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STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

CLARENCE ROWE, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
OLEANDER POWER PROJECT, L.P., )  
and DEPARTMENT OF ENVIRONMENTAL )  
PROTECTION, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**COPY**

CASE NO.: 99-2581

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
VOLUME I

\* \* \* \* \*

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:  
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Registered Diplomate Reporter

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A P P E A R A N C E S

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FOR THE PETITIONER:

CLARENCE ROWE  
(Pro se)

FOR THE RESPONDENT OLEANDER:

DAVID S. DEE, ESQUIRE  
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

\* \* \* \* \*

1 I N D E X

2

PUBLIC COMMENT:

3

MARJORIE DERRICK 29

4

JAN MOODY 30

CRAIG BOCK 34

5

DOUGLAS SPAHR 54

TOM BERRINGER 59

6

7 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:

13

NONE

14

15

PETITIONER'S WITNESSES:

16

JUANITA BARTON 269 272

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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 EXHIIBTS:

NONE

PETITIONER'S EXHIBITS:

1	180
3	252
7	261

P R O C E E D I N G S

1  
2           JUDGE: This is the administrative  
3 hearing in Clarence Rowe versus Oleander  
4 Power Project, L.P., and Department of  
5 Environmental Protection, Division of  
6 Administrative Hearings Case Number  
7 99-2581.

8           The issues for determination in this  
9 proceeding are stated in the Petition for  
10 Administrative Hearing. My name is Daniel  
11 Manry, I'm the Administrative Law Judge  
12 assigned by the Division of Administrative  
13 Hearings to conduct this proceeding.

14           Counsel, state your appearance for the  
15 record beginning with Oleander.

16           MR. DEE: Yes, sir. My name is David  
17 Dee, I'm an attorney with the Law Firm of  
18 Landers and Parsons, Tallahassee, Florida.  
19 I'm here on behalf of Oleander Power Project,  
20 the Applicant.

21           JUDGE: And the Department?

22           MR. GOORLAND: Scott Goorland for the  
23 Department of Environmental Protection.

24           JUDGE: Mr. Rowe, are you represented by  
25 Counsel?

1 MR. ROWE: No, sir.

2 JUDGE: Are you familiar with the procedure  
3 followed in an administrative hearing?

4 MR. ROWE: No, sir, this is my first  
5 opportunity, get my feet wet.

6 JUDGE: I'm going to take a few minutes  
7 to give you a brief summary of what's going  
8 to take place here today. If you have any  
9 questions during that explanation, feel free  
10 to ask.

11 Or at the conclusion or during the course  
12 of the hearing, to the extent that I can answer  
13 those questions without giving you legal advice,  
14 I will.

15 I'm the Administrative Law Judge in the  
16 case and I -- that means I make legal rules  
17 and findings of fact in the case. I work for  
18 the State, but I have nothing to do with the  
19 Department of Environmental protection. I'm  
20 an independent tribunal.

21 You are the Petitioner in this case.  
22 And that means that you have the burden of  
23 proof. You will present your case in chief  
24 first consisting of witnesses and exhibits.  
25 How many witnesses do you have?

1           MR. ROWE: I have one witness, but I  
2 do have some questions and concern. I had  
3 submitted to you a written request pertaining  
4 to the citizens, I call them the people who  
5 have a vested right that live here, pay taxes  
6 and have an awful lot to say --

7           JUDGE: We'll get to that in a few  
8 minutes, Mr. Rowe.

9           MR. ROWE: Okay.

10          JUDGE: How many exhibits do you have?

11          MR. ROWE: I have not tallied them.  
12 However, I did give them all to Oleander  
13 Power Plant and they did number them. I  
14 don't know what the numbers are that they  
15 have placed on them. But I gave them all  
16 of the exhibits.

17          JUDGE: How many witnesses do you have,  
18 Mr. Dee?

19          MR. DEE: Four.

20          JUDGE: How many exhibits?

21          MR. DEE: Forty-six.

22          JUDGE: Okay. You're going to call  
23 your witness first, Mr. Rowe. You will  
24 conduct direct examination of that witness.  
25 Mr. Dee will have cross examination, you

1 will have Redirect and that will conclude  
2 the examination of the witness.

3 You submit your exhibits during your  
4 case in chief, and Mr. Dee has the right  
5 to object to the admissibility of any of  
6 those exhibits. I will rule on the  
7 objections, if any. And then we'll proceed  
8 in accordance with the ruling.

9 If I sustain the objection, the exhibit  
10 will be retained in the record but not  
11 submitted as evidence. If I overrule the  
12 objection, that means the exhibit will be  
13 admitted in evidence and relied upon as a  
14 basis for findings of fact.

15 MR. DEE: Your Honor --

16 JUDGE: Yes.

17 MR. DEE: -- if I could object -- or  
18 interrupt at this moment, with regard to  
19 the permitting case as conducted by the  
20 Department of Environmental Protection --

21 JUDGE: You have the burden of proof.

22 MR. DEE: -- I have the burden of  
23 going forward initially.

24 JUDGE: You're correct, you're correct,  
25 okay. So that changes the order of proof.



1 Let me ask the Department, are the interests  
2 of Oleander and the Department sufficiently  
3 aligned that Oleander can function as lead  
4 counsel?

5 MR. GOORLAND: I'll be representing  
6 the Department and if an issue comes up, you  
7 know, that I'd like to ask a question to a  
8 witness, I'm going to represent the Department  
9 in that matter, if Oleander doesn't represent  
10 the Department in that matter.

11 JUDGE: As a matter of procedure, I'm  
12 going to address Oleander first.

13 MR. GOORLAND: That's fine, I'll speak  
14 up if I need to.

15 JUDGE: I'll give you an opportunity  
16 to on witnesses further direct if it's an  
17 Oleander witness. If it's a witness by Mr.  
18 Rowe, it would be further cross by the  
19 Department.

20 MR. GOORLAND: Thank you.

21 JUDGE: Any objection to that?

22 MR. GOORLAND: No.

23 JUDGE: Okay. Just to finish the  
24 explanation, Mr. Dee also has a right to  
25 object to questions you ask of witnesses.

1           If he has an objection and I sustain the  
2           objection, then that means you need to  
3           ask the witness the next question.  If I  
4           overrule the objection, that means that  
5           the witness can answer the question.

6           At the conclusion -- well, actually,  
7           I'm changing the order here.  Mr. Dee is  
8           going to make a prima facie showing first.  
9           At the conclusion of his case, then the  
10          burden of going forward shifts to Mr.  
11          Rowe.

12          Mr. Rowe, you then will present your  
13          case in chief.  And Mr. Dee then will have  
14          an opportunity for rebuttal evidence.

15          MR. DEE:  Yes, sir.

16          JUDGE:  The same rules apply to Mr.,  
17          when Mr. Oleander is presenting his -- I  
18          mean when Mr. Dee is presenting Oleander's  
19          case, you have the right to object to  
20          questions of witnesses, you have the right  
21          to object to the admissibility of exhibits.

22          And examination of witnesses by Mr.  
23          Dee will be directed by Mr. Dee, cross by  
24          you, Mr. Rowe, and redirect by Mr. Dee.  
25          There may be further direct on those questions,

1 I mean on those witnesses by the Department.

2 Any questions?

3 MR. ROWER: Yes. I don't know if it's  
4 a question, but -- oh, yes, it's a question.

5 I've been approached by a lot of the  
6 citizens that have what I have referred to  
7 as a vested right or Constitutional right in  
8 reference to the freedom of speech. They  
9 have asked to see if they would be given an  
10 opportunity to bring their concerns to your  
11 attention for consideration.

12 I did put that in writing to you. I  
13 did not get a response to that concern.

14 Also, during a meeting on May the 13th,  
15 both DEP attorneys did make it known that  
16 the members of the community will be, would  
17 be given an opportunity to speak before you  
18 and that you would take their comments in  
19 consideration.

20 In making this request, I would like  
21 to --

22 JUDGE: Who said that?

23 MR. ROWE: The DEP attorney, as well  
24 as Mr. -- what is his name, Mr. Halin, I  
25 think his name is. I wasn't at -- I do

1 have the transcript.

2 JUDGE: Mr. Rowe, we have several  
3 pending motions that I'm going to take up  
4 in a few minutes. One of the pending  
5 motions is your request to allow public  
6 testimony filed August 6th. The second  
7 is Oleander's Motion in Limine filed August  
8 16th. And the third is Oleander's Motion  
9 to Strike filed July 30, '99. All of those  
10 we'll take up on pending motions.

11 Any witness scheduling problems or  
12 other preliminary matters?

13 MR. DEE: No.

14 MR. ROWE: My witnesses have another  
15 previous engagement. They will be here but  
16 they will be much later. But since he's  
17 going to be doing his thing first, they  
18 will probably be here in time.

19 JUDGE: Okay. Mr. Rowe, have you had  
20 an opportunity to review Mr. Dee's exhibits?

21 MR. ROWE: Not really.

22 JUDGE: Okay.

23 MR. ROWE: I've looked at some of them --

24 JUDGE: Well, you're not in a position  
25 to state whether or not any of those exhibits

1 are uncontested?

2 MR. ROWE: No, sir. As a matter of  
3 fact, I'd like to explain, as a matter of  
4 record, I just received these documentation  
5 as of Friday and due to the fact there was  
6 a hurricane coming, we were making all  
7 those preparations and doing what was  
8 necessary, I have not had an opportunity  
9 to review these things.

10 However, I don't have any problem in  
11 holding this case up. As a matter of fact,  
12 I think it might be important if we expedite  
13 this case in order to, if the ruling is not  
14 favorable for the citizens that we might  
15 move this case into another arena.

16 JUDGE: Mr. Dee, have you had an  
17 opportunity to review Mr. Rowe's exhibits?

18 MR. DEE: Yes, sir.

19 JUDGE: Are any of those exhibits  
20 uncontested?

21 MR. DEE: No, sir.

22 JUDGE: Okay. On preliminary -- oh,  
23 will there be a transcript?

24 MR. DEE: Yes, sir.

25 JUDGE: Okay.

1           MR. ROWE: Your Honor, I do have a  
2 question to both you and Oleander Power  
3 Plant. Is it okay if I ask someone to sit  
4 here for me just to pass on some information  
5 that I might need, someone to do some running  
6 or something of that nature?

7           JUDGE: To assist you?

8           MR. ROWE: Yes.

9           JUDGE: Yes. Yes, except for the fact  
10 that I'm not sure we have a chair for that  
11 person. Someone has advised me that more  
12 chairs are coming, but at this point they're  
13 not here, yet.

14           MR. GOORLAND: Your Honor, as a  
15 preliminary matter, I'd just like to file a  
16 Notice of Appearance.

17           JUDGE: Oh, yes.

18           MR. GOORLAND: I'm substituting for  
19 Douglas Beason.

20           JUDGE: Okay. Just for the record, Mr.  
21 Goorland has just entered a Notice of  
22 Appearance by Scott A. Goorland, Assistant  
23 General Counsel for State of Florida  
24 Department of Environmental Protection.

25           Okay, before we get opening statements,

1 Mr. Rowe --

2 MR. ROWE: Yes, sir.

3 JUDGE: -- the first pending motion is  
4 your request to allow public testimony. Do  
5 you wish to argue your Motion?

6 MR. ROWE: Yes. I make that request  
7 on behalf of the citizens that have what I  
8 would, what I want to call a vested right or  
9 Constitutional right under freedom of speech  
10 to voice their concern. These are people  
11 that live in the community, they're registered  
12 voters, they're taxpayers and they do have a  
13 serious interest in the Oleander Power Plant  
14 as well as other polluters in the community.  
15 Therefore, they would like to voice their  
16 concern.

17 Oleander did through I guess it's  
18 process, and I'm getting my feet wet in  
19 reference to it, has attempted to make  
20 people aware that it would request  
21 discovery through interrogatories,  
22 videotapes and disks and things of a  
23 computer nature and some people were  
24 concerned about holding up their businesses  
25 and things of that nature and, therefore,

1           it was kind of intimidating for people to  
2           have to deal with that situation.

3                     And based on the fact that on May the  
4           13th, Mr. Doug Beasley, the attorney --

5                     MR. GOORLAND:   Beason.

6                     MR. ROWE:   -- Beason, the attorney for  
7           DEP, and Mr., I think his name is Halpin,  
8           the supervisor, I need to find that page,  
9           has stated that the public would be given  
10          an opportunity to speak before you and  
11          that you would take those things in  
12          consideration to the Secretary based on  
13          their concerns.

14                    I would like to make that request and  
15           in making that request, I would ask that  
16           the public comments of the citizens,  
17           public comments be postponed until at  
18           least tomorrow to get that word out because  
19           these people have to work for a living,  
20           they --

21                    JUDGE:   That Motion to Continue is  
22           denied.   Keep going.

23                    MR. ROWE:   Okay.   Well, the main point,  
24           I wanted to make sure that the people that  
25           are not here today that were working would



1 be able to get their word in and be here  
2 tomorrow. But I have to abide by whatever  
3 your decision is.

4 JUDGE: Yes. This hearing isn't going  
5 to be going on tomorrow. How many people  
6 are you asking for public testimony from  
7 today?

8 MR. ROWE: I am not -- I don't have  
9 a head count or anything of that nature,  
10 it's just that people have been calling me  
11 in reference to that.

12 JUDGE: How many are here? I see at  
13 least four, four hands. Okay.

14 MR. ROWE: There will probably be more  
15 later.

16 JUDGE: Anything further, Mr. Rowe,  
17 in support of your Motion?

18 MR. ROWE: No, like I said, I'm not a  
19 lawyer and I don't practice it, but I like  
20 to think that we, the people, that we here  
21 do have a right to voice a concern about,  
22 to approve those things that come into  
23 our community because we're going to have  
24 to live with it.

25 The people that are investing into

1           this community don't live here, probably  
2           won't be living here and, therefore, my  
3           main concern is in reference to the health  
4           and the safety and the welfare of this  
5           community and my children and my grandchildren  
6           in reference to environmental impact.

7           JUDGE: Any response, Mr. Dee?

8           MR. DEE: Yes, Your Honor. On behalf  
9           of Oleander, we had previously prepared and  
10          filed a Motion in Limine and a response to  
11          the request for public testimony.

12          As you will see in that response, there  
13          are at least four major concerns that we have.  
14          It is correct that under Chapter 120 you have  
15          the right to allow public testimony when it  
16          is appropriate. And it is clear from the  
17          Statute that that is purely discretionary  
18          on your part.

19          In this instance, we would respectfully  
20          suggest that it is not appropriate to have  
21          further public testimony. The Florida  
22          Department of Environmental Protection has  
23          already had two public hearings that were  
24          noticed in the newspaper, that were held  
25          at night at a site convenient to the public

1 close to where the project's going to be  
2 located for the purposes of soliciting  
3 public.

4 The first hearing was held in March,  
5 it lasted for several hours. There was a  
6 sizable crowd. I did not get a head count,  
7 but the estimate would be probably 70 to  
8 80 people or more.

9 The second hearing was held in May,  
10 again, after notices and an opportunity for  
11 the public to come in. The estimate that  
12 I've heard is there were approximately 20  
13 people at that meeting.

14 Both of those opportunities were  
15 available to the public. A number of people  
16 came and spoke. Mr. Rowe did not attend  
17 the first meeting. He appeared briefly at  
18 the second meeting and then left because he  
19 felt that the notice had been inadequate.

20 Our concern is that the public has had  
21 a fair and appropriate opportunity to comment  
22 already and it is unnecessary to have, yet,  
23 another opportunity in this proceeding.

24 Our concerns become more acute when we  
25 start talking about people other than what

1 I would describe as the general public. The  
2 first concern is that there were a group of  
3 Petitioners that initially filed petitions  
4 concerning the permit that's at issue in  
5 this case. Those Petitioners voluntarily  
6 dismissed their case before discovery could  
7 be conducted.

8 Now, Mr. Rowe has indicated that they  
9 were, quote, intimidated. I would suggest  
10 to you that they merely received standard  
11 interrogatories asking them to explain the  
12 basis for their contentions and also to  
13 produce the documents that supported their  
14 contentions.

15 They dismissed. They should not now  
16 be allowed to come to this hearing and, in  
17 effect, ambush Oleander with issues and  
18 testimony that was not previously disclosed  
19 through discovery.

20 We've had no opportunity to take the  
21 depositions of those individuals or otherwise  
22 to learn the basis for their claims.

23 The third set of potential public  
24 witnesses that is of concern to us would be  
25 those people that would come in and proffer

1 expert testimony under the guise of public  
2 comment. We understand that general lay  
3 members of the public sometimes are allowed  
4 to come in and testify at these proceedings.  
5 But we do not want experts coming in and  
6 testifying, again, when we've had no  
7 opportunity for discovery.

8 We've sent interrogatories to Mr. Rowe,  
9 he's indicated that he has no expert witnesses.  
10 We've taken his deposition, he reconfirmed  
11 that he had no expert witnesses.

12 Given the fact that there has been no  
13 expert testimony examined through discovery,  
14 we would hate to have Oleander ambushed in  
15 this hearing by members of the public or  
16 people coming in under the pretense that  
17 they're members of the public and presenting  
18 expert opinion testimony.

19 The final concern is that Mr. Rowe has,  
20 to use his words from his deposition, tried  
21 to create a campaign in this instance. He  
22 has gone out and solicited members of the  
23 public to come testify. He has not  
24 identified any of them to us with the  
25 exception, I guess, of Ms. Juanita Burton,

1 or Barton.

2 Other members of the public, again,  
3 we've had no opportunity for discovery.  
4 We don't know who they were or they are or  
5 what they would say. —

6 Given the significance of this case  
7 to my client, we just don't feel that it's  
8 appropriate for them to be ambushed in this  
9 fashion with public testimony. This is a  
10 major project, it offers significant benefits  
11 to the residents of this community. It's  
12 been carefully reviewed by the Department  
13 of Environmental Protection and recommended  
14 for approval.

15 We feel that the client in this case,  
16 Oleander, is entitled to a fair hearing.  
17 It would not be fair to allow the public  
18 to come in and bushwhack Oleander at this  
19 point with undisclosed facts and allegations.

20 JUDGE: Who are the individuals, members  
21 of the public, who are here to comment today?

22 Okay, Madame, state your name for the  
23 record and spell --

24 MS. DERRICK: Marjorie Derrick.

25 JUDGE: -- Spell each name.

1 MS. DERRICK: M A R J O R I E,  
2 D E R R I C K.

3 JUDGE: And your name?

4 MS. MOODY: Jan Moody, M O O D Y.

5 JUDGE: J A N? --

6 MS. MOODY: Uh-huh.

7 JUDGE: Sir?

8 MR. BOCK: Craig Bock, C R A I G, last  
9 name B O C K.

10 MR. SPAHR: Douglas Spahr, S P A H R.

11 JUDGE: S P A --

12 MR. SPAHR: S P A H R.

13 MR. BOCK: And I know at least two  
14 others that are coming, sir, just running  
15 a little late.

16 MR. SPAHR: There's one more, Your  
17 Honor.

18 JUDGE: Oh, yes.

19 MR. BERRINGER: Tom Berringer, just  
20 like the movie actor.

21 JUDGE: Well, I'm not --

22 MR. BERRINGER: Spelled a little bit  
23 different.

24 JUDGE: How do you spell your last  
25 name?

1 MS. MOODY: No.

2 MR. SPAHR: Yes, yeah, we were Petitioner --

3 MR. BOCK: Oh, excuse me, in other words,  
4 did we file?

5 JUDGE: Yeah, were you a party to a case? --

6 MR. BOCK: Yes, sir.

7 JUDGE: Okay. Ms. Derrick, are you going  
8 to say anything different today than what you  
9 said in previous public --

10 MS. DERRICK: Yes, I've had --

11 JUDGE: -- hearings -- okay, we have a  
12 Court Reporter here today and we're trying  
13 to make a public record.

14 MS. DERRICK: Uh-huh.

15 JUDGE: So throughout the course of  
16 the day, I'm going to instruct everyone to  
17 talk one at a time. So if I'm asking you  
18 a question, let me finish the question  
19 before you start your answer. And I'll  
20 let you finish your response before I ask  
21 the --

22 MS. DERRICK: I had the one-sentence  
23 thing to say is all.

24 JUDGE: -- and I'll let you finish  
25 your response before I ask the next question.



1 Did you get that?

2 COURT REPORTER: Thank you, I did, yes.

3 JUDGE: Okay. So you are going to say  
4 something different than what you said --

5 MS. DERRICK: Definitely, yes, sir. --

6 JUDGE: -- earlier. Ms. Derrick, is  
7 there something that you don't understand  
8 about my instruction to let me finish the  
9 question before you start your answer?

10 MS. DERRICK: No.

11 JUDGE: Okay. Ms. Moody, are you  
12 going to say anything different than what  
13 you said at your earlier public hearing  
14 appearance?

15 MS. MOODY: Yes.

16 JUDGE: Okay. Mr. Bock, same question.

17 MR. BOCK: Yes, sir.

18 JUDGE: Mr. Spahr?

19 MR. SPAHR: Yes, sir.

20 JUDGE: And Mr. Berringer?

21 MR. BERRINGER: Yes, sir.

22 JUDGE: Ms. Derrick, how long would  
23 your comments take?

24 MS. DERRICK: About 30 seconds.

25 JUDGE: And Ms. Moody?

1 MS. MOODY: Approximately 10 minutes.

2 JUDGE: And Mr. Bock?

3 MR. BOCK: Probably 10 to 15 minutes,

4 sir.

5 JUDGE: And Mr. Spahr?

6 MR. SPAHR: Ten minutes or less.

7 JUDGE: Mr. Berringer?

8 MR. BERRINGER: Approximately 10 minutes,

9 sir.

10 JUDGE: Anything further from either of  
11 the parties?

12 MR. DEE: Yes, sir.

13 JUDGE: Go ahead.

14 MR. DEE: As you've heard, all of these  
15 witnesses testified before. Two of the  
16 witnesses were Petitioners before. They  
17 now all claim that they're going to say new  
18 things. It is those -- those new things  
19 are precisely what I'm concerned about.

20 They are new issues, presumably, that  
21 we have not previously had any notice of  
22 or any opportunity for discovery and, thus,  
23 no means to address or prepare for. That  
24 is why we continue to object to public  
25 testimony by these witnesses.

1           JUDGE: Mr. Goorland, do you have  
2 anything to add on behalf of the Department?

3           MR. GOORLAND: No, sir, we don't object  
4 to public testimony.

5           — JUDGE: Okay. Subject to a condition  
6 that I'm going to express in just a few  
7 minutes, the request to allow public comment  
8 is granted. The Motion in Limine is denied.

9           I'm going to start with Ms. Derrick,  
10 proceed to Ms. Moody, Mr. Bock, Mr. Spahr  
11 and Mr. Berringer. And to the extent that  
12 the public comments are redundant, then  
13 I'm going to stop it as cumulative.

14           So if -- if you're not going to say  
15 anything different than what the previous  
16 speaker said, then your public comment  
17 would be limited to adopting that speaker's  
18 comments.

19           And any comments that you do make  
20 will be limited to comments that are  
21 different and not cumulative of the  
22 previous speakers.

23           Ms. Derrick.

24           MS. DERRICK: I just wanted to make  
25 a comment on this inadequate notice of

1 or publication about notice of the May  
2 meeting --

3 MR. DEE: Your Honor --

4 JUDGE: Just a minute. Mr. Dee?

5 MR. DEE: We're starting public testimony  
6 now?

7 JUDGE: Yes.

8 MR. DEE: All right, could I pose a  
9 standing objection to any testimony that's  
10 based -- since they're not going to be --

11 JUDGE: This isn't testimony.

12 MR. DEE: This is just public comment.

13 JUDGE: None of these people are under  
14 oath.

15 MR. DEE: All right, sir. I understand.

16 JUDGE: Go ahead, Ms. Derrick.

17 MS. DERRICK: Okay, concerning inadequate  
18 notice about the May meeting that caused a  
19 number of residents actually to leave. I  
20 talked the next day to a County Commissioner's  
21 office, I forgot whether it was Truman  
22 Scarborough or Sue Carlson, and they said  
23 they had no idea that meeting was taking place.

24 I just wanted to put that out.

25 JUDGE: Okay, thank you. Ms. Moody.

1 MS. MOODY: I just have a couple of  
2 things to say, sir.

3 JUDGE: State your name for the record.

4 MS. MOODY: My name is Jan Moody,  
5 M O O D Y. I live at 2130 Winston Drive  
6 in Cocoa.

7 And I have been a resident there for  
8 21 years and we have two children and we  
9 moved here specifically for the rural  
10 area and the wildlife out there.

11 Throughout the years, my children and  
12 I and my husband have loved the wildlife.  
13 And in fact, I dug through some photographs,  
14 this is my son and what you see here are  
15 white ibises, this is on our street.

