

STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

COPY

CLARENCE ROWE,)
)
 Petitioner,)
)
 vs.)
)
 OLEANDER Power Project, L.P.,)
 and Department OF ENVIRONMENTAL)
 PROTECTION,)
)
 Respondent.)

CASE NO.: 99-2581

* * * * *

TRANSCRIPT OF PROCEEDINGS
VOLUME II

* * * * *

The above and foregoing cause having come to be heard
 before DANIEL MANRY, Administrative Law Judge, on August 30,
 1999, at the hour of 9:30 a.m., at the Brevard County
 Government Center, Building B, 2725 Fran Jamieson Way, in
 the City of Viera, County of Brevard, State of Florida, for
 the purpose of taking testimony in said cause.

REPORTED BY:

DEBRA M. ARTER
 Registered Diplomate Reporter

ASSOCIATED COURT REPORTERS
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A P P E A R A N C E S

FOR THE PETITIONER:

CLARENCE ROWE
(Pro se)

FOR THE RESPONDENT OLEANDER:

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Landers & Parsons, P.A.
310 West College Avenue
Tallahassee, Florida 32301

FOR THE RESPONDENT DEP:

SCOTT A. GOORLAND, ESQUIRE
Assistant General Counsel
3900 Commonwealth Boulevard, MS-35
Tallahassee, Florida 32399-3000

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I N D E X

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PUBLIC COMMENT:

MARJORIE DERRICK	29
JAN MOODY	30
CRAIG BOCK	34
DOUGLAS SPAHR	54
TOM BERRINGER	59

<u>OLEANDER'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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RICHARD Zwolak	89	136	153	
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KENNARD F. KOSKY	155	177		
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RICHARD McCANN	184	218		
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AL LINERO	226	238		
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DEP'S WITNESSES:

NONE

PETITIONER'S WITNESSES:

JUANITA BARTON	269	272		
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E X H I B I T S

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OLEANDER'S EXHIBITS:IDEVIDENCE

7, 8, 12, 16, 17, 31, 34, 35, 36, 45, 46

132

14, 28, 29, 30, 1, 6, 9, 10, 13

176

15, 20-27, 37-44

217

2, 3, 5, 11, 19, 32

237

DEP'S EXHIIBTS:

NONE

PETITIONER'S EXHIBITS:

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180

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7

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A P P E A R A N C E S

1
2 FOR THE PETITIONER:

3 CLARENCE ROWE
4 (Pro se)

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15 * * * * *

1 I N D E X

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3 PUBLIC COMMENT:

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MARJORIE DERRICK 29

5

JAN MOODY 30

CRAIG BOCK 34

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DOUGLAS SPAHR 54

TOM BERRINGER 59

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OLEANDER'S WITNESSES: DIRECT CROSS REDIRECT RECROSS

8

RICHARD Zwolak 89 136 153

9

KENNARD F. KOSKY 155 177

10

RICHARD McCANN 184 218

11

AL LINERO 226 238

12

DEP'S WITNESSES:

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NONE

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PETITIONER'S WITNESSES:

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JUANITA BARTON 269 272

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EXHIBITS1
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25OLEANDER'S EXHIBITS:ID EVIDENCE

7, 8, 12, 16, 17, 31, 34, 35, 36, 45, 46

132

14, 28, 29, 30, 1, 6, 9, 10, 13

176

15, 20-27, 37-44

217

2, 3, 5, 11, 19, 32

237

DEP'S EXHIBITS:

NONE

PETITIONER'S EXHIBITS:

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1 P R O C E E D I N G S (Continued)

2 Q. What did you do?

3 A. We looked at the major sources of air pollutants in
4 the, in the area and they included the Florida Power and
5 Light Canaveral Plant, Orlando Utilities Commission Indian
6 River Plant, as well as the Orlando Utilities Commission
7 Standard Energy Center, then developed through the modeling
8 that we had performed. On the project we used the ISCST
9 model and the five years of meteorological data.

10 Q. All right. I'd like you to use Exhibit 21 to
11 summarize your conclusions regarding the cumulative impacts
12 that would be associated with the operation of Oleander and
13 these other power plants that you've identified.

14 A. Exhibit One presents a summary of the --

15 Q. Exhibit 21, sir.

16 A. I'm sorry, I thought you said Exhibit One.

17 Q. Thank you.

18 A. Exhibit 21 is a Summary of Maximum Pollutant
19 Concentrations Predicted for the Proposed Oleander Power
20 Project With Other Air Emission Sources. And it's presented
21 with pollutants of sulfur, nitrogen oxide and particulate
22 matter.

23 In general, what it shows is that the maximum
24 concentration predicted when all these sources are considered
25 in the same model are generally 50 percent or lower than the

1 Florida ambient air quality standard.

2 These impacts, I might point out when we evaluated
3 the source contributions from the sources, they were
4 generally from the background sources that were dominating
5 impacts. The project itself either had no impact or no
6 measurable impact, if you will, for the levels predicted
7 here.

8 Q. Why did you select those three pollutants for your
9 analysis?

10 A. Those were the primary pollutants of concern that
11 could be attributable to stack emissions.

12 Q. All right, sir, did you consider whether Oleander
13 should install ambient air quality monitors in Brevard County
14 to measure the effects associated with the operation of this
15 project?

16 A. Yes, we did. Since the project's impacts were less
17 than the significant impact levels, they would also be less
18 than the detectable limits for monitoring equipment as well
19 as pre-construction monitoring requirement that has been
20 established by U.S. EPA and DEP. So we're less than the
21 required monitoring pre-construction levels.

22 Q. Just let me make sure I understand that you're not
23 obligated -- or excuse me, Oleander is not obligated to
24 install pre-construction monitors under any applicable state
25 or federal standard?

1 A. That's correct.

2 Q. All right. Did I also understand you to say that
3 if monitors were installed, the impacts of this project could
4 not be measured?

5 A. That's correct, because they're less than the
6 significant impact levels.

7 Q. All right sir. Do you know whether the Florida
8 Department of Environmental Protection already has monitors
9 in place in Brevard County?

10 A. Yes, I do, they have two ozone monitors in Brevard
11 County and two particulate matter monitors, I believe.

12 Q. All right, does it have other monitors in this
13 region?

14 A. Yes, to the north in Volusia County there are two
15 ozone monitors. Seminole County, Orange County and Osceola
16 also have additional monitors. And then to the south, Saint
17 Lucie County, there's an additional ozone monitor. These are
18 all located, except for Saint Lucie, probably about 50 to 60
19 miles of the site.

20 Q. Well, how do the ozone measurements here in the
21 county compare with measurements made elsewhere in the
22 region?

23 A. Based on the review that I've performed, on the
24 monitoring data that I prepared from the DEP over the last
25 five years as well as analyses that DEP has performed

1 specifically for this region, generally speaking, the two
2 monitors measure ozone concentrations very similarly in terms
3 of trends as well as magnitudes.

4 Based on the DEP workshop that was held in May of
5 this year, DEP presented information regarding the regional
6 nature of ozones specifically for Brevard County, as well,
7 and showed that for the two monitors in Brevard County, when
8 the concentrations went up at one monitor they also went up
9 at the other. If they went down at one, they went down at
10 the other. The magnitudes were very same, very similar.

11 In reviewing the data for the other monitors in
12 adjoining counties, the same trends and magnitudes held.

13 Q. Well, how do the ozone measurements here in Brevard
14 County compare to the applicable ambient air quality
15 standards for ozone?

16 A. They meet the standards, they comply; therefore,
17 the air is in attainment.

18 Q. Well, given your review of the issues in this case,
19 have you determined whether an additional ozone monitor is
20 needed here in Brevard County?

21 A. Although an additional monitor can provide an
22 additional measurement point, in terms of added value it will
23 not determine or help in assistance in determining whether
24 the air is complying or not complying.

25 Q. And I take it it would not help in determining

1 whether the project has any impact because the impacts
2 couldn't be measured.

3 A. That's correct.

4 Q. What would it cost to install an ozone monitor and
5 collect data for an appropriate period of time?

6 A. Based on discussions that I've had with people
7 within my organization, as well as DEP, the price can range
8 from 75,000 to \$100,000 per year.

9 Q. And approximately how long would you want to
10 collect data in order to have a meaningful data base?

11 A. Well, you definitely would want to collect it for
12 one year and continue it for trends.

13 Q. Did you evaluate the impacts of the Oleander
14 Project on, that is to say, the impacts of the air emissions
15 from the Oleander Project on soils, vegetation, visibility
16 and growth-related air quality impacts?

17 A. Yes, we looked at the predicted impacts on soils,
18 vegetation, visibility and growth-related air quality impacts
19 and determined that because the impacts were less than the
20 significant values, there would be no significant adverse
21 effect on those parameters.

22 Q. All right, did you try to determine whether the
23 airborne emissions from the Oleander Power Project would
24 cause any adverse effects on water quality in nearby lakes,
25 rivers or streams?

1 A. We looked at, in terms of what the pollutants
2 emissions are from the combustion turbine using fuel oil and
3 natural gas, the particles will be emitted in very small
4 particles, generally less than -- under ten microns, which is
5 a very small diameter.

6 Because of that small size, they tend to stay
7 airborne. As a result, we expect to see minimal, if any,
8 fallout on adjoining bodies of water.

9 Q. Well, did you try to determine whether the impacts
10 of the project's NO_x emissions would include any
11 deterioration of water quality in nearby water bodies?

12 A. We did but we weren't required to.

13 Q. Tell me what you did.

14 A. What we did was we looked at the deposition due to
15 nitrogen oxide emissions from the power plant and looked at
16 that to look at nitrogen oxide fallout. This procedure
17 followed the same methods in determining concentration
18 methods where you again use the ISCST dispersion model, the
19 five years of meteorological data together with assuming that
20 the plant would be firing just fuel oil.

