IN THE SUPREME COURT OF FLORIDA

METROPOLITAN DADE COUNTY, et al., Appellants,	)	
v.	)	CASE NO. 70,703
KATIE NICHOLS, et al. Appellees.	)	

ANSWER BRIEF OF APPELLEE FLORIDA PUBLIC SERVICE COMMISSION

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TABLE OF CONTENTS

CITATIONS OF AUTHORITY

STATEMENT OF THE CASE AND FACTS

The final hearing was held in Tallahassee on December 5, 1986. The parties presented four witnesses whose testimony had been prefiled consistent with Commission practice. Florida Power and Light Company (FP&L) sponsored the testimony of Mr. Whiting and Mr. Cavendish. Florida Crushed Stone Company ("FCS"), an active party below which chose not to appeal, presented the testimony of Mr. Seidman. Metropolitan Dade County ("Dade County") presented the testimony of Dr. Shanker. The Industrial Cogenerators presented no witness.

Mr. Whiting was FP&L's only witness in its direct case. (R. Vol. IV, Tr. 8-97.) He presented FP&L's study (Exhibit 1, Document 1), which includes FP&L's methodology (Attachment IV, pages 43-45 of Document 1 of Exhibit 1), discussed the assumptions and presented the conclusions reached by the study. In its rebuttal case, FP&L presented the testimony by Mr. Whiting (R. Vol. IV, Tr. 330-52) and by Mr. Cavendish (R. Vol. IV, Tr. 272-330). On rebuttal Mr. Whiting addressed the proper interpretation of Rule 25-17.825, F.A.C., whether avoided nonfuel O&M costs should be measured on an incremental or average basis, the comparability of other methodologies in Florida to FP&L's and the appropriateness of FP&L's methodology. Mr. Cavendish addressed the problems with the methodologies proposed by Dr. Shanker and Mr. Seidman, and the validity of the assumptions underlying FP&L's methodology. While Mr. Whiting did not actually prepare Attachment 4, he was involved in its preparation. (R. Vol. IV, Tr. 30.)

FP&L's study effort was formally initiated in 1984 with

the formation of an interdepartmental task team. (R. Vol. IV, Tr. 20.) The interdisciplinary team began with a survey of methods employed by other utilities to identify and measure hourly variable nonfuel O&M expenses. (R. Vol. IV, Tr. 20-21.) The survey showed that no utility had developed a methodology that could identify and measure incremental variable costs.

Contrary to initial assumptions, the various analyses comprising the attachments to FP&L's study showed that corrective maintenance costs actually increased when units' net output factors decreased. (R. Vol. V, Ex., Doc. 1, p. 29.) Nonetheless, FP&L was still required by the Commission to develop an acceptable methodology. (R. Vol. IV, Tr. 14, 15.) Therefore, FP&L conducted the analyses in Attachment IV, using statistical correlation to test the level of subjective judgments. (R. Vol. IV, Tr. 23.)

FP&L's methodology consists of two steps. The first step is a comprehensive review of Expenditure Analysis Codes ("EACs")[1] to determine which codes contain nonfuel O&M costs that might vary hour-by-hour. These changes in expenses would result from small changes[2] in FP&L generation resulting from the purchase of

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[1] EACs are cost categories used in FP&L's operating budget system. (R. Vol. V, Ex. 1, Doc. 1, p. 7.)

[2] "Small" is an important modifier. In 1985, the last year for which there was data at the time of the hearing, as-available energy from cogenerators comprised less than one percent, .43% of FP&L total energy supplied to customers (net energy for load). (R. Vol. IV, Tr. 48.) If, in the future, cogeneration comprised a larger portion of FP&L's energy supply and that changed the operation of FP&L's system, the applicable EACs could change. (R. Vol. IV, Tr. 49-50.) The point is that for the present the judgments in step one assumed small changes in FP&L generation and this affected the choices.

as-available energy by cogenerators. (R. Vol. V, Ex. 1, Doc. 1, pp. 43-61.) The second step of FP&L's methodology is a statistical analysis (regression) of the EACs chosen in step one. (R. Vol. IV, Tr. 289.)

In the initial application of FP&L's methodology, the decisions in step one, whether costs varied hour-by-hour due to small changes in output, were made by representatives of FP&L's Power Resources Department. These employees were familiar with the operations of FP&L's generating units. (R. Vol. IV, Tr. 289; R. Vol. V, Ex. 1, Doc. 1, p. 7.) The individuals making these initial decisions were engineers. Several times in FP&L's testimony, the decisions of whether to include EACs were referred to as "engineering judgments" or "engineering assessments." (R. Vol. IV, Tr. 23, 31, 289.)

