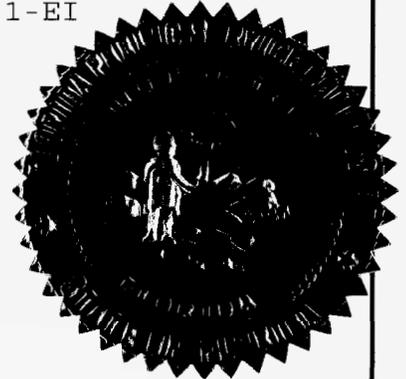


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040001-EI

In the Matter of

FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE INCENTIVE
FACTOR.



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VOLUME 5

Pages 587 through 682

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, November 9, 2004

TIME: Commenced at 9:35 a.m.

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

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APPEARANCES (As heretofore noted.)

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I N D E X

WITNESSES

NAME:

PAGE NO.

THOMAS L. HARTMAN

Continued Cross Examination by Mr. Moyle
Cross Examination by Ms. Vining

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CERTIFICATE OF REPORTER

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EXHIBITS

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P R O C E E D I N G S

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(Transcript follows in sequence from Volume 4.)

CHAIRMAN BAEZ: Good morning. Go back on the record.
ood morning.

Mr. Hartman, you are still on the stand, and,
r. Moyle, I believe you were cross-examining.

MR. MOYLE: Thank you, Mr. Chairman. Just a couple
f preliminary matters, if I could, before we start.

I had handed out a document yesterday that was some
nswers to interrogatories. I think I failed to have that
arked as an exhibit. Could I please have that marked?

CHAIRMAN BAEZ: Those were the responses to various
uestions, the first set of interrogatories?

MR. MOYLE: Yes, sir.

CHAIRMAN BAEZ: We'll show that marked as Exhibit 66.

(Exhibit 66 marked for identification.)

MR. MOYLE: Also, Mr. Chairman, yesterday during the
ross-examination of Mr. Hartman we had a lot of discussion
about a right of first refusal and the "magic words" and I
think I uttered the magic words. I'd like to retract those
magic words after giving it some further consideration so that
we will not be asking for the right of first refusal, you know.
And the way the record stands now is I'll ask him questions
about it. You've made a ruling already on my motion to strike
with respect to the best evidence, and I'll just ask him a few

1 more questions about it and leave it at that.

2 CHAIRMAN BAEZ: Very well. Thank you, Mr. Moyle.

3 THOMAS L. HARTMAN

4 continues his testimony under oath from Volume 4:

5 CONTINUED CROSS EXAMINATION

6 BY MR. MOYLE:

7 Q Mr. Hartman, good morning. How are you?

8 A Good morning.

9 Q Just to remind you, we read yesterday the provision
10 of the prehearing order that directs you to answer questions
11 yes or no and then explain. You'll try to do that for me, will
12 you not?

13 A Yes, I will.

14 Q Okay. Mr. Hartman, I want to talk with you a little
15 bit about the so-called benefits of the PPAs. And in your
16 prefiled testimony you identified six benefits, did you not, on
17 Pages 9 and 10 of your direct testimony?

18 A Yes, I did.

19 Q Okay. And you can't give any kind of financial value
20 to each of these benefits; isn't that correct?

21 A Yes, that's correct. I testified that while the
22 benefits are real, they're very difficult to try and quantify.

23 Q Okay. So, to use your words, they're unquantifiable;
24 is that right?

25 A I, I think what I said, that they would be very

1 difficult to quantify.

2 Q Okay. Are they unquantifiable?

3 A No, they could be quantified. However, they would
4 take a number of assumptions that make the quantified analysis
5 dependent entirely upon the assumptions you make.

6 Q Okay. But you haven't undertaken to quantify the
7 benefits; correct?

8 A No. That's correct.

9 Q Okay. We talked yesterday -- I asked you to rank
10 those benefits and you could not rank them. Do you recall
11 that?

12 A Yes, I recall that.

13 Q So am I correct in taking your answer that in your
14 view all the, all the benefits are equally important?

15 A I don't believe I said that all the benefits were
16 equally important either. What I said was that we had not
17 attempted to rank them. If I was -- you know, obviously
18 thinking about this last night and going on through, a lot of
19 the benefits hinge upon the availability of transmission in
20 SERC. So since they're all dependent on that, that's probably
21 the most important, but we haven't ranked them.

22 Q So we can rank them now, is the SERC transmission the
23 most important?

24 A No. What I've said is that the benefits are
25 important as a package; that if I had to say the key, the key

1 is transmission in SERC, and several of the other benefits flow
2 as a result of that.

3 Q All right. Well, let's walk through the benefits, if
4 we can.

5 Benefit one, you identified the first benefit as FP&L
6 being able to maintain 165 megawatts of firm coal capacity in
7 FP&L's portfolio, with the opportunity to purchase additional
8 coal by wire on an as-available basis; is that correct?

9 A That's correct. The coal by wire is the ability of
10 the transmission system to let us pick up coal whenever it's on
11 the margin.

12 Q Okay. And I have a lot of questions for you, so, you
13 know, if you have to -- if you feel the need to explain, please
14 do. But if you can just give me yes or nos, that'll probably
15 move it along a little bit.

16 MR. LITCHFIELD: I'll object to the lecture of the
17 witness. I think he's heard how he needs to answer his
18 questions, and I think he's entitled to qualify as he sees fit.

19 CHAIRMAN BAEZ: Okay.

20 MR. MOYLE: I'll continue on.

21 CHAIRMAN BAEZ: Mr. Moyle, you -- I think
22 Mr. Hartman's been on long enough to know the rules.

23 MR. MOYLE: Okay.

24 CHAIRMAN BAEZ: And if you're not getting the answers
25 you want, that's a, that's a different matter. You can --

1 BY MR. MOYLE:

2 Q Okay. Mr. Hartman -- okay. Mr. Hartman, Page 10,
3 Lines 8 to 9, don't you state that the Scherer contract
4 represents the only available source of additional coal-based
5 generation in the time frame contemplated?

6 A Yes, that's what I state. And I was referring
7 specifically to available firm coal capacity.

8 Q Okay. Are you familiar with the concept of delivered
9 power?

10 A Yes, I am familiar with that concept.

11 Q And for the benefit of those who may not be familiar
12 with the concept of delivered power, delivered power is
13 capacity and energy that is delivered at a particular point;
14 correct?

15 A That's, that's correct.

16 Q Okay. And FPL buys delivered power, does it not?

17 A Yes, we do.

18 Q Okay. Mr. Hartman, are you aware that SERC is
19 divided into four subregions?

20 A Yes, I am.

21 Q Okay. And those subregions are Southern,
22 SERC-Entergy, SERC-TVA and SERC-VACAR; is that correct?

23 A That's correct.

24 Q Mr. Hartman, if there existed a coal generator in
25 SERC-Entergy, SERC-TVA or SERC-VACAR that was willing to sell

1 FP&L delivered power at the Scherer unit at a price cheaper than
2 Southern, would that be a better deal for FP&L?

3 A Not necessarily.

4 Q Assume that all the transmission packs -- impacts are
5 the same, would it be a better deal?

6 A You've just asked me to assume an impossibility. The
7 transmission impacts can't be the same. What we have here is
8 rollover, and we have the firm transmission rights that we can
9 then arbitrage. You've asked me to assume that our
10 transmission rights which exist in Southern's territory would
11 exist into Entergy and Dominion and other areas, and that's not
12 possible.

13 Q All right. If I understand how transmission works,
14 if somebody can deliver product to Scherer -- that's where
15 you're taking most of your coal from currently; correct?

16 A We are taking some coal from Scherer, but that isn't
17 where we're taking most of it, no.

18 Q Where is it, Miller?

19 A Most of it right now is Miller.

20 Q Okay. How much are you taking from Scherer?

21 A 210 megawatts at the present time.

22 Q Okay. If, if somebody could deliver 210 megawatts of
23 delivered power to Scherer, say, from the north, wouldn't the
24 impacts on transmission flowing south be the same as, as the
25 energy coming out of Scherer, the same 210 megawatts?

1 A Could you restate that question again?

2 Q Sure.

3 A I'm trying to understand it.

4 Q As I understand it, Scherer currently provides
5 210 megawatts of coal. If somebody could provide 210 megawatts
6 of delivered power to the Scherer bus bar, okay, wouldn't the
7 impacts on transmission, assuming Scherer was not providing
8 these 210 megawatts to you, wouldn't the impacts on
9 transmission flowing south be the same?

10 A Not necessarily. The transmission grid is all
11 interconnected. What we're looking at is system flows. And to
12 the extent we had an extra 200 megawatts flowing into Scherer,
13 that would be a new system flow, and it could impact the entire
14 rest of the system.

15 Q Okay. Did you, did you solicit any offers for
16 delivered power from anyone?

17 A No, we did not.

18 Q Okay. And so I take it then that you didn't look at
19 any kind of system flows as to whether delivered power might be
20 an option?

21 A No, we did not. And the reason we did not is
22 delivered power typically encounters pancaked rates and losses.
23 So if you were delivering just across the Southern system,
24 you'd be looking at additional transmission at the same price
25 we're looking here, plus additional losses. If you're coming

1 in from the Entergy system, you would have the Entergy losses,
2 plus the Southern losses, plus the Entergy transmission cost,
3 plus the Southern transmission cost to get to the same point.

4 Q And there's significant transmission losses
5 associated with your moving power from Georgia to Florida;
6 correct?

7 A That's correct.

8 Q Okay.

9 A 2.2 percent. But if you moved it on the Southern
10 system, you'd also be looking -- if you moved it ten yards on
11 the Southern system, you'd be looking at another 2.2 percent.

12 Q Okay. With respect to transmission losses, couldn't
13 a provider be able to determine the pricing and the impact on
14 transmission losses just the way you've done this analysis that
15 you're presenting to the Commission, somebody who might be
16 interested in, in providing you delivered power?

17 A If somebody wanted delivered -- well, the first
18 answer is yes. The issue is, however, that again you have the
19 pancaked rates and the pancaked losses.

20 Again, if you're going from Entergy to Southern to,
21 say, Miller and then to us, the transmission losses would be
22 approximately 3 percent -- you'd be looking at 5 percent losses
23 just getting it to the Miller unit.

24 Q Okay.

25 A In addition, you would have the firm transportation

1 or a firm transmission, that would be \$1.70 per kilowatt month
2 on Entergy or \$1.70 per kilowatt month on Southern, plus about
3 another \$1.20, so you'd be looking at \$3.00 a kilowatt month
4 for the firm transmission, again, just to get it to the Miller
5 plant.

6 Q There's a lot there. I'm not going to take the time
7 to follow up on each of that because we'd be here most of the
8 morning.

9 But with respect to your concern about pancaked
10 rates, are you aware of, of considerations of RTOs being
11 formed?

12 A Yes, I am.

13 Q Okay. And is one of the goals of the RTO to try to
14 eliminate pancake rates?

15 A One of the goals of the RTO is to eliminate pancake
16 rates.

17 Q Okay. And as we sit here today, do you know whether
18 pancake rates will be in place in 2010?

19 A No, I do not. But I do know that the C-Trans
20 transaction, which was attempting to do that in the SERC
21 territory, is no longer in existence and has fallen apart.

22 Q Mr. Hartman, you identified a coal-fired development
23 project owned by L&S Power in Osceola, Arkansas, within
24 SERC-Entergy that is to be commercial sometime between 2008 and
25 2009, did you not?

1 A No, I don't believe we did identify that. We did not
2 look at projects that were in development.

3 Q Do you have a copy of your rebuttal testimony?

4 A Not in front of me.

5 MR. LITCHFIELD: Mr. Chairman, I'm wondering whether
6 counsel for Mr. Churbuck is attempting to cross-examine
7 Mr. Hartman on his rebuttal, which, of course, will come up
8 this afternoon.

9 CHAIRMAN BAEZ: If that's -- there's probably a more
10 appropriate time.

11 MR. MOYLE: Yeah. I had a question. Okay. I had a
12 question for him, and he made a reference to the plant in his
13 rebuttal. I can save it for later, if you want.

14 CHAIRMAN BAEZ: If you would.

15 BY MR. MOYLE:

16 Q Mr. Hartman, did FPL contact anyone other than
17 Southern that owns, is constructing or is developing a coal
18 plant in the SERC region, the SERC-Entergy region, the SERC-TVA
19 region or the SERC-VACAR region about delivered power products
20 for the period 2010 to 2015?

21 A No, we did not, for the reasons that I've just stated
22 as far as pancaked rates and losses.

23 Q Okay. Did, did you contact any power marketer other
24 than Southern that owns power out of any coal plant that is
25 operating, in construction or in development in SERC-Southern,

1 SERC-Entergy, SERC-TVA or SERC-VACAR about delivered power
2 products for the period 2010/2015? Same answer; no?

3 A The same answer. I'll also clarify that we didn't
4 contact anybody about potential development projects because we
5 consider them conjecture at this time as to whether they'd ever
6 be completed.

7 Q And you didn't, you didn't consider projects in
8 construction either, did you?

9 A No, we did not consider projects in construction.

10 Q Okay.

11 A The track record in the industry is such that
12 construction projects very often get delayed and sometimes just
13 get canceled.