16 And I copied out a map, and in this  
17 yellow area is the plant, the power plant,  
18 and the two other areas is the big fishing  
19 hole, people have been going there for years.

20 And all along these red lines are  
21 where we have spotted the endangered wood  
22 stork. This photograph right here was taken  
23 just about one mile from the area. And in  
24 this photograph, which is a photograph I  
25 took, is a photograph of the endangered

1 species, the wood stork. There's eight of  
2 them in here and there's little babies that  
3 are in here and the babies are what is in  
4 danger, especially.

5 I have a collection of other -- here  
6 are some baby fledglings. These are all  
7 wood storks all along this area.

8 I found out on the web site that  
9 Oleander Plant has stated that they have  
10 taken -- they had looked at endangered  
11 species in this area and they found none,  
12 there was no habitat. I beg to differ with  
13 that because I know that's not true. There  
14 is a lot of endangered, threatened and  
15 special concern birds and animals like  
16 the alligator, turtle in these lakes,  
17 there's wood storks all along in there.  
18 This is where they nest, this is where  
19 they have their babies.

20 And in the last 20 years there has  
21 only been 15 years where they've had babies.  
22 I don't think a substantial type of study  
23 has ever been done on this property, any  
24 type of an environmental impact statement  
25 or a study has been done.

1           I know that if it had, they would  
2           have found all these birds, the hawk, the  
3           eagle, all of them are on this property.  
4           They're in our property. And they'll be  
5           flying over the five stacks that they  
6           have and that -- because the wood stork  
7           is, flows with the up drafts and especially  
8           heated ones, they would get into this and  
9           possibly -- probably be incinerated with  
10          the 1,100 degrees.

11          I would ask that some type of a  
12          environmental -- a good, unbiased environmental  
13          study, impact study be done. Because I do  
14          know that we have all these in our area.  
15          And these are endangered and threatened  
16          species, especially the wood stork, the  
17          woodpecker and the sandhill crane, those  
18          are three species that are on the endangered  
19          list.

20          And I specifically point out these  
21          because -- with the wood storks years ago  
22          in the -- this sounds kind of silly now, but  
23          in the fifth grade, this is my son's report,  
24          this was on the wood stork and he got an  
25          award for it. And we have been following

1           these wood storks all along throughout the  
2           years and we were very surprised because  
3           this is the first time that they left the  
4           cork screw sanctuary near Fort Meyers and  
5           they headed up--and they happen to live in  
6           our area.

7           And as I said before, all these red  
8           areas are where we have spotted them. And  
9           I know there's more in there. But they fly  
10          over this area, too. But they're on this  
11          property, too. We have followed these  
12          wood storks for years and I would hate to  
13          see something happen to a lot of our species.  
14          They're beautiful.

15          This is what happens. And this is the  
16          area they're coming to to build in and this  
17          is the reason we moved out there. We're  
18          teaching our children to, please to take  
19          care of the wildlife and we've done that  
20          all throughout their lives. We moved out  
21          there specifically for this reason.

22          I did not get any type of a brochure  
23          or anything of a mailing about this Oleander  
24          Plant. I had no idea it was even going to  
25          be in -- that it was even going to be around



1 the area until I saw it in the newspaper.

2 This is the reason why we moved out  
3 here. We've invested a lot of, we've invested  
4 a lot of money. We've put in thousands of  
5 dollars of plants and plant life. We've  
6 protected the wildlife. We've done all this  
7 for 21 years. We've kept our eye on the  
8 zoning. And we knew that everything was  
9 residential, agricultural or industrial.

10 And with industrial, I'll say light  
11 industrial because never in 100 years  
12 could you ever convince me that a huge  
13 850 megawatt plant, power plant that has  
14 a Title V permit to spew out four million  
15 pounds of pollutants a year is light  
16 industry. We don't understand how that  
17 could ever be classified as such.

18 And I thank you very much.

19 JUDGE: Okay, thank you. Mr. Bock?

20 MR. BOCK: Yes, sir, is this chair  
21 being used?

22 JUDGE: No, you can sit there.

23 MR. BOCK: Your Honor, my name is  
24 Craig Bock. My interest in this, I live  
25 on the 3.2 kilometer fallout area with my

1 home being on Lake Poinsett, and I know  
2 we need to make this pertinent --

3 JUDGE: Just a minute, let me interrupt  
4 you. By statute, Mr. Dee, Mr. Goorland, Mr.  
5 Rowe, do any of you wish to cross examine  
6 the previous person?

7 MR. ROWE: No, Your Honor.

8 JUDGE: Do you have a copy of the  
9 Statute handy, Mr. Dee?

10 MR. DEE: Yes, sir, I do, that's what  
11 I was looking at.

12 JUDGE: Okay, Mr. Goorland, do you?

13 MR. GOORLAND: No.

14 JUDGE: Mr. Dee, do you?

15 MR. ROWE: Is all that the Statute?

16 MR. DEE: No, sir, we'll address those  
17 issues during our case in chief.

18 JUDGE: I still would like to address  
19 that during your case in chief.

20 MR. DEE: Yes, sir.

21 JUDGE: Mr. Bock, you can proceed.

22 MR. BOCK: Yes, sir, my name is Craig  
23 Bock and the reason for my interest is I  
24 live on a 3.2 kilometer fallout area, the  
25 actual study area of the fallout from this

1 plant. The maximum particulate in an  
2 isograph or whatever it's called, sir, I'm  
3 no professional, certainly, there's an X  
4 on my street showing the maximum particulate.

5 My daughter has asthma. Through study, —  
6 we see no other state that we can find on  
7 the Internet that would allow a power plant  
8 and light industrial, let alone one of this  
9 size, through. Through our research, we  
10 have found out that the initial 2,000 hours,  
11 and our belief was it was going to take this  
12 power plant over the 100 tons of VOCs which  
13 should have provided on-site monitoring.  
14 It was taken down to 100,000 after that.

15 A letter from DEP states that at any  
16 time they could request more hours of oil  
17 burning.

18 Here we are with what we feel is  
19 already an unfair, you know, amount of  
20 pollution from power plants in our area  
21 because we have two already in our area  
22 that the County Commission is working on  
23 trying to change to gas power plants and  
24 here we're going to allow another one  
25 that has a tremendous amount of potential

1 oil burning.

2 This is my problem. I live on a  
3 dream lake with a daughter with asthma.  
4 I work for Florida Power and Light, but  
5 I'm not representing them, I'm only  
6 representing my own interest. I'm a  
7 distribution designer. And throughout  
8 this ordeal I was representing Florida  
9 Power and Light erroneously by their  
10 attorney. It has been a difficult thing.  
11 They got plenty of budget to work this  
12 through.

13 We requested pre site monitoring.  
14 I know that a letter from DEP stated that  
15 for good corporate citizenship they would  
16 put a monitor in our area. They refused  
17 to do that, though they stated they're  
18 good corporate citizens.

19 The truck traffic would be tremendous  
20 and we have two retirement communities  
21 right at that corner. And I believe it's  
22 700 and something trucks to refill the,  
23 I believe it's 5.6 million gallons, either  
24 5.6 or 5.2, I think there are two 2.6  
25 million gallons of oil.

1           Through our research, we have found  
2           out, it grows a mildew, I believe this  
3           would be professional hearsay since I'm  
4           not a professional, we heard it would be  
5           more reasonable to burn it than to treat  
6           it for this fungicide, quite an expensive  
7           process. So we have a great concern, also,  
8           you know, when this project was introduced  
9           they said it would not be seen. They showed  
10          pictures where you could barely see it.

11           Then they said in their stipulated  
12          agreement with Brevard County, which the  
13          attorneys in that situations said they  
14          couldn't do that during the moratorium  
15          but it was voted on by the Commissioners,  
16          stated that upon maturity 50 percent of  
17          this plant would not be seen. A lot more  
18          from what they had said.

19           Then in the stipulated agreement,  
20          now it's 80 percent within five years.  
21          So we did get some concession on that.

22           But let me say in their fact book,  
23          they said they based their professional  
24          reputations on -- and believe me, this  
25          group has hired some very good professionals,

1 I admire all of them for their knowledge,  
2 they're very good, but they stated there  
3 would be no opacity, you would not even  
4 be able to see this. Now, all of a  
5 sudden, in the agreement upon start-up  
6 it would be 20 percent and upon running  
7 can be 10 percent.

8 They also gave setbacks in the fact  
9 book of anywhere between 250 and 750 feet,  
10 I believe, sir, I'm going by memory. And  
11 with the agreement, it was 25 feet to the  
12 north, the lot line, and much closer on  
13 the sides. So we know that we were told  
14 erroneous facts from the beginning.

15 Also, this is being built upon a  
16 piece of property that is considered  
17 functional wetlands on it, but Brevard  
18 County code and industry should not be  
19 able to develop on this property.

20 Basically, the citizens have gotten  
21 together, we did our best to collect  
22 moneys, we had Mr. John Harris from  
23 Titusville represent us to the best of  
24 his ability. I apologize for dropping  
25 out of the, of the challenge, but let

1 me say this, Judge, I'm generally not  
2 a coward.

3 But I became afraid when Mr. Dee  
4 sent me some paperwork, and he can shake  
5 his head but I did congratulate him and  
6 the County Attorney's Office for scaring  
7 me out because it talked about getting  
8 a hard drive from your home. And that  
9 may be very standard language, but when  
10 you're told that it goes from just the  
11 day of being able to speak before a judge  
12 to a three-day court case and then you're  
13 told they may even come get the hard drive  
14 of your home and they're already stating  
15 the records of a major company who I know  
16 is not going to come to my aid, so it's  
17 going to be my home, my money, my attorney  
18 and my life, I did it because I was a coward  
19 in that situation, I dropped out. I don't  
20 say that very proudly.

21 There have been facts throughout, sir,  
22 that have been not been true. There has  
23 been considerable contributions as Mr.  
24 Wolfinger says, they're good corporate  
25 citizens and that's how they act upon that.

1 But certainly, nothing that the average  
2 citizen can, can come against.

3 As you see today, most of the seats  
4 are filled with many of their specialists.

5 — And who are we? —

6 I do know that Doug Spahr has written  
7 a letter to DEP. I believe it still has  
8 gone unanswered as of the, Mr. Holliday's,  
9 the meteorologist's, model. As you know,  
10 with models, sir, it depends on the  
11 information you put in. But because these  
12 stacks are so short, because there's a  
13 60-foot limit on this light industrial area  
14 for zoning, this plant is actually larger  
15 megawatt wise than the Florida Power Plant  
16 on U.S. 1, which is on a small 37 acres.

17 But the height is 60 feet on these  
18 stacks and I believe it's 100 (sic) and  
19 either 12 degrees or 1,116 degrees Fahrenheit  
20 that this gas has to try and exit out to try  
21 and get the rise because the stacks are so  
22 short.

23 And we also believe that at times with  
24 much humidity and like yesterday, you can  
25 see the smoke push down quickly. Also, it's



1 at a velocity at around 72 miles an hour, I  
2 believe. They have to do this. And it  
3 uses two million gallons of water a day.  
4 We're concerned, we went to the City of  
5 - Cocoa, they came with their attorney and  
6 their representation, we were mirrored and  
7 well challenged on each end. But two  
8 million gallons of water a day is not minor  
9 thing.

10 The citizens of Cocoa right now do not  
11 have all reclaimed water and they plan on  
12 using -- I believe Cocoa has in excess of  
13 about 350,000 gallons per day, and as per  
14 the DEP letter, they can use up to 1.9  
15 million. They can use 8.6 in Oleander --  
16 I believe, that and more. It's probably  
17 within 100 yards to the ramp of I-95 to  
18 the truck traffic they're going to have.

19 And, sir, I don't know if I've done  
20 a well job of representing this, but I  
21 feel if we had representation we could  
22 afford, what they have, this certainly  
23 could be stopped.

24 The functional wetlands, through the  
25 meteorologist, I'm not a professional to

1 challenge but we've had some, you know,  
2 professional people, no PE engineers, look  
3 at it and it don't seem to add up. The  
4 letters we have from DEP that Marlene  
5 Waters is bringing, I believe, and she's  
6 running a little late, but she has copies  
7 of those letters for to you substantiate  
8 those facts. Their fact book, no doubt,  
9 even a Commissioner stated, they were less,  
10 they seemed to be less than truthful at  
11 the time. I believe that was County  
12 Commissioner Truman Scarborough's words  
13 at the time, maybe to a lesser degree.

14 This power's going to go outside  
15 Brevard, we don't need it. Today we're  
16 looking at just the perimeter. They put  
17 it in what we consider to be an economically  
18 depressed area already. Certainly, we have  
19 tourists turn off 1-95 that go past another  
20 power plant, I believe.

21 This has serious ramifications. I  
22 know my home will be going up for sale. Some  
23 studies have shown some companies pay a \$2  
24 Million bond for loss of homes. They did  
25 not render to us, the people, they gave it

1 to consideration Sue Carlson.

2 The other Commissioners stated they  
3 didn't receive it. Said there was no  
4 property value loss. But I will say that  
5 the gentleman that was going to buy the  
6 lot next door to me was very concerned.  
7 Once a power plant goes there, I have to  
8 have -- my realtor by law has to tell the  
9 purchaser that a power plant is being built  
10 within that vicinity. So there's no doubt  
11 that my dream home, which was put on the  
12 market for \$269,000 maybe a year ago, but  
13 that dream home, there is no doubt that  
14 that will depreciate greatly.

15 This will be a tragic loss for me, not  
16 only for my daughter's health but for my  
17 property. And the wetlands will be dredged  
18 on and by Brevard County regulation they  
19 should not be able to. And the fact they  
20 have not been forthright and truthful in  
21 all their facts in their fact book that  
22 they said they staked their professional  
23 recommendations on.

24 I am very pleased that Clarence Rowe  
25 has had the courage to continue this. And

1 I'm pleased to speak before you all in the  
2 legal world. I did not have the strength  
3 that Clarence Rowe has, I admire him greatly  
4 for continuing this. I didn't think I could  
5 take the three-day ordeal and the possibility  
6 of having my hard drive taken and already  
7 seeing what has been falsely recommended by --  
8 any gain that could be played to belittle me  
9 and to challenge me in my personal life, it's  
10 been tough.

11 JUDGE: Thank you.

12 MR. DEE: Your Honor, could I just ask  
13 just a few questions?

14 JUDGE: Well, The statute provides that  
15 the threshold test before you get to that  
16 point, Mr. Dee, is whether or not the Agency  
17 proposes to consider the material.

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

19 MR. GOORLAND: Can we have a few seconds  
20 on that?

21 JUDGE: Sure.

22 MR. BOCK: Sir, I know there are two  
23 others that are coming. I don't know why  
24 they're so late. I had trouble finding  
25 this room, it's not marked well.

1           MR. DEE: Your Honor, in this instance,  
2 I believe you're sitting in the chair of  
3 the Agency head on an interim basis, and I  
4 think the initial decision is yours as to  
5 whether you can, intend to consider the  
6 material.

7           JUDGE: Mr. Goorland?

8           MR. GOORLAND: At this time we've taken  
9 into account much of the public testimony  
10 that was already previously given. And we  
11 have made our position known on the permit  
12 and we're going to stand by that.

13          JUDGE: Okay, so the answer to the  
14 question is no?

15          MR. GOORLAND: Right.

16          JUDGE: All right.

17          MR. DEE: For the purposes of making  
18 sure that the record is complete, could I  
19 ask just a few quick questions?

20          JUDGE: Mr. Dee, while you were  
21 conferring -- Mr. Goorland, Mr. Dee has made  
22 the argument that the term "Agency" in Section  
23 120.57, (1) (B) means the Administrative Law  
24 Judge sitting in the stead of the Agency head  
25 in Recommended Order cases. That's his argument.

1 I don't know if you heard that or not.

2 MR. GOORLAND: I did not hear that.

3 JUDGE: Do you have a position on that?

4 MR. GOORLAND: I have no objection to that.

5 JUDGE: Well, the statutory definition of  
6 agency is broad enough to include that

7 interpretation. However, it's not clear that --

8 MR. GOORLAND: Are you asking whether or  
9 not the testimony can be taken into account --

10 MR. DEE: That's the issue.

11 MR. GOORLAND: -- in the record?

12 JUDGE: The issue -- first of all, it's  
13 not testimony, the Statute doesn't provide for  
14 testimony. The Statute provides for public  
15 comment.

16 MR. GOORLAND: Right. I'll have no  
17 objection to doing so.

18 JUDGE: Well, I think that -- I disagree  
19 with that interpretation. The Agency here  
20 in this case is, has heard the public comment  
21 before --

22 MR. DEE: Yes, sir.

23 JUDGE: -- is in a position to know  
24 whether or not this public comment is cumulative  
25 of previous comments, whether or not anything

1 new is being presented that the Agency hasn't  
2 already considered and will be addressed in  
3 the case in chief.

4 The only determination I can make of  
5 whether or not these comments are cumulative  
6 is when I hear it here today. If I hear  
7 comment that's cumulative of previous comment,  
8 then I can make that determination.

9 But the only purpose for me allowing  
10 public comment today is to allow the public  
11 an opportunity to make comments on this issue  
12 when they have not had a previous comment --  
13 opportunity to make comment; or if they have  
14 had a previous opportunity to make comment,  
15 then to make comment other than that which  
16 they have already made in their earlier  
17 opportunities, that's the sole scope for  
18 which I've allowed, or granted the Motion  
19 and denied your Motion in Limine.

20 MR. DEE: Yes, sir, and I guess -- the  
21 objection I had started to interpose a few  
22 moments ago was that we would like to have  
23 a standing objection to any hearsay testimony  
24 to any expert opinion testimony that is  
25 rendered by people who have not demonstrated

1 to possess the necessary expertise to give  
2 that opinion testimony.

3 And thirdly, we would object to any  
4 speculative testimony.

5 JUDGE: - Okay.--- At such time as a member  
6 of the public is sworn, then you can make that  
7 objection. It's moot because there's no  
8 testimony being given.

9 MR. DEE: Just for the purposes of  
10 preserving the record in this instance, could  
11 I ask Mr. Bock to confirm that he does not  
12 claim to be an expert with regard to the  
13 issues that he's just described?

14 JUDGE: You can ask him. I heard Mr.  
15 Bock expressly say that he's not. But if  
16 you want to -- in an abundance of caution,  
17 if you want to ask that question.

18 THE WITNESS: I have no problem  
19 repeating that for the record, if that's  
20 okay with you, Judge.

21 JUDGE: Okay.

22 MR. BOCK: I am not a professional nor  
23 do I speak any of these facts as a professional.  
24 Many of them are done by the professionals at  
25 DEP and the professionals at your company



1           that I repeated. And again, I can substantiate  
2           by bringing in this information, I have it  
3           with me today.

4           MR. DEE: But you claim no expertise  
5           with regard to the issues that you've just  
6           discussed.

7           MR. BOCK: Yes, sir, that's correct.

8           MR. DEE: That's all I need.

9           MR. BOCK: I guess our major concerns,  
10          Judge, before I sit down and again, I  
11          appreciate this time, again, it's a time  
12          for a coward and I appreciate that, sir.  
13          I say that humbly.

14          We don't feel, and I say we, many of  
15          us people have discussed, we've been very  
16          well treated by Mr. Allender, he has  
17          answered questions. We don't feel DEP is  
18          an agency that's protecting us, we feel  
19          it's business as usual. We don't feel  
20          Brevard County has protected us. Our  
21          attorney has, John Harris has said going  
22          into the moratorium it's illegal. We are  
23          the people against all odds with no way  
24          to win as we should.

25          Now, these facts which we stated are

1 correct, we feel DEP is here to permit,  
2 we believe we have a disproportionate  
3 amount already. And in a functional  
4 wetland issue by Brevard County code says  
5 they can't build there, from my  
6 understanding, not as an expert, yes,  
7 sir.

8 JUDGE: All right.

9 MR. GOORLAND: Your Honor, if I may,  
10 when I stated my position before, I want  
11 to caveat that by saying I was not at, or  
12 present at the public hearings, so I could  
13 not affirmatively distinguish between what  
14 was stated there and anything new that is  
15 being stated here. However, I still hold  
16 our position that I stated before.

17 JUDGE: But you've conferred with  
18 representatives of the Agency --

19 MR. GOORLAND: Yes, I have.

20 JUDGE: -- who have that knowledge.

21 MR. GOORLAND: I believe they are here,  
22 there are people here who did have that  
23 knowledge that could distinguish the  
24 difference.

25 JUDGE: Okay.

1           MR. BOCK: Sir, one last thing, what  
2 surprised us was when, we thought that DEP  
3 worked for we, the people, and we thought  
4 we employed them. But we have found out  
5 when we challenged this the response was  
6 done by David Dee and his crew. It was  
7 no longer we, the people, with DEP, it was  
8 the Oleander Power Project versus us.

9           And it was very much a surprise. I've  
10 always been a person that's been strong in  
11 believing that the people can win when it's  
12 right. I've lost that opinion, sir. And  
13 I might just say that it is intimidating  
14 and it may be in your legal world a very  
15 normal thing to get a package like that,  
16 but to me it was.

17           I'm not a coward, I'm a fighter, and  
18 I cowarded out because of that. There was  
19 not really much DEP -- you could tell they  
20 were carrying it for DEP and I thought DEP  
21 worked for DEP. Thank you, Your Honor.

22           JUDGE: Thank you. Mr. Spahr.

23           MR. DEE: Your Honor, for the purposes  
24 of the record, there were some accusations  
25 at me directly and I'd like to point out

1           that I on behalf of Oleander sent one set  
2           of interrogatories and one Request to Produce  
3           to the Petitioners in this case. They were  
4           represented by counsel.

5           JUDGE: When you say the Petitioners  
6           in this case --

7           MR. DEE: Well, the Petitioners in the  
8           original proceedings, that would include Mr.  
9           Bock, Mr. Spahr.

10          JUDGE: Okay.

11          MR. DEE: They were represented by  
12          counsel, as you heard, Mr. John Harris. No  
13          objection to any of those discovery requests  
14          was ever posed by Counsel for Mr. Bock or Mr.  
15          Spahr. I've had no telephone conversations  
16          with them, no ex parte communications.

17          So I do strongly object for the record  
18          to any insinuation that I intimidated or  
19          threatened or otherwise abused these people.

20          JUDGE: Mr. Spahr. Anything different  
21          than --

22          MR. ROWE: Mr. -- Your Honor, like I  
23          said, I'm not a lawyer, but I'd like to say  
24          something and I don't know if this is the  
25          appropriate time to say it. But in response

1 to the people that are speaking here, I, too,  
2 felt that that was in the form of intimidation.  
3 We're not lawyers, we're not professionals --

4 JUDGE: Mr. Rowe --

5 MR. ROWE: Yes, sir.

6 JUDGE: -- this interest your opportunity  
7 for public comment.

8 MR. ROWE: Go right ahead, sir.

9 JUDGE: Mr. Spahr, anything different  
10 other than what has already been said by Mr.  
11 Bock?

12 MR. SPAHR: Yes, sir. Ms. Derrick and  
13 Ms. Moody, I got different substance than  
14 Mr. Bock.

15 JUDGE: Go ahead, state your name for  
16 the record.

17 MR. SPAHR: My name is Douglas Spahr,  
18 Cocoa, Florida, and I'm representing myself  
19 here today and I don't purport to be an  
20 air pollution expert. But I am a citizen  
21 who did take the trouble to get the entire  
22 Intent to Issue package, including such  
23 things as the technical evaluation, preliminary  
24 determination, so on and so forth.

25 And in one area of Florida here we do

1           have some Class One areas and the National  
2           Park Service has permitting responsibility  
3           for that area. And I did get a copy of  
4           their permit application guidance for new  
5           air pollution sources. And one thing that  
6           interests me here, they're making a statement  
7           here, says all assumptions for the analysis  
8           should be explicitly stated with sufficient  
9           information to be furnished to the National  
10          Park Service (inaudible).

11                 I went through it. They have a page  
12           here, but it's all the significant happenings  
13           with regard to this case. You know, letters  
14           back and forth and so on and so forth. And  
15           I was kind of surprised to see in there, I  
16           saw no formal request from DEP or data to  
17           do what the National Park Service thinks is  
18           fundamental, duplicate their analysis.

19                 Because this whole permit thing is  
20           predicated on this, on this analysis and  
21           they're using, you know, data from the  
22           Orlando Airport estimates, the DEP wavered  
23           requirement to do pre-construction watering,  
24           so we're tied down to the healthy air we  
25           believe is on the validity of a computer

1 simulation.