21 Based on that analysis, we came up with a
22 deposition calculation that's in terms of a weight per unit
23 area. The value we came up with was 0.0007 grams per meter
24 squared, which is typical wet deposition.

25 We also put that in terms of the monitor for that

1 region and we collected data in the '82 to '83 time period by
2 the Florida Electric Coordinating group FCJ which had
3 measured wet deposition in Melbourne. The value determined
4 there for over a one-year period was about .2 grams per meter
5 squared.

6 In evaluating deposition, you're looking at not
7 only the wet component as well as the dry component. And
8 typically, from literature the dry component is about equal
9 to the wet component. So we doubled the results for the wet
10 deposition measurement value and came up with .4 grams per
11 meter squared.

12 If you take a look at the .0007 divided by the .4
13 gram measured, it's less than 25 percent change in impacts.

14 Q. So the Oleander -- the NO_x emissions from the
15 Oleander Power Project would contribute 0.5 percent of the
16 NO_x deposition that is -- or nitrogen deposition that is
17 currently occurring in this area?

18 A. Well, again, we took the measurements from 1982 to
19 1983. In reviewing that data, there was some variability
20 across the state. Because emission may have increased since
21 that time period, if anything, the existing nitrogen
22 deposition may be higher, therefore, our contribution to the
23 total would be lower.

24 Q. You've mentioned this deposition rate. Over what
25 period of time are you talking about?

1 A. The measured deposition.

2 Q. Well, you've talked about the calculated deposition
3 rate that would occur as a result of this project.

4 A. What we looked at was, again, we used five years
5 and we selected the point of maximum depositions. So it's a
6 one-year average selected over five years.

7 We also -- in evaluating that point, typically
8 there would be other areas which would be less than the
9 maximum point, generally 50 percent or lower for most of the
10 adjoining areas, including some of the adjacent water bodies.

11 Q. I just want to make sure I understand. This -- the
12 amount of nitrogen that's to be deposited, that would occur
13 over a period of one year?

14 A. That's correct.

15 Q. Okay.

16 A. That's correct.

17 Q. And you started to explain why your analysis was
18 conservative. You said that most of the areas will not
19 receive the maximum rate of deposition?

20 A. That's correct.

21 Q. All right, and were your other assumptions in the
22 analysis conservative in this design to overcome to estimated
23 impacts?

24 A. Yes, they were, sir.

25 Q. Given your analysis, have you formed an opinion as

1 to whether the airborne emissions from the project would
2 cause any measurable impacts to water quality on any of the
3 water bodies here in Brevard County?

4 A. Based on the relatively low impacts, the conclusion
5 I come to is that we will not have any significantly adverse
6 effect on the water bodies.

7 Q. Now, do you know whether DEP or EPA require an
8 applicant for a PSD permit to perform an analysis of a
9 project's impacts on water quality?

10 A. No, not that I'm aware of.

11 Q. They do not require it.

12 A. They do not require it.

13 Q. Do you know whether DEP has any rules or criteria
14 to use when evaluating such analyses?

15 A. There are no EPA or DEP criteria.

16 Q. Do you know whether EPA or DEP has ever denied a
17 PSD permit because of its impacts on water quality?

18 A. No, I'm not aware of any.

19 Q. All right, sir. Now I'd like you to take a look at
20 Exhibit 37 through 44. What do those Exhibits depict?

21 A. These Exhibits are figures that show the
22 distribution, the spatial distribution of maximum impacts,
23 ground level impacts due to the project within approximately
24 a two-mile radius from the site. They're evaluating the
25 spatial distribution of sulfur dioxide concentrations, looks

1 like, in Exhibits 36, 37, 38 and 39. Exhibit 40 and 41
2 assesses the carbon monoxide impact due to the power plant.

3 Exhibit 42 presents information for the nitrogen
4 dioxide concentrations predicted for the power plant.

5 Then 43 and 44 show the spatial distribution of
6 particulate matter due to the, predicted concentrations of
7 particulate matter due to the project.

8 Q. So those Exhibits show us where the maximum impacts
9 will occur.

10 A. That's correct.

11 Q. And the other Exhibits that you've discussed told
12 us what the maximum impacts would be?

13 A. That's correct.

14 Q. All right, sir. Based on your analysis, have you
15 been able to determine whether the airborne emissions from
16 this project would have any meaningful adverse impacts on any
17 neighborhood or community here in Brevard County?

18 A. Again, similar to. Based on my results that show
19 that the project's impact are less than significant impact
20 values, there should be no meaningful impacts to the projects
21 in the neighborhood surrounding the project.

22 Q. And that's with regard to any neighborhood or any
23 community.

24 A. That's correct.

25 Q. All right, sir. Based on your analysis in this

1 case and your experience and your projections, have you
2 formed an opinion as to whether the Oleander Power Project
3 will comply with all of the applicable DEP statutes, rules
4 and policies concerning the project's air emissions?

5 A. Based on my review and evaluations done, my
6 conclusion is that the project will comply with all
7 applicable air quality standards and guidelines in reference,
8 by DEP as well as EPA.

9 Q. Will the project be able to comply with all of the
10 permit conditions contained in Exhibit 11, which is the draft
11 DEP permit for this project?

12 A. Yes, it will.

13 Q. All right have you formed an opinion as to whether
14 the Department should issue a PSD permit for this project?

15 A. Yes, I have. I believe the Department should issue
16 the permit.

17 Q. All right, sir. Now, did you prepare any of the
18 documents in Section One?

19 A. Yes, I prepared Section Three which is the Air
20 Quality Review and Applicability, Section Five, Ambient Air
21 Quality Analysis, Section Six, the Ambient Impact Analysis,
22 and Section Seven, the Additional Impact Analysis.

23 Q. All right, sir, did you also prepare or assist with
24 the preparation of Exhibits 6, 9, 10 and 13, which are the
25 letters from Golder to DEP concerning the project?

1 A. Yes, I did.

2 Q. All right, during your testimony today you used
3 Exhibits 20 through 27 and 37 through 44. Did you also
4 prepare those Exhibits?

5 A. Yes, I did.

6 Q. To the best of your knowledge, is the information
7 contained in all of these Exhibits that I've just identified
8 true and correct?

9 A. Yes, they are.

10 Q. And do you adopt the statements and the information
11 contained in those Exhibits as part of your testimony here
12 today?

13 A. Yes, I do.

14 MR. DEE: Your Honor, at this time
15 Oleander moves the following Exhibits
16 into evidence --

17 JUDGE: That will be Exhibit One
18 which you've already admitted but now
19 confirmed the, or set the predicate for.
20 The remainder of the production of that
21 Exhibit, 6, of course, the same is true,
22 9, also true 10, 13, 15, 20 through 27
23 and 37 through 44.

24 MR. GOORLAND: No objection.

25 JUDGE: 37 through 44?

1 MR. DEE: Yes, sir.

2 JUDGE: Okay, Department has no
3 objection.

4 MR. ROWE: No objection.

5 JUDGE: Mr. -- all right. Exhibits --
6 I have 10 and 13 already in evidence.

7 MR. DEE: They are, sir, but I'm just
8 trying to -- this gentleman helped with
9 the prepping of those documents with
10 issues that are within his area of
11 expertise. I'm just trying to establish
12 the predicate for the introduction of
13 those documents.

14 JUDGE: Sure. And that's also true
15 with some of the other Exhibits I just
16 mentioned.

17 JUDGE: Oleander Exhibits 15 and 20
18 through 27 and 37 through 44 as previously
19 identified in the record are admitted in
20 evidence without objection. Give me just
21 a few minutes to catch up to you.

22 MR. DEE: All right, thank you.

23 (Whereupon, Oleander's Exhibits 15, 20-27 and
24 37-44 were marked and received in evidence.)

25 JUDGE: Okay, Mr. Dee.

1 MR. DEE: If I could just confirm that
2 1, 6, 9, 10 and 13 are also in evidence.

3 JUDGE: One is in evidence.

4 MR. DEE: Six?

5 JUDGE: Six is in evidence, 9 is in
6 evidence and 10 is in evidence and 13 is
7 in evidence.

8 MR. DEE: Very good, thank you, sir.
9 I have no further questions of this Witness.

10 JUDGE: Further direct?

11 MR. GOORLAND: No, sir.

12 JUDGE: Cross?

13 MR. ROWE: Yes.

14

15

CROSS EXAMINATION

16 BY MR. ROWE:

17 Q. You stated that there was a recommendation not to,
18 that no other monitors were needed at the site. And yet,
19 specifically where -- let me go back.

20 Specifically where are the monitors located in
21 Brevard County?

22 A. Those are monitors, one is located in Cocoa Beach,
23 the other one is in Palm Bay. They're roughly 10 and 25
24 miles away.

25 Q. How effective are monitors that far away from the

1 located site and at the same time near I -- not I-95 -- yeah,
2 I-95 where you got carbon monoxide running up and down the
3 road all day and these things are 11, 12, 20 something miles
4 away, how does it pick up that kind of information so far
5 away rather than being there and not only that you're going
6 to build a plant that's going to be in a Title V and you have
7 citizens that are concerned about the health and welfare and
8 your monitors are so far away?

9 A. Well, first off, ozone is a regional pollutant.
10 And it's -- for instance, for this project, ozone is not
11 emitted directly into the atmosphere. There are precursors
12 or there are compounds that are emitted that then form ozone.

13 Based on volatile organic compound emissions as
14 well as nitrogen oxide, they combine in the presence of
15 sunlight to then form ozone.

