that site plan under the heading "Load Management and Time of Use Rates"?

A Yes.

Q Would you read those two paragraphs?

A "FPL's forcast incorporates the effects of a mandatory gradually phased-in program for time of use rates in both its residential and commercial/industrial sectors. The cumulative effects of the above-mentioned programs are reflected by the following reductions to the long-term summer peak forecast."

Q And that's shown on the next page, isn't?

A Yes.

Q And for 1987 the reduction is 1044 megawatts in the summertime?

A Yes.

Q And for 1989 it's 1473 megawatts?

A 1989?

Q '89.

A 1473 megawatts.

Q All right.

Mr. Chairman, I also have a copy of Pages 43 and 44 from the 1983 site plan, and I would like to have that marked for identification as an exhibit.

CHAIRMAN WILSON: We will identify that as Exhibit 616.

(Exhibit No. 616 marked for identification.)

Q (By Mr. Childs) Do you happen to have a copy of the 1984 site plan?

A Yes.

Q Would you please turn to Page 49 of that site plan?

A Yes.

Q Would you agree that at the bottom of that page it shows the percent of reductions in forecasted summer peak demand for 1987 and 1989 of 878 megawatts and 1284 megawatts, respectively?

A Yes.

Q Mr. Pollock, have you done any evaluation of the conservation programs filed by Florida Power and Light Company in terms of the assumed market penetration rates for conservation programs?

A No.

Q Mr. Pollock, have you done any evaluation of Florida Power and Light Company's conservation programs with respect to hoped-for or expected reductions in peak load? (Pause)

A No. I have not made a comparison of the conservation estimates, hoped-for or actually achieved, in any of the load forecast.

Q For example, if we looked at this 1984 site plan at Page 49 with the 878 megawatts reduction in load forecast, that's greater than the size of the Martin Unit that was expected in the qualification proceeding to be placed in service in the summer of 1987, isn't it?

A Yes, it is.

Q Do you happen to know what cost effectiveness evaluation was done for this 878 megawatts in terms of the timing of the FPL unit that was being avoided?

A No.

MR. CHILDS: Thank you, Mr. Pollock.

MR. McWHIRTER: You have concluded your cross examination?

MR. CHILDS: Yes.

MR. McWHIRTER: I have no redirect of Mr. Pollock.

CHAIRMAN WILSON: Does Staff have any questions?

MR. HOWE: I have a few.

CHAIRMAN WILSON: Go ahead, Mr. Howe.

CROSS EXAMINATION

BY MR. HOWE:

Q Mr. Pollock, if we might first address the Martin Units and the unsited unit. These were the deferred units, is that correct?

A Yes, sir.

Q What kind of units were they? How were they to be fueled?

A These units were coal-fired units. They were to be equipped, at least the Martin Units, with flue mast desulfurization equipment to enable the company to burn lower quality of coal.

Q As coal units, were these units expected to themselves have oil backout benefits?

A As with any generation addition, you need to ask the question, I think, over the context of the entire life of the unit. I think fundamentally a unit will build a generating unit primarily to meet load growth. To the extent that in putting a generating unit the utility temporarily has a higher than what would otherwise be normal reserve margin, then that would occasion potential opportunity to displace other more expensive forms of generation. But primarily the purpose of installing capacity is to meet projected load and to provide an adequate reserve margin.

Q If Florida Power and Light had not had any generation expansion plans to include the Martin Units, but instead it was able to establish that just on a fuel cost basis its tranmission project qualified for oil backout treatment, under the Commission's rule wouldn't Florida Power and Light still have been able to recover that project through an oil backout cost recovery factor?

MR. GUYTON: I think that we would object. It assumes facts not in evidence.

MR. HOWE: I don't think it does. Mr. Pollock is providing testimony to the effect that the Martin Units were deferred beyond what was first expected and, in fact, were ultimately dropped from the Company's generation expansion plan. So I think a question based on the absence of that unit is not outside of the scope of his direct testimony.

CHAIRMAN WILSON: Let me hear the question again.

MR. HOWE: I'll try.

Q (By Mr. Howe) Mr. Pollock, if we assumed that Florida Power and Light's oil backout project, the 500 kV transmission lines, was fully qualified under the rule -- well, first of all, could it be fully qualified under the rule without there have been any Martin Units in FP&L's generation expansion plan?

(Pause)

CHAIRMAN WILSON: Is this asking for a legal conclusion on the part of the witness?

MR. HOWE: Not really. I think I am asking under the rule, just applying the terms of the rule, under the strict terms of the rule could it have --

CHAIRMAN WILSON: His understanding of the rule?

MR. HOWE: His understanding of the rule, yes.

A My understanding is that it was the inclusion of the Martin Units and the capacity deferral benefits invoked therein that enabled the project to show cumulative positive net savings over the first 10 years of commercial operation; therefore, enabling the project to qualify under the cumulative -- under the net present value test prescribed in the oil backout rule. But for the inclusion of the deferred capacity benefits, and associated fuel cost savings, and so on, the cost of the project, including the unit power capacity charges, would have exceeded the projected savings.

Q The way the rule operates, would you agree that the higher the cost of the Martin Units the greater the net savings calculated under the rule?

A Yes, the greater the cumulative net savings.

Q Now, the net savings are allowed as accumulated depreciation, is that correct?

A That's correct.

Q The Utility receives two-thirds of the net savings as accumulated depreciation, is that correct?

A That's right.

Q Does the amount of the net savings and the two-thirds -- I'm sorry. Does the two-thirds of the net savings that are allowed as accelerated depreciation in any way relate to the amount of the backout project that remains to be depreciated?

A No. The two-third savings is calculated on the basis of the actual net savings in a given six-month period. Those actual net savings are in large part determined by the capacity deferral costs and benefits associated with the Martin Units. To the extent that the project is not fully depreciated and the net savings calls for, let's say, $50 million of accelerated depreciation, then that is based upon two-thirds of the net savings; it is not based on the remaining investment in the transmission project.

Q If the net savings were of sufficient magnitude the utility might have completely depreciated the unit under that two-thirds rule, might it not? It was dependent, was it not, totally on the magnitude of the savings, not on the amount to be depreciated?

A Yes. The net savings determines the magnitude of the accelerated depreciation.

Q In the cost assigned by Florida Power and Light to the Martin Units to calculate the net savings, what return on equity does the Utility use?

A The return on equity has varied somewhat, depending upon what was authorized in the base rate cases that coincided both with the construction of the units and then subsequently the assumed commercial operation date of the units. But throughout most of the time a 15.6% return on equity was applied and used in calculating the AFUDC rate applied to the construction costs, and it is also being used for purposes of determining the deferred capacity carrying charges, which is a primary component of the deferred capacity benefits assumed for those units.

Q Would you agree that, all else being equal, that the higher return on equity used in the net savings calculation the greater the amount of accelerated depreciation Florida Power and Light might take under the rule as two-thirds of those net savings?

A Yes. And that effect is moreover compounded because of the compounding of the AFUDC.

Q Would you explain how that works?

A Well, AFUDC is applied to the average balance of construction, including previously capitalized AFUDC so you would have the compounding affect of the charges on top of the previously accumulated carrying charges, so the higher the equity rate, the greater the effect of the compounding in determining the AFUDC component of the installed cost of those units.

CHAIRMAN WILSON: What's the point of this? That's almost a mathematical truism. I'm not sure what the point of this is.

MR. HOWE: Chairman Wilson, the amount that the units are valued at, and the way that the rate of return, AFUDC and such, to the extent they affect the cost of the unit, they affect the amount of the net savings. You can reach a point where there are no net savings if either the units are more expensive than Florida Power and Light portrays, or the other side of this is, if they were not intended to come on line until a later date.

CHAIRMAN WILSON: You got that out of what he just said?

MR. HOWE: No. But you were asking me what was the intent of this line of questions, as I understand.

MR. GUYTON: Mr. Chairman, where we're headed, it would appear to us anyway, that we're essentially rehashing direct. This isn't cross examination, this is a matter -- how do you ask cross of someone that you agree with?

COMMISSIONER BEARD: If I understood what he said, .156 times .156 is greater than .136 times .136?

WITNESS POLLOCK: Yes.

COMMISSIONER BEARD: It's crucial.

Q (By Mr. Howe) Mr. Pollock, would you refer to -- its Tab A of the documents that Florida Power and Light distributed, on which they requested that official notice be taken. And I'm referring there to the oil backout cost recovery factor rule. Can you tell what provision of this rule, as you understand it, allows Florida Power and Light to take into consideration the deferral of the Martin Units in calculating its net savings?

A That would be Paragraph 4-A of the rule.

Q In calculating the net savings, is there provision in the rule as to how the net savings themselves should be computed?

A No.

Q Is there anything in the rule that requires the Utility to use, for example, its actual cost of capital?

A I should add, in terms of the application of the rule for calculating net savings in the recovery dockets there is no prescribed formula for how you calculate net savings.

Q Is there any order out of the Commission telling Florida Power and Light how to calculate net savings?

A There is a form which FP&L has been following in the calculation of the net savings, which parallels the net savings calculation used in the original qualification docket.

Q And was that net savings in the original qualification docket the one you meant in 1982?

A Yes.

Q And is that the one that presumed the 1987 in-service date for the Martin 3 unit?

A That was the assumption at the time, yes. As to your other question, with respect to actual cost of capital, I think the rule clearly states that only the actual costs associated with the project are subject to recovery.

Q Where does it state that? Would you refer, please, to Rule 1-C, I'm sorry, Subsection 1-C of the rule.

A Yes, I have it.

Q Does that define the manner in which net savings are to be calculated?

A Yes. For purposes of calculating or applying the accumulative net present value test, yes.

Q Were the St. Johns units, in which Florida Power and Light participates with JEA, in Florida Power and Light's 1982 generation expansion plan?

A Yes, they were.

MR. HOWE: I have no further questions.

CHAIRMAN WILSON: Staff?

CROSS EXAMINATION

BY MS. RULE:

Q Mr. Pollock, on Page 43 of your direct testimony --

CHAIRMAN WILSON: I'm sorry, what page?

MS. RULE: 43.

WITNESS POLLOCK: Yes, I have that.

Q (By Ms. Rule) You state that 1987 tax savings refund would have been $6.7 million greater if the oil backout costs had been included in the analysis. Are you proposing at this time that additional monies be refunded for 1987?

A We're not suggesting that the Commission go back in this proceeding and disturb the findings that had previously been made in connection with the income tax savings rule in 1987. No, that is not part of the relief which FIPUG is seeking in its petition in this docket.

Q Are you suggesting that the Commission take that into account in figuring FPL's 1988 tax savings calculation?

A Yes, absolutely.

Q Do you know if FIPUG is participating in the current docket to review FPL's 1988 tax savings?

A I know that, yes, and they participated in the '87 docket as well.

Q What tax rate is used to calculate the income tax expense for oil backout purposes?

A It's the same income tax rate that is in effect, the corporate tax rate. For 1987 it would be a blended tax rate of 40% for federal income tax purposes. Subsequently, it would be a 34% tax rate.

Q And are you aware that the tax savings rule, Rule 25-14.003 of the Florida Administrative Code, are you aware of how that defines tax savings?

A I'm familiar with the rule, and I've also reviewed the application of that rule, yes.

Q Under that definition, are there any tax savings in the oil backout project?

A No, not specifically tax savings. The issue had to do with the fact that FP&L was earning a higher return on equity on its oil backout investment. Therefore, removal of that investment from the analysis and application of the income tax rule resulted in a lower return on equity, with FPL's remaining regulated investment, which in turn would have had the affect of reducing the refund calculated under the income tax savings rule. The point is not that there is a different tax rate that's not being reflected, the point is that there is a different return on equity that's being applied to one and that's being ignored for purposes of calculating the refunds under the tax savings rule.

MS. RULE: Thank you. No further questions.

CHAIRMAN WILSON: Any questions, Commissioners?

Mr. Pollock, I have to take this kind of opportunity to educate myself sometimes. I just have a real brief question to ask you.