14 Q Are you, are you aware, has FPL ever had a
15 construction project that's delayed or canceled?

16 A I don't believe FPL has.

17 Q Mr. Hartman, are you familiar with the concept of
18 coal-priced power out of a gas or combined cycle unit?

19 A Yes, I'm familiar with that concept.

20 Q And for the benefit of those who may not be familiar
21 with the concept of coal-priced power, isn't it power out of a
22 combined cycle gas unit that's essentially a financial
23 mechanism by which power suppliers can supply energy from their
24 gas or combined cycle generation resources, but sell the energy
25 tied to a coal index rather than a gas index?

1 A That, that is fundamentally the concept. In essence,
2 however, you're swapping a gas risk for a financial risk on the
3 counterparty, and, in addition, you don't have the physical
4 capabilities of coal to store coal at the site. So if you have
5 an interruption on gas, you still lose the power.

6 Q Mr. Hartman, if I understand the concept of pricing
7 natural gas to coal fired, it's, it's a financial mechanism
8 that somebody with a gas-fired combined cycle unit could opt to
9 offer you, could they not, to say, we'll tie this to coal, if
10 you really want coal-based pricing, we can give you this at a
11 coal-based index; is that correct?

12 A Fundamentally that's the nature of the transaction.

13 Q Okay.

14 A But, again, what you've swapped is a risk on the
15 price of natural gas for a risk of the financial viability of
16 whoever the counterparty is that's offering that swap.

17 Q Okay. You didn't consider, did you, talking to
18 anyone about the notion of offering you coal-priced power?

19 A No. We did not consider it. The concept has come up
20 in discussions in the past, and I'm unaware of anyone that is
21 offering that product that has the financial wherewithal to
22 stand behind it and protect our customers from the risk of
23 default.

24 Q Did you do any kind of investigation to determine who
25 might be offering that?

1 A The only firm I'm aware of that is offering it and
2 was at least brought it up in the past is Calpine, and they
3 don't have the financial strength to do this.

4 Q Are you aware if any other entity is offering that as
5 a product?

6 A The only one that is -- I am aware of, although I'm
7 sure there must be others, is Calpine because it came up in the
8 case of a particular plant.

9 Q Okay. And with -- so Calpine is offering it. Any
10 other providers of energy?

11 A None that I've talked to.

12 Q Okay. Does FPL offer it?

13 A I'm unaware of it, if they do.

14 Q Mr. Hartman, let me ask you about some companies and
15 ask you if you contacted, contacted them. Morgan Stanley,
16 they're in the business of supplying power, are they not?

17 A Yes, they are.

18 Q Do you know if they're in the business of supplying
19 power in the southeast?

20 A I'm -- I don't know.

21 Q Okay. Did you contact Morgan Stanley?

22 A No, I did not.

23 Q How about, how about BP? They're in the power
24 business; correct?

25 A Yes, they are.

1 Q Did you contact them about possibly supplying power?

2 A We contacted one of their affiliates. Oh, excuse me.

3 It wasn't BP. No, we did not talk to BP.

4 Q Constellation?

5 A No, we did not talk to Constellation.

6 Q Tractebel?

7 A No, we did not talk to Tractebel.

8 Q National Power?

9 A No, we did not talk to National Power.

10 Q Reliant?

11 A Let me clarify in the sense that the time frame we're
12 talking about, some of these entities were aware of the fact
13 that we had the 2003 RFP out that did require power during this
14 time frame. As far as replacement of the UPS, no, we did not
15 talk to Reliant.

16 Q Right. And I'm not asking about the 2000 RFP. That
17 was a year ago. I'm talking about energy represented by these
18 PPAs that you're asking this Commission to approve
19 specifically.

20 So you did not talk to Reliant; is that correct?

21 A No. No, we did not talk to Reliant.

22 Q How about Progress Energy Carolina, did you talk to
23 them?

24 A No, we did not talk to Progress Energy Carolina about
25 providing power to us under these contracts.

1 Q How about Duke?

2 A Yes, we did.

3 Q Did they give you an indicative offer?

4 A I think one of the things we've indicated is that the
5 identification of indicative offers was going to have to be
6 confidential.

7 Q And I'm not asking for the terms, just whether,
8 whether it was provided.

9 A Well, at least part of the terms are already in my
10 testimony, and identifying who a competitor is in the market
11 and what price they were offering power is competitive
12 information that a number of firms would be interested in.

13 Q National Energy Group, did you contact them?

14 A No, we did not talk to National Energy Group.

15 Q How about Santee Cooper?

16 A No, we did not talk to Santee Cooper.

17 Q TECO Power Services?

18 A No, we did not talk to TECO.

19 Q Entergy?

20 A No, we did not talk to Entergy.

21 Q Calpine?

22 A No, we did not talk to Calpine about this
23 replacement.

24 Q Williams?

25 A Yes, we did talk to Williams.

1 Q Did you speak with them personally?

2 A Yes, we did.

3 Q Competitive Power Ventures?

4 A No, we did not talk to CPV.

5 Q Oglethorpe?

6 A No, we did not talk to Oglethorpe about them

7 providing us power under this contract.

8 Q MEAG?

9 A No, we did not talk to MEAG.

10 Q Alabama Electric Cooperative?

A No, we did not talk to Alabama Electric.

Q TVA?

A No, we did not talk to TVA.

Q Tenaska?

15 A No, we did not talk to Tenaska.

16 Q Cogentrix?

17 A No, we did not talk to Cogentrix.

18 Q LS Power?

19 A We did not talk to LS Power specifically about
20 providing power to replace the UPS we were losing in 2010.

21 Q Okay. You would agree, would you not, that an RFP
22 process would be an effective method of gauging market interest
23 and supplying energy and capacity to meet the need represented
24 by the UPS contracts?

25 A It would be one way. It's not necessarily the best

1 way.

2 Q Benefit two, Mr. Hartman, in your prefiled testimony,
3 Page 9, Lines 11, I'm sorry, Line 10, you identified the second
4 benefit of the PPAs as, FPL will receive rights of first
5 refusal for additional firm coal-fired capacity and energy from
6 Southern's Miller and Scherer units; is that correct?

7 A That's correct.

8 Q And this is the issue we spent some time talking
9 about yesterday, didn't we?

10 A Yes, we did.

11 Q Okay. These rights are valuable to FPL in the event
12 that coal-fired energy is cheaper than gas-fired energy;
13 correct?

14 A They're valuable to FPL when coal-fired energy is
15 less expensive than gas-fired energy or the same because it can
16 get rid of some volatility for our customers and help our fuel
17 diversity, and whenever we're in a position where we could
18 exercise on the rights of first refusal in the agreements.

19 Q Okay. So that would be, yes, generally speaking, if
20 coal is cheaper, then these rights are valuable?

21 A And, and even if it was the same price, I would say
22 coal would be valuable due to the loss in fluctuation of
23 pricing of gas compared to coal.

24 Q Okay. So it would be -- they're valuable when it's
25 cheaper or the same price?

1 A That's correct.

2 Q Okay. And right now Florida has more, more gas than
3 coal; isn't that correct?

4 A That's my understanding.

5 Q Okay. And do you know if Southern has more coal than
6 gas generally speaking?

7 A Generally speaking, Southern has a great deal more
8 base load coal and nuclear than gas.

9 Q Okay. Mr. Hartman, isn't it true that Southern in
10 recent years has been adding gas-fired generation to their
11 system to meet load growth?

12 A I don't know why -- I don't know the answer to that.

13 Q You don't? Do you know if Southern's expansion plans
14 call for adding gas-fired generating units to meet expected
15 load growth?

16 A No, I don't know.

17 Q Assume for the purposes of my question that Southern
18 has been adding gas-fired generation to meet load growth. And
19 with respect to the value of this right of first refusal, is it
20 likely that Southern will dispatch coal-fired generation ahead
21 of gas generation to serve its native load rather than selling
22 the, the cheap coal-fired generation to you under a right of
23 first refusal in situations in which coal is cheaper than gas?

24 MR. LITCHFIELD: Let me first object to the question
25 on the grounds that it assumes facts in evidence, unless it is

1 clear that Mr. Moyle is simply asking the witness to accept
2 this as a hypothetical.

3 CHAIRMAN BAEZ: Mr. Moyle, your response?

4 MR. MOYLE: I'm asking him to accept it as a
5 hypothetical.

6 CHAIRMAN BAEZ: Okay. Go ahead.

7 THE WITNESS: Could you restate it, please?

8 BY MR. MOYLE:

9 Q Sure. If I understand these rights of first refusal,
10 they're valuable when, when coal is cheaper than gas or equal
11 to gas. And I'm asking you to assume that Southern is building
12 gas-fired units to meet its load growths.

13 In a situation in which coal is cheaper than gas,
14 won't Southern economically dispatch its plant so that the coal
15 units serve its base load before selling power to you under a
16 right of first refusal, assuming rational economic behavior?

17 A Well, you've put two -- I can't answer it very simply
18 because you've put two things together: One is dispatch at the
19 plant and the other is our right of first refusal.

20 I would agree with you that Southern will dispatch
21 their coal and nuclear first as the lowest marginal cost. That
22 doesn't mean that it isn't going to be available on the market
23 because coal and nuclear you can't reasonably cycle, so there's
24 going to be times whenever the gas plant is off-line, they're
25 going to have excess coal and nuclear available in the off-peak

1 periods and they're going to be willing to sell it. It'll be
2 more than their loads. And that's been an historic trend and
3 there's no reason to see why that could continue -- why that
4 should not continue.

5 The other side of the coin is you've said why would
6 they sell us the right of first refusal if coal is cheaper
7 independent to the dispatch? And the reason might have to do,
8 and, again, this has to be conjecture, as far as the generation
9 mix that they're looking at. Southern right now is something
10 north of 80 percent coal and nuclear, which is a very high base
11 load capacity. A lot of utilities or most utilities try and
12 maintain a mix of base load, intermediate and peaking units to
13 cover their load profile. Southern's fairly high on base
14 loads. They might be looking at changing their generation mix
15 to more closely match what they're looking at in terms of
16 loads. If that is what they are doing, they still might be
17 willing to go ahead and sell coal output on a wholesale
18 contract.

19 Q But you don't know what Southern is doing?

20 A No, I can't speak for what Southern is doing. I
21 might, I might point out that Southern did build the Miller
22 units and they weren't needed for their system and they did
23 sell them to us.

24 Q Mr. Hartman, you haven't done any kind of projections
25 or analysis of future load growth in Southern to try to

1 determine how valuable these rights might be, have you?

2 A No, I have not.

3 Q Okay. But you do consider these right of first
4 refusal rights to be valuable, do you not?

5 A What I have indicated is it is one of the benefits
6 that we consider valuable to our customer.

7 Q So the answer would be, yes, you consider it
8 valuable?

9 A Yes, it is.

10 Q Mr. Hartman, how much money did FPL pay for the
11 Scherer right of first refusal?

12 A We paid nothing explicitly for the right of first
13 refusal.

14 Q And how about with respect to the Miller right of
15 first refusal?

16 A Again, we paid nothing explicitly for it.

17 Q Okay. Let's talk about benefits three through six.
18 And for the purpose of trying to save some time, I'm going to
19 lump benefits three through six together for the record, and
20 I'd just like to confirm that per Pages 9 through 10 of your
21 prefiled testimony what those benefits are. Okay?

22 Number 3, FPL will also retain 930 megawatts of firm
23 transportation (sic.) within SERC for future use; is that
24 correct?

25 A That's correct. And let me clarify a little bit on

1 that. If we don't do the UPS deal or an equivalent and roll
2 over our transmission now, that transmission right goes away if
3 we don't exercise the rollover and we'll never get it back.

4 MR. MOYLE: Mr. Chairman, would you, would you
5 instruct the witness to try to answer yes or no? I was simply
6 trying to get him to confirm that these were the benefits, and
7 I don't know that my question required an explanation.

8 CHAIRMAN BAEZ: I think he answered yes. But
9 according to the ground rules, he gets to clarify.

10 BY MR. MOYLE:

11 Q Number 4, FPL will obtain equivalent gas
12 transportation adequate for 790 megawatts of generation on a
13 separate gas transmission network; is that right?

14 A That's correct.

15 MR. LITCHFIELD: Let me, let me ask if counsel is
16 reading from Mr. Hartman's testimony or if he's reading from
17 some other transcript. Because as I'm following along with
18 Mr. Hartman's testimony, Mr. Moyle is not accurately reciting
19 word for word Mr. Hartman's points.

20 MR. MOYLE: And these are my notes.

21 CHAIRMAN BAEZ: Is that a question or an objection?

22 MR. LITCHFIELD: It's an objection.

23 CHAIRMAN BAEZ: Okay. Fair enough. Mr., Mr. Moyle,
24 if, if -- you made original reference to Pages 9 and 10 --

25 MR. MOYLE: That's fine.

1 CHAIRMAN BAEZ: -- benefits three through six. So if
2 you can -- if what you're merely confirming is the text of the
3 testimony, then I think you can just as easily refer to that.

4 MR. MOYLE: Okay.

5 BY MR. MOYLE:

6 Q Benefit number five, FPL's access to firm
7 transmission capacity on the Southern system enables FP&L to
8 obtain contracted firm capacity and/or purchase market energy
9 from outside Florida, thus enhancing FPL's electric system
10 reliability; correct?