16 This process generally takes time to cure and,
17 therefore, distance. As a result, even EPA monitoring
18 criteria -- and that's one of the reasons why there are two
19 monitors in Brevard County, which is only one of 23 counties
20 in the state that has an ozone monitor and it's only one of
21 14 counties that has two, because of the regional nature,
22 generally ozone monitors are separated by great distances.

23 And I would expect any monitor to be located at the
24 Oleander site not to really pick up any concentrations of
25 ozone due to the project. Simply because there would be not

1 sufficient time for development of ozone.

2 Q. What I'm trying to understand, I understood you to
3 say that this is a regional thing and that material goes up
4 and the sunlight produces them. I mean, how do you know
5 where to put this monitor to ensure that you're getting
6 whatever -- I mean, instead of being in Palm Bay 25 miles
7 away, why not put it there closer to 95 where you got a
8 million cars running on a daily basis that you pushing out
9 some type of pollutant? And not only that, you're going to
10 put another plant there.

11 A. Well, given the review that I looked at in terms of
12 the monitoring available over the last five years, there's a
13 remarkable similarity in trend for those two monitors within
14 the county terms in terms of how they're being measured
15 already. That's true not only for those two monitors but
16 monitors in neighboring counties.

17 So that suggests to me, very frankly, that the
18 monitors are located in an area that's measuring similar
19 concentrations and that an additional monitor, although you
20 get another data point, as I discussed, I don't think that in
21 terms of determining whether there's a health problem or air
22 quality related problem that would be justified.

23 Q. Based on your expert opinion, are you saying that
24 if you did place a monitor at that particular site, that
25 you -- the reading wouldn't be any different?

1 A. That's -- than the two monitors that are currently
2 in place?

3 Q. Yes.

4 A. That's correct.

5 Q. I'm just belaboring that, I find that extremely
6 hard to digest.

7 Most of the work that appears, based on what I'm
8 hearing, that you have done, that from models and samples and
9 things of that nature in your Exhibits, can an independent
10 person duplicate your results?

11 A. Definitely.

12 Q. Is the formula in there? I mean, I don't have the
13 slightest idea how you duplicate it or what you do to
14 duplicate it.

15 A. The formula's not in the report directly. What we
16 use is what I consider a standard model as well as a standard
17 approach. In fact, we have to use this model, we have to use
18 these approaches as dictated by the U.S. EPA as well as DEP.

19 So, in fact, all the information, all the programs
20 that I used are, in fact, available through the Internet web
21 site that DEP has and they can be downloaded.

22 And then with the input of the stack parameters for
23 this facility, these models with the weather data can be run.
24 And, in fact, other people can duplicate exactly what we
25 produced.

1 Q. I'm going to assume -- no, let me ask the question.
2 Then based on your findings and your monitoring information
3 and Exhibits, would these Exhibits mean the Clean Air Act
4 standard?

5 A. Oh, yes, they would.

6 Q. And how did you do this, you did this by modeling
7 or monitoring?

8 A. We reviewed the monitoring data.

9 Q. You reviewed it but the results is modeling?

10 A. Well, we are not required to monitor for ozone
11 because we're less than 100 tons a year. And because of the
12 reactive nature of the compounds, the precursors, the VOCs
13 and nitrogen oxide, typically ozone is not modeled in a
14 permit application.

15 Since we are fortunate to have two monitors in
16 Brevard County and since ozone is a regional monitor, the
17 allowance was in terms of reviewing this data that the ozone
18 concentrations in Brevard County would be adequately measured
19 by the project if it were measured and by those two monitors
20 themselves.

21 Q. And those two monitors would take into
22 consideration all the other pollutants in the community as
23 far as ozone is concerned.

24 A. As far as ozone is concerned, that's correct.

25 MR. ROWE: I have no further questions.

1 JUDGE: Redirect?

2 MR. DEE: No, sir.

3 JUDGE: Thank you, you're excused from
4 your oath, you're excused --

5 MR. ROWE: Your Honor, I'd like to --

6 JUDGE: -- as a witness.

7 MR. ROWE: -- enter -- this is a map
8 of the location of the monitors and, I
9 guess you might say, the mileage pertaining
10 to those. If there's no objection, I would
11 certainly like to enter those into the
12 record. Yes, I would like to enter that
13 into the record as, just as information
14 pertaining to the location and the mileage
15 pertaining to those monitoring systems
16 and the location, alleged location of
17 Oleander Power Plant.

18 JUDGE: For identification purposes,
19 this is Petitioner's Two.

20 MR. DEE: Your Honor, I would point
21 out this is a hearsay exhibit and it's
22 not corroborated by any other competent
23 evidence.

24 MR. ROWE: I think he --

25 MR. DEE: It can get accepted --

1 JUDGE: Just a minute, Mr. Rowe.

2 MR. DEE: -- it can get -- you can
3 accept it for whatever it's worth. I
4 don't know that you can use it for
5 the purpose of creating a finding of fact.

6 JUDGE: Mr. Goorland?

7 MR. GOORLAND: I would agree.
8 Unfortunately, we're unable to corroborate
9 this.

10 JUDGE: Okay. Did you want to add
11 something, Mr. Rowe?

12 MR. ROWE: Oh, I was going to say it
13 does have the specific locations, the
14 addresses of those locations, and I won't
15 necessarily go on record and say that
16 those are the exact miles of the location,
17 but I would say it's about on or about in
18 that mileage area, on or about 11 -- I
19 think it says 11 miles from Cocoa Beach
20 and maybe 23 miles for the one in Palm
21 Bay.

22 And then it also has an ID number,
23 I think all this can be established if
24 we were serious about what we're doing.

25 JUDGE: Petitioner's Two is rejected

1 pursuant to the objection.

2 Call your next witness, Mr. Dee.

3 MR. DEE: Yes, sir, at this time
4 Oleander would call Mr. Al Linero.

5 MR. ROWE: Your Honor, when you say
6 it's rejected, that means it's not part
7 of the record, is that correct, sir?

8 JUDGE: I'm going to retain it as
9 part of the record of the case that will
10 be -- if the case is appealed, both
11 rejected and accepted exhibits are
12 retained so if there is any appeal, the
13 Appellate Court has a complete record.

14 MR. ROWE: Yes, sir.

15 JUDGE: As far as the evidentiary
16 record I'm going to rely on to decide
17 the case, it's been rejected, it's not
18 part of the evidentiary record.

19 MR. ROWE: That's fine, thank you,
20 sir.

21 JUDGE: Swear the Witness.

22

23

24

25

1 WHEREUPON,

2 AL LINERO,

3 being first duly sworn by the Court Reporter to tell the
4 whole truth as hereinafter certified, was examined and
5 testified under the oath as follows:

6 JUDGE: State your first and last
7 name and spell each name.

8 THE WITNESS: My name is Al Linero.
9 The last name is L I N E R O, the first
10 name is A L.

11 Judge: Thank you. Mr. Dee.

12 DIRECT EXAMINATION

13 BY MR. DEE:

14 Q. Where are you employed, Mr. Linero?

15 A. I'm employed with the Department of Environmental
16 Protection in Tallahassee.

17 Q. What is your job title at DEP?

18 A. I'm administrator of the New Source Review
19 Section.

20 Q. What are your duties and responsibilities at DEP?

21 A. I manage a section that's responsible for reviewing
22 all major projects, all new major construction in the State
23 of Florida. And I'm responsible for overseeing the engineers
24 and meteorologists who perform that work.

25 Q. When you talk about major construction, you're

1 talking about major sources of air pollution?

2 A. Yes, I am.

3 Q. All right, and how long have you held your position
4 at DEP?

5 A. I've held it for four and a half years.

6 Q. Before you started working at DEP, had you had any
7 prior experience working with air pollution issues?

8 A. Yes, I have approximately 25 years of experience.
9 Before I came to DEP, I worked a small -- short period of
10 time as a consultant for a company called CH2M Hill. And
11 prior to that, I worked for four years as Director of Air
12 Quality in the Broward County Department of Natural Resource
13 Protection.

14 Throughout the entire decade of the '80s, I worked
15 for Arabian American Oil Company, I was in charge of their
16 Technical Environmental Program.

17 And from 1973 through 1978, I worked for
18 Environmental Science and Engineering, a consulting company
19 in the State of Florida.

20 Q. So you've got 25 plus years --

21 A. Approximately.

22 Q. -- experience on air pollution control issues.

23 A. Yes, sir.

24 Q. All right. What academic training do you have for
25 your job at DEP?

1 A. I have a Bachelor's Degree in Chemical Engineering
2 from the University of Florida in 1971, a Master's Degree in
3 Environmental Engineering with a specialty in air pollution
4 from the University of Florida in 1976.

5 Q. Are you a Registered Professional Engineer in
6 Florida?

7 A. Yes, sir.

8 Q. Approximately how many projects have you reviewed
9 for compliance with air quality regulations?

10 A. At my present job, approximately 100.

11 Q. Have you ever testified before as an expert witness
12 regarding air quality issues?

13 A. Yes, I have.

14 Q. I'd like you to take a look at Exhibit 19 and tell
15 me whether Exhibit 19 is a true and correct copy of your
16 resume'.

17 A. Yes, it is.

18 Q. Does your resume' accurately summarize your
19 academic and professional accomplishments?

20 A. It does.

21 Q. All right, sir.

22 MR. DEE: Your Honor, at this time
23 Oleander would proffer Mr. Linero as an
24 expert regarding air pollution control
25 issues, the DEP regulations that govern

1 complied with our requirements for best available control
2 technology. And also, that the ambient air monitoring or
3 ambient air modeling impacts were correctly done and that the
4 impacts were within allowable parameters in accordance with
5 the national ambient air quality standards and the increments
6 that apply to non attainment -- to attainment areas.

