

464-B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of	)	DOCKET NO. 910816-EQ
Need for Electric Power Plant (Amelia	)	ORDER NO. 25285
Island Cogeneration Facility) by Nassau	)	ISSUED: 11/01/91
Power Corporation	)	
	)	

Pursuant to Notice, a Prehearing Conference was held on October 23, 1991, in Tallahassee, Florida, before Commissioner Susan F. Clark, Prehearing Officer.

APPEARANCES:

J. BERT GRANDOFF, Esquire, and KENNETH P. BROWN, Esquire, McWhirter, Grandoff and Reeves, Post Office Box 3350, Tampa, Florida 33601 and

JOSEPH A. McGLOTHIN, Esquire, and VICKI GORDON KAUFMAN, Esquire, McWhirter, Grandoff and Reeves, 522 East Park Avenue, Suite 200, Tallahassee, Florida 32301  
On behalf of Nassau Power Corporation.

MATTHEW M. CHILDS, Esquire, BONNIE DAVIS, Esquire, and CHARLES A. GUYTON, Esquire, Steel Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1804  
On behalf of Florida Power & Light Company.

JAMES P. FAMA, Esquire, Florida Power Corporation, Post Office Box 14042, St. Petersburg, Florida 33733  
On behalf of Florida Power Corporation.

BRUCE PAGE, Esquire, 421 West Church Street, Suite 715, Jacksonville, Florida 32202  
On behalf of Jacksonville Electric Authority

ROBERT V. ELIAS, Esquire, and MARY ANNE BIRCHFIELD, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff.

WILLIAM E. WYROUGH, Esquire, and PRENTICE PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0862  
On behalf of the Commissioners.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 2

### PREHEARING ORDER

#### Background

On June 13, 1990, Nassau Power Corporation (Nassau) filed with the Commission an executed standard offer power sales agreement designed to meet 435 megawatts of the identified 500 megawatt 1996 statewide need. This contract identified Florida Power and Light Company (FPL) as the purchasing utility. On July 31, 1991, Nassau filed a Petition for Determination of Need for a proposed 435 megawatt natural gas fired cogeneration facility. The proposed facility is to be located on Amelia Island in Nassau County, Florida. By letter dated August 6, 1991, Nassau waived the time scheduling requirements of Rule 25-22.080(2), Florida Administrative Code, to permit a final decision no later than January 28, 1992. On August 8, 1991, FPL filed its Notice of Appearance in this docket. Florida Power Corporation (FPC), the Jacksonville Electrical Authority (JEA) and the City of Fernandina Beach (FB) filed separate requests to intervene in this docket which were granted without objection.

#### Use of Prefiled Testimony

All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits, unless there is a sustainable objection. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his testimony at the time he or she takes the stand.

#### Use of Depositions and Interrogatories

If any party desires to use any portion of a deposition or an interrogatory, at the time the party seeks to introduce that deposition or a portion thereof, the request will be subject to proper objections and the appropriate evidentiary rules will govern. The parties will be free to utilize any exhibits requested at the time of the depositions subject to the same conditions.

ORDER NO. 25285  
 DOCKET NO. 910816-EQ  
 PAGE 3

Order of Witnesses

In keeping with Commission practice, witnesses will be grouped by the subject matter of their testimony. The witness schedule is set forth below in order of appearance by the witness's name, subject matter, and the issues which will be covered by his or her testimony.

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
<u>Nassau - Direct</u>		
1. David W. Dewhurst (Nassau)	Corporate organization, project overview	1
2. Phillip N. Cantner (Nassau)	Project site, plant facilities, purchase power contract, steam sale arrangements, fuel type and supply, interconnection, associated facilities, environmental advantages	1, 6, 7, 15-19, 22, 31, 34, 37
3. Robert L. Brooks (Nassau)	Plant technology and components	1
4. John H. Beck (Nassau)	Right-of-way acquisition	1
5. J. Donald Dacey (Nassau)	Nassau's ability to finance the project	2
6. Roger E. Clayton (Nassau)	Adequacy of transmission system to deliver Nassau's power; impact on import capability; adequacy of proposed interconnection	24-26, 28-29
7. James A. Ross (Nassau)	FPL's capacity needs; states' need for capacity; cost-effectiveness of Nassau Power's project; economic benefits of Nassau Power's project	3-5, 8-13, 20-21, 23 25, 26, 37
8. Robert Dolan* (Nassau)	Power Purchase Contracts and Interconnection Agree- ments	33

ORDER NO. 25285  
 DOCKET NO. 910816-EQ  
 PAGE 4

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
9. Guy Hammond (Nassau)	Power Purchase Contracts and Interconnection Agree- ments	33
10. Sheldon Ferdman (Nassau)	Availability of interface capacity	26,28
<u>FPL - Direct</u>		
11. S. S. Waters (FPL)	FPL's capacity needs; Nassau's contrived presentation of FPL's capacity needs; Nassau's lack of cost effectiveness	3-5,8-10,12-14, 20-21,23-24, 26,34,37
12. K. Adjemian (FPL)	Impact of Nassau location on electrical transmission system	10, 11, 13, 22, 24-26,28, 29,34,37
<u>JEA - Direct</u>		
13. P. G. Para (JEA)	Effect of Nassau Power project on transmission system	28
14. Sheldon Ferdman (JEA)	JEA's position on providing transmission service for project	34
<u>FPL - Rebuttal</u>		
15. K. Adjemian	Rebuttal to Mr. Ross: Tie line assistance; why transmission service will not mitigate Nassau's adverse impact on trans- mission service	5,25,29

ORDER NO. 25285  
 DOCKET NO. 910816-EQ  
 PAGE 5

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
K. Adjemian	Rebuttal to Mr. Clayton: Adequacy of FPL transmission system to deliver Nassau's power and perform reliably; Nassau's inadequate interconnection	24, 25, 30
16. S. S. Waters	Rebuttal to Mr. Ross: Effect of third 500 kV line; Nassau's adverse state reliability impact; Inappropriate Nassau dispatch; Cost responsibility for transmission additions; Flawed analysis of state need.	4, 5, 9-13, 21, 23, 24, 26
<u>Nassau - Rebuttal</u>		
17. James A. Ross (Nassau)	Rebut FPL's assertions regarding adjustments to planning assumptions, Nassau's ability to provide adequate electricity at a reasonable cost	3-5, 10, 11, 21, 23, 29
18. Roger E. Clayton (Nassau)	Rebut Adjemian's interpretation of Nassau impact on import capability	24-25
19. Phillip N. Cantner (Nassau)	Rebut Waters' comments on Nassau's participation in 1989 FPL solicitation; Waters' comments on Nassau's variable costs; Waters' interpretation of JEA's position	14-17, 27

