

EXHIBIT G

(Joseph Alan Murray Deposition Excepts)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANDREA ROSSI and LEONARDO)
CORPORATION,)
)
Plaintiffs,)

VS.)

No. 1:16-cv-2119-CMA

THOMAS DARDEN; JOHN T. VAUGHN;)
INDUSTRIAL HEAT, LLC; IPH)
INTERNATIONAL B.V.; and)
CHEROKEE INVESTMENT PARTNERS,)
LLC,)

Defendants.)

INDUSTRIAL HEAT, LLC and IPH)
INTERNATIONAL B.V.,)

Counter-Plaintiffs,)

vs.)

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Counter-Defendants,)

and)

J.M. PRODUCTS, INC.; HENRY)
JOHNSON; FABIO PENON; UNITED)
STATES QUANTUM LEAP, LLC;)
FULVIO FABIANI; and JAMES)
BASS,)

Third-Party Defendants.)

HIGHLY CONFIDENTIAL

Videotaped Deposition of JOSEPH ALAN MURRAY
(Taken by Plaintiff)
Raleigh, North Carolina
Friday, February 17, 2017

Reported in Stenotype by
Lauren M. McIntee, RPR
Transcript produced by computer-aided transcription

02/17/2017 Joseph Alan Murray

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1 programs and what the options are for the programs.

2 Q. When was the FP&L device last calibrated?

3 A. I have no idea.

4 Q. Do you know if it's been three years?

5 A. No idea.

6 Q. Four years?

7 A. I have, still have no idea.

8 Q. Okay. So you, you have absolutely no

9 information with respect to whether their data is

10 accurate or not?

11 A. What I know is that they provided it under

12 subpoena. They may or may not be accurate.

13 Q. Okay. So you don't have any reason to

14 believe that we should rely on those results as opposed

15 to the results of Mr. Penon or Mr. Fabiani; is that

16 correct?

17 A. I disagree with that. I, I would say that we

18 have to at least look at this and understand why, why

19 would it be this way. And so my view is that if, if a

20 company like Florida Power and Light provides data under

21 subpoena, there would be an expectation that they would

22 provide, would provide proper and accurate data, and

23 it's a reasonable way to check the facility. We did

24 this, I did this kind of anticipating that Florida Power

25 and Light would always be higher than the measurements

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1 that were made here.

2 Q. Okay. And, and the vast majority of the time

3 here they are?

4 A. Yes.

5 Q. With very few exceptions, in fact. And one

6 exception is between November and December 2015?

7 A. Yes.

8 Q. And during that period it, it appears that

9 the power usage drops by the FP&L measurements, right?

10 A. The FP&L measurement drops, yes, below the

11 measurements provided by Mr. Penon and Mr. Fabiani.

12 Q. Do you know why that would be?

13 A. I have no idea.

14 Q. Do you know if it's accurate? Do you know

15 if, perhaps, there is a problem with the device, the

16 measuring device?

17 A. I have no information other than the data

18 that was provided in the subpoena by Florida Power and

19 Light.

20 Q. Okay. So you have no reason to believe that

21 that information is more accurate than the measurements

22 taken by Penon and/or Fabiani, correct?

23 A. No, other than the fact that it's a Florida

24 utility, and they are regulated. I would think that --

25 Q. Do regulated Florida utilities ever have

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1 device malfunctions?

2 A. Oh, absolutely. Absolutely. In fact, I

3 believe in this facility they actually replaced a smart

4 meter at some point earlier in the year.

5 Q. Why do you believe that?

6 A. Because the registration number of the meter

7 in the subpoenaed data changed.

8 Q. When was that?

9 A. I don't recall. It was earlier in the year.

10 I would say sometime maybe in the May or June time

11 frame.

12 Q. Okay. Do you know if it was hooked up

13 correctly when it was replaced?

14 A. I do, I do not.

15 Q. Okay. So what you've got here is just a

16 comparison side by side of the two number sets. Is

17 there anything scientific about that other than looking

18 at it?

19 A. It's, it's very alarming to see a drop. I

20 mean in general when you see this, you see a very, very

21 consistent amount of power being absorbed by the reactor

22 system. And when the reactor system has a major drop

23 like here in the, let's say between July and August you

24 see a drop off, which I think corresponds to the data

25 that says, hey, we had some, some reactors go offline,

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1 you see that drop. That makes sense. And then sometime

2 in October they brought all of the units back online and

3 the power goes up.