7 Q. Did the Department request additional information
8 from Oleander to ensure the Department had all the
9 information it needed to evaluate the application?

10 A. Yes, we did.

11 Q. And did I correctly understand you to say that the
12 Department reviewed the modeling analyses and the impact
13 assessments that were presented with the application?

14 A. The Department did.

15 Q. Did the Department independently confirm the
16 accuracy of those evaluations?

17 A. Yes, the Department did.

18 Q. All right, so, in effect, the Department duplicated
19 the analysis that was performed by Oleander.

20 A. The Department approved the work done by Oleander.

21 Q. All right.

22 A. I can't say without consulting with my expert that
23 we duplicated it.

24 Q. You verified it.

25 A. Yes, sir.

1 Q. All right. You mentioned the DEP sent written
2 requests for additional information. I'd like you to take a
3 look at Exhibits Two, Three, Four and Five and tell me
4 whether those are the documents the DEP sent to Oleander as
5 part of the Department's review of the application in this
6 case.

7 A. Yes, they are, three of them were documents
8 prepared by the Department. One of them was a document
9 prepared by the Fish and Wildlife Service.

10 Q. All right. And that document for Fish and Wildlife
11 Service was forwarded from the DEP?

12 A. Yes, sir.

13 Q. Did DEP provide an opportunity for the public to
14 offer comments about the project?

15 A. Yes, we did.

16 Q. Did you publish -- did you hold public meetings?

17 A. We held two public meetings for this project.

18 Q. Did the Department publish notice of those
19 meetings?

20 A. The Department published notice on -- oh, yes,
21 the Department did publish notice of both meetings.

22 Q. I'd like you to take a look at Exhibit Seven and
23 Eight and confirm for me that those were the notices
24 furnished by the Department for the public meetings.

25 A. I confirm that Exhibit Seven is the notice

1 published by the Department in the Florida Administrative
2 Weekly for the meeting of March the 3rd. Did you say Exhibit
3 Eight?

4 Q. Yes, sir.

5 A. Yes, this is the notice that we published in the
6 Orlando Sentinel on February 23rd for a meeting scheduled
7 March 30th.

8 Q. All right, sir. In this case have DEP and Oleander
9 satisfied all of the DEP notice requirements that are
10 applicable to the permit application that is now before us?

11 A. These satisfy an additional meeting that we had, an
12 additional meeting that we had that is not normally a
13 requirement of the review process.

14 In a subsequent notice, we satisfied the notice
15 requirements for a PSD application.

16 Q. And that would be Exhibit 12 that you're referring
17 to?

18 A. Let me have a look. Yes, sir, Exhibit 12 satisfies
19 the public notice requirements for a Notice of Intent for DEP
20 application.

21 Q. So just to be clear, in this case DEP and Oleander
22 have satisfied all of the notice requirements.

23 A. Yes, sir.

24 Q. Now, we heard from Mr. Zwolak that approximately 80
25 people attended the meeting on March 3rd. Approximately how

1 many people attended the meeting on March 13, 1999?

2 A. On the -- what date?

3 Q. The second meeting on May 13.

4 A. I think about 20. I think about 20 were there and
5 about 10 stayed for most of the meeting.

6 Q. Did you -- did the Department receive written or
7 verbal comments about this project from the public either
8 during or after the public meetings?

9 A. Yes, we did, we received quite a number of comments
10 even before the first public meeting. Some of those comments
11 were in the form of letters, numerous phone calls and quite a
12 number of electronic mail submittals.

13 Q. Did the Department consider those comments before
14 the Department formulated its decision in this case
15 concerning the permit application?

16 A. Yes, we did consider those comments and those
17 comments were discussed with, with Oleander and, certainly,
18 those comments had quite a bit to do with Oleander reducing
19 its fuel oil hours from 2,000 to 1,000.

20 Q. And based on your experience in general and your
21 work on this project, have you formed a professional opinion
22 as to whether the emission limits and control technologies
23 proposed by Oleander in this case represent the best
24 available technology for the Oleander Power Project?

25 A. Yes, for this type of project, the limits on gas

1 are the lowest that I've heard of in the country for what's
2 called an attainment area operating as a simple cycle
3 project. For oil, they're equaling to the best available
4 control technology.

5 Q. Have you formed a professional opinion as to
6 whether the Oleander Power Project will cause or contribute
7 to violations of any state or federal ambient air quality
8 standards?

9 A. Yes, I have.

10 Q. And what is your opinion, sir?

11 A. That the Oleander Project will not cause or
12 contribute to any violation of a national ambient air quality
13 standard or allowable increment.

14 Q. So it will not cause or contribute to a violation
15 of any applicable PSD increment?

16 A. Yes, sir, that's correct.

17 Q. Have you formed a professional opinion whether the
18 Oleander Power Project complies with all the DEP applicable
19 statutes, rules, policy and guidance concerning air quality
20 issues?

21 A. Yes, I have.

22 Q. And what is your opinion?

23 A. That it does comply with all applicable rules and
24 regulations.

25 Q. When DEP reviews a PSD permit application, does DEP

1 evaluate environmental justice issues?

2 A. No.

3 Q. I'd like you to take a look at Exhibit 32, which is
4 a letter from DEP to Mr. Rowe.

5 A. Yes, sir.

6 Q. All right, does that Exhibit accurately reflect the
7 Department's position with regard to environmental justice
8 issues, PSD permitting cases?

9 A. Yes, it does. It was prepared by our office
10 general counsel and it is my understanding it is the
11 Department's position on the matter and rules.

12 Q. All right, sir. When DEP reviews the permit
13 application, does DEP review the impact of the project's
14 airborne emissions on water quality?

15 A. No.

16 Q. Does the Department have any rules or other
17 criteria to use for evaluating environmental justice issues
18 or the water quality impacts associated with airborne
19 emissions?

20 A. There are no rules at all for environmental
21 justice. You can look at impacts on water quality from the
22 standpoint of the impacts of the control equipment that is
23 applied to minimize the air emissions. If that control
24 equipment itself has an impact on water quality or solid
25 waste, then you can take that into consideration. But not

1 from the emissions by the project itself. It's primarily the
2 impacts of the control equipment.

3 Q. So the Department would not look at the question of
4 whether the airborne emissions are causing adverse water
5 quality impacts.

6 A. No.

7 Q. All right, sir. Now, has the Department made a
8 preliminary decision in this case as to whether it should
9 issue a PSD permit to Oleander?

10 A. Yes, we issued a preliminary determination that we
11 should issue a permit to Oleander for this project.

12 Q. That's Exhibit 11?

13 A. Yes, it is.

14 Q. All right. Did you prepare or supervise the
15 preparation of Exhibit 11?

16 A. I supervised the preparation of Exhibit 11.

17 Q. And Exhibit 11 reflects the official position of
18 the Department with regard to the Oleander application?

19 A. It does.

20 Q. All right. To the best of your knowledge, are the
21 statements contained in Exhibit 11 accurate and correct?

22 A. Yes, they are.

23 Q. Do you adopt the statements in Exhibit 11 as part
24 of your testimony today?

25 A. I do.

1 Q. Has the Department received reasonable assurance
2 that Oleander will be able to comply with all the emission
3 limits and emission conditions contained in Exhibit 11?

4 A. Yes.

5 MR. DEE: Your Honor, at this time
6 I'd like to move the following Exhibits
7 into evidence.

8 JUDGE: Go ahead.

9 MR. DEE: Exhibits 2, 3, 4, 5 7, 8,
10 11, 19 and 32.

11 JUDGE: Mr. Goorland?

12 MR. GOORLAND: No objection.

13 JUDGE: Mr. Rowe?

14 MR. ROWE: No objection.

15 JUDGE: Oleander's Exhibits 2, 3, 5 7,
16 8, 11, 19 and 32 are admitted in evidence
17 without objection. I already have 7 and 8
18 in.

19 MR. DEE: Wonderful.

20 JUDGE: So they're in.

21 (Whereupon, Oleander's Exhibits 2, 3, 5, 11,
22 19 and 32 were marked and received in evidence.)

23 JUDGE: Go ahead, Mr. Dee.

24 MR. DEE: I have no further questions
25 for this Witness.

1 JUDGE: Further direct?

2 MR. GOORLAND: No, sir.

3 JUDGE: Cross?

4 MR. ROWE: Yes.

5

6

CROSS EXAMINATION

7 BY MR. ROWE:

8 Q. You had testified that the meetings were announced,
9 I think the Exhibit was Exhibit Seven in the Florida Weekly
10 or the Florida Week?

11 A. Yes, sir, in the Florida Administrative weekly.

12 Q. Where is that paper circulated at?

13 A. It's not a newspaper, as such.

14 Q. What is it?

15 A. It was not a newspaper, it is a publication of all
16 the actions of all of the State agencies.

17 Q. Who would normally get that information?

18 A. Primarily -- primarily attorneys, consultants,
19 Government officials. That's who would primarily get this
20 newspaper.

21 Q. Would you classify --

22 A. I'm sorry, not a newspaper but Florida
23 Administrative Weekly.

24 Q. Would you classify that as public notice of
25 advertising to the people of Brevard County that Oleander has

1 a project going on here that should be publicly notified?

2 A. This in and of itself, no, because it in and of
3 itself doesn't meet the requirements of Chapter 50 of the
4 Florida Statutes.

