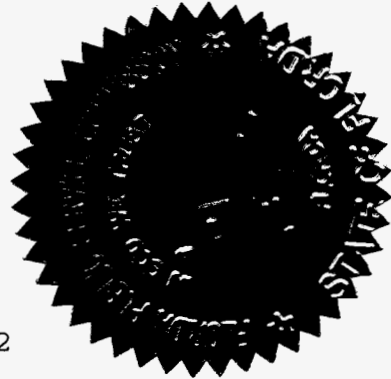


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :
Joint petition for :
determination of need for :
an electrical power plant :
in Volusia County by the :
Utilities Commission, City of :
New Smyrna Beach, Florida, and :
Duke Energy New Smyrna Beach :
Power Company, Ltd., L.L.P. :

DOCKET NO. 981042-EM



VOLUME 12

Pages 1544 through 1594

PROCEEDINGS:

HEARING

BEFORE:

CHAIRMAN JULIA A. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
COMMISSIONER E. LEON JACOBS

DATE:

Friday, December 11, 1998

TIME:

Concluded at 6:10 p.m.

LOCATION:

Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY:

JANE FAUROT, RPR
NOTARY PUBLIC IN AND FOR
THE STATE OF FLORIDA AT LARGE

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

14704 DEC 30 8

FPSC-RECORDS/REPORTING

I N D E X

WITNESSES

NAME	PAGE
WILLIAM D. STEINMEIER	
Continued Direct Testimony	1546
Cross Examination by Mr. Wright	1548
Cross Examination by Mr. Moyle	1579
Redirect Examination by Mr. Butler	1590

EXHIBITS - VOLUME 12

NUMBER	PAGE
37	Deposition of Mr. Steinmeier 1590

P R O C E E D I N G S

(Transcript follows in sequence from Volume 12.)

WILLIAM D. STEINMEOER

continues his testimony under oath from Volume 12:

CONTINUED DIRECT TESTIMONY

A Second, it is my opinion that granting this joint petition would be harmful to many Florida utility customers and to existing utilities. It could result in unnecessary duplication of facilities. It could displace off-system sales and wholesale sales which currently flow back to the benefit of utility customers. And it could complicate the utility's planning process as to generation and transmission expansion.

 Third, siting merchant plants without a showing of utility-specific need would also unfairly discriminate against utilities and increase the risk associated with future utility generation investments.

 Finally, I would observe that this is a need determination docket on an expedited time schedule. It is not a generic investigation into electric industry restructuring. In my opinion it would be a serious mistake to make a major change in power plant siting policy in the State of Florida in a siting docket based on concerns and issues related to the appropriate market structure of the electric industry in Florida which cannot be fully developed

1 and considered in this docket.

2 For all of these reasons I would encourage the
3 Commission to reject this petition in this case. Only by
4 doing so I think can the Commission preserve its proper role
5 in regulating the siting of new power plants in Florida.

6 That concludes my summary.

7 MR. BUTLER: Thank you. I would tender Mr.
8 Steinmeier for cross examination.

9 COMMISSIONER GARCIA: Mr. Steinmeier, let me ask
10 you while they look for the questions they are going to ask
11 you, tell me about discriminating against incumbent
12 utilities. How does granting this petition discriminate
13 against incumbent utilities?

14 THE WITNESS: Very simply, Commissioner, insofar
15 as the standards for getting a need determination by a
16 utility would be different from those required of a merchant
17 power plant. What is proposed in this case is that a
18 merchant plant simply be able to come forward and say we are
19 a merchant plant, therefore we don't need to make a
20 utility-specific showing of reliability need, of need for
21 reliable electricity at a reasonable cost, of most
22 cost-effective alternative, of conservation efforts. While
23 a utility coming to you with a need determination petition
24 would still need to meet all of those standards that are
25 included in the siting act.

1 COMMISSIONER GARCIA: So would you suggest that
2 if we were to grant this that then we look at our rules
3 again and sort of remove the bid rule and things of that
4 nature so that our incumbent utilities would be able to
5 compete better?

6 THE WITNESS: In my opinion you would need to
7 take a look at that whole issue, yes. I'm not ready to make
8 a specific recommendation as to the bid rule, but it seems
9 to me that you would want to carefully evaluate whether
10 everybody should be on the same footing or whether there is
11 an inherent discrimination in allowing siting of power
12 plants in one circumstance without the same level of showing
13 that it is in another.

14 COMMISSIONER GARCIA: Thank you.

15 CHAIRMAN JOHNSON: Mr. Wright.

16 MR. WRIGHT: Thank you, Madam Chairman.

17 CROSS EXAMINATION

18 BY MR. WRIGHT:

19 Q Mr. Steinmeier, I understood you to say in your
20 summary that it is your understanding or belief that as a
21 matter of policy a determination of need may only be given
22 for a power plant where that power plant is required for
23 reliability purposes. Was that your testimony?

24 A Yes, sir.

25 Q Are you familiar with the criteria in Section

1 403.519 that the Commission is to take into account in
2 evaluating need determination applications?

3 A Yes, I am.

4 Q And what are those criteria, please?

5 A Those criteria are that the Commission consider
6 the need for system reliability and integrity, the need for
7 reliable electricity at a reasonable cost, consider whether
8 the proposed plant is the most cost-effective alternative to
9 meet that need, and also that the Commission consider
10 conservation efforts that have been taken or could be taken
11 that might mitigate the need for the proposed plant. The
12 Commission, of course, might also consider other factors
13 within its jurisdiction.

14 Q Now, we discussed this at your deposition. Will
15 you still agree with me that none of those factors is
16 superior to any other?

17 A I reread that deposition and I expected you to
18 ask this question. I would have been disappointed if you
19 hadn't. On two out of three occasions to the best of my
20 recollection when it came up I focused on reliability. I
21 believe that the first and most fundamental point of the
22 criteria are to establish that there is a reliability need
23 for the electricity. All of the criteria have to be
24 considered, certainly.

25 COMMISSIONER GARCIA: Sir, let me ask you, what

1 do you mean by reliability need? Is it reliability -- is it
2 the reliability that the utility, the incumbent utility will
3 be able to meet its needs, the future needs of its
4 customers, is that what you mean?

5 THE WITNESS: Essentially, Commissioner, yes.

6 COMMISSIONER GARCIA: And you don't think that
7 the need of New Smyrna qualifies as a need that is being
8 met?

9 THE WITNESS: As to the City of New Smyrna Beach?

10 COMMISSIONER GARCIA: Yes.

11 THE WITNESS: The need for 30 megawatts in my
12 mind falls substantially short of demonstrating a need for
13 building a 514 megawatt plant. But what is sought to be
14 sited here is a 514 megawatt plant, and there is a
15 utility-specific showing of need for reliability purposes
16 only as to 30 megawatts. In my view that is inadequate to
17 site that large of a plant.