2 I believe Mr. Rowe, he petitioned to  
3 ask for the power plant's procedures for  
4 validating and maintaining a computer  
5 simulation. I'm not making this statement  
6 as an expert witness thing, but I work for  
7 a contractor where simulations were used  
8 for aircraft and we were required to have  
9 it and the Government came in and saw we  
10 had an audited and verified plan for the  
11 validation and verification of our simulated  
12 software.

13 I'm not casting any aspersions or  
14 alluding (Inaudible) or sites and suddenly  
15 you have a model that doesn't do what it  
16 was purported to do in the first place.  
17 So maybe they did this but seems like the  
18 official record would say the DEP asked for  
19 this data. You read this technical thing,  
20 it says no way did they have it. The  
21 National Park Service thinks that's  
22 fundamental and seems like it's good  
23 practice with a simulation thing.

24 I really think it ought to be done  
25 in this case. They ought to get that data,

1 they ought to duplicate the ambient air  
2 flow analysis to some reasonable, you know,  
3 percentage. Because I'm breathing this air  
4 here and I'd really like to have a higher  
5 confidence in this ambient air quality --  
6 analysis. Thank you.

7 JUDGE: Just a minute. Mr. Goorland,  
8 same question.

9 MR. GOORLAND: No questions. However,  
10 I'd like to --

11 JUDGE: No, my question to you is does  
12 he -- it's the same question after every  
13 public comment, by --

14 MR. GOORLAND: Okay.

15 JUDGE: -- statute does the Agency  
16 propose to consider this material?

17 MR. GOORLAND: What I'd like to state,  
18 I've clarified the matter with some of my  
19 folks, and it will be the same answer for  
20 each one of the public testimony.

21 JUDGE: Okay.

22 MR. GOORLAND: So you won't have to  
23 ask me.

24 JUDGE: You speak up if anything changes.

25 MR. GOORLAND: I will. What we've done



1 is we've taken into account from previous  
2 testimony any of the matters that are being  
3 brought up that are within our permitting  
4 jurisdiction. Now, there are matters that  
5 are being brought up that are not within our  
6 jurisdiction, that has not been taken into  
7 account.

8 JUDGE: And for the record, so that  
9 everyone understands, when you say within  
10 your jurisdiction, you mean within the  
11 jurisdiction of this hearing --

12 MR. GOORLAND: Within --

13 JUDGE: -- since this is proposed  
14 Agency action of your Agency. Therefore,  
15 if you don't have jurisdiction over it, I  
16 don't have jurisdiction.

17 MR. GOORLAND: Right.

18 JUDGE: Okay.

19 MR. GOORLAND: And that pretty much  
20 concludes my comment. We've taken those  
21 into account in our, our permitting actions  
22 previously.

23 JUDGE: Okay. By the way, for the  
24 record, Mr. Dee, I just -- the definition  
25 of Agency in Section 120.52 is broad enough

1 to include DOAH --

2 MR. DEE: Yes, sir.

3 JUDGE: -- Division of Administrative  
4 Hearings.

5 MR. DEE: Yes, sir.

6 JUDGE: However, Section 120.52(5) has  
7 a separate definition for DOAH and that is  
8 the division. So when the Statute is  
9 discussing action or consideration by the  
10 Division of Administrative Hearings, it  
11 describes it as the Division, distinguishing  
12 it from the Agency.

13 MR. DEE: Yes, sir.

14 JUDGE: Okay. Mr. Berringer --

15 MR. BERRINGER: Yes.

16 JUDGE: -- anything different from the  
17 comments of Ms. Derrick, Ms. Moody, Mr. Bock  
18 and Mr. Spahr?

19 MR. BERRINGER: I do believe so, sir.

20 JUDGE: State your name for the record.

21 MR. BERRINGER: My name is Tom Berringer,  
22 I'm from Cocoa. Also, I would like to ask a  
23 request at this point. I have a severe  
24 hearing problem and if you gentleman would  
25 speak so I can hear you and also Your Honor.

1 JUDGE: I will try.

2 MR. BERRINGER: I appreciate that.

3 JUDGE: Go ahead.

4 MR. BERRINGER: Yes, sir. I guess you've  
5 heard a lot of the different issues that are  
6 involving and causing us to worry about our  
7 home sites and our highways. But what I'd  
8 like to share with you this morning is a  
9 very personal one.

10 Being from the north, we seem to know  
11 a little bit more about pollution, I guess,  
12 than most of the folks down here on a citizen  
13 basis, of course. And as we were able to  
14 retire, we looked for places that we thought  
15 we might like to retire in. And one of the  
16 main reasons is -- to get away from the cold  
17 is number one. But also with the cold there's  
18 pollution.

19 And in the north it was rampant. And,  
20 yes, it is improving. So we moved to Florida.  
21 We have a little dream house, what I can afford  
22 in a retirement community. You must be 55 and  
23 over to be in that community. We have people  
24 55 to 92, I believe. And a lot of widows, a  
25 lot of widowers.

1           And when I came to this community, my  
2 health was very good. I had some problems  
3 that I brought with me, as we all probably  
4 have. But then I looked around and saw a  
5 lot of folks that had similar problems and  
6 even worse and, sadly to say, I've missed  
7 some of the folks that have passed on.

8           I say that to bring the point out  
9 that we understand there is a pollution  
10 condition with the Oleander Project. I  
11 can't give you numbers, I don't know  
12 anything about the particulars. You've  
13 heard quite a bit and you folks have all  
14 this before you.

15           My concern is this: As some of the  
16 older folks expressed to myself as an  
17 individual and to some of the other people  
18 here that represented a movement against  
19 the particular project, most of the  
20 concern was the fact that you have older  
21 ladies, older men that felt intimidated  
22 because they moved here with the last  
23 moneys they probably ever had, bought a  
24 place and this is where they're going to  
25 die from. They want to do this in

1 retirement status, and so do I.

2 And now we have a threat of a  
3 condition which we don't have much control  
4 over. And you've heard about the traffic.  
5 Let me share a short story with you. We  
6 have an old gentleman by the name of Larry,  
7 he's up in Virginia right now in a rest  
8 home. He was coming down 95, excuse me,  
9 he was coming down Route 520 with his big,  
10 old Cadillac, about a '79, and somehow he  
11 ended up underneath a tanker coming off  
12 of 95. He lived. He hurt his knee, that's  
13 all he did. He hurt his knee.

14 Route 520 is one of the top 10 most  
15 dangerous highways in Central Florida,  
16 according to the newspaper, that's the  
17 only thing I have to go on.

18 Our concern, sir, if this power house  
19 does finally go in, we not only have to  
20 worry about our old folks, and me, and  
21 everyone that lives there, about their  
22 driving down with all the extra truck  
23 traffic that's going to be there adding  
24 to our roads.

25 These folks feel so intimidated

1           that when we had these terrible wild  
2           fires last year, myself and some other  
3           folks in the community got phone calls,  
4           what should we do? Should we go? What --  
5           they were so intense and worried over  
6           the fact that this is going to affect  
7           them personally. And they're taking  
8           this the same way.

9           You know, I heard Mr. Bock speak  
10          about the fire -- or the water line.  
11          They want to use recirculated water,  
12          whatever you call it, from Cocoa, and  
13          if they can't get that they're going to  
14          tap into the main water line that runs  
15          right down in front of our homes on 520.

16          But also, I don't know if you folks  
17          know it, but the Fire Department's line  
18          comes off that same line. Had the power  
19          house been in operation and we had the  
20          wild fires as close as they were last  
21          year, and they were within like three  
22          quarters of a mile, if that power house  
23          was taking all the water or as much as  
24          they could take out of that line, the  
25          fire company would have had a real

1           problem pumping water out of that line.  
2           It's the same line. The fire line and  
3           the City water line, it's the same line.

4           These are points that a lot of folks  
5           haven't heard. And we're just glad  
6           today that we're able to bring some of  
7           these facts out to you folks.

8           I mentioned some of the conditions  
9           of the people living in the community. I  
10          have first stages of asbestosis, okay.  
11          I had open heart surgery in 1996, and  
12          which I'm doing great, I got four new  
13          arteries, man, I'll tell you, I feel  
14          wonderful, thank God for that. I went  
15          legally blind a year ago. And all these  
16          are things that happens to us because of  
17          our genes or occupation and things like  
18          that. And I realize that.

19          But when I look at the people in  
20          my community, they're worse off than I  
21          am. And my heart goes out to them. And  
22          they, in turn, would trust me to come  
23          here today and tell you folks this, that  
24          they are very concerned.

25          I think we have 246 actual houses

1 in our community. And when we were going  
2 around and asking for donations for this  
3 John Harris, the lawyer, and giving out  
4 information about the meetings that were  
5 held, we had probably 230 families that  
6 donated. One widow who lost her husband  
7 two years ago handed me a dollar, the  
8 tears ran down my face. What are you  
9 going to do? That's the concern she had,  
10 dollar's worth. Unbelievable. Unbelievable.

11 We're scared. We know it's not going  
12 to be a big, belching plant, we understand  
13 that. It's just the way it's been done  
14 that hurts us the most. They're coming  
15 here as good citizens of the county, they  
16 didn't even want to let us know they were  
17 coming, sir.

18 And at this point we would only ask  
19 that you would have mercy in your heart  
20 today at this hearing and you will be able  
21 to help do the right thing. And that  
22 would be to not let them come in. Thank  
23 you very much.

24 JUDGE: Okay. Mr. Rowe, that concludes  
25 the public comment. Those are the individuals



1 that you identified as wishing to make public  
2 comment, is that correct?

3 MR. ROWE: Those are some. There will  
4 probably be some coming in later. Like I  
5 said, a lot of these people have to work  
6 and they do have to talk with their employers  
7 in order to come here.

8 JUDGE: Okay. The other pending matter  
9 that we have is Oleander's Motion to Strike.  
10 That Motion, Mr. Dee, is, identifies phrases  
11 such environmental injustice, families and  
12 grandchildren and citizens as the offensive  
13 language.

14 MR. DEE: Yes, sir, and I would like  
15 to supplement that before you rule on it.

16 JUDGE: Go ahead.

17 MR. DEE: With regard to the allegations  
18 about Mr. Rowe's legal standing to represent  
19 other people, that portion of the Motion, we  
20 believe, is well-founded and should be  
21 granted.

22 With regard to his allegations about  
23 this project being a crass commercial venture  
24 being foisted upon the local north community,  
25 we also believe that portion of the Motion

1           should be granted because the allegation is  
2           purely speculative, it's clearly impertinent,  
3           if not downright scandalous.

4           The third portion of that Motion,  
5           though, deals with Mr. Rowe's concerns about  
6           environmental injustice. At this time I'm  
7           going to withdraw that portion of the Motion.  
8           We have taken Mr. Rowe's deposition on August  
9           13th and at that time he made clear that  
10          he intended to pursue his environmental  
11          injustice claims with U.S. Department of  
12          Justice and EPA and anyone else who would  
13          listen to him.

14          He's also made veiled reference to  
15          his desire to take immediate appeal of  
16          today's proceedings. Given the possibility  
17          that Mr. Rowe will attempt to pursue an  
18          appeal on those legal issues, we believe  
19          that it is in our best interest to move  
20          forward and address factual merits of the  
21          allegations.

22          We believe that the issue is not  
23          legally relevant in the sense that DEP  
24          does not have the statutory authority to  
25          address it. But in the event that someone

1 in a higher forum should disagree, we'd  
2 like to have already covered the factual  
3 merits of the claim because we believe  
4 there is no factual support for the  
5 - allegation. So we're trying to cover  
6 both sides of the issue.

7 And for that reason, we would ask  
8 that you not strike the allegations of  
9 environmental injustice.

10 JUDGE: Okay, Mr. Goorland?

11 MR. GOORLAND: Well, Your Honor, one  
12 part of the statement that Mr. Dee made  
13 that I agree with was, I agree that, you  
14 know, it is not part of our standard  
15 permitting jurisdiction. And therefore,  
16 I don't think it becomes a relevant issue.  
17 And I'm talking, of course, about that  
18 environmental justice position.

19 The rest of that --

20 JUDGE: Are you objecting to Mr. Dee's  
21 withdrawal of that portion of the Motion?

22 MR. GOORLAND: Well, I don't object  
23 to his withdrawal of the Motion. However --

24 JUDGE: It's only a portion of the  
25 position.

1           MR. GOORLAND:  However, I'd like the  
2           record to reflect our position.

3           JUDGE:  As a matter of law.

4           MR. GOORLAND:  Yes.

5           JUDGE:  Okay, Mr. Rowe --

6           MR. ROWE:  Yes, sir.

7           JUDGE:  -- the Motion, that portion  
8           of the Motion to Strike addressing the  
9           issues of the phrase "environmental  
10          injustice" has been withdrawn, but the  
11          Motion remains with respect to that  
12          portion of the Petition for Administrative  
13          Hearing dealing with family, grandchildren  
14          and citizens and gross commercial venture.

15          Do you wish to respond?

16          MR. ROWE:  I'm not sure whether I  
17          understand it, but -- could you give me  
18          some clarifications?  I thought he withdrew  
19          his concern in reference to the subject.

20          JUDGE:  The Motion to Strike moved to  
21          strike three categories of language in the  
22          Petition for Administrative Hearing.

23          MR. ROWE:  All right, sir.

24          JUDGE:  The first category was language  
25          pertaining to environmental injustice.

1 MR. ROWE: Uh-huh.

2 JUDGE: That portion of the Motion to  
3 Strike has been withdrawn.

4 MR. ROWE: Okay.

5 JUDGE: That leaves open for argument  
6 that portion of the Motion to Strike  
7 language in the Petition for Administrative  
8 Hearing dealing with family, grandchildren  
9 and citizens --

10 MR. ROWE: Uh-huh.

11 JUDGE: -- and gross commercial venture.

12 MR. ROWE: Yes, I'd like to address  
13 that. Again, I go back into what I consider  
14 the vested right or Constitutional rights,  
15 a right to defend one's home and family.  
16 When I speak of my children and my  
17 grandchildren, I did give Mr. Dee a list  
18 of my family and their addresses living  
19 in the community.

20 He already knew there are Title V  
21 pollutioners (sic) that are within this  
22 community. It's like a glass of water,  
23 it's filled to the rim. And even though  
24 Oleander Power Company would like to come  
25 in and say hypothetically with a quarter

1 of a teaspoon, that quarter of a teaspoon  
2 once it hit that glass would overrun it.  
3 So we have a real serious concern with  
4 reference to it health and welfare.

5 -- And I feel that as a citizen, a  
6 father, that I have a right to protect  
7 my family. Those are my offspring. My  
8 friends and my neighbors, as well. And  
9 I think we all have that right, based on  
10 our constitutional rights.

11 It appears that Oleander Power Plant  
12 is attempting to ride roughshod over  
13 common citizens that does not have the  
14 legal expertise or professional support  
15 or services that they are fortunate enough  
16 to have. I think that this is something  
17 that people that have little or no income  
18 should be given a right to voice their  
19 concern and protect their family and their  
20 community.

21 I feel that this is a Constitutional  
22 right. And I feel that it is an investment  
23 that I have to protect my family and ensure  
24 that the impact or the adverse impact on  
25 the environment, quality of air, quality of

1 water, quality of our community stay as  
2 level as humanly possible, that my great  
3 grandchildren might be able to enjoy the  
4 benefits of this community which I have  
5 watched and, and, as I see it, slowly  
6 deteriorating, based on some of these  
7 different impacts.

8 So I feel that that should stand.  
9 I feel that it's a Constitutional right.  
10 We send our kids to service to protect  
11 this country and we have right here as  
12 well to protect our families and our  
13 communities. And I don't think we're  
14 doing anything illegal or immoral.

15 JUDGE: The Motion to Strike is  
16 granted as to that part which has not  
17 been withdrawn.

18 Does Oleander wish to make opening  
19 statement?

20 MR. DEE: Yes, sir, Your Honor.  
21 Your Honor, the issue in this case is  
22 whether the Florida Department of  
23 Environmental Protection should issue a  
24 permit for the Oleander Power Project.  
25 And to state the issue more precisely,

1 the issue is whether Oleander has provided  
2 reasonable assurances to DEP that Oleander's  
3 project will comply with the applicable DEP  
4 rules under the DEP program for the  
5 prevention of significant deterioration of  
6 air quality.

7 The prevention of significant  
8 deterioration, or PSD permit, that is at  
9 issue in this case, would authorize the  
10 construction of certain facilities that  
11 are potential sources of airborne emissions.  
12 In this case, those facilities include five  
13 combustion turbines that would be used to  
14 generate electricity at an electrical power  
15 plant that Oleander plans to build here in  
16 Brevard County. It would also include two  
17 fuel storage tanks.

18 In this case, the evidence will  
19 demonstrate that the Florida Department of  
20 Environmental Protection has, indeed,  
21 carefully reviewed Oleander's application  
22 and reached a preliminary decision to  
23 issue the PSD permit to Oleander. The  
24 evidence will further demonstrate the  
25 DEP's decision is a critical one and the



1 PSD permit should, indeed, be issued.

2 The combustion turbines that are  
3 at issue in this case truly represent  
4 state of the art technology. The turbines  
5 are extremely fuel efficient. They will  
6 use much less fuel than the existing fleet  
7 of similar oil and gas-fired power plants  
8 here in Florida.

9 They will -- by using less fuel, they,  
10 in turn, will produce less in the way of  
11 airborne emissions.

12 In addition, these new generation  
13 combustion turbines have design features  
14 that are pollution prevention features.  
15 They prevent the airborne pollution from  
16 being formed in the first instance.

17 This project will use natural gas  
18 as its primary fuel. Natural gas is  
19 the cleanest burning fossil fuel that's  
20 commercially available today for the  
21 generation of electricity. If natural  
22 gas is not available, very low sulfur  
23 fuel oil will be used as a backup fuel.

24 This project will be a peaking  
25 power plant. It will provide power to

1 the citizens of this community and the  
2 State of Florida when there are peak  
3 demands for electrical power. Those  
4 peak demands typically occur during  
5 the very cold winter months, the very  
6 hot summer months, when your heater or  
7 your air conditioner are on, or when  
8 there's been an emergency such as a  
9 hurricane.

10 As a result, this project will only  
11 operate part time. In this case, Oleander  
12 is only seeking authorization to operate  
13 this plant a maximum of 3,390 hours per-  
14 year, or approximately 39 percent of the  
15 year. What that means is the remainder  
16 of the year the plant will be idle.  
17 There will be no airborne emissions from  
18 the plant during those times.

19 When the plant is operational, it will  
20 have to comply with very stringent emission  
21 limits that are being imposed by the Florida  
22 Department of Environmental Protection.

23 Those limits have been determined  
24 through the analysis of the best available  
25 control technology for this facility. This

1 project must comply with DEP's best available  
2 control technology available. And indeed,  
3 the limits that are being proposed in this  
4 case are being used as a model for facilities  
5 throughout the United States. They will set  
6 the standard for other similar peaking  
7 plants throughout the United States.

8 Now, Oleander has performed an  
9 evaluation of the project's impacts on  
10 ambient air quality. Oleander's analysis  
11 was prepared in accordance with standard DEP  
12 and EPA procedures and guidelines. That  
13 analysis was very conservative. It  
14 overestimates the potential impacts from  
15 the project.

16 Even using a conservative analysis,  
17 the evidence will demonstrate that the  
18 project's maximum impacts on ambient air  
19 quality will be less than one percent of  
20 any of the ambient air quality standards  
21 that are enforced by DEP. Those ambient  
22 air quality standards were developed by  
23 the United States Environmental Protection  
24 Agency and, in turn, were adopted by the  
25 Department of Environmental Protection.

1           The standards are expressly designed  
2           to protect human health and welfare. They  
3           were designed to protect everyone. That  
4           includes children, that includes the elderly,  
5           that includes asthmatics and other people  
6           who are especially sensitive to sources of  
7           airborne pollution. All of those people  
8           are intended to be protected by the ambient  
9           air quality standards.

10           In this case the project's maximum  
11           impacts are 0.6 percent of the applicable  
12           ambient air quality standards or less, 0.6  
13           percent or less. In this case human health  
14           and welfare will be protected by an  
15           extremely wide margin.

16           The evidence presented today will also  
17           demonstrate that the project complies with  
18           all of the applicable, other applicable DEP  
19           air quality standards and regulations.

20           Now, as I mentioned, the Department  
21           has performed its own independent review  
22           of the evidence of the application. They  
23           have independently concurred with Oleander  
24           that the PSD permit should be issued.

25           Now, you've heard a lot of comments

1           this morning from the public already, and  
2           you also have reviewed Mr. Rowe's petition.  
3           And notwithstanding the information that's  
4           already been presented to DEP by Oleander  
5           and notwithstanding the analysis that was  
6           done by the Department, we continue to  
7           hear from Mr. Rowe and the public about  
8           their fears and their concerns with regard  
9           to this project.

10                   We certainly understand the concerns,  
11           but I want to assure you that we have tried  
12           to address those concerns and we will try  
13           again today to address those concerns.

14                   The first issue that Mr. Rowe has  
15           raised is that Oleander should monitor the  
16           air quality near the site. Now, as it turns  
17           out, the Florida Department of Environmental  
18           Protection already has a network of ambient  
19           air quality monitoring stations located here  
20           in Brevard County, throughout the region and,  
21           indeed, throughout the State of Florida.

22                   Further, the evidence will demonstrate  
23           that additional ambient air quality monitoring  
24           by Oleander is not required under any of the  
25           applicable DEP regulations.

1           Further, such monitoring is not  
2 warranted. Even if Oleander were to incur  
3 the cost of installing an ambient air quality  
4 monitor near the site or at some other  
5 appropriate location in this county, you  
6 wouldn't be able to measure a change in  
7 ambient air quality after it starts operating.  
8 For that reason, it would be inappropriate  
9 and unwarranted for Oleander to incur the  
10 additional expense of installing that monitor,  
11 and that expense would range upwards of  
12 \$100,000.

13           Now, Mr. Rowe and other members of the  
14 public have mentioned that they are concerned  
15 about the potential cumulative impacts of  
16 air pollution here in Brevard County as a  
17 result of the existing sources of air  
18 pollution when combined with the potential  
19 impacts associated with Oleander.

20           As you've heard, his analogy is that  
21 the glass is full. I am happy to announce  
22 that Mr. Rowe's concerns simply are not  
23 well founded. The existing air quality in  
24 Brevard County meets all of the applicable  
25 ambient air quality standards that, as I

1 mentioned, have been promulgated expressly  
2 to protect human health and welfare.

3 Nonetheless, in an effort to respond  
4 to these concerns, Oleander did an analysis  
5 of the cumulative impacts associated with  
6 this project when combined with the effects  
7 of the other power plants in this region.  
8 The evidence will show that those impacts,  
9 whether viewing Oleander individually or  
10 cumulatively with the other facilities,  
11 there will not be any measurable or  
12 meaningful change in ambient air quality  
13 in this region as a result of the power  
14 plant that Oleander has proposed.

15 Mr. Rowe also in his deposition has  
16 raised questions about the project's  
17 impacts on water quality in surrounding  
18 lakes and streams such as the Saint John's  
19 River and Indian Liver Lagoon. It should  
20 be noted that normally DEP does not require  
21 an applicant for a PSD permit to determine  
22 whether the airborne emissions from its  
23 source will cause adverse impacts on water  
24 quality. Nonetheless, here, too, Oleander  
25 has attempted to evaluate Mr. Rowe's concerns.

1           The evidence will demonstrate that the  
2 emissions in this case will be exceptionally  
3 small. And because the emissions are  
4 exceptionally small, the impacts on water  
5 quality will be immeasurably small.

6           And the final issue that you've heard  
7 us discuss this morning is the question  
8 of environmental justice. Mr. Rowe has  
9 alleged that DEP should not issue the PSD  
10 permit in this case because the project  
11 allegedly would not be consistent with  
12 President Clinton's Executive Order with  
13 regard to environmental justice issues.  
14 The President's Executive Order applies  
15 to federal agencies.

16           The order instructs federal agencies  
17 to not take actions that would cause a  
18 disparate or a disproportionate adverse  
19 impact on minority neighborhoods or low  
20 income populations.

21           As you've heard from Mr. Goorland,  
22 DEP does not have the statutory authority  
23 to consider or implement the President's  
24 Executive Order. They have no statutory  
25 authority to consider environmental justice



1 issues when they decide whether to issue  
2 or deny a PSD permit.

3 Again, in an effort to respond to the  
4 concerns that have been raised in this  
5 community, in an effort to be proactive,  
6 Oleander has addressed environmental justice  
7 issues.

8 The evidence will demonstrate that  
9 this project will have no meaningful adverse  
10 impacts on any minority or low-income  
11 neighborhood. There will not be any  
12 disproportionate adverse impact on any  
13 minority or low-income community.