Of the 162 separate EACs initially examined, three were determined to be directly related to unit output: Utilities-EAC 642 and Chemicals-699 (both of which are related to condensate make-up water in steam production) and Ash Disposal-EAC 700. (R. Vol. V, Ex. 1, Doc. 1, p. 7.) The rationale for concluding the costs in the other EACs would not change hourly due to small changes in FP&L generation were summarized in Attachment IV of FP&L's study. (R. Vol. V, Ex. 1, Doc. 1, pp. 44, 53.) Those reasons and the number of EACs rejected under each is shown below:

	Rationale	# Of EACs Eliminated
1.	EAC not affected by changes in load due to cogeneration or system cycling.[3]	83
2.	EAC does not contain any Production Fossil Steam Expense.[4]	51
3.	EAC related to cycling[5] rather than small changes in load.	9
4.	EAC with expenses that are a function of service hours rather than output.[6]	2
5.	EACs with fuel expenses.[7]	8

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[3] Changes in these EACs bore no relationship to hourly changes in the level of output of generating units. Examples are Company Forms-EAC 634, Donations-EAC 623, Insurance-EACs 750-54, Office Furniture-EAC 735 and Postage-EAC 630. (R. Vol. IV, Ex. 1, Doc. 1, pp. 45-61.)

[4] Because of configuration of FP&L's system and use of economic dispatch the source of power that cogeneration would replace on FP&L's system would be either fossil generation or purchased power. (R. Vol. V, Ex. 1, Doc. 1, p. 4.) EACs without fossil production costs were, therefore, eliminated.

[5] Cycling is the bringing a unit on or off line and synchronizing it to FP&L's system. (R. Vol. V, Ex. 1, Doc. 1, p. 22.)

[6] Some maintenance is determined solely by the number of hours a unit runs, regardless of the level of output at which the unit would be run. Combustion turbines are the prime example. Remember output (megawatt hours or MWH) are a function not only of time (service hours) but also of the generation level. (R. Vol. V, Ex. 1, Doc. 1 , p. 5.)

[7] The task was to identify nonfuel O&M costs; therefore, fuel related costs, which are calculated separately, were eliminated.

	Rationale	# Of EACs Eliminated
6.	EACs with purchased power expenses.[8]	6

To make the decision of how EACs should be treated in step one of FP&L's methodology, one must have knowledge of FP&L's accounting system as well as knowledge of FP&L's power system operation. (R. Vol. IV, Tr. 67, 96.)

Mr. Whiting has a background which includes knowledge of FP&L's accounting system, power system operations and statistical measurement techniques. After receiving his BS in Industrial Management from Georgia Institute of Technology in 1972, Mr. Whiting worked with increasing responsibility in FP&L's Internal Auditing Department for ten years, performing and supervising audits, including power plant audits. (R. Vol. IV, Tr. 12, 13.) In 1982, Mr. Whiting transfered to the Power Supply Department where he has served in several capacities. He has negotiating, budgeting and administration responsibility for FP&L's major purchase power agreements, contracts which have nonfuel O&M components (R. Vol. IV, Tr. 37, 38) and has served as Power Coordination Manager in the Systems Operations Department.

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[8] The rationale for excluding those costs appears on page 53 rather than page 44 of Ex. 1, Doc. 1. When purchased power is being replaced by cogeneration, no FP&L generation is reduced, so no O&M is avoided. Avoided purchased power costs are calculated separately as a part of the avoided fuel cost. (R. Vol. V, Ex. 1, Doc. 3.)

(R. Vol. IV, Tr. 13.) In the latter capacity he was responsible for the economic dispatch of FP&L's power system. Step two of FP&L's methodology consisted of a regression analysis to test the causal relationship postulated by the choice of costs in step one. (R. Vol. IV, Tr. 289.) Mr. Whiting also has the ability to perform statistical analyses. He testified that he could have performed the regression analyses in the initial application of step two of FP&L's methodology (R. Vol. IV, Tr. 31), had updated those analysis (Id.) and had performed regression analyses on costs used in the Gulf methodology (R. Vol. IV, Tr. 78-80, 87-89). Because of his accounting and operations background, Mr. Whiting had filed testimony several times before the Commission as FP&L's production witness in the fuel cost recovery docket. (R. Vol. IV, Tr. 96.)