18 COMMISSIONER GARCIA: Okay.

19 BY MR. WRIGHT:

20 Q Are you aware of need determination -- well, let
21 me ask you, how many need determination cases did you --
22 Florida Public Service Commission need determination cases
23 did you review in preparing for your testimony, Mr.
24 Steinmeier?

25 A Probably 10 or 12.

1 Q Can you name some of them?

2 A Back to the 1989 planning hearings, some of the
3 subsequent planning hearing orders, Ark (phonetic) and
4 Nassau, Cypress. I could check another document, if you
5 would like more precision.

6 Q Did you happen to review any of the need
7 determination orders with respect to the Stanton units at
8 the Orlando Utilities Commission?

9 A I don't believe so.

10 Q Did you review a need determination order with
11 respect to the determination of need for Florida Power
12 Corporation's Crystal River 5 coal-fired power plant?

13 A No.

14 Q Did you review a need determination order with
15 respect to Tampa Electric Company's Big Bend 4 coal-fired
16 power plant?

17 A No.

18 Q Did you review a need determination order with
19 respect to the St. Johns River Power Park coal-fired units
20 of the Jacksonville Electric Authority and your client here,
21 Florida Power & Light Company?

22 A I believe I have read that one.

23 Q Okay. Did you review a need determination order
24 with respect to the Palatka units of the Seminole Electric
25 Cooperative Incorporated?

1 A No, I don't believe.

2 Q Did you review a recent order relating to the
3 City of Tallahassee's need determination proceeding for its
4 Purdham 8 unit?

5 A Yes, I did.

6 Q How much need did the City of Tallahassee have in
7 that case?

8 A I don't recall.

9 Q Subject to check, would you accept that it
10 demonstrated a need for 88 megawatts?

11 A Okay.

12 Q Have big is the power plant, the Purdham 8 power
13 plant that this Commission determined a need for?

14 A Well, something like 250 is coming to mind.

15 Q Did you review the determination of need
16 proceeding order before the Cane Island 3 unit that was
17 recently decided by the Commission?

18 A Yes, I did.

19 Q Okay. Are you aware that in several of the need
20 determinations that I just mentioned the Commission
21 specifically found that the power plant capacity was not
22 needed for reliability purposes during the foreseeable few
23 years and that it nonetheless approved them on the basis
24 that it would provide economic benefits and fuel
25 displacement benefits, specifically oil backout?

1 A Well, in my experience it's not at all unusual
2 for utilities to build new power plants and then grow into
3 the new capacity that is represented by those new units. I
4 have certainly had that experience in Missouri. A 30
5 megawatt load growing into 514 megawatts of capacity is a
6 substantial stretch based on those precedents, however, it
7 would seem to me.

8 Q Well, I don't believe that you answered my
9 question, which was are you aware that in several of those
10 orders the Public Service Commission specifically found that
11 the plant was not needed in the time sought and in the
12 amount sought for reliability purposes, but approved them
13 anyway on the basis of economic and oil backout benefits
14 that they would provide?

15 A Oil backout, you're talking about St. Johns?

16 Q That's one of them.

17 A Yes, I am aware of that. I think that, again,
18 the more recent case is a much closer match in terms of
19 capacity and growing into new capacity. The oil backout
20 cases, at least there it was clearly identifiable what
21 utility would be backing out what capacity and replacing it
22 with what.

23 Q Are you sure about that?

24 A Well, I felt sure until you just asked me that.

25 Q I think -- well, let me ask you, do you know

1 whether at least one of the orders in the cases I mentioned
2 talked about broker sales, enhanced broker sales or
3 increased broker sales?

4 A I am specifically referring to the St. Johns
5 case, which is the one with which I'm personally familiar.

6 Q Okay. In your summary, you gave what I would
7 call a criticism of the proposed New Smyrna Beach power
8 project on the basis that there is no assurance that the
9 power would be sold in Florida. Is that an accurate
10 characterization of what you said?

11 A Yes.

12 Q You have been here all four days of this
13 wonderful hearing, have you not?

14 A Yes, sir.

15 Q You were here earlier today, were you not?

16 A Yes.

17 Q Do you agree with Mr. Rib's assessment that if
18 this power plant, the New Smyrna Beach power project is
19 built, it will run and some of the power will be sold in
20 Florida?

21 A I imagine that's true.

22 COMMISSIONER GARCIA: Commissioner, it would be
23 difficult to envision, I think, a power plant like this
24 being built selling all of its power to other states,
25 wouldn't you agree?

1 THE WITNESS: I think that is a less likely
2 scenario, yes.

3 COMMISSIONER GARCIA: Okay. Thank you.

4 THE WITNESS: But I would expect it to sell some
5 of its power out-of-state. The problem we have is that
6 there is no way, absent a contract with anyone for 94
7 percent of the output, there is simply no way to ascertain
8 where the power is going or at what price.

9 COMMISSIONER GARCIA: Well, I think we have
10 established in the record that there is a need for 30
11 megawatts. The question is is there any other need, at
12 least as you see it, is there any other need, and that need
13 can only be furnished through contracts or through needs of
14 utilities, right?

15 THE WITNESS: It just seems to me, Commissioner,
16 as a practical matter that that is the only way you can know
17 that when you site a power plant it is, in fact, going to be
18 meeting a specific need in Florida for the power.

19 COMMISSIONER GARCIA: But if we didn't require
20 your client to buy this power, we didn't require them to
21 contract with this company, and we didn't include it, as FPC
22 has said, within its -- within its planning process, how
23 would I -- why would this plant worry you at all?

24 THE WITNESS: Several reasons. It would worry
25 existing utilities, including FPL, because of the potential

1 displacement of off-system sales and of wholesale sales that
2 those utilities now make. The gains from those sales flow
3 back to the benefit of the customers either entirely or in
4 large measure, 80 percent on broker sales to the benefit of
5 utility customers through the clauses. It increases the
6 complication, at least adds a new variable to the planning
7 process for generation and transmission planning.

8 COMMISSIONER GARCIA: Tell me how that would
9 happen?

10 THE WITNESS: That happens, it seems to me, by
11 virtue of the fact that the utility has an obligation to
12 serve. It has to continue to plan its generation in order
13 to assure that it can provide reliable service within the
14 appropriate standards and with the reserve margins that are
15 determined prudent. It also wants to have a reasonable fuel
16 mix. At least I think most utilities do, and I know when I
17 was on the Commission we didn't want our companies to have
18 all of their eggs in one fuel basket.

19 COMMISSIONER GARCIA: Although I would assume
20 that in your state they relied a lot on coal, I would
21 assume?

22 THE WITNESS: Quite substantially, as in 71, 72
23 percent coal generation, about 25 percent nuclear, about 2
24 percent gas and oil. So if you want to encourage -- and
25 that will be changing over the next several years with the

1 addition of some natural gas, more natural gas generation.
2 So as a utility plans its own capacity additions in order to
3 assure that it can meet its obligation to serve, it realizes
4 that there are certain trade-offs. If you want fuel
5 diversity at all, if that is at least one goal of the
6 process, there are some generating facilities with higher
7 capacity costs but lower fuel costs, some with lower
8 capacity costs that may have higher fuel costs, and they
9 have to try to assess which option to choose next.