5 But together with the advertisement in the Orlando
6 Sentinel, it does satisfy all the requirements.

7 Q. You said Exhibit Seven does not meet the
8 requirement but, yet, you testified that it did. Am I
9 correct?

10 A. I believe I've testified that, by itself, Exhibit
11 Seven, doesn't meet the requirements, but Exhibit Seven and
12 Eight --

13 Q. No, I mean --

14 A. -- notices the same meeting, together they do meet
15 the requirements. And Eight alone meets the requirements by
16 itself.

17 Q. No, I was talking about when Attorney Dee was
18 asking you the question, you stated that that did meet the
19 requirements.

20 A. It met one of the requirements, which is that all
21 of our public meetings must be advertised in Florida
22 Administrative Weekly. All of them must be advertised there
23 as a requirement of the Administrative Procedures Act.

24 Q. I don't have a problem there. My problem is people
25 here in Brevard County that have a concern, the public

1 citizens, especially that I refer to with vested rights, were
2 not aware of that particular paper that you just stated, we
3 don't get it, anyway.

4 The other question I have for you, the Orlando
5 Sentinel, would you consider that a local paper for local
6 people?

7 A. I consider it a newspaper with general circulation
8 that satisfies the requirements of Chapter 50.

9 Q. Would you consider it a local newspaper?

10 A. I don't live here locally, but my sense is that
11 many people do subscribe to the Orlando Sentinel and it is
12 available at the hotel where I stay.

13 Q. Uh-huh. Can you answer my question, please? Could
14 you give me a yes or no?

15 A. Could you restate your question.

16 Q. The question was do you consider the Orlando
17 Sentinel a local paper for Brevard County and its citizens?

18 A. I consider it a Brevard edition of the Orlando
19 Sentinel local paper.

20 Q. That wasn't the question. The question was the
21 Orlando Sentinel. That's okay, we don't have to beat up on
22 that.

23 The other question is in reference to the April 8
24 advertisement, that was done in Florida Today. I think
25 that's -- I done forgot what Exhibit that is.

1 MR. DEE: Twelve.

2 BY MR. ROWE:

3 Q. What kind of time limit is required to give public
4 notice? Is there a time that says if I give you public
5 notice and say, hypothetically, in ten days if I don't hold a
6 meeting within that period of time I have to readvertise to
7 let you know that it's going to be held at another time?

8 A. One -- there are a number of requirements and
9 constraints. And one of them is that we have to provide
10 public notice well in advance of the public hearing. And
11 that's what this notice would have done, it would have met
12 the requirement to, to give sufficient time, sufficient
13 public notice of the meeting.

14 Q. Which one?

15 A. The second one.

16 Q. Because that was a meeting that was held that very
17 few people knew of and a lot of phone calls were made to try
18 to entice people. I think you testified that there were
19 probably about 30 people there.

20 I was there and I was quite upset and I brought
21 that to the concern. And a lot of people walked out because
22 they weren't satisfied, that the general public that was
23 there would not have been there because they did not know
24 about that particular meeting because it was not noticed in
25 the April 8th advertisement. That's almost 30, I don't know

1 how many days later after the April 8th meeting.

2 There was also some concerns, I think the
3 Commissioners wrote letter, the Chairman, Mr. Scarborough,
4 wrote letters in reference to that concerns pertaining to
5 public notice and the meeting itself, plus some of the
6 citizens wrote letters pertaining to that.

7 MR. DEE: Excuse me, Mr. Rowe, if
8 there's a question, I'd like to hear
9 the question. I hear a lot of testimony
10 about Mr. Rowe --

11 MR. ROWE: I'm sorry, I'm sorry, I'm
12 getting my feet wet, I'm learning.

13 BY MR. ROWE:

14 Q. The question is did you receive any correspondence
15 from the Chairman of the Commissioners pertaining to the
16 advertisement of the meeting of April 13th?

17 A. Yes, the Department received a letter from the
18 Chairman.

19 Q. Did you receive any correspondence from the general
20 public in reference to concern about that May the 13th
21 meeting and, if so, about how many letters or correspondence
22 you might have received?

23 A. I don't recall seeing any. It's possible that one
24 of my staff may have received these letters and might know of
25 this. But I myself am only familiar with the correspondence

1 from Chairman Scarborough.

2 Q. Who would be responsible for responding to these
3 correspondence?

4 A. Yes, I took the responsibility of replying to
5 Chairman Scarborough.

6 Q. What about the general public, though, the
7 citizens?

8 A. One of my staff would have initiated the response.
9 I'm not aware if there was any response. I'm not aware they
10 would have received any other comments in writing.

11 Q. Would your staff respond on general principle
12 without your blessing or direction?

13 A. Well -- could you repeat that question?

14 Q. I say would your staff just arbitrarily respond to
15 something without your permission or blessing to, to probably
16 give some guidance in how to respond to some concerns?

17 A. They would check with me if they had something they
18 felt warranted a response, needed a response, and I would go
19 along with it, if they did.

20 Q. So based on the fact that -- am I to understand you
21 that no one brought information to you that they had received
22 correspondence from the general public concerning that
23 April -- not April, May 13th meeting?

24 A. No one brought anything to my attention.

25 Q. Okay, thank you, sir. In your response to the

1 Chairman, Commissioner Scarborough, could you just kind of
2 give a brief summary of what that stated?

3 A. Yeah, I don't have that correspondence --

4 MR. DEE: Your Honor, I'd like to
5 object at this point, I'm not sure that
6 correspondence between the Department
7 and one of the County Commissioners is
8 in any way relevant to the issuance of
9 this permit.

10 JUDGE: Mr. Goorland?

11 MR. GOORLAND: I don't know if it's
12 actually available. I haven't seen it.
13 So I'd like to see it before I do.
14 Otherwise, I have no position on that.
15 I mean, I want to see it.

16 JUDGE: Mr. Rowe?

17 MR. ROWE: I think it's important
18 because it did have a concern it was as
19 related to be and advertised and people
20 that had concerns was supposed to know,
21 and at that particular time there was
22 no such animal as far as the proper
23 advertisement.

24 It was advertised in the April 8th
25 today's paper, but the meeting was held

1 the 13th. The meeting that was advertised
2 April 8th was a meeting that was held prior
3 to.

4 JUDGE: Okay, it's irrelevant and
5 immaterial, why is it irrelevant and
6 immaterial, to what standard and
7 requirement?

8 MR. ROWE: I think it shows a concern
9 on the part of the citizens that they were
10 not aware of the meeting and that the
11 Chairman of the Board as well as other
12 citizens did write correspondence to that
13 effect.

14 JUDGE: Anything further, Mr. Dee?

15 MR. DEE: This line of questioning
16 is not relevant to whether the Applicant
17 has complied with the applicable
18 standards so it's irrelevant and --

19 JUDGE: The objection is sustained.
20 Ask your next question.

21 MR. ROWE: I have no further questions.
22 Your Honor, if it's possible, these are
23 some of my exhibits --

24 JUDGE: Do it in your case in chief.

25 MR. ROWE: Sir?

1 JUDGE: Do it in your case in chief.

2 MR. ROWE: That's all right, I won't
3 even ask you.

4 JUDGE: Redirect.

5 MR. DEE: I have no questions for
6 this Witness, Your Honor, no further
7 questions.

8 JUDGE: You're excused from your oath,
9 you're excused as a Witness.

10 THE WITNESS: Okay.

11 JUDGE: Call your next witness.

12 MR. DEE: There are no further witnesses,
13 Your Honor.

14 JUDGE: Any other exhibits?

15 MR. ROWE: Yes, sir.

16 JUDGE: No --

17 MR. ROWE: Sorry about that. I'm going
18 to learn.

19 MR. DEE: No, sir, Your Honor, I have
20 no further exhibits.

21 JUDGE: Is 18 in evidence?

22 MR. DEE: Thank you. 18 is the resume'
23 of Mr. Halpin, who's an employee at the
24 Department. He was not called to testify,
25 so it's unnecessary to introduce that

1 Exhibit.

2 JUDGE: So 18 is withdrawn.

3 MR. DEE: Yes, sir. And then Exhibit
4 45 for rebuttal are basically -- it's a
5 placeholder at this point, there's been
6 no rebuttal so didn't need to take any
7 action on Exhibit 45.

8 JUDGE: Okay, Mr. Goorland, is the
9 Department going to submit evidence?

10 MR. GOORLAND: No, Your Honor.

11 JUDGE: Okay, let's take a five-minute
12 recess and we'll come back.

13 MR. DEE: Thank you.

14 JUDGE: Mr. Rowe, we'll come back for
15 your case in chief.

16 MR. ROWE: All right, thank you.

17 (Whereupon, a recess was taken in the
18 proceedings.)

19 JUDGE: Okay, we're back on the record.

20 Mr. Rowe, call --

21 MR. ROWE: Yes, sir.

22 JUDGE: -- call your first witness.

23 MR. ROWE: Can I introduce -- I think
24 you said I can do this. The documents --

25 JUDGE: You want to submit some documents

1 in evidence?

2 MR. ROWE: Yes, sir.

3 JUDGE: Okay, what is --

4 MR. ROWE: I need some clarification,
5 I'm not sure what I'm doing, but I'm going
6 to ask --

7 JUDGE: First of all, let's identify
8 your documents.

9 MR. ROWE: Okay, this one here is a
10 deposition that was taken --

11 JUDGE: This one here is Petitioner's
12 Three?

13 MR. ROWE: And it does have the, I
14 guess, discoveries that I've given to Mr.
15 Dee and they're marked as Exhibit et cetera,
16 et cetera. I wasn't sure if this is already
17 in the record or not. And if it's not, I
18 would certainly like to make it a part of
19 the record.