Are you familiar with the way that the Commission determines capacity payments under the cogeneration rules?

WITNESS POLLOCK: Mr. Chairman, I have not studied thoroughly the procedures which the Commission uses to calculate the avoided cost payments, for example. I have, of course, reviewed the scenario submitted by the utilities in the annual planning hearing proceedings which include the calculation of the avoided units and the cost assumptions built in.

CHAIRMAN WILSON: Those are based on what?

WITNESS POLLOCK: Those assumptions are based upon the cost of a unit that would be avoided by the addition of cogeneration into the system. What the utility would not have to build if it had additional capacity from qualifying facilities.

CHAIRMAN WILSON: Does the -- could we call that a unit that they are speculating on?

WITNESS POLLOCK: It's probably more than that because it will be based upon an unit that's in the generation plan, the least cost generation plan of the utility with or without the additional qualifying facilities. So, in a sense it may be a little better than speculation. But as you know, the further out you go in time, the more speculative future events become, and so to that extent it has a speculative element.

CHAIRMAN WILSON: The cogeneration contracts that were signed three years ago were based on what unit?

WITNESS POLLOCK: I'd be guessing. I'm not totally sure what the Commission was using for its avoided unit. I know there was a contention about whether or not a coal-fired unit or a combined cycle unit was the correct choice.

CHAIRMAN WILSON: Do you recall that the unit in-service date was 1992?

WITNESS POLLOCK: I believe that's right.

CHAIRMAN WILSON: Are you aware that that is no longer the deferred unit that's used in the calculation of capacity payments for cogeneration?

WITNESS POLLOCK: I don't know for certain.

CHAIRMAN WILSON: Would you accept that the in-service date now that's now being used is 1995?

WITNESS POLLOCK: Certainly, if you tell me.

CHAIRMAN WILSON: Is the principle that you espouse in your testimony, and I'm looking right now on Page 36, concerning -- you say, "As a matter of regulatory practice rates should never be based on speculation, nor should they include any cost associated with capacity that has not yet been built and is not used and useful in providing service to FPL's customers."

Is that a very broad principle that you espouse?

WITNESS POLLOCK: Yes, I do.

CHAIRMAN WILSON: Would you tell me how that would apply to cogeneration pricing?

WITNESS POLLOCK: In cogeneration pricing what you're trying to do is to determine what you should pay a qualifying facility to install a particular project in lieu of having the utility construct additional capacity.

CHAIRMAN WILSON: Or to defer construction of additional capacity?

WITNESS POLLOCK: Yes, conceivably. It could either be avoiding or deferring construction of new capacity. So what you're trying to do is prevent a situation where you're paying more for that cogeneration capacity than it would otherwise cost for the utility to provide its own resources to supply the same amount of load. The end result being that the ratepayers, at least in theory, would be indifferent as to whether they should way the utility to install the plant or pay the qualifying facility the avoided cost.

CHAIRMAN WILSON: All right. Now distinguish that situation for me from the decision that was made in 1982 in the calculation of the benefits under this rule.

WITNESS POLLOCK: In 1982 the Commission examined the capacity deferral benefits made possible under the oil backout -- under the unit power sales agreement. The difference is that the Commission used, in that docket, cost parameters based upon FPL's assumptions in that docket. The Commission did not decide as is the case in avoided cost pricing, what those specific parameters should be when it came to applying the portion of the rule which calculates the net savings, and that was a matter that was left up to the determination of the Commission in subsequent periods when the deferred units would have otherwise come on line. So the difference is they identified the avoided units, the deferred capacity, but they didn't identify the cost parameters for the timing of those units.

CHAIRMAN WILSON: And can I take from your testimony that those cost parameters ought to always reflect what the current updated costs and new technology would -- the cost of that that would produce?

WITNESS POLLOCK: Certainly it should represent the actual cost and reasonably determined cost parameters of the capacity that you were deferring as a result of a particular project.

CHAIRMAN WILSON: And should it reflect the cost that was known or speculated at the time that these contracts are signed, or should those cost parameters be changed as more is known about the cost of the unit?

WITNESS POLLOCK: Well, in terms of the cogeneration payments, I think you provide an option that says that a customer can lock in the avoided unit and base his payments on that avoided unit at some discounted rate to reflect when that avoided capacity would have otherwise been needed. I think here you're not talking about a contractual arrangement between a qualifying facility and a utility. You're talking about a mechanism for giving utilities an inducement to invest in oil backout such as the 500 kV transmission line.

CHAIRMAN WILSON: I understand that there is that difference. I'm not sure that it's much of a distinction. You talk about the principle that you discussed in your testimony, which was that you ought to use current prices, current technology, to reevaluate or evaluate what the value of the avoided unit would be. That's kind of inconsistent with one of options the we allow cogenerators to take.

WITNESS POLLOCK: I'm not suggesting that the deferred costs necessarily have to be based on today's option. I'm pointing out that simply that the question of which units are deferred as of the point in time that the company began recovering the accelerated depreciation is at issue. And in my mind it's an issue as to whether or not those units, those particular Martin coal-fired units, would have been the ones deferred and would have come in service in the dates assumed by the company in its filings.

CHAIRMAN WILSON: Would you likewise assume that a cogenerator ought to take the costs that are prevalent at the time they began collecting the avoided capacity payments?

WITNESS POLLOCK: I'm not familiar enough with the options that a cogenerator has. But certainly in other places that I've seen, cogenerators have that option of either fixing the payment, or having the payment vary with the rate of inflation or some other parameter that may change over time. In effect, the cogenerator is attempting to gauge which is the most cost effective option for him to choose.

CHAIRMAN WILSON: The cogenerator has decisions he has to make about whether to actually construct a project in determining whether it's cost effective to him or for him. In that context he has to have some firm price in mind so he can judge the value of it, doesn't he?

WITNESS POLLOCK: That's right, and a contract in order to obtain the financing necessary to actually physically construct the plant.

COMMISSIONER BEARD: Let me ask you a couple of questions. Why was the accelerated depreciation in this instance not begun until '87?

WITNESS POLLOCK: Because the assumption was that in 1982 the Company would not be experiencing the benefits from the deferred capacity until approximately June of 1987, which was based on the company's 1982 load forecast and generation expansion plan. The date which the Company determined it would have built and placed Martin Unit 3 in commercial operations.

COMMISSIONER BEARD: And that assumption was accepted by this Commission in '82 for the purposes of beginning accelerated depreciation in '87?

WITNESS POLLOCK: No, sir. I believe in my interpretation of the rule of the 1982 proceedings was the Commission accepted that assumption for purposes of qualifying the transmission project for recovery under the oil backout cost recovery factor. But that when FP&L suggested to the Commission that they ought to lock in the assumptions with respect to the timing and the cost parameters of those very units, the Commission denied that proposal and said that it should be taken up at a later time.

COMMISSIONER BEARD: What authority -- what and when was the authority granted for them to begin the accelerated depreciation in 1987?

WITNESS POLLOCK: Presumably in the '87 filings, this would have been toward the early part of 1987, the Commission would have first discovered the oil backout cost recovery factor with the inclusion of the deferred capacity cost in the calculation of the net savings.

COMMISSIONER BEARD: Okay. Now, at that point in time the accelerated depreciation becomes a function of the net savings for fuel. Right?

WITNESS POLLOCK: It becomes a function of the total net savings. It's the difference between the fuel savings and capacity savings. The total overall net savings.

COMMISSIONER BEARD: Capacity and fuel for the deferred plants and capacity and energy for the contract with Georgia Power?

WITNESS POLLOCK: Yes. Essentially it's the avoided fuel costs, less the energy and capacity cost associated with the coal-by-wire, less the project revenue requirements, plus the deferred capacity carrying charges, minus the fuel displacement benefits foregone by the deferred capacity.

COMMISSIONER BEARD: And the greater the savings in any six-month period of time, the greater the accelerated depreciation during that subsequent six month.

WITNESS POLLOCK: Yes, sir.

COMMISSIONER BEARD: Consequently, the greater the accelerated depreciation, in fact, the less time it takes to depreciate the project in its entirety?

WITNESS POLLOCK: That's correct.

COMMISSIONER BEARD: So if the savings were minimal, then the time it took to depreciate it would have been maximized in the opposite direction, they would be inverse to each other?

WITNESS POLLOCK: That's correct.

COMMISSIONER BEARD: So in theory if the savings were minimal enough, the time to depreciate the project could in fact not really have been accelerated but in theory could have been over what would have been a normal depreciation period.

WITNESS POLLOCK: Yes. In fact, the Commission realized that in discussions concerning the qualification of the project. That if all of the assumptions were wrong and there were no savings during the actual application of the rule, the project would be treated just the same for investment purposes as a normal transmission project.

COMMISSIONER BEARD: And conversely the greater the savings and the less time it took to depreciate it, it could in theory, I think you testified earlier, been depreciated in a six-month period of time and been done if the savings were great enough.

WITNESS POLLOCK: It's certainly possible. If FP&L had said they were going to defer 1400 megawatts effective June of 1987 that would have the same effect of more rapidly depreciating the project.

COMMISSIONER BEARD: Just from a theoretical standpoint if savings were great enough, they could have offset the entire depreciation of the project in one six-month period of time.

WITNESS POLLOCK: In theory, that's true; if you really think that the capacity deferral are savings, then it would have that effect, yes.

COMMISSIONER BEARD: Only looking to the theory aspect of that, not the reality of it. Now, would one assume that the faster that a project is depreciated, i.e. the greater the savings with that project, the greater the liklihood or the greater the priority -- I'm not sure of the terminology I want to use -- that it, in fact, does, that project did fall back to the oil backout as opposed to growth? Conversely, the longer it took to depreciate, the less the savings, the greater the liklihood this project should be more closely associated with growth as opposed to oil backout. On some continuum, if you will.

WITNESS POLLOCK: I'm having a little trouble making that connection. The net savings is strictly a function of the circumstances of the time, plus the assumptions of how much savings you're getting in the way of deferred capacity. That's independent of load growth to a degree. However, to the extent that --

COMMISSIONER BEARD: Your argument would be going back to the calculation of the savings, okay, I understand that there is disagreement as to how that should be calculated.

WITNESS POLLOCK: Yes.

COMMISSIONER BEARD: Okay. But leaving that aside for a minute, excluding that argument but assuming there were no argument on the savings, let's assume that the savings were pure fuel; forget capacity for a moment, okay. And that if the savings at that point in time, based purely on fuel differential, okay, were greater than obviously it is more closely associated with oil backout as opposed to if their minimal, it's probably more closely associated with growth since depreciation is going to be extended to a more normalized period, if you will.

WITNESS POLLOCK: Not necessarily, Commissioner, and for this reason. The fuel savings calculations implicit in the analysis basically compares scenarios with and without the coal-by-wire purchases. To the extent that removing the coal-by-wire purchases leaves the utility in a situation where it does not have adequate generating resources left to maintain adequate service or adequate reliability, then the savings that you're measuring are really not savings related to oil backout, they are really savings related to the need to the utility to buy emergency power and use other utility resources in order to maintain system reliability.

COMMISSIONER BEARD: Well, if I follow your argument the Martin plants -- I think it's your argument, that the Martin plants, in retrospect at least, probably were not needed until further out than '87, okay, then doesn't that argument that you just made basically dissipate? Or certainly become less of a factor?

WITNESS POLLOCK: It would become less of a factor if in reality the Company had adequate reserve capacity at the time that those units would have otherwise gone into service.

COMMISSIONER BEARD: Well, why would you suggest to us they should have been placed further out in the first place if there weren't adequate reserves in '87, or expected adequate reserves in '87? They should have never planned those units in the first place.

WITNESS POLLOCK: That's a good question and the answer is somewhat difficult to explain, but it's kind of like tuning into the beginning of an Indiana Jones movie, ignoring everything else that happened in the movie and tuning in at the end. You have to kind of know what the story line was in between the two time periods to fully appreciate what could have happened if the Utility had been in a different circumstance.