10 Well, how exactly are you to know when a merchant
11 plant may become available to you by contract? How are you
12 to know what price capacity from that plant may become
13 available to you at some point in the future? If a utility
14 assumes that it must ignore the merchant plant for its own
15 reliability purposes and simply build its next plant as it
16 would have, it faces the risk that it builds that plant and
17 then there turns out to be quite a bit of capacity from the
18 merchant plant available that is economic, and for purely
19 economic reasons the utility buys more of that power and
20 underutilizes the plant it just bought. Those are the ways,
21 it seems to me, that it complicates the planning process.

22 And then the potential for duplicative facilities
23 if you are siting power plants without a utility-specific
24 demonstration that the plant is needed, don't you risk
25 having generating capacity that simply not all of which is

1 needed in order to meet reliability needs in Florida. Those
2 are the reasons I think that utilities are concerned.

3 COMMISSIONER GARCIA: Thank you.

4 CHAIRMAN JOHNSON: Mr. Wright.

5 MR. WRIGHT: Thank you, Madam Chairman.

6 BY MR. WRIGHT:

7 Q Mr. Steinmeier, at a couple of points in your
8 remarks so far you have mentioned wholesale power sales.
9 You would agree that benefits flow to the purchasing
10 utilities in wholesale power transactions, would you not?

11 A That benefits of wholesale sales flow to the
12 purchasing utilities?

13 Q Yes, and their ratepayers in such transactions,
14 do they not?

15 A In general?

16 Q Yes.

17 A Sure. A wholesale purchaser, I assume, strikes a
18 deal it likes and buys the power and feels duly blessed.

19 Q And you would agree as a general proposition,
20 would you not, that the lower the price at which the
21 purchasing utility buys the power for its ratepayers'
22 benefit, the greater those benefits will be?

23 A True.

24 Q You just talked some about planning, have you
25 ever done work as an electric system planner?

1 A No, I have not.

2 Q Have you ever conducted a generation expansion
3 plan?

4 A No.

5 Q An integrated resource plan?

6 A I was Chairman of the Commission as the Missouri
7 Commission developed its integrated resource planning rules,
8 and have also read reams and reams of testimony on the
9 process of planning a number of power plants on which we
10 ruled as to the prudence of the planning process and the
11 need for the plant, as well as the construction cost of the
12 plant.

13 Q Are you familiar with probabilistic analyses
14 conducted as part of system planning?

15 A Not well enough to define it off the top of my
16 head, no.

17 Q Are you aware that utilities sometimes rely on a
18 probabilistic basis on available but uncontracted for
19 capacity and energy in their planning processes?

20 A I really don't know.

21 Q You're not an economist are you, Mr. Steinmeier?

22 A No, I'm not.

23 Q Do you have any experience in electric
24 transmission engineering?

25 A No, I don't.

1 Q And you're not any kind of an engineer, are you?

2 A I'm not any kind of an engineer, no, sir.

3 Q Do you know how many electric utilities in
4 Florida or in peninsular Florida, if you had that
5 information, own no generation facilities at all?

6 A I don't know that number, no.

7 Q In preparing your testimony, did you conduct any
8 studies of merchant plant activity in other states?

9 A I conducted no study, as such, no. Of course,
10 merchant plant activity is a relatively new phenomenon.

11 Q Did you reply on any or consult any studies on
12 the effects of merchant plants on wholesale power costs
13 where merchant plants exist?

14 A No.

15 Q Did you make any study of the effects of merchant
16 plant construction in other states on utilities and their
17 activities?

18 A No, I did not. As I suggested a moment ago, the
19 phenomenon is sufficiently new that I really don't think
20 there is a great deal of information out there as yet as to
21 the actual impact of merchant plants, certainly not over any
22 long-term.

23 Q Have you ever heard of a law firm known as
24 McGuire, Woods, Battle, and Boothe (phonetic)?

25 A It rings a bell.

1 Q Are you aware whether they maintain on the
2 internet an electronic document, I guess you would call it,
3 that they call the merchant power scoreboard?

4 A No.

5 Q You will agree that merchant plants are allowed
6 in some number of states in the United States, will you not?

7 A Sure.

8 Q Would you also agree that in at least some of
9 those states those plants were allowed without any change in
10 law before they began being permitted and built?

11 A Both situations have occurred, yes. I know that
12 in Virginia and Wisconsin within the last year there has
13 been new legislation passed because both of those
14 commissions have determined that under their existing siting
15 laws they could not site merchant plants. Both the Virginia
16 and Wisconsin legislatures amended their siting laws, I
17 think both earlier this year, within the last year or so.

18 Q It was the -- the Wisconsin Public Service
19 Commission actually advocated changing the law to facilitate
20 the construction and operation of merchant power plants, did
21 they not?

22 A Yes. I think there was a real confluence of two
23 focuses in Wisconsin. The Commission there had set out a
24 32-step plan toward retail competition a couple of years
25 ago. Probably exactly three years ago. Summer before last

1 they had some serious capacity shortages. The original 32
2 point plan called for evaluation of merchant plants and the
3 possible promotion of merchant plants in Wisconsin. The
4 capacity shortages of '97, I think, rather focused the
5 political attention on the issue and a bill was passed
6 earlier this year.

7 Q I just want to make sure, I think that you
8 answered my question, but you launched into your explanation
9 so quickly that I'm not sure I heard it. Was the answer to
10 my question, yes, that the Wisconsin Public Service
11 Commission advocated and supported changing the law to
12 facilitate the construction of merchant plants there?

13 A I apologize for the launch. My literal answer to
14 your exact question is I don't know.

15 Q Oh, really. You don't know?

16 A As to whether the Commission sought the
17 legislation?

18 Q Yes.

19 A I do not know.

20 Q Are you aware whether utilities in Wisconsin
21 advocated merchant plants and supported the development of
22 merchant plants?

23 A I suspect that there was some division among
24 them, there usually is, but I'm sure that some Wisconsin
25 companies supported it at least.

1 Q I'm sorry, I missed the last few words of your
2 answer, Mr. Steinmeier.

3 A I'm sure some Wisconsin utilities at least did.

4 Q Okay. Will you agree that there can be wholesale
5 competition without there being full retail restructuring?

6 A Yes.

7 Q In preparing for your testimony, did you review
8 Florida Power & Light Company's or FPL Group's annual report
9 or 10K form?

10 A No, I did not.

11 Q You didn't think it was important to review their
12 annual report and what they might have to say about
13 competition to form your policy considerations in this
14 proceeding?

15 A No, I did not.

16 Q Are you aware of activities of FPL's affiliates
17 with respect to merchant plant development and operation in
18 other states?