11 A Correct.

12 Q And number six, FPL gets to defer making a long-term
13 commitment, either a self-build or long-term purchase, which
14 would likely be gas-based, thus preserving a certain amount of
15 flexibility to consider new non-gas technologies over the next
16 ten years. Is that an accurate statement?

17 A That's accurate.

18 Q And just, just so that we're clear, with regard to
19 benefit six, does a long-term commitment for the purpose of
20 this benefit mean a contract or other arrangement that is
21 longer than five years?

22 A It would be my understanding -- well, certainly it's
23 longer than five years. But it would be my understanding that
24 absent these contracts, we're going to be looking at
25 potentially a self-build with the RFP process and others

proposing, in which case our analysis said we're going to be
2 looking at building a plant for our unit -- for our customers.

3 Q Okay. Mr. Hartman, isn't it true that if you were to
4 contract with a power supplier in Southern on the same flow
5 paths as Franklin and Harris and the supplier, and the supplier
6 of power was not relying on FGT or Gulfstream for fuel
7 transportation, FPL could obtain the same three to six benefits
8 that we've just discussed?

9 A If there was a supplier along the same sort of flow
10 path that -- well, the answer is first, yes. Let me qualify it
11 with the fact that if there was a supplier along the same flow
12 path capable of providing 955 megawatts at the bus bar with
13 firm gas transportation and we could run with the, a good deal
14 with them, then, yes, it could provide benefits three through
15 six.

16 Q Isn't it also true that if you contracted with a
17 power supplier outside of Southern that had the ability to
18 deliver its power to within Southern on the same flow paths as
19 Franklin and Harris, that the three to six benefits, again,
20 assuming neither FGT or Gulfstream was providing gas
21 transportation, could be realized?

22 A That I'm unsure of.

23 Q Prior to signing the PPAs, did you receive pricing
24 information from anyone other than Southern, that is, that
25 owns, is constructing or is developing a gas plant or combined

1 cycle plant in SERC-Southern, SERC-Entergy, SERC-TVA or
2 SERC-VACAR about selling power to FPL for the period of 2010 to
3 2015?

4 A Prior, prior to signing the PPA we had an indicative
5 quote from a generator in the market. We also had some
6 publicly available pricing on a couple of units.

7 Q And it's your testimony you received one indicative
8 offer; isn't that correct?

9 A That's correct.

10 Q Prior to signing the PPAs did you contact anybody --
11 strike that.

12 How many suppliers of power products are there in
13 SERC, if you know?

14 A I have no idea how many there are in SERC. The issue
15 isn't how many there are in SERC. The issue is how many could
16 provide the products we're looking for, and there are very few
17 of those.

18 Q And why could they not? Transmission constraints?

19 A Transmission constraints is part of it. Part of the
20 issue is also, you pointed out benefits three through
21 six potentially being of value to our customers. Again, we're
22 looking at having to roll over, which requires that we have
23 very few or very little or no substantial change in system
24 flows as a result of our rollover transaction. That limits
25 where we can get the power.

1 And then we're saying we want to preserve
2 955 megawatts of bus bar to get 930 at our border. There's
3 very few people that can provide that.

4 Q Mr. Hartman, I just read you a whole list of, of
5 power providers and you had contacted a couple of them. Do you
6 recall that?

7 A I recall that.

8 Q Okay. Didn't you go through a process when you were
9 gauging the market where you looked at potential providers and
10 made a judgment that you didn't think they could transmit power
11 into the state?

12 A Yes, we did go through that process, although you've
13 substantially shortened what the actual process was.

14 Q Okay.

15 A First, first -- let me clarify. First we went out
16 and we identified potential providers that were in the area
17 near Miller, near Scherer that we had some idea that we might
18 be able to roll over. That excludes a large number of the
19 people that you read out on your list. We were also looking at
20 physical assets.

21 Then we went out and looked at, on the Southern OASIS
22 Web site, potential transmission constraints that are in place,
23 and there's some substantial constraints in the northwest
24 quadrant, in the southwest quadrant of Southern's territory.

25 We then looked, once we had got a list of potential

1 customers or potential providers of power, who they were
2 interconnected with. Some of the potential providers were
3 interconnected with TVA, in which case we'd be looking at
4 pancaking transmission losses and rates.

5 Whenever we get on down to it, we wind up with a very
6 limited number of potential providers who can provide this
7 product. We then looked at them.

8 Q And my question, I think, was originally you had
9 looked at certain providers and determined that there might be
10 transmission constraints and eliminated it from consideration;
11 isn't that right?

12 MR. LITCHFIELD: Objection to the question. Is he
13 asking the witness to confirm what his question was?

14 MR. MOYLE: I'm asking -- I mean, it's a yes or no
15 question, I think. Did he contact, look at people that, that
16 potentially could supply it and --

17 CHAIRMAN BAEZ: Overruled. Ask the question.

18 BY MR. MOYLE:

19 Q Okay. As part of the process did you look at
20 potential providers and make a judgment that due to
21 transmission constraints they might not be able to serve you
22 and you eliminated, eliminated them from further consideration?

23 A Yes. As part of the process we eliminated from
24 consideration suppliers that, due to transmission constraints,
25 we did not believe could deliver the power to our system.

1 Q Okay. And you made that judgment; correct?

2 A We made that judgment based on information available
3 on Southern's OASIS network.

4 Q Okay. And you're not an expert in transmission
5 planning; isn't that correct?

6 A I don't have to be an expert in transmission planning
7 to answer that. No, I am not. But the information is publicly
8 available on the network.

9 Q Did you, did you speak to anyone at Southern about,
10 about the information to confirm that your judgments were
11 correct?

12 A No, I didn't speak with anyone at Southern. I did,
13 however, talk to people in our Transmission System Planning
14 Department that the way we were looking at it was reasonable.

15 Q Did you speak to any providers that you scratched off
16 the list to, to see if, if they had any information that they
17 could add to your decision to scratch them off the list due to
18 transmission constraints?

19 A No. We didn't talk to providers that we did not feel
20 could get power to us based on publicly available transmission
21 information and the analysis, or would support the
22 recommendations of our transmission system planners.

23 Q Mr. Hartman, please rank the following entities by
24 whom would best know the constraints on the Southern
25 transmission system, and the three entities are Southern, a

1 supplier or provider housed within Southern or you.

2 A Southern, our transmission group and maybe the
3 supplier.

4 Q So you believe that your transmission group located
5 down in Florida would have better information about
6 transmission constraints than a, than a provider located in
7 SERC that's selling power?

8 A Yes, I do.

9 Q Another aspect of increased reliability that you cite
10 is the ability to have gas-fired energy from non-FGT,
11 non-Gulfstream supplied gas; correct?

12 A That's correct.

13 Q Historically has FPL effectively and reliably
14 operated its gas-fired generating units using only the FGT
15 system?

16 A Historically we have. There have also been
17 interruptions on the FGT due to a fire in Perry, for example.

18 Q When was the last interruption?

19 A I don't remember.

20 Q The fire in Perry, that was, what, five, six years
21 ago?

22 A In that time frame, I believe, yes.

23 Q Okay. And since then don't we have a new natural gas
24 pipeline in the state?

25 A Yes, we do. We have Gulfstream.

1 Q And that's Gulfstream?

2 A That's correct.

3 Q And you would agree, would you not, that the
4 Gulfstream Pipeline, once it, once it became operational,
5 increased reliability?

6 A I would agree with that.

7 Q Do you know -- are you aware of Gulfstream's plan to
8 expand its pipeline?

9 A No.

10 Q Okay. Are you aware of three liquified natural gas
11 or LNG projects that are in development in which liquified
12 natural gas would be shipped from the Bahamas into southeastern
13 Florida?

14 MR. LITCHFIELD: I'll object to the form of the
15 question. It assumes facts not in evidence.

16 CHAIRMAN BAEZ: Can you restate the question and lay,
17 lay a predicate?

18 MR. MOYLE: Sure.

19 BY MR. MOYLE:

20 Q Do you know what, do you know what LNG is?

21 A I'm familiar with LNG.

22 Q What is it?

23 A Liquified natural gas.

24 Q Is this a reliable source of, of fuel?

25 A I think it's reasonably reliable.

1 Q Okay. Are you aware of any liquified natural gas
2 proposals to bring liquified natural gas into southeast
3 Florida?

4 A I'm aware of the fact that there are three projects
5 in development to bring LNG into South Florida. I'm also aware
6 of the fact that none of them have received all the permitting
7 that's necessary to be built, and all of them interconnect to
8 NGT.

9 Q You would agree that if even one of these three LNG
10 projects was successful, that that would provide added
11 reliability to FPL's system, would it not?

12 A Well, first of all, let me -- I think FPL already has
13 a very reliable system. Secondly, I would agree that an
14 additional source of LNG would enhance reliability.

15 Q Okay. And isn't it true that, that Florida Power &
16 Light or one of its subsidiaries has an interest in one of
17 these LNG projects?

18 A I'm aware --

19 MR. LITCHFIELD: Object to the question. I'm not
20 sure what relevance that has to this proceeding.

21 CHAIRMAN BAEZ: Respond.

22 MR. MOYLE: Well, he's talking -- he raised a
23 concern. I'm trying to show that, you know, this reliability
24 on gas coming out of Southern is not very significant, given
25 the fact that we have a new Gulfstream Pipeline, given the fact

1 that we have these LNG projects, and given the fact that we
2 historically have not had much problem with FGT. He said,
3 yeah, well, these LNG projects, I'm not sure about their
4 permitting process and what not. I want to establish that FPL
5 has an interest in one of them, and historically FPL has
6 probably been pretty successful in getting permits and bringing
7 projects into, into completion.

8 CHAIRMAN BAEZ: I'll allow it.

9 THE WITNESS: Could you repeat the question, please?

10 BY MR. MOYLE:

11 Q I think it was, and I may have to ask the court
12 reporter to read it back, but I think it was, isn't it true
13 that FPL has an interest in one of these LNG projects?

14 A Yes, that's my understanding.

15 Q And isn't this project in which FPL has an interest
16 scheduled to be completed before June 1, 2010?

17 A I don't know what the schedule is on the project.

18 Q Okay. You would agree, would you not, that FPL, when
19 it seeks to permit a facility and develop a facility, has a
20 track record that's generally successful?

21 A I would agree with that.

22 Q Would you agree that the FPL-sponsored LNG project,
23 assuming it's completed before June 1, 2010, provides as much,
24 if not more, reliability than the gas-fired capacity
25 represented by taking power from the Franklin and Harris plants

1 is set forth in Southern's contracts?

2 A I don't know. I've never even looked at that issue.

3 Q Mr. Hartman, I'm going to ask you some questions
4 about, about the steps that you took to judge Southern's
5 contract against other proposals. We've talked about this a
6 little bit. I have a series of questions along these lines.

7 You were in charge, were you not, of gauging the
8 marketplace before entering into these agreements with
9 Southern?

10 A Yes, I was.

11 Q And isn't it true that, that FPL never issued an RFP
12 for the capacity represented by these agreements?

13 A Yes, it's true that we did not issue it. We did not
14 need to issue it.

15 Q Okay. Did, did you let it be publicly known that you
16 were seeking options to provide power for the 2010 to 2015 time
17 frame? Did you put a notice in any kind of paper or post it on
18 a Web site that you were interested in any kind of public
19 disclosure that you were looking at trying to get power in this
20 2010 to 2015 time frame?

21 A No, we did not post it on a Web site or put an ad in
22 the newspaper. However, it was in our Ten-Year Site Plan that
23 we anticipated replacing the expiring UPS agreement with a PPA.

24 Q Did you contact any power providers with projects in
25 Florida to inquire about their interest in providing you power

1 in the 2010 to 2015 time frame?

2 A We are continually in contact with power providers in
3 Florida about some of our needs. In this case we did not
4 contact them about providing power to replace the UPS because
5 one of the key aspects is the reliability, the transmission and
6 other aspects associated with the generation being outside of
7 the state, and an instate supplier could not provide that.

8 Q So you didn't call anybody in Florida; correct?

9 A Not specifically about this contract.

10 Q You testified in your direct testimony, Page 16, Line
11 20, that you oversaw an evaluation of the contracts against
12 offers received by FPL in the last RFP; correct?

13 A That's correct.

14 Q Okay. Now FPL never received or entered into any
15 contracts in response to that RFP; isn't that correct?

16 A That's correct. Our units were more cost-effective
17 for our customers than the offers.

18 Q Okay. And given your oversight role, you never
19 submitted testimony to this Commission explaining the role that
20 you took in that 2003 RFP process; isn't that correct?

21 A Let me explain what that sentence says. It says, "In
22 addition, I oversaw an evaluation of the contracts against
23 offers received by FPL in the last RFP." That isn't that I was
24 in supervisory responsibility for the evaluation of the last
25 RFP. It is that I oversaw an evaluation of these contracts

1 against the offers in the RFP.

2 Q Okay. I didn't understand that.

3 Your direct testimony, Page 17, if I'm reading this
4 correctly, on Line 6 through 9 you eliminated over 4,000
5 megawatts because they were peaker units; is that correct?

6 A That's correct.

7 Q You didn't consider, did you, that peakers are
8 capable of being converted to combined cycle units by adding
9 the heat recovery steam generators to them, did you?