Mr. Whiting began examining the issue of whether the purchase of as-available energy would allow FP&L to avoid O&M expense in 1983 when the Commission first proposed a rule suggesting that the as-available energy price include an avoided O&M component. (R. Vol. IV, Tr. 15.) In 1984 when FP&L created an interdisciplinary task team to examine the issue, Mr. Whiting was assigned to the team. (R. Vol. IV, Tr. 16.) He participated throughout FP&L's study and was responsible for drafting the narrative summary of the study. Id. In his prefiled direct testimony, Mr. Whiting explained why the identification and measurement of incremental variable nonfuel O&M costs transcended payments to cogenerators. He explained the assumptions underlying the report, described FP&L's methodology for computing avoided

fuel and purchased power costs, defined the cost relationships involved, explained why incremental cost were more important than average costs, and reviewed the conclusions in FP&L's study. (R. Vol. IV, Tr. 12-25.)

On cross examination of Mr. Whiting, it was brought out that Mr. Whiting was not an engineer and had not made the "engineering judgments" (treatment of costs) in step one of FP&L's methodology. (R. Vol. IV, Tr. 29.) Counsel conducting the cross examination concluded that he did not have to ask Mr. Whiting any questions about those judgments (Id.) even though Mr. Whiting had also testified that he was familiar with FP&L's methodology, and that while he did not prepare the attachment to FP&L's study showing the first application of the methodology, he was involved in the preparation of the methodology. (R. Vol. IV, Tr. 30.)

At the close of cross examination, Commissioner Marks also asked Mr. Whiting a number of questions about the study and how FP&L's system operates. (R. Vol. IV, Tr. 50-57.) Mr. Whiting answered those questions as well, further evidencing his knowledge of the study and FP&L system operations. Id.

On redirect, Mr. Whiting was prepared to defend the decisions regarding the treatment of costs in step one of FP&L's methodology and was being offered for that purpose. (R. Vol. IV, Tr. 57, 58.) Following redirect, Mr. Whiting's exhibit, was moved into evidence without objection.

At that point, one of the cogenerators sought permission for further cross arguing that Mr. Whiting was being offered as an expert in engineering in light of his testimony on redirect. (R. Vol. IV, Tr. 61, 62.)

Recross proceeded with a series of questions by FCS. Mr. Whiting testified that he was prepared to testify to the correctness of the judgments in step one of FP&L's methodology rather than simply restating what someone else told him. (R. Vol. IV, Tr. 67.) Mr. Whiting went on to testify he was not an engineer by training but that his current vocation required "a lot of engineering work" and that he "had some informal education in engineering topics, particularly in the production area." Id. When asked what training or on-the-job experience he had that qualified him to testify as to the appropriate selection of EACs, Mr. Whiting stated: "I'm aware of power plant operations, the types of expenses that are incurred and why they're incurred. And that's what's necessary to make this judgment." Id.

The Commission accepted the conclusions in FP&L's study. The Appellants dissatisfied with the outcome, took this appeal of Commission Order No. 17273 issued March 11, 1987.

SUMMARY OF ARGUMENT

The Appellants had three opportunities to object to the testimony and supporting study submitted by Florida Power and Light Company (FP&L). They failed to raise a contemporaneous objection and as such, waived the right to raise the objection for the first time on appeal.

The expert witness, G.L. Whiting, was competent to testify upon the matters raised in his pre-filed testimony. He had knowledge, training and personal experience in the area. The record adequately supports these findings. Although framed as engineering judgments, the witness established on the record that the testimony and studies were based upon production costs, the area of responsibility of the witness.

Finally, if conceding for the purpose of argument that the testimony was based upon hearsay, it was admissible under a hearsay exception. The material relied upon by Mr. Whiting was the type of information reasonably relied upon by experts to support the opinions expressed. This exception is specifically provided for in section 90.704, Florida Statutes. There being substantial and competent evidence in the record to support the decision of the Commission, the order on appeal should be affirmed.

POINT ON APPEAL

THE COMMISSION'S CONSIDERATION OF THE TESTIMONY OF THE EXPERT WITNESS COMPILED WITH THE ESSENTIAL REQUIREMENTS OF LAW

I.