ORDER NO. 25285  
 DOCKET NO. 910816-EQ  
 PAGE 6

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>1</u> (DHD-1)	Dewhurst (Nassau)	Corporate organization
<u>2</u> (DHD-2)	Dewhurst (Nassau)	Falcon Seaboard Projects
<u>3</u> (PCN-1)	Cantner (Nassau)	Site Plan
<u>4</u> (PCN-2)	Cantner (Nassau)	Westinghouse Proposal
<u>5</u> (PCN-3)	Cantner (Nassau)	ITT letters
<u>6</u> (PCN-4)	Cantner (Nassau)	Sonat gas offer
<u>7</u> (PCN-5)	Cantner (Nassau)	Citrus gas offer
<u>8</u> (PCN-6)	Cantner (Nassau)	Arthur D. Little fuel study
<u>9</u> (PCN-7)	Cantner (Nassau)	Summary report of Environmental Issues Considerations
<u>10</u> (JHB-1)	Beck (Nassau)	Resume of John H. Beck
<u>11</u> (JHB-2)	Beck (Nassau)	Resume of Harry L. Hunt
<u>12</u> (JHB-3)	Beck (Nassau)	Transmission Line Right- of-Way Analysis
<u>13</u> (REC-1)	Clayton (Nassau)	Resume of Roger Clayton

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 7

<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>14</u> (REC-2)	Clayton (Nassau)	Study Methodology
<u>15</u> (REC-3)	Clayton (Nassau)	Load Flow Base Case and Contingency Analysis (Condition 1)
<u>16</u> (REC-4)	Clayton (Nassau)	Load Flow Base Case and Contingency Analysis (Condition 2)
<u>17</u> (REC-5)	Clayton (Nassau)	Load Flow Base Case and Contingency Analysis (Condition 3)
<u>18</u> (REC-6)	Clayton (Nassau)	Load Flow Base Case and Contingency Analysis (Condition 4)
<u>19</u> (Attachment A)	Ross (Nassau)	Qualifications of James A. Ross
<u>20</u> (JAR-1)	Ross (Nassau)	FPL Response to Staff's Interrogatories, No. 3; list of proposed power lines
<u>21</u> (JAR-2)	Ross (Nassau)	FPL GPIF Schedules
<u>22</u> (JAR-3)	Ross (Nassau)	Historical EAF 5 Year Rolling Average for Turkey Point 3
<u>23</u> (JAR-4)	Ross (Nassau)	Historical EAF 5 Year Rolling Average for Turkey Point 4
<u>24</u> (JAR-5)	Ross (Nassau)	Derivation of Recommended TIGER TIE Assistance Assumption

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 8

<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>25</u> (JAR-6)	Ross (Nassau)	July 13, 1990 memo from Adjemian to Waters
<u>26</u> (JAR-7)	Ross (Nassau)	Cost Comparison of Discounted Standard Offer in 1996 v. IGCC
<u>27</u> (JAR-8)	Ross (Nassau)	Comparison of System Revenue Requirements
<u>28</u> (JAR-9)	Ross (Nassau)	Value of Deferral Comparison
<u>29</u> (JAR-10)	Ross (Nassau)	Nassau Impact on Winter Capacity Reserves
<u>30</u> (JAR-11)	Ross (Nassau)	Comparison of Nassau Capacity Payment with Full IGCC Payment Adjusted by FPL's "Location Penalty"
<u>31</u>	Dacey Clayton Cantner Ross (Nassau)	Nassau's Petition for Determination of Need
<u>32</u>	Hammond	FPL's response to Nassau's 1st set of Interrogatories (#5)
<u>33</u> (SSW-1)	Waters (FPL)	Summary of FPL generation expansion plan in Docket No. 880004-EU (in Megawatts)
<u>34</u> (SSW-2)	Waters (FPL)	Summary of FPL generation expansion plan in Docket No. 910004-EU (in Megawatts)
<u>35</u> (SSW-3)	Waters (FPL)	Availability assumptions for Turkey Point used in Docket no. 910004-EU



ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 9

<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>36</u> (SSW-4)	Waters (FPL)	Comparison of expansion plans used by Nassau to plans filed by FPL
<u>37</u> (SSW-5)	Waters (FPL)	FPL's reconstruction of Nassau's petition figure 19 with correction of errors
<u>38</u> (SSW-6)	Waters (FPL)	FPL's reconstruction of Nassau's petition 19 with Nassau project at 77.5% capacity factor
<u>39</u> (SSW-7)	Waters (FPL)	Comparison of revenue requirements to value of deferral methodology using FPL's 1990 assumptions
<u>40</u> (SSW-8)	Waters (FPL)	FPL 1991 load forecast
<u>41</u> (SSW-9)	Waters (FPL)	1991 to 2019 long term fossil fuel price forecast delivered constant nominal dollar coal prices
<u>42</u> (SSW-10)	Waters (FPL)	Summary of financial and economic assumptions used for FPL constructed units
<u>43</u> (SSW-11)	Waters (FPL)	Cost parameters used in screening curves
<u>44</u> (SSW-12)	Waters (FPL)	Cogeneration small power producer forecast (cumulative by year)/MW

ORDER NO. 25285  
 DOCKET NO. 910816-EQ  
 PAGE 10

<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>45</u> (SSW-13)	Waters (FPL)	1991 fossil unit availability
<u>46</u> (SSW-14)	Waters (FPL)	1991 nuclear unit availability
<u>47</u> (SSW-15)	Waters (FPL)	Conservation and Load Management
<u>48</u> (SSW-16)	Waters (FPL)	FPL's reconstruction of Nassau's petition figure 19 with correction of errors using FPL's 1991 assumptions
<u>49</u> (SSW-17)	Waters (FPL)	FPL's reconstruction of Nassau's petition figure 19 with Nassau project at 77.5% capacity factor using FPL's 1991 assumptions
<u>50</u> (SSW-18)	Waters (FPL)	Comparison of revenue requirements to value of deferral methodology using FPL's 1991 assumptions
<u>51</u> (KA-1)	Adjemian (FPL)	Import Capability and FPL's transmission tie line assistance (MW) (without Nassau)
<u>52</u> (KA-2)	Adjemian (FPL)	Import Capability and FPL's transmission tie line assistance (MW) (with Nassau)
<u>53</u> (KA-3)	Adjemian (FPL)	Potential transmission expansion for the Nassau Power proposed unit