Our contention is if you go back and redo essentially the system planning or apply the system planning concepts, that

FP&L, in the wake of declining load projections, would in all probability, and I think a very strong probability, have decided prudently to defer the in-service date of those units assuming there was no coal-by-wire that they could count on as the unit power purchases.

Now, in making that decision the Utility is going to have to have certain contingency factors because as everybody knows load forecasts can be wrong. They can be optomistic, they can be too optomistic or too pessimistic. So in the same course of making the decision to defer these units because these were very high cost units, the Company would have had the opportunity to consider other options in the event that their forecast proved wrong later on.

COMMISSIONER BEARD: Well, I appreciate that, and to the extent though that you have to make an assumption based on your arguments that their load forecasts were greater than perhaps they should have been, otherwise you can't assume that they defer those units to a later date or some alternative, perhaps less expensive alternative than what you're suggesting, is that correct? As an example, perhaps they never planned those units, and they didn't back out of oil, if you will, and later coal-by-wire became the deferral process for the units as opposed to an oil backout mechanism.

WITNESS POLLOCK: I'm sorry.

COMMISSIONER BEARD: It's a hypothetical alternative.

All I'm saying is that you are saying they could have found a lesser costly alternative than the two Martin units, is that what I understood you to say?

WITNESS POLLOCK: Yes, sir. I'm saying it's not a foregone conclusion that had the generation plan been updated from time to time in the absence of the unit power agreements, that FP&L would not have decided to look into some alternative to the Martin units in the '87, '88 time frame. And suggesting that based upon circumstances that happened in that interim time period, that there would have been other options available to the Company that the Company could have then relied upon to meet its capacity needs that existed in the '87, '89 time frame.

CHAIRMAN WILSON: You're not suggesting they should have known in 1982 that they shouldn't have built the Martin plants, are you?

WITNESS POLLOCK: No, I'm not.

CHAIRMAN WILSON: You're not suggesting that.

WITNESS POLLOCK: I'm suggesting that generation planning is a very dynamic process, and to really throughly test the idea that the Martin units themselves are the deferred units and would have been constructed and built in the time frame that the Company claims would have been the case in 1982, it's necessary to go back and see what would have happened based upon the facts and circumstances that occurred after 1982.

CHAIRMAN WILSON: Well, if they were going to build plants in 1982 to meet a perceived need for 1987, '88 and '89, when would they have had to start construction?

WITNESS POLLOCK: It really depends upon the option the Company chooses.

COMMISSIONER BEARD: Well, the option is two coal-fired plants at Martin.

WITNESS POLLOCK: Another option could be purchase of out of state or in-state service capacity.

COMMISSIONER BEARD: You just made a statement, though, in '82 they wouldn't necessarily have known those alternatives to the two coal-fired plants in '87.

WITNESS POLLOCK: That's correct.

COMMISSIONER BEARD: So in '82 they are making the decision, the next question obviously leads to how long does it take from start to finish to construct a coal-fired unit in that time scenario? You could easily take the Seminole plants that were completed in the early 80's and look at the time frames it took to develope those, as an example, and there are others. Would you guesstimate they might be five years plus?

WITNESS POLLOCK: Oh, yes, I would certainly agree with that. But my point is this: That once a utility decides to commence construction, as we've learned in the nuclear era, those decisions are not always irrevocable. They have to be revisited from time to time and some utilities have found that--

CHAIRMAN WILSON: They may not have to be revisited but they certainly have been.

WITNESS POLLOCK: They should be revisited.

CHAIRMAN WILSON: Are you suggesting that no deferral of capacity should be considered in calculating the benefits under the rule?

WITNESS POLLOCK: No. I'm not suggesting there was not a capacity deferral. I'm merely suggesting the time in which the Commission recognizes that capacity deferral and the cost parameters assigned to the deferred capacity should be seriously reviewed and questioned based upon FPL's static assumptions.

CHAIRMAN WILSON: Okay. So in your opinion was there any capacity deferral between the years 1982 and August of 1989?

WITNESS POLLOCK: No, not necessarily. Based upon subsequent load forecasts it is my position -- I'm sorry. Let me qualify the answer a little bit.

CHAIRMAN WILSON: I wish you would. Like you I have 20/20 hindsight also.

WITNESS POLLOCK: I hope I don't have it, but we all have it.

If your question is addressed specifically to the unit power sales agreements, did the unit power sales agreements alone would have been the only factor that would have caused FP&L to defer the Martin units, the answer in my opinion is no, it would not. In addition to the unit power sales agreements, the Company experienced declining load growth that in addition to the UPS agreements would have caused deferral. So irrespective of whether the Company had entered into the UPS contracts, it's my position that the units could have been deferred because of changes in load growth.

CHAIRMAN WILSON: The view that you have of the FEECA statute is that releaving the state of dependence on expensive fuels, I'm not sure exactly what the statutory language is, but petroleum fuel such as oil and gas, is clearly modified by the term "cost effective", the way you read it, is that right?

WITNESS POLLOCK: I don't have a thorough understanding of those statutes and the regulations that were developed from those statutes, but certainly --

CHAIRMAN WILSON: Your comments concerning whether they should have built two 700 megawatt coal plants instead of looking at later technology, such as current combined cycle plants, leads me to think that the cost effectiveness is a very strong element of your aanalysis.

WITNESS POLLOCK: You could characterize it as cost effectiveness but it's an attempt to develop what the least cost of the utility would be at any point in time based on the facts and circumstances at that time. What I'm suggesting is that you would go back and look at what the generation plan would be, the least cost options would be, given all of the options that would be available in that time frame.

CHAIRMAN WILSON: So the reduction and dependence on petroleum fuels would not play a role in your analysis of that situation.

WITNESS POLLOCK: I wouldn't say that. It could play a roll in that. It just depends on whether or not the costs you're going to incur to achieve that end offset the benefits.

CHAIRMAN WILSON: We're back to least cost and cost effective and not in terms o. a policy of reduction of reliance on petroleum fuels.

WITNESS POLLOCK: Yes The Oil Backout rule says, "economic displacement" and to my mind economic displacement means that the cost of displacing petroleum fuels are more than exceded by the benefits of that displacement. If that's not the case, then displacing petroleum fuels has no inherent -- is not inherently beneficial to the customers.

CHAIRMAN WILSON: So a decision, for instance, by this Commission to view as the appropriate statewide avoided unit for calculation of cogeneration prices of a 500 megawatt coal plant, despite the fact that all of the generation plans show that there is a need for and the appropriate unit to be built, would be a combined cycle plant earlier than that, under your analysis, least cost to the utility, you would say that the combined cycle plant would be the one to go for?

WITNESS POLLOCK: Yes. If the utility determined that an optimum generation expansion plan, meaning the plan that meets the reliability criteria at the lowest cost to the ratepayers, means they would have otherwise have installed a combined cycle unit at this point in time, then that is what the basis -- that would be the utility's avoided cost, and that would be the appropriate basis for determining what the utility can afford to pay a qualifying facility to avoid having to construct that type of capacity.

COMMISSIONER GUNTER: Let me, if I can, see if I can get a little better understanding of where your decision would be if you were making the decision, as to which alternative to get, whether it be a combined cycle or pulverized coal plant. What would you consider as the cost elements that you would look at? Because I get from the tone of your responses to the Chairman that you're primarily concerned with the capital costs, is that correct?

WITNESS POLLOCK: No, sir. I would look at all of the costs associated with the options.

COMMISSIONER GUNTER: Would you do an evaluation through the life of the plant, through the expected depreciable life the plant?

WITNESS POLLOCK: Yes, sir, I would.

COMMISSIONER BEARD: In order to make a determination of benefit of the customers?

WITNESS POLLOCK: Yes, I would.

COMMISSIONER GUNTER: Have you ever done any fuel forecasting?

WITNESS POLLOCK: Thank goodness, no.

COMMISSIONER GUNTER: Have you ever seen a fuel forecast?

WITNESS POLLOCK: Yes, sir.

COMMISSIONER GUNTER: Have you ever seen a fuel forecast that was right?

WITNESS POLLOCK: Very rarely.

COMMISSIONER GUNTER: If you can tell me somebody that has been right over, say, a ten year time period we're going to hire them. Can you tell somebody that's been over a ten year time period that's been correct?

WITNESS POLLOCK: I don't think anybody can be right over that period of time.

COMMISSIONER GUNTER: Okay. So the only thing sure about fuel forecasts when you're trying to make a determination over the expected life of any facility that's built, the only surety there is that that forecast is going to be wrong, is that right? Because fuel is a very large component over the expected depreciable life of any, regardless of whether it's coal, gas, even nuclear to some respects.

WITNESS POLLOCK: That's correct, the assumptions regarding fuel prices can affect the outcome of the analysis.

COMMISSIONER GUNTER: So, would you say at the time you make the analysis if it doesn't disagree strongly with experts in the field, that there is a general consensus in the fuel forecasts that you take what's available to you at the time that you make that forecast, when you're making a determination of the next avoided unit?

WITNESS POLLOCK: In general you would, that's absolutely correct.

COMMISSIONER GUNTER: I'm asking you specific. You see, one of the things, I'm trying to get you to take a position, Mr. Pollock. I'm leading you around the pasture. It's just like put a halter on an old cow, you just lead them around the pasture and eventually you get to the gate. Oh, cow is his, lead that pony around there. I can't use dogs and cows anymore.

CHAIRMAN WILSON: Quails.

WITNESS POLLOCK: Since I'm out of water you can try to lead me to that, too.

COMMISSIONER GUNTER: I have the quail coming to the feeder. But the process then is you take the best fuel forecast you can, you take the best construction cost estimate that you can, and you make a determination of what's least cost at whatever time period you select, whether that's today or ten years ago, is that correct?

WITNESS POLLOCK: Yes, and you can do that by looking at the wide range of scenarios. You don't rely on just one forecast of the construction costs and one forecast of the fuel costs.

COMMISSIONER GUNTER: Well, you recall the question I asked you previously. I said that when none of those forecasts, particularly the fuel forecast -- most construction is out on a competitive bid and, God forbid, we are doing everything in this country on low bidder. I can ask that the question was asked of John Glenn: "What did you think when you lifted off the ground?" He said, "Oh, my God, the low bidder got the contract." (Laughter) You know, that's sort of the situation that we have existing in this country. By the way, I have a recording of that conversation, sometime if you would like to hear it.

WITNESS POLLOCK: I would.

COMMISSIONER GUNTER: Well, if you all can find a machine that will play those damned old wide tapes on a reel about that big (indicating) we will listen not only to that but we will listen to the launch of 109D, which was John Glenn's final activity where he said, "May the wee ones be with you, Thomas."

But if you don't have any disagreement, substantial disagreement, among the fuel-forecasting parties -- and I am talking about you can use Chase Econometrics or MIT, or whoever is in that business of forecasting fuel -- and you have a reasonable construction estimate, is that inappropriate to make a decision on at the time of what the avoided unit would be?

WITNESS POLLOCK: If you have exhausted all of the opportunities and all of the potential options, yes.

COMMISSIONER GUNTER: Mr. Pollock, I doubt that you can ever exhaust all the opportunities. But there gets to be a point of finality. I'll bet you in the morning you don't evaluate how many damned ways you can brush your teeth, and there are probably a thousand ways but you get your damned teeth brushed, isn't that right? There gets to be a point that you cannot exhaust all of the alternatives. But as a practical, everyday walking-around-sense kind of thing, once you get laid out before you one that somebody is not forecasting oil at $4 a barrel and somebody is not forecasting it at $100 a barrel but somewhere where there is a general consensus, is that inappropriate for the Commission to use? (Pause) Apparently yes, that is inappropriate?

WITNESS POLLOCK: It's not, provided that the Commission has looked at a number of different possible scenarios that go into those forecasts.

COMMISSIONER GUNTER: What do you mean by "scenarios," forecasts?

WITNESS POLLOCK: Yes.

COMMISSIONER GUNTER: Fuel forecasts?

WITNESS POLLOCK: For example, let's assume that construction costs go up at a 5% rate or they go up at zero.