10 A No, we did not consider that. And it's --

11 Q And hasn't FPL with respect to some of its --

12 MR. LITCHFIELD: I object. I think the witness was
13 attempting to clarify his answer and Mr. Moyle moved right over
14 the top of him.

15 CHAIRMAN BAEZ: Mr. Hartman, did you need to clarify
16 your answer?

17 THE WITNESS: Yes, I did. And --

18 CHAIRMAN BAEZ: Go ahead, sir.

19 THE WITNESS: Basically converting a peaker to a
20 combined cycle unit again is the same thing as building a new
21 plant, and we weren't looking at building new plants or
22 anything else. We were looking at existing assets with
23 existing flows where we could get our rollover and minimize the
24 risk for our customers.

25 CHAIRMAN BAEZ: Go ahead, Mr. Moyle.

1 Y MR. MOYLE:

2 Q Okay. Now with respect to -- hasn't FPL converted
3 eakers to combined cycle units, if you know?

4 A I don't know off-hand.

5 Q Okay. So you don't know how long this process might,
6 ight take?

7 A No, I couldn't testify to that.

8 Q Do you have any expertise in transmission access law?

9 A Excuse me?

10 Q Do you have any expertise in transmission access, you
11 now, these FERC tariffs and things like that, do you consider
12 yourself an expert in those matters?

13 A I'm obviously not a FERC attorney. I have some
14 expertise and experience in using them.

15 MR. MOYLE: Can I have a minute?

16 CHAIRMAN BAEZ: Maybe we can take ten minutes and
17 give the court reporter a rest.

18 (Recess taken.)

19 CHAIRMAN BAEZ: Go back on the record. Before we
20 continue with the cross-examination, Ms. Vining, it's my
21 understanding that -- actually, in an effort to cut down on the
22 time for some of the other parties that are waiting on possible
23 bench votes, I think staff is ready to recommend on some issues
24 or will be ready to recommend on some issues. What I had
25 planned is a natural starting point for that is after the lunch

1 break, which I think we'll probably be reconvening -- I'm
2 hoping to cut away at noon and come back at 1:30. We'll
3 dispense with all of the votes.

4 My understanding is the only issues that would be
5 outstanding or we intend to leave outstanding until the end of
6 the hearing is Issues 14B and C --

7 MS. VINING: That's correct.

8 CHAIRMAN BAEZ: -- at this point. I feel compelled
9 to lay this out there at this time. There is a 99 percent
10 chance that 14C may be addressed in writing, so that would
11 be -- that vote or decision would be most likely deferred to an
12 upcoming agenda. But we might be able -- we'll most likely be
13 able to dispense with 14B at the end of the hearing. But in
14 the interest of getting some of those innocent, and I use the
15 word for purposes of this moment, you know, let them get out on
16 time and whatnot, I think we can stand to deal with the issues
17 that don't affect the factors at the end of -- when we
18 reconvene after the lunch break.

19 Anything else that we need to discuss or clear up?

20 MS. VINING: I don't think so. Staff will be
21 prepared to give an oral recommendation on those issues at
22 1:30.

23 CHAIRMAN BAEZ: Very well. Mr. Moyle, just a quick
24 question or a quick reminder. I did want to try and break for
25 lunch at noon. So I don't know how much cross you have left,

1 hopefully you're moving along, but 12:00 is going to be a
2 breaking point.

3 MR. MOYLE: Okay. I'll make every effort to be done
4 by that.

5 CHAIRMAN BAEZ: And remember, staff has some
6 questions too --

7 MR. MOYLE: Okay.

8 CHAIRMAN BAEZ: -- so if you can hold them in your
9 heart as well. Did you need to bring something up or no?

10 MR. MOYLE: No.

11 CHAIRMAN BAEZ: Okay. Then go ahead, sir.

12 BY MR. MOYLE:

13 Q Mr. Hartman, you were asked some questions, I
14 believe, yesterday based on interrogatories that staff served
15 on you and you answered. Do you still have those in front of
16 you? FPL's responses to staff interrogatories.

17 A Yes, I do.

18 MR. LITCHFIELD: May I ask a clarification for the
19 record, if those are already marked as an exhibit?

20 CHAIRMAN BAEZ: Well, I was going to ask if that's
21 part of the stipulated Exhibit 2. Is that what you're
22 referring to?

23 MS. VINING: Yes, it was previously marked as
24 Exhibit ID 2, yes.

25 CHAIRMAN BAEZ: Okay. Are you clear, Mr. Litchfield?

1 MR. LITCHFIELD: Yes. Thank you.

2 BY MR. MOYLE:

3 Q I want to ask you some questions about your response
4 to Staff Question Number 34; that is the second page of the
5 document that you have. And for the record, I'll read the
6 question.

7 "On Page 15 of Witness Hartman's direct testimony
8 filed in this proceeding, he discusses a cost differential of
9 \$60 to \$80 million (2004 NPV) between the cost of FPL's
10 self-build option compared to the cost of the proposed
11 contracts. Please describe in detail how this cost
12 differential was calculated."

13 Does that response represent your true and accurate
14 answer to this question, Mr. Hartman?

15 A Yes, it does.

16 Q Okay. And let me just make sure I understand how you
17 got to this number. Down there in the second paragraph you use
18 \$107 million; correct?

19 A In the second paragraph I use \$107 million as the NPV
20 of the, let's see, self-build facility against the PPAs at
21 basically a bus bar price.

22 Q And then you add another 17 million for an equity
23 adjustment; is that right?

24 A That's correct.

25 Q And this is the equity adjustment Mr. McGlothlin was

1 talking with you about yesterday; correct?

2 A That's correct.

3 Q And then down on the last sentence you did some other
4 adjustments, and if I read that, it says, "The total cost
5 differential between a self-build unit and the PPAs is \$153
6 million, before considering the benefit of retaining
7 transmission in SERC;" is that correct?

8 A That's correct.

9 Q All right. And then to make the adjustments from
10 this 153 million, you subtracted, what, 83 million?

11 A \$83 million would represent some of the value of the
12 arbitrage, that's correct.

13 Q And then you kind of put a range in there; correct?
14 You also subtracted another number?

15 A That's correct.

16 Q Okay. And just so I'm clear, this arbitrage number,
17 this was what we talked about yesterday where it depends on a
18 number of factors in terms of future market conditions; isn't
19 that correct?

20 A That's correct.

21 Q And one of those is coal prices being lower than gas
22 prices; correct?

23 A The key to the arbitrage is that pricing in the
24 southeastern SERC area being less than the pricing in Florida.

25 Q And if pricing in Florida is less than pricing in

1 SERC, then the arbitrage value is zero; correct?

2 A During those hours whenever that would occur, yes.

3 Q And I asked you yesterday whether you could guarantee
4 to the Commission any dollar figure associated with this
5 arbitrage, and I think you answered no; isn't that correct?

6 A That's correct.

7 Q Let me ask you some questions about the negotiations
8 that you were in. Isn't it true that Southern was not willing
9 to sell the Scherer coal capacity to FPL without the Franklin
10 and Harris combined cycle capacity?

11 A It is clear that in order to get 100 -- or in order
12 to get the 955 megawatts that we needed, the only capacity we
13 could get on coal was 165 from Scherer, so the rest of it had
14 to be gas.

15 Q Okay. Southern wasn't willing just to give you the
16 165 megawatts of coal and let you look elsewhere for the gas;
17 right? They linked together the gas out of Franklin and Harris
18 with the Scherer?

19 MR. LITCHFIELD: I object to the question. It
20 mischaracterizes the witness's answer.

21 CHAIRMAN BAEZ: Can you restate it and allow the
22 witness to correct you, if possible?

23 MR. MOYLE: Okay.

24 BY MR. MOYLE:

25 Q Was Southern willing to sell you the Scherer coal

1 capacity without any natural gas combined cycle capacity?

2 A That's difficult to answer in a yes-or-no fashion.

3 We negotiated all three contracts simultaneously. Without the
4 two gas contracts that we had, Scherer -- Southern would have
5 been unwilling to continue with the Scherer contract.

6 Q Do you remember when I asked you some questions on
7 your deposition taken a couple of weeks ago, I guess,
8 October 28th?

9 A Yes, I do.

10 Q Do you have a copy of that deposition in front of
11 you?

12 A Yes, I do.

13 Q Okay. Turn to Page 74, Line 24. And I'll ask you
14 the question, and ask you to read your response to my
15 deposition into the record. I asked you -- are you there yet?

16 A Yes.

17 Q My question was, "And if I understand how the
18 negotiation sort of played out, you cared a lot about the coal
19 units, if I heard your answers to staff's question earlier, and
20 the Southern folks cared a lot about the gas units. Is that a
21 fair characterization?"

22 And read your answer.

23 A My answer was, "We cared an awful lot about the coal
24 units. Southern was unwilling to give us the coal without the
25 gas units."

1 Q Okay. So as we stand here today, was Southern
2 willing to give you coal without the gas units?

3 A I think what I just said was, we negotiated as a
4 package. If the contracts for the gas units went away, they
5 would have been unwilling to give us the contract for the
6 Scherer unit.

7 Q The statement that you gave in the deposition,
8 "Southern was unwilling to give us the coal without the gas
9 units," is that incorrect in any way?

10 A I think the two are, what I just stated and what is
11 in here, consistent.

12 Q From your perspective, during the negotiations, was
13 coal out of Scherer tied to taking gas out of Franklin and
14 Harris or any other facility?

15 MR. LITCHFIELD: I'll object to the extent that the
16 question may be an attempt to get the witness to answer a legal
17 conclusion with respect to tying; otherwise, I'm happy to have
18 the witness answer the question.

19 CHAIRMAN BAEZ: Use another word.

20 MR. MOYLE: Okay.

21 CHAIRMAN BAEZ: I can think of a few if you --

22 MR. MOYLE: Okay.

23 BY MR. MOYLE:

24 Q Mr. Hartman, from FPL's perspective, during the
25 negotiations, isn't it true that Southern's coal capacity out

1 of Scherer was linked to you also taking combined cycle
2 capacity out of Franklin and Harris or some other gas-fired
3 units?

4 A Well, again, it's difficult for me to say. We were
5 looking for 930 megawatts at our system boundary. We could
6 only get 165 megawatts of coal from Scherer. The rest of it
7 had to come from gas. So in the sense that we're trying to get
8 930 megawatts or 955 at the bus bar, if you can only get part
9 of it from coal, then yes.

10 Q Do you think you could have negotiated a deal with
11 them where you said, look, why don't we just go ahead and take
12 this 165 megawatts of coal, and we'll go out into the market
13 for the gas? Would they have been willing to accept that kind
14 of a deal?

15 A As a merchant provider, given a proper price for
16 coal, I'm sure they would have been willing to do it.

17 Q Did you ever have that conversation with them and
18 inquire as to whether they would be willing to allow you to
19 take the 165 megawatts of coal without the gas?

20 A No, I don't specifically recall having that
21 conversation.

22 Q Did FPL pay a premium for the combined cycle,
23 gas-fired energy that is part of these contracts?

24 MR. LITCHFIELD: I'll object to the form of the
25 question. The term premium is undefined.

1 CHAIRMAN BAEZ: Restate it.

2 BY MR. MOYLE:

3 Q Did FPL pay more for the gas-fired capacity than it
4 would cost it to build itself?

5 A We evaluated against a self-build unit. The overall
6 PPAs are a little bit more expensive. We've evaluated since
7 then gas units against our self-build units in terms of some
8 similar sort of pricing. The difference is less than 2
9 percent. Given the uncertainties we have and the accuracy of
10 the self-build at this stage, I don't see that we paid any
11 difference.

12 Q Okay. So who was cheaper by 2 percent? Southern or
13 your gas-fired units?

14 A At this stage of our estimate on the self-build, our
15 unit was cheaper by a little bit less than 2 percent.

16 Q And you don't believe 2 percent is a significant sum?

17 A Not at this stage of our estimates on the self-build
18 unit. We're not at the level yet where we'd be going out with
19 an RFP. We haven't defined our -- you know, refined our
20 engineering analysis or costing yet.

21 Q Do you have -- are you able to tell this Commission
22 what a 2 percent savings on the value of the natural gas-fired
23 contracts might be, rough numbers?

24 A Well, we were looking at it in terms of a dollars per
25 megawatt hour for our customers. So it's on the order of a

1 dollar out of, say, 60.

2 Q Okay. And if you'd round that number over all the
3 megawatts, what, 790 over the five and a half years, what's
4 that number?

5 A I don't know.

6 Q It would be in the millions of dollars, would it not?

7 A But as I pointed out, the accuracy of the estimates,
8 I can't identify that there's any difference in the numbers
9 right now.

10 Q Other than the 2 percent that you talked about.

11 A At our preliminary level of engineering for a
12 self-build unit without refining the numbers, I can't say that
13 our numbers are accurate within 2 percent.

14 Q Okay. But they're your numbers; right? You did the
15 analysis and at least at the first scrub came up with 2 percent
16 cost differential where your gas-fired units were cheaper than
17 Southern's gas-fired units by 2 percent. Am I correct in that?