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 11

<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>(Rebuttal)</u>		
<u>54</u> (JAR-12)	Ross	FPC Economy Purchases data (Dkt. 910754-EI and 910004-EU), FPL Assumed Purchases from Southern (Dkt. 910004-EU)
<u>55</u> (JAR-13)	Ross	Summary TIGER Output Report Provided by FPL to Nassau (Dkt. 910004-EU)
<u>56</u> (JAR-14)	Ross	Comparison of Capacity Additions Contained in FPL Sensitivity TIGER Analysis, Revised Figure 19 - Column 2 and 7 Capacity Addition
<u>57</u> (JAR-15)	Ross	Illustration of PROSCREEN Procedure
<u>58</u> (JAR-16)	Ross	Comparison of Nassau standard offer with IGCC Options incorporating FPL Transmission loss adjustment and capacity Schedule
<u>59</u> (JAR-17)	Ross	Comparison of Nassau standard offer Benefits Under FPL 1991 Plan with Adjustment for Economy, and Nassau Operating at 77.5% Capacity Factor and Capacity Addition Schedule

ORDER NO. 25285  
 DOCKET NO. 910816-EQ  
 PAGE 12

<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>60</u> (SSW Doc. No. 1)	Waters (FPL)	Comparison of System Revenue Requirements Economic Results of Nassau Project
<u>61</u> (SSW Doc. No. 2)	Waters (FPL)	Correction of Mr. Ross' Analysis of the Nassau Project Impact On Peninsula Florida Winter Capacity MW Reserves
<u>63</u> (SSW Doc. No. 3)	Waters (FPL)	Analysis of the Nassau Project Impact on Peninsula Florida Summer Capacity MW Reserves - Summer 1996

Nassau reserves the right to add exhibits based on pending discovery.

FPL reserves the right to add exhibits based on pending discovery.

#### PARTIES' STATEMENT OF BASIC POSITION

**NASSAU BASIC POSITION:** Nassau Power's standard offer contract with FPL subscribes the first 435 MW of the statewide avoided unit. Nassau Power is seeking a determination of need to construct a 435 MW cogeneration facility on Amelia Island in Nassau County, Florida based on that power purchase contract. The facility Nassau proposes will in all likelihood be the most efficient in the state. Nassau Power's progress with vendors, gas suppliers, steam sales arrangements, and other project elements demonstrate that the project is a viable and desirable way to meet the need for additional generating capacity.

The capacity and energy which the Nassau project will supply is needed by FPL and by the state of Florida. Underlying the standard offer contract is a determination of needed capacity in the form of a statewide avoided unit. The subscribing standard offer presents the capacity associated with avoiding that unit. Further, when appropriate planning assumptions and projections are used, FPL's system shows a need for capacity in 1996 to meet its reliability criteria. On a statewide basis, the state continues to

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 13

require Nassau's capacity as well. Even if Nassau's project is not needed for reliability purposes in 1996, the addition of Nassau in 1996 will lower FPL's overall revenue requirements over the life of the contract by enabling FPL to defer the units in its expansion plan.

The existing transmission system is adequate to deliver Nassau's power to FPL's load center.

The Nassau project is a reliable and cost-effective way to meet the increasing needs of FPL and the State.

**FPL BASIC POSITION:** Nassau's petition and testimony fail to demonstrate a need for Nassau's capacity and do not satisfy the applicable statutory criteria. Nassau's project adversely impacts electric system reliability and integrity, does not satisfy a need for adequate electricity at a reasonable cost and is not the most cost-effective alternative available. Nassau ignores the most recent and relevant information regarding FPL's need for capacity and attempts to circumvent the Siting Act by maintaining it can rely on cogeneration planning hearing findings regarding a generic, unlocated statewide avoided unit as a surrogate for specific findings regarding its project. Nassau's position is inconsistent with this Commission's interpretation of the Siting Act and prior Commission decisions.

Nassau has failed or refused to provide the information necessary to assess its Amelia Island project. The status of its project development is so preliminary that it defies evaluation. Nassau cannot or has not provided information of sufficient reliability or detail to permit any critical assessment of what assurances have been provided or are available from a steam host, equipment vendors, a construction firm, gas suppliers or transporters or a lender; it does not have an interconnection agreement; Nassau has not addressed potential back-up service; it does not have a valid standard offer; and it cannot or will not demonstrate project viability.

When Nassau's petition is properly reviewed from the perspective of the need of the purchasing utility - FPL, it is clear the petition should be denied. Nassau's suggestion of need is premised upon either adjustments fully litigated before this Commission and previously rejected or a selective use of one projection from a more recent generation planning study Nassau otherwise asks the Commission to reject.

Nassau's petition should be denied.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 14

FPC BASIC POSITION: No position.

JEA BASIC POSITION: The proposed Nassau Power project will reduce the Florida transmission system's capacity to import power from outside of Florida. The commission should defer certification of Nassau's need until the transmission service agreements necessary for FPL to receive the output of the Nassau project are in place.

STAFF'S BASIC POSITION: No position at this time.

#### STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Has Nassau Power provided sufficient information on the site, technology and status of project development of the Nassau Power Project to enable the Commission to evaluate its proposal?

NASSAU: Yes. Nassau has provided detailed information on the project site and the advanced combined cycle technology it proposes. As to the status of the project, Nassau has provided information on its two firm gas offers, gas transportation, the status of its steam sales arrangements, plant operations, associated facilities and proposed interconnection. (Cantner, Brooks, Beck)

FPL: No. Nassau Power has not provided information in sufficient detail to permit a critical assessment of the technical viability of Nassau's project.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 2: Has Nassau provided sufficient information on its project costs, financing arrangements and costs and revenues for the Nassau Power Project to enable the Commission to evaluate the project's financial viability?

NASSAU: Nassau has provided information on total project costs, Nassau's ability to finance the project, anticipated financing arrangements, fuel forecasting, progress in negotiations concerning arrangements for fuel supply, and various other aspects of the development of the project. This information is sufficient to enable the Commission to judge project viability in the sense of

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 15

gauging the adequacy of planning, the experience and expertise of the developer, and the ability of the developer to have the necessary elements of the project in place in time to meet the requirements of the contract.

Nassau objects to an issue intended to reach "financial viability" if that term is defined to mean an examination of the details of specific costs, internal financial measurements, and profitability. This is not contemplated by the criteria set out in section 403.519 or in rule 25-22.081, Florida Administrative Code. (Cantner)

FPL: No. Nassau has not provided sufficient information to enable the Commission to evaluate the project's financial viability.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

**\*ISSUE 3:** Are the reliability criteria used by FPL adequate for planning purposes?

NASSAU: Yes. FPL uses two reliability criteria: a 15% summer reserve margin and a loss of load probability ("LOLP") no greater than 0.1 days per year. These criteria are adequate for planning purposes. (Ross)

FPL: Yes. (Waters).

