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PLEASE REPLY TO:
TALLAHASSEE
August 13, 1990

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ORIGINAL
FILE COPY

HAND DELIVERED

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399

Re: ~~Docket No. 900004-EU~~, Hearings on load forecasts,
generation expansion plans and cogeneration prices for
Peninsular Florida's electric utilities.

Dear Mr. Tribble:

Enclosed for filing and distribution are the original and 15
copies of Nassau Power Corporation's Motion for Clarification of
Order No. 23235.

Also enclosed is an extra copy of Nassau Power Corporation's
Motion for Clarification of Order No. 23235. Please stamp with
the date of filing and return it to me.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG IN/M
- LIN 6 VCK/jwm
- OPC _____ Enclosures
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

DOCUMENT NUMBER-DATE

07319 AUG 13 1990

FPC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Hearings on load forecasts,)
generation expansion plans and)
cogeneration prices for Peninsular)
Florida's electric utilities.)

DOCKET NO. 900004-EU
FILED: August 13, 1990

NASSAU POWER CORPORATION'S MOTION FOR
CLARIFICATION OF ORDER NO. 23235

**ORIGINAL
FILE COPY**

Nassau Power Corporation ("Nassau"), through its undersigned attorneys, pursuant to rule 25-22.037(2), Florida Administrative Code, files this Motion for Clarification of Order No. 23235. As grounds therefor, Nassau states:

1. At its May 25, 1990 Special Agenda Conference, the Commission voted on five issues related to subscription and allocation of the statewide avoided unit.

2. In accordance with Commission procedure, the Commission's May 25 vote was subsequently reduced to writing in Order No. 23235, issued on July 23, 1990. Attachment 1. The written order as drafted does not clearly reflect the Commission's vote on Issue 4.

3. The Commission voted to approve Staff's primary recommendation on Issue 4. The primary recommendation on Issue 4 provides:

ISSUE 4: Does the subscription limit prohibit any utility from negotiating, and the Commission subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility?

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PRIMARY RECOMMENDATION (Ballinger): No. The subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, i.e., a 1993 combined cycle unit. Any contract outside of these boundaries should be evaluated on a utility's individual needs and costs, i.e., should be evaluated against the units identified in each utility's own generation expansion plan.

Staff Recommendation at 4, emphasis supplied. Attachment 2.

4. The Commission vote approved the primary Staff recommendation on Issue 4. There was no deviation from the language of the staff recommendation. Tr. pp. 76-77, Attachment 3. The transcript demonstrates that the recommendation adopted by the Commission encompassed contracts prior to as well as later than the in-service date of the avoided unit. Tr. pp. 59-61. The need for clarification of the decision on Issue 4 arises because Order No. 23235 as drafted departs from the language approved by the Commission; however, the order's treatment of Issue 5 refers to the decision on Issue 4 in a way that properly confirms the Commission's intent.

5. Order No. 23235 describes the fourth and fifth issues which the Commission considered and the Commission's vote on those issues as follows:

The fourth issue is: Does the subscription limit prohibit any utility from negotiating, and the Commission from subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility? We find that the subscription limit approved by Order No. 22341 and the current criteria of Rule 25-17.083(2), Florida Administrative Code, for approval of

negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, a 1996 coal unit. Any negotiated contract with an in-service date later than 1996 should be evaluated against a utility's individual needs and costs, i.e., evaluated against the units identified in each utility's own generation expansion plan.

The fifth issue is: Should a negotiated contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit be counted towards that utility's subscription limit? As discussed above, we find that the subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be judged against each utility's own avoided cost.

Order No. 23235 at 3, emphasis supplied.

6. When the Commission's discussion of Issue 5 is taken into account, it is evident that the intent of Order No. 23235 was to hold with respect to Issue 4 that the subscription limit does not apply to any negotiated contract with an in-service date different (earlier or later) than the in-service date of the statewide avoided unit. That is, just as it did with Issue 5, the Commission held with respect to Issue 4 that any negotiated contract outside the boundaries of the standard offer contract does not apply to the subscription limit. This was indisputably the clear decision of the Commission.

7. However, the use of the phrase "in-service date later than 1996" in the drafting of Order No. 23235's discussion of Issue 4 creates an inadvertent ambiguity which, standing by

itself, could be read to mistakenly imply that the subscription limit has some application to negotiated contracts with an in-service date prior to 1996. To remove this ambiguity, Order No. 23235 should be clarified to clearly and completely conform to the Issue 4 decision and to state that a negotiated contract with an in-service date different than the standard offer in-service date does not apply to the subscription limit.