4 So all of the trends seem to be consistent

5 except for this period of time when, in about from

6 middle of November to the beginning of December where

7 you have a power level absorbed into the building lower

8 than the measured. So that would give -- to me, there

9 are three potential explanations. Number one, Florida

10 Power and Light could be wrong. Number two, the

11 measurements made by Fabiani and Penon could be wrong.

12 And number four or -- I'm sorry, number three, the data

13 could have been manipulated. On either part, on either

14 party.

15 Q. Do you have any evidence that the data has

16 been manipulated --

17 A. No, I don't.

18 Q. -- by either one?

19 A. Not by Florida Power and Light or by Fabiani

20 or Penon.

21 Q. Okay. So you have no evidence of

22 manipulation. So what are you opining to specifically

23 here?

24 A. Specifically, in this period it was, it was

25 determined by Mr. Penon that the measurements, the

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1 this graph and any opinion with relation to any time
 2 that it dipped down below to be invalid?
 3 **A. For this specific graph, yes.**
 4 Q. Okay.
 5 **A. But there's more data.**
 6 Q. What's the more data?
 7 **A. If we look at --**
 8 Q. Hold on. Okay. More, more within this
 9 report or --
 10 **A. Yeah.**
 11 Q. -- more --
 12 **A. More in the analysis. I'm sorry.**
 13 Q. Okay. We'll go through the analysis.
 14 **A. Okay.**
 15 Q. Okay. Now you said, and I want you to look
 16 at that again, you said that the readings were taken at
 17 midnight every night?
 18 **A. I believe, yes.**
 19 Q. Sir, I'm looking at the readings, and it says
 20 12:00.
 21 **A. Uh-huh. Yes.**
 22 Q. Okay. You take that as midnight?
 23 **A. Yes.**
 24 Q. Sure it's not noon?
 25 **A. No. In fact, we looked at that. We looked**

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1 data point averages, because, or the single data points,
 2 because we wanted to make sure that if there was an
 3 offset, that we weren't artificially penalizing one set
 4 of data versus the other.
 5 Q. Okay. And, in fact, when you did that,
 6 that's what's reflected in Exhibit B, correct?
 7 **A. Take a look. Yeah. This is a 3-day rolling**
 8 **average. Actually, it has both data. It's kind of**
 9 **difficult to see with the, the line underneath. The,**
 10 **the FPL minus Penon data is the blue line. It's just**
 11 **the raw values. And then there is a, I would call that**
 12 **almost a gray line. Man, these colors are horrible, but**
 13 **the greenish line is the FP&L data minus a Penon 3-day**
 14 **rolling average.**
 15 **So we took the, the FPL data because, or I**
 16 **took the FPL data because I was concerned about whether**
 17 **it was noon or midnight. And we did a rolling average**
 18 **to, over the 3-day period to end up with that value, and**
 19 **then plotted it.**
 20 Q. All right.
 21 **A. Plotted it, so we took the 3-day average of**
 22 **the FPL minus the Penon data, because the Penon data**
 23 **was --**
 24 Q. So this --
 25 **A. -- very smooth.**

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1 **at the data both ways, assuming it was noon and assuming**
 2 **it was midnight. I asked the question, and I was told**
 3 **that it was noon. So I just -- I'm sorry. I was told**
 4 **that it was midnight, and so I --**
 5 Q. Who told you that?
 6 **A. Counsel. Based on --**
 7 Q. Counsel did?
 8 **A. Yes.**
 9 Q. Okay. Other than counsel, do you have any
 10 independent source?
 11 **A. No.**
 12 Q. Do you know where counsel got that
 13 information?
 14 **A. I do not.**
 15 Q. So you were relying on counsel for that
 16 opinion?
 17 **A. Yeah, they were the ones that got the**
 18 **subpoena --**
 19 Q. Okay.
 20 **A. -- and provided the data.**
 21 Q. Does this data change or the correlations
 22 change at all if the measurement were taken at noon as
 23 opposed to midnight?
 24 **A. No. That's why we did the analysis with the**
 25 **rolling 2-day average versus, versus just the single**