FPC: No position.

JEA: No position.

STAFF: Yes.

**ISSUE 4:** Which FPL planning assumptions, 1990 or 1991, should be used as the basis for evaluating the need for and cost-effectiveness of the Nassau Power Project?

NASSAU: The Commission should use as a starting point for evaluation those FPL planning assumptions only recently reviewed by the Commission in the "mini-APH" hearing. This is the most recent set of assumptions which the Commission has reviewed and they are the subject of a Commission order issued only two months ago. FPL should not be permitted to present in this hearing an entirely new

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 16

set of assumptions, many of which are interrelated and so cannot be assessed in isolation. (Ross)

FPL: The most current set of FPL planning assumptions should be used in reaching a decision in this docket. The most current FPL planning assumptions before the Commission are FPL's 1991 planning assumptions presented in FPL's direct case.

The alternative set of FPL planning assumptions, FPL's 1990 planning assumptions, are now more than a year old. While these assumptions were reasonable for planning purposes at the time they were filed in October 1990, they are now dated and no longer represent FPL's best and most likely assessment of its system conditions and needs.

Regardless of the set of planning assumptions chosen, the analyses show that Nassau's project is not needed by FPL and is not the most cost-effective alternative available to FPL. (Waters)

FPC: No position.

STAFF: No position at this time.

ISSUE 5: What adjustments, if any, should be made to the assumptions identified in Issue 4 as a starting point for evaluating the need for and cost-effectiveness of the Nassau Power Project?

NASSAU: First, FPL assumed in Docket No. 910004-EU that a planned third line would be in service in 1996. The planned in-service date is now 1997. Keeping all of FPL's other assumptions and making this single correction shows a need of 400 MW in 1996.

Second, FPL's tie assistance assumption should be reexamined in light of the indication that JEA, the owner of the transmission resource which FPL relies upon for the long term, regards it as likely to diminish and difficult to quantify even in 1995.

Third, FPL's Turkey Point availability assumptions should be tempered in light of the more conservative approach which FPL took toward planning in the GPIF calculations filed after the hearings in Docket No. 910004-EU. (Ross)

FPL: The Commission should not make any selective adjustments to either set of FPL planning assumptions. As Nassau acknowledges, the assumptions and projections employed in FPL's planning process are interrelated. Attempts to make isolated adjustments must be



ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 17

viewed with a critical eye: adjustments could create internal inconsistencies, or they could be made simply to create a need for capacity that does not exist when the proper assumptions are employed.

FPL's 1991 planning assumptions were developed in FPL's planning process, which has been fully addressed in prior proceedings, and they are presented in FPL's direct case. They are internally consistent and reasonable for planning purposes without adjustment.

If FPL's less recent and somewhat dated 1990 planning assumptions are employed, they should not be adjusted. Nassau's argument that FPL's 1990 planning assumptions were reviewed by the Commission only two months ago and, therefore, should be used, is entirely at odds with their arguments regarding adjustments to the 1990 planning assumptions. If Nassau wants to rely on that review to preclude consideration of FPL's more recent 1991 planning assumptions, then Nassau should be bound regarding the Commission's findings in that review - that FPL's planning assumptions (without the adjustments proposed by Nassau) were reasonable for planning purposes. See, Order No. 24989 at 6-10. Based on those planning assumptions, the Commission found that FPL needed no additional capacity until 1997 and 1998, and to meet that need FPL would phase in a 907 MW IGCC unit, with 272 MWs in 1997 and the remainder in 1998. Order No. 24989 at 10, 30.

Nassau has proposed at least three adjustments to FPL's 1990 planning assumptions. These adjustments are inappropriate. Two of the proposed adjustments, Mr. Ross' proposed reduction to the projected availability of FPL's Turkey Point nuclear units and Mr. Ross' proposal to disregard nonfirm tie line assistance in assessing FPL's system reliability, were fully litigated, on Nassau's initiative, in Docket No. 910004-EU, and the Commission rejected Nassau's arguments and affirmed FPL's planning assumptions. See, Order No. 24989 at 7-10. Nassau's attempt to relitigate those issues in this proceeding is inconsistent with Nassau's arguments and the Commission's findings in Docket No. 910004-EU regarding administrative finality. See, Order No. 24989 at 71, 72. It is also precluded by the principles of res judicata and collateral estoppel. Nassau's third adjustment to FPL's 1990 planning assumptions - to move the in-service date of the third 500 kV line from 1996 to 1997 - is inappropriate unless all other assumptions changed between FPL's 1990 and 1991 planning assumptions are made. Nassau should not be allowed to pick and choose planning assumptions from different years. (Waters).

FPC: No position.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 18

JEA: No position.

STAFF: No position at this time.

ISSUE 6: What is the electrical capacity of the Nassau facility and does it differ from the capacity in Nassau's proposed Standard Offer Contract?

NASSAU: The Nassau project will be able to supply 435,000 kw net to FPL's grid and simultaneously meet its other obligations. Subject to final design, the maximum output capability of the plant will be approximately 480 MW. (Cantner)

FPL: FPL cannot determine from the information produced by Nassau whether the electrical capacity of Nassau's facility is the capacity specified in their proposed contract.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 7: What electrical load, if any, at the Nassau facility does Nassau propose FPL serve?

NASSAU: The Nassau facility will serve its own parasitic load. The limited need for start-up could be supplied by FPL, FPUC, or from generators on site. (Cantner)

FPL: It is not clear. Nassau's proposed Standard Offer Contract appears to differ from Nassau's discovery responses on this point.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 19

**ISSUE 8:** Does FPL's power supply plan reviewed by the Commission in Docket 910004-EU reasonably consider the effects of conservation or other demand side alternatives for purposes of this proceeding? If not, does FPL's 1991 power supply plan reasonably consider the effects of conservation and other demand side alternatives?

**NASSAU:** The FPL plan reviewed by the Commission in Docket No. 910004-EU reasonably considers the effects of conservation and other demand side alternatives. Nassau has not had the opportunity to review the reasonableness of the effects of conservation and demand side alternatives considered by FPL in the 1991 plan. (Ross)

**FPL:** For purposes of this proceeding, the Commission should use the most recent FPL power supply plan available - FPL's 1991 power supply plan. That plan includes FPL's best and most current estimates of conservation and demand side alternatives. In that plan the effects of conservation and other demand side alternatives are reasonably considered.