20 JUDGE: What are the responses to
21 discovery by document title? Is it Response --
22 Answers to Interrogatories?

23 MR. ROWE: Yes, sir.

24 JUDGE: -- Responses to Request for
25 Admissions?

1 MR. ROWE: Yes, sir.

2 JUDGE: Responses to Request to Produce?

3 MR. ROWE: Yes, sir, I think so.

4 JUDGE: So Petitioner's Three is an exhibit
5 consisting of Petitioner's Answers to
6 Interrogatories, Petitioner's Responses to
7 Request for Admissions and Petitioner's
8 Responses to Request to Produce.

9 Mr. Dee, have you had an opportunity
10 to review Petitioner's Three?

11 MR. DEE: I'm not sure that we've got
12 an accurate description of Three. I
13 thought when Mr. Rowe started to talk about
14 his deposition --

15 MR. ROWE: Well, this is --

16 MR. DEE: -- and the exhibits that were
17 attached to your deposition --

18 MR. ROWE: That's what I thought I did.

19 MR. DEE: Well, there are no Answers to
20 Interrogatories or Requests to Produce
21 attached to it. I have no objection to Mr.
22 Rowe's objection going into the record, if
23 that's what he's trying to introduce.

24 MR. ROWE: Uh-huh.

25 MR. DEE: So attached, Your Honor.

1 JUDGE: Wait just a minute.

2 MR. DEE: Yes, sir.

3 JUDGE: Let's clear the record up on
4 what we're talking about.

5 MR. DEE: Yes, sir.

6 JUDGE: Petitioner's Three is a copy
7 of, a transcript of Mr. Rowe's deposition?

8 MR. DEE: Yes, sir.

9 JUDGE: Go ahead, Mr. Dee.

10 MR. DEE: Attached to the deposition
11 are various exhibits including some
12 correspondence, and I have no objection to
13 the first five deposition exhibits.

14 The sixth is Mr. Rowe's Petition, I
15 have no objection to that.

16 Seven is some correspondence from
17 Golder to DEP, I have no objection to that.

18 Eight is a map showing the location
19 of his house, I have no objection to that.

20 Exhibit Nine, however, is a letter
21 from DEP to Mr. Rowe with a list of impaired
22 waters and a map of Section 303(D), listed
23 waters for Brevard County. This is a hearsay
24 document, and I would object to that on the
25 grounds that it's hearsay.

1 I would also object to Deposition
2 Exhibit Number 10, which appears to be a
3 document that was downloaded off the Internet.
4 And it's a list of various water bodies,
5 again presumably impaired or affected. Also
6 attached to 10 are some newspaper articles,
7 apparently, that, again, are hearsay.

8 JUDGE: Okay so -- go ahead. Is that
9 it?

10 MR. DEE: Yes, sir.

11 JUDGE: So the objectionable documents
12 in Petitioner's Three are the Exhibit Nine
13 to the deposition?

14 MR. DEE: Yes, sir, and 10.

15 JUDGE: And 10.

16 MR. DEE: Yes, sir.

17 MR. GOORLAND: Your Honor, I have no
18 record of this in my file. And I don't know
19 if Mr. Rowe has attempted to provide this
20 to the Department before --

21 MR. ROWE: No.

22 MR. GOORLAND: -- or if he has a copy
23 for me now.

24 MR. ROWE: I can get a copy.

25 MR. GOORLAND: I also, if you wouldn't

1 mind me looking --

2 MR. ROWE: Go right ahead.

3 MR. GOORLAND: Your Honor, I'll support
4 Mr. Dee's Motions.

5 JUDGE: Okay. I'm going to take -- make
6 the Exhibits 9 and 10 attached to the
7 deposition of Mr. Rowe and make them
8 Petitioner's Four and delete them from
9 Petitioner's Three.

10 MR. ROWE: May I ask a question, Your
11 Honor?

12 JUDGE: Sure.

13 JUDGE: With that change made, is there
14 any objection to Petitioner's Three?

15 MR. DEE: No, sir.

16 MR. GOORLAND: No, sir.

17 JUDGE: Petitioner's Three is admitted
18 in evidence without objection.

19 (Whereupon, Petitioner's Exhibit Number Three was
20 marked and received in evidence.)

21 JUDGE: Let's take up Petitioner's --
22 do you have anything else you want to add,
23 Mr. Rowe?

24 MR. ROWE: Yes, sir, I had a question
25 in reference to --

1 JUDGE: Four?

2 MR. ROWE: -- the deletion.

3 JUDGE: We're going to come back to it,
4 Mr. Rowe.

5 MR. ROWE: Oh, you were?

6 JUDGE: Yes. Petitioner's Five?

7 MR. ROWE: What I have is -- let me
8 have Petitioner's Three.

9 MR. ROWE: Oh.

10 JUDGE: Is that your only copy, Mr. Rowe?

11 MR. ROWE: Yes, sir, because I knew he
12 had one but I wasn't aware I had to give you
13 one. But I'll get you a copy.

14 JUDGE: This is your only copy?

15 MR. ROWE: No, sir.

16 JUDGE: It's not.

17 MR. ROWE: No, sir.

18 JUDGE: Petitioner's Five.

19 MR. ROWE: These are other information
20 that I gave to Mr. Dee in reference to during
21 the time of the deposition --

22 JUDGE: Show it to opposing Counsel.

23 MR. ROWE: Oh. During the time of the
24 deposition, I made him aware that there was
25 other information forthcoming. And I have

1 since given him that information, as well.
2 There are newspaper articles downloaded
3 from the, what do you call it, web site,
4 a list of my immediate family and addresses,
5 other documentation from Golder and
6 Associates and DEP.

7 And what those documents do, they
8 did have other polluters within Brevard
9 County and other toxins and stuff of that
10 nature.

11 JUDGE: You need some time, Mr. Dee?

12 MR. DEE: Not especially, no, sir.
13 I'm trying to make this simple for all of
14 us. The first set of documents Mr. Rowe
15 has produced here are documents that
16 apparently were downloaded from the
17 Internet from a web page produced by the
18 Environmental Defense Fund.

19 Those documents are all hearsay
20 documents, to which we would object. So
21 I'd like to treat that as one set, just
22 to make this easier, if you wanted to
23 call that Five.

24 JUDGE: All right, for identification
25 purposes, then, the Internet documents from

1 the Environmental Defense Fund, Petitioner's
2 Five.

3 MR. DEE: If you want, I can pass those
4 to you.

5 MR. DEE: We've got at least two newspaper
6 articles --

7 JUDGE: This is Petitioner's Six?

8 MR. DEE: Yes, sir. Again, hearsay.
9 No offense to our reporter, our reporter here.

10 MR. SCHWEERS: It's not my byline.

11 JUDGE: Just a minute.

12 MR. DEE: Yes, sir.

13 JUDGE: Petitioner's Seven.

14 MR. DEE: Petitioner's Seven would be
15 a composite exhibits of several documents
16 which I believe are already in evidence.
17 There's a March, 16, 1999, Technical
18 Evaluation and Determination.

19 JUDGE: And that's what Exhibit?

20 MR. DEE: Exhibit 11 of the Applicant.

21 JUDGE: Do you agree or disagree with
22 that characterization, Mr. Rowe?

23 MR. ROWE: If he says it's there, he
24 has a better memory than I, I would agree.

25 JUDGE: All right.

1 MR. DEE: As part of Seven, I would
2 just -- to make life simpler, there are
3 several letters to and from DEP that I
4 believe are also already admitted as
5 exhibits.

6 JUDGE: Which exhibits?

7 MR. DEE: There is a letter dated December
8 17th from DEP to Oleander, that would be
9 Exhibit Three.

10 JUDGE: All right.

11 MR. DEE: There is a letter dated
12 December 22 from DEP to Oleander which is
13 the same as Oleander's Exhibit Five.
14 And there is a letter -- and I will point
15 out these DEP letters and documents
16 apparently were downloaded from the
17 Department's web page, so I can't tell
18 without further review as to whether
19 they're identical to the ones that have
20 already been introduced.

21 But based on the assumption that
22 they're the same as the documents in the
23 record, I don't have any objection to it.

24 And then finally, there is a letter
25 dated February 1, 1999, from Golder which

1 has previously been introduced as Oleander's
2 Exhibit Number Six, and I have no objection
3 to that document being introduced by Mr. Rowe.

4 JUDGE: Okay, let me have those.

5 MR. DEE: Yes, sir. We have some other
6 documentation here. There's a letter --

7 JUDGE: This is Petitioner's Eight?

8 MR. DEE: Yes, Your Honor. I'm sorry.

9 JUDGE: Go ahead.

10 MR. DEE: There is a letter or document
11 prepared by Mr. Rowe dated August 18, 1999,
12 which identifies his children, grandchildren
13 and other family members. We have no objection
14 to the introduction of that document.

15 We have as Petitioner's Nine the document
16 apparently consisting of 38 pages which on the
17 cover says Area Report, paren, TRI data, and
18 it apparently was downloaded off the Internet.

19 Again, this is a hearsay document and
20 we would object to Exhibit Nine.

21 And then there are, I guess Ten is an
22 unlabeled document labeled major air pollution
23 sources in Brevard County. I don't have a
24 clue as to where that came from. But again,
25 it would be hearsay. I don't have any idea

1 where this came from.

2 And then I've got a document entitled
3 Comparison of Air -- it again would be hearsay,
4 in any event, and that would be Number 11,
5 it's Comparison of Air Quality Data with
6 National Ambient Air Quality Standards.

7 MR. ROWE: May I comment in reference
8 to that document?

9 JUDGE: Sure. Just a minute.

10 MR. DEE: As Number 12, we've got another
11 document with -- on the upper right hand corner
12 it says Eight-Hour Averages and it shows
13 various years on the top of the page and on
14 the side of the page it identifies various
15 counties. Again, it's a hearsay document.
16 I'm not sure what it's intended to demonstrate.