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1 Q. This is the difference between the two,
 2 correct?
 3 **A. Yes. Yeah. That's, that's why it's on a**
 4 **different scale. And we show a zero value. So, so the**
 5 **axes are completely different. Do you, do you see that?**
 6 Q. Uh-huh.
 7 **A. So the zero value, this would be the**
 8 **difference between the two. So any days that you had a**
 9 **value below zero would obviously be an area that we**
 10 **would have to look at and understand is the FP&L data**
 11 **bad or is potentially the Penon data bad.**
 12 Q. And so, I'm sorry. Any areas where what?
 13 **A. Where the value went below zero.**
 14 Q. Okay. And, in fact, there are fewer times
 15 where that occurs I believe --
 16 **A. Actually there are more.**
 17 Q. There are more?
 18 **A. There are 17 days in this, and I believe in**
 19 **the other one there are 14 days.**
 20 Q. Well, if it's a 3-day average, that shouldn't
 21 be, right?
 22 **A. No. The data from Florida Power and Light,**
 23 **it had big, big spikes. So what we were doing is we**
 24 **were taking the difference between the smooth Florida**
 25 **Power and Light data and the Penon-provided data,**

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1 Products, Inc., Henry Johnson, and James Bass. I only
 2 have a couple of questions for you. To start, did you
 3 ever meet Mr. Henry Johnson?
 4 **A. I have not.**
 5 Q. You have not. Great. Have you ever spoken
 6 with him on the phone or via e-mail?
 7 **A. I have not.**
 8 Q. Okay. Have you ever met Mr. James Bass?
 9 **A. I have not.**
 10 Q. You have not. Have you ever spoken with him
 11 via telephone or e-mail?
 12 **A. I have not.**
 13 **MR. LEÓN: Okay. That's all the questions I**
 14 **have. Go ahead, Rudy.**
 15 **THE WITNESS: That was easy. I like that.**
 16 **MR. NUÑEZ: All right.**
 17 EXAMINATION
 18 BY MR. NUÑEZ:
 19 Q. Good afternoon, Mr. Murray. My name is Rudy
 20 Nuñez. We also met the other day at Dr. Rossi's
 21 deposition. Can you hear me clearly through the
 22 speakerphone?
 23 **A. Yes.**
 24 Q. All right. You let me know if you have any
 25 problems or trouble hearing. Okay?

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1 Q. What were you told about his work
 2 performance, if anything?
 3 **A. That he, you know, he showed up, but you**
 4 **know, he was just kind of a participant in the data**
 5 **collection and, at the plant. He was kind of like**
 6 **Dr. -- or Mr. Rossi's kind of assistant, if you will, or**
 7 **technical assistant, kind of helping him out in the**
 8 **facility.**
 9 Q. Did anyone make any comments to you or talk
 10 to you about any concerns they had with him?
 11 **A. I think there was, there was a, a modest**
 12 **level of concern with how close he was with Mr. Rossi**
 13 **relative to just, you know, the close relationship and**
 14 **whether or not he would be fully -- fully disclose**
 15 **everything to us, but I think the only thing that he**
 16 **hasn't disclosed as far as I'm aware is the actual final**
 17 **report and, and I think maybe he has produced some data.**
 18 **I haven't looked at it though. So it was only a**
 19 **question of if he would release all of the data.**
 20 Q. So to your understanding, the only thing he
 21 didn't do was turn over that final report?
 22 **A. I believe that's, that's correct, yes.**
 23 Q. And I think the raw data too. I don't want
 24 to, you know, I'm not trying to trip you up or anything.
 25 **A. Right, no, no, no. Yeah, I think the raw**

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1 **A. Okay.**
 2 Q. All right. As you testified, you know,
 3 several times today, you brought up Mr. Fabiani. I
 4 represent Fulvio Fabiani and his company, an LLC by the
 5 name of United States Quantum Leap. I certainly don't
 6 have the time to go back through all that you've done
 7 that I would want to, but I did want to, you know, touch
 8 on a few points to kind of maybe clear up some questions
 9 I had.
 10 Let me ask you. When, when you first came on
 11 board with Industrial Heat with regards to Dr. Rossi's
 12 technology, E-Cat, and the plant, what were you told at
 13 the start about Mr. Fabiani?
 14 **A. I was told that Fulvio Fabiani was a close**
 15 **family friend of Mr. Rossi's wife. I, I believe her**
 16 **name is Maddalena, and that she was, you know, a close,**
 17 **almost like a mentor of his, and that Fulvio had worked**
 18 **with, with Mr. Rossi in Italy and on other activities.**
 19 **I also learned that he was a, an avid pinball machine**
 20 **both repairman and developer.**
 21 Q. Anything else?
 22 **A. Other than he had developed some hardware**
 23 **devices for the, the reactor system. And I don't, I**
 24 **don't remember the exact nature of that. And that he**
 25 **had spent a lot of time in, in Raleigh.**