FPL's 1990 power supply plan, although dated, has a consideration of conservation and demand side alternatives that is very similar to the projections contained in FPL's 1991 power supply plan. (Waters).

**FPC:** No position.

**JEA:** No position.

**STAFF:** No position at this time.

**ISSUE 9:** Are there any adverse consequences to FPL and its customers if the proposed Nassau Project is not completed in the approximate time frame provided in the Standard Offer Contract with Nassau Power?

**NASSAU:** If the Nassau project is not completed in the time frame provided in the standard offer, FPL will need to add different resources or will fail to meet its reliability criteria in 1996. Even if Nassau's project is not needed in 1996 for reliability, if it does not come on line in the time frame provided in the standard offer, FPL will not be able to defer more expensive units in its generation expansion plan. (Ross)

**FPL:** No. Mr. Waters has shown, using either FPL's 1990 or 1991 assumptions, that FPL does not need Nassau's capacity in 1996 and is better off without the project's power. If the Nassau project is completed as scheduled, FPL and its customers will suffer

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 20

adverse consequences. FPL's system reliability and integrity will suffer, and FPL's customers will have to pay for power that is not needed or cost-effective. (Waters).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 10: Would the proposed Nassau Power Project and the purchase of power pursuant to the Nassau Power/FPL Standard Offer Contract contribute to the reliability and integrity of FPL's electric system over the life of the contract?

NASSAU: Yes. Nassau's project is needed to provide adequate reliability for FPL's system. However, satisfaction of this standard does not require Nassau to demonstrate that there is a need for its capacity in every year of the contract. (Ross)

FPL: No. Both from a generating supply and transmission viewpoint, the Nassau Project will have an adverse impact on FPL and state reliability. As testified by FPL witness Adjemian, the Nassau Project will have the effect of reducing the import capability to the state by as much as 300 MW. This reduction has the effect of reducing FPL and the State's ability to rely on this amount of tie line assistance from utilities north of Florida. This effect has been captured in the analysis presented by FPL witness Waters in his testimony. Further, as testified by FPL's witness Adjemian, and supported by Nassau witness Clayton's analysis contained in his testimony, the Nassau Project will load up existing transmission corridors within Florida, reducing the ability of the state electric grid to respond during emergencies. (Adjemian, Waters).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 21

ISSUE 11: Is Nassau Power's proposed 435 MW project consistent with the need to provide adequate electric system reliability and integrity on a statewide basis over the life of the contract?

NASSAU: Yes. Nassau's project is needed on a statewide basis. The need represented by the 1996 500 MW statewide avoided unit underlies Nassau's standard offer contract. The state continues to need the capacity. (Ross)

FPL: No. The Nassau project is not needed by the individual purchasing utility, FPL. In addition, Nassau's location makes the project inconsistent with the reliability of the state as a whole. Introduction of Nassau's power into the Florida grid will adversely affect system reliability and integrity. It will limit the ability of Florida utilities to import power through the Florida - Georgia interface, reduce the ability to make economy purchases, and increase transmission losses. Therefore, the Commission should find that the Nassau project is not needed by FPL and is not consistent with the needs of the state as a whole. (Waters, Adjemian).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 12: Is the proposed Nassau Power Project and the Standard Offer Contract between Nassau Power and FPL needed to reliably provide adequate electricity to FPL at a reasonable cost?

NASSAU: Yes. From FPL's individual perspective, FPL has an obligation to provide service to its customers at the least cost. Reliability considerations aside, adding Nassau Power's project in 1996 at the price of Nassau Power's discounted standard offer and allowing future units to slip to later years would lower FPL's overall cost of service, when compared to FPL's present generation expansion plan.

FPL: No. The Nassau project is not needed by the individual utility, FPL. In addition, Nassau's location makes the project inconsistent with the reliability of the state as a whole. Introduction of Nassau's power into the Florida grid will adversely affect system reliability and integrity. It will limit the ability of Florida utilities to import power through the Florida - Georgia interface, reduce the ability to make economy purchases, and increase transmission losses. Therefore, the Commission should

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 22

find that the Nassau project is not needed by FPL and is not consistent with the needs of the state as a whole. (Waters, Adjemian).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 13: Does the Nassau Power Project contribute equally to the reliability and integrity of FPL's and electric system as a facility built near FPL's load center?

NASSAU: At the time Nassau's standard offer contract was executed, it contained no "location penalty"; therefore, Nassau believes this is an inappropriate issue. Even if deemed an appropriate issue, Nassau Power has shown that any difference is mitigated through the low price of its discounted standard offer contract. (Ross)

FPL: No. A facility built at the location proposed by Nassau, a significant distance away from FPL's load center, cannot contribute equally to the reliability and integrity of FPL's electric system as a facility which were built near FPL's load center. This is a technical fact which cannot be denied regardless of the vintage of cogeneration rules which Nassau falls under. Substantial costly transmission additions would be required to preserve the existing and planned system reliability. This loss of system reliability is consistent with the Commission's finding in Order No. 24989 in Docket No. 910004-EU (at pp. 32-33). (Adjemian, Waters).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 23

ISSUE 14: Is the fuel forecast used by Nassau Power for the Nassau Power Project reasonable for evaluating this project?

NASSAU: Nassau has combined the use of fuel forecasts with a strategy to enter long-term contracts for the supply of the project. This approach removes the risk of fuel price uncertainty. That approach is working. Nassau has received offers from two potential suppliers. (Cantner)

FPL: If the issue is intended to relate to a fuel forecast for FPL's facilities, FPL does not know what forecast was used by Nassau. If the issue is intended to relate to a fuel forecast for Nassau's facility, FPL's position is no, Nassau has not presented a complete fuel forecast for use in evaluating its project, nor indicated that the incomplete forecast it has presented is appropriate to use in evaluating its project. It is appropriate to evaluate Nassau's project using the expected costs of fuel that Nassau has developed, as one measure of the viability of the project. However, Nassau has refused to provide all such information.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 15: Has Nassau provided appropriate assurances that there will be an adequate gas supply available for its project?

NASSAU: Yes. Nassau has received two firm offers for gas supply to the project. Both offers are for long-term, price-certain contracts. Each supplier has offered a corporate warranty sufficient to satisfy Nassau and its lenders. (Cantner)

FPL: No. Nassau refuses to disclose its price quotes from one of its "two potential suppliers." Much of the arrangements with its two potential suppliers remain subject to negotiation. Adequate assurance of gas supply has not been provided.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 24

ISSUE 16: Is there adequate capacity on existing pipelines which would allow the necessary volumes of gas to flow to the proposed pipeline extensions?