THE APPELLANTS DID NOT OBJECT TO THE INCLUSIONS OF THE EXPERT WITNESS TESTIMONY THUS FAILING TO PRESERVE THE ISSUE FOR APPELLATE REVIEW

The testimony of the expert witness, G. L. Whiting, was prefiled and received into evidence without objection. (Tr. 11.) The study which Mr. Whiting offered and supported was also received into evidence without objection. The Appellants therefore failed to preserve any alleged error for appellate review. In order for an appellate court to review a decision concerning the admissibility of evidence, a party must give the trial court an opportunity to determine the issue of admissibility. In Rinker Materials Corp. v. Hill, 471 So.2d 119, 119-120 (Fla. 1st DCA 1985) the Court held:

> We have reviewed the record and note that counsel for the employer and carrier did not contemporaneously object to the expert testimony on the ground that it was not founded on facts in the record. Without such contemporaneous objection before the deputy, there is no basis for reviewing such issue on appeal.

This Court would have a reviewable issue if the Appellants had objected to G.L. Whiting's testimony. The absence of an objection precludes reviewing the issue on appeal. The parties were given a clear opportunity to object to the inclusion of the testimony and study on three occasions.

The first occasion occurred when the expert witness's testimony was offered into evidence. The second and third

opportunities occurred when the study was offered into evidence as Exhibit No. 1.

In Commission proceedings, testimony is prepared and prefiled, giving all the parties, the Commissioners and the staff an opportunity to review the testimony, prepare cross examination and submit rebuttal testimony. Rule 25-22.048(4), F.A.C. The prefiled testimony is then transcribed into the record as if read; however, not without first giving the parties an opportunity to object. At the beginning of the hearing, the first opportunity was presented:

"CHAIRMAN MARKS: Any objection to the insertion of his testimony into the record at this point? If there are no objections, it will be inserted into the record." (Tr. 11.)

Then at the conclusion of Mr. Whiting's redirect examination, Counsel for Florida Power and Light moved for the admission into evidence of the study profferred by Mr. Whiting. It was received into evidence without objection.

"MR. GUYTON: We would move the admission of Commission Exhibit 1, Mr. Whiting's exhibit.

"CHAIRMAN MARKS: Any objections?

"MR. SELLERS: I have no objections.

(Exhibit No. 1 admitted into evidence.)"

(Tr. 60).

Finally, at the conclusion of a second round of cross examination and further redirect, Counsel for Florida Power and Light again moved the admission of Mr. Whiting's exhibit.

"MR. GUYTON: Commissioner Gunter, I believe it was admitted, but we would move the admission of Exhibit No. 1.

"COMMISSIONER GUNTER: It was already moved." (Tr. 97.)

The Appellants were given three opportunities to object to the admission of the witness's testimony and the introduction of his study. On all three occasions the Appellants stood mute or acquiesced in its admission. The exclusion from consideration of the testimony now sought by the Appellants was never suggested to the Commission. The Commission assumed, and rightly so from the record before it, that it could and should consider the testimony and study.

The Appellants have failed to point to any part of the record where such an objection was made. The only hint of an objection relative to this witness was an offer by the Appellants to discontinue further cross examination of the witness if the Commission would be willing to strike portions of the witness's answers. Commissioner Gunter rejected the offer and cross examination continued.

"MR. ZAMBO: Well, if you would be willing to strike those portions of his testimony, both direct and on cross examination here today, that purport to give an engineering opinion, I will be happy to forgive my opportunity to ask questions.

"COMMISSIONER GUNTER: No, I'm just trying to get you to ask questions that are pertinent." (Tr. 94.)

With the rejection of the offer to waive cross examination, questioning by the Appellants continued without interruption. The failure to raise an objection constitutes a waiver of the right to

raise the objection for the first time on appeal. Rinker, supra. The rational for this conclusion is clear. The Commission, as trier of fact, was not asked to decide the admissibility of the testimony and study. Absent an objection, the Court has no decision to review. The Appellants are seeking instead to have this Court substitute itself for the Commission and try the issue de novo. This Court has rejected that suggestion in the past. Citizens of Florida v. Public Service Comm., 435 So.2d 784, 787 (Fla. 1983).

Without a contemporaneous objection preserving the issue for appellate review, the Appellants have waived the right to try the issue before this Court.

II.