18 MR. LITCHFIELD: Asked and answered.

19 CHAIRMAN BAEZ: That's true.

20 MR. MOYLE: Okay.

21 BY MR. MOYLE:

22 Q And you're not able to tell this Commission what that
23 dollar figure represents, total sum number?

24 A No, not right now.

25 Q Mr. Hartman, are you familiar with the fact that the

1 Southern Company and its affiliated companies, Southern Company
2 Services, Georgia Power, Gulf Power, and Southern Company per
3 its compliance filing dated August 9, 2004, admitted to failing
4 one of FERC's indicative market power tests in the Southern
5 control area?

6 A I'm familiar with the fact that Southern made that
7 filing. I've seen the filing. I'm also familiar with the fact
8 that there was 600 other tests that Southern claims they
9 passed, and the filing that they did file indicated that they
10 did not have market power in Florida.

11 Q So are you familiar that -- would that be a, yes,
12 with respect to them admitting that they failed one of the
13 FERC's indicative market power tests in the Southern control
14 area?

15 A Yes.

16 Q Are you familiar with the deficiency letter recently
17 issued by FERC with regard to this admitted failure by
18 Southern?

19 MR. LITCHFIELD: I'll object to the question. It
20 assumes a fact not in evidence.

21 CHAIRMAN BAEZ: (Inaudible. Microphone off.)

22 MR. MOYLE: I can put that fact in evidence.

23 BY MR. MOYLE:

24 Q I just passed out a document that's dated October 29,
25 2004 from the Federal Energy Regulatory Commission. Have you

1 seen this document before?

2 A No, I have not.

3 Q Okay. Just for the record, if you would, I'd ask you
4 to flip over to Page 4. Actually, on Page 1, you would agree
5 the last sentence of the first paragraph says, "Please be
6 advised that your submittal is deficient as described below,"
7 and the reference in the letter is "Updated Market Power
8 Analysis"?

9 A That's what the letter says.

10 Q Okay. Read just for the record Paragraph 8 of the
11 letter found on Page 4.

12 MR. LITCHFIELD: Let me object to Mr. Moyle
13 attempting to use Mr. Hartman as a means to get into the record
14 in this proceeding a document that Mr. Hartman has already
15 indicated he's not seen before and that Mr. Moyle is presenting
16 to the parties and this Commission for the first time today.

17 MR. MOYLE: And all I wanted to do is read that one
18 paragraph to publish it. I've provided the Records folks with
19 an authenticated certificated, silver embossed copy from FERC
20 that I think is a self-authenticating document.

21 CHAIRMAN BAEZ: Mr. Litchfield, I'm not seeing a
22 problem with him presenting this document. Overruled.

23 BY MR. MOYLE:

24 Q Please read Paragraph 8 into the record.

25 A "Your filing included only a generation market power

1 analysis and did not address the three other prongs of the
2 Commission's four-part test to determine whether to grant
3 public utilities market-based rate authority, namely
4 transmission market power, barriers to entry, and affiliate
5 abuse/reciprocal dealing. Therefore, you are directed to file
6 a demonstration that Southern Companies satisfies the
7 Commission's concerns regarding transmission market power,
8 barriers to entry, and affiliate abuse/reciprocal dealing."

9 Q Mr. Hartman, you can't be assured, can you, that in
10 the presence of this FERC market power inquiry that these PPAs
11 are not the product at least in part of such market power, can
12 you?

13 MR. LITCHFIELD: And I'll object to the question on
14 the grounds that it assumes that, in fact, a final
15 determination has been made with respect to the market power
16 issue in Southern Company's service territory; that those issue
17 remain in play. And I, therefore, object on the basis.

18 MR. MOYLE: And my question doesn't ask him to guess
19 as to what FERC's going to determine. I'm just asking him that
20 he can't sit here in front of this Commission and guarantee
21 that these contracts aren't the result of market power that was
22 exercised at the negotiating table.

23 CHAIRMAN BAEZ: And are you requiring him to -- are
24 you requiring the witness to know market power when he sees it?

25 MR. MOYLE: Not in a legal context.

1 CHAIRMAN BAEZ: Okay. Answer the question,
2 Mr. Hartman.

3 THE WITNESS: I'm sure these weren't the result of
4 market power, and the reason why I can be sure of that is we
5 have the option to do other things besides these PPAs. We have
6 the option to self-build to meet our loads. We have other
7 options besides dealing with Southern Company. So if we didn't
8 think these were a good deal for us, it isn't like Southern
9 could continue to extort money from us. We could walk away
10 from the table. That's one aspect of it.

11 A second aspect is, we compared these contracts in
12 terms of cost-effectiveness for our customers to other
13 published pricing of some contracts up in Southern's territory,
14 and these contracts are cost-effective against the other
15 contracts that have been produced in the market. So from the
16 standpoint that Southern could not force us to sign a contract,
17 we had other alternatives, and these were comparable prices to
18 other contracts, I don't believe that there's any way that
19 these could have market power implications against us taking
20 the power.

21 Q Did you have any discussions while at the negotiating
22 table about, well, what happens if market power is found to
23 exist?

24 A No, we did not.

25 MR. MOYLE: May I approach? (Inaudible. Microphone

1 off.)

2 CHAIRMAN BAEZ: Just a question from staff. This
3 is -- we don't administratively notice --

4 MS. VINING: We can, but it's up to you.

5 CHAIRMAN BAEZ: Would you suggest marking it instead
6 and make it simpler? I don't know. I'm in a gray area here.

7 MS. VINING: It probably would be simpler to just
8 mark it as an exhibit. It's up to you if you want to just take
9 administrative notice of it.

10 CHAIRMAN BAEZ: We'll mark it, that's fine. Show the
11 October 29th letter, FERC letter marked as Exhibit 67.

12 (Exhibit 67 marked for identification.)

13 BY MR. MOYLE:

14 Q Mr. Hartman, do you have a copy of the contracts in
15 front of you, the Scherer, Harris, and Franklin units?

16 A I have a copy of the redacted contracts.

17 Q I'm giving you an excerpt of the Franklin contract,
18 Article 12, Regulatory. I'm going to ask you to look at that
19 and confirm that that is indeed an excerpt of the contract.

20 MR. LITCHFIELD: Mr. Chairman, may I ask counsel to
21 clarify that any markings on the document that he has
22 distributed here this morning are not on the original?

23 CHAIRMAN BAEZ: Are you referring to the handwritten
24 markings, the circles and the line numbers?

25 MR. LITCHFIELD: Correct.

1 CHAIRMAN BAEZ: Okay.

2 MR. MOYLE: That was a notation I made to myself.

3 CHAIRMAN BAEZ: Very well.

4 BY MR. MOYLE:

5 Q Mr. Hartman, other than that notation, is this a true
6 and accurate copy of the relevant provisions of the Franklin
7 contract with respect to regulatory matters?

8 A Yes, it appears to comply with what we have in the
9 contract.

10 Q Okay. And would you also confirm that this
11 regulatory section is found in the Scherer contract and also
12 the Harris contract?

13 A Yes, they are.

14 Q And they're identical; correct?

15 A I believe some of the numbering has changed as far as
16 the sections, but the terms of the agreement are the same.

17 Q Okay. In Section 12.3.1 it says, "Moreover, it is
18 the parties' mutual intent that FERC be precluded, to the
19 fullest extent permitted by law, from altering this agreement
20 in any way."

21 My question is, do I read this to mean that should
22 FERC find that Southern has market power, that FPL would not
23 seek to have this deal changed in any way?

24 MR. LITCHFIELD: Counsel, I'm having trouble finding
25 the reference.

1 MR. MOYLE: It's about halfway down on 12.3.1, the
2 third sentence.

3 CHAIRMAN BAEZ: Mr. Moyle, can you restate your
4 question?

5 BY MR. MOYLE:

6 Q My question is, he was the one negotiating this. Am
7 I reading this and is it your understanding that this would
8 indicate that should FERC find that Southern has market power,
9 FPL would not seek to have this deal changed in any way?

10 A This says basically that the deal is the deal that
11 has been struck among the parties. It also has some further
12 provisions that go to the issue of, if the contract is changed
13 by FERC as a result of market power, what happens. From our
14 perspective, what it says is, you know, that the agreement
15 shouldn't have to be filed, it's a market power contract, and
16 we don't anticipate any issues nor are we supposed to do any.
17 This is the deal. I'd also point out that these provisions are
18 fairly common in market power contracts.

19 Q Okay. I asked you the question earlier, I thought,
20 that if you discussed market power at the negotiating table and
21 you told me no; is that right?

22 A I did tell you no. Nowhere in here does it use the
23 word "market power." That was not the reason for this being
24 put in. It is a typical provision on a market-based contract
25 that you don't need to do a filing, and the parties will try

1 and preserve their bargain. I've seen it in numerous other
2 contracts besides ones with Southern.

3 Q So this is language you're familiar with?

4 A It's the type of language I'm familiar with. It's
5 also normally the type of language that I mostly refer to my
6 FERC counsel to take a look at.

7 Q Reading on further down it talks about -- and I'll
8 quote, Notwithstanding the foregoing, if at any time FERC takes
9 some action that reduces the economic benefit of this agreement
10 to either party (impacted party) as contemplated on the
11 effective date (original economic benefit), impacted party
12 shall be deemed to have retained rights under Section 205 to
13 file for changes in the agreement, but only to the extent
14 required to restore the original economic benefit; is that
15 correct?

16 A That's correct. That's what it says.

17 Q Can you show me where the term "original economic
18 benefit" is defined?

19 A Reading the document on Page 56, original economic
20 benefit doesn't appear to be specifically defined. It does,
21 however, say, let me see, "Notwithstanding the foregoing, if at
22 any time FERC takes some action that reduces" -- and here's
23 where I would say original economic benefit is defined, it
24 says, "the economic benefit of this agreement to either party
25 as contemplated on the effective date."

1 Q Original economic benefit is not a defined term in
2 the agreement; is that correct?

3 MR. LITCHFIELD: I object. The witness just
4 indicated that it was and explained to Mr. Moyle how it was.

5 CHAIRMAN BAEZ: He answered the question.

6 BY MR. MOYLE:

7 Q What's your understanding of the term "original
8 economic benefit"? Is that the deal that was struck by the
9 parties?

10 A That's the deal that was struck by the parties.

11 Q Mr. Hartman, can you commit to this Public Service
12 Commission today that if FERC takes away Southern's
13 market-based rate authority pursuant to a market power
14 investigation, that FPL ratepayers will pay the lesser of the
15 price specified in the PPAs or Southern's cost-based rates?

16 A No, I can't specify that. I don't know what would
17 happen at FERC.

18 Q Mr. Hartman, are you aware if bundling products
19 together, linking a highly desired product with one that is
20 less desirable, is indicative of behavior of a market
21 participant who enjoys market power?

22 MR. LITCHFIELD: I'll object to the question. That's
23 entirely a legal analysis that Mr. Moyle is asking the witness
24 to weigh in on.

25 CHAIRMAN BAEZ: Sustained.

1 BY MR. MOYLE:

2 Q Mr. Hartman, I'm going to ask you some questions
3 about transmission. You filed prefiled testimony that talks
4 about transmission and are familiar with that issue, are you
5 not?

6 A Yes, sir, I am.

7 Q Okay. And indeed, as a condition precedent or a
8 condition, I'm not sure as a legal matter whether it's a
9 precedent or not, but that FPL needs to obtain firm
10 transmission rights from each generating facility; is that
11 correct?

12 A That's correct.

13 Q And when you said, "each generating facility," you
14 mean FPL's long-term point-to-point transmission service
15 agreement by which FPL transmits power across Southern under
16 the Scherer PPA; correct?

17 A It's unclear to me what your question is.

18 Q With respect to each generating facility, with the
19 point-to-point service, wouldn't that with respect to Scherer
20 reflect approximately 165 megawatts?

21 A It will reflect a little bit less than that because
22 Southern rates it at the delivery point. So it would be
23 165 megawatts less Southern's current losses.

24 Q What would the number be with respect to Harris,
25 under the Harris PPA, approximately?

1 A Again, I don't remember offhand. The total is
2 330 megawatts.

3 Q And this would be broken out pretty much along the
4 lines of the megawatt value of the contracts; is that right?

5 A Yes, that's correct.

6 Q Okay. In your prefiled testimony, Page 6, Lines 13
7 to 15, you state that if FPL is unable to obtain these firm
8 transmission rights by a date certain or -- or and at an
9 acceptable cost, FPL has the right to terminate the PPAs; is
10 that correct?

11 A That's correct.

12 Q With respect to the prices that are going to be paid,
13 Section 7.4.1 of the agreement, does that reflect the pricing
14 terms?

15 A Which contract are you looking at?

16 MR. LITCHFIELD: And I'll object to the form of the
17 question in that it is vague. Mr. Moyle has not identified
18 what pricing terms he's referring to.

19 BY MR. MOYLE:

20 Q Let me come at it this way. 7.4, buyer's request for
21 transmission service, you would agree that that is set forth in
22 the Scherer contract, would you not?

23 A I would agree that 7.4 in the Scherer contract is
24 buyer's request for transmission service, yes.

25 Q Okay. And you've suggested that the Commission must

1 act now or run the risk of losing these PPAs because this
2 first condition precedent about FPL receiving firm
3 point-to-point transmission service source from the Scherer
4 unit, the Franklin unit, and the Harris unit needs to be
5 obtained before this contract can be approved; is that correct?