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1 **data, he indicated that there was raw data stored on a**
 2 **server in Russia that was encrypted and he had to, he**
 3 **put it there for safekeeping, and I believe that that**
 4 **data has been released only maybe in the last few days.**
 5 **I, I have not looked at it. I haven't seen it. I**
 6 **haven't inspected it, but I believe that it has been**
 7 **released in the last few days. But I have not seen a**
 8 **final report, and I don't know anything about, you know,**
 9 **if a final report was actually produced.**
 10 Q. All right. Now, getting back to, I was
 11 asking you about conversations and concerns. And again
 12 I don't want to put words in your mouth, but correct me
 13 if I'm wrong that it seemed like you had heard that
 14 there may be concerns about what he was, how honest he
 15 was being with Industrial Heat. Is that a fair way to
 16 phrase it?
 17 **A. I would say that the concern was about his**
 18 **allegiance and his close relationship with Mr. Rossi**
 19 **rather than -- that's how I would characterize it.**
 20 Q. Okay. And do you think, was that something
 21 that was knew over time or would they knew that from the
 22 beginning?
 23 **A. I --**
 24 Q. I should say -- let me strike that.
 25 Was that a new concern or a concern that they

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1 couple more questions, go ahead, Rudy, quickly.
 2 MR. NUÑEZ: Yeah. I don't have that much, so
 3 I appreciate it, Mr. Murray.
 4 BY MR. NUÑEZ:
 5 Q. And I'll move on from the meeting at Jones
 6 Day. Let's go to the -- and I think it's in your expert
 7 report. You've been asked a lot about it. I'm not
 8 trying to retread all this stuff, but I do want to
 9 confirm a couple things just to clear up with my
 10 questions.
 11 There were -- and correct me if I'm wrong.
 12 Mr. Fabiani provided what I would call, and you correct
 13 me, electric power consumption numbers; is that correct?
 14 A. He provided us with, I think it was a
 15 spreadsheet for each month or maybe it was one
 16 spreadsheet that had numerous tabs. I don't recall
 17 which. And it had the time stamp for twice a day,
 18 cumulative energy in those 12-hour periods. And he
 19 provided us with a, a log that kind of showed dates and
 20 events when things were turned on and the power went off
 21 and this and that and different events, so what I would
 22 describe as a log of events.
 23 And I think those were the two major items
 24 that he had provided to us on the second day, and then
 25 he was going to wait and provide us with the final

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1 Q. Okay. So that was 14 out of, I think it was
 2 350 or almost a year, correct?
 3 A. I believe the number in the final report was
 4 total of 357 days, and then Mr. Penon deducted 5 or 6
 5 days. I don't remember the exact number. And so there
 6 was a cumulative number of maybe 352 days of, of
 7 operational days.
 8 Q. And for lack of a better word, I think there
 9 were discrepancies between Fabiani's numbers versus the
 10 FP&L's numbers. Do you have any reason to believe that
 11 that is a result of Mr. Fabiani manipulating the data
 12 that he was putting into his spreadsheets?
 13 A. At this point, I have no evidence of that
 14 whatsoever.
 15 Q. And do you anticipate any kind of work in the
 16 future between now and trial where you would come to a
 17 different conclusion?
 18 A. I can't say at this point because I think
 19 that there's a lot of data that's just becoming
 20 available. For example, I think the raw data from
 21 Mr. Fabiani just became available, and I have not looked
 22 at that at all.
 23 Q. Okay. Let me ask you, and this will --
 24 MR. LOMAX: And Rudy --
 25 Q. I'm close to the end here.

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1 report and the other data a few days later. He also
 2 said that he had taken data from the flow meter from
 3 time to time, and he had logged it into a spreadsheet on
 4 the desktop of his computer, but his computer was locked
 5 up and he couldn't get to it, and he was going to
 6 provide that data to us as well, but he didn't produce
 7 that data either.
 8 Q. Okay. And now my question relates -- I think
 9 you made an analysis that his power consumption numbers
 10 for the plant don't match the readings from Florida
 11 Power and Light; is that correct?
 12 A. No, which just incidentally we would not
 13 anticipate that they match. We would anticipate that
 14 the building would absorb more power than just the
 15 reactor because there was other, there were other
 16 electrical devices in the building. The primary concern
 17 is where the value goes negative, where the building is
 18 actually absorbing less, less energy per day than the,
 19 than reported by Mr. Fabiani and Mr. Penon.
 20 Q. Okay. And how many times did that happen?
 21 A. How many times? There was a 14-day period.
 22 I think cumulative number of days where it was below
 23 zero was 14 days, and that's just pure absolute
 24 negative. And, you know, and that's just assuming that
 25 nothing else in the building absorbed power.