COMMISSIONER GUNTER: Let's stay with fuel forecasts.

WITNESS POLLOCK: Okay. Let's assume that the fuel forecasts --

COMMISSIONER GUNTER: We are going to have to dissect this quail one feather at the time. On a fuel forecast, if you have got a fuel forecast from a half a dozen reputable firms, in the business of forecasting fuel, that's their business, is it inappropriate for the Commission to use those as a guide in making a determination of the appropriateness of a cost estimation for any generation facility?

WITNESS POLLOCK: No, it is not inappropriate.

COMMISSIONER GUNTER: All right, fine. If you used -- you know, there are economic indicator companies which we use, we use the results of what they forecast of what the inflation rate is going to be and the rest of those kind of things. Again, how many circumstances do you know, except for the rare circumstances like Mr. Babson back in the days of the depression, or I think -- yeah, that was Mr. Babson because it's named Babson Park and Babson College after him, because he was the one who predicted what was going to happen with the depression, the great depression in October of '29. And he has an economic school down the country.

But assume you take those variables and you look at the various economic forecasting companies, the same as you do with oil companies or the fuel supply folks, prognosticators, and you use those escalation rates over the life of a construction period, and you have a comparable construction price for a plant that has been built. Is that -- and, you know, we know around the country what it costs to build -- I mean, what the latest price of a plant came on line for. In some circumstances in nuclear we damned sure wouldn't want to use that, we would want to use our estimates and not some from up in the part of the world that you are from. You all didn't have quite as good an experience up in that part of the world.

WITNESS POLLOCK: We actually got off pretty cheap with our nuclear plants.

COMMISSIONER GUNTER: As cheap as us?

WITNESS POLLOCK: Not quite, we built them later than you all and we're not quite as efficient.

COMMISSIONER GUNTER: Okay. So is there anything fair about using that as a component in estimating the price of the next generation plant, or a generation plant to be avoided?

WITNESS POLLOCK: No, there is no problem with it. I think the concern that I am expressing in connection with the testimony, it's not that you are not doing it but that in this particular instance it's a case where the parameters can change over a fairly short period of time, which would render it --

COMMISSIONER GUNTER: Parameters change every two years.

WITNESS POLLOCK: That's correct. You look at it every two years.

COMMISSIONER GUNTER: We meet every two years and look at it.

WITNESS POLLOCK: That's right. I am simply saying that you would have had to have gone back and revisited the '82 assumptions to validate whether or not those assumptions were still appropriate to use in '87 and '89, or '88. That's the position of our testimony.

COMMISSIONER GUNTER: Okay. You've said that you would have us go back and resurrect and see what happened, the historical situation. You would have had us go back to say the time we established the first avoided plant, which was I believe a '92 plant was the first one that we specifically identified for cogeneration pricing.

WITNESS POLLOCK: Well, in this context you would be looking --

COMMISSIONER GUNTER: But we had not identified one for cogeneration pricing prior to then. We had identified plants, and we ran into a little problem when we were trying to get the pot right on the contract. But for pricing of cogeneration contracts we had not done it previously. We had identified plants to be avoided but had not identified them with the components for pricing cogeneration. But you would have had us at some point in time go back and revisit whether those plants were the ones to be avoided or not?

WITNESS POLLOCK: Not for purposes of adjusting the cogeneration prices, but for purposes of this case we have a major component of a rate that is a function of assumptions made in 1982 about the cost and timing of the completion of certain units. In that situation we are talking about a specific rate that will have a direct, immediate impact on ratepayers that you need to go back. Just as you would if you were going back and evaluating putting a new plant in rate base, I think you would need to go back with the same level of concern and determine whether or not those plants would have been the proper ones and what they would have cost before you pass on a higher rate because of those particular units, which is what is happening.

COMMISSIONER GUNTER: In other words, you don't ascribe to the policy, because what you are really talking about is imprudence after you get a plant constructed, you know, where you are saying to go back and look, and did you build it right, was it over budget, and that kind of thing. That goes into a totally different ballgame.

WITNESS POLLOCK: Yes, sir.

COMMISSIONER GUNTER: As a regulator, one of the things -- and at some point in your life you might be doomed to be a regulator -- but if you are, one of the problems that you are going to find yourself with is the problem of making a decision with what information you have available to you at the time and sticking to it.

WITNESS POLLOCK: That's correct; I agree with that.

COMMISSIONER GUNTER: And that is a difficult situation. And you would have us say that, "Regardless of the evidence that was available to you at the time, now go back and reconstruct it and make a change to it," is that right?

WITNESS POLLOCK: What I am saying -- what I am essentially saying is that because you have a situation of --

COMMISSIONER GUNTER: Is that right? Is the answer to my question "yes"?

WITNESS POLLOCK: Yes. I would have you go back and review it.

COMMISSIONER GUNTER: Okay, fine.

CHAIRMAN WILSON: Redirect?

MR. McGLOTHLIN: A few questions.

REDIRECT EXAMINATION

BY MR. McGLOTHLIN

Q Mr. Pollock, if we were to assume that some of the declines in load growth which took place after 1982 were due in part to conservation attempts, conservation efforts, would that affect your conclusion that Florida Power and Light Company did not experience deferral benefits in 1987, and that the accumulated depreciation should be refunded?

A No. The reason for the decline in the load would not have an effect on the decision because the Utility is able to evaluate the likelihood of any particular program and its effect on the load forecast. For purposes of projections, the Company uses a mid-band, a high probability and low probability, it's not just a single point estimate of the probable load forecast over time. So the Company would be making an assessment of the likelihood of those things happening and basing their plans on that probability.

Q Do you know whether or not in 1982 the Commission had occasion to consider whether, as a matter of policy, it wanted to lock in the cost parameters of the unit deferred by the oil backout project or whether, as a matter of policy, it wanted to reserve that decision until more information was had?

A Yes. That was the specific issue that was raised in the first cost recovery docket under the oil backout clause.

Q And how did the Commission resolve that question?

A The Commission declined to accept the proposal by FPL to lock in the assumptions regarding the timing and cost of the Martin units which it claimed were being deferred by the coal-by-wire capacity.

Q With respect to the selection of the avoided unit upon which to base capacity payments to cogenerators, would the decision to alter the parameters of the avoided unit possibly affect the viability of the cogenerator to finance a unit if its payments were based upon altered parameters later?

A Yes, it could, if the cogenerator had attained his financing and did his analysis based upon a certain rate level, and that rate level was substantially altered, that could certainly affect the viability of that project.

Q Under the way the oil backout rule operates, would a change in the cost parameters of the unit that was estimated in

1982 affect the ability of Florida Power and Light Company to recover the revenue requirements of the project if those parameters were changed?

A No. The Company would eventually recover those revenue requirements associated with the project under the backout clause, regardless of the cost parameters, but it would recover them perhaps on a more equitable basis over time.

Q If the Commission were to determine, based on the evidence in this case, that the in-service date of the capacity deferred by the oil backout project was not 1987 but was a later date, or that the costs were less than those which have been put forth by Florida Power and Light Company, but does not require that the accelerated depreciation be reversed and that money refunded, what ramifications would that decision have on present and future customers? (Pause)

A Given the situation that based upon the actual cost parameters and timing assumptions used have effectively written down the project to a zero balance, it would have no effect on future ratepayers.

Q With respect to the matching of the costs and benefits of the unit, what implications would that decision have?

A Well, to the extent that the Company recovered more of the accelerated depreciation, and did so despite the fact that the actual net savings were lower, then that would create a mismatch between the recovery of the costs and the benefits.

MR. McGLOTHLIN: Those are all the questions I have.

CHAIRMAN WILSON: Thank you very much.

WITNESS POLLOCK: Thank you, Commissioners.

(Witness Pollock excused.)

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CHAIRMAN WILSON: Call your next witness.

MR. McWHIRTER: I would like to call Mr. Babka.

CHAIRMAN WILSON: Mr. Babka.

MR. CHILDS: Commissioner, while he is going to the stand I would like to move into evidence Exhibits 614 through 616.

CHAIRMAN WILSON: All right, Exhibits 614 through 616 are admitted into evidence.

MR. McWHIRTER: And I move 601 through 613.

CHAIRMAN WILSON: 601 through 613 are moved into evidence, without objection.

(Exhibit Nos. 601 through 616 admitted into evidence.)

MR. GUYTON: Mr. Chairman, we would also like to move into the record some Requests for Admissions and the admissions or the responses of FIPUG. I think it's appropriate to include them and ask them to be identified in the record, if we understand the appropriate procedure.

CHAIRMAN WILSON: Do I have those?

MR. GUYTON: I don't believe they have been filed but I have copies of them here and can hand them out the parties, if you so desire, or we can just leave a copy with the court reporter.

CHAIRMAN WILSON: Well, go ahead and give them out and let me look at it.

MR. GUYTON: All right, sir.

CHAIRMAN WILSON: Is there any objection to the Request for Admissions by the parties? Have you all had an opportunity to examine these?

MR. McGLOTHLIN: If those are our responses, we would have no objection.

CHAIRMAN WILSON: Yes.

MR. GUYTON: Mr. Chairman, the Request for Admissions that I am handing out are FPL's First and Second Requests for Admissions of FIPUG and their responses. (Pause)

DONALD L. BABKA

appeared as a witness on behalf of FIPUG and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McWHIRTER

Q Your name, sir, is Donald L. Babka?

A That's correct.

Q And you are an employee of Florida Power and Light Corporation?

A That's correct.

CHAIRMAN WILSON: Has Mr. Babka been sworn?

WITNESS BABKA: I have not been sworn.

(Witness Babka sworn.)

Q (By Mr. McWhirter) Mr. Babka, you are the gentleman that normally furnishes certain information semiannually in connection with the oil backout recovery for Florida Power and Light Company?

A That's correct. I basically do the mathematical calculations to come up with the over- and-under recoveries and revenue requirements.

Q How long have you been involved in Florida Power and Light's oil backout filings?

A I believe I started in August of 1986 was the first time I filed.

Q When did you become and employee of the Company?

A June 24th, 1984.

Q And so you were not an employee of the Company, nor familiar with the original oil backout qualification at the time it occurred, were you?

A No, I did not live through that.

Q As between yourself and Mr. Waters, are you the witness most familiar with the determination of the transmission project revenue cost?

A The calculation of revenue requirements could be me; as far as the capital expenditures it would be Mr. Waters.

Q All right, sir. Are you also the witness responsible for calculating the deferred capacity carrying charges associated with Martin coal-fired 3 and 4?

A That's correct. There again Sam would be responsible for the capital expenditures.

Q Are you generally familiar with the content of the oil backout filings each six months?

A Yes, I am.

Q I place before you, and I would like to pass out an extract from your testimony that's filed in Docket No. 890001-EI for the period October of 89 through March of 1990. Is this an exhibit prepared by you, sir?

A Yes, sir.

Q I would like to refer you first to the second page of that exhibit, which deals with the investment in the cogeneration project.

A Which schedule are you on?

Q We passed it out to you.

A The second page of it?

Q Yes.

MR. McWHIRTER: Perhaps we should get a number on this, Mr. Chairman.

CHAIRMAN WILSON: All right. What would the appropriate number be?

MR. PRUITT: 208.

CHAIRMAN WILSON: No. 208, Exhibit No. 208.

(Exhibit No. 210 marked for identification.)

MR. MCWHIRTER: Mr. Pollock informed me that I said, "cogeneration project" and I should have said "transmission project," in the last question if the court reporter would acknowledge that.

Q (By Mr. McWhirter) The 500 kV lines essentially cost $334 million to construct?

A That's correct, uh-huh.

Q And it appears that you have depreciated these lines down to a current balance of $8,182,000?

A That's correct.

Q Are you familiar with the oil backout rule?

A Yes.

Q Do you have that before you?

A Yes, I do.

Q Are you familiar with the fact that Subsection (4)(d) of the rule requires -- I am looking now about the bottom half of that subsection that says, "To the extent, however, that two-thirds of the actual net savings associated with the qualified oil backout project in any six-month period exceeds those costs rolled into the base rates, these additional revenues shall continue to be collected through an oil backout recovery and applied toward accelerated recovery of the investment cost of the qualified oil backout project until such time as the investment is fully repaid." Are you familiar with that portion of the rule?