14 Now, the evidence will be presented  
15 by four witnesses that will be called on  
16 behalf of Oleander. The first three  
17 witnesses are Richard Zwolak, Ken Kosky  
18 and Bob McCann. They're private consultants  
19 employed with the firm of Golder, Incorporated.  
20 These three witnesses are exceptionally well  
21 qualified to offer the testimony that they're  
22 about to give here today.

23 These three witnesses have performed  
24 environmental socioeconomic analyses of many  
25 of the power plants here in Florida. Indeed,

1 they have worked on many power plants around  
2 the United States and they've worked on many  
3 air pollution and environmental statements  
4 throughout the globe, throughout the world.  
5 Oleander's fourth witness will be a  
6 representative of the Florida Department of  
7 Environmental Protection, Mr. Al Linero.  
8 Mr. Linero is also qualified to discuss the  
9 issues that have been raised in this case.

10 He has approximately 20 years of  
11 experience working on air pollution issues.  
12 He will explain on behalf of the Department  
13 why DEP has concluded that the permit should  
14 be issued for this project.

15 So in summary, we believe the evidence  
16 will overwhelmingly demonstrate that this  
17 project complies with all of the applicable  
18 DEP criteria and, for that reason, the  
19 Department should issue the PSD permit that  
20 is in question.

21 JUDGE: Thank Mr. Dee. Mr. Goorland?

22 MR. GOORLAND: No statement.

23 JUDGE: Mr. Rowe, opening statement?

24 MR. ROWE: As previously stated, I have  
25 no expertise, neither am I a lawyer, but we

1 do have a degree of sensitivity pertaining  
2 to our community. Speaking of the already  
3 accumulated polluters in Title V that are  
4 already here and Oleander Power Plant, I  
5 think, is also classed as a Title V, which  
6 means it will contribute to the pollution  
7 that's already here, I think it's important  
8 that the people that live here, that have  
9 concerns here, that have investments here  
10 are heard.

11 And not only that, that they're listened  
12 to. Oleander and its power and its financing  
13 backing has been fortunate enough to have  
14 some of the best witnesses, expertise, I  
15 guess, that money can buy.

16 However, we are not fortunate enough to  
17 have some eloquently -- and I don't know if  
18 I'm doing a good job in speaking, but I  
19 think it's important that we, too, be given  
20 a form of justice in reference to what we  
21 believe in hoping that we can live in peace  
22 and harmony.

23 The Oleander plant is not something  
24 that is desperately needed here. It appears  
25 that the Oleander plant is here to profiteer.

1           There is a -- what is it, Florida Power and  
2           Orlando Utilities, they are power sources,  
3           they do contribute to the pollution. Matter  
4           of fact, Orlando Utility has just recently  
5           been fined about \$25,000 in violation for  
6           contributing to some of these ill-fated  
7           things.

8           My concern is that we just have so much  
9           here that there is no compelling need for  
10          Oleander Power Plant in this particular  
11          community, there is no benefit to the  
12          citizens. They're not going to reduce the  
13          rate of the power that we utilize here.

14          There's really no job opportunities  
15          here. We talk about 12 people, we don't  
16          even know if those 12 people that they're  
17          talking about hiring is either local or  
18          shipped in.

19          We're seriously concerned in reference  
20          to our health and welfare of this community  
21          and we are hoping that you will deny this  
22          petition.

23          We -- even though the DEP might not  
24          have certain jurisdiction, I know that  
25          during our telephonic conference you stated

1 that you didn't have jurisdiction in  
2 reference to the environmental justice  
3 issue, and perhaps there are other things  
4 that these agencies might not have  
5 jurisdictions in.

6 However, I think it's important that  
7 wherever those jurisdiction lies, that power  
8 and that are authority lies, that the issue  
9 continue. I have requested that you consider  
10 forwarding this information to the proper  
11 authorities for consideration of these issues,  
12 hope that you will take that in consideration  
13 in doing so.

14 But the bottom line is that there's an  
15 awful lot of people that have a real serious  
16 concern and have voiced that concern, but it  
17 doesn't appear that it's having any real  
18 degree of sensitivity in catching the ear of  
19 those concerned.

20 However, we will do whatever the proper  
21 procedures are and follow those procedures  
22 until we can reach to a plateau that we might  
23 be able to seek justice. We, therefore,  
24 request that the permit be denied.

25 JUDGE: Okay. Mr. Dee, how long are

1 your first three witnesses going to take?

2 MR. DEE: This is just a lunch scheduling  
3 issue, so let's go off the record.

4 (Whereupon, discussion was held off the  
5 record.)

6 JUDGE: Let's go back on the record.  
7 We'll get to that, Mr. Rowe.

8 Mr. Dee, call your first witness.

9 Oh, and for the record, when you're  
10 presenting expert testimony --

11 MR. DEE: Yes, sir.

12 JUDGE: -- have you, Mr. Rowe, have  
13 you reviewed the qualifications of these  
14 experts?

15 MR. ROWE: Sir, even if I did, it  
16 really doesn't mean anything to me. I'm  
17 just a common --

18 JUDGE: You have a right to object  
19 to the qualifications of the experts, and  
20 if you want to, if you want Mr. Dee, Mr.  
21 Dee to lay those qualifications out on  
22 the record as what we call laying a  
23 predicate for the tender of the expert,  
24 then that's your right to do that.

25 If you don't have any objection to

1 that, then Mr. Dee can submit the  
2 qualifications of the experts in the  
3 form of a resume' and then we can proceed  
4 to the substance of their testimony.

5 MR. ROWE: I would request that he  
6 do that first thing you just stated.

7 JUDGE: Okay, call your first witness.

8 MR. DEE: Yes, sir.

9 MR. GOORLAND: Your Honor, would it  
10 be possible to take a break?

11 JUDGE: You wanted a recess, I'm sorry,  
12 let's do that.

13 (Whereupon, a recess was taken in the  
14 proceedings.)

15 JUDGE: Okay, back on the record.

16 Mr. Dee, call your first witness.

17 MR. DEE: Yes, sir, at this time  
18 Oleander would call Mr. Richard Zwolak.

19 JUDGE: Mr. Zwolak.

20

21 WHEREUPON,

22

RICHARD ZWOLAK,

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

24 whole truth as hereinafter certified, was examined and

25 testified under the oath as follows:

1           JUDGE: State your first and last name  
2           and spell each name for the record.

3           THE WITNESS: My name is Richard Zwolak,  
4           R I C H A R D, capital Z W O L A K.

5           JUDGE: Okay. Mr. Dee.

6           MR. DEE: Your Honor, as a preliminary  
7           matter, let me just point out, this is a  
8           complete set of the Exhibits that Oleander  
9           will be introducing today. This is your set.  
10          We have a separate set over here for the  
11          Witness to use, and I've already given a  
12          full set to Mr. Goorland and a set was  
13          provided to Mr. Rowe.

14          JUDGE: Okay.

15   DIRECT EXAMINATION

16          BY MR. DEE:

17           Q. Mr. Zwolak, are you familiar with the Oleander  
18          Power Project that is the subject of this proceeding?

19           A. Yes, I am.

20           Q. Would you just explain very briefly as to how you  
21          became familiar with the project.

22           A. Golder was commissioned in 1996 to conduct the  
23          preliminary investigation of the site, as well as several  
24          other sites in Florida for either a simple cycle or combined  
25          cycle power plant.



1           The proposed Oleander site was one of those sites.

2           Q.    You mentioned Golder, is that where you're  
3 employed?

4           A.    Yes, sir.

5           Q.    And what is Golder? --

6           A.    Golder is an international environmental and  
7 engineering consulting firm.

8           Q.    What is your job title at Golder?

9           A.    I have two titles. One is Director of  
10 Environmental Planning, and the other is Power Sector Program  
11 Manager.

12          Q.    And what are your general duties and  
13 responsibilities at Golder?

14          A.    With respect to the Director of Environmental  
15 Planning, I'm responsible for conducting environmental  
16 studies and multidisciplinary studies to support our public  
17 and private sector clients. Those multidisciplinary studies  
18 often involve evaluation of air and water resources, ecology  
19 and land use.

20          Q.    What academic training do you have for your work at  
21 Golder?

22          A.    I received a Bachelor of Arts degree in Geography  
23 from the University of South Florida in 1976. And I also  
24 received a Master's of -- degree in Geography from the  
25 University of South Florida in 1979.

1 Q. Did your Master's degree include any courses  
2 involving environmental planning or other related subjects?

3 A. Yes, the environmental planning discipline was  
4 incorporated within the program at the time of my education.  
5 The types of courses that were part of the curriculum  
6 included Social Science Statistics, Physical and Cultural  
7 Geography.

8 Q. Would that include analysis of socioeconomic  
9 issues?

10 A. Yes, it would.

11 Q. All right. Do you have any professional  
12 certifications?

13 A. Yes, I am certified by the American Institute of  
14 Certified Planners. That is a nationally recognized  
15 certification program for planning professionals.

16 Q. When did you receive that certification?

17 A. I received that certification in 1986.

18 Q. So approximately how many years of experience do  
19 you have working on environment and land use studies?

20 A. I have one year of experience in the public sector  
21 and then 20 years as a private consultant.

22 Q. Could you just give us an overview of the kinds of  
23 projects that you've worked on during your career.

24 A. Yes, they generally fall into three categories.  
25 One is the siting of community infrastructure. That would

1 include utilities such as power plants and transmission  
2 lines. It also involves other infrastructure such as  
3 pipelines, highways, airports, landfills.

4 Another major component of my work during the 20  
5 years has been the environmental assessment of those proposed  
6 facilities on both the physical and biological environment as  
7 well as on the cultural environment.

8 In addition, I have been responsible for seeking  
9 permits and approvals from federal, state and local agencies  
10 for those projects.

11 Q. What kinds of permits have you been responsible for  
12 obtaining for these projects?

13 A. The permits that are typically required and that  
14 I've been responsible for obtaining include air construction  
15 permits, including prevention of significant deterioration,  
16 including water use permits, waste water and storm water  
17 permitting, dredge and fill permitting and comprehensive plan  
18 amendments, rezoning and site plan approvals.

19 Q. How many -- approximately how many environmental  
20 impact studies and environmental analyses have you performed  
21 over the last 20 plus years?

22 A. Well over 200 studies.

23 Q. And how much projects have you worked on where  
24 you've had to evaluate the environmental permitting and land  
25 use issues concerning an electrical power plant or electrical

1 transmission line?

2 A. That would be well in excess of 20 studies.

3 Q. Has all of your work been performed here in  
4 Florida?

5 A. It has not. Most of my work has been conducted in  
6 Florida. However, I have worked in approximately 20 other  
7 states as well as over half a dozen foreign countries.

8 Q. Has all of your work been performed for private  
9 clients?

10 A. It has not. I have worked directly for federal  
11 and state governments, agencies, including environmental  
12 agencies, as well as local governments. That would be  
13 counties as well as cities.

14 Q. Who employed you for your work overseas?

15 A. A number of clients, the most frequent of which was  
16 the World Bank.

17 Q. Have you ever been qualified and allowed to testify  
18 as an expert witness before?

19 A. I have, yes.

20 Q. And what areas have you addressed in your testimony  
21 as an expert witness?

22 A. In previous proceedings, I've qualified as an  
23 expert in environmental planning, resource planning, land use  
24 exhibit analysis, environmental impact analysis and  
25 socioeconomic analysis.

1 Q. Have you ever appeared before any regulatory body  
2 or agency to render opinions concerning the environmental  
3 impacts associated with an electrical power plant?

4 A. Yes, I have. I've appeared before federal, state  
5 and local agencies to either present findings of our studies  
6 or to seek approval for projects.

7 Q. Mr. Zwolak, I've previously showed you Exhibit 16.  
8 Is Exhibit 16 a true and correct copy of your resume'?

9 A. Yes, it is.

10 Q. Does your resume' accurately summarize your  
11 academic and professional accomplishments?

12 A. It does, yes.

13 MR. DEE: Your Honor, at this time we  
14 would proffer Mr. Zwolak as an expert  
15 concerning land use planning --

16 JUDGE: Go ahead.

17 MR. DEE: -- land use analyses and  
18 socioeconomic and environmental impact  
19 assessments.

20 JUDGE: Mr. Goorland, any objection?

21 MR. GOORLAND: No objection, Your Honor.

22 JUDGE: Mr. Rowe, any objection?

23 MR. ROWE: No objection.

24 JUDGE: The Witness is accepted as an  
25 expert for the purposes tendered without

1 objection.

2 BY MR. DEE:

3 Q. Mr. Zwolak, you mentioned that you began working  
4 for Oleander in 1996?

5 A. That's correct.

6 Q. And what were you asked --

7 JUDGE: Before we go any further, did  
8 you intend to admit -- to submit Oleander 16?

9 MR. DEE: That and other exhibits when  
10 his testimony is completed.

11 JUDGE: Okay, go ahead. Just so the  
12 parties know, if you want to submit something  
13 for admission in evidence, then you have to  
14 say that. Because just identifying it doesn't  
15 submit it for admission.

16 Okay, go ahead, Mr. Dee.

17 BY MR. DEE:

18 Q. You mentioned that you began work for Oleander  
19 in 1996 --

20 JUDGE: Just a minute. You're going  
21 to have to -- if you want to continue to  
22 confer, you're going to need to move so  
23 that you're outside of my ear shot because  
24 it's distracting, I can't hear what's  
25 going on.

1 UNIDENTIFIED SPEAKER: I'm sorry.

2 JUDGE: You're free to remain there,  
3 but if you want to confer go someplace  
4 else.

5 -- Go ahead.

6 BY MR. DEE:

7 Q. What were you asked to do for Oleander in 1996?

8 A. I was asked to evaluate the Oleander site and  
9 determine its suitability for a power plant. We evaluated  
10 air and water resource aspects of the site on the project as  
11 well as ecological and land use considerations.

12 Q. And what were your general responsibilities  
13 concerning this project?

14 A. I was the Project Manager responsible for oversight  
15 of that entire study.

16 Q. Were you also responsible for obtaining all of the  
17 local and state and federal permits and approvals for the  
18 project?

19 A. Yes.

20 Q. All right. In general terms, can you tell us what  
21 Oleander wants to build in Brevard County.

22 A. Yes. The proposed Oleander Project is a peaking  
23 power plant. It will use five combustion turbines to  
24 generate approximately 850 megawatts of electricity. It is  
25 a peaking facility and, as such, it is designed to operate

1 only during a portion of the year, that portion of time when  
2 the demand for electricity exceeds the supply that would  
3 otherwise be provided by base load facilities.

4 Q. And when would that occur?

5 A. Generally, that occurs due to weather extremes,  
6 either very hot weather or very cold weather. It can also  
7 occur on the basis of various types of emergency type  
8 situations, some of which are also weather related.

9 Q. Since Oleander is building a peaking plant, has  
10 Oleander agreed to limit the operations of this facility?

11 A. Yes, they have.

12 Q. And what -- can you summarize those limitations for  
13 us?

14 A. Yes, those limitations, which are included in both  
15 the draft permit issued by DEP and the Stipulated Settlement  
16 Agreement issued by Brevard County, would include a  
17 limitation of 3,390 hours per year, that's approximately 30  
18 percent of the hours in a year.

19 And there's also a limitation to the amount of fuel  
20 oil that would be used as a backup to the primary supply of  
21 natural gas. And that limitation is 1,000 hours per year.

22 Q. What is Oleander's expectation with regard to the  
23 actual operation of this facility? How many hours is it  
24 really expected to operate?

25 A. Well, the request in the permit application and



1 subsequent document is for what is perceived to be the  
2 maximum potential, which would be the 3,390. We have  
3 evaluated a number of scenarios, one of which is frequently  
4 used as the basis for conceptual design, is 400 hours on  
5 natural gas and 400 hours on fuel oil.

6 Q. Historically, how many hours have the other peaking  
7 plants in Florida operated?

8 A. Historically, much less. And there are certainly  
9 quite a number of peaking plants and they're all used very  
10 differently by different utilities and independents. But  
11 historically less than 800 hours per year.

12 Q. Now, what kind of equipment will actually generate  
13 the electricity in this case?

14 A. Those would be five combustion turbines.

15 Q. And how much power will they produce?

16 A. Under nominal condition, 850 megawatts.

17 Q. You mentioned combustion turbines. Are combustion  
18 turbines used at other facilities here in Florida?

19 A. Yes. It is the dominant type of technology that's  
20 being proposed today. There are well over 80 sites in  
21 Florida under both a simple cycle configuration, which you  
22 use for peaking purposes, and combined cycle configuration,  
23 which is typically used for longer term operation.

24 Q. Can you give us an example of some combustion  
25 turbines that are currently being used here in Florida?

1           A.    Certainly.  I have been involved in permitting a  
2   number of plants, some of them being the University of  
3   Florida cogeneration plant on the campus of the University  
4   of Florida.  There are two cogeneration plants in the Tampa  
5   and Orlando areas that employ a combined cycle technology  
6   using combustion turbines.

7                   Walt Disney World has a combustion turbine that  
8   generates a substantial amount of their electrical needs.  
9   And there are also a number of simple cycle and combined  
10  cycle configurations in urbanized areas of southeast Florida  
11  such as the City of Lake Worth.

12           Q.    Now, you mentioned the combustion turbine at the  
13  University of Florida.  Where is that in relation to Shands  
14  Hospital?

15           A.    That is immediately west of the hospital.

16           Q.    So it's in very close proximity to the Shands  
17  Hospital.

18           A.    It's within 700 to 800 feet of the hospital  
19  structure.

20           Q.    All right, sir.  And you mentioned that there was a  
21  similar facility at Walt Disney World.

22           A.    That is correct.

23           Q.    Can you tell us where that is located in relation  
24  to other landmarks at Disney World.

25           A.    That is situated, the plant at Disney World is

1 situated about 1,200 feet from the Magic Kingdom,  
2 Cinderella's Castle. It's also situated in close proximity,  
3 by that I mean several hundred feet, to the employees' day  
4 care center.

5 Q. You mentioned a facility at Lake Worth. Is that  
6 facility located near any local landmarks?

7 A. Yes. It's located immediately adjacent to  
8 Interstate 95 and just south of the Lake Worth High School.

9 Q. You mentioned other similar facilities. Are there  
10 any that are located in close proximity to residential  
11 neighborhoods?

12 A. Yes, most of the facilities that I've mentioned  
13 with, perhaps, the one exception being Shands Hospital is  
14 located in areas that have residences within 1,000 feet from  
15 the project site boundary.

16 Q. All right, sir. I'd like you to turn to Exhibit 36  
17 and show us where this project will be located.

18 A. Exhibit 36 is a project location map, and I do have  
19 this in a larger size. If you wish, I can use that.

20 Q. Why don't you show us the larger one, then.

21 So you're looking at a blowup of Exhibit 36?

22 A. I am.

23 Q. Can you identify some of the landmarks in the  
24 community for us?

25 A. And I'll go ahead and mark it as Exhibit 36.

1           Exhibit 36 is a reproduction of a map showing the  
2 Central Brevard area. It shows the main land portion of  
3 Central Brevard, as well as the barrier islands.

4           The proposed project site is located just west of  
5 the municipal limits of the City of Cocoa. It is also  
6 located in the northeast corner, or near the northeast corner  
7 of the interchange of State Road 520 and Interstate 95.

8           Q. So we're east of 95 and north of 520?

9           A. That's correct.

10          Q. All right, sir. Where is this site in relationship  
11 to the town of Mims, Florida?

12          A. Mims, Florida, is located just about due north of  
13 the proposed project site, approximately 21 miles north.

14          Q. All right, sir. Now, I'd like you to look at  
15 Exhibit 35, and I'd also like you to use your aerial  
16 photograph to show the area surrounding the proposed site.

17          A. Exhibit 35 is an aerial photograph that was taken  
18 by a subcontractor of Golder in 1998. I'll go ahead and mark  
19 the board as Exhibit 35, as well, the presentation board.

20                 The Exhibit depicts the existing conditions around  
21 the plant site. The plant site itself includes either the  
22 existing land use that will, would remain to a certain degree  
23 after construction's complete. And it also shows the  
24 proposed project superimposed on this existing aerial  
25 photograph.

1 Q. Can you tell us what's in the area surrounding the  
2 site?

3 A. Yes. As Exhibit 35 depicts, the existing area is,  
4 is largely undeveloped. The businesses that are closest to  
5 the proposed site include several commercial and industrial  
6 type businesses. Further to the east of the proposed site  
7 are additional industrial and commercial uses along the  
8 frontage of Cox Road. Those would be primarily on the west  
9 side of Cox Road.

10 To the north is an existing substation which the  
11 project would propose to interconnect with. To the west of  
12 the proposed project footprint and still on the project site  
13 boundary are existing electrical transmission lines.

14 And further to the south there is an area of  
15 undeveloped land.

16 Q. And where is I-95 in relation to the project?

17 A. I-95 is located to the west of the project and is  
18 identified as that highway in the lower left corner of  
19 Exhibit 35.

20 Q. All right, sir. Do you have an aerial photograph  
21 that would also depict the land uses in the area surrounding  
22 the site?

23 A. Yes.

24 MR. DEE: That particular Exhibit is  
25 not included in Oleander's Exhibit list.

1 Mr. Zwolak just provided that to us today.  
2 I would propose to identify that Exhibit  
3 as 46.

4 Mr. Zwolak, if you'll give me copies  
5 of that Exhibit.

6 THE WITNESS: -I have those.

7 MR. DEE: All right, we need to distribute  
8 them to the parties.

9 THE WITNESS: Okay.

10 JUDGE: For the record, Oleander's 46  
11 is what?

12 MR. DEE: It's an aerial photograph of  
13 the area that includes the site as well as  
14 surrounding developments.

15 BY MR. DEE:

16 Q. Mr. Zwolak, would you use Oleander's Exhibit 46 and  
17 describe the area surrounding the proposed site?

18 A. Yes, referring to Exhibit 46, the central portion  
19 of the aerial photograph is a, is where the project site is  
20 located. So this not only shows the existing businesses that  
21 I described on Exhibit 35, but it also shows the property  
22 that would be occupied by the proposed simple cycle power  
23 plant.

24 This particular Exhibit does show Interstate --  
25 I-95 to the west. It also shows State Road 520 to the south.

1           It identifies the commercial and industrial  
2 businesses on the west side of Cox Road.

3           It also identifies some of the closest residential  
4 areas which are located over 1,400 feet to the east and to  
5 the west of the proposed site.

6           Q.   How is the site identified on Exhibit 46?

7           A.   It is depicted by a dark blue boundary that  
8 circumscribes the three parcels of land that comprise the  
9 project site. Most of the site is located to the north of  
10 Townsend Road, which is a road that runs north/south from  
11 State Road 520, and then turns to the west.

12           There is a small portion of the site that's located  
13 to the south of Townsend Road.

14           MR. GOORLAND: Excuse me one second. Is  
15 it possible, Your Honor, that we could perhaps  
16 rearrange the board a little so that he can  
17 stand to the side of it rather than in front  
18 of it?

19           MR. DEE: If this gentleman here would  
20 move over to Richard's seat, then Richard  
21 can stand to one side.

22           MR. GOORLAND: Thank you.

23           MR. DEE: That might be a little easier  
24 to see.

25           MR. GOORLAND: I apologize for the

1 interruption, Your Honor.

2 THE WITNESS: Thank you. Just to  
3 reiterate a little bit, Exhibit 46 identifies  
4 the site boundary in dark blue, it identifies  
5 the nature of the site and the surrounding  
6 properties as being surrounded by either  
7 industrial, commercial or utility uses.

8 Identifies some of the infrastructure in  
9 the area, I-95 and State Road 520 to the south  
10 and west respectively, and it also identifies  
11 the closest residential areas which are to  
12 the east of Cox Road and to the west of  
13 Interstate 95.

14 BY MR. DEE:

15 Q. What is the zoning for the site?

16 A. The zoning for the existing site is IU, which is  
17 light industrial.

18 Q. All right, sir, and what is the zoning for the  
19 surrounding area?

20 A. The surrounding area is zoned primarily light  
21 industrial, as well. That would include properties to the  
22 east, north and west. There is a small portion to the  
23 southeast of the project site zoned heavy industrial and the  
24 property to the south of, the southern portion of the site is  
25 zoned tourist commercial.



1 Q. All right, sir. I'd like you to use Exhibit 35 and  
2 45 to describe Oleander's proposed plan for developing the  
3 site.

4 JUDGE: Give me those Exhibit numbers  
5 again.

6 MR. DEE: Yes, sir, 35 and 45.

7 JUDGE: Okay.

8 THE WITNESS: Exhibit 35 is a conceptual  
9 drawing of what the proposed project would look  
10 like after build-out. It is superimposed on an  
11 oblique aerial photograph, oblique color aerial  
12 photograph that was taken by a sub contractor  
13 in 1998.