6 A Again, I don't -- could you repeat the question? I
7 don't think I understand it.

8 Q Let me restate. When is it anticipated that you're
9 going to receive firm transmission rights?

10 A Anywhere between today and December of 2005.

11 Q December 2005?

12 A Correct.

13 Q Why did you pick that date?

14 A That's the last date in here. There's some treatment
15 in my rebuttal testimony as far as the schedule. Basically
16 it's 240 days from the time we applied for transmission, which
17 was in August.

18 MR. MOYLE: Mr. Chairman, I have a lot of questions
19 on transmission. I think what I'm going to do, he also talks
20 about transmission in his rebuttal, to move it along I'm going
21 to come back to this on some of his rebuttal stuff.

22 MR. LITCHFIELD: I have no objection to the extent
23 that we're not then revisiting Mr. Hartman's direct testimony.
24 I'm perfectly amenable to Mr. Hartman answering transmission
25 questions relating to the transmission issues that he takes on

in his direct -- excuse me, in his rebuttal, but to the extent that they're direct, I would object.

3 CHAIRMAN BAEZ: And here's one to take home,
4 everybody. This is the problem with getting into the hard
5 lines of direct and rebuttal and when splitting. I mean, I
6 understand the mechanics of it for emotional effect and
7 everything else, but as a practical matter, it becomes very
8 difficult to get into these kinds of arguments, and Mr. Moyle
9 is trying to reserve his ability to address his direct. You
10 know what? The ball is in your court, and you don't have to do
11 us any favors on that in that regard based on Mr. Litchfield's
12 objection.

13 MR. MOYLE: I'll plow through it out of not wanting
14 to deal with this issue later.

15 CHAIRMAN BAEZ: Go ahead.

16 BY MR. MOYLE:

17 Q Are you familiar with the Southern Transmission open
18 access tariff governing transmission service across the
Southern Transmission service territory?

A Yes.

 MR. MOYLE: And I have a copy of it. If I could ask
that official recognition be taken of the open access tariff of
Southern Company, which is effective December 14th, 2000. And
24 I'll give the witness a copy of it, and I can provide you a
25 copy of it as well.

1 MR. LITCHFIELD: Is counsel going to ask Mr. Hartman
2 to authenticate it or how is he proposing to --

3 MR. MOYLE: I'm going to ask him a couple of
4 questions about it. And I'd ask that official recognition be
5 taken of it.

6 CHAIRMAN BAEZ: Give me a moment because I'm
7 going to -- Mr. Litchfield, part of recognizing the tariff is
8 authentication. So, you know, if he's going to ask questions
9 on it, I'm just not sure from staff -- and is it something we
10 can take recognition of the OATT, is it the OATT that you're
11 offering up, Mr. Moyle?

12 MR. MOYLE: I'm going to ask him some questions about
13 the tariff. I mean, I can ask him whether he has
14 familiarity --

15 CHAIRMAN BAEZ: Which tariff is it?

16 MR. MOYLE: I'm sorry?

17 CHAIRMAN BAEZ: Which tariff is it?

18 MR. MOYLE: The open access tariff.

19 MR. LITCHFIELD: We just have no way of knowing
20 today -- we have to accept at face value that this is, in fact,
21 an accurate reproduction of Southern Company's current tariff
22 and that it is a complete copy of the current tariff and I just
23 have no way of knowing that today.

24 MR. MOYLE: I think I can deal with it this way. Let
25 me just walk him through, ask him some questions, I'm going to

1 refer him to a couple of sections. You know, he can either
2 have familiarity with the section and say, yeah, that's what it
3 says, I'm familiar with that, or he doesn't have familiarity
4 with it.

5 CHAIRMAN BAEZ: In the meantime, Mr. Litchfield --

6 MR. LITCHFIELD: We'd be willing to accept subject to
7 check that --

8 CHAIRMAN BAEZ: And there you go. I mean, I think we
9 can cross a line on conspiracy theories on just about anything,
10 and I'm not willing to engage in that kind.

11 MR. LITCHFIELD: No, I'm not suggesting conspiracy.

12 CHAIRMAN BAEZ: And my only question directed at
13 staff is, are FERC tariffs something that we can take
14 recognition of? I believe they are, and that Scherer, we'll
15 take recognition of it. That should take care of any
16 authentication issues over the document.

17 Mr. Moyle, you're going to ask questions that the
18 witness I think you'll recognize may not have knowledge of. So
19 I don't know how fertile this ground is, but as for recognition
20 of the tariff, it has been had. Ask your questions.

21 MR. MOYLE: Thank you.

22 BY MR. MOYLE:

23 Q Mr. Hartman, per the Southern transmission system
24 tariff, isn't it true that before firm point-to-point
25 transmission service sourced from the Scherer unit to Franklin

1 unit and the Harris unit to FPL can be confirmed, FPL must
2 first enter a rollover request on the Southern OASIS system; is
3 that right?

4 A Your statement was from Scherer to Franklin?

5 Q A source from Scherer, Franklin, and Harris, before
6 it can be sourced out of there, you must first enter a rollover
7 request on the Southern OASIS system; correct?

8 A In order to obtain it in this instance, yes.

9 Q Okay. And then Southern must complete an applicable
10 study process associated with that rollover request; correct?

11 A That's correct.

12 Q And then they must make FPL an offer of such
13 point-to-point transmission service sourced from the Scherer
14 and the Miller unit to FPL per the rollover request; is that
15 correct?

16 A That's correct.

17 Q And then FPL must accept that offer and enter into a
18 transmission service agreement for such rolled over
19 point-to-point transmission service?

20 A Or reject it.

21 Q Okay. Do you anticipate accepting the agreement
22 that's provided to you?

23 A I anticipate we're going to be in a position to
24 accept it, yes.

25 Q Have you received the system impact study results yet

1 on the rollover request?

2 A No, I have not.

3 Q Do you know if the process for approval of the
4 rollover request is going to be completed before February 2005?

5 A I know that I have been in discussions with Southern
6 Transmission, and we anticipate they're going to be approving
7 the rollover request of our existing rights, which would be
8 Miller and Scherer to FPL, which is the first step, basically
9 any day now. And then the redirect, I don't know when they
10 will be approving that one. I will also point out that one of
11 the reasons why the units that we're using were chosen was to
12 make that redirect a very high likelihood.

13 Q Okay. And rather than walk through all these
14 questions, if I understand the transmission process, and I'm
15 not sure that I do that well, but first, you have to try to get
16 a redirect approval, correct, where you say -- I'm sorry, you
17 get rollover right approval where you say, we have this
18 contract under Scherer, we have another deal here for the same
19 megawatts, we want to rollover our existing rights with Scherer
20 into these new agreements? Is that essentially it?

21 A That's correct.

22 Q And then after they come back and from your
23 perspective hopefully say yes, then you have to say, well, now
24 we have a redirect request because we're not going to take all
25 the megawatts out of Scherer, we're going to split them up into

1 some other unit, so we're going to ask you to look at a
2 redirect; is that correct?

3 A That's correct.

4 Q And with respect to the redirect request, that's
5 something that has to be studied, does it not, by Southern
6 Transmission?

7 A Yes, it does.

8 Q Let me refer you to Section 22.2 of the tariff, and
9 ask you if that is a section that addresses what we've been
10 talking about.

11 A That's correct.

12 Q Okay. And that's called modification on a firm
13 basis. Has FPL put its redirect request in to Southern for the
14 rolled over point-to-point transmission service modifying the
15 source receipt point at this point in time?

16 A We have told Southern what our new source and receipt
17 points are. We've given them the information necessary to do
18 the study. We have not yet filed it on OASIS.

19 Q So it's not showing up on OASIS?

20 A It is not yet showing up on OASIS.

21 Q Do you know when it's going to show up on OASIS?

22 A It will show up on OASIS as soon as we get the
23 confirmation of the rollover.

24 Q And then once that happens, then that shows up on
25 OASIS, and Southern begins this redirect study?

1 A That's correct.

2 Q And this process could take additional time, could it
3 not?

4 A It could.

5 Q Mr. Hartman, are you familiar with Section 17 of the
6 tariff?

7 A Yes, in general.

8 Q And there's not a time certain when you're going to
9 know when these redirect requests are going to be acted on; is
10 that correct?

11 A There is not a time certain. However, Section 19 of
12 the tariff specifies certain expected times that Southern's
13 are required to adhere to unless there's extraordinary
14 circumstances. And if they don't adhere to those times, then
15 you can go back to the FERC.

16 Q And there could be additional costs associated with
17 this redirect study; isn't that correct?

18 A There could be. Again, one of the reasons why we're
19 using the facilities we're using is specifically to avoid those
20 problems.

21 Q And has Southern studied what those problems are
22 going to be at this point?

23 A I don't know if they have or not.

24 Q And there could be additional costs if the study
25 comes back and indicates that transmission upgrades need to be

1 made due to the redirect requests; isn't that correct?

2 A It's possible, but highly unlikely.

3 Q Okay. But it's another variable that's out there
4 with respect to possible impacts of transmission costs?

5 A That's correct.

6 Q Okay. Has FPL established a dollar amount that it
7 will not go above as it relates to these possible unknown
8 transmission costs?

9 MR. LITCHFIELD: I'll object to the question to the
10 extent that it may require Mr. Hartman to disclose confidential
11 terms of the redacted portion of the contract, but to the
12 extent he can do so without so disclosing, the witness should
13 answer.

14 CHAIRMAN BAEZ: Those would have been my instructions
15 precisely, Mr. Hartman.

16 THE WITNESS: In the contract, particularly 7.4 which
17 you pointed out earlier, there are some provisions that govern
18 exactly the circumstance. And one of the things you'll notice
19 is on Page 33 of the Scherer contract in Section 7.4.2, it
20 identifies that we will separately point out any part of the
21 transmission cost that is above the long-term firm transmission
22 service under the OATT. And in that circumstance, we can bring
23 that back to Southern, or Southern Company Services in this
24 case, and they can offer to do a number of things to get rid of
25 that problem, including providing part of that service to us at

1 that rate rather than the system upgrades that might be
2 necessary.

3 There are some other provisions that again basically
4 keep us back towards the OATT price, the open access
5 transmission tariff. The key issue though is whenever we were
6 looking at doing these facilities, doing these contracts, we
7 studied the Southern transmission system. We ran the load flow
8 models. We did the analysis and determined that as best our
9 transmission system planning department can do, there is no
10 system upgrades necessary, and there's no reason why we can't
11 get transmission from these facilities under the long-term
12 tariff rate.

13 Q Now, the studies you've done, they're not binding on
14 Southern's transmission analysis, are they?

15 A No, they're not

16 Q And if I understood your answer, that you're going to
17 try to stick to the OATT tariff price; is that right? That if
18 it's higher than that, you're going to go back to Southern and
19 see what they can do to stick to the OATT price; is that right?

20 A That's correct. That's what the contract specifies.

21 Q Does it require that they give you the OATT price
22 regardless?

23 A No, it does not

24 Q And do you recall when you were asked in your
25 deposition about these rights and whatnot you had indicated

1 that if you had to pay 200 million in system improvements, that
2 wouldn't be an acceptable price?

3 A That's correct.

4 Q Okay. And as we sit here today, all the numbers that
5 you've provided to the Commission in terms of the value of
6 these contracts, they don't include any possible transmission
7 system upgrades that Southern could come back with, do they?

8 A No. They're based on the open access transmission
9 tariff for the reason being that it's very unlikely there's
10 going to be other costs.

11 Q Okay. If there were other costs, would you
12 anticipate bringing that back to the Commission to see if they
13 were comfortable with those costs, or would it be you would
14 just go ahead and move forward with the deal?

15 A There is some provisions in the contract that
16 specifically address that.

17 Q Are those confidential provisions?

18 A Yes, they are.

19 Q And I haven't seen those, have I?

20 A I hope not.

21 Q All right. I have a few more questions, Mr. Hartman.
22 Are you aware that FPC also has an arrangement with Southern to
23 take power beginning in the summer of 2010?

24 A I'm aware of the fact that FPC has at one time had
25 filed a term sheet in this docket for it.

1 Q Are you aware that that term sheet is no longer part
2 of this docket?

3 A Yes, I am.

4 Q What's your understanding of Southern's ability to
5 terminate this deal?

6 A There are a number of circumstances under which
7 Southern can terminate the contracts.

8 Q Can you refer to those to me in the contract?

9 A Well, key one is, of course, if we default, they can
10 terminate the contract. If we fail to get approval from the
11 Public Service Commission, then we're in a situation where, I
12 believe, they can terminate the contract if we don't waive it,
13 waive the approval. And there are some circumstances in the
14 section dealing with transmission, Section 7.4, under which
15 Southern can terminate the contract.

16 Q And you had mentioned about whether you don't get PSC
17 approval. Isn't it true that you don't need PSC approval in
18 order to move forward with this deal?

19 MR. LITCHFIELD: Object to the question on the
20 grounds that it calls for a legal conclusion.

21 MR. MOYLE: Just his understanding.

22 CHAIRMAN BAEZ: I'll allow it.

23 THE WITNESS: Clearly FPL could waive the requirement
24 for FPSC approval. It would be my recommendation to management
25 if the FPSC does not approve of this contract, that we don't

1 waive such obligation and that we terminate it. The contract
2 is of no benefit to our shareholders. It's a benefit to our
3 customers. And I don't see why our shareholders should take a
4 risk for no return.