19 A Only very vaguely.

20 Q When you say very vaguely, what are you aware of?

21 A An occasional reference in the trade press.

22 Q Have you seen any articles in the trade press
23 that indicate that FPL has merchant plants in approximately
24 11 states and two foreign countries?

25 MR. BUTLER: I would object to the question in

1 that it assumes evidence not in the record.

2 COMMISSIONER GARCIA: I'm sorry, I can't hear
3 what Mr. Butler is saying.

4 MR. BUTLER: I'm sorry, I had my microphone off.
5 I object to the question as assuming evidence not in the
6 record.

7 MR. WRIGHT: I asked him whether he was aware of
8 that, I didn't say that was or was not a fact.

9 BY MR. WRIGHT:

10 Q The question is are you aware of that, Mr.
11 Steinmeier?

12 A No, I'm not.

13 Q So you didn't -- you didn't inquire of your
14 client about their position on merchant plants in other
15 states?

16 A No.

17 Q And you didn't review any of their documents or
18 activities related to merchant plant activities in other
19 states?

20 A No, I did not.

21 Q You didn't think that was relevant to inform your
22 policy considerations for the testimony you were going to
23 give to this Commission?

24 A No, I really didn't. I mean, companies like FP&L
25 and Duke are actively engaged -- that doesn't light up

1 right, but I think it's on. I was saying that companies
2 like FPL and Duke are obviously -- through their holding
3 companies are actively engaged in looking for business
4 opportunities around the country.

5 Q I understand your assumption. My question was
6 did you think it was relevant to inquire of FPL and its
7 affiliates activities regarding merchant plant development
8 in other states. And I think your answer was no, and if
9 that is the case, just confirm that and I will go on to the
10 next question.

11 A That was my answer.

12 Q Okay. I want to ask you a couple of questions
13 regarding the allocation of risk where power plants are
14 constructed. We had a short conversation on this subject in
15 your deposition. I want you to assume two parallel
16 scenarios; one in which a merchant plant is built and sells
17 under contract to a utility for, let's say, three years; and
18 another scenario in which a utility builds the identical
19 plant and puts it in rate base for the life of the plant.
20 Are you with me on my hypothetical?

21 A I believe so.

22 Q Okay. Who bears the risk of a devaluation in the
23 asset value for the merchant plant after the contract
24 expires?

25 A A devaluation of the merchant power plant, the

1 shareholders of the merchant plant.

2 Q Okay. And who bears the risk of a devaluation of
3 the power plant asset in the utility build scenario?

4 A Assuming that the plant has been reviewed by the
5 Commission, has been placed in rate base, or that portion of
6 it which has been determined as prudent has been included in
7 rate base, the customers of the utility company would
8 continue to receive power from that plant and would continue
9 to pay rates that included the cost of that plant in their
10 rates. By the same token, if at the end of the three-year
11 contract the cost of replacement power was substantially
12 higher than the original contract, of course, the utility
13 would have to increase its rates to customers presumably if
14 it's only or best option was to sign a new contract for
15 higher cost power.

16 Q Based on your experience and knowledge of the
17 power generation industry in the United States, generation
18 costs have been going down for the last six-plus years, have
19 they not?

20 A Well, I have gotten to watch up close and
21 personal as they have gone way up and as they have come down
22 over the last 20 years. And, yes. And I apologize. The
23 answer to your question is yes, capacity costs have
24 generally been coming down because of the commercialization
25 and refinement of combined cycle generating technology in

1 recent years. Among the factors that none of us knows for
2 sure longer term are whether those capacity costs will
3 continue to come down, what fuel prices will be very many
4 years out, and so forth. There are always factors that over
5 a period of several years can change the way that curve
6 moves.

7 Q Are you aware that combined cycle technology is
8 projected to improve in efficiency and also improve in the
9 form of lower costs over the next several years?

10 MR. BUTLER: Excuse me. I'm going to object
11 again to assuming facts not in evidence. And just saying at
12 the beginning of it, "are you aware that," doesn't make the
13 problem about assuming the facts not in evidence go away.

14 MR. WRIGHT: I think it's a fair question, but I
15 will be happy to show the witness Florida Power & Light
16 Company's ten-year site plan in which they show lower costs
17 and better heat rates for their proposed Martin 5 and 6
18 units.

19 MR. BUTLER: Don't bother, go ahead and ask the
20 question.

21 MR. WRIGHT: Thank you.

22 BY MR. WRIGHT:

23 Q The pending question is, I believe, Mr.
24 Steinmeier, isn't it your understanding, or are you aware
25 that the capital costs of new combined cycle capacity are

1 projected to decline and that the heat rates of such
2 capacity are projected to improve over at least the next
3 seven or eight years?

4 A I don't know. And I have heard some concerns
5 expressed in some quarters that because of the rapid
6 increase in demand for combined cycle units there is some
7 upward pressure on capacity costs.

8 Q Are you familiar with what are sometimes being
9 referred to as either Series H or Series AT combined cycle
10 units?

11 A No, sir, not by name.

12 Q Do you know about Florida Power & Light Company's
13 plans to construct new combined cycle facilities at its
14 Martin Station, specifically Martin Units 5 and 6?

15 A Only most generally, yes. I can't tell you what
16 type of unit.

17 Q Okay. Do you know whether the cost of those, the
18 projected costs of those units is less than the current
19 costs of combined cycle capacity?

20 A I do not.

21 Q Do you know whether the projected heat rate of
22 those units is better than, that is lower than the heat
23 rates of current combined cycle technology?

24 A I do not.

25 Q As a matter of policy, would you agree that the

1 Florida Public Service Commission may consider the risk
2 allocation inherent in power plant and construction and
3 operation as a matter within its jurisdiction under the need
4 determination statute?

5 A I would assume it could do that as an additional
6 consideration. That certainly would not subsume the stated
7 four criteria that proceed it.

8 Q If some merchant plants or a merchant plant
9 existed, and it were to submit a bid into a utility's RFP
10 process, would that, in your opinion, cause injury to the
11 utility's customers, the presence of its participating in
12 the RFP process?

13 A No, with an explanation. Am I getting better?

14 Q You're doing great.

15 A No, in and of itself I don't see how that would
16 do harm to the utility or its ratepayers. But I would
17 harken back to concerns that I have raised previously here
18 to Commissioner Garcia, as well as in my testimony about the
19 fact that a merchant plant has a number of potential effects
20 on existing utilities as I have delineated there, and I
21 won't repeat the list.

22 Q You are learning. Would you agree that as a
23 general proposition the more participants in an RFP process,
24 the sharper the pencils of the bidders are likely to be,
25 that is probably resulting in a lower price to the

1 purchasing utility?

2 A Well, certainly that is clearly generally true,
3 and I'm not aware of anything that would prevent Duke today
4 from participating in a bidding process on a need for new
5 capacity by a Florida utility. The difference there is it
6 would win a bid and then site a plant and build a plant and
7 the Commission would know where the power was going and at
8 what price.