NASSAU: Nassau believes this issue should be framed in terms of reasonable assurances of the adequacy of future arrangements when the service will be needed. Existing pipelines do not have adequate capacity. However, if SONAT is chosen to supply the project it will construct a 20" pipeline extension from Savannah, Georgia to Yulee, Florida and a 14" pipeline from Yulee to the plant. If Citrus is chosen to supply the project, gas will be delivered through an FGT mainline expansion. (Cantner)

FPL: No. Moreover there is no pipeline to the proposed Nassau facility or to a location in close proximity to the proposed Nassau facility.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 17: Has Nassau provided appropriate assurance that there will be adequate transportation available to transport gas to its project?

NASSAU: Yes. If Sonat is chosen as the gas supplier, it is committed to build the pipeline extension needed to supply the project and has made a firm offer to do so. If Citrus is chosen, FGT will deliver the gas through a lateral it has agreed to construct. Thus, adequate assurance has been provided that pipeline capacity will be available. (Cantner)

FPL: No. The only clear evidence regarding gas transportation is that there is no present means of transporting gas to Nassau's proposed site. In addition, Nassau has no contract for transportation. Nassau represents it has firm offers for two firms to build pipelines, but cannot identify the likely or probably structure of these yet to be negotiated deals or whether the offers will be accepted. Adequate assurance of gas transportation has not been provided.

FPC: No position.

JEA: No position.



ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 25

STAFF: No position at this time.

ISSUE 18: Has Nassau provided sufficient information on its agreements with the steam host, equipment suppliers and fuel suppliers for the Nassau Power Project to enable the Commission to evaluate its proposal?

NASSAU: Yes. (Cantner)

FPL: No. Nassau has not provided information in sufficient detail to permit a critical assessment of these elements of Nassau's project.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

\* ISSUE 19: Should the Commission deny Nassau Power's petition for determination of need based on the absence of signed letters of intent or contracts that assure availability of natural gas delivered to the site?

NASSAU: No. The issue as framed does not state the criterion on which the Commission's decision should be based. The Commission has never required signed letters of intent or contracts for fuel as a prerequisite for a determination of need. For example, in the Indiantown case the Commission did not require Indiantown to have a signed letter of intent or contract for coal delivery. See Order No. 24042, (Finding of Fact, #19, which was subsequently adopted by the Commission in Order No. 24268), Docket No. 900709-EQ. Nassau agrees that Nassau must provide adequate assurances that gas and related transportation will be available for the project. Nassau has provided such assurance through the two firm offers it has received from gas suppliers. (Cantner)

FPL: The Commission should not refuse to grant an affirmative determination of need simply because Nassau does not have a letter of intent or a contract that assures the availability of natural gas delivered to the site. However, Nassau has not given adequate assurances that there will be an adequate, reliable supply of gas, or adequate, reliable transportation of the gas for its project. The Commission should refuse to grant an affirmative determination of need for these reasons.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 26

FPC: The Commission should not refuse to grant an affirmative determination of need simply because Nassau does not have a letter of intent or a contract that assures the availability of natural gas delivered to the site. FPC does not take a position as to whether Nassau has given adequate assurances with respect to gas supply or transportation.

JEA: No position.

STAFF: No.

ISSUE 20: Will the Nassau Power project contribute to fuel diversity on FPL's system?

NASSAU: Yes. Very little of FPL's off-system resources are fueled by natural gas. The project presents a unique opportunity to add to FPL's resources 435 MW of gas-fired capacity priced at the cost of coal. (Ross)

FPL: Since Nassau's energy will be priced upon the delivered price of coal and would supplant coal fired generation on FPL's system, it provides no fuel cost diversity. If Nassau could show it has reliable gas transportation and gas supply and that its project is viable, Nassau's project would contribute to fuel diversity, but this modest benefit is more than offset by Nassau's adverse impact on system reliability and its lack of cost-effectiveness. (Waters).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 21: If FPL has a capacity need in 1996, is the proposed Nassau Power Project the most cost-effective means of satisfying that need?

NASSAU: Yes. In answering this question, reference should be made first to the statewide avoided unit upon which Nassau Power's standard offer is based. The cost parameters of the avoided unit were developed in a generation expansion plan in which the choice of cost-effective units was a key consideration. The price of Nassau's contract is 20% below the cost of a plant that was chosen as the cost-effective means of meeting the identified need.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 27

From FPL's perspective, Nassau's contract is more cost-effective than FPL's alternative, even when the cost of acquiring transmission service is taken into account. (Ross)

FPL: No. FPL does not have a capacity need in 1996. Even if a capacity need were to exist, the Nassau Project would not be the most cost-effective alternative available to FPL. This conclusion is valid regardless of whether FPL's 1990 or 1991 planning assumptions are used in making such determinations. (Waters).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 22: What facilities, including fuel delivery facilities, are required in conjunction with the Nassau Power project?

NASSAU: Nassau Power will build a 12-mile, 230 KV transmission line to interconnect its project with FPL's transmission grid. Appropriate fuel delivery facilities will be the responsibility of the entity who is ultimately chosen to transport the gas. See Issue 17. (Cantner)

FPL: Although Nassau identifies a transmission line as the only associated facility, Nassau's petition and evidence suggest there may be others, including facilities necessary to deliver fuel and facilities necessary to deliver water. FPL believes that two transmission circuits are necessary to reliably interconnect this facility to FPL's system. Further, as contained in the testimony of FPL witness Adjemian, additional transmission facilities, beyond those required for the physical interconnection, are required to maintain the level of adequacy and integrity of FPL's and the state's transmission grid. (Adjemian).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 28

ISSUE 23: Does FPL, as an individual utility interconnected with the statewide grid, have a need by 1996 for the additional 435 MW of capacity represented by the Nassau Power Project?

NASSAU: Yes. When appropriate planning assumptions are used, FPL's system shows a need for capacity in 1996 to meet its reliability criteria. Recognizing the 1997 in-service date of the third 500 kv line to Georgia by itself has the effect of creating a 400 MW deficit in 1996. Even if Nassau's project is not needed in 1996, the addition of Nassau in 1996 will lower FPL's revenue requirements over the life of the contract by enabling FPL to defer more costly units. (Ross)

FPL: No. FPL has no additional capacity needs in 1996 whether such a determination is made using the 1990 or 1991 planning assumptions. FPL's capacity needs for 1996 have been satisfied by acquisitions of capacity from the Indiantown Cogeneration Ltd. (300MW) and through the purchase of a portion of Scherer Unit No. 4 (646MW). Both of these acquisitions were presented to the Commission for certification and approval. Nassau participated in both of these proceedings. There FPL presented information which clearly showed those projects to be superior to Nassau. (Waters).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 24: Is there currently adequate transmission capacity on FPL's system to reliably and cost-effectively transport the power from the proposed Nassau Power Project in North Florida to FPL's load centers in South Florida?