Accordingly, Nassau requests the Commission to enter an order clarifying the decision on Issue 4 to more clearly state that a negotiated contract having an in-service date different than the in-service date of the statewide avoided unit does not count toward the subscription limit.


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Attorneys for Nassau Power
Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Nassau Power Corporation's Motion For Clarification of Order No. 23235 has been furnished by hand delivery* or by U.S. Mail to the following parties of record, this 13th day of August, 1990:

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Fla. Public Service Commission
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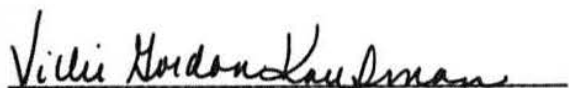
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Vicki Gordon Kaufman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Planning Hearings on load) DOCKET NO. 900004-EU
forecasts, generation expansion plans,) ORDER NO. 23235
and cogeneration prices for Peninsular) ISSUED: 7-23-90
Florida's electric utilities.)
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
BETTY EASLEY
GERALD L. GUNTER
THOMAS M. BEARD

NOTICE OF PROPOSED AGENCY ACTION
ORDER ON SUBSCRIPTION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

In Order No. 22341 we approved the concepts of subscription and allocation of the statewide avoided unit. The details of implementing the subscription and allocation limits, however, were left to be determined after a one-day hearing which would address same. Order No. 22341 at 20-23. In an effort to avoid that hearing, all of the parties to the Planning Hearing docket and its companion docket, Docket No. 900004-EU-A were invited to attend a meeting with our Staff for discussion of these issues.

The first issue raised is: How should standard offer contracts and negotiated contracts for the purchase of firm capacity and energy be prioritized to determine the current subscription level? Essentially, all contracts should be prioritized according to the execution date of the contract. With regard to standard offer contracts, the execution date is the date on which the cogenerator signs the standard offer and

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tenders it to the utility. With regard to negotiated contracts, the execution date is the date on which the last party to the contract signs the agreement. All execution dates are contingent upon final approval by this Commission.

Due to the fact that under existing Rule 25-17.083(8), Florida Administrative Code, payments made pursuant to standard offer contracts are recoverable without further action by the Commission, a standard offer contract will have the same approval date as execution date. Negotiated contracts will "lock in" their execution date upon approval of the Commission. Negotiated contracts will not officially count toward the subscription limit until approved by the Commission but will be considered as "executed" contracts when determining the priority of all contracts. A standard offer contract executed on the same date as a negotiated contract will take precedence over the negotiated contract.

The second issue is: How should the utilities who are subject to the Commission designated subscription amounts notify the Commission on the status of capacity signed up against the designated statewide avoided unit? Utilities subject to Commission-designated subscription amounts shall be required to submit to the Director of the Division of Electric and Gas of the Florida Public Service Commission an informal notice of contract execution within five days of the contract execution date. This notice should include, at a minimum: the type of the contract, the in-service year of the project, the amount (MW) committed, the contracting party or parties, and the amount (MW) remaining under the current subscription level. Either the utility or the cogenerator can submit the notice of the contract execution. If a notice of contract execution is not received within five days, priority will then be based upon the date the notice is ultimately received. Filing of the contract should occur within 30 days of the date of the notice.

The third issue is: What happens when a utility reaches its own subscription limit? On our own motion for reconsideration of Order No. 22341, we have eliminated the allocation of the MW associated with the statewide avoided unit to the individual peninsular investor-owned electric utilities, i.e., FPL, TECO and FPC. When we are satisfied that 500 MW of the 1996 statewide avoided coal unit is fully

ORDER NO. 23235
DOCKET NO. 900004-EU
PAGE 3

subscribed, in accord with Order No. 23234, we will close that standard offer and consider the options available to us at that time.

The fourth issue is: Does the subscription limit prohibit any utility from negotiating, and the Commission from subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility? We find that the subscription limit approved by Order No. 22341 and the current criteria of Rule 25-17.083(2), Florida Administrative Code, for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, a 1996 coal unit. Any negotiated contract with an in-service date later than 1996 should be evaluated against a utility's individual needs and costs, i.e., evaluated against the units identified in each utility's own generation expansion plan.

The fifth issue is: Should a negotiated contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit be counted towards that utility's subscription limit? As discussed above, we find that the subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be judged against each utility's own avoided cost.