9 Q Would you think that the presence of built and
10 operating merchant plants bidding into an RFP process along
11 with bidders of unbuilt plants would generally tend to
12 result in lower prices to the purchasing utility as the
13 outcome of such a process?

14 A I'm sorry, counselor, could you repeat that
15 question?

16 Q I will try. Do you think that the presence of
17 both built and operating merchant plants in and RFP process
18 along with bidders proposing to sell power from unbuilt
19 plants would tend to result in better, i.e., lower prices to
20 the purchasing utility?

21 A I don't know. Now I'm sitting here trying to
22 figure out what difference it makes in terms of the bidding
23 process whether it was built already. I guess I missed in
24 your previous question your assumption that the plant was
25 built and operating before it was bid on. But my concern

1 about building it before there is a bidding process and
2 before there is a contract, I've already clearly stated.

3 Q Would you agree that the owner/operator of an
4 existing power plant would have a pretty strong incentive to
5 sharpen its offer in an RFP process based, for example,
6 on the good old economic principle that something is better
7 than nothing?

8 A Well, if the plant is otherwise sitting idle and
9 selling no power, yes. What we don't know is what, in fact,
10 how this plant will operate if it is sited, this Duke
11 merchant plant, where it will sell its power, at what price.
12 We know or would expect it to seek the highest price that it
13 can find, it's not going to charge cost-based rates like
14 utilities do. It really depends on how things are going
15 with the output of that plant and how much money it's
16 making. If it is a money machine like was suggested last
17 week, then there may be no great incentive to sharpen the
18 pencil or bid on a contract.

19 COMMISSIONER GARCIA: Commissioner, but wouldn't
20 the incentive be that if they didn't sharpen the pencil, FPL
21 would build its own plant, and FPL would then have another
22 plant and there would be less for Duke to -- there would be
23 less of a market for Duke to sell its power on?

24 THE WITNESS: Commissioner, generally, yes. What
25 we don't know is exactly how big the market is or how many

1 plants built by FPL and/or merchants can be digested in the
2 market. The suggestion was that if a merchant plant -- we
3 have been through it today, as well. The ten or eleven
4 merchant plant possibility. If, in fact, there are price
5 spikes to be sold to elsewhere in the country or if, in
6 fact, there is a strong wholesale price to be sold to across
7 the border, the new FPL plant built to meet its obligation
8 to serve its customers may or may not be a big negative
9 factor to Duke.

10 COMMISSIONER GARCIA: But let's put ourselves
11 back in the scenario. Let's say Duke goes ahead and builds
12 this power plant. A year from now FPL comes in to ask for a
13 new plant. And Duke is probably selling on the margin, but
14 maybe, you know, their bankers want a very solid return,
15 they don't want to play that speculative. They don't want
16 to print money as Mr. Nesbitt said, they want to guarantee
17 that income. So for Duke -- for FPL's 400 megawatt need,
18 let's say FPL came in for 400 megawatts even though they are
19 going to build a plant for 6 or 7. But Duke has got 400 to
20 meet FPL's specific need. You don't think it's to their --
21 in their best interest to shoot for the very best price so
22 that they can guarantee that income and avoid another plant
23 coming on line which might take away the market that they
24 have been selling into?

25 THE WITNESS: Duke is going to try to sell its

1 power for the best price it can get. It's going to look for
2 the best deal for it.

3 COMMISSIONER GARCIA: Right. And FPL is going to
4 try to produce its power as low as it possibly can for its
5 ratepayers. Both of them, though, produce very competitive
6 outcomes, hopefully. I mean, very cost-effective outcomes.
7 One is the factor that you disappear and die, the other one
8 is that if you produce a power plant that is not productive
9 within the PSC regulatory framework, the shareholders have
10 to pay for it. But, I mean, there are pressures on both
11 systems to produce the most efficient plant.

12 THE WITNESS: Correct.

13 COMMISSIONER GARCIA: So my question,
14 Commissioner, is -- I want to go with back to what Shef
15 said, the plant is built. A year from now, FPL comes in and
16 says we need 400 new megawatts. Shef's Duke plant bids for
17 that. Doesn't he have an incentive to try to get under
18 whatever it would cost you to build it yourself and to
19 contract with you?

20 THE WITNESS: Again, I don't know. I don't know
21 what their ultimate goal is.

22 COMMISSIONER GARCIA: Okay. That's a fair
23 answer.

24 THE WITNESS: But if at that point they are
25 looking for a long-term contract and can offer the best

1 price, then I would assume that they might do that. The
2 fact is I don't know if they -- if they ever will sign a
3 long-term contract with anybody.

4 BY MR. WRIGHT:

5 Q Mr. Steinmeier, are you familiar with the concept
6 of a hurdle rate being a minimum required return on
7 investment in order to warrant an investor making such
8 investment?

9 A Generally.

10 Q Will you agree that a bidder who is bidding a
11 power sale based on an unbuilt plant will generally
12 incorporate his, her, or its hurdle rate into his, her or
13 its bid?

14 A No, I'm really not familiar with that.

15 Q I want to back up and ask a follow-up question on
16 our risk allocation colloquy a few minutes ago. You
17 indicated in responding to my question that if power costs
18 were to go up in the meantime after the three-year period,
19 that the purchasing utility would bear the risk of having to
20 pay higher market costs, right?

21 A Correct.

22 Q Can't -- in the scenario that we have been
23 discussing, can't the purchasing utility mitigate that risk
24 by seeking longer term contracts?

25 A Can't which utility?

1 Q The purchase utility.

2 A Well, sure. I mean, that's part of the point of
3 the longer term contract is to mitigate the risk. That at
4 the end of the term the contract things have dramatically
5 changed one way or the other.

6 Q You don't know what the existing generation mix
7 of the power plants on the ground in Florida is, do you?

8 A Not from memory, no. It's more diverse than
9 Missouri, I know that.

10 Q Do you agree that the State of Florida and the
11 Public Service Commission have a legitimate interest in
12 reducing the amount of fuels consumed for the generation of
13 electricity within Florida?

14 A Certainly.

15 Q As a matter of policy, if a power plant were
16 proposed today and the technology offered by that power
17 plant would result in less environmentally pollution,
18 enhanced reliability, and lower cost electricity, as a
19 matter of policy shouldn't the Commission and the siting
20 board be in a position to grant the appropriate permits for
21 that plant to be constructed and operated?

22 A They would do which three meritorious things
23 again, please?

24 Q All that you can think of. Mom, apple pie and
25 the flag. Less environmental pollution, enhanced

1 reliability, and reduced cost.

2 A Yes, such a plant should be sited as long as it
3 is clearly determinable because there is a contract for the
4 output of that plant how those meritorious goals are going
5 to be achieved, and that they will be.