17 JUDGE: This is Petitioner's 12?

18 MR. DEE: Twelve, yes, sir.

19 JUDGE: What's the title on Petitioner's
20 12?

21 MR. DEE: There is no title.

22 JUDGE: Mr. Rowe, what is Petitioner's
23 12?

24 MR. DEE: Your Honor, that document
25 we've identified as Number 12 apparently was

1 attached to a letter from DEP dated August 16,
2 1999. So this DEP letter and that attachment
3 presumably should be together.

4 MR. ROWE: Along with that piece there,
5 too, whatever that number might be on it.

6 JUDGE: As part of 11?

7 MR. ROWE: Uh-huh, all of that came with
8 the letter. I guess the paper clip came off
9 of it.

10 MR. GOORLAND: It's all 11.

11 JUDGE: Okay.

12 MR. DEE: So then 11 and 12 become --

13 JUDGE: No, there is no 12, unless you
14 have more.

15 MR. DEE: Well, as a matter of fact --
16 and then 12 is, there are two separate sets
17 of documents that apparently were downloaded
18 off the Internet. Both of them have a cover
19 page with a map, and on the lower right hand
20 side of the cover page it says EPA and it
21 refers on the upper right hand side to Brevard
22 County, Florida.

23 Again, these are hearsay documents. And
24 that would be 12.

25 MR. GOORLAND: It appears to show a number

1 of facilities in Brevard County. It doesn't
2 say what kind of facilities. This second one
3 appears to have a demographic map and a list
4 of facilities attached to it in Brevard County.
5 These are off the EPA data base, TRI inventory.

6 MR. DEE: To summarize, Your Honor --

7 JUDGE: Just a minute.

8 MR. DEE: Yes, sir.

9 JUDGE: All right, to summarize?

10 MR. DEE: Yes, sir, Exhibit Five, the
11 documents from the Environmental Defense Fund,
12 the Exhibit Six, the newspaper articles, Nine,
13 the Internet documents, 10, the Major Source
14 Inventory, 11 and 12 are all hearsay documents
15 and for that reason, we would object to the
16 admission of those documents.

17 JUDGE: Okay, let's take up what you
18 have no objection to, first. Petitioner's
19 Three, no objection?

20 MR. DEE: Yes, sir.

21 JUDGE: That's the deposition of Mr.
22 Rowe --

23 MR. DEE: That's correct, yes, sir.

24 JUDGE: -- with attached Exhibits One
25 through Eight.

1 MR. DEE: Yes, sir.

2 JUDGE: Petitioner's --

3 MR. DEE: Seven.

4 JUDGE: -- Seven is a Composite Exhibit,
5 Technical Evaluation, including -- these are
6 cumulative of Oleander's Three, Five and Six.

7 MR. DEE: Yes, sir.

8 JUDGE: And you have no objection to
9 those.

10 MR. DEE: That is correct.

11 JUDGE: Mr. Goorland, any objection to
12 Petitioner's Seven?

13 MR. GOORLAND: No.

14 JUDGE: Petitioner's Three, any objection
15 to Petitioner's Three, Mr. Goorland?

16 MR. GOORLAND: No.

17 JUDGE: All right, Petitioner's Three
18 is admitted in evidence without objection.
19 Petitioner's Seven, you had no objection,
20 Mr. Goorland?

21 MR. GOORLAND: That's correct.

22 JUDGE: Admitted in evidence without
23 objection.

24 (Whereupon, Petitioner's Exhibit Number Seven
25 was marked and received in evidence.)

1 JUDGE: Petitioner's Eight is a
2 document prepared by Mr. Rowe identifying
3 his family members, is that correct?

4 MR. ROWE: Correct, sir.

5 JUDGE: Mr. Dee, you have no objection
6 to that. Mr. Goorland?

7 MR. GOORLAND: I'm concerned about the
8 relevance of that document, Your Honor.

9 JUDGE: Why is it relevant, Mr. Rowe?

10 MR. ROWE: It was something that Mr.
11 Dee had stated in reference to defending
12 the welfare of my children and grandchildren
13 and future in reference to adverse
14 environmental impact, and I was trying to
15 show that I did have children and grandchildren
16 in the immediate area and that I do have a
17 concern about their health and welfare as
18 far as environmental impact is concerned.

19 JUDGE: Petitioner's Eight is rejected
20 pursuant to objection by Mr. Goorland,
21 irrelevant and immaterial.

22 Now, that's all of the exhibits to
23 which you have no objection, Mr. Dee.
24 Everything else you object to?

25 MR. DEE: That is correct.

1 JUDGE: Okay, Petitioner's Four are
2 Exhibits Nine and Ten that were originally
3 attached to Petitioner's Three. Mr. Dee,
4 you've stated your objections as hearsay?

5 MR. DEE: Yes, sir.

6 JUDGE: Mr. Goorland, do you have
7 objection to Petitioner's Four?

8 MR. GOORLAND: I have the same.

9 JUDGE: Mr. Rowe, would you like to
10 respond?

11 MR. ROWE: What was the exhibit number
12 for this one, from DEP?

13 MR. DEE: That, I believe, is Number 11.

14 JUDGE: Let me see the date on that.
15 Yes, sir, that is Petitioner's 11. We're
16 not to Petitioner's 11, yet.

17 MR. ROWE: Was that accepted or rejected?

18 JUDGE: We're not to Petitioner's 11,
19 yet. Mr. Goorland and Mr. Dee have both
20 objected to Petitioner's Four, this is your
21 opportunity to respond to the objection.

22 MR. ROWE: I have to see it.

23 JUDGE: Petitioner's Four, that is Exhibit
24 Nine and Ten to your deposition.

25 MR. ROWE: Oh, the orange book, the thing

1 there?

2 JUDGE: Petitioner's Four is a Composite
3 Exhibit consisting of Exhibits Nine and Ten
4 that were originally attached to your deposition.

5 MR. ROWE: Oh. I think it's important --

6 JUDGE: The objection's hearsay, not
7 whether you think it's important. It's an
8 out-of-court -- the objection is it's an
9 out-of-court statement made by a party who
10 is not here to be cross examined and
11 doesn't fit within one of the exceptions
12 to the hearsay rule.

13 MR. ROWE: Let me say this, then, like
14 I said, I don't know what I'm doing, but
15 during the -- when I was requested to bring
16 that in, I thought I was doing what was
17 appropriate, what I understood it, to bring
18 that information in so there wouldn't be any
19 rabbits coming out of the hat, so to speak.

20 During the deposition, or the exchange
21 of the documents, there was no concern
22 voiced about the documents. And it appears
23 that they were being accepted based on the
24 fact that Mr. Dee did go ahead and exhibit
25 them within the deposition itself.

1 Whether they're accepted or not, I
2 felt that based on the fact that no issue
3 was raised during the time that we were
4 discussing them, that they had merit.

5 JUDGE: Petitioner's Four is rejected
6 pursuant to objection.

7 Petitioner's Five, Mr. Dee, you object
8 to this on the grounds that it's hearsay.
9 Mr. Goorland?

10 MR. GOORLAND: I haven't had an
11 opportunity to review exactly what's in the
12 material, so I'm not sure if there's any
13 relevance, either.

14 JUDGE: By either, do you mean join in
15 the hearsay objection?

16 MR. DEE: But you agree it's hearsay.

17 MR. GOORLAND: I do.

18 JUDGE: Mr. Rowe, do you wish to respond
19 to the hearsay and relevancy objections of
20 Petitioner's Five?

21 MR. ROWE: I've just got to peep at it
22 just a little bit.

23 I would request that the documents
24 remain due to the fact that they are
25 informational documents pertaining to

1 pollutants and chemicals in Brevard County.

2 And I think it can be substantiated.

3 JUDGE: Petitioner's Five is rejected
4 pursuant to objection.

5 Petitioner's Six, Mr. Dee, you object
6 to the newspaper articles as hearsay. Mr.
7 Goorland?

8 MR. GOORLAND: I also object, same
9 objection.

10 JUDGE: Mr. Rowe, do you wish to
11 respond to the objections?

12 MR. ROWE: Just do what you got to do,
13 Your Honor.

14 JUDGE: Petitioner's Six is rejected
15 pursuant to objection.

16 Petitioner's Nine is 38 pages of data.
17 Mr. Dee objects on the grounds that it's
18 hearsay. Mr. Goorland?

19 MR. GOORLAND: Same objection.

20 JUDGE: Mr. Rowe, do you wish to respond?

21 MR. ROWE: Your Honor, for clarification,
22 I guess due to my stupidity, why go through
23 all this hassle on a deposition and
24 interrogatories if they're going to mark them
25 as exhibits, then come back and reject them?

1 It's such a waste of time and what do you
2 call it, redundant?

3 JUDGE: I couldn't agree with you more.
4 Do you wish to respond to the hearsay objection?

5 MR. ROWE: I would like to see them remain.

6 JUDGE: Petitioner's Nine is rejected
7 pursuant to objection.

8 Petitioner's 10, Mr. Dee objects to
9 Petitioner's 10 on the grounds of authenticity
10 and hearsay. Mr. Goorland?

11 MR. GOORLAND: Same.

12 JUDGE: Mr. Rowe, do you wish to respond?

13 MR. ROWE: I don't think it's going to
14 do any good, but I would request that it stay.

15 JUDGE: Petitioner's 10 is rejected
16 pursuant to objection.

17 Petitioner's 11, Mr. Dee has objected
18 on the grounds of hearsay. Mr. Goorland?

19 MR. GOORLAND: Same.

20 JUDGE: Mr. Rowe?

21 MR. ROWE: Request that it remain.

22 JUDGE: Petitioner's 11 is rejected
23 pursuant to objection.

24 Petitioner's 12, Mr. Dee has objected
25 on the grounds of hearsay. Mr. Goorland?

1 MR. GOORLAND: Same.

2 JUDGE: Mr. Rowe, do you wish to respond?

3 MR. ROWE: I think I said something prior
4 to. Did we just reject Exhibit 11?

5 JUDGE: We did.

6 MR. ROWE: May I ask for clarification?
7 This is a correspondence from Environmental
8 themselves, this is a gentleman that works
9 with DEP and I'm trying to understand why
10 it's -- whatever. It appears to me that
11 these people should have some credibility
12 in reference to the documents that they're
13 furnishing to the public.