5 BY MR. MOYLE:

6 Q Okay. And I handed out an excerpt of the contract
7 earlier and had that little note 12.1.3. Is that the provision
8 that you're referring to that gives you the option to continue
9 the agreement regardless of PSC approval?

10 A That's correct, that's part of it.

11 Q Okay. So if Florida Power & Light thinks this is --
12 is convinced this is such a great deal, it has the option, does
13 it not, to move forward with it, and then subsequently in the
14 year 2010 bring it back to a future Commission to consider in
15 the fuel adjustment clause?

16 A I would clearly not recommend our management do
17 anything so foolish. Why should we be in a situation where
18 we're going to take on a risk on the contract that we have,
19 okay, it's bringing benefits to our customers, now you're
20 putting us in a position where if we approve this, come 2010,
21 if it's a great deal, our customers get all the benefit; if
22 it's not a great deal because coal, for example, is now, you
23 know, wildly out of the market, then our shareholders take the
24 risk, I would not recommend that to anyone.

25 Q Okay. So instead, you'll ask this Commission to make

1 a decision now to give you kind of a stamp of approval for
2 something that's going to take place in 2010, is that right, in
3 terms of market conditions and whatnot?

4 A Well, you have to make decisions all the time about
5 what's going to happen in 2010 or 2015. We have to build
6 plants to meet a need in 2012, 2015. That's a decision that
7 has to be made. The issue here that you're asking is, should
8 our shareholders take the risk for purely a customer benefit?
9 And I don't think anyone would ask that of a shareholder of any
10 company. What we're doing is we have a contract that we
11 clearly feel is in the customer's best interest. All of the
12 benefits flow to the customer.

13 Is the future uncertain? Yes. But we have to make
14 those decisions anyway. If we don't do this deal, we'd
15 probably wind up building a power plant. That's a much longer
16 decision than doing a five-year deal and carries significant
17 risk with it also.

18 Q Do you know when the Scherer plant --

19 COMMISSIONER DEASON: Excuse me.

20 MR. MOYLE: I'm sorry.

21 CHAIRMAN BAEZ: Hold on, Mr. Moyle.

22 COMMISSIONER DEASON: This is an area that I was
23 going to ask the witness about, and since we're on the subject,
24 with Mr. Moyle's indulgence, I'd like to ask a few questions.

25 CHAIRMAN BAEZ: Please.

1 COMMISSIONER DEASON: Mr. Hartman, I'm looking to
2 determine what -- when you say "approval of the FPSC," what do
3 you envision? To what extent of an approval are you looking
4 for? Unconditional approval? Under any circumstance?

5 Are you looking for us to make a determination that
6 based upon the information we have at this time it appears to
7 be a cost-effective, prudent decision? Are you looking for
8 approval consistent with that that we would give if this were a
9 normal need determination, at the end of that process just like
10 we did recently for FPL's latest expansion of its generation?
11 What type of approval is contemplated in the contract, in your
12 understanding of what the contract terms are?

13 THE WITNESS: Well, again, you might be asking me
14 things well over my head and out of my expertise.

15 COMMISSIONER DEASON: Well, that may be, but you're
16 the one that -- this is in your testimony and you're the
17 witness to address it, so I don't have anybody else to ask.

18 THE WITNESS: My understanding of what we're asking
19 is, we're asking that whenever we incur costs under this
20 contract, which will be 2010, we can basically recover those
21 costs from our customers because we're entering it on our
22 customers' best interest. If the power costs whatever it
23 costs, then fine. We recover it from the customers, assuming
24 that we go ahead and administer that contract and use that
25 contract in a prudent fashion. I don't believe we're asking

1 for, you know, an issue of if we're imprudent or reckless as to
2 how we dispatch the plants or anything else, that that's
3 necessarily recoverable, but that it's a prudent deal, a deal
4 appears to be in our customers' best interest. We're not
5 asking for anything for our shareholders on it that, okay, to
6 the extent, you know, you do this deal, you can recover the
7 cost from the customers when the costs come in.

8 CHAIRMAN BAEZ: Mr. Moyle.

9 BY MR. MOYLE:

10 Q So if I understand it, you're basically asking that
11 this Commission bind a future Commission in the years 2010 to
12 2015 with respect to recovery of those costs, absent some kind
13 of a malfeasance event on behalf of FPL?

14 MR. LITCHFIELD: Object to the extent it calls for a
15 legal conclusion; otherwise, the witness can answer.

16 THE WITNESS: Well, the issue is whether this
17 Commission can bind a future decision -- a future Commission as
18 far as a decision, and I doubt if they can. What we're asking
19 is for this Commission to say, yes, we think this is in the
20 customers' best interest; yes, you should be able to recover
21 from the customers. What a future Commission does I have no
22 idea right now.

23 BY MR. MOYLE:

24 Q You would agree with me, would you not, as a general
25 rule it's easier to predict market conditions at a future point

1 in time the closer you are to that point in time?

2 A Yes, I would agree with that.

3 Q Do you have any familiarity with standard offer
4 contracts and utilities' efforts to reduce the standard term on
5 standard offer contracts from ten years to five years due to
6 concerns about future prices that may not be best deals for the
7 ratepayers?

8 A I've seen standard offer contracts all over the
9 place. I've seen efforts to make standard offer contracts
10 longer in term also.

11 Q Have you seen efforts to make some shorter as well?

12 A Yes, I have.

13 Q Do you know if part of that was premised on --

14 CHAIRMAN BAEZ: Hold on, Mr. Moyle.

15 MR. MOYLE: I'm sorry.

16 CHAIRMAN BAEZ: Go ahead.

17 THE WITNESS: I've seen standard offer contracts and
18 I've negotiated standard offer contracts that were shorter in
19 tenor. And the reason why they were shorter is people could
20 not get the financing to buy the fuel necessary for the plants.
21 So there's a lot of reasons why they might be shorter and
22 longer. One of the objectives of a long-term contract is to
23 reduce some of the risks for the customers. So I've seen
24 utilities go out and negotiate a longer term contract at a
25 fixed price for the same reason.

1 Q Right. But you would agree with me, would you not,
2 that if you were wanting to try to pay market prices, that one
3 way to do that would be to ink deals at a point in time closer
4 to when the actual commodity was due to be delivered as
5 compared to further out in time, correct, as a general
6 proposition?

7 A As a general proposition, a shorter term deal gets
8 rid of the risk that the deal is off-market. Okay. I will
9 also point out that whenever you take that to a ridiculous
10 extreme, you wind up with a situation where the utilities are
11 only allowed to buy in the spot market and pricing becomes very
12 volatile. Okay. That's led to bankruptcy of utilities, as you
13 and I both know.

14 Q Scherer is one of the units that you're taking power
15 out of in this; is that right?

16 A That's correct.

17 Q Do you know when that was built?

18 A No, offhand I don't.

19 Q It's a coal-fired unit?

20 A It is a coal-fired unit.

21 Q Are you aware of federal legislative changes in the
22 early '90s with respect to Clean Air that was made?

23 A I'm aware of some of them.

24 Q What's that generally termed?

25 A You're talking about the Clean Air Act?

1 Q Yes.

2 New source review, does that mean anything to you?

3 A I'm familiar with it.

4 Q What is your understanding?

5 A It has to do with the need whenever you're doing a
6 major upgrade rather than routine maintenance or normal
7 maintenance on a plant to get a new air permit for it.

8 Q Do you know if the Scherer unit has had to go through
9 that process?

10 A I understand that's a matter of dispute.

11 Q Currently?

12 A I don't know whether it's current or not. I know at
13 one time it was disputed.

14 Q But you don't know what the status of that is as we
15 sit here today?

16 A No, I do not know.

17 Q That document that I handed you earlier, the excerpt
18 from the contract --

19 A Yes.

20 Q -- 13.1 -- I'm sorry, 13 is entitled, "Change In
21 Law," is it not?

22 A Yes, it is.

23 Q Okay. Would you read for the record the two
24 sentences under 13.1 entitled, "Increased Generation Costs."

25 A "The parties acknowledge that during the term of this

1 agreement, changes in law that increase seller's cost of
2 providing capacity and/or energy hereunder could occur. Any
3 increased generation costs will be paid by buyer through an
4 additional payment or surcharge each month ("Change in Law
5 Surcharge").

6 Q Is it your understanding that any modifications made
7 to the Scherer plant that increase the cost of -- to Southern
8 could potentially be recovered under this clause?

9 A I think that's overly generous. Change in law has a
10 very defined set of terms in the contract. So changes in the
11 facility caused specifically by a change in law as defined in
12 the contract, part of it could be recovered under the contract,
13 yes.

14 Q Okay. So if Congress next year, hypothetically
15 speaking, passed some regulations that required additional
16 environmental controls or whatnot or any other costs with
17 respect to the operation of Scherer or Harris or Franklin and
18 Southern needed to make those changes, isn't it true that FPL
19 would bear the burden of paying some moneys for that change in
20 law?

21 A FPL and our customers would bear the cost of paying
22 some of the changes that are associated with it. Now, the
23 example you used was a change in regulatory cost. So let us
24 presume it takes a major capital investment. That might have a
25 20-year life. We're looking at a five-year contract. So we

1 would pay our proportionate share of it during that life. Yes,
2 that's true.

3 You would also have that -- if we didn't have that
4 provision, then that risk would be built into the contract in
5 terms of its pricing. So we're sitting there with a price that
6 is pretty good and we take that risk just like we do on our
7 existing plants.

8 Q Isn't true in the RFP that you-all issued not too
9 long ago where you attached a PPA document to it that the
10 change in law risk was not borne by FPL but was borne by the
11 seller of the electricity?

12 A That is the way it was written in the PPA. That was
13 not a minimum requirement to the RFP, and the PPA was put out
14 there for negotiation purposes.

15 Q But in this document it's the reverse; correct?

16 A No. In this document, which is a final contract, the
17 risk is borne by us. Okay. Now, you're saying the PPA said
18 the risk goes to the seller. It did. Okay. But that was not
19 a minimum requirement to the RFP. And as I pointed out, the
20 costs could be borne ultimately by the customers no matter what
21 occurs. It's do you build it into the price to begin with and
22 pay for it whether it occurs or not, or just pay it if it
23 occurs?

24 Q And, Mr. Hartman, I understand, I mean, part of the
25 reason I'm asking the question is because this Commission,

1 you're asking them to consider whether this is a good deal.
2 And in your PPAs that you attached to your RFP, the change in
3 law risk was borne by people selling power to you, as I
4 understand it. But if I understand what this says is that in
5 this situation that risk is borne by you, the buyer; is that
6 correct?

7 MR. LITCHFIELD: Asked and answered.

8 CHAIRMAN BAEZ: The witness did answer the question.

9 THE WITNESS: The issue is that nobody signed those
10 PPAs. Our negotiating point, our beginning point was, okay,
11 the seller bears the risk. But nobody has signed those PPAs.
12 They're not a minimum requirement that it has to be that way.
13 It's always a sharing of risk. It's an issue of, okay, if the
14 PPA says it's all on the seller's account, would they reduce
15 the price, and how much would they reduce the price, and where
16 does the risk lie?

17 Q Mr. Hartman, isn't it true that FPL's senior
18 management had some concerns about certain provisions of this
19 deal?

20 A There were some issues that our management was not
21 necessarily all that happy about at the end of the day. I
22 think they're relatively minor. You know, we've stated
23 publicly in this proceeding that we would prefer to have more
24 coal rather than less.

25 Q And isn't it true that you had some trouble getting

senior management to sign off on certain pieces of this deal?

2 A No. By the time we were done, the deal was on the
3 table senior management was very happy with, and it was in our
4 customers' best interest. What we did have is some number of
5 details. The overall package is good, but one of the issues
6 that up until August 11th, whenever the contract was signed,
7 had to do with a two-hour change in the dispatch schedule for
8 Franklin. Overall, the deal is good.

9 Q At your deposition, you have it in front of you
10 still, do you not, Page 82?

11 I asked you the question, "Who do you think got the
12 better end of these negotiations that you had with Southern?"

13 And your answer was, I quote, At the end of the
14 negotiations, both parties were not particularly thinking that
15 they had snookered the other one. I know that my counterpart
16 at Southern that I was negotiating with had some trouble
17 getting a couple of things through his management. I know we
18 had some issues on our side. I think it wound up to be a fair
19 bargain.

20 Do you still stand by that testimony?

21 A Yes, I do. Our management would still prefer to have
22 100 percent coal rather than some gas and some coal. The deal
23 is a good one as it sits. I know that the guy that signed the
24 contract would still be happier if we had two hours less notice
25 on the Franklin dispatch.

1 Q Do you think that you got a good deal for FPL if its
2 objective was to retain coal-fired generating capacity and you
3 went from 930 megawatts of coal-fired generating capacity down
4 to 165 of coal-fired generating capacity?

5 MR. LITCHFIELD: I'll object to the question. I
6 think it improperly frames an assumption that he attributes to
7 something in Mr. Hartman's testimony, and I don't believe that
8 Mr. Hartman has testified to that.

9 CHAIRMAN BAEZ: Can you restate your question?

10 BY MR. MOYLE:

11 Q With respect to the -- am I correct in that one of
12 the things that was important for you was to be able to retain
13 coal-fired generation?