A I see that.

Q Now, apparently, as of August of this year your nondepreciable plant balance went down to $8,182,000, but if you continued to apply the savings for the months of September and October how long would it take to write off that other $8 million?

A That 8.1 million is land and you do not depreciate land.

Q Yes, but the rule, sir, does not -- the section I have quoted you does not refer to depreciation. It says "accelerated recovery of the investment cost of the qualified oil backout project until such time as the investment is fully recovered," annd it doesn't refer to the depreciated portion.

A Okay. If you looked at it that way the 8 million would be gone early in September.

Q All right. So for all intents and purposes during the period of October, if you complied with that section of the rule, the investment in that plant would be gone by September before the new oil backout comes into play in October?

A Early October, yes, sir.

Q All right, sir. And then if you go back to Page 1 --

CHAIRMAN WILSON: By the way, Mr. McWhirter, I am advised that the appropriate number for this exhibit should be 210 rather than 208.

MR. McWHIRTER: Thank you, sir.

Q (By Mr. McWhirter) If you will go to Page 1 of 210, on Line 2 you show return on investment of $4.5 million?

A That is correct.

Q If you applied the rule so that you wrote off that plant altogether, there would be no need for a return of $4.5 million during the October-to-March period, would there?

A Not exactly. If you look at the testimony, I cite Mr. Hoffman's exhibit from Docket No. 830001. And if you note on Page 4 of that it says that, "We also apply a return to the prepaid tax balance." And, of course, the prepaid tax balance occurs when the accelerated depreciation, book depreciation, exceeds tax depreciation. This has been approved in three different oil backout orders so far back between the period of October '82 and October '83, when we had some ten or $11 million worth of accelerated depreciation. And at that time the total book balance of deferred taxes exceeded the total depreciation tax balance, and therefore we wound up with prepaid taxes that we did get a return on as working capital.

Q So you collected from the customers taxes to be paid in the future, and now you are charging a return on those taxes?

A Not exactly. The prepaid taxes result from an expense item that is not yet deductible for tax purposes. Therefore, when we collect the monies from the customer we give them 100% of the depreciation on the project, but part of that money is used to pay taxes. We don't get to keep it all, so we have to invest money in those taxes.

Q You don't get to keep it all?

A No, sir.

Q What do you do with it?

A The IRS wants their share.

Q If you give that to the IRS, it's no longer your money and you're not entitled a return, are you, on money you've given to the IRS?

A No. The portion on -- the money that we receive from the ratepayer, 100% of that goes to reduce the plant balance. But we only get to keep the net of tax amount, because part of it has to be paid to the government until the tax depreciation exceeds book and turns those around. So we really only get a net of tax return on those.

Q You use that money as working capital, and the source of the funds is from the customer that you've collected, is that correct?

A What we get from the customer is the net of tax amount of the depreciation. We are giving them 100% of the depreciation to cover the project. The other way you could do it is you could depreciate the project net of tax, but we have elected, consistent with what Joe Howard did back in 1982, we continued to take 100% of the depreciation.

Q Well, now, on Page 2 we had $8 million as a nondepreciable plant in balance, and you say that would be gone in September. And so this 4.54 million represents a return on? Some number. What is the number that it represents a return on.

A The exact number? It represents a return on the land, the 8.1 million, which we do not depreciate. And let me see if I can get you the prepaid tax balances. (Pause) The deferred tax balance, the prepaid taxes as peaked in October is right at $60 million, and it's coming down as tax depreciation will exceed book, because there will no longer be any book depreciation; so it will be tax, and it will turn around quite readily now because the tax life is 15 years on this property.

Q Explain that to me another way. I'm not sure I understand what you said?

A Okay. When your total balance book taxes exceed your total balance of tax depreciation, you will wind up with a prepaid tax. In other words, you wind up with an expense that's not deductible for tax purposes because your book depreciation is going faster than your tax depreciation.

Q That's money that you collect from customers today to pay taxes in the future with, is that essentially it?

A It's really money that I've collected from the ratepayer, given them credit as accelerated depreciation for 100% of it. Part of that, even though I gave them 100% credit, I had to pay the IRS. So I had money invested in that -- in those prepaid taxes until I get it back, so I have debt equity and preferred invested in there.

Q And that sum today is $60 million?

A Yes, sir.

Q Beg your pardon?

A Yes, sir.

COMMISSIONER GUNTER: Did you say 60 or 50?

WITNESS BABKA: It's right at 60 million right now, but it is tending down quickly because they have no more book depreciation. They have tax that's going to turn it around the other way real quick.

Q (By Mr. McWhirter) And you said 60?

A Yes, 6-0.

Q And this $4.5 million is a return on part of that $60 million?

A Yes, sir.

Q What is the percentage return that you're utilizing, sir?

A The overall or the equity return?

Q Well, give me the overall and also the equity. (Pause)

A The overall return is 13.56%. The equity return is 15.6, of course.

Q 15.61.

COMMISSIONER EASLEY: 15?

WITNESS BABKA: 13.56%.

COMMISSIONER EASLEY: And 15?

WITNESS BABKA: 15.6 on equity.

Q (By Mr. McWhirter) Mr. Babka, what is this ITC amortization? That looks like some kind of credit the customers are getting.

A Yes. That's the amortization of the investment tax credits that were generated from the project that was built.

Q I see. And how long will that be paid to the customers?

A Okay. What we use is a composite rate that is based on the total property that gave rise to the investment tax credits, which is currently 4%, I believe, so this is using a 4% rate. So you're talking 20 years.

Q How long will that go on, sir?

A Well, it would be 20 years, so the plants have been there starting in '82, finished up in '85, so it would be 20 years from '85.

Q So that means from the money that current customers have paid you through depreciation and accelerated depreciation, you've accumulated an income tax credit that will flow to the benefit of customers in the future sometime?

A Yes.

Q Now, this income taxes, you've got a $2 million credit there. What's that all about?

A Okay. That's merely showing that your deferred taxes are turning around. If you notice your deferred taxes are positive, that means they are turning around, getting less prepaid; and, therefore, you have a credit to current because your current tax expense is reduced as the book depreciation becomes tax deductible through tax depreciation.

Q So current customers are paying for taxes that will be paid by the Company sometime in the future?

A I guess I didn't understand that.

Q We're paying taxes now, and you're not paying those taxes, you're accumulating, and paying in the future?

A That is -- that is the return, or the repayment of those prepaid taxes, and they would be flowing to the IRS as they turn around. See, the difference between the two would be the amount we have to pay to the IRS at that moment.

Q The difference between Line 5 and Line 7?

A Yes, sir.

Q So you pay the IRS 1.2 million in income taxes on this project?

A That looks about correct, yes.

Q If you fully wrote off the project, as this rule requires, then you wouldn't have any income taxes on it, would you?

A If you fully wrote it off?

Q Yes.

A No, sir, those prepaid taxes would still be there.

Q Well, you pay income taxes but the customers wouldn't have any responsibility for the income taxes because you're getting no return on that investment?

A I don't think I could agree with that, because we've given the customer the full benefit of 100% depreciation, and we've really only collected a net of tax amount. You know, you could have done it the other way, net of tax amount, you still have some plant balance to depreciate. But that's not the theory that Joe Howard took back in '82 when we had accelerated depreciation, so I continued on with the methods he had used and previously approved by the Commission.

Q Explain to me what the Seminole credits are?

A There is a piece of this line that we built to connect in Seminole, and that piece of line we charged Seminole a return on, and that return flows back through the clause.

Q Now, you've got some 23 customers that you provide, or not customers, but utilities for whom you provide transmission services, don't you?

A That I don't know.

Q And according to your Form 1, in 1987 you collected some $21 million in wheeling charges for the use of your transmission facility?

A That I don't -- that's out of my field. I do not know.

Q Do these customers, these other utility companies such as JEA, Seminole, the Florida Municipal Group, Lake Worth, Florida Keys, City of Tallahassee, and Florida Power, do they use any portion of this 500 kV line?

A I don't know. Mr. Waters may be able to answer that. I don't know.

Q But you do know that you don't charge -- you don't give the oil backout component any credit for the use of that line by any utility other than Seminole, is that correct?

A That's correct.

Q Does your company have any 500 kV lines other than the ones that are in the oil backout project?

A There again, you'd have to ask Sam. I'm not that familiar with it.

Q You don't know. If the Southern Company system provided energy to JEA over a 500 kV line, would it be fair to presume that that's this project?

A There again, I do not know.

Q Assuming for purposes of hypothetically, if JEA did pay you a wheeling charge of $1 million to utilize a component of this line, wouldn't it be fair to provide a credit to the oil backout surcharge the same way as you have done for Seminole?

MR. GUYTON: I'm going to object. It assumes a fact that hasn't been established in evidence. It also goes to an issue that hasn't been identified. I am not even sure it's relevant to the proceeding.

COMMISSIONER HERNDON: Where is it relevant?

MR. McWHIRTER: Mr. Chairman, one of the issues in this case is whether the revenues that are collected on this line are the appropriate revenues, and whether or not the line has been fully written off, and whether or not the oil backout surcharge should terminate because now the revenues and the other factors offset the cost.

COMMISSIONER GUNTER: Your objection was?

MR. GUYTON: The objection was that we're not sure of the relevance of this line of questioning, and it also was a hypothetical question and assumed a fact that hasn't been established in evidence.

COMMISSIONER GUNTER: It's a hypothetical and that's not unusual to have hypotheticals asked. We have talked about, you know, who has got hogs and cows and horses and goats. Mr. McWhirter is known for his surreptitious ways of getting to Chaires.

MR. McWHIRTER: Mr. Chairman, as a late-filed exhibit, I would request that Florida Power and Light Company file in this Docket Pages 332 through 332-E of their FERC Form 1 for the year ending December 31st, 1988.

COMMISSIONER HERNDON: Is that not available as a public record?

MR. McWHIRTER: I want to get it in evidence in this case. They would be available.

COMMISSIONER HERNDON: It wasn't available to you, and you couldn't introduce it?

MR. McWHIRTER: We asked for it and they sent us the one they filed in March of '88, which was for the calendar year '87. I can give you the one in '87, if you like to have that evidence.

COMMISSIONER GUNTER: We've got a late-filed. What is it again, now, you want what pages?

MR. McWHIRTER: Page 332 through 332-E, FERC Form 1.

COMMISSIONER GUNTER: What time period? Then we'll talk about what --

MR. McWHIRTER: Calendar year 1988.

COMMISSIONER GUNTER: All right.

COMMISSIONER EASLEY: I'd just like to know what it is.

MR. McWHIRTER: What it is is the money that's paid to Florida Power and Light by other utility companies for utilizing transmission facilities.

COMMISSIONER GUNTER: On their system?

MR. McWHIRTER: Yes, sir, on the Florida Power and Light system.

COMMISSIONER EASLEY: Well, is that --

COMMISSIONER GUNTER: Is that identified in there? I have not seen that. Is it identified in there, these two 500 kV lines, or just wheeling anywhere?

MR. McWHIRTER: It identifies 500 kV lines, and it has payments coming from JEA on transmission to Southern Company, and I think it's logical to presume that that's this 500 kV line.

COMMISSIONER GUNTER: Because one of the interesting things is having been involved in the Keys dispute down there. I don't believe on the best day that you have had 500 kV line running down there. What's that late-filed number?

MR. GUYTON: Commissioner, we would object to the admission or the provision of it. One, we're surprised. Do we haven't been given any indication that it's going to be used or this issue was going to be raised in this proceeding. We question its relevance, and they are asking us to prove a case. We offered to proffer Mr. Babka as an adverse witness. They didn't want to specify the areas that were appropriately identified by Mr. Babka. He's obviously not the right witness here and they haven't called the right witness.

COMMISSIONER GUNTER: You wouldn't object to anything the Commission had that you all filed, would you?