14 And I'm having a problem trying to
15 digest the information which they keep
16 and maintain and then give to the public
17 based on requests.

18 JUDGE: I've ruled. The objection is
19 to the, hearsay objection is to Petitioner's
20 12. Do you wish to respond to the hearsay
21 objection to Petitioner's 12?

22 MR. ROWE: Request that it remain.

23 JUDGE: Petitioner's 12 is rejected
24 pursuant to objection.

25 Call your first witness.

1 MR. ROWE: The first witness is Ms.

2 Juanita Barton.

3

4 WHEREUPON,

5

JUANITA BARTON,

6 being first duly sworn by the Court Reporter to tell the

7 whole truth as hereinafter certified, was examined and

8 testified under the oath as follows:

9

JUDGE: State your first and last

10

name and spell each name for the record.

11

THE WITNESS: My name is Juanita,

12

J U A N I T A, last name Barton, B A R T O N.

13

JUDGE: Mr. Rowe.

14

15

DIRECT EXAMINATION

16

BY MR. ROWE:

17

Q. Mrs. Barton, in reference to the proposed Oleander

18

Power Plant, what is your objection in reference to this

19

proposed plant?

20

A. That's a hard question to answer because after

21

having heard all the expert testimony this morning, and later

22

this afternoon, I am not an expert, my objection is the

23

effect that it will have on the people who have to live with

24

the results once the soothsayers leave the area.

25

Q. Would your objection be in reference to health or

1 endangered species?

2 A. All of the above.

3 Q. Could you elaborate, please?

4 A. One of my concerns when I went before the Board of
5 Commissioners is the effect that not only Oleander Plant but
6 pollution in itself is a concern of mine because of some of
7 the effects it has had on my family.

8 Last night I had to get a ticket for my sister to
9 fly to Chicago to take care of her daughter who's suffering
10 with cancer. She's not the only one of my family members
11 whose been affected by this. And that's why I've become
12 concerned. She's just the most recent.

13 Q. When you say she's not the only one, would you give
14 a number or other incidents where your family might be
15 affected according to environmental impact?

16 A. Well, because when my father moved here, being a
17 laborer, he was unaware of the fact that where our house was
18 sitting was where a grove of oranges had been and not only
19 had been, we were surrounded by oranges and they were
20 surrounded by pesticides. So we grew up with that sort of
21 thing.

22 And so my oldest sister has had a kidney removed
23 and she's had to go back for treatments for recurrence of
24 cancer.

25 My mom died of cancer. I have a niece who has

1 breast cancer and a niece who has lupus at this time.

2 Q: Do you see a benefit in reference to the Oleander
3 Power Plant being located in this particular community?

4 A. Not being -- not being that familiar with it, I
5 hesitate to answer that particular question. What I would
6 say, based on what I know about pollution and what I've seen
7 it do, I would say that we don't need any more pollution,
8 even if it's minuscule.

9 Q. So -- you can answer this with a yes or no or
10 however you desire. I think you live about 20 something
11 miles away from the proposed location. Do you honestly feel
12 that the emission from the Oleander Plant could possibly have
13 an impact on your family, yourself or anybody else?

14 A. Yes. Anything that can get into my water, can get
15 into the air I breathe, yes, it can have an effect.

16 Q. Is there anything that you would like to add to
17 your concerns in reference to the proposed plant and possible
18 effects?

19 A. I look around the room and I see the experts and I
20 see the people who are concerned about our community. I see
21 people who have vested interest, financial interest that this
22 plant go into place. But what price the dollar?

23 I know that even though it is an economic move for
24 some people and it may be an advantage to some of the people
25 in this room, a financial advantage, to me it would be, and

1 to my family and to many other families in the area where I
2 live, more pollution would not only be an economic
3 disadvantage, but it would be a disadvantage to the existence
4 of our families.

5 There are people who are technically better in this
6 room to speak to the issue of whether or not Oleander or any
7 other pollutant issues, I guess, will affect us.

8 But to speak to stats and censuses and all the
9 other technical things has nothing -- it's a good thing. But
10 when it comes down to my family picked off and dying one at a
11 time younger and younger, I can't equate that to any of the
12 statistics, there are no statistics out there to help me, to
13 quantify and to qualify how I feel.

14 And like most of us, if we're financially secure,
15 and it's never come to our door to knock and we've never seen
16 it happen to us, then we have no vested interest in what's
17 going on in other areas.

18 MR. ROWE: I have no further questions
19 at this time, Your Honor.

20 JUDGE: Cross, Mr. Dee?

21

22

CROSS EXAMINATION

23 BY MR. DEE:

24 Q. Mrs. Barton, do you live in Mims, Florida?

25 A. Yes, sir.

1 Q. That's approximately 21 miles away?

2 A. Approximately, yes.

3 MR. DEE: I have no further questions.

4 JUDGE: Further cross, Mr. Goorland?

5 MR. GOORLAND: No.

6 JUDGE: Further Redirect Mr. Rowe?

7 MR. ROWE: I have no further questions
8 for the Witness. I thank Mrs. Barton for
9 being here and expressing her concerns and
10 she's excused.

11 JUDGE: You're excused from your oath,
12 you're excused as a witness.

13 MR. ROWE: Your Honor, I had subpoenaed
14 some other people in reference to this subject
15 matter. However, based on the testimony of
16 the expert witnesses and a lot of the questions
17 that I had for those witnesses, I think it
18 would be redundant to attempt to re-address
19 them. And therefore, I will not call those
20 other witnesses that I had requested because
21 I feel that my concerns have been responded
22 to with the other expert witnesses.

23 JUDGE: Any other exhibits?

24 MR. ROWE: I don't have any.

25 JUDGE: Does Petitioner rest?

1 MR. ROWE: Petitioner rests.

2 JUDGE: All right. Any rebuttal?

3 MR. DEE: No, sir.

4 JUDGE: Mr. Goorland?

5 MR. GOORLAND: No, sir.

6 JUDGE: Oleander rests?

7 MR. DEE: Yes, sir.

8 JUDGE: Department rests?

9 MR. GOORLAND: Yes, sir.

10 JUDGE: Okay.

11 MR. ROWE: Your Honor, can I ask a
12 question for clarification?

13 JUDGE: Yes, sir.

14 MR. ROWE: All those Exhibits that
15 were rejected, does that mean -- I'm
16 trying to get -- because I really don't
17 know. Does that mean that they stay in
18 the record even though they have no,
19 whatever -- say, for example, I appeal
20 the decision, whatever, that it moves
21 forward, that this information will still
22 be intact?

23 JUDGE: The Exhibits that are rejected
24 are part of the record for appeal purposes --

25 MR. ROWE: Okay.

1 JUDGE: -- but they're not part of
2 the evidentiary record that I will consider
3 in making my decision.

4 MR. ROWE: Very good, thank you, sir.

5 JUDGE: Mr. Rowe, each side has the
6 opportunity, if they wish to exercise it,
7 to submit a proposed order in this case.
8 I will issue a Recommended Order.

9 The parties, if they wish to exercise
10 that right, will file Proposed Recommended
11 Orders in my office no later than 10 days
12 after the date the transcript is filed in
13 my office.

14 The Proposed Recommended Orders must
15 comply with the following requirements:

16 Each paragraph in the Proposed Findings
17 of Fact must be numbered, each paragraph
18 must cite to that portion or portions of
19 the record upon which it is relying for
20 its Proposed Findings and each paragraph
21 must consist of something other than
22 recited testimony. Any questions?

23 MR. ROWE: (No response.)

24 JUDGE: This hearing is adjourned.

25 (Whereupon, the proceedings were concluded at 4:27 p.m.)

CERTIFICATE

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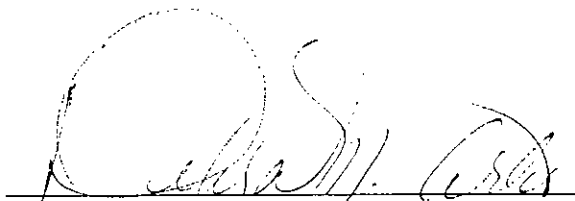
STATE OF FLORIDA)
)
COUNTY OF BREVARD)

SS:

I, DEBRA M. ARTER, Registered Diplomate Reporter and Notary Public in and for the State of Florida at Large, DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did stenographically report the proceedings and evidence adduced and offered in said hearing, and that the foregoing and annexed pages, numbered 205 through 275, inclusive, comprise a true and correct transcription of volume II of the proceedings in said cause.

I FURTHER CERTIFY that I am not related to or employed by any of the parties or their counsel, nor am I interested in the outcome of this action.

SWORN TO AND SUBSCRIBED by me this 1st day of September, 1999.



DEBRA M. ARTER
Registered Diplomate Reporter

DEBRA M. ARTER
COMMISSION # 0050774
NOTARY PUBLIC, FLORIDA