14 The Exhibit Number 45 is a site plan of  
15 the proposed project located within the proposed  
16 site boundaries showing the orientation of the  
17 equipment on the project site.

18 BY MR. DEE:

19 Q. What are the major components of the project?

20 A. The five combustion turbines which would be used to  
21 generate electricity are oriented on an east/west orientation  
22 located just south of the existing substation and just west  
23 of the existing transmission lines that abut the project  
24 site.

25 To the east and to the south of those combustion

1 turbines are water treatment and storage equipment. Also,  
2 further to the southeast of the project site, the location  
3 where the combustion turbines are located is fuel, you know,  
4 location and storage would occur.

5 In areas peripheral to these major components,  
6 those areas being to the east, south and southwest of the  
7 equipment, is where storm water management facilities would  
8 be developed to maintain the storm water on site.

9 Q. Approximately how tall will the features of the  
10 project be in relation to ground level?

11 A. The tallest features would be the stacks for each  
12 combustion turbine, so there would be five stacks associated  
13 with the project, each being 60 foot above ground level.

14 There are a series of ancillary equipment stored  
15 with the combustion equipment which would all be lower than  
16 that. The other major structures on site would be both the  
17 water storage tanks and the fuel tanks. And those tanks  
18 would be generally 35 to 45 feet in height.

19 Q. All right, sir. Why was this site selected for the  
20 proposed project?

21 A. Well, it provides for an opportunity to develop a  
22 project without impacting a residential area. It is located  
23 immediately adjacent to a substation. It's located adjacent  
24 to transmission lines and a natural gas pipeline which would  
25 provide the primary fuel source.

1           It is located in an area that is zoned for  
2 industrial development, that is designated for both light and  
3 heavy industrial use in the comprehensive plan, and it  
4 provides a significant buffer not only because of the site  
5 arrangement but the immediately adjacent off-site uses, it  
6 provides a significant buffer to the closest residential  
7 areas.

8           Q.   Does this site have good characteristics for its  
9 proposed use?

10          A.   Yes, it's good -- excellent characteristics for  
11 this proposed use.

12          Q.   How will Oleander obtain water for the project's  
13 needs?

14          A.   The plan to supply water to the project comes from  
15 a thorough evaluation of all the alternatives that were  
16 investigated in the early part of 1998. What is proposed is  
17 to utilize reclaimed water to the greatest extent practical.

18                 And there would be an agreement between the City of  
19 Cocoa and the Applicant, Oleander Power, to supply that  
20 reclaimed water.

21                 Oleander intends to develop infrastructure in  
22 concert with the City of Cocoa to supplement that reclaimed  
23 water with a storm water supply. That would supplement  
24 reclaimed water when it was not available.

25                 Potable water would be used only as a last resort

1 if reclaimed water and storm water were not available.

2 Q. What would Oleander do with the waste water that's  
3 generated on site?

4 A. The minimal amounts of storm water -- excuse me,  
5 of waste water that would be generated on site would be  
6 discharged back to the City of Cocoa.

7 Q. So there will be no discharges of industrial waste  
8 water into the environment on this site?

9 A. That's correct.

10 Q. All right. Will there be a well installed on site  
11 to obtain groundwater on site?

12 A. No, groundwater is not a source of makeup water for  
13 the project.

14 Q. Do you know whether Oleander has offered to comply  
15 with any conditions or limitations on the development of this  
16 project?

17 A. Yes. There are a number of conditions and  
18 limitations.

19 Q. You had mentioned a Stipulated Settlement Agreement  
20 a few moments ago.

21 A. Yes.

22 Q. Does that document contain the conditions and  
23 limitations you're referring to?

24 A. It does.

25 Q. And what kinds of conditions and limitations were

1 BY MR. ROWE:

2 Q. In reference to knowing that this is a Title V, it  
3 says the proposed project will be a new air pollution source  
4 that will result in an increase in emissions in Brevard  
5 County. I think you might have testified to the effect that  
6 that chart that I think was Exhibit 28, would that be the  
7 emission that this plant will be producing at that particular  
8 time, being Title V and increasing the air emissions in  
9 Brevard County? I'm just reading something off this document  
10 here.

11 A. Yeah, that Exhibit shows that emissions would be  
12 above the threshold, which would be considered a major  
13 source.

14 Q. Uh-huh.

15 A. That's -- in the definition within the Department's  
16 rules, that's synonymous with a Title V source, which Title V  
17 is Title V of the Clean Air Act.

18 Q. Let me ask you another question. In reference to  
19 the number of different pollutants or polluters already in  
20 Brevard County, how does one determine when you have reached  
21 the maximum level? I understand if Oleander Power Plant was  
22 only producing one percent pollution, how does that compare  
23 with the rest of the pollutants that are already here?

24 I mean, do they say one and one is two and three  
25 is five and et cetera and that we're hitting a danger zone

1 a week and a half -- 20 or 31 percent polluters are Title V?  
2 When is enough and when is not enough?

3 A. Well, as I mentioned, there's sort of two  
4 components of looking at air quality. One is the emissions  
5 which more than not are criteria for review, whether it's  
6 technology or whether it's a permit.

7 Then there's the air quality effects, which as I  
8 indicated, Mr. McCann will likely testify on the air quality  
9 effects.

10 Q. Oh, okay. So the things are slightly different,  
11 and the air quality is when you evaluate whether the impacts  
12 are either at or near any kind of public welfare or health  
13 effects. That's just including the Oleander, but does that  
14 take into consideration other pollutants in the community?

15 A. It can, yes. It can evaluate that. There's  
16 various thresholds of impacts that was adopted by the  
17 Environmental Protection Agency, adopted by DEP as part of  
18 thier regulations. If it's below those thresholds, then it's  
19 considered to be insignificant.

20 They're sort of thresholds of whether or not you  
21 have to do a complete analysis for the pollutants or whether  
22 you have to look at it in more detail.

23 Q. Based on your analysis, is this a complete analysis  
24 of all the different pollutants that it doesn't supersede  
25 whatever the regulated requirements are?

1           A.    Well, the analysis that was submitted in Exhibit  
2 One included everything that's required to evaluate in terms  
3 of all the pollutants and the threshold criteria.

4           We looked at modeling every PSD pollutant, which  
5 I believe--I listed in Exhibit 29, and valued that relative to  
6 levels that both EPA and DEP considered to be significant.

7           Then -- and that sort of judged whether or not you  
8 do further analysis.

9           Q.    Did it come out where you had to do further  
10 analysis?

11          A.    The impacts are all less than what's considered to  
12 be significant. In fact, in many cases, many times less than  
13 significant.

14          And these significant levels are about one to two  
15 percent, that is, ten times lower, or 100 to 50 times lower  
16 than the ambient air quality standard, so they're very, very  
17 low. So if you're less than that, it's even lower.

18          Q.    That includes Oleander -- I mean, not Oleander as  
19 well as Orlando Utilities or FPL or anybody else that might  
20 be producing the very same pollutants?

21          A.    Well, the impacts when you get to that low,  
22 generally you're not required to do that. The next witness,  
23 Mr. McCann, will discuss the air quality analyses in more  
24 detail.

25               MR. ROWE: I don't have any further

1 questions.

2 Judge: Redirect?

3 MR. DEE: No, sir.

4 JUDGE: Thank you, you're excused  
5 from your oath, you're excused as a  
6 witness.

7 Call your next witness.

8 MR. DEE: At this time Oleander would  
9 call Mr. Robert McCann, Junior

10

11 WHEREUPON,

12

RICHARD McCANN,

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

16

JUDGE: State your first and last

17

name and spell each name for the record.

18

THE WITNESS: Robert, McCann, R O B E R T,

19

McCann, M C C A N N.

20

JUDGE: Mr. Dee.

21

DIRECT EXAMINATION

22

BY MR. DEE:

23

Q. Are you familiar with the Oleander Power Project

24

that is the subject of this proceeding?

25

A. Yes, I am.



1 Q. Could you tell us just tell us briefly why you're  
2 familiar with it?

3 A. I was involved in preparing the air quality impact  
4 assessment for the project.

5 Q. Where are you employed?

6 A. I'm employed at Golder Associates, Incorporated.

7 Q. And what are your general duties and  
8 responsibilities at Golder?

9 A. I'm an associate and Manager of the Air Resources  
10 Group. This group consists of professionals who perform work  
11 in air dispersion modeling, air permitting and monitoring of  
12 air pollutants and noise.

13 Q. What academic training do you have for your work?

14 A. I have a Bachelor of Science in Meteorology in 1993  
15 from Lowell Technological Institute out of the University of  
16 Massachusetts at Lowell.

17 Q. How many years of experience do you have working on  
18 air pollution issues?

19 A. About 25 years.

20 Q. Could you summarize your work experience for us?

21 A. Yes, after graduation from college in 1993, I  
22 worked at Environmental Research and Technology, now known  
23 as ENSR, E N S R, in Lexington and Concord, Massachusetts.  
24 I was a staff scientist, Project Manager and Assistant  
25 Manager of the Air Impact Section within the Air Quality

1 Studies Division.

2 From 1982 to 1986 I was employed at KBN Engineering  
3 Applied Sciences in Gainesville, Florida, and I was the  
4 principal scientist as well as Manager of the Air Resource  
5 Group.

6 From -- I'm sorry, I was employed at Environmental  
7 Science and Engineering from 1982 to 1986. From 1986 to 1995  
8 I was employed at KBN Engineering and Applied Sciences  
9 maintaining -- I was Manager of the Air Resource Group as  
10 well as Manager of the Gainesville office.

11 Beginning in 1996 when KBN merged with Golder, I  
12 became an associate as well as manager of the Air Resources  
13 Group within that company, within the company.

14 Q. Approximately how many air quality analyses have  
15 you performed in your career?

16 A. Literally hundreds of air dispersion impacts as  
17 well as air monitoring assessments.

18 Q. Could you just generally describe the types of  
19 projects you've worked on?

20 A. These projects mainly involved new source review  
21 under some regulation such as the prevention of significant  
22 deterioration regulation as well as for sources located in  
23 non attainment areas, building downwash effects, long-range  
24 transport assessments, rated at 100 kilometers, as well as  
25 gas and particle deposition on soils and vegetation.

1 Q. Have you taught any professional courses in your  
2 field?

3 A. I've taught several air dispersion modeling courses  
4 for both private industry as well as public workshops in the  
5 United States as well as foreign countries such as Argentina  
6 and the Dominican Republic. For those courses, I instructed  
7 professionals who were evaluating the air quality effects for  
8 permitting purposes such as PSD or non attainment provisions.

9 Q. Have you ever been qualified to testify as an  
10 expert witness in any proceeding?

11 A. Yes, I have.

12 Q. Could you just tell us generally what was it you  
13 addressed in those cases?

14 A. I was qualified as a, in the field of meteorology  
15 and air quality impact quality assessments for eight site  
16 certification hearings. Over the last 12 years, 13 years,  
17 these involved site certifications for the Seminole Electric  
18 Company, Hardee Unit 3 facility in 1995, the original units,  
19 Hardee 1 and 2 in 1990. In 1985 and 1986 in Broward County  
20 the resource recovery facilities and then several others in  
21 the State of Florida.

22 Q. I'd like you to take a look at Exhibit 15 and tell  
23 me if that's a true and correct copy of your resume'.

24 A. Yes, it is.

25 Q. Does your resume' accurately summarize your

1 academic and professional accomplishments?

2 A. Yes, it does.

3 MR. DEE: Your Honor, at this time  
4 Oleander would tender Mr. McCann as an  
5 expert in meteorology, air quality  
6 dispersion modeling and air pollution  
7 impact assessments.

8 JUDGE: Mr. Goorland?

9 MR. GOORLAND: No objection.

10 JUDGE: Mr. Rowe?

11 MR. ROWE: No objection.

12 JUDGE: The Witness is accepted as  
13 an expert for the purposes tendered  
14 without objection.

15 Go ahead, Mr. Dee.

16 BY MR. DEE:

17 Q. Mr. McCann, what are ambient air quality standards?

18 A. Ambient air quality standards set limitations on  
19 the total amount of air pollutants that can occur in a  
20 certain area.

21 Q. Who sets ambient air quality standards?

22 A. EPA sets the standards and then states such as  
23 Florida can adopt them.

24 Q. What is the basic purpose behind the promulgation  
25 of ambient air quality standards?

1           A.    The basic purpose is to protect the general health  
2           and welfare of the public.  There are two types of air  
3           quality standards, primary standards and secondary standards.

4                    The primary standards are designed to protect the  
5           public health, while the secondary standards are designed to  
6           protect the public welfare with an adequate margin of safety  
7           from known or adverse effects of air pollutants.  Generally,  
8           the secondary standards are equal to or lower than the  
9           primary standards.

10           Q.    Are the ambient air quality standards designed to  
11           protect everyone?

12           A.    Yes, they are, they're designed to protect the very  
13           young, children, the elderly, as well as the sick, including  
14           those with respiratory problems, such as asthmatics.

15           Q.    All right, sir, how are ambient air quality  
16           standards sustained?

17           A.    EPA has to go through a rule-making process where  
18           they have to evaluate air quality standards every five years,  
19           and this consists of committees that are made up of  
20           scientists as well as physicians and doctors who review the  
21           latest findings on any scientific research that's been done  
22           to determine whether the current standards are adequate or  
23           revisions need to be made.

24           Q.    Does Florida have ambient air quality standards?

25           A.    Yes, they do.  Florida has adopted standards, the

1 National Ambient Air Quality Standards, and also has the  
2 flexibility to have more stringent standards in, I believe  
3 it's Exhibit One, Table 3-1 lists the pollutants for which  
4 ambient standards have been set. There are six pollutants  
5 and they're referred to as criteria pollutants.

6 Q. How do the Florida ambient air quality standards  
7 compare to the federal standards?

8 A. The Florida standards are identical to the annual  
9 standards except for sulfur dioxide, where they've adopted  
10 more stringent concentrations for 24-hour and annual.

11 Q. As part of your work on this project, did you  
12 determine whether the ambient air quality standards currently  
13 are being met where the Oleander Power Project will be built?

14 A. Yes, I did.

15 Q. What did you discover?

16 A. I discovered, in fact, the ambient standards in  
17 terms of meeting compliance, complying with standards, they  
18 are in compliance and that's consistent with what DEP has  
19 considered, as well.

20 Q. Could you tell us briefly what that means.

21 A. Generally, that means where ambient air qualities  
22 have been established, areas that are less than the ambient  
23 standards are considered attainment. Areas that are  
24 exceeding or in violation of the standard are non attainment,  
25 up in the northeast, for example, pollutants that are non

1 attainment for the pollutant ozone.

2 Q. So this area is in attainment, which means the air  
3 quality here is better than the maximum limits allowed under  
4 the ambient air quality standards?

5 A. That's correct.

6 Q. What is PSD increments?

7 A. PSD increments are limits that establish the  
8 incremental air quality in an area. The amount of PSD is  
9 based on the character or the theory is classified according  
10 to allowances for increases in air pollutants.

11 Q. Well, how is Brevard County classified under the  
12 PSD program?

13 A. Brevard County is classified as a PSD Class Two  
14 increment, which allows for moderate increases in air  
15 pollution.

16 Q. All right. Did you perform an air quality impact  
17 analysis to determine whether the proposed Oleander Power  
18 Project would comply with the limits established by the  
19 ambient air quality standards and the PSD increments?

20 A. Yes, I did.

21 Q. All right, and what was -- excuse me. Did your  
22 analysis comply with the DEP and EPA requirements for such  
23 assessments?

24 A. Yes, they did comply with them.

25 Q. Would you describe for us what you did as part of

1 your analysis.

2 A. As part of the analysis, we used methods and  
3 methodology recommended for and developed by the U.S. EPA as  
4 well as DEP in assessing the air quality assessments for the  
5 project. These assessments followed U.S. EPA documentation  
6 and air modeling guidelines in terms of models, and using  
7 receptors we conformed with what was recommended.

8 Q. You used a standard EPA model?

9 A. Yes, we predicted concentrations with the  
10 Industrial Source Complex Short Term Dispersion Model,  
11 referred to as ISCSTD 3 model, and that's a model typically  
12 used in areas that have gently rolling to flat terrain. It's  
13 applicable to point sources or stack emissions such as for  
14 the project.

15 And it's specifically recommended for uses by both  
16 DEP and EPA for assessments such as the Orlando Power  
17 Project.

18 Q. As part of your modeling, did you use any  
19 meteorological data?

20 A. We used five years of hourly meteorological data  
21 from the Orlando International Airport. And that consisted  
22 of meteorological parameters such as wind direction, wind  
23 speed, temperature and other parameters that are needed to  
24 do the air quality assessment.

25 This particular weather data is recommended



1 specifically by DEP to address the air quality impacts in  
2 this county.

3 Q. And did your analysis consider potential impacts in  
4 the area surrounding the project?

5 A. Yes, we did. We modeled consistent with the  
6 guidelines, what we refer to as receptor locations where we  
7 actually located points around the facility. We had more  
8 than approximately 500 or more locations out to more than  
9 five miles away from the facility.

10 With that, we also used as part of the modeling  
11 exercise, which refers to the regulatory default options,  
12 which are a series of technical features that must be used in  
13 an application such as this particularly for air permitting  
14 purposes.

15 Q. Well, does the model account for meteorological  
16 events such as aversion?

17 A. Yes, it does. As I mentioned earlier, we used five  
18 years of our meteorological data and that includes an --  
19 inversion is the occurrence such as a low mix height, or a  
20 very small volume of air in which pollutants can be dispersed  
21 or trapped and use high concentrations.

22 Since we considered five years, we had more than  
23 40,000 weather observations which did include inversions, or  
24 low mix heights, to be included in the analysis.

25 Q. Well, based on your analysis in this case, have you

1 formed an opinion as to whether the Oleander Power Project  
2 will comply with all of the applicable ambient air quality  
3 standards and PSD increments?

4 A. Yes, I've concluded that the Oleander Power Project  
5 will comply with all the ambient air quality standards and  
6 PSD increments.

7 Q. I'd like you to take Exhibit 20 and explain for us  
8 very briefly how you reached your conclusion.

9 A. Exhibit 20 is a summary of the maximum pollutant  
10 concentrations predicted for the project. And it shows a  
11 series of pollutants in the first column from SO<sub>2</sub>, sulfur  
12 dioxide, NO<sub>2</sub>, nitrogen dioxide, particulate matter, PM<sub>10</sub>, as  
13 well as carbon monoxide.

14 And since there are various averaging times for the  
15 standards, there are also averaging times for the  
16 concentrations. For example, for SO<sub>2</sub> we predicted  
17 concentrations for both natural gas and oil-fired that  
18 consider in the combustion turbines and then compared them to  
19 the ambient air quality standards. What it shows is the  
20 concentrations predicted for the power plant are well below  
21 the standards.

22 Higher impacts are occurring for the oil-firing  
23 case.

24 Q. What are EPA significant impact levels?

25 A. The EPA significant impact levels are threshold

1 levels to determine whether more detailed analyses are  
2 required for a particular project. If a project's impact's  
3 less than significant values, then the project is deemed to  
4 provide reasonable assurance.

5 -- If it's over, then an additional air quality  
6 analysis would be needed, for instance, modeling background  
7 sources or non project related sources with the project  
8 itself.

9 Based on the results shown in this Exhibit, for  
10 both the natural gas-fired and oil-fired situations we are  
11 below the -- the project is below the significant impact  
12 levels.

13 Q. So from a regulatory perspective, if the impacts  
14 are below the significance level, that means they are, in  
15 effect, insignificant, or not worthy of further evaluation.

16 A. That's correct.

17 Q. All right. I'd like you to take Exhibits 22  
18 through 27 and very quickly compare the impacts from the  
19 project to the applicable air quality standards and PSD  
20 permits.

21 MR. ROWE: That was 22 through 27?

22 MR. DEE: Yes, sir.

23 THE WITNESS: Exhibits 22 and 23 are  
24 presenting results that I presented in,  
25 had summarized in the earlier Exhibit.

1 Q. -- so small that you can't represent them with a  
2 box, it's basically a flat line?

3 A. That's correct.

4 Q. All right, sir.

5 A. -That's correct. The second exhibit, -Exhibit 23,  
6 this compares the air quality impacts from the project to the  
7 ambient air quality standards and PSD increments. What this  
8 indicates is that for sulfur dioxide concentrations, the  
9 project's impact is less than .6 of the ambient air quality  
10 standards and less than two percent of the PSD increment.

11 The next set of Exhibits, Exhibits 24 and 25, show  
12 the similar comparison of particulate matter to ambient  
13 predictions for the project. And again, the information is  
14 presented for the project in comparison to the ambient air  
15 quality standard and PSD Class Two increment. There's a very  
16 thin bar compared to the ambient air standards or Class Two  
17 increments.

18 Exhibit 25 shows the percent of the standards. And  
19 for particulate matter they were less than .2 percent of the  
20 ambient air quality standards and about 1.1 percent, or less  
21 than the PSD Class Two increments.

22 Q. And are 26 and 27 similar?

23 A. Yes, they are.

24 Q. They present information for nitrogen dioxide and  
25 for --

1           A.    Nitrogen dioxide in Exhibit in 27, it's showing  
2    that the project impacts .3 percent of the ambient standard  
3    and 1.2 percent of the PSD Class Two increment.

4           Q.    All right, sir, you've told us what the analysis  
5 -- indicated. Is your analysis likely to over estimate or under  
6    estimate the potential impacts on the Oleander Power Project?

7           A.    Our results are conservative. They're likely to  
8    over estimate, because of the way the modeling was performed.

9                    We assumed for the maximum impacts that we would be  
10   firing the oil for the entire year when, in fact, oil would  
11   be limited to about 1,000 hours.

12                   Also, the model also considered natural gas  
13   emissions to occur for the entire year, as well, when, in  
14   fact, this will be limited to 3,390 hours during the year.

15                   When we considered that we used five years of  
16   hourly meteorological data which, again, is more than 40,000  
17   weather observations or combinations of weather events, the  
18   likelihood that the plant would be operating under the worst  
19   case meteorologically under oil or gas is low.

20           Q.    How do the air impacts for natural gas compare to  
21   the impacts when firing oil?

22           A.    The impacts for natural gas were approximately two  
23   to five times lower than those for oil.

24           Q.    But your maximum impact assessments are all based  
25   on firing oil.

1           A.    That's correct.

2           Q.    All right.  Now, you've told us that you use very  
3 conservative analyses, you've told us that the project's  
4 maximum impacts are all less than one percent of the  
5 applicable ambient air quality standards and you've told us  
6 that the ambient air quality standards are designed to  
7 protect human health and welfare.  Given those facts, what  
8 conclusions can you draw regarding the project's potential  
9 impacts on human health and welfare?

10          A.    Well, regarding human health and welfare, the  
11 project's impacts, there's a wide margin of safety in terms  
12 of air quality impacts.

13          Q.    Well, did you consider the possibility, as Mr. Rowe  
14 has mentioned with earlier witnesses, that the impacts from  
15 this project may be combined with the impacts of other  
16 facilities in this region?

17          A.    Yes, we did, although we weren't required to.

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(End Volume I )

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C E R T I F I C A T E

STATE OF FLORIDA )  
 )  
COUNTY OF BREVARD )

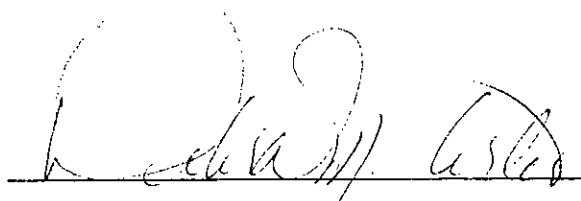
SS:

I, DEBRA M. ARTER, Registered Diplomate Reporter  
and Notary Public in and for the State of Florida at Large,

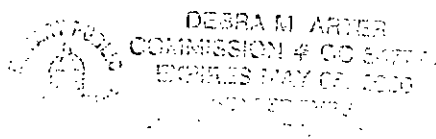
DO HEREBY CERTIFY that the above-entitled and  
numbered cause was heard as hereinabove set out; that I was  
authorized to and did stenographically report the proceedings  
and evidence adduced and offered in said hearing, and that  
the foregoing and annexed pages, numbered 5 through 199,  
inclusive, comprise a true and correct transcription of  
Volume I 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



1 offered by Oleander?

2 A. The conditions that are identified in that  
3 Stipulated Settlement Agreement include hours of operation,  
4 hours of operation on fuel oil, limitations with respect to  
5 truck traffic, limitations with respect to odor and vibration  
6 and noise.

7 It also includes a requirement to assist the City  
8 in developing the infrastructure that I just mentioned  
9 regarding storm water as a supplement to the reclaimed water  
10 supply.