6 Q Well, I understand your testimony to be then that
7 it shouldn't be absent some kind of a contract, is that
8 right?

9 A Right.

10 Q Why should the Commission's hands be tied if
11 based on the evidence before it, it could conclude that for
12 the State of Florida as a whole and for the general
13 statewide body of electric ratepayers and citizens, those
14 benefits would accrue?

15 A The Commission will make that determination based
16 upon the record and argument in this case.

17 Q Will you agree that national energy policy as it
18 exists today in the United States, and that is the policy of
19 the federal government, is to promote and encourage
20 competition in the electric power industry, particularly
21 wholesale competition?

22 A I would generally agree with that, yes.

23 COMMISSIONER CLARK: Mr. Wright, what were you
24 reading from?

25 MR. WRIGHT: His deposition.

1 COMMISSIONER CLARK: And his deposition was the
2 federal government is promoting all competition, especially
3 wholesale?

4 MR. WRIGHT: Commissioner Clark, I asked him the
5 following question, will you agree that as a matter of
6 policy -- I'm sorry, "Do you agree that the federal energy
7 policy as it exists today in the United States is to promote
8 and encourage competition in the electric power industry,
9 particularly wholesale competition?

10 Answer: "Federal energy policy in the United
11 States today?

12 "Yes, sir.

13 "National government policy?

14 "Yes, sir.

15 Answer: "Promotes competition in the wholesale
16 electricity market."

17 COMMISSIONER CLARK: Mr. Steinmeier, is that your
18 testimony that it's competition in both the retail and
19 wholesale market, or is it just the wholesale market?

20 THE WITNESS: Wholesale. I mean, there certainly
21 are those in Washington who are promoting retail competition
22 in electricity, as well.

23 COMMISSIONER CLARK: But as I understand it, the
24 policy, whether it's in FERC rules or in any congressional
25 act does not, in fact, preserves the authority to determine

1 when and if retail competition takes place for the states.

2 THE WITNESS: That is exactly right.

3 BY MR. WRIGHT:

4 Q Mr. Steinmeier, I know that pursuant to the
5 motions to strike that we were fortunately able to work out
6 with FPL's attorneys there are some new version of your
7 testimony. I want to ask you a question which in the
8 revised version that I have relates to some statements you
9 make at Page 11 of your testimony. I fear that there may be
10 a repage or repaginated version that is different, so I will
11 direct you to a question in your testimony that states, "Are
12 there other matters within the Commission's jurisdiction
13 about which the Commission should be concerned regarding
14 this need determination application?" Can you locate that?
15 In my version it starts at Line 20, Page 10.

16 A Okay.

17 Q And in response, you identified several things
18 that could happen. That a positive determination of need in
19 this case could adversely affect utilities' ability to meet
20 their service obligations, could affect subsequent need
21 determination proceedings, could affect the ability to plan,
22 could affect recoverability of past and future investments,
23 could lead to uneconomic duplication of facilities, and
24 could adversely affect the customers of Florida utilities.
25 That's a fair characterization of your testimony, is it not?

1 A Yes, sir.

2 Q I'm going to take these one at a time. Are you
3 aware of any case before any public service commission or
4 public utilities commission in the United States in which it
5 was even alleged that the construction and operation of a
6 merchant plant would affect a utility's ability to meet its
7 service obligations?

8 A No.

9 Q The same question with respect to adverse effects
10 on subsequent determination of need proceedings?

11 A I can answer it all at once unless you really
12 want to preserve the dramatic effect.

13 Q No, I don't. Please do. If you will say no to
14 the same question for all six of these items?

15 A I would.

16 MR. WRIGHT: I'm done.

17 CROSS EXAMINATION

18 BY MR. MOYLE:

19 Q Mr. Steinmeier, picking up on a couple of points.

20 A Aren't we through?

21 Q We're getting closer. I know it has been a long
22 day for you and whatnot. But when you were on the Missouri
23 Commission, did that commission have the power to establish
24 policy for the state with respect to electric matters?

25 A Generally, yes, through rulemaking.

1 Q In your opinion, can this Florida Public Service
2 Commission establish policy for the State of Florida as it
3 relates to electric matters?

4 MR. BUTLER: I would object to that question. He
5 is trying to get him, apparently, to render a legal opinion
6 on what your statutory authority is over rulemaking, and
7 that is an exercise we went through to try to limit that out
8 of his testimony, which I think we succeeded in doing.

9 MR. MOYLE: I was simply trying to ask him in his
10 opinion, his expert opinion, which he is an expert, can this
11 Florida Public Service Commission establish policy for the
12 State of Florida with respect to electric matters.

13 CHAIRMAN JOHNSON: You can answer it.

14 THE WITNESS: On those matters that are left to
15 the Commission's discretion to establish a policy and are
16 not already answered by statute or case law.

17 BY MR. MOYLE:

18 Q Given that that is your answer, do you believe
19 that this Commission can establish a policy on merchant
20 plants?

21 COMMISSIONER GARCIA: Commissioner, could you do
22 me a favor? I need you to speak right into the mike because
23 I'm not picking you up here.

24 A We spent a great deal of time last week changing
25 my testimony to remove legal opinions. Do you want me to

1 render --

2 Q I'm not asking you for a legal opinion. I wasn't
3 a party to those conversations. I'm just asking you based
4 on your opinion, you testified that the PSC can establish
5 policy for the State, I'm asking you do you believe that
6 they can establish policy for the State on merchant plants?

7 A And I will answer that I will leave that matter
8 in the good hands of the Commission based on the evidence
9 and argument already presented to them in this case.

10 Q That's not an answer to my question. Do you
11 believe in your expert opinion whether they have that
12 ability?

13 A The ability or the legal authority? They clearly
14 have the ability.

15 Q So you would believe that they could establish a
16 policy on merchant plants, correct?

17 A The siting act was adopted by the legislature.

18 Q I'm sorry, Chairman Johnson, I know it has been a
19 long day. It's a series of questions, I asked him whether
20 when he was chair of the Missouri Commission he had the
21 ability to establish policy, electric policy for the state.
22 I think he answered yes. I asked him as an expert does he
23 believe that you, the Florida Public Service Commission, can
24 establish electric policy for the state, and I believe he
25 answered yes. Now I'm asking him, and it follows, is does

1 he believe then that the Commission can establish a policy
2 on merchant plants for the state.

3 MR. BUTLER: I'm going to renew my objection,
4 because they are questions about what you can do. I mean, I
5 thought that one of the principle points of our narrowing
6 his testimony last week was to have him not testify to you
7 on what you can do, but what you should do. If Mr. Moyle
8 wants to ask him if they should establish or you should
9 establish policy as to merchant plants, I would have no
10 objection. My problem is with the references to whether you
11 have the ability to do so or whether you can do so.