MR. GUYTON: No, sir, Commissioner.

COMMISSIONER GUNTER: We have to make a determination of whether it's relevant.

MR. GUYTON: Commissioners, if you want to take a look at it, we have no objection.

COMMISSIONER GUNTER: It's coming in as a late-filed. Why don't you provide -- this is your witness. You called him as your witness, and it's your responsibility to provide the data your witness does the last time I checked. What would be that number?

MS. RULE: This is going to be a FIPUG exhibit, this will be -- well, Mr. Pruitt has already assigned some to -- two other numbers. If this is going to be a FIPUG --

COMMISSIONER GUNTER: It's a FIPUG number.

MS. RULE: 617.

COMMISSIONER GUNTER: What was that again?

MS. RULE: 617.

COMMISSIONER GUNTER: 617.

(Late-filed Exhibit No. 617 identified.)

MR. McWHIRTER: The last exhibit number you gave me was --

CHAIRMAN WILSON: Excuse me, Mr. McWhirter, I'm going to use this opportunity to again make my plea and appeal, and God knows what I'm going to have to do to get us to start numbering these exhibits in chronological order as they are admitted into evidence, starting with number 1 and working our way up.

COMMISSIONER GUNTER: That's too simple.

CHAIRMAN: I don't know what it takes to get us to that point, but whatever it is, for God's sake let's do it.

MS. RULE: I'd be more than happy to talk to you at anytime about how you would like exhibits numbered.

CHAIRMAN WILSON: That's the way I'd like to have it numbered. It's too late in this case, but from now on it's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, et cetera.

COMMISSIONER GUNTER: You don't want 64-A and 64-A-Z.

CHAIRMAN WILSON: It doesn't appeal to my simple mind.

MR. McWHIRTER: Somebody give me a number.

COMMISSIONER GUNTER: You had one, 617.

MR. McWHIRTER: 617.

COMMISSIONER GUNTER: Late-Filed, to be provided with Mr. McWhirter's witness.

CHAIRMAN WILSON: I don't understand why you didn't know that, I mean the last exhibit was 210, and this one is 6-something or other.

MR. McWHIRTER: That's right.

CHAIRMAN WILSON: I guess there is just something intuitive about numbers that go in a row.

COMMISSIONER EASLEY: I thought I had figured this out, and now I'm thoroughly confused.

I thought when I read the rule about the six months review, and I read the Prehearing Order that said that this is a spin off from the fuel adjustment docket, that we were probably dealing with this six months period. And when I looked at Exhibit 210 and, indeed, it's talking about '89 through March of '90, and then I said, "Okay, yeah, I've figured this out." It's a spin off of this six-months period. Now I'm listening to a late-filed exhibit for 1988, and I really am now confused as to what an '88 set of figures has to do with this six months figure or true up. Am I on the wrong six months or did I totally misunderstand what I'm doing?

MR. McWHIRTER: The point I'm going to try to demonstrate with this, Ms. Easley, is the Utility receives revenue from the use of this line from other utility companies and they are not giving the customers credit for this revenue.

COMMISSIONER EASLEY: Okay. So you're just using '88 as an example, but I'm right about the six months period?

MR. McWHIRTER: Yes.

COMMISSIONER EASLEY: Oh, good.

COMMISSIONER GUNTER: Could we get some copies of this so we can look at it? Because one of the things in the characterization -- we're talking about this line, and I would need to look at the data to make sure if, in fact, it is this line and marry it up with the maps, the existing maps that the appropriate utility interfaces to see if, in fact, wheeling is a process. That's a concern I have. Because I hate to leave something hanging with the perception that we're talking about these two 500 kV lines. And I'm not sure that's the case, because there are some 500 kV lines in that system that I know that are not part of this oil backout. And I don't want to leave here with a perception or have the record indicate that any transmission, any wheeling -- I'm not saying that there is not a bunch of it, but I certainly don't want to leave the perception that it's all of it without having something to look at and maybe ask this witness. Have you got somebody that can get to a Xerox machine?

MR. McWHIRTER: Well, sir, what I have is the '87 Form 1, if you want to look at it.

COMMISSIONER GUNTER: Oh, you don't have an '88?

MR. McWHIRTER: No, sir, I don't.

COMMISSIONER GUNTER: All right.

MR. McWHIRTER: Okay.

COMMISSIONER GUNTER: Okay. We've got -- Staff's going to go get us one.

WITNESS BABKA: Commissioner, even if he gave me that copy, I'm sure the customer is getting credit for it someplace, but I don't think I can go through it line by line and tell you exactly where.

COMMISSIONER GUNTER: No, I just need to look at it. Because for instance, if the Keys are in there, I know I was involved in that process in getting power to the City of Key West, in which there was something less than a 110 line running down through Keys Co-op of which the City of Key West had to help them upgrade their line and there is a charge to get down there, but there is not a 500 kV line. And I just happen to know that by having been around here for a while. And when you mention some of those, there is some things that, you know, I have been able to recall by -- that was a very lengthy and onerous process.

MR. McWHIRTER: We're not contending that all of this revenue is for the use of that line.

COMMISSIONER GUNTER: Okay, good.

Q (By Mr. McWhirter) Mr. Babka, since you have been doing the oil backout filing, have you ever filed an exhibit that in any way identifies the cost of debt, the cost of deferred capital, and the assumed return on equity for this project?

A Are you looking at the project itself, or the deferred unit? The project itself?

Q The project itself.

A Yes. The same testimony that you got those exhibits out of, on Page 10, Line 24, 25 and on 11, Line 1 and 2.

Q You refer to E. L. Hoffman's prefiled testimony?

A Yes, sir.

Q That doesn't give us the current return on equity and the current return on debt, does it?

A Well, it spells out that we use the midpoint of the last allowed return on equity. It also spells out that we use the incremental cost of debt.

Q Did you issue any specific debt associated with this project?

A With the 500 kV line? I guess I couldn't answer that. That was done before I was involved in this. I would assume that there are some specifically identified issues to that project, and those were the ones that were used, both preferred stock and long-term debt.

Q You don't give us any percentages here, you just refer us to other documents where that information may be found, is that correct?

A Yes, sir.

Q And there is nowhere in your documents that show that this 4.5 million return is based on anything other than the $8 million in land, is there?

A Well, I think if you look in the verbiage it says the unrecovered property, and also if you -- once again, the same lines I read before, in the testimony, on Page 4 of 7 of Hoffman's document No. 1, it says, "We apply a return to the prepaid tax balance that occurs when accelerated depreciation results in the accumulated book depreciation balance exceeding the balance of depreciation taken for tax purposes."

Q In fact, you don't give us any numbers here, you just give us verbiage here.

A No, sir, I didn't, no.

Q To your knowledge what was the highest cost of long-term debt that was associated with this project?

A I believe it was back in 1982, when they started, it was around 16%, and it's come down ever since.

Q Has FP&L taken the advantage of the opportunity to refinance its high cost debt?

A Yes, sir, and every time we do we reflect it in the oil backout filing as reduced cost of capital.

Q Is that also true with respect to the deferred capacity?

A Yes, sir.

Q Are you using the 15.6% return on the deferred capacity also?

A Yes, sir.

Q Do you assign any specific debt cost to that deferred capacity?

A Yes. It's the -- as stated in my testimony, Document No. 1, we show that we used the debt that was there at the time of the construction. If you took out a new debt issue it would be associated with -- incremental cost, the same way as the project works.

Q Is it FPL's assumption that its current cost of equity is 15.6%?

A For purposes of oil backout, yes, sir.

Q For purposes of tax refund it's 13.6?

A I believe that the company stipulated to use after-tax savings refund. They did not for oil backout.

Q What other returns a you use in your accounting processes?

A Return on equity?

Q Yes, sir.

A 15.6 is the only one that we use. The surveillance report uses 15.6 and so does the clauses.

Q On this transmission line, does electricity generated by coal pass through that line, as well as electricity generated by gas, and electricity generated by nuclear and electricity generated by oil?

A I don't know.

Q You don't know.

You calculated the maintenance expense. Under the rule the cost to be recovered by cost recovery procedure is the maintenance expense differential of the qualified oil backout project which would normally be included in base rates, that's the oil/nonoil operating and maintenance expense differential. How did you conclude what portion of this maintenance expense related to oil and what portion related to nonoil?

A Well, on the project it's one built to move coal, and there is nothing to compare it to to come with nonoil, so it's all in there. There is no differential because there is nothing to compare it to.

Q Well, if there is no differential, then it wouldn't be proper for you to include a maintenance expense under this rule, would it?

A I believe so because I think the rule says differentially you'd have to take one less the other, and the other being oil, there isn't any, so it would be the total thing, I would believe.

Q You're saying that this transmission line could not be used to transmit energy that was generated in oil-fired plant?

A No, sir, I said I didn't know. I said I didn't know what was transmitted over the line. I didn't say that it couldn't be used for that. I don't know what it is used for altogether.

Q Well, then you can't testify with certainty that the only energy going over this line is coal-fired energy, can you?

MR. GUYTON: I object. I don't believe he has testified to that effect. (Pause) That's all right. I'll withdraw the objection.

Q (By Mr. McWhirter) Can you answer the question?

A Would you ask the question again? I'm sorry.

COMMISSIONER WILSON: The question assumes he has already testified to that, or does it?

MR. McWHIRTER: All right, then, Mr. Chairman, I won't ask that question.

COMMISSIONER WILSON: Well, just rephrase your question. Just ask him flat out, Mr. McWhirter. (Pause)

Mr. McWhirter, can I get an idea of how much more cross you have of this witness?

MR. McWHIRTER: I would say about ten minutes.

COMMISSIONER WILSON: And how much will you have of the Company's other witness?

MR. McWHIRTER: That's all we have. This will be our final witness.

COMMISSIONER WILSON: And cross examination of --

MR. McWHIRTER: We have Mr. Waters.

COMMISSIONER WILSON: And what does the length of time of your cross examination of Mr. Waters, what would you estimate?

MR. McWHIRTER: Oh, 20 minutes.

COMMISSIONER WILSON: Go ahead.

Q (By Mr. McWhirter) Are the costs in your Page 2 in Exhibit 210, are those costs recovered from the customers solely on the basis of kilowatt hour sales?

A I'm sorry. I didn't get to the page that you were on.

Q Page 210 -- well, I guess it's Page 1 of Exhibit 210.

A I don't have an exhibit 210.

Q This is OB-B4, the document. It's that one right there under the microphone.

A Right here?

Q Yes.

A All right.

Q See that $5 million?

A The bottom line, on Line 10?

Q The bottom line, that's the revenue requirements for the oil backout project?

A That's the total.

Q Are those dollars collected from the customers solely on the basis of a kilowatt hour charge?

A Yes, sir.

Q DO you have a sizable investment, to your knowledge, in other transmission facilities?

A Do we have the investments in other transmission besides this?

Q Yes.

A I'm certain we do, but Sam could answer that better than I could.

Q To your knowledge, are any of these other transmission-related costs being recovered from customers on a kilowatt hour basis?

A I do not know.

Q You do not know?

A No, sir.

Q Are you familiar with the capacity in wheeling charges associated with unit power sales agreements with the Southern Company?

A The capacity charges I am because they go through the clause.

Q And what do those capacity charges represent, sir?

A There again, I think Mr. Waters may be able to answer that. As far as I know it's the revenue requirements to the plants that we are getting the electricity out of. I think Mr. Waters could answer that better than I could.

Q Those capacity charges, that's like a return on investment and depreciation expense?

A To the best of my knowledge, that's true.

Q Are those kinds of costs similar to the same kind of costs that FP&L would incur for its own transmission and generation facilities?

A I don't know what goes into those. I have never seen the contracts, and therefore I do not know the details of them.

Q All right. On your Turkey Point plant and your Martin Unit 1, the oil plant, and the Manatee plant, do you recover the capital costs associated with these plants from customers on a kilowatt hour basis, as opposed to some other basis?

A I know nothing of rate design and how that is collected.

Q Are you familiar with the St. Johns plant of your Company?