THE COMMISSION'S CONSIDERATION OF THE TESTIMONY OF A QUALIFIED EXPERT WITNESS IS SUBSTANTIVELY IN COMPLIANCE WITH THE ESSENTIAL REQUIREMENTS OF LAW

G.L. Whiting prefiled testimony, testimony before the Commission and study were introduced without objection, but he was extensively questioned. In this case, the voir dire of the witness went to the weight to be afforded the testimony and not to the competency to testify since no objection was made as to his competency. Rinker, supra. Questions which have a bearing on the weight to be given an expert's testimony deal with his knowledge, training and personal involvement with the issues. On each area of inquiry, the record supports the conclusion that the Commission was correct in relying upon the witness's testimony.

The study relied upon by witness Whiting was prepared using a two step analysis. In the first step, engineers screened elements of production expenses to compile a list of those production expenses which may have varied with respect to output of a production facility. The second step was to evaluate whether there was a statistical correlation between the level of the expenses incurred and the relative level of output. From the record it is clear that G.L. Whiting supervised, reviewed, and consulted with the engineers who screened elements of production expenses and then made the decisions as to which expenses to include. He then reviewed the second step, the evaluation of the statistical correlation. What Appellants seem to contend in their brief is that the witness was incompetent to undertake the first evaluation and hence could not use the report as the basis of his testimony.

Mr. Whiting is competent to testify on the "Final Report on the Investigation of Avoided Variable Operating and Maintenance Expense due to Cogeneration." He has knowledge, training and personal involvement with the issue. Section 90.702, Florida Statutes; International Insurance Co. v. Ballon, 403 So.2d 1071 (Fla. 4th DCA 1981).

The Record discloses that:

A. Personal involvement:

1. Mr. Whiting has been personally involved with the issue since the first Commission hearing on the subject in 1983. (Tr. 15.)

2. He was assigned to a task force in 1984 for the evaluation of the subject of his testimony. (Tr. 16, 20.)

3. He was personally involved in the preparation of the report although he did not write the report. (Tr. 30.)

4. He had evaluated the reports filed by the other utilities and was prepared to discuss the methodologies and deficiencies with those studies. (Tr. 20, 21, & 34.)

B. Training:

1. Mr. Whiting has technical training in Industrial Management from Georgia Institute of Technology;

2. A Masters of Business Administration from University of Miami; and,

3. Became a Certified Internal Auditor. (Tr. 12.)

4. He has received on-the-job training and performs engineering work in his current position. (Tr. 67.)

C. Knowledge:

1. The first step in the evaluation of the costs is an identification of production costs associated with load. This is particularly within his area of supervisory authority. (Tr. 13.)

2. He was capable of discussing the changes in load on Florida Power and Light's system and answered hypothetical questions, pointing out the engineering effects. (Tr. 40, 41.)

3. He testified that he was capable of explaining the engineering judgments used in the study. (Tr. 58.)

4. With his accounting background, Mr. Whiting was the key person to undertake and evaluate the costs associated with the EAC's necessary to complete the study. (Tr. 96.)

During cross examination, the Appellants tried to discredit the witness by inquiring into his training and experience. Instead of discrediting the witness, they substantiated that he was the appropriate witness to testify on the subject. In questioning by Chairman Marks, the following testimony was elicited:

"Q. Are you an engineer by education?

"A. Primarily, I do a lot of engineering work in my current vocation. And I have had some informal education in engineering topics, particularly in the production area.

"Q. Okay. Could you tell me what that training or on-the-job experience might be that would qualify you to give these kind of judgments?

"A. What kind of judgments are you asking me to make?

"Q. Whether these engineering judgments as to which accounts should be included in effect for are correct?

"A. As to whether or not the EACs collected were appropriate for selection in this docket? I'm aware of power plant operations, the types of expenses that are incurred and why they're incurred. And that's what's necessary to make this judgment." (Tr. 67.)

The Appellants through a semantical assault try to claim that the witness was incompetent to make engineering judgments. The first step in the evaluation, the determination of which EAC's to use, requires a power plant operations witness to properly make that decision. Witness Whiting is precisely the person made those decisions.

The actual calculation of correlations the second step in the study, is more in the nature of engineering. However even here, the witness testified that he was capable of doing the necessary calculations to determine the statistical correlations. (Tr. 31.) On this step however, the Appellants did not question Mr. Whiting's competency to testify.