12 CHAIRMAN JOHNSON: Mr. Moyle.

13 MR. MOYLE: Chairman Johnson, in my opinion it's
14 not a difficult question with respect to his expertise. I
15 was not a party to any agreement or any conversations last
16 week, and I'm simply asking, in my opinion, a generic
17 question. He had the ability to establish policy on the
18 Missouri Commission. He believes you all have the ability
19 to establish policy on the Florida Commission. Then as
20 simply a subset, does he believe that you all have the
21 ability to establish policy on merchant plants as we sit
22 here today. And it's a yes or no answer.

23 CHAIRMAN JOHNSON: I thought you answered that
24 one, but you can answer it again.

25 COMMISSIONER CLARK: You know, Mr. Moyle, I don't

1 care what his opinion is. I see that as a legal opinion and
2 you all, the lawyers, are going to argue with, and it's
3 getting late. You know, I just don't see the need for him
4 to answer it. I'm sorry, Madam Chairman.

5 CHAIRMAN JOHNSON: I think he already answered
6 that he thought we had the ability, but he left the legal
7 authority question hanging.

8 MR. MOYLE: Well, if I could just get it for
9 record, his answer.

10 CHAIRMAN JOHNSON: I'm sorry, his question was do
11 you think we have the ability?

12 THE WITNESS: As a practical matter, when a
13 policy directly affects the market structure of the industry
14 in the state, I always found it useful to consult with the
15 legislature before making a major departure in policy. So
16 I'm not sure if the Commission can establish a policy in
17 this case on merchant plants.

18 BY MR. MOYLE:

19 Q But you are sure they have the broader authority
20 to establish policy, you're just not sure on the merchant
21 plant issue, correct?

22 A They have lots of authority to establish policy
23 within the confines of statutory authority granted to them.

24 Q And you bring up the statutes, let's talk a
25 little bit about the statute. What is your opinion with

1 respect to whether the Power Plant Siting Act will allow
2 Duke's proposal to go forward?

3 MR. BUTLER: I would object to the question as
4 calling for a legal opinion on Mr. Steinmeier's part.
5 Again, I thought that's what the exercise of narrowing the
6 testimony was to avoid.

7 CHAIRMAN JOHNSON: It does strike me, Mr. Moyle,
8 that you are asking him as to directly his interpretations
9 of the law.

10 MR. MOYLE: I'm kind of in a box, Madam Chairman.
11 One reason I wasn't a party to this agreement. Number two,
12 you know, I raised an objection that what I perceive many of
13 the issues in his testimony was did relate to legal issues.
14 That objection was overruled, so now that testimony has been
15 allowed to come in. I think I have a right to be able to
16 ask questions with respect to his view. I think his
17 testimony is that he has read cases, he has read the
18 statute, he doesn't believe that Duke can come in and do
19 this. And I think I'm entitled to ask a few questions about
20 that.

21 MR. BUTLER: Madam Chairman, I would just like to
22 respond to his point about his not being involved in
23 revising the testimony. Mr. Moyle was here when we had
24 those arguments about the motion to strike. You simply
25 directed the counsel to confer together and try to reach

1 some sort of accommodation. I certainly would not have
2 objected to Mr. Moyle's raising his concerns at that point.
3 In fact, he didn't. And to use that now as a reason to be
4 allowed to go into questions about legal opinions when, you
5 know, the clear point of our revising Mr. Steinmeier's
6 testimony and limiting it here is so that he is not
7 testifying to these kind of statutory interpretation type of
8 matters, it seems disingenuous.

9 CHAIRMAN JOHNSON: Mr. Moyle.

10 MR. MOYLE: Can you give me a couple of minutes?

11 CHAIRMAN JOHNSON: We will go off the forward for
12 three minutes.

13 (Brief recess.)

14 MR. MOYLE: I'm going to withdraw that question
15 for the time being.

16 CHAIRMAN JOHNSON: Okay.

17 BY MR. MOYLE:

18 Q Mr. Steinmeier, let me direct your attention to
19 Page 6 of your testimony that was filed with the Commission.

20 A Yes, sir.

21 Q And in there you have a series of statements that
22 pertain to the lack of a contract in this matter, isn't that
23 correct?

24 A Correct.

25 Q And just so that the record is clear, you state

1 that without a contract the wholesale provider of power
2 cannot identify the utility or utilities to which it will
3 sell, correct?

4 A Correct.

5 Q And that without a contract which addresses the
6 amount and availability of capacity and other terms and
7 conditions affecting performance, the impact of a wholesale
8 provider's plant on electrical system reliability integrity
9 cannot be demonstrated, correct?

10 A Yes, sir.

11 Q Would the converse of these statements be true if
12 there was a contract in place?

13 A With a contract the wholesale provider could
14 identify the utilities to which it would sell, et cetera?

15 Q Correct.

16 A Do you want me to go through the whole page and
17 make sure --

18 Q Or you can just answer generally. If a contract
19 existed would the converse of these statements on Page 6 of
20 your testimony, Lines 5 through about Line 16, I guess,
21 maybe all the way through 20, would those statements be true
22 if there was a contract?

23 A Counselor, generally -- I can't answer that
24 question yes or no. But certainly a contract would put
25 before the Commission the information it needed to evaluate

1 the other criteria that it must evaluate in a siting need
2 determination, yes.

3 Q Okay. In preparation for your testimony here,
4 have you reviewed the testimony of Mr. Vaden, with the
5 exhibits that were attached to that?

6 A I don't believe so, no.

7 Q One of the exhibits was a participation agreement
8 between the City of New Smyrna and Duke Energy, you didn't
9 review that agreement?

10 A Not in any detail.

11 Q So then you didn't review the agreement that
12 follows then, and you can't render an opinion as to whether
13 there is a contract in place in this regard, isn't that
14 correct?

15 A That's correct. I think elsewhere in my
16 testimony I refer to a full purchased power contract, that's
17 really what I'm referring to. It's my understanding that --
18 well, I will leave it there.

19 Q All right. In your opinion, and correct me if
20 I'm putting words in your mouth, but you believe that the
21 granting of this joint petition would be a mistake as a
22 matter of policy as it would circumvent the Power Plant
23 Siting Act, isn't that correct?

24 A I believe the granting of a need determination in
25 this case would not be sound as a matter of policy because I

1 believe the Commission would be unable to adequately
2 evaluate criteria that are a fundamental part of the siting
3 policy in the absence of any specific contract or specific
4 utility to whom the output is to be sold.

5 Q And maybe I'm misunderstanding you. It's not
6 your testimony that you believe every power plant in the
7 State of Florida has to come to this Commission for review,
8 is it?

9 A Only those that are required under the Siting Act
10 to come, 75 megawatts and greater, and other exceptions.

11 Q Are you aware of how many power plants have not
12 come through the Power Plant Siting Act that are currently
13 in place and operating in the state?

14 A No, I couldn't give you a count on either side.

15 Q Would you be surprised if more than a third of
16 the existing power plants didn't go through the Power Plant
17 Siting Act?