A Yes, I know what it is.

Q And when was that plant completed? (Pause)

A I don't know the exact dates. It's recent, but I don't know the exact dates.

Q Would you agree, subject to check, that it was 1987?

A It would seem right that that's when it was -- part of it -- there is two units there and I'm not sure when each unit went in.

Q What is the size of those units?

A I don't know for sure.

Q About 660 megawatts?

A I don't know.

Q Are they pretty similar in size to the Martin coal plants that would have been completed in 1987 had they not been deferred?

MR. GUYTON: I object. The witness has said he doesn't know the size of the units. He would not be able to compare them to Martin.

MR. McWHIRTER: He didn't know the specific size, but my question was broader to that: "Are they comparable in size?" He may know in general terms whether they were comparable.

COMMISSIONER WILSON: Can you answer the question? Do you know enough about either unit to be able to say, one way or the other?

WITNESS BABKA: All I can say is, if his assumption is 660 and the Martin units were seven, I assume they are the same size, but I don't know. I don't know that much about them.

Q (By Mr. McWhirter) Do you think they are about the same size, is that what you said?

A If what you said was correct.

Q You don't know how your Company collected for the capital investment in those plants, either, do you?

A No, sir.

Q How about the electricity you buy from the Tampa Electric Company Big Bend 4, do you how that is passed along to the customers?

A No, sir.

Q When did Florida Power and Light first begin to recognize the Martin coal-fired units in the oil backout filings?

A Martin 3 was June of 1987; Martin 4 was December of '87 -- or '88, I'm sorry.

Q Do you know what the oil backout cost recovery factor was prior to the April 1987 filing? (Pause)

A Okay. The period before that, 10-86 through 3-87, it was .762 cents per kilowatt hour. In 4-87 through 9-87 it was 6.49 cents (sic), so it went down a little bit.

Q What was it in the April '89 oil backout cost recovery factor?

A April through September is .78 cents.

Q Would it be fair to ascribe most of the increase in the oil backout factor before April of '87 and the one in '89 to the accelerated depreciation based on the Martin plants?

A Now, you are talking about the change in the factor between when?

Q The difference between those two assessments.

A I'm sorry, which ones?

Q The one before April of '87.

A Before April '87?

MR. GUYTON: I'm sorry. I'm having a little trouble hearing over there. You have asked about three periods and now you are asking a comparison about two. I don't know that I have an objection, Ijust can't hear.

Q (By Mr. McWhirter) The period from September to March of 1987 was what, again, sir?

A September to March, and you are comparing that to?

Q Say it again.

A September '86 through 3-87, you are comparing that to which period now?

Q Yes, sir, that period.

A Which period are you comparing that to?

Q Well, I want to know, first of all, what that number is, September to March.

A .762.

Q All right, sir. And compare that from April of '89 to September of '89. (Pause)

A 7.80 would be .18 -- it would be the increase in accelerated depreciation reduced by the revenue requirements to plant, because the plant balance is going down. So you would have a very small change.

Q With respect to the number of .69 cents, what period was that? (Pause)

A Did you say 649?

Q .69 cents was the number you gave me. (Pause)

MR. GUYTON: I may be mistaken, but I believe the witness gave us a factor of .649. That may be the source of some confustion here.

Q (By Mr. McWhirter) Was it .649?

A Well, April of '87 through September of '87 was .649.

I may have read that wrong. (Pause)

Q In FP&L's filing, April '87, when you first started accelerated depreciation on the Martin plant, did FP&L present through your testimony any information on the prudency of the costs that were affiliated with those plants?

MR. GUYTON: I'm going to object. The question assumes that there was accelerated depreciation during that period, and the witness has only testified that the Martin units were used in a calculation of net savings. It hasn't been established that there was any accelerated depreciation in that period.

Q Well, let me withdraw that question and ask you this question: When did you first start using accelerated depreciation?

A The first month that accelerated depreciation occurred was August of 1987. Prior to that we had accelerated depreciation in October, November and December of 1982.

Q You had it in '86 and then you had a hiatus in which there were no positive savings, and then you picked it up again in Ausut of '87?

A That's correct. And that's exactly how Joe Howard projected it to be in the qualification hearings.

Q Did you present any evidence other than just what those costs were?

A I guess I'm not following your question.

Q You just stated what the cost of the Martin plant, according to Mr. Hoffman's 1983 calculations was, is that correct?

A No. Mr. Howard, in his quantification hearings, indicated that we would have savings early on in '82 and then that we would not have any further savings until '87. And that's exactly what happened.

Q Okay. When you started collecting for those savings in '87, did you present any evidence concerning the prudency of the investment at that time?

A The prudency or the investment in the Martin units?

Q Yes, sir.

A No. I don't know.

Q To your knowledge did FP&L ever provide any testimony in the oil backout filings that Martin Unit 3 would have been the least cost alternative in the absence of coal-by-wire?

A Sam might be able to answer that; I certainly can't.

Q You don't know?

A No.

Q To your knowledge, during the time that you've presented the testimony has FP&L ever attempted to demonstrate that Martin Unit No. 4 would have been the least cost alternative?

A I don't know.

Q Is it correct that the average installed cost assumed for Martin Unit No. 3 was around $2,473 per kilowatt?

A I don't know; I have not calculated that.

Q Are we able to calculate that number from any figures that you have supplied?

A I don't think that I can from what I have in front of me.

Q Have you ever offered any testimony to the Commission relating to that cost and how it was calculated?

A No, sir.

Q Would you agree, subject to check, that the mathematical average cost for the two Martin units came out to over $2,000 per kilowatt?

A I don't know. I said I never calculated it, so I really don't know. (Pause)

MR. McWHIRTER: I tender the witness.

COMMISSIONER GUNTER: Let me ask you something: Do you know anything about Exibit 617 that counsel asked to be included into the record, those three pages?

WITNESS BABKA: No, I don't.

COMMISSIONER GUNTER: Well, I'm kind of down to the relevance side and there are two accounts that are referred to in here. There's Account 456, which is Transmission of Electricity for Others, which I would assume would be what was commonly known as the buzz word "wheeling." And the second account which you asked to be copied was Transmission of Electricity by Others. In other words, would I be incorrect in that the account of

Transmission of Electricity by Others would be characterized as having electricity carried by somebody else for Florida Power and Light?

WITNESS BABKA: I believe that is correct.

COMMISSIONER GUNTER: And then the first portion, which was Transmission of Electricity for Others, would be FLorida Power and Light transmitting power, or wheeling, for others, would that be correct?

WITNESS BABKA: I assume that is correct.

COMMISSIONER GUNTER: And if I went through, Mr. McWhirter, and I'm down now to looking at the relevance of the document included in Account 456, there are no 500 kV references.

Now, if you look at the account numbers on the page that you are looking at, the third page, and I sort of had to puzzle through this a little bit when I started looking as to where it came from, who originated it and for who, until I looked at the title of the account, "Transmission of Electricity by Others," as Account 565. So now I am trying to understand the relevance. When the wheeling that Florida Power and Light does, there is no reference whatsoever in my review of the first two pages of the exhibit that you have asked to be -- you know, you asked to be identified for possible moving into the record, I go down under 3-B and I look at "Originating and Terminating," and the highest voltage on those pages is 230 kV.

MR. McWHIRTER: Commissioner, on Page 3, though, you have got the 500.

COMMISSIONER GUNTER: On Page 3 -- go to Page 3 and look at the title of the account. You see, right up above 3-A, "Transmission of Electricity by Others." And if you start looking at this, you start looking at where the origin came from and who did it. Go to the bottom one, for instance. Southern Company Services delivered to Florida Power and Light from Cajun Electric Power Company, from Duke Power, from GSU -- who is that? -- Gulf States Utilities and Mississippi. They delivered to Florida Power and Light. You have to puzzle through that -- I had to puzzle through because I was trying to find some relevance. That's where somebody else is doing it for Florida Power and Light, they are not doing it for somebody else. That's an expenditure that they make and not a revenue that they receive of that $896,000. That's my understanding of the forms.

MR. McWHIRTER: The $694,000, isn't that a --

COMMISSIONER GUNTER: That's a payment to the Southern Company.

MR. McWHIRTER: Paid to Florida Power and Light?

COMMISSIONER GUNTER: That's a payment from Florida Power and Light to the Southern Company. The termination point is Florida Power and Light; the provider is Southern Company Services. So I am trying to understand, before we go any further and before we lose this witness, you know, the one where it came from, or whoever can explain that, that that's a cost, that's not a revenue. That $896,000 is a cost item. The revenue item is on the previous page of $20,891,087, and that's even a different account number. That's Account No. 446. And there is not a 500 kV referenced on those first two pages, and I'm wondering about the relevance of carrying it any further.

MR. McWHIRTER: This is the voltage -- (Pause) -- Commissioner Gunter, you may have me there.

COMMISSIONER GUNTER. Well, no, I'm not trying to "have you."

MR. McWHIRTER: I didn't want you to have me. You may be accurate. It looked to me like we were getting charges that the oil backout wasn't getting credit for, and I wanted to ask this witness about that.

COMMISSIONER GUNTER: Well, I understand, and maybe they have got somebody, but my reading of it -- and I was really hung up, I'll be very honest with you, until I started reading the footnotes at the top of the page, and started reading at No. 2 where they have got, "Transmission of Electricity for Others," included in Account 456, and "Transmission of Electricity by Others," and that's Account 565. (Pause) But we can go on.

MR. McWHIRTER: I'm going to withdraw the exhibit. I think it probably leads more confusion than it brings to light. Thank you.

ChAIRMAN WILSON: Mr. Howe, any questions?

MR. HOWE: No, sir.

CHAIRMAN WILSON; Staff, questions?

MS. RULE: Staff has a few questions.

CROSS EXAMINATION

BY MS. RULE:

Q Mr. Babka, how is the amortization for the investment tax credit generated by the oil backout assets calculated?

A Like I stated, it's based on a composite rate using all the property that gave rise to it. So it's basically on a straight-line method based on all of our property.

Q Okay. When you say "a composite basis," that's companywide, correct?

A That's correct.

Q And that's not just for oil backout?

A No.

Q Why isn't an amortization rate specific to the oil backout ITCs used?

A Well, talking to our tax people, they have real concern as to whether this would meet the ratable flow-through of ITC, because the IRS rules do call for a composite rate. We have done it on the preferred tax side and flowed all the excess deferred taxes back to the ratepayer already, because the plant is going to be fully depreciated in August, so the ratepayers will have all the excess deferred taxes and prepaid balances will be stated at 34%. But ITC was checked several times, and my tax people advise me that it is real risky to do it because if we do it and it's wrong we put all of our ITC at risk, which is 453 million, and we certainly don't want to lose that much money for us or our ratepayers.

Q Okay. Mr. Babka, if you are talking about ratable, doesn't it just have to be over the book life of the asset?

A I'm sorry, I can't hear you.

Q Okay. You used the word "ratable," correct?

A Yes.

Q Doesn't that just have to be over the book life of the asset?

A That's correct. And what they are concerned about is this depreciation method used in oil backout may not be what the IRS is looking for for a quicker flow-through method. You can use some different methods there. Keep in mind that I am not an expert on IRS rules, so what I am telling you is based on what our tax people have told me. But they have real concern of doing such a thing without getting a letter ruling from the IRS first.

Q Have you sought such information from the IRS?

A Have I what?

Q Have they asked for anything from the IRS?

A No. To my knowledge, they have not yet.

Q Will the ITCs that are generated by the oil backout assets continue to earn a return after the oil backout assets are fully recovered?

A I'm sorry. I'm having trouble hearing you.

Q Okay. Does this help at all, Mr. Babka?

A Yeah.

Q Okay. Will the ITCs that are generated by the oil backout assets continue to earn a return after the oil backout assets are fully recovered?

A Well, if you want to look at it as they are earning a return, if they're there or not there, the return requirements are going to be the same the way it's calculated.

Q I'm not sure if I understand you.