11 Q. Why did Oleander offer to accept these restrictions  
12 on its Plan of Development?

13 A. Well, they weren't required under the current Land  
14 Development Code for Brevard County to limit their facility  
15 in the manners that I just described. There have been a  
16 number of studies that Golder has conducted since the  
17 project's inception that showed that we could demonstrate  
18 compliance with those types of conditions.

19 And because those conditions were a source of  
20 concern to, to the local residents in the community, most of  
21 those conditions were offered by Oleander as an incentive to  
22 develop the project in a manner that is reasonable and  
23 minimizes environmental impact.

24 Q. All right, sir.

25 A. As part of your work on this project, did you



1 evaluate the project's impact on minority and low-income  
2 neighborhoods?

3 MR. GOORLAND: Your Honor, at this point,  
4 if I may, I have an objection I'd like to  
5 raise, and it may take one or two minutes.

6 JUDGE: Go ahead.

7 MR. GOORLAND: In the preliminary matters,  
8 Mr. Dee withdrew his Motion to Strike regarding  
9 the environmental justice issue. And he  
10 stated that he'd like to do so because he'd like  
11 to make a record of Oleander's relationship  
12 with the community.

13 The Department has no objection and had  
14 no objection to his withdrawal for those  
15 purposes.

16 However, if you recall, I did state  
17 for the record our opinion about the  
18 environmental justice issue. At this point,  
19 I would like to state that if Mr. Dee's  
20 line of questioning is for the purpose of  
21 showing any relationship with the community  
22 that Oleander may have, I have no objection  
23 to that line of questioning throughout this  
24 witness or any other witness.

25 However, if Mr. Dee intends to propose

1 any line of questioning for the purpose of  
2 determining whether environmental justice  
3 played a role or should play a role in the  
4 Department's issuance of the permit or your  
5 determination in that matter, then I would  
6 raise an objection and would raise it as  
7 a standing objection to any of those.

8 JUDGE: Mr. Dee?

9 MR. DEE: Yes, sir. This line of  
10 testimony is intended to demonstrate that  
11 Oleander has attempted to address the  
12 concerns of the community. It is also  
13 intended to demonstrate that if  
14 environmental justice issues are legally  
15 relevant to this proceeding, we have,  
16 indeed, addressed those concerns and  
17 demonstrated that those concerns are not  
18 well founded.

19 We agree with the Department that  
20 environmental justice issues appear to  
21 be legally irrelevant to this case.  
22 However, the law in this area is unclear.  
23 There is certainly the opportunity for  
24 someone to come in on appeal and challenge  
25 a determination at this juncture that no

1 testimony should come in on environmental  
2 justice issues.

3 If you were to rule that no evidence  
4 could come in now, there is the potential  
5 that on appeal, if we were to lose that  
6 issue, the case would be remanded and we  
7 would be back here at a later date to  
8 take testimony on the issue. We would  
9 prefer to address it now once and for  
10 all and be done with it.

11 So for that reason, we would like  
12 to have the opportunity to put the evidence  
13 in the record. We intend to argue in our  
14 Proposed Recommended Order that on the  
15 merits there is no violation of any  
16 environmental justice concerns. However,  
17 legally they're not relevant, but if  
18 they were relevant and you considered  
19 them or the Department considers them  
20 on the merits we've addressed.

21 JUDGE: The problem with that is  
22 my recollection is, correct me if I'm  
23 wrong, but I think in response to your  
24 initial Motion to Dismiss I've already  
25 ruled on that issue.

1           MR. DEE: In response to the initial  
2 Motion to Dismiss, you ruled that our  
3 Motion was moot because you dismissed  
4 the initial letter that was filed by Mr.  
5 Rowe and you gave him the opportunity to  
6 file an Amended Complaint.

7           JUDGE: But it was on that ground,  
8 wasn't it, the environmental justice ground?

9           MR. DEE: No, sir. The initial  
10 question is whether Mr. Rowe had satisfied  
11 his pleading obligations. The decision  
12 was that, no, he had not.

13          So you instructed him to file a new  
14 Petition.

15          JUDGE: Wait a minute --

16          MR. DEE: You also at that time, Your  
17 Honor, advised me that my Motion to Dismiss  
18 on environmental justice grounds was moot  
19 because you had already dismissed the  
20 Petition.

21          We agreed, but I then asked you to  
22 instruct Mr. Rowe about environmental  
23 justice issues in the hope that we wouldn't  
24 have to continue to pursue this concern.

25          Mr. Rowe has made it clear -- not only

1 has he replied, but he has continued to make  
2 it clear in his deposition that he wants  
3 to pursue this issue with EPA and the  
4 Department of Justice.

5 And we're simply trying to address  
6 the issue now on the facts and we intend  
7 to address it legally, as well, in our  
8 post hearing submittals. To ensure that,  
9 whether it's relevant or not, we've  
10 addressed the merits of his concern.

11 JUDGE: The Order granted the Motion  
12 to Dismiss and it rendered the Motion to  
13 Strike moot.

14 MR. DEE: Yes, sir.

15 JUDGE: The Motion to Dismiss has  
16 stated as one of its grounds that Petition  
17 allegedly, made allegations of environmental  
18 injustice, over which this forum has no  
19 jurisdiction.

20 MR. DEE: That was the allegation we  
21 raised. You never got to the merits of  
22 that allegation because you ruled that the  
23 pleading was insufficient as a matter of  
24 law.

25 JUDGE: Okay. Anything further, Mr.

1 Goorland?

2 MR. GOORLAND: Yes, Your Honor, I'm  
3 looking back through the record, and the  
4 Order granting the Motion to Dismiss --  
5 I don't think it makes it clear in here  
6 whether or not it was based on the  
7 environmental justice issue. And I was  
8 not -- I was not part of that discussion,  
9 at the time I was not part of this.

10 However --

11 JUDGE: What is the Agency's position  
12 on jurisdiction on environmental justice?

13 MR. GOORLAND: The Agency's position  
14 is that the environmental justice is not  
15 part of our permitting jurisdiction and,  
16 therefore, it is not an issue that should  
17 be considered as part of whether or not  
18 the permit should be issued, and it should  
19 not be part of your consideration as to  
20 whether or not the Department should have  
21 issued or should issue the permit in your  
22 recommendation.

23 And I would ask that any line of  
24 questioning -- I would object to any line  
25 of questioning based on those specific

1 purposes. But again, I will say I have  
2 no objection if they wish to show the  
3 relationship with the community.

4 JUDGE: Mr. Rowe, any response on  
5 the objection?

6 MR. ROWE: I would request that it  
7 remain as a part of the Complaint as stated.

8 JUDGE: Okay. Well, we're -- that's  
9 not at issue.

10 MR. ROWE: It's not? Okay.

11 JUDGE: The issue is there's an  
12 objection to a specific question.

13 MR. GOORLAND: And it's a standing  
14 objection, Your Honor, to a line of  
15 questioning.

16 JUDGE: Anything further, Mr. Rowe?

17 MR. ROWE: No, sir.

18 JUDGE: The objection is sustained.

19 MR. DEE: Your Honor, may we proffer --

20 JUDGE: Yes --

21 MR. DEE: -- is the testimony?

22 JUDGE: -- you certainly may.

23 MR. DEE: All right.

24 JUDGE: Note for the record when  
25 you're completed with the proffer.

1 MR. DEE: Yes, sir.

2

3 PROFFERED DIRECT EXAMINATION

4 BY MR. DEE:

5 Q. Mr. Zwolak, did you perform an assessment of  
6 whether this project would cause adverse impacts on minority  
7 and low-income neighborhoods?

8 A. Yes, I did.

9 Q. And why did you perform this work?

10 A. During the spring of 1998, we were conducting a  
11 visual impact assessment. And part of the requirements of  
12 that methodology was to drive all public rights-of-way within  
13 a several-mile radius of the project site.

14 It was at that time that we noticed that there was  
15 a community south of State Road 520 that had a racial  
16 minority.

17 So I disclosed our discovery to Oleander and  
18 suggested that they conduct a study, and they immediately  
19 authorized us to proceed.

20 Q. What criteria did you use when trying to determine  
21 whether the project would adversely affect any minority or  
22 low-income neighborhoods?

23 A. Well, we initially looked at the Executive Order  
24 dealing with environmental justice, that's Executive Order  
25 1898, Federal Actions Affecting Environmental Justice in



1 Racial Minority Populations and Low-Income Populations. We  
2 applied those criteria in addition to traditional  
3 environmental impact assessment methodology to come up with  
4 our conclusions.

5 Q. All right, sir, and have you formed an opinion as  
6 to whether the Oleander Power Project will cause any adverse  
7 impact on any minority or low-income neighborhoods?

8 A. I have formed an opinion, yes.

9 Q. What is your opinion, sir?

10 A. It is my opinion that the proposed Oleander Power  
11 Project will not adversely affect any racial minority  
12 population or low-income population or, for that matter,  
13 any population in the vicinity of the project site.

14 Q. Let's talk about the basis for your opinion.  
15 Where is the nearest minority or low-income neighborhood?

16 A. That neighborhood is situated south of State Road  
17 520, and if I can refer to one of the Exhibits --

18 Q. Certainly.

19 A. -- I'll refer to the applicant's Exhibit 46. I've  
20 already used this Exhibit to identify the nearest residential  
21 areas to the project site. The racial minority neighborhood  
22 is located to the south of State Road 520 and also to the  
23 east of I-95. It is actually south of and is not depicted to  
24 any great extent on this Exhibit.

25 Q. How far is it from the site to the nearest

1 residence in the minority neighborhood you're referring to?

2 A. Approximately 2,400 feet.

3 Q. Is there anything between the project and that home  
4 that would serve as a buffer?

5 A. Yes, there are a number of areas of vacant land.  
6 There are also a number of commercial businesses that are  
7 both north and south of 520. Then there's the State Road 520  
8 itself.

9 Q. Where is Mr. Rowe's home located in relation to the  
10 site?

11 A. His home, I believe, if it's on Pennsylvania  
12 Avenue, I've looked at maps and Pennsylvania Avenue is  
13 between, I think, three and four miles southeast of the  
14 project site.

15 Q. So it's even further away than the minority  
16 neighborhood you referred to.

17 A. Absolutely, yes.

18 Q. All right. Now, in the nearest minority  
19 neighborhood, will the residents be able to see the proposed  
20 Oleander Power Project after it's been built?

21 A. They will not.

22 Q. Will they be able to hear it?

23 A. They will not be able to hear it under normal  
24 conditions, no.

25 Q. Will there be any truck traffic through their

1 neighborhood?

2 A. No, there aren't any highways that the trucks would  
3 use to access the Oleander site through the neighborhood.

4 Q. Would there be any direct or physical disruption of  
5 that community?

6 A. No. All of the interconnections that Oleander will  
7 require for either fuel supply or water or sanitary service  
8 or reclaimed water service will be located in close proximity  
9 of the site and not near this community.

10 Q. Would there be any indirect effects on the  
11 well-being of that minority community?

12 A. The effects of the project do extend up to several  
13 miles beyond the project site, as indicated by our air  
14 quality analysis.

15 Q. Let's set aside air quality just a second.

16 A. Okay.

17 Q. Are there any other impacts this project would have  
18 on the minority neighborhood that would adversely affect its  
19 well-being?

20 A. No.

21 Q. All right, sir. What about communities that are  
22 located further away from the project?

23 A. There would be even less of an impact, which means  
24 there would be no disruption at all to those communities.

25 Q. Now, you mentioned potential air quality impacts.

1 Have you tried to determine where the maximum air quality  
2 impacts from this project will occur?

3 A. Yes.

4 Q. All right. Approximately how far from the site  
5 will those impacts occur?

6 A. They vary, depending upon the parameter that's  
7 evaluated. The maximum impacts range anywhere from .25 miles  
8 to .24 miles.

9 Q. All right, I'd like you to turn to Exhibit 33 and  
10 look at Table 3 and explain the analysis that you performed  
11 concerning the project's air quality impact on minority and  
12 other neighborhoods.

13 A. Exhibit 33 is a report entitled Environmental  
14 Justice Assessment Constellation Power Development, Inc.,  
15 Oleander Power Project. Table 3 is found on Page Six.  
16 And -- just one page from the back of the report.

17 And it identifies for each air quality parameter  
18 the direction and distance of the maximum concentration. It  
19 identifies the value of that concentration, its comparison to  
20 state ambient air quality standards.

21 And it also identifies the racial characteristics  
22 of that location as defined by census tract, block group  
23 data.

24 Q. Can you summarize the findings that are found in  
25 that Table?

1           A.    Yes, in summary, the most significant concentration  
2 of air emission from the proposed project would be .6 percent  
3 of the State's ambient air quality standard.

4           The evaluation also identifies that for the one  
5 parameter whose worst case falls within the community to the  
6 southeast of the site, that concentration would be one  
7 twentieth of one percent of the State's ambient air quality  
8 standard.

9           Q.    So you looked at eight scenarios and seven of the  
10 situations that you evaluated the maximum impacts occurred in  
11 communities that are not minority communities?

12          A.    That is correct. With the one exception of the,  
13 one of the eight parameters, the percent minority as  
14 determined by the census bureau is anywhere from 0 percent to  
15 2 percent minority population.

16          Q.    So if the maximum impacts occur in non minority  
17 communities out of seven out of eight scenarios, what  
18 conclusions can you draw as to whether the project will have  
19 a disproportionate impact on minority neighborhoods?

20          A.    This evaluation suggests that there would not be  
21 any disproportionate impact on minority populations.

22          Q.    Now, you've mentioned that you've compared these  
23 maximum impacts to ambient air quality standards. Do you  
24 know whether those standards are designed to protect human  
25 health and welfare?

1           A.    They are, they're designed to protect human health  
2    and welfare for all citizens.  That would include young and  
3    old, as well as those that are less healthy due to other  
4    types of medical problems.

5           Q.    If the maximum impacts in all cases are less than  
6    one percent of the applicable standard, what conclusions did  
7    you draw concerning the project's impacts on air quality and  
8    the populous in Brevard County?

9           A.    I would conclude that there is negligible impact of  
10   the proposed project on all of the residents of Brevard  
11   County.

12          Q.    All right, sir.  Now, you've referred to Exhibit  
13   Number 33.

14          A.    Yes.

15          Q.    To the best of your knowledge, are the statements  
16   contained in that Exhibit true and correct?

17          A.    They are.

18          Q.    And do you adopt those statements as part of your  
19   testimony today?

20          A.    I do.

21          Q.    Have you ever prepared similar environmental  
22   assessments before concerning environmental justice issues?

23          A.    Yes, I have.

24          Q.    And were your findings in those cases accepted by  
25   the appropriate regulatory agencies?

1           A.    Yes, they were found to be appropriate by both the  
2 U.S. Environmental Protection Agency and the World Utility  
3 Service.

4           Q.    All right, sir.

5           --MR. DEE: That is the end of the  
6 proffer, Your Honor.

7           JUDGE: Thank you.

8           MR. DEE: Thank you for your indulgence.

9

10                                 CONTINUED DIRECT EXAMINATION

11         BY MR. DEE:

12           Q.    Mr. Zwolak, you had mentioned in your prior  
13 testimony Exhibit 35.

14           MR. ROWE: What Exhibit was that?

15           MR. DEE: That was Exhibit 33.

16           MR. ROWE: Is this the Exhibit?

17           MR. DEE: Yes, sir, it is.

18           MR. ROWE: It's marked Exhibit 32.

19           MR. DEE: Well, my apologies.

20           JUDGE: For the record, Exhibit 33  
21 is a report dated August 26, 1999, prepared  
22 by Golder Associates, Inc., entitled  
23 Environmental Justice Assessment  
24 Constellation Power Development, Inc.,  
25 Oleander Power Project. Is that the

1 title on that document?

2 MR. DEE: Yes, it's marked as Exhibit  
3 32.

4 JUDGE: It's just mismarked.

5 MR. DEE: Yes, sir, there may be some  
6 confusion. On Friday we were shipping our  
7 Exhibits to Mr. Rowe from our office in  
8 Tallahassee. Golder was separately shipping  
9 documents, I guess, on Thursday, actually,  
10 was separately shipping documents to Mr.  
11 Rowe from their office. So there may have  
12 been some confusion in the transmittal  
13 letter sent by Golder.

14 JUDGE: As to any confusion in the  
15 identification of Exhibits, Oleander Power  
16 Project's Amended Exhibit list filed today  
17 here in the record controls the  
18 identification of any of Oleander's Exhibits.  
19 Do you have a copy of that, Mr. Rowe?

20 MR. ROWE: I think so.

21 JUDGE: Do you have a copy of that,  
22 Mr. Goorland?

23 MR. GOORLAND: I have a copy of it.

24 JUDGE: Okay.

25 MR. DEE: Mr. Zwolak, if you would



1 give me the Amended Exhibit List that's  
2 in that file that you have. Let me give  
3 that to Mr. Rowe at this time to, hopefully,  
4 eliminate any confusion.

5 And Mr. Rowe, just, again, to eliminate  
6 any confusion, you were sent documents  
7 directly by Golder?

8 MR. ROWE: Uh-huh.

9 MR. DEE: Those documents did not have  
10 exhibit numbers on them. Let me give you a  
11 new set of those same Exhibits with the  
12 exhibit numbers attached.

13 MR. ROWE: Okay, very good.

14 MR. DEE: Yes, sir.

15 JUDGE: Ask your next question.

16 MR. DEE: Thank you, sir.

17 BY MR. DEE:

18 Q. Mr. Zwolak, you had previously discussed Exhibits  
19 35, 36, 45 and 46. 35 was the artist's rendering, 36 was the  
20 site location map, 45 was the Site Development Plan and 46  
21 was the aerial photograph. With regard to all of these  
22 Exhibits, do they accurately depict the site and Oleander's  
23 plans for the site?

24 A. Yes.

25 Q. Do all of these Exhibits supplement and help

1 explain the testimony you've provided this morning?

2 A. They do.

3 Q. Do you know whether there have been any public  
4 meetings to discuss this project prior to today's hearing?

5 A. Yes.

6 Q. Do you know -- can you identify some of those  
7 meetings for us?

8 A. Yes, I can. In a general context, there have  
9 been two DEP public hearings regarding the PSD application.  
10 DEP -- Oleander on its own accord conducted eight public  
11 meetings in various locations throughout Brevard County,  
12 beginning in, with the project announcement in November of  
13 1998 and going till just the recent past.

14 The project mailed over 16,000 questionnaires to  
15 residents of Brevard County, the central area of Brevard  
16 County. And Oleander also placed 20 advertisements in  
17 various newspapers throughout the community of various sizes  
18 from, I'd say, about a half a page down to smaller legal  
19 notices.

20 Q. Has the County conducted any public meetings  
21 concerning this project?

22 A. Yes, there have been a number of times when the  
23 project has come before the Board of County Commissioners and  
24 the local planning agency in Brevard County. In addition,  
25 the County had several workshops regarding the settlement

1 agreement.

2 Q. All right. Do you know whether the DEP meetings  
3 concerning the PSD permit in this case were published, notice  
4 was published, I'm sorry?

5 A. I have seen the public notices, yes, sir.

6 Q. All right, sir. I'd like you to look at Exhibits  
7 7, 8, 12, if you'll just flip through there, 7, 8, 12, 17,  
8 and 31.

9 A. I've reviewed them.

10 Q. All right, do these Exhibits contain the notices  
11 that were published by DEP and Oleander to inform the public  
12 about this project?

13 A. Yes, they include the Agency's public notices, the  
14 Applicant's public notice for the issuance of the draft  
15 application, as well as the other advertisements that I  
16 mentioned.

17 Q. All right, sir. Did you attend the DEP  
18 meeting that was held on March 3, 1999, for discussion of  
19 this project --

20 A. I did.

21 Q. -- by DEP? And approximately how many people  
22 attended that meeting?

23 A. I counted approximately 80 in attendance.

24 Q. And approximately how long did the meeting last?

25 A. It was a little bit over two hours in duration.

1 Q. Was the public given an opportunity to submit oral  
2 and written comments at the DEP meeting on March 30?

3 A. Yes, that was expressed by DEP both at the  
4 beginning of the meeting and at the end.

5 Q. All right, as part of your work on this project,  
6 have you determined whether Oleander and DEP have satisfied  
7 the applicable DEP requirements for the publication of public  
8 notice and providing an opportunity for public participation  
9 in this case?

10 A. Yes, I was personally responsible for seeing that  
11 the notice was placed in the appropriate newspaper.

12 Q. So the DEP notice requirements have been satisfied?

13 A. Yes.

14 Q. All right. Now, I'd like you to take a look at  
15 Exhibit 34. Tell me whether that is the Stipulated  
16 Settlement Agreement that was signed by Brevard County and  
17 Oleander.

18 A. It is a complete and executed copy.

19 Q. Does Exhibit 34 accurately describe the land use  
20 restrictions that have been accepted by Oleander for the  
21 development of this project?

22 A. They do, yes.

23 Q. Do the statements in Exhibit 34 supplement and  
24 explain your prior testimony concerning the restrictions that  
25 have been accepted for this project?

1 A. Yes, they do.

2 MR. DEE: Your Honor, at this time  
3 I'd like to move the following Exhibits  
4 into evidence:

5 JUDGE: Go ahead.

6 MR. DEE: 7, 8, 12, 16, 17, 31, 33, 34,  
7 35, 36, 45 and 46.

8 MR. GOORLAND: Your Honor, I'd object  
9 to Exhibit 33.

10 JUDGE: Mr. Rowe, any objection?

11 MR. ROWE: No, sir.

12 JUDGE: Exhibits -- Oleander Exhibits 7,  
13 8, 12, 17 --

14 MR. DEE: 16.

15 JUDGE: -- 16 --

16 MR. DEE: And 17.

17 JUDGE: Okay, let's start over.

18 MR. DEE: Yes, sir.

19 JUDGE: Oleander's Exhibits 7, 8, 12, 16,  
20 17, 31, 34, 35, 36, 45 and 46 are admitted in  
21 evidence without objection.

22 Mr. Dee, Oleander's 33 was part of the  
23 proffer?

24 MR. DEE: That's correct, Your Honor.

25 JUDGE: Are you now submitting it for

1 admission?

2 MR. DEE: I'll try again, yes, sir.

3 JUDGE: And the Department's objection  
4 is sustained. Oleander's 33 is proffered  
5 only.

6 MR. DEE: All right, sir.

7 JUDGE: The Motion to admit it is  
8 objected to and sustained. Ask your next  
9 question.

10 MR. DEE: Yes, sir.

11 (Whereupon, Respondent's Exhibits 7, 8, 12, 16,  
12 17, 31, 34, 35, 36, 45 and 46 were marked and received in  
13 evidence.)

14 BY MR. DEE:

15 Q. Mr. Zwolak, you heard the testimony or the comments  
16 that were offered by the public this morning. Did Oleander  
17 perform an environmental assessment of the project's impacts  
18 on wetlands and wildlife?

19 A. Yes.

20 Q. And what was the conclusion of that assessment?  
21 Excuse me, what was done, first?

22 A. The work that Golder conducted on ecological  
23 aspects of the site and eventually leading to an impact  
24 assessment of what the effect of the project would be began  
25 in 1996.

1           We had a mid level ecologist on site to conduct  
2 both a wetlands determination and a threatened and endangered  
3 species review.

4           Since that time, our project ecologist has been  
5 on site a number of times and he has been vigilant to  
6 maintain an appearance for threatened and endangered species.  
7 He's always looking to see if there would be any threatened  
8 and endangered species or species of concern that the project  
9 would impact.

10           His findings were that there were none observed on  
11 the site at any time during any of the site visits.

12           We also to supplement his work had one of our  
13 senior wildlife ecologists, a gentleman with 20 years'  
14 practice in the State of Florida, he holds an M.D., a Ph.D  
15 degree, he reviewed the work as well as conducted his own  
16 independent evaluation and found that the project would have  
17 no impacts on threatened and endangered species.

18           Q.    Or species of special concern?

19           A.    Or species of special concern.

20           Q.    Have you considered the possibility that birds will  
21 fly over the power plant while it is operational and be  
22 incinerated?

23           A.    That was part of the evaluation that our Ph.D  
24 wildlife ecologist reviewed, yes.

25           Q.    And what was the conclusion of that review?

1           A.    His findings were that in his professional career,  
2 he had never come across that incidence to occur.

3           Q.    So he does not expect that to occur in this case?

4           A.    Correct, correct.  Given the absence of species on  
5 site, where threatened species might be, the known corridors  
6 in Brevard County, and where the site is located, he would  
7 expect that that would not occur, there would be no impact  
8 from migration as well as occupancy on the site.

9           Q.    As a land use planner, have you considered whether  
10 this development is compatible with surrounding land uses?

11          A.    Yes, I have.

12          Q.    And what is your conclusion concerning that issue?

13          A.    That the proposed project is compatible with the  
14 immediately adjacent land use, that being  
15 industrial/commercial.  It is also compatible with the  
16 residential uses that are quite some distance away from the  
17 industrial/commercial area.