18 A Is whether I surprise easily relevant? No, I
19 probably would not be surprised.

20 Q You have talked a lot about policy, let me ask
21 you this policy statement or question. As a matter of
22 policy, do you think it would be bad policy for independent
23 power producers to seek to enter other power markets around
24 the country?

25 A Would it be bad policy, I'm sorry, for whom?

1 Q Independent power producers to seek to enter
2 other power markets around the country?

3 A No, that's not bad policy.

4 Q So, following your reasoning, it wouldn't be bad
5 policy for Duke to be trying to enter the Florida market,
6 would it?

7 A No. If they had a contract for the full output
8 of this plant to a Florida utility, I wouldn't be here
9 today.

10 MR. MOYLE: I have nothing further.

11 COMMISSIONER CLARK: Staff.

12 MS. PAUGH: Madam Chairman, staff requests to
13 move the deposition of Mr. Steinmeier or have it marked as
14 an exhibit. Inserted into the front of the deposition is a
15 document titled stipulated deletions from the deposition of
16 William B. Steinmeier. I would like this to be included as
17 part of the exhibit. This document represents portions of
18 staff's depositions which we have agreed to deletion as a
19 result of the motions to strike portions of his testimony.

20 CHAIRMAN JOHNSON: It will be marked as 37.
21 Anything else, staff?

22 MR. WRIGHT: Madam Chairman, is this 37?

23 CHAIRMAN JOHNSON: Yes.

24 MR. WRIGHT: Thank you.

25 MS. PAUGH: If the deposition can be moved into

1 the record, staff has no questions of this witness.

2 CHAIRMAN JOHNSON: Show it admitted without
3 objection.

4 MS. PAUGH: Thank you. No questions, Madam
5 Chairman.

6 (Exhibit Number 37 received into evidence.)

7 CHAIRMAN JOHNSON: Commissioners? Redirect?

8 MR. BUTLER: Briefly.

9 REDIRECT EXAMINATION

10 BY MR. BUTLER:

11 Q Mr. Steinmeier, you were asked by Mr. Moyle about
12 a participation agreement that was included as an exhibit to
13 Mr. Vaden's testimony, do you recall those questions about
14 that?

15 A Yes.

16 Q It asked you to assume, I know you are not
17 generally familiar with it, but assume that that
18 participation agreement concerns the agreement between
19 Duke/New Smyrna and the City of New Smyrna Beach for 30
20 megawatts of power. If that were the case, would the
21 existence of such a participation agreement constitute a
22 contract that would change your conclusions on Page 6 of
23 your testimony?

24 A No, it would not. If siting 514 megawatts of
25 power only requires a 30 megawatt commitment of output, I

1 think that does serious disservice to the intention of the
2 siting policy.

3 MR. BUTLER: Thank you, Mr. Steinmeier, that's
4 all the redirect that I have.

5 CHAIRMAN JOHNSON: Exhibits. 36.

6 MR. WRIGHT: 36 is Mr. Dolan's exhibit?

7 MR. BUTLER: Mr. Steinmeier doesn't have an
8 exhibit.

9 MR. GUYTON: Madam Chairman, on behalf of Mr.
10 Steinmeier and Florida Power & Light Company, I would like
11 to thank you for making the special arrangements to get him
12 on and off this afternoon, and also thank Florida Power
13 Corporation for allowing that.

14 CHAIRMAN JOHNSON: Anything else?

15 COMMISSIONER GARCIA: Madam Chairman, I also
16 would like to thank you for allowing former commissioners to
17 testify as experts. It's always good to know that there is
18 a future employment for us all.

19 COMMISSIONER JACOBS: That is high praise
20 considering the source.

21 MR. SUNDBERG: Madam Chairperson, as you have
22 correctly perceived, I have some interest and some
23 discussion on the motion to dismiss, which I understand is
24 being postponed until next Friday. Is it possible that that
25 would not take place until later in the afternoon? I am

1 supposed to participate in the ceremony for the Justice
2 Kogan, who is retiring from the court at 2:00 o'clock. And
3 I don't ask for any indulgence, I would just like some sense
4 of timing. Do you think it might be 3:00 or later before
5 you got to the discussion of the motion to dismiss?

6 CHAIRMAN JOHNSON: You mean as to the discussion
7 as to whether or not we are going to hear it and rule upon
8 it next Friday?

9 MR. SUNDBERG: Well, whatever. In other words,
10 as I understand it there may be some further discussion on
11 the motion to dismiss. Am I not accurate in that respect?

12 CHAIRMAN JOHNSON: There may be some discussion
13 as to the motion to dismiss. But candidly I am of the
14 opinion that we should allow parties the opportunity to file
15 briefs and for staff to write a recommendation and then for
16 us to have an opportunity to rule upon that at a separate
17 time.

18 MR. SUNDBERG: So you do not anticipate there
19 will be any further oral argument on the motion to dismiss
20 or any -- I was led to believe that some of the
21 Commissioners had some further questions. If I'm wrong,
22 just --

23 CHAIRMAN JOHNSON: And there may be, but we are
24 going to have to determine the right procedure to
25 accommodate that. Whether it will take place Friday or at a

1 time -- a different date and time certain, we are going to
2 have to discuss that.

3 COMMISSIONER GARCIA: Madam Chairman, I think
4 your suggestion of written recommendations from staff will
5 then require a little bit more time from us, so maybe you
6 can set it for a time certain, let's say at the end of some
7 future agenda, that way everyone can prepare for that and we
8 can just simply close this thing up on next Friday. Because
9 I'm going to have to leave on a time certain on next Friday
10 at about -- I think my flight out is at 5:20 or so. And
11 judging how these witnesses have gone, in particular Terry
12 Deason has had too many questions to ask, and so they have
13 just prolonged this discussion.

14 COMMISSIONER DEASON: I want you to notice how I
15 curtail my questions as the hour got later and later.

16 COMMISSIONER CLARK: He is leading by example
17 there, Joe.

18 CHAIRMAN JOHNSON: We should be able to provide
19 the parties with some notice before next Friday. I need to
20 get with staff, because one of the things is -- I notice we
21 have some deadlines and we are already pushing this till
22 Friday, and I need to talk to them about what works in terms
23 of the schedule and making sure -- I don't believe we are
24 going to have oral argument next Friday, but I need to
25 coordinate and make sure we have the best process set forth

1 for that.

2 MR. SUNDBERG: I think if it was specially set
3 that would be the best of all worlds preferably. Thank you.

4 CHAIRMAN JOHNSON: Anything else? Okay, we will
5 stand in recess until next Friday at 1:30.

6 MR. BUTLER: Thank you.

7 MR. GUYTON: Mr. Steinmeier is excused?

8 CHAIRMAN JOHNSON: No, he's got to stay here just
9 one more day. No, you are excused. Thank you.

10 (Transcript continues in sequence with
11 Volume 13.)

12 * * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25