COMMISSIONER BEARD: But the answer is yes, isn't it? After you have depreciated -- for regulatory purposes, after you have depreciated the value of the property, $326 odd million dollars, after you fully depreciate it for regulatory purposes, there would still be a revenue requirement, the way you all have calculated it, on that remaining tax balance?

WITNESS BABKA: You're right, you're right, yeah.

COMMISSIONER GUNTER: Because you're including that as a component in working capital, are you not?

WITNESS BABKA: Yes, you're right, and I guess what I was alluding to if the ITC was.

COMMISSIONER GUNTER: That's what she was asking you.

WITNESS BABKA: Okay, I'm sorry.

COMMISSIONER GUNTER: She was asking you that question. Isn't that right, counselor?

MS. RULE: Yes.

COMMISSIONER GUNTER: All right.

Q (By Ms. Rule) And Mr. Babka, that will continue for approximately what, ten or fifteen years?

A Approximately that length of time.

Q What rate will be used to amortize those ITCs that remain unamortized?

A Right now we're using the composite rate, and it's 4% currently.

Q Who paid for the recovery of the oil backout assets?

A Who paid for the recovery?

Q Yes.

A The ratepayer paid the recovery of it.

Q And that would be since the inception of the oil backout clause, correct?

A Yes.

Q And who would then be getting the benefit of the ITC amortization related to the oil backout assets?

A The ratepayer gets the benefit of the ITC amortization.

Q And that would be from 1982 on into the future, is that correct?

A Yes.

Q And who --

A Keep in mind what I'm saying is if we want to amortize those more rapidly, all the company is requesting is they be allowed to get a letter release so that we don't put all of our

ITCs in jeopardy -- jeopardize all of our ITCs.

COMMISSIONER GUNTER: Before you go any further, how do you arrive at a composite rate? Because you have certainly items in there in your composite rate that have a much shorter life than if you're using 4%. What's that 25 years?

WITNESS BABKA: It's basically -- my understanding is you just take all your plant that gave rise to the ITC and you look at the depreciation of that plant and divide the two out, and that's where you come up with the rate.

COMMISSIONER GUNTER: Okay. So you've got a composite rate of all the components of the company of 25 years, is that right?

WITNESS BABKA: That's correct.

COMMISSIONER GUNTER: All right. Go ahead.

Q (By Ms. Rule) Mr. Babka, what's the unamortized balance of ITCs as of the date the oil backout assets will be fully recovered? (Pause) That would be just the depreciable assets, Mr. Babka.

A I believe it was 17-1/2 million. I'd have to look here.

MR. GUYTON: Marsha, that's just as to this project?

MS. RULE: Yes.

WITNESS BABKA: 17,780,000.

Q As of what date?

A August of '89.

Q Thank you.

And I believe you earlier stated that a 15.6 return on equity is currently used in determining the oil backout factor, is that correct?

A That's correct.

Q Why is FP&L using a 15.6 return on the equity portion of oil backout?

A Okay. Based on various records, and it starts way back in the qualification hearings, and the first place you see it is where Bonnie Davis in the transcripts cites what the Staff's position is on return on equity.

Q Mr. Babka, are you telling me that you're using 15.6 because Bonnie Davis said so?

A That's the first place you see it. Now, there's a record that goes on. If you look at position 2-B in the Prehearing Order, the qualification hearings. Staff's recommendation in the Prehearing Order was: "Are the assumptions used in the net savings analysis as reflected by Mr. Skaff in Document 3, and Mr. Cook in Document 6 reasonable? Staff disagrees with rate of return on equity of 19% used in calculating the revenue requirement for the project and for the capacity deferred benefits. Staff believes the last authorized rate of return on equity of 15.85 should be used as the calculation." Public Counsel's position same as Staff, and FIPUG's position was same as Staff.

Q Mr. Babka, what year was that?

A July 30th, 1982.

Q 1982. Would you say that 15.6 pretty closely approximated FPL's actual cost of capital then?

A I'm not a cost of capital expert, but according to Joe Howard it did not. It was more like 19%.

Q Can you site me to any Commission rule or order that defines actual cost of capital as the last authorized cost of capital?

A The only one I can think of is in the conservation clause, not in the oil backout clause.

Q Now, the oil backout rule, I believe, requires FP&L to use its actual cost of capital for the recovery period, does it not?

A It says, I believe the current costs, and I think it was the position of all parties that are here today, that that's what current cost meant.

Q Okay. I don't believe that's responsive, Mr. Babka. If you would -- I don't know if you have it before you, but Rule 17.0164(e) says, at least in part, "Oil backout cost recovery factor applicable to a qualified oil backout project shall be estimated every 6 months in conjunction with the fuel and purchase power cost recovery clause." It goes on to say, "the estimate shall be based on the most current projections of oil, nonoil fuel prices, other operation and maintenance expenses, taxes and kilowatt hour sales, and on the actual cost of capital for the qualified oil backout project."

Can you -- I repeat my question, can you refer me to any Commission rule or order that interprets this particular provision as the last authorized cost of capital?

A That's the way I take it because if they used anything different they would have to have cost of capital witnesses in here every six months to determine what it is.

COMMISSIONER GUNTER: Well, let me see if I can cut through this.

The Company's had an opportunity -- a golden opportunity, and you may have the same opportunity and you may pass it on to Leroy or whoever that is. You know that old story about throwing Leroy the ball. The Company's had a golden opportunity when you had the return on equity at 15.6. You came in and had the first year, but the last -- and there were two subsequent years. They came in and made an offer and we kind of said "heifer dust," we're not going to go along with that, you can come a little more, we'll agree with it, and we won't have to have a proceeding.

And as the Company's authorized rate of return on a voluntary basis changed, it seems to me that that is the authorized rate of return the Company should have been using in this -- seems to me that that would be the one that we would use for all purposes. You know, we specifically identified -- and that's a problem I have, is we specifically identified things like AFUDC and for interims and for all the rest of it. But I guess the way the game is played, if you don't specifically identify every item that there is a capital component on, that it stays at whatever rate it was. I'll bet you'd be screaming like a mashed cat, or somebody would be, if it had been 13 and all of a sudden the cost of capital had raised to 15.6 on equity, you know. And the company had agreed, you know. It seems likely that we would have said, "Oh, that's our current" and we would have moved to 15.6.

I think you're probably going to get the opportunity, or somebody in the Company is going to get the opportunity before this proceeding is over to either belly up to the bar for all purposes at 13.6, which is your authorized return, or on the Commission's own motion. You get the opportunity to come back, or somebody gets the opportunity to come back, your cost of capital folks, and find out that we had a company about two weeks ago. A publically held electric utility that would have been glad to get 13.1. In fact, that was their position. I'm just letting you know how -- that the piranhas are swimming in the water. I can use piranhas, can't I?

CHAIRMAN WILSON: Yes.

COMMISSIONER GUNTER: I'm just trying to cut through where you were -- the route you were going in.

MS. RULE: That's fine.

COMMISSIONER GUNTER: It looked as though you were goning down Monroe Street and I was trying to cut you off at Five Points.

MS. RULE: Why thank you.

COMMISSIONER GUNTER: All right.

Q (By Ms. Rule) I do have one more question on that subject though, and that's whether Mr. Babka knows of any economic justification for FP&L earning 15.6 on the oil backout project when FP&L agreed to cap its earnings for tax savings and other purposes at 13.6?

A Have I done a study on this?

Q No. I'm just asking if you, in your position with FP&L, are aware of any economic justification for doing this?

A No. I have no knowledge of cost of capital. I'm certainly not an expert in that area.

COMMISSIONER GUNTER: You might be before this is over. (Laughter)

MS. RULE: No further questions.

CHAIRMAN WILSON: Any questions, Commissioners?

MR. GUYTON: Commissioners, I have a couple of this witness, if I might.

CHAIRMAN WILSON: All right.

MR. GUYTON: I guess this is cross.

CROSS EXAMINATION

BY MR. GUYTON:

Q Mr. Babka, how do you calculate the oil backout cost recovery factor with respect to retail and wholesale customers?

A Well, the factor is calculated on a total company basis, and then you come down to total company kilowatt hour sales and divide the two out and you come up with a factor and then that factor is applied to retail sales. So it automatically jurisdictionalizes it as you go.

Q Mr. McWhirter had said, or suggested, to you that there was nothing to show that your $4.5 million projected return on investment on Page 1 of Exhibit 210 was not earned solely on $8.1 million of undepreciated land balance that you show on the next page. Do you recall that question?

A I'm sorry, I can't hear you clear across here.

Q That's all right. Let me cut through it.

Mr. Babka, what rate of return would $4.5 million be on an $8.1 million investment?

A Well, it would be over 50%.

COMMISSIONER GUNTER: Got any more than that?

(Laughter)

CHAIRMAN WILSON: Commissioner Gunter would like a piece of that. (Laughter)

COMMISSIONER BEARD: That's 50% for six months.

MR. GUYTON: That's all our cross.

COMMISSIONER GUNTER: Counselor, is anybody, who is --

CHAIRMAN WILSON: Redirect?

COMMISSIONER GUNTER: -- is it, and I guess well, we've got one that got nervous. Here he comes.

Is it appropriate to ask the Company's position if -- or let ya'll sleep on it overnight or whatever as to whether we've got a stipulation on that issue on the rate of return, or whether we're going to be forced into a situation of having to gin up a proceeding to make a determination of what is the appropriate rate of return? That's the only one that apparently is left out.

CHAIRMAN WILSON: I think we'll let them sleep on it.

COMMISSIONER GUNTER: Well, whatever. I don't mind that.

MR. GUYTON: Commissioner Gunter, I don't want to be nonresponsive, this is --

COMMISSIONER GUNTER: You want to sleep on it?

CHAIRMAN WILSON: Then don't be.

COMMISSIONER GUNTER: Don't be then. Be positive.

MR. GUYTON: May we have an opportunity to consult with the client and get back to you/

CHAIRMAN WILSON: Well, you're going to have all night. We're going to come back in the morning at 9:30 and do some stuff.

(UNIDENTIFIED SPEAKER): Little known fact that responsiveness is next to godliness.

CHAIRMAN WILSON: Sometimes it's next to impossible, though.

We will join together again in the morning at -- Mr. McWhirter, you had no further questions of this witness?

MR. McWHIRTER: No further questions of this witness.

CHAIRMAN WILSON: There were no exhibits associated with this witness either, were there?

MR. McWHIRTER: We move Exhibit 211 and withdraw 617.

CHAIRMAN WILSON: All right. Exhibit 211, without objection is --

MS. RULE: I think 211 was 210.

COMMISSIONER GUNTER: 210, yes.

CHAIRMAN WILSON: I think it's 647 myself. (Laughter)

MR. GUYTON: Mr. Chairman?

CHAIRMAN WILSON: Just a minute.

MR. GUYTON: This witness was originally --

CHAIRMAN WILSON: 210 was the schedule oil backout before revenue requirements projected for '89 -- October '89 to March 1990. Is that correct?

CHAIRMAN WILSON: That was designated Exhibit 210. You are moving Exhibit 210. 210 is admitted in the record.

(Exhibit No. 210 admitted into evidence.)

Was there another exhibit? You withdraw your other exhibit? Okay, we're clear.

Anything else we need to do before tomorrow morning?

MR. GUYTON: Mr. Chairman, this witness was originally identified as a witness to be called in the regular oil backout cost recovery proceeding. I think for the purposes of addressing these very questions that have been raised here now, I understood he was to be called as an adverse witness in this proceeding. I also understood that he was not to be recalled in the other one because he was going to be called here. If that's an appropriate understanding, can we excuse Mr. Babka as to --

MR. McWHIRTER: I have no objection to that, Mr. Chairman.

MR. HOWE: No objection.

CHAIRMAN WILSON: All right, that's fine. Mr. Babka, you may be excused from further participation.

(Witness Babka excused.)

Anything else this afternoon? All right.

We will reconvene in the morning at 9:30.

(Thereupon, hearing adjourned at 5:45 p.m., to reconvene at 9:30 a.m., Wednesday, August 23, 1989, at the same location.)