14 A Yes, that's true.

15 Q And with respect to that being an important piece of
16 it, do you think that piece was satisfied when at the end of
17 the day under the existing UPS agreements, you have, what,
18 930 megawatts of coal-fired generation; correct?

19 A That's correct.

20 Q And under these agreements, your coal-fired
21 generation will be 165 megawatts; correct?

22 A The coal-fired generation under these agreements is
23 165 megawatts. That's the firm coal. We also have the
24 capability of buying coal off-peak, and for that reason I think
25 that's one of the reasons why management is quite happy with

1 it. And also, I'd refer to the fact that, you know, this is a
2 good deal for the customers.

3 MR. MOYLE: I have nothing further.

4 CHAIRMAN BAEZ: Thank you, Mr. Moyle.

5 Staff, how much cross do you have, as an estimate?

6 MS. VINING: More than 15 minutes.

7 CHAIRMAN BAEZ: All right. Let's run it as close to
8 noon. If you can find a good breaking point, then take it.

9 MS. VINING: Okay.

10 CHAIRMAN BAEZ: All right. Go ahead, Ms. Vining.

11 CROSS EXAMINATION

12 BY MS VINING:

13 Q Okay. Mr. Hartman, on some of my questions I'll be
14 referring to some of the FPL responses to staff interrogatories
15 that you should already have in front of you, and those were
16 Exhibit 2, staff's composite stipulated exhibit.

17 Can you tell me what the total capacity of the
18 Southern Company Florida transmission interface is?

19 A No, I'm afraid I can't. It isn't an issue here.
20 We're right now bringing in 930 megawatts from our existing UPS
21 contracts. That's the same amount we're looking at bringing in
22 from these particular contracts. So I know we have the
23 capacity to handle it across the interface.

24 Q So you don't know specifically what FPL's share of
25 that interface is?

1 A Offhand I don't know. It wasn't an issue.

2 Q But it's at least 955 megawatts?

3 A We're already bringing that much in under the
4 existing UPS agreements.

5 Q Will FPL still own its share of the Southern Company
6 Florida transmission interface if the proposed contracts are
7 not approved?

8 A Excuse me. I didn't hear that one.

9 Q I'm sorry. Will FPL still own its share of that
10 interface if the proposed Southern Company contracts are not
11 approved?

12 A If the Southern Company contracts are not approved,
13 we will still own the physical asset. However, we'll lose the
14 rights to use them because what will happen is we have to post
15 on the -- our OASIS system that these rights are no longer
16 being used by FPL, and they're open for the use of others. And
17 as I've already testified, you could have a price difference
18 between Southern and Florida, and anyone can go in there and
19 buy that capacity, buy that transmission capacity, and we would
20 anticipate others would.

21 Q I know you talked early about Southern's open access
22 transmission tariff. Now, under that tariff, would FPL pay the
23 same amount for rollover rights of the existing transmission
24 service as it paid for new firm transmission on Southern's
25 system?

1 A Yes, we would. The pricing is exactly the same.

2 Q Now, is nonfirm transmission on Southern's system
3 cheaper than firm service?

4 A Nonfirm is cheaper than firm. The problem in that
5 case is that it might be less expensive, but we couldn't
6 guarantee to get our power on through because firm transmission
7 always has priority over nonfirm.

8 Q Do you know what the difference is between nonfirm
9 and firm?

10 A I haven't looked at it. Okay. One of the keys to
11 doing this -- you know, in terms of reliability, if nothing
12 else, for our customers in order to look at these contracts as
13 part of our reserves is we have to have the firm transmission.

14 Q So is it your position that if FPL were to try and
15 purchase nonfirm economy energy, you wouldn't be able to
16 acquire nonfirm transmission service on a regular basis, let's
17 say?

18 A On a regular basis, the trouble with doing as you
19 suggested is, when the nonfirm would be available is the times
20 whenever the price difference didn't exist because the firm
21 transmission owners get the first shot at bringing in the
22 power. So if there's off-peak cheap power available, firm
23 transmission will be using the rights across the interface to
24 bring it in. If you get a nonfirm, the only time you're going
25 to be able to use it is whenever it's not economic to play that

1 difference in pricing between the two markets.

2 Q So based on what you just said, it would seldom be
3 economic for you to make those purchases if you had nonfirm
4 transmission?

5 A With nonfirm transmission, it would be almost
6 impossible to make economic purchases.

7 Q In the proposed contracts, did FPL choose the
8 Franklin and Harris combined cycle plants because these units
9 are along the same transmission pathway as the Miller coal
10 plant?

11 A We chose the plants because the analysis indicated
12 that they had almost or at least very minimal impact, if any,
13 on system flows. So they can be deemed to be on the
14 transmission path that Miller is. If you take a look
15 physically, they're located very near the transmission line
16 that Miller comes in now. So as a result, we anticipate that
17 rollover will be approved, redirect will be approved, and that
18 there will be probably no increased costs for system changes.

19 Q Could FPL make economy energy purchases --

20 COMMISSIONER DEASON: Excuse me. Just a let me ask a
21 question.

22 MS. VINING: Okay.

23 COMMISSIONER DEASON: Do you have a map that shows
24 the location of the plants on the Southern transmission system?
25 Is that part of your testimony?

1 THE WITNESS: It isn't part of my testimony.

2 COMMISSIONER DEASON: It is not. I looked for it; I
3 couldn't find it. I just was wondering. Thank you.

4 THE WITNESS: It used to be on Southern's OASIS
5 network. They showed a map of their transmission grid and had
6 locations of the various plants. Unfortunately, with certain
7 security considerations that have come up almost every utility
8 have pulled those maps off their Web site.

9 CHAIRMAN BAEZ: Commissioner Deason, is that
10 something you would like to see?

11 COMMISSIONER DEASON: I think it would be helpful to
12 see how it fits into the transmission system. Is this
13 something that we can obtain?

14 CHAIRMAN BAEZ: Is that something that we could
15 obtain?

16 MR. LITCHFIELD: We're amenable to providing that as
17 a late-filed exhibit, and we'll determine what, if any,
18 confidential protection we would need to ask for at that point.

19 CHAIRMAN BAEZ: By all means, if you can arrange
20 that. Thank you.

21 MR. LITCHFIELD: Shall we identify it?

22 CHAIRMAN BAEZ: Sure. We'll call it 68, and that's
23 a -- let me make sure I got the request correctly. What you
24 need is a map detailing plant locations and I'm assuming the
25 transmission path that is being referred to.

1 COMMISSIONER DEASON: Yeah, I would like to see the
2 plants that are the subject of this agreement, those locations
3 on a transmission grid map that kind of shows where the main
4 transmission lines are in Georgia and how the anticipated flows
5 would be to connect to the interconnect.

6 THE WITNESS: I understand what you're asking,
7 Commissioner. We can get that to you.

8 CHAIRMAN BAEZ: We'll mark that 68 and with
9 confidentiality to be determined.

10 (Late-Filed Exhibit 68 identified.)

11 MR. MOYLE: Mr. Chairman, I don't know if this will
12 help with Commissioner Deason's inquiry or not, but with
13 Mr. Dismukes, who's going to testify later, he attached an
14 exhibit to his testimony that showed plant locations up in
15 Georgia and Alabama if that's of interest.

16 CHAIRMAN BAEZ: Thank you. Go ahead, Ms. Vining.

17 BY MS. VINING:

18 Q Can FPL make economy energy purchases from Southern
19 Company only when not dispatching the Franklin, Harris, and
20 Scherer units under the proposed agreements?

21 A Yes, that's true if we're using the transmission to
22 provide the economy energy, but the dispatching of the
23 Franklin, Harris, and Scherer units becomes an interesting
24 problem. There are times whenever the Franklin, Harris, and
25 Scherer units might be less expensive than our marginal unit on

1 our system, which would logically conclude that, okay, dispatch
2 these units and bring the power down. But we also have to take
3 a look at the market price that's available out there in the
4 Southern territory at that time. So there will be instances
5 where the Scherer or Franklin unit would be cost-effective for
6 us to dispatch to meet our system needs whenever we look at our
7 system, but we can actually buy power cheaper in the market up
8 there than these units are dispatching, in which case we would
9 keep these units off-line and bring the lower cost power in.

10 Q Okay. In FPL's response to Staff Interrogatory 43,
11 which I believe you have in front of you.

12 A Yes, I have it.

13 Q Okay. You state this under certain conditions FPL
14 can dispatch the units under contract and sell their output to
15 the market; correct?

16 A That's correct.

17 Q Now, what happens to the generation and transmission
18 revenues received by FPL under those circumstances?

19 A It goes to our customers. Okay. I mean, we're
20 looking at using this to benefit our customers. So to the
21 extent that we dispatch these off and do economy purchases,
22 that benefit flows on through the clause that we're asking for
23 recovery on.

24 Q As a credit back to the consumers?

25 A That's correct.

1 Q Now, does having the firm point-to-point transmission
2 service as opposed to the nonfirm transmission service help FPL
3 purchase power from other providers than Southern?

4 A Very definitely. The advantage of the firm
5 point-to-point transmission service that we get with rollover
6 is the fact that we can dependably bring the power from
7 Southern's system into ours. Southern's open access
8 transmission tariff has a, to me at least, rather unusual
9 provision that we can move that power firm on 24-hour notice.
10 So if we have power that we're buying from -- we're bringing
11 in, for example, from the Harris plant and there is a different
12 plant that can provide power more cost-effectively to us, 24
13 hours ahead of time we can tell Southern Transmission that we
14 want to bring the power from that other plant that's cheaper
15 and bring it in every bit as firm as we do under the existing
16 arrangements.

17 Q Okay. In that scenario which you just outlined, that
18 would allow you to obtain economy energy with no incremental
19 transmission costs; is that correct?

20 A All the economy energy we're talking about in here
21 has no incremental transmission costs.

22 Q Now, you also stated yesterday, I believe, in
23 response to some of the questions from Mr. McGlothlin that FPL
24 could redirect the transmission rights on a nonfirm basis with
25 a one-hour notice as well?

1 A That's correct. If the plants trip or whatever,
2 okay, on a nonfirm basis, we can just go ahead and put in an --
3 they call it an e-tag and notify the transmission provider we
4 want to take it from a different plant. And again, the trouble
5 with that is it is nonfirm. So if that gets interrupted, it
6 gets interrupted. But an hour ahead we can move the power
7 around.

8 Q And how much of the economy energy that FPL generally
9 purchases is done with more or less than one-hour notice? In
10 other words, is the majority done with less than one-hour
11 notice, or do you generally need more than an hour notice?

12 A In most of the cases what we're going to be looking
13 at doing in these particular contracts is off-peak economy
14 energy purchases. And we're pretty much going to know ahead of
15 time, well enough ahead of time to get the firm transmission
16 when we're going to do it. You know that the plants are going
17 to be -- the gas plants are going to be off-line, you know,
18 over the weekend, for example, and we'll be buying economy
19 energy or in the spring and the fall. So most of the time I
20 anticipate we will be able to get the economy energy purchases
21 on a firm basis.

22 Q Now, if, let's say, you make that request 24 hours
23 ahead of time and it's not available, what would FPL do about
24 buying economy energy and the associated transmission?

25 A Well, if it was unavailable for the firm service, we

1 still have firm service to our existing plant, be it, Scherer
2 or Harris or Franklin, and can dispatch that plant to meet our
3 system needs.

4 Q Same question with regard to the nonfirm transmission
5 with the one-hour notice. Would your answer be the same?

6 A The answer is basically the same except if you moved
7 it somewhere else and you're trying to schedule it nonfirm, you
8 still have that other restriction in the sense that it is still
9 nonfirm whenever you notify it an hour ahead of time.

10 Q So in the end, this right you'd have for firm
11 point-to-point transmission with the 24-hour notice, and that
12 right is associated with the PPAs, that gives FPL priority over
13 other requests for short-term transmission; is that correct?

14 A Yes, it does. One of the key benefits of this is
15 where the problem on receiving firm transmission into Florida,
16 it all concentrates at the Florida border. There's a fair bit
17 of transmission available inside Southern's territory to go to
18 different units. It's trying to get across the boundaries that
19 tends to be a problem. And our firm point-to-point with
20 rollover will get us into Florida. So we anticipate very
21 little problem in moving our firm point-to-point to any other
22 site within Southern's territory.

23 MS. VINING: Mr. Chairman, I think that would be a
24 natural break in the questioning.

25 CHAIRMAN BAEZ: Very well. Thank you. We will

1 recess and reconvene at 1:30.

2 (Lunch break.)

3 (Transcript continues in sequence with Volume 6.)

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1 STATE OF FLORIDA)
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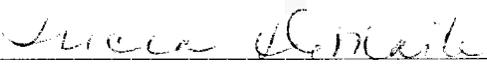
3
4 WE, LINDA BOLES, RPR, and TRICIA DeMARTE, RPR,
5 Official Commission Reporters, do hereby certify that the
6 foregoing proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that we stenographically
9 reported the said proceedings; that the same has been
10 transcribed under our direct supervision; and that this
11 transcript constitutes a true transcription of our notes of
12 said proceedings.

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

18 DATED THIS 17th DAY OF NOVEMBER, 2004.

19 
20 _____
21 LINDA BOLES, RPR
22 FPSC Official Commission Reporter
23 (850) 413-6734

24 
25 _____
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