18          Q.    Have you considered the potential impacts  
19 associated with truck traffic going to and from the site?

20          A.    Yes.

21          Q.    Could you summarize your conclusions concerning  
22 truck traffic.

23          A.    During the middle portion of 1998, we conducted a  
24 traffic impact assessment that evaluated the ability of the  
25 existing infrastructure, this being primarily State Road 520,



1 to accommodate both construction and operation traffic during  
2 the a.m. and p.m. peak hours.

3 And we found that the, both State Road 520 and  
4 Townsend Road operate at a very high level of service. That  
5 level of service would be an indicator of a lack of  
6 congestion both with and without the project.

7 Supplementing that work, we also evaluated the  
8 entire route alternatives from the Port of Cape Canaveral to  
9 the project site to determine if specifically fuel oil trucks  
10 would have an impact, an adverse impact on the highway  
11 corridor.

12 Q. In the course of your work on this project, have  
13 you formed a professional opinion as to whether the PSD  
14 permit -- excuse me, have you formed a professional opinion  
15 as to whether the PSD satisfies the DEP criteria for the  
16 issuance of the PSD permit?

17 A. As Project Manager, I relied on my resource staff  
18 who developed the draft documents which I reviewed and  
19 approved during the course of the project.

20 Q. What is that opinion?

21 A. My opinion is that the proposed project does comply  
22 with the applicable standards.

23 Q. You heard the public comments that were offered  
24 this morning. Was there anything said this morning that  
25 would change your opinion concerning the issuance of the PSD

1 permit for this project?

2 A. It would not.

3 Q. All right, sir.

4 MR. DEE: I have no further questions.

5 JUDGE: Does the Department have any

6 further Direct?

7 MR. GOORLAND: No, sir.

8 JUDGE: How long will your -- let's go  
9 off the record.

10 (Whereupon, discussion was held off the  
11 record.)

12 JUDGE: Let's go back on the record.

13 Cross.

14

15 CROSS EXAMINATION

16 BY MR. ROWE:

17 Q. You made comments in reference to noise under  
18 normal conditions.

19 A. Yes.

20 Q. If it's not going to be heard under normal  
21 conditions, what conditions would it be heard?

22 A. If there was a, an absence of ambient noise levels,  
23 for instance, if all the vehicular traffic on all the roads  
24 in, surrounding the site were to stop and all the industrial  
25 and commercial activities were to stop and you would have

1 very close to an absence of noise levels, then you would  
2 possibly be able to hear the project under certain  
3 meteorological conditions.

4 Q. So basically what you're saying is that there will  
5 be some noise heard, and you're saying that that noise would  
6 be normal noise.- Is that what you're saying? -

7 A. Well, there would be some sound that might be  
8 detected by certain individuals, if they're drawn to it,  
9 based on whatever activity that they're doing.

10 Our analysis that we conduct evaluates what a  
11 proposed source of noise would contribute to an existing  
12 situation. And under a scenario where you don't have noise,  
13 then, yes, you might be able to hear the project where,  
14 otherwise, you would not hear it.

15 Q. Have these analyses been duplicated or can this  
16 be duplicate and, if so, who duplicated them, other than your  
17 association?

18 A. Well, we have staff that conducts both noise  
19 monitoring and noise modeling at Golder. And they worked  
20 under my direction to conduct both the monitoring and the  
21 modeling activities.

22 Being a model, a predictive model, yes, it can be  
23 duplicated.

24 Q. I mean, have you -- has that been tested or has --  
25 is the formula available so that if an independent tester

1 wanted to duplicate your findings, that it could be done?

2 A. They could.

3 Q. Is it in the exhibits?

4 A. No, the noise analysis was not required by any  
5 regulatory agency, it was something that Oleander undertook  
6 just to confirm that there would not be a noise problem or,  
7 if there was a noise problem, to determine what would be  
8 necessary to rectify that problem.

9 Q. Based on the comments of, public comments and the  
10 concerns that were had to you, what was it, five turbo  
11 engines, they make a drastic amount of noise, would they not?

12 A. No.

13 Q. I never heard one.

14 A. No, they are designed to operate in quiet mode. By  
15 that, they have certain design features either built into the  
16 turbine themselves or the enclosure that would minimize noise  
17 levels to a certain level.

18 Those requirements are not mandated by the local  
19 government, which normally is the agency that regulates noise  
20 level, but by OSHA.

21 Q. Is there -- I mean, do you have, based on your  
22 analysis, do you have any estimate as far as what kind of  
23 noise level you're talking about?

24 A. Yes, the GE 7FA combustion turbine, which is what  
25 Oleander proposes to use, comes with a guarantee of 95

1     decibels at three foot from the source. So using that  
2     information, we can predict what the noise levels will be at  
3     various distances based on different operational scenarios.

4             And that is what we used to come up with our  
5     conclusion regarding, A, the need to -- the need to meet the  
6     proposed county requirements that are now part of the  
7     Stipulated Settlement Agreement and then, B, to see if there  
8     might be a nuisance noise level that might need to be  
9     mitigated by Oleander, just as a good neighbor policy.

10            Q.    You also testified that there would be a number of  
11     trucks moving in and out with the oil.

12            A.    Yes.

13            Q.    What kind of noise factor would that contribute to  
14     the decibels, if any?

15            A.    It would contribute very little. And I base that  
16     comment on the fact that during a typical operational  
17     scenario for State Road 520, there are about 100 trucks a  
18     day -- excuse me, an hour that will pass through that  
19     intersection.

20            Under the rare occasion where Oleander uses fuel  
21     oil, they will contribute to that truck traffic to the amount  
22     of four to six trucks per hour.

23            Because the ambient level is so high, with all the  
24     existing traffic that's already there, the incremental  
25     increase would not be very detectable.

1 concentrated reused water. It would be the minerals that are  
2 already in the water supply that is available to, to county  
3 residents.

4 Q. You're saying that once you run that water through  
5 your cycle, it won't pick up any kind of pollutants in  
6 washing and cleaning your equipment as far as maintenance is  
7 concerned?

8 A. Well, with respect to the water treatment aspects,  
9 filtering of water and stuff, that's where the concentration  
10 of minerals would occur. There may be some operations where  
11 you take water and use it for wash water.

12 That would be routed to a oil/water separator.  
13 That waste stream, that waste water stream would be routed  
14 to an oil/water separator to separate any oily residue or  
15 pollutants from the water before it went to an on-site  
16 working tank and eventually then will discharge to the City  
17 of Cocoa.

18 Q. In reference to the monitoring of the air, your  
19 company has suggested that there was no need to monitor the  
20 air, even though the citizens had requested it, requested  
21 during public hearing that a monitor be set up in order to  
22 ensure the quality of air as it was prior to the company  
23 going in. You recommended that not be done.

24 How far is the two monitoring stations that is  
25 in existence right now?

1           MR. DEE: Your Honor, if I could at  
2           this time, I would suggest that a different  
3           witness will be addressing those issues.

4           And it may be more appropriate, Mr.  
5           Rowe, if you would like to hold those  
6           questions for a few moments --

7           MR. ROWE: I can do that.

8           MR. DEE: -- and address it to someone  
9           else.

10          MR. ROWE: I can do that.

11          JUDGE: Okay, ask your next question.

12          BY MR. ROWE:

13          Q. Getting back to those 400 hours and that scenario,  
14          is that for sure that that's going to happen? I mean, how do  
15          you check that? I understand what you're saying, but is  
16          there a requirement that these things be checked and  
17          maintained as far as documents or audit trail or something?

18          A. Well, there are certainly a number of regulatory  
19          requirements that would be imposed by DEP during the course  
20          of operation of the plant to monitor its performance, from  
21          emissions monitoring to water consumption.

22          Now, in that case, it wouldn't be DEP that  
23          monitors, that would be the Water Management District.

24          So there will be many means by which Oleander will  
25          have to maintain records and supply documents to demonstrate

1 compliance with the applicable regulatory programs.

2 Q. Based on your testimony here today, you're saying  
3 that you're only going to use oil for a specified period of  
4 time.

5 A. Correct, that is only when natural gas is not  
-6 available. If it's available for 365 days a year during any  
7 given calendar year, then there would not be any fuel oil  
8 burned during that period of time.

9 Q. And you will maintain a record of the number of  
10 hours that you're burning this oil in reference to -- because  
11 oil does produce some type or form of pollutant, does it not?

12 A. It does have emissions, yes, and the DEP draft  
13 permit requires specific monitoring requirements, including  
14 fuel use. I might add it also requires us to monitor the  
15 quality of the fuel oil to make sure it is effective.

16 Q. Is that your better grade of oil or is that second  
17 or -- where is that as far as quality is concerned?

18 A. To my knowledge, that's the best grade that's  
19 commercially available.

20 Q. And how much oil -- you have how many tanks, two  
21 tanks?

22 A. Two tanks, yes.

23 Q. And how much oil do those tanks hold?

24 A. They each hold 2.8 million gallons.

25 Q. So let me ask a hypothetical question here. If you



1 filled them up today and that you were burning gas, would  
2 there be any need for those trucks to be running backwards  
3 and forwards refilling those tanks and storing that oil?

4 A. No, once the tanks are full, there would be no  
5 truck traffic at all associated with fuel oil deliveries,  
6 unless fuel oil needed to be used.

7 Q. About how long would you say it would take  
8 to -- I'm trying to get a general idea. You said, I think,  
9 six trucks an hour or something of that nature.

10 A. Yes.

11 Q. About how long would it take to fill one of those  
12 tanks?

13 A. I can offer you an answer with respect to the  
14 ability of the project to consume fuel. Those tanks are  
15 designed to provide fuel for a continuous burn for all of the  
16 units for a 72-hour period.

17 It would take longer to fill those tanks than 72  
18 hours. So I can't tell you whether it's four days or five  
19 days, but it's certainly greater than three. That in and of  
20 itself possesses a limitation on fuel oil use.

21 Q. But if you had to burn the oil, based on the type  
22 of consumption that you're talking about, you could have  
23 trucks running on a regular -- looks like to me for about a  
24 half a year, if not more, trying to keep those things filled,  
25 based on the fact you're going to be --

1           A. No, no, there's an annual limitation of 1,000  
2 hours. So the project could only run 1,000 hours before it  
3 would cease to operate on fuel oil.

4           Q. Uh-huh. I think the Fish and Wildlife Game, is  
5 that a Government agency?

6           A. Well, there's Florida Game and Fresh Water Fish  
7 Commission and then U.S. Fish and Wildlife Service. So the  
8 terms are --

9           Q. U.S. Fish and Wildlife Game (sic), is that a  
10 Government agency?

11          A. Yes, it is.

12          Q. And it appears to me that I read somewhere where  
13 information was sent to them and they required that -- excuse  
14 me, I have no expertise in what I'm trying.

15          I think you were burning, not burning but it had  
16 something to do with a maximum of 42 parts and they  
17 recommended that you only utilize 25?

18          A. Correct.

19          Q. However, according to the condition of the permit,  
20 it appears that your association failed to heed to that  
21 recommendation of that requirement.

22          A. That's going to be addressed in other testimony  
23 this afternoon.

24                 MR. DEE: By the next witness, yes,  
25 sir.

1 MR. ROWE: Okay.

2 BY MR. ROWE:

3 Q. Have you ever designed or did additional, other  
4 work for Oleander Power Plant in reference to cycle  
5 facilities, combined cycle facilities?

6 A. Not combined cycles, no. Simple cycle, yes.

7 Q. What kind of cycle?

8 A. Combined cycle, similar to that proposed by  
9 Oleander, yes, I have.

10 Q. Yes, you have. Where were those designed compared  
11 to the location?

12 A. Those were located in Perryman, Maryland.

13 Q. Were there any problems in reference to meeting  
14 regulatory requirements in reference to those plants?

15 A. No, the permit applications were submitted. The  
16 permits were received, the plant has been constructed and,  
17 to my knowledge, is operational successfully in compliance  
18 with environmental standards.

19 Q. How close are those plants in reference to a  
20 residence area?

21 A. Well, the closest community is Perryman itself,  
22 which might be a quarter mile or more, perhaps upwards to  
23 about a half mile from the project site.

24 Q. Did the residents readily accept that?

25 A. To my knowledge, they did.

1 Q. In reference to the alleged wetlands in that  
2 particular area, can you still build in the wetlands,  
3 or -- first of all, are there wetlands, is there wetlands  
4 there?

5 A. I can refer to an Exhibit and show you more  
6 clearly.

7 Q. Yes, please.

8 A. I'll refer to Exhibit 46, which is an aerial  
9 photograph of the project site. Most of the wetlands on site  
10 that occur naturally are located in the southwest portion of  
11 the project site both north and south of Townsend Road.  
12 Those wetlands will not be impacted by the project.

13 The wetlands that will be impacted by the project  
14 include a drainage ditch that runs north/south through the  
15 center of the property and a portion, not all, but a portion  
16 of the eastern third of the site.

17 Now, this historically included some natural  
18 uplands as well as upland areas. What occurred is, as you  
19 can see, this area has already been impacted by previous  
20 development. This area was scraped in the '70s when the  
21 borrow pit was dug out, in the late '70s and '80s. It was  
22 used as a location for open storage.

23 And what happened is when this area was graded, it  
24 was graded flat without the ability to convey storm water off  
25 the site quickly. So wetland plants now have come up and

1 occupied portions of this eastern area.

2 The project impacts will primarily be to this ditch  
3 and areas from the center of the project site out a bit  
4 toward the east.

5 A lot of the disturbed wetland that's located on  
6 the eastern portion of the site will be used as a buffer area  
7 for use to the east and will be used, will enhance that area,  
8 both the natural wetland and the artificial wetland to  
9 decrease it's diversity in wildlife habitat.

10 Q. Okay, thank you. You say that there will be some  
11 regulatory audit keeping in reference to fuel hours burned,  
12 gas, et cetera.

13 A. Yes.

14 Q. Who will maintain those records, DEP or a higher  
15 authority?

16 A. To my knowledge, they'll be maintained both by the  
17 operator of the plant and by the Department of Environmental  
18 Protection.

19 Q. At the state level or the federal level?

20 A. State.

21 Q. Does the federal level ever come in and oversee the  
22 state, or is that just a no-no?

23 A. Not to my knowledge; but perhaps the second witness  
24 can speak more to that.

25 Q. Okay. I think you testified that there were no

1 endangered species in reference to that proposed site.

2 A. Correct.

3 Q. Who did the analysis in reference to endangered  
4 species?

5 A. An ecologist by the name of David Culver who works  
6 for Golder Associates and also a gentlemen by the name of Jim  
7 Newman.

8 Q. Is that a part of the Exhibits? Is that  
9 information available in the Exhibits?

10 A. No. No, there may be some previous excerpts of  
11 their evaluation as a part of the original permit  
12 application. But those documents aren't a requirement for  
13 the permitting program.

14 Q. Would they be in this document here?

15 A. Should be.

16 Q. Okay. Should be or they are?

17 A. I'd have to look to refresh my memory.

18 Q. Go right ahead. While you're looking, did your  
19 experts monitor the area year round or was there a  
20 specified --

21 JUDGE: One question at a time, sir.

22 MR. ROWE: Sorry about that sir.

23 THE WITNESS: I refer to Applicant's  
24 Exhibit Number One, that is the Air Permit  
25 Application and PSD Analysis. Under Section

1 Seven entitled Additional Impact Analysis,  
2 there is a sub section called -- numbered  
3 7.2, the title of which is Impact on Soils,  
4 Vegetation and Wildlife.

5 BY MR. ROWE:

6 Q. Very good, sir. Now, the other question was the  
7 person that did this evaluation, was that a year round or was  
8 that just one weekend or --

9 A. No, no, it was seasonal. It began in '96. And as  
10 I stated earlier, there were a number of times when our  
11 ecologists were out on the site, so that would have occurred  
12 probably during all four seasons.

13 Q. What do you mean when you say all four seasons,  
14 winter --

15 A. It would be spring and fall, summer and winter.

16 Q. Did they live there?

17 A. No.

18 Q. How did they conduct the analysis?

19 A. They traveled to the site by vehicle and then they  
20 traversed the property in different directions based on their  
21 specific purpose for the day. So they would have walked  
22 through or around the different vegetation communities on the  
23 site, which would have included the natural wetland, the  
24 disturbed wetland, also the pine flatwoods and the open  
25 fields that are out there.

1 Q. And they never saw any birds that were being  
2 commented about today.

3 A. That's correct.

4 Q. Okay. You said there's a drainage ditch there. Is  
5 that drainage ditch used for storm water to go into that rock  
6 pile? What is the purpose of that ditch?

7 A. The -- I'll refer again to Exhibit 46. The ditch  
8 that's located in the central portion of the property  
9 essentially drains rainwater from the property itself.  
10 Because of the elevations to the north of the site, the  
11 disturbed and developed areas east of the site and I-95 to  
12 the west, the drainage for the site is essential to the site  
13 itself.

14 Eventually, this discharge goes underneath  
15 Interstate 95 and then into State Road 520 right-of-way.

16 Q. So you won't be disturbing any of that area there,  
17 you'll be building, more or less, to the, closer to yourself  
18 there.

19 A. Correct, the footprint of construction is limited  
20 to this area of pine flat woods on the western half of the  
21 site and then the disturbed areas that are in the east  
22 central portion of the site.

23 Q. Thank you, sir. Of all that water that you're  
24 using running through that system, how much of that water,  
25 if you can say hypothetically, I don't know what I'm talking



1 about, if you put a gallon in there, how much of that will go  
2 up in evaporation?

3 A. Probably 98, 99 percent.

4 Q. 98, 99 percent. And how much water's going to be  
5 running through that system a day?

6 A. 121,000 gallons a day when the plant is operating  
7 on natural gas for a 17-hour period. It could be  
8 substantially less if the operation is of shorter duration.  
9 It would be more, obviously, if it ran greater than 17 hours.

10 Q. But it is anticipated it will run 17 hours a day?

11 A. One of the design bases for the project is a  
12 17-hour operational day.

13 Q. How much will it deal with in oil, is there a  
14 change in the figures there? Would it use more or less?

15 A. The operation on fuel oil would result in an  
16 increase in the use of water.

17 Q. And how much less in burning oil?

18 A. Well, it would be more than oil -- I'm sorry, it  
19 would be more than natural gas. If the plan were to operate  
20 17 hours a day on natural gas, water consumption would be  
21 approximately 1,115,000 gallon.

22 Q. And if it was burning oil, how much water  
23 consumption would be utilized?

24 A. That was the number I just mentioned.

25 Q. That was oil.

1 A. I'm sorry, I misunderstood you.

2 Q. That was oil.

3 A. Yes.

4 Q. And could you repeat that figure again for the  
5 natural gas?

6 A. Yes, for natural gas, based on a 17-hour day,  
7 anticipated water use would be 121,000 gallons per day.

8 Q. You have classified yourselves as a Title V  
9 company. What kind of pollutants will be produced?

10 A. Golder is not a Title V company.

11 Q. No, no, not you, Oleander Power Plant is.

12 A. Okay.

13 MR. DEE: Mr. Rowe, the error issues  
14 will be addressed by the next two witnesses.

15 MR. ROWE: Sorry about that.

16 THE WITNESS: That's okay.

17 MR. ROWE: I think that concludes my  
18 questions.

19 JUDGE: Redirect.

20 MR. DEE: Yes, sir, just very briefly.

21

22

REDIRECT EXAMINATION

23 BY MR. DEE:

24 Q. Mr. Zwolak, do you know whether the United States  
25 Environmental Protection Agency has recommended guidelines

1 for noise levels to protect public health and welfare?

2 A. Yes, they do.

3 Q. Has Oleander agreed to meet those noise guidelines  
4 at the property line of the site?

5 A. Yes, they have.

6 Q. And that agreement is reflected in the Stipulated  
7 Settlement Agreement with the County?

8 A. It is.

9 MR. DEE: I have no further questions  
10 for you, sir.

11 MR. BOCK: Judge, can the public ask  
12 any questions at all, just to have it on  
13 the record?

14 JUDGE: No. You're excused from your  
15 oath, you're excused as a witness.

16 THE WITNESS: Thank you.

17 MR. ROWE: Thank you, sir.

18 JUDGE: Let's go off the record.

19 MR. DEE: Yes, sir.

20 (Whereupon, a luncheon recess was taken from 11:55  
21 a.m. to 1:30 p.m.)

22 JUDGE: Mr. Dee, call your next witness.

23 MR. DEE: At this time, Oleander Power  
24 Project would call Mr. Ken Kosky.

25

1 WHEREUPON,

2 KENNARD KOSKY,

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 name,  
7 and spell each name for the record, please.

8 THE WITNESS: Kennard, K E N N A R D, F,  
9 Kosky, K O S K Y.

10 JUDGE: Mr. Dee.

11 DIRECT EXAMINATION

12 BY MR. DEE:

13 Q. Yes, sir, where are you employed, Mr. Kosky?

14 A. I'm employed by Golder associates, Inc., 6241  
15 Northwest 23rd Street, Gainesville, Florida.

16 Q. Are you familiar with the Oleander Project that  
17 is the subject of this hearing?

18 A. Yes, I am.

19 Q. Would you just tell us very quickly why you're  
20 familiar with this project.

21 A. I was the engineer of record for the air permit  
22 and PSD application and drafted all the studies that were  
23 conducted thereon.

24 Q. What is your job title at Golder?

25 A. I'm a principal with Golder.

1 Q. What does that mean when you say you're a  
2 principal?

3 A. I'm a senior level person involved in the review  
4 and conducting of various environmental studies. My  
5 specialty is air pollution control, specifically working with  
6 electrical power plants.

7 Q. What academic training do you have for your work on  
8 power plants?

9 A. I have a Bachelor's of Science in Engineering,  
10 1970, from Florida Atlantic University, a Master's of  
11 Science, 1976, from University of Central Florida. I have  
12 a year and a half, completed all my course work for a Ph.D  
13 at the University of Central Florida and have conducted, been  
14 present at EPA-sponsored training programs on air pollution  
15 control and air pollution studies.

16 Q. Approximately how many years have you worked on air  
17 pollution control issues?

18 A. Twenty-nine years.

19 Q. Could you just summarize your work experience with  
20 regard to air pollution control issues.

21 A. I started my career in 1970 working for the  
22 predecessor of the Environmental Protection Agency. I was  
23 actually assigned to the State of Florida developing the  
24 first air pollution plant.

25 In April, '72, I was employed by the predecessor

1 to the Florida Department of Environmental Protection, worked  
2 in the central district in the operations area.

3 In September, '74, I began a career as a  
4 professional consulting engineer for Environmental Science  
5 and Engineering. I worked there 11 years prior to forming  
6 KBN Engineering and Applied Sciences, which merged with  
7 Golder Associates in 1996.

8 Q. Are you a Registered Professional Engineer in  
9 Florida?

10 A. Yes, I am. I'm registered in mechanical  
11 engineering and I've held that registration since 1976.

12 Q. Have you taught any courses concerning air  
13 pollution control issues?

14 A. Yes, I have, both at the University of Central  
15 Florida and University of Florida. I've taught courses at  
16 the Chamber of Commerce as well as for the Florida Bar  
17 Association.

18 Q. Approximately how many projects have you evaluated  
19 during your career that have dealt with air pollution control  
20 issues?

21 A. I've worked on several hundred projects working in  
22 air pollution control. When I was employed by the  
23 predecessor, Environmental Protection Agency, I permitted  
24 sources, developed control strategies for sources and  
25 evaluated projects in terms of their air quality impacts.

1           As a professional engineer, I've been involved in  
2 hundreds of air pollution projects principally involving the  
3 preparation of the air pollution permits, PSD permits for  
4 electric power plants. I've been involved in probably 30,000  
5 megawatts of different types of studies.

6           Q. All right, sir. Has all of your work occurred here  
7 in Florida?

8           A. No, it hasn't.

9           Q. Could you give us an idea of other locations where  
10 you've worked.

11          A. I've worked primarily in Florida since 1970. I  
12 have worked in other states, other southeast states, as well  
13 as the state of Maryland and the midwest.

14           I've also worked in power plant development  
15 internally, being a consultant for the World Bank in Pakistan  
16 as well as various projects throughout the world.

17           I've worked in China, Jamaica, Dominican Republic,  
18 Buenos Aires, Argentina, and Brazil.

19          Q. Did you also work for the U.S. Agency for  
20 International Development on these kinds of projects?

21          A. Yes, as a direct contractor evaluating and  
22 performing environmental studies.

23          Q. Have you ever performed any analyses of the best  
24 available control technology for the various sources of air  
25 pollution?