NASSAU: Yes.

FPL: No. The Nassau project will cause substantial deterioration to the existing and planned transmission capacity and system reliability of FPL and the state, reduce economy purchases significantly and increase losses. (Adjemian, Waters).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 29

ISSUE 25: Is the Florida transmission network adequate to accommodate the delivery of electrical power generated by Nassau Power's proposed project?

NASSAU: Yes. Existing and planned networks in Florida are adequate to transport power generated by Nassau Power. If FPL's tie assistance assumption is accepted, transmission service which may be needed to enable FPL to deliver its firm purchases (including Nassau Power) while maintaining reliability criteria, is available from JEA. Even when the cost of potential transmission service is added to the cost of Nassau Power's contract, the project is more economical than FPL's alternative. (Clayton)

FPL: No. The existing and planned transmission system in Florida does not have the capability to accommodate the delivery of the power generated by Nassau, without displacing the use of the system for reliability and economy energy purposes. Use of the existing and planned transmission for the delivery of Nassau's output to FPL, or any other utility in Florida, will cause a substantial deterioration of the reliability of FPL and the State. (Adjemian).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 26: Who should be responsible for the cost, if any, of transmission payments to JEA and/or the costs of constructing new transmission facilities to reliably incorporate the Nassau Power Project's output into FPL's system?

NASSAU: The delivery of Nassau's power does not require new facilities or transmission service from another utility. Nassau's transmission expert has determined that Nassau's project reduces FPL's import capability by 223 MW. If necessary, that can be mitigated by transmission service from JEA. Even when the cost of such service is added to Nassau's project, the project is still less expensive than FPL's IGCC. Therefore, any required transmission "cost" is more than offset by the discounted standard offer price. Thus, if necessary, FPL should purchase interface capacity from JEA. (Ross, Clayton)

FPL: Nassau. Any expenses which are incurred as a result of the purchase of Nassau's output are properly borne by Nassau. The Nassau project will cause a substantial deterioration of the power supply and transmission system reliability of FPL and the State.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 30

Transmission payments to JEA would not resolve the adverse impact of Nassau's project. The expenses necessary to compensate for the deterioration in power supply and transmission reliability need to be considered in the economic evaluation of Nassau versus other alternatives. (Waters, Adjemian)

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 27: Can Nassau be charged for transmission service?

NASSAU: No. Any and all charges assessed against Nassau for transmission service would have to be according to FERC filed tariffs or contracts. No tariff or contract on file with the FERC provides for a charge to or payment by Nassau for delivery of its power to FPL.

FPL: Without additional facts this question cannot be addressed. FPL reserves the right to supplement this response if associated facts are developed and reserves its right to brief this legal issue.

FPC: FPC reserves the right to brief this legal issue.

JEA: No position.

STAFF: No position at this time.

ISSUE 28: If there is an effect on FPL's electrical system, would the acquisition as proposed by Nassau of transmission capability from JEA mitigate the Nassau Power Project's effect on reliability and integrity of FPL's electric system?

NASSAU: Yes. If it is determined to be desirable or necessary, the acquisition of transmission service from JEA would put FPL in the same position it was in prior to the Nassau project coming on-line. (Clayton)

FPL: No. The reliability and integrity of FPL's electric system results from the interconnected state transmission system. Firm transmission service is only a contractual mechanism for obtaining use; it does not increase the reliability of the transmission

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 31

system. This principle has already been litigated and decided by the Commission. (Adjemian).

FPC: No position.

JEA: No. The transfer of capacity rights has no impact on the capabilities of the transmission system.

STAFF: No position at this time.

ISSUE 29: Does the interconnection of the Nassau Power Project to FPL's electric system through a single transmission circuit provide a reliable means of interconnection consistent with Prudent Utility Practices?

NASSAU: Yes. (Clayton)

FPL: No. The proposed single transmission circuit does not provide a reliable means the interconnection of a 400 MW class unit to the transmission grid. A minimum of two independent circuits are necessary to reliably integrate the output of the facility. (Adjemian).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 30: Does Nassau have a valid standard offer contract and interconnection agreement with FPL for the Nassau Power Project?

NASSAU: Yes. Nassau signed a preapproved standard offer contract based on the Commission's designation of a 500 MW statewide avoided unit. The Commission determined that Nassau's contract to subscribes the first 435 MW of the statewide avoided unit. Order No. 23792. Nassau Power has satisfied all requirements to accept FPL's standard offer power purchase contract. The signing and tendering of a separate interconnection agreement satisfies the rule's requirements in that regard.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 32

FPL: Nassau does not have a valid Standard Offer contract because it does not have a valid interconnection agreement. The interconnection agreement is not valid because Nassau attempted to alter its obligation in Sections 2 and 5 of the agreement. These changes are not permitted by the tariff or the Commission Cogeneration Rules, nor did FPL agree to them.

In addition, it is not clear in whose service territory Nassau's project would be located. Until that is resolved, FPL's legal obligation to provide retail services and/or to interconnect with Nassau has not been established. Nassau's attempt to avoid this problem by proposing to construct a 12-mile transmission line to interconnect with an existing FPL substation may be inconsistent with established law.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 31: Are there other aspects of Nassau Power's proposed project that constitute matters within the Commission's jurisdiction and which are relevant to the Commission's decision?

NASSAU: Yes. Nassau Power's standard offer contract represents the culmination of a long process designed to implement the Commission's responsibilities under PURPA. The project would implement the Commission's policy determination regarding the role of cogeneration in the utilities' generation expansion plans. Further, the project presents an opportunity to expand the role of natural gas in the state, with implications for energy alternatives. These are matters which are relevant to the Commission's decision and which should be taken into account.  
(Cantner)

FPL: In addressing the need for Nassau's project, the Commission should be guided by the fact that transmission facilities are a limited resource to FPL and the state. If implemented, Nassau's project would cause a deterioration of the reliability of FPL's and the state's electric system. Nassau has proposed no remedy that would overcome this adverse impact to FPL and the state. For that reason, Nassau's project would not provide a net benefit to FPL or the state, and Nassau's petition for a determination of need should not be granted.



ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 33

The Commission has already determined that it will assess need from the perspective of the individual utility. No public policy interest would be served by departing from that statutory interpretation and policy, which was firmly in place at the time Nassau executed the Standard Offer contract. Nassau's proposal that the need for its project not only be assessed on the basis of statewide need, but that it be assessed on the basis of a statewide study performed in the fall of 1988 with no revisions to reflect the changes in demand and supply that have occurred since the study was originally performed, is unprecedented. The Commission should make a determination of need based on the most current information available. No public policy interest would be served if the Commission blinds itself to present reality. In this case that means the Commission should use FPL's 1991 generation expansion plan to gauge the need for Nassau's project. As FPL has shown, there is no need for Nassau's project.

Finally, if, as Nassau asserts, there is a need for its project, the Commission must determine whether there is a reasonable likelihood that Nassau would be able to construct and operate the project as Nassau has presented it to the Commission and as required by the Standard Offer contract Nassau executed. The Commission should not grant an affirmative determination of need for a project if there is not a reasonable likelihood that it can be brought to fruition as it is presented in the need proceeding. Of necessity then, the Commission must determine the technical and financial viability of Nassau's project. Nassau's refusal to provide the information necessary to make this assessment, when every assurance of confidentiality has been offered to it, precludes the Commission from making any meaningful assessment of the project's viability, and, consequently, should preclude the Commission from granting an affirmative determination of need for the project.

FPC: FPC reserves the right to brief this legal issue.

JEA: No position.

STAFF: No position at this time.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 34

ISSUE 32: Does FPL have a legal obligation under PURPA to interconnect with the Nassau Power Project?

NASSAU: Yes. 16 U.S.C. § 824a-3 and 18 C.F.R. § 292.303(c) require FPL to interconnect with Nassau. The statute and regulation require utilities to interconnect with QFs.

FPL: This is a legal issue and will be briefed.

FPC: No position.

JEA: No position.

STAFF: No position at this time.

ISSUE 33: Does FPL have a legal obligation to interconnect with the Nassau Project applying the Florida Public Service Commission rules, regulations and applicable tariffs to the interconnection as proposed by Nassau Power Corporation?

NASSAU: By tendering a signed interconnection agreement, Nassau Power did all that was necessary to accept FPL's standard offer. While Nassau submits the proposed interconnection is adequate, the arrangements can be modified by the parties.

FPL: This is a legal issue and will be briefed.

FPC: FPC reserves the right to brief this legal issue.

JEA: No position.

STAFF: No position at this time.

ISSUE 34: Should the Commission delay issuance of a determination of need in this case pending FPL's contracting with JEA for transfer of a portion of JEA's import capability?

NASSAU: No. The need, if any, for such a transfer is a matter of contract between those two parties. The contracts of private parties cannot supersede Nassau's federal right to receive its avoided cost rates pursuant to contract. Commission delay in issuing the determination of need or conditional issuance of the determination of need would unlawfully subordinate Nassau's federal right to contractual rights which JEA may have. (Cantner)

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 35

FPL: No. The Commission should deny Nassau's need petition because Nassau's project does not satisfy the statutory criteria. A transfer of state import capability to FPL would not enhance FPL's or the state's reliability, or offset Nassau's adverse impact on reliability. (Waters, Adjemian).

FPC: No position.

JEA: Yes, until such time as contractual arrangements are in place it would be inappropriate for the Commission to approve the determination of need for the Nassau Power project.

STAFF: No position at this time.

ISSUE 35: Must FPL purchase Nassau's power at the rates in its standard offer contract?

NASSAU: Yes. Nassau's rates in its standard offer contract with FPL are the avoided cost rates calculated at the time it entered into its legally enforceable contract to deliver the project's power. As such, these rates reflect the project's property right, guaranteed by PURPA and the FERC's implementing regulations (18 C.F.R. § 292.304(d)(2)(ii) to the avoided cost rates determined at the time the legally enforceable obligation was entered into.

FPL: No. FPL reserves its right to brief this legal issue.

FPC: FPC reserves the right to brief this legal issue.

JEA: No position.

STAFF: No position at this time.

ISSUE 36: Would a determination that there was no need for the Nassau project based in material part on a comparison of the impacts of the rates in its standard offer contract with any other cost or rate target be a violation of PURPA?

NASSAU: Yes. During the time frame relevant to Nassau's contract, the Commission implemented the federal requirements of PURPA and PURPA's regulations via approval of the standard offer contract which forms the basis for Nassau's project. The basis for the contract was the Commission's determination that the avoided costs represented in the contract were an accurate reflection of the avoided costs which should be paid to QFs who executed the contract. A determination at a later date and time, comparing

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 36

Nassau's project against a different standard and disallowing previously approved avoided costs, would result in a denial of Nassau's entitlement to avoided costs rate in contravention of 18 C.F.R. § 292.304.

FPL: No. FPL reserves the right to brief this legal issue.

FPC: FPC reserves the right to brief this legal issue.

JEA: No position.

STAFF: No position at this time.

ISSUE 37: Based on the resolution of the above issues, should the petition of Nassau Power for the determination of need for the Nassau Power Project be granted?

NASSAU: Yes. (Cantner, Ross)

FPL: No. (Waters, Adjemian).

FPC: No position.

JEA: No position.

STAFF: No position at this time.

#### STIPULATED ISSUES

Issues 3 and 19 are stipulated.

#### PENDING MOTIONS

Motion for Official Recognition of FPL power purchase and interconnection agreements.

Motion for Official Recognition of FPC power purchase and interconnection agreements.

Notice of intent to request specified confidential treatment (Motion due to be filed no later than 11-4-91)

Request for confidential treatment of information provided to FPL as part of settlement.

ORDER NO. 25285  
DOCKET NO. 910816-EQ  
PAGE 37

OTHER MATTERS

Any party seeking to utilize confidential material at the hearing in this docket shall so advise the Prehearing Officer in writing no later than November 1, 1991. Any party seeking to utilize confidential material at the hearing shall advise the Prehearing Officer in writing at the same time of the procedure it proposes for the handling of confidential material consistent with applicable law.

Nassau intends to request official notice of the contracts and interconnection agreements between QFs and FPC. If official notice is taken Nassau will not call Mr. Dolan.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that these proceedings shall be governed by this order unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as  
Prehearing Officer, this 1st day of November,  
1991.

  
\_\_\_\_\_  
Susan F. Clark, Commissioner  
and Prehearing Officer

( S E A L )

RVE  
910816ph.rve