The evaluation of the credentials of a witness to testify is properly within the sound discretion of the trier of fact. Upchurch v. Barnes, 197 So.2d 26, 28-29 (Fla. 4th DCA 1967); see: Quinn v. Millard, 358 So.2d 1378, 1382 (Fla. 3rd DCA 1978). The witness was examined on voir dire as to his qualifications experience and personal knowledge. He was cross examined using actual and hypothetical questions. (Tr. 40-41.) His testimony was admitted into evidence along with supporting evidence without objection. The Appellants did not question nor object to any specific decision that was made by the witness in including some

costs and excluding others. The Appellants failed to demonstrate any deficiency in engineering judgment or with the study. Having failed to demonstrate error, the appeal should be affirmed. It is not the task of an appellate court to reweigh the evidence. Florida Retail Federation, Inc. v. Mayo, 331 So.2d 308 (Fla. 1976).

III.

THE WITNESS'S TESTIMONY WAS PROPERLY ADMITTED WITHIN A LAWFUL EXCEPTION TO THE HEARSAY RULE

There are several recent Florida appellate court decisions dealing with the admissibility of hearsay expert testimony.

Assuming for the sake of argument that the testimony here offered was based upon hearsay, it would be admissible and constitute competent evidence upon which the agency may rely under an appropriate exception to the hearsay rule.

"Under section 90.704, [Florida Statutes] an expert may rely on facts or data that have not been admitted, or is even admissible when those underlying facts are of 'a type reasonably relied upon by experts in the subject to support the opinion expressed, ...'" Ehrhardt, Florida Evidence, s. 704.1, at 411, (2d ed. 1984); citing from Sikes v. Seaboard Coast Line Railroad Co., 429 So.2d 1216, 1222 (Fla. 1st DCA 1983). Followed in Crawford v. Shivashankar, 474 So.2d 873, 874 (Fla. 1st DCA 1985).[9]

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[9]Harris v. Game and Fresh Water Fish Comm., 495 So.2d 806, 808 (Fla. 1st DCA 1986) is inapplicable to this case. In Harris, the testimony of an investigator concerning the appellant's conviction of a crime in Georgia was held insufficient in itself to support a finding unless it would be admissible over objection in civil actions. Unlike this case, the Commission in Harris, sought the admission of the hearsay testimony on the grounds that the report filed by the investigator was a business record pursuant to section 90.803(6)(a), Florida Statutes.

Here, Mr. Whiting relied upon data which he had used in 1985 when the study was first prepared and was admitted into evidence. It was the type of data and information used by the other utilities to determine variable O & M expenses for their companies. (Tr. 34-35.) It was therefore reasonable for Mr. Whiting to rely upon this information, support his expert opinion and reach the conclusions he reached.

Even if the testimony was not the type which experts reasonably rely upon to reach their conclusions, the Commission was still entitled to admit the evidence and rely upon it in reaching the conclusion it reached. In Tri-State Systems, Inc. v. Department of Transportation, 500 So.2d 212 (Fla. 1st DCA 1986), the testimony of a property owner that agents of the Department of Transportation had assured him that outdoor display signs were properly permitted before he purchased the property was held to be admissible:

> ... Moreover, even though the testimony may be said to constitute hearsay evidence that the permits were in fact legal, DOT made no objection to the testimony on this or any other ground at the time it was presented. Thus, as unobjected-to hearsay the testimony became part of the evidence in the case and was usable as proof just as any other evidence, limited only by its rational persuasive power.

Therefore, the unobjected to testimony of Mr. Whiting was properly admitted into evidence, even if based upon hearsay testimony, under the exception to the hearsay rule in section 90.704, Florida Statutes, and the cases cited. However, Mr. Whiting was competent to testify on the study presented and the Appellee does not concede that the testimony was based upon hearsay.

CONCLUSION

The Commission permitted the testimony to be included in the record without any contemporaneous objection being raised by the Appellants. The expert witness testimony was based upon the witness's knowledge, experience and personal involvement with the issue in the proceeding.

Had the testimony and study sponsored by the witness been based upon hearsay evidence, it was admissible to prove the ultimate fact in issue. The alleged hearsay evidence was of the type an expert would reasonably rely upon to sustain an opinion. It is permissible under section 90.704, Florida Statutes. Even carrying the allegation further, if the evidence was a type not reasonably relied upon it could have been admitted absent a contemporaneous objection.

Therefore, no error being demonstrated and the decision of the Commission being based upon competent substantial evidence in the record, the decision of the Commission should be affirmed.

Respectfully submitted,

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September 15, 1987

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 15th day of September, 1987 to the following:

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