1           A.    Yes, I have.

2           Q.    Have you ever been qualified before to testify as  
3 an expert witness?

4           A.    Yes, I have, I've been qualified about 40 times in  
5 various different proceedings before the Environmental  
6 Regulatory Commission Hearing Officers involving permit  
7 aspects. I've been involved with County Courts, Circuit  
8 Courts, the Grand Jury, the Government of Florida and also  
9 the Florida Power Plant Siting Act. I've testified both for  
10 the air pollution studies and best available control  
11 technology.

12          Q.    I'd like you to take a look at Exhibit 14 and tell  
13 me whether that's a correct copy of your resume'.

14          A.    Yes, it is.

15          Q.    Does your resume' accurately summarize your  
16 academic and professional accomplishments?

17          A.    Yes, it does.

18          Q.    All right, sir.

19               MR. DEE: Your Honor, at this time we  
20 would proffer Mr. Kosky as an expert in  
21 the field of air pollution control and  
22 best available control technology.

23               MR. GOORLAND: No objection.

24               MR. ROWE: No objection.

25               JUDGE: The Witness is accepted as an



1 expert for the purposes tendered without  
2 objection.

3 Go ahead, Mr. Dee.

4 BY MR. DEE:

5 Q. Mr. Kosky, can you just briefly summarize the work  
6 that you've done for the Oleander Power Project.

7 A. I was the professional engineer of record for  
8 preparation of the air permit application submitted to the  
9 Department of Environmental Protection. This involved  
10 completion of the application form as well as preparation of  
11 the, what's called prevention of significant deterioration  
12 analysis.

13 I was the professional engineer that signed the  
14 application.

15 During the course of the review, I was involved in  
16 the preparation of various documents as well as updates to  
17 the application that was submitted to the Florida Department  
18 of Environmental Protection for its review and ultimately  
19 issuance of a draft permit.

20 Q. Can you just very briefly describe the regulatory  
21 mechanisms that are used here in Florida and elsewhere in the  
22 United States to manage air pollution control issues.

23 A. There's two principal factors that are involved in  
24 air quality management. The first is ambient air quality  
25 standards. Ambient air quality standards were established by

1 the Environmental Protection Agency starting in 1970 as a  
2 means to protect the general public health and welfare of the  
3 general pollution with an adequate margin of safety. It's  
4 where people breathe.

5 Generally, these types of standards are established  
6 in units of mass per unit volume.

7 The second aspect of air quality management is  
8 really emission standards of some type. Emission standards  
9 can be set in a couple ways. One is to establish an emission  
10 standard to meet an ambient standard, or they could be  
11 technology based.

12 Technology-based standards were promulgated by EPA  
13 starting in the early '70s as new source performance  
14 standards. That is, for new sources, they have to meet these  
15 more stringent base technology standards.

16 These standards are typically given in units that  
17 are common to the type of industry for a combustion turbine.  
18 It's in parts per million by volume.

19 Q. Let's go back to the Oleander Power Project. Can  
20 you just briefly describe the type of combustion technology  
21 that will be used in this case and the fuels that will be  
22 used.

23 A. The Oleander Power Project will use combustion  
24 turbines that are manufactured by the General Electric  
25 Company. The model is the Frame 7FA combustion turbine.

1 It's an industrial -- heavy industrial turbine that works  
2 on a same principle as a jet engine, albeit more complicated.

3 The engine will burn primarily natural gas with a  
4 limit of 3,390 hours per year with a backup fuel of oil, and  
5 that's going to be limited to an equivalent of 1,000 hours  
6 per year.

7 Q. What Can you tell us about the state of your  
8 knowledge about combustion turbines, and these GE turbines  
9 in particular, how advanced are they?

10 A. These combustion turbines will be the most advanced  
11 for peaking service in Florida. Much improvements have been  
12 made in the technology of combustion turbines to make them  
13 more and more efficient.

14 They also use a type of air pollution control  
15 technology that's called Dry Low-No<sub>x</sub>, usually called DLN,  
16 that will be used to control the emissions when combusting  
17 natural gas. And when combusting oil, water injection will  
18 be used.

19 If you look at the fleet of turbines in Florida,  
20 these will be clearly the most efficient in terms of most  
21 emissions as well as producing power.

22 Q. Now, you've mentioned that this project will be  
23 limited to operating a maximum of 3,390 hours per year. How  
24 many hours are there in a year?

25 A. There's 8,760 per year.

1 Q. What will happen during those other hours in this  
2 instance?

3 A. The plant would not operate for those hours.  
4 Essentially, 60 percent of the time the plant just wouldn't  
5 operate at all.

6 Q. Would there be any airborne emissions during 60  
7 percent of the time?

8 A. No.

9 Q. Now, how will the air pollutant emissions be  
10 controlled at the Oleander Power Project?

11 A. As I mentioned briefly, there's various pollutants  
12 that could be emitted and the technology that's incorporated  
13 into the General Electric turbines are the DLN technology,  
14 and that will control nitrogen oxides when combusting the  
15 natural gas, and water injections when combusting the oil.

16 Also, pollutants such as particulate matter and  
17 sulfur dioxide which are more from the impurities in fuel  
18 will be very low. Natural gas is the cleanest of fossil  
19 fuels. And the type of oils that will be used is also very,  
20 very clean.

21 Other pollutants such as carbon monoxide and  
22 volatile organic compounds are controlled in the combustion  
23 process itself.

24 Q. Okay, could you take a look at Exhibit 28 and use  
25 that Exhibit to describe for us the type and amounts of air

1 pollutants that will be emitted from the Oleander Power  
2 Project.

3 A. All right, Exhibit 28 shows the emissions of the  
4 Oleander Project for the major air pollutants that would be  
5 emitted by the project. The first column has the five major  
6 pollutants, particulate matter and PM<sub>10</sub>. PM<sub>10</sub> is particulate  
7 matter with the aerodynamic diameter less than ten microns.  
8 Sulfur dioxide, nitrogen oxide, carbon monoxide and volatile  
9 organic compounds.

10 Of the five, the emission will be slightly  
11 different on gas and oil. And then there will be different  
12 emission rates. What I've shown in the Exhibit in the third  
13 and fourth column is the emission level consistent to what is  
14 normally indicated in the type of technology.

15 For particulate matter, for example, it's in pounds  
16 for opacity. Both fuels will have what's called 10 percent  
17 opacity. For nitrogen oxide, carbon monoxide and VOC's, it's  
18 in parts per million, that is so many parts by volume in a  
19 million parts of air.

20 Also, in the table it shows pounds per million BTU,  
21 pounds per in CT, which is part of the permitting process as  
22 well as tons per year and tons per year for the overall  
23 project. That's used mainly in items of regulatory criteria  
24 and is somewhat misleading when the, particularly when you're  
25 dealing with something like a gas.

1           For example, the combustion turbine actually uses  
2 air as its working fluid. And for each hour it operates, it  
3 will actually process 3.5 million pounds of air. If it were  
4 to operate the whole year, it's something like six million  
5 tons.

6           So sort of put in perspective, some of these  
7 emissions with respect to the new source performance  
8 standards that I had mentioned earlier, there are two that  
9 are important. One is for nitrogen oxide. The proposed  
10 natural gas limit is nine parts per million by volume  
11 with a correction for oxygen. The actual limit, new source  
12 performance standard limit that the EPA has promulgated and  
13 the EPA has adopted is over 100. So it's a factor of ten.

14           Similarly, for sulfur dioxide it's a percentage of  
15 fuel. It's going to be 16 to about 400 times less than the  
16 new source performance standard. For example, on oil,  
17 the -- in the event it is operated, it's .05 percent sulfur  
18 at the Oleander Project. The new source performance standard  
19 for the project limit is .8, so well over a factor of 10.

20           Q. Let me go back for just a second very quickly. You  
21 mentioned CT, does that mean the combustion turbine?

22           A. Yes, combustion turbine.

23           Q. You talked about 10 percent opacity, is that an  
24 emission limit that will be imposed on this facility?

25           A. Yes, it is.

1 Q. All right. Now, how do -- you've compared the  
2 emission rates for the Oleander Project with the emission  
3 limits that are established in the new source performance  
4 standards. How do the emission rates from this plant compare  
5 with the emissions from other simple cycle peaking  
6 facilities?

7 A. Well, in terms of production rate, the actual  
8 amount of pollution relative to the production rate, which  
9 in this case is electricity, is going to be a lot less. The  
10 type of machine that's being used is just more efficient.

11 For example, a unit that can be compared is the  
12 pounds of pollutant per megawatt hour. A megawatt hour is  
13 a million watts. A million watts is about what a residential  
14 home would use in a whole month.

15 This project on natural gas will emit .3 pounds per  
16 megawatt hour. If you were to look at gas turbines of the  
17 '70s vintage, which there are in Florida, their emissions are  
18 6 to 7 pounds per megawatt hour. So in fact, the emissions  
19 in terms of what the production rate is even less, like more  
20 than 20 times lower than that.

21 Q. How will the NO<sub>x</sub> emissions in comparison compare to  
22 the NO<sub>x</sub> emission rates from other peaking plants here in  
23 Florida?

24 A. It will be the lowest emitting peaking unit in  
25 Florida for natural gas. And in terms of the emissions on

1 oil, it will be at the lowest that's been approved in Florida  
2 or in other places on gas.

3 Q. All right, sir. Is this project subject to review  
4 under the DEP regulations for the prevention of  
5 deterioration?—

6 A. Yes, it is.

7 Q. Could you explain that process for us and that  
8 program.

9 A. Major sources in Florida as well as in other parts  
10 of the country are required to undergo what's called a  
11 prevention of significant deterioration review, or PSD. A  
12 PSD review is applicable to new sources which are in 28  
13 categories that emit 100 tons a year or more of a pollutant  
14 regulated by the regulations, or 250 tons per year.

15 This program was adopted initially in the 1977  
16 amendments to the Clean Air Act, at which time EPA wrote  
17 implementing regulations.

18 Florida's regulations coincide with the EPA  
19 regulations, and those regulations have been approved by  
20 EPA.

21 Q. The DEP regulations have been approved by EPA?

22 A. Yes, they have.

23 Q. All right. I'd like you to take Exhibit 29 and use  
24 that to tell us which pollutants are subject to PSD review  
25 for the Oleander Power Project.



1           A.    As I indicated earlier, tons a year is important  
2    criteria in evaluating thresholds for review. Exhibit 29  
3    shows a list of 16 what's classified as PSD pollutants, of  
4    which the Oleander Project would be required to undergo  
5    review on six of them.

6           This review, called a PSD review, involves air  
7    quality type analysis that might include monitoring as well  
8    as determining compliance with the air standards, as well as  
9    a control technology type review that includes best available  
10   control technology.

11           The pollutants subject to PSD are sulfur dioxide,  
12   particulate matter, nitrogen oxides, carbon monoxide,  
13   volatile organic compounds and sulfuric acid mist.

14           Q.    With regard to those pollutants, did you perform  
15   a determination of the best available control technology?

16           A.    Yes, I did.

17           Q.    Okay, and just describe very generally what is  
18   involved in performing a BACT determination, or best  
19   available control technology determination.

20           A.    The best available control technology determination  
21   is really a case-by-case determination that evaluates the  
22   feasible control technologies that can achieve a maximum  
23   emission reduction, or the lowest level, as well as the  
24   environmental, economical and energy impacts of that  
25   technology.

1           Alternative technologies are evaluated and can be  
2 rejected based on the economic, environmental and energy  
3 considerations. In this evaluation, what's required is to  
4 look at available information from the DEP and other states,  
5 look at engineering and scientific information on the  
6 technologies and then looking at the cost, particularly the  
7 economic, any social costs or any impacts.

8           This is weighed ultimately by FDEP in making a  
9 determination of best available control technology.  
10 Alternative technologies can be rejected based on either  
11 technical feasibility as well as the impacts on the  
12 environment, energy and economic consequences of the  
13 project.

14           Q. You mentioned that you performed a BACT  
15 determination in this case. Was your BACT analysis performed  
16 in compliance with the applicable EPA and DEP requirements?

17           A. Yes, it was.

18           Q. What did you do in this instance?

19           A. BACT requires looking at the type of source as a  
20 combustion turbine, in looking at those technologies that  
21 could achieve the maximum reduction. It's an approach called  
22 a top-down approach, where you evaluate any technology that  
23 might be available and look at its technical feasibility as  
24 well as looking at the associated impacts.

25           Q. I'd like you to take Exhibit 30 and very quickly

1 summarize your findings and your BACT analysis for each of  
2 the pollutants that you evaluated.

3 A. Exhibit 30 is a summary of the best available  
4 control technologies for the major pollutants. What was  
5 concluded was that the Dry Low-NO<sub>x</sub>, or DLN technology, for  
6 natural gas and water injection for oil were the best  
7 combustion technologies for nitrogen oxides, carbon monoxide  
8 and volatile organic compounds.

9 For pollutants that are involved in impurities in  
10 the fuel, it was natural gas and low sulfur distillate oil,  
11 which includes particulate matter and sulfur dioxide  
12 considerations.

13 Q. All right, does the BACT determination result in  
14 the establishment of an emission limit?

15 A. Yes, it does.

16 Q. All right, sir. What emission limits were  
17 established as BACT in this case for the control of NO<sub>x</sub>?

18 A. For NO<sub>x</sub>, a BACT limit of nine parts per million  
19 by volume dry collected to -- corrected to 15 percent O<sub>2</sub> when  
20 firing natural gas and 42 percent per million again corrected  
21 to 15 percent oxygen for distillate oil. And that's using  
22 Dry Low-NO<sub>x</sub> technology for gas and water injection for oil.

23 Q. All right, sir, before we broke for lunch, Mr. Rowe  
24 was asking Mr. Zwolak about comments that were apparently  
25 submitted by the U.S. Fish and Wildlife Service considering

1 the appropriate limits for NO<sub>x</sub>, did you hear those questions?

2 A. Yes.

3 Q. Do you have any response to the suggestion that the  
4 emission for NO<sub>x</sub> when firing fuel oil should be lower than 42  
5 parts per million?

6 A. Yes, we actually -- actually wrote the Department  
7 concerning that. I did review the permit. I'm also familiar  
8 with the technology. That particular comment by the Park  
9 Service was just technically incorrect. They might have  
10 looked at the gas number. The lower number of 25 that was  
11 quoted is for natural gas on the project that they had quoted  
12 in reviewing the permit.

13 So for oil, the 42 is the lowest that has been  
14 approved and especially for this type of turbine.

15 Q. Do you know whether, if the United States  
16 Environmental Protection Agency has reviewed the BACT  
17 determination and the emission limits that have been proposed  
18 for the Oleander Power Project?

19 A. Yes, they have, and they provided comments to DEP.  
20 They did not have any adverse comments on the permit and, in  
21 fact, discussions with Region Four, myself as well as I'm  
22 doing some permitting up in the northern tier state in Region  
23 Five, that Region Four actually feels like this is a -- I  
24 could characterize it maybe as a model type of emission limit  
25 for a peaking plant.

1           It's one -- it's the lowest that's been approved so  
2 far in Region Four for a peaking plant. And in fact, the  
3 permit has been sent to Region Five as sort of a model of  
4 some plants that are being permitted up in, in the Wisconsin  
5 and Minnesota-area.

6           Q.    So am I correct in understanding that the emission  
7 limits proposed for the Oleander Power Project are being used  
8 to set the standards applicable to other facilities elsewhere  
9 in the United States?

10          A.    I believe they are and they have.

11          Q.    Why does Oleander want to use fuel oil in this  
12 case?

13          A.    Using fuel oil is, as a backup to natural gas, the  
14 only reason most people use oil is that in the event you have  
15 some kind of disruption with natural gas, which actually  
16 occurred a year ago in the pipeline near Perry, I think it  
17 was in the newspapers; fortunately, during that case it was  
18 during a weekend which there was less use.

19                But in the event you don't have natural gas, you  
20 have to use some kind of backup fuel to provide peaking.

21          Q.    Has Oleander agreed to reduce its use of fuel oil  
22 in this case?

23          A.    Yes, as a result of actually two things. One, the  
24 public workshops, there was comments about the oil use.

25                And secondly, discussions with DEP. So the oil was

1 originally 2,000 hours, the same maximum limit of operation,  
2 but within that 2,000 hours of oil, and that was decreased to  
3 2,000 hours of oil.

4 Q. Does Oleander have any economic incentives to want  
5 to reduce the use of fuel oil?

6 A. Yes, they do. There's actually two factors that  
7 are involved and both together increase the cost of burning  
8 oil by 35 to 50 percent on the same basis of gas. One factor  
9 is oil is just more experience.

10 And secondly, the water and everything else, the  
11 maintenance adds to that cost.

12 Q. Oleander would have to buy water when it's burning  
13 natural fuel oil?

14 A. Effectively, yes. Even if they're getting water,  
15 you have to treat it because the water that's being used is  
16 essentially pure, pure water. So you make it, it has a cost.

17 Q. How do the limits on fuel oil in this case compare  
18 to the limits imposed on other power plants?

19 A. It's actually lower than most plants. If you look  
20 at probably well over 1,000 megawatts of simple cycles  
21 permitted in the 1990s, the average is more like 2,000 units  
22 of operation for those units. This is actually lower than  
23 those facilities.

24 Q. Have you reviewed Exhibit 11, which is the draft  
25 for the permit for the Oleander Power Project?

1 A. Yes, I have.

2 Q. If the project is built and operated that's  
3 described in the application that has been submitted to the  
4 DEP, will the project be able to comply with all the  
5 conditions and emission limits contained in DEP's draft--  
6 permit?

7 A. Yes, I can.

8 Q. Can the GE combustion turbines that are being  
9 proposed in this case comply with DEP's combustion limits?

10 A. Yes.

11 Q. Can Oleander hire or staff their own plant to be  
12 in compliance with the DEP permit limits?

13 A. Yes, these type of combustion turbines are highly  
14 automated. Having been to engineering school with a slide  
15 rule, the difference is between having valves and having  
16 computer screens. Power plants today have all computer  
17 screens and all the control equipment is fully automated.

18 The parent company of Oleander has an institution  
19 where they actually -- the environmental people train the  
20 operators in how to operate, and there will be what's called  
21 continuous emission monitors monitoring the pollutants from  
22 the stacks so they'll know how they're operating at any time.

23 Q. Did you prepare any sections of Exhibit One, which  
24 is the air permit application submitted to DEP for the  
25 project?

1 A. Yes, I did.

2 Q. All right. Did you prepare or assist with the  
3 preparation of Exhibits 6, 9, 10 and 13, which are letters  
4 and materials from Golder to DEP concerning this project?  
5 That would be 6, 9, 10 and 13.

6 A. Yes.

7 Q. All right, now, during your testimony you've  
8 discussed Exhibits 14, 28, 19 and 30. Did you prepare all  
9 of these exhibits?

10 A. Yes, I did.

11 Q. With regard to all of these Exhibits that I've just  
12 mentioned, all of these Exhibits that you've prepared, are  
13 the statements in those documents true and correct, to the  
14 best of your knowledge?

15 A. Yes, they are.

16 Q. Do you adopt the statements in those documents as  
17 part of your testimony here today?

18 A. Yes, I do.

19 MR. DEE: Your Honor, at this time we  
20 would like to move the following Exhibits  
21 into evidence: It would be Exhibits 1, 6, 9,  
22 10, 13, 14, 28, 29 and 35.

23 JUDGE: You didn't mention 11.

24 MR. DEE: That's a letter from DEP.

25 We'll have another witness address that.



1 JUDGE: Okay, fine. Any objection?

2 MR. GOORLAND: Not if I could have one  
3 moment to pull these out.

4 JUDGE: Sure.

5 MR. GOORLAND: No objection.

6 JUDGE: Mr. Rowe?

7 MR. ROWE: No objection.

8 JUDGE: I'm going to take these in my  
9 order, not necessarily numerical order.  
10 I'll go slowly.

11 Oleander's Exhibits 14, 28, 29, 30, 1 --

12 MR. ROWE: Did you say 1?

13 JUDGE: Yes, 1, 6, 9, 10 and 13 are  
14 admitted in evidence without objection.

15 (Whereupon, Respondent's Exhibits 14, 28, 29, 30,  
16 1, 6, 9, 10 and 13 were marked and received in evidence.)

17 JUDGE: Go ahead, Mr. Dee.

18 MR. DEE: I have no further questions  
19 for this Witness.

20 JUDGE: Further direct?

21 MR. GOORLAND: None, thank you.

22 JUDGE: Cross.

23 MR. ROWE: Cross, is that me?

24 JUDGE: That's you.

25 MR. ROWE: I'm getting the hang of it.

## CROSS EXAMINATION

1  
2 BY MR. ROWE:

3 Q. There is some concern in reference to a letter of  
4 concerns pertaining to, I guess, U.S. Fish and Wildlife where  
5 they had recommended -- I haven't made this an exhibit,  
6 yet -- that's in reference to recommended -- I don't know how  
7 to say it, that the nitrogen be lowered to 25, I think it's  
8 PPM, or something of that nature. I think you testified that  
9 they made an error thinking that was gas or something of that  
10 nature?

11 A. That's correct.

12 Q. However, on the, all through here it appears  
13 they're not saying that it's gas, they're saying that it's  
14 oil. And on the last page it even makes reference -- or one  
15 of these pages it makes reference to, what is that,  
16 Auburndale Power Partners, that's on the last page, and  
17 something about Texas and the Mexico Power has also required  
18 25 PPM, you'll have to excuse me, I'm not familiar with all  
19 this technology.

20 A. We went and looked particularly with the Auburndale  
21 Power Project and actually reviewed the permit. We actually  
22 collect a lot of permits because when we do air quality  
23 analyses you have to know what the emissions are. And in  
24 fact, about that same time frame we had projects in Polk  
25 County for these projects and we had the permit.

1           And in fact, the permit did not have PPM for oil,  
2           it had actually 25 PPM for gas and, actually, it was a tier  
3           down kind of permit.

4           The other aspect is that particular project was  
5           also much smaller than the type of turbine project that we  
6           have. But that, I know for a fact, permit did not say 25 for  
7           oil. It was 25 for gas and it had, I believe it's 42 PPM for  
8           oil firing.

9           Q. Is that information within the Exhibits or the  
10          application that's being applied for here? I mean, is there  
11          any way I can substantiate that what you're saying is valid?

12          A. I believe one of the Exhibits which we, was  
13          correspondence to the Florida Department of Environmental  
14          Protection that actually stated what the permit was. The  
15          permit itself isn't in here.

16          Q. Is there --

17          A. It's a matter of public record in terms of  
18          availability from DEP. It would be in their files.

19                 MR. ROWE: Is there a possibility I  
20                 can make -- I don't know how to do this,  
21                 Your Honor, but since it's not in there,  
22                 I would certainly like to have a copy of  
23                 that and that it do become a part of the  
24                 record.

25                 I don't really know how to say that

1 or do it, but I'll say it in the simplest  
2 way I know to say it. Because he's making  
3 reference that that was a mistake.

4 JUDGE: Do you have a document you  
5 want to submit in evidence?

6 MR. ROWE: Oh, I want to submit the  
7 one I gave you, but he is saying that is  
8 a mistake based upon the recommendations  
9 put there.

10 JUDGE: I heard his testimony.

11 MR. ROWE: Yes, and I'm just saying  
12 if that is so, then certainly I would like  
13 to have a copy of the document and that  
14 said document be entered into the record.

15 JUDGE: Are you submitting two documents  
16 for admission?

17 MR. ROWE: No, no, that one, I don't know  
18 what number you like to call it.

19 JUDGE: All right.

20 MR. DEE: Your Honor, I may be able to  
21 make this a little simpler for everybody.  
22 The transmittal letter is not part of the  
23 record that we established so far. This  
24 technical review is one of the exhibits  
25 that we just moved into evidence.

1           In addition, Exhibit 13 is Golder's  
2           response back to the Florida Department of  
3           Environmental Protection concerning these  
4           comments from U.S. Fish and Wildlife Service.

5           So Mr. Kosky's testimony is consistent  
6           with the information he previously provided  
7           to DEP concerning this committee.

8           JUDGE: Well, Mr. Rowe has moved a  
9           document, I guess it's Petitioner's One?

10          MR. ROWE: It could be, yes, sir, whatever  
11          you deem appropriate. Is that Petitioner or  
12          Exhibit?

13          JUDGE: It's an exhibit and I'm identifying  
14          it as Petitioner's Exhibit One.

15          MR. ROWE: Okay.

16          JUDGE: Mr. Dee?

17          MR. DEE: We have no objection.

18          JUDGE: Mr. Goorland?

19          MR. GOORLAND: No objection.

20          JUDGE: Petitioner's One as identified  
21          is admitted on the record without objection.

22                 (Whereupon, Petitioner's Exhibit Number One was  
23          marked and received in evidence.)

24          JUDGE: Go ahead, Mr. Rowe.

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