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1 MR. LOMAX: This is Chris and --
 2 Q. Do you have any evidence --
 3 MR. LOMAX: -- time is up.
 4 Q. -- in your investigation and your work for
 5 Industrial Heat that Mr. Fabiani manipulated improperly
 6 any data?
 7 A. At this point, no, I do not.
 8 MR. LOMAX: And, Rudy, this is Chris. That's
 9 the time.
 10 MR. NUÑEZ: All right. And, yep, that's
 11 going to match up with my time. And I will say
 12 thank you, Mr. Murray. Thank you, everyone. Have a
 13 good weekend.
 14 THE WITNESS: Okay. No problem. Thank you,
 15 guys.
 16 THE VIDEOGRAPHER: This concludes the
 17 videotaped deposition of Joseph Murray. We are off
 18 the record at 5:20 p.m.
 19 (Stenotype record continued off the video record.)
 20 MR. ANNESSER: Just as a formality, sir, you
 21 have the right to read or waive, which means you can
 22 read the deposition before it's finalized, or you
 23 can waive that right.
 24 THE WITNESS: I would like to read it.
 25 MR. ANNESSER: Okay.

02/17/2017 Joseph Alan Murray

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1 MR. LOMAX: And Defendants are going to
 2 designate Mr. Murray's testimony at this time as
 3 highly confidential due to a lot of the information
 4 that was provided here today.
 5 (DEPOSITION CONCLUDED AT 5:20 P.M.)
 6 (SIGNATURE RESERVED)
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1 STATE OF NORTH CAROLINA
 COUNTY OF WAKE:
 2
 3 REPORTER'S CERTIFICATE
 4 I, LAUREN McINTEE, RPR, a Notary Public in
 5 and for the State of North Carolina, do hereby certify
 6 that there came before me on Friday, the 17th day of
 7 February, 2017, the person hereinbefore named, who was
 8 by me duly sworn to testify to the truth and nothing but
 9 the truth of his knowledge concerning the matters in
 10 controversy in this cause; that the witness was
 11 thereupon examined under oath, the examination reduced
 12 to typewriting under my direction, and the deposition is
 13 a true record of the testimony given by the witness.
 14 I further certify that I am neither attorney
 15 or counsel for, nor related to or employed by, any
 16 attorney or counsel employed by the parties hereto or
 17 financially interested in the action.
 18 IN WITNESS WHEREOF, I have hereto set my
 19 hand, this the 20th day of February, 2017.
 20
 21 *Lauren M. McIntee*
 22
 23 LAUREN McINTEE, RPR, Notary Public
 24 Notary Number: 201616600044
 25

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1 WITNESS'S CERTIFICATE
 2
 3 I, JOSEPH ALAN MURRAY, do hereby certify
 4 that I have read and understand the foregoing
 5 transcript and believe it to be a true, accurate, and
 6 complete transcript of my testimony, subject to
 7 the attached list of changes, if any.
 8
 9 _____
 10 JOSEPH ALAN MURRAY
 11
 12 This deposition was signed in my presence by
 13 _____, on the ____ day of
 14 _____, 2017.
 15
 16 _____
 17 Notary Public
 18 My commission expires:
 19
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 22
 23
 24
 25

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1 CaseWorks, Inc.
 811 Ninth Street, Suite 260 (Page 1 of 2)
 2 Durham, North Carolina 27705
 3 E R R A T A S H E E T
 4 Re: Andrea Rossi, et al. vs. Thomas Darden, et al.
 5 Deposition of: JOSEPH ALAN MURRAY
 6 Please read this transcript with care, and if
 7 you find any corrections or changes you wish made, list
 8 them by page and line number below. DO NOT WRITE IN
 9 THE TRANSCRIPT ITSELF. Return the
 10 Certificate and Errata Sheet to this office after
 11 it is signed. We would appreciate your prompt
 12 attention to this matter.
 13 To assist you in making any such corrections,
 14 please use the form below. If supplemental or
 15 additional pages are necessary, please furnish same and
 16 attach them to the errata sheet.
 17 Page ____ Line ____ should
 18 read: _____
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 22 read: _____
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 read: _____