Therefore, it is

ORDERED by the Florida Public Service Commission that issues one through five as stated above, are hereby resolved as set forth in the body of this order.

By ORDER of the Florida Public Service Commission,
this 23rd day of JULY, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
(7582L)MAP:bmi

Attachment 1
Page 3 of 4

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 13, 1990.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

January 18, 1989

TO: STEVE TRIBBLE, DIRECTOR
DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BROWNLESS) *AW*
DIVISION OF ELECTRIC AND GAS (BALLINGER) *J.W.D. RET*

RE: DOCKET NO. 900004-EU - PLANNING HEARINGS ON LOAD
FORECASTS, GENERATION EXPANSION PLANS, AND
COGENERATION PRICES FOR PENINSULAR FLORIDA'S ELECTRIC
UTILITIES.

AGENDA: JANUARY 30, 1990- CONTROVERSIAL \pm PAA -PARTIES MAY
PARTICIPATE

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: With regard to the subscription limits established in Order No. 22341, how should standard offer and negotiated contracts for firm capacity and energy be prioritized to determine the current subscription level?

PRIMARY RECOMMENDATION (Ballinger): Initial priority should be given to all contracts based on the execution date or the last

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combined cycle unit, they would then offer a standard offer contract based on the Commission approved statewide avoided unit, a 1994 combined cycle unit. Likewise, when FPL subscribes 230.6 MW of the 1994 avoided unit, they would open a new standard offer contract based on the Commission approved 1995 statewide avoided unit.

ISSUE 4: Does the subscription limit prohibit any utility from negotiating, and the Commission subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility?

PRIMARY RECOMMENDATION (Ballinger): No. The subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, i.e., a 1993 combined cycle unit. Any contract outside of these boundaries should be evaluated on a utility's individual needs and costs, i.e., should be evaluated against the units identified in each utility's own generation expansion plan.

SECONDARY RECOMMENDATION (Brownless): Yes. Although the recommendation of Technical Staff has merit, the rules as currently written simply don't envision cogeneration contracts

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that are not tied to the current statewide avoided unit.

ISSUE 5: Should a negotiated contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit be counted towards that utility's subscription limit?

PRIMARY RECOMMENDATION (Ballinger): No. The subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be evaluated against each utility's own avoided cost.

SECONDARY RECOMMENDATION (Brownless): No. Utilities should be prohibited from negotiating for units which are beyond the date of the statewide avoided unit. If, however, such units are contracted for, these contracts should be judged for cost recovery purposes against the avoided costs of the 1994 and 1995 avoided units approved by the Commission in Order No. 22341. After 1995, these contracts should be judged against the units identified in the FCG's 1989 Long Range Generation Expansion Plan.

1 CHAIRMAN WILSON: Pick a unit.

2 COMMISSIONER GUNTER: That's right, pick a unit.

3 MR. BALLINGER: We'll come back if it fills up?

4 CHAIRMAN WILSON: '93, '94 or '95, and we'll just
5 keep going.

6 COMMISSIONER EASLEY: That is of course the legal
7 answer.

8 COMMISSIONER GUNTER: We will go back and stay
9 within the bounds of the record. We are supposed to
10 have an APH next year, aren't you, in '91?

11 MS. BROWNLESS: No, sir. We will not have one in
12 '91, because a work plan was not filed in January of
13 this year. The reason the work plan was not filed in
14 January --

15 COMMISSIONER GUNTER: You are talking '92, you are
16 talking three year centers?

17 MS. BROWNLESS: Yes. We are talking '92 now
18 because we haven't approved a work plan, and it takes
19 them roughly a year after a work plan is approved to
20 produce a product. We didn't make them file the work
21 plan because we didn't know what we wanted them to do.

22 CHAIRMAN WILSON: Issue 4.

23 MR. DEAN: We can move it faster than three years.

24 CHAIRMAN WILSON: Primary recommendation?

25 COMMISSIONER GUNTER: Primary recommendation.

GOMIA AND ASSOCIATES

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1 CHAIRMAN WILSON: Issue 5.

2 COMMISSIONER BEARD: No.

3 CHAIRMAN WILSON: Primary recommendation. All
4 right.

5 COMMISSIONER GUNTER: Are we going to get to this?

6 CHAIRMAN WILSON: Yes.

7 MS. BROWNLESS: And now we are to the parameters?

8 COMMISSIONER EASLEY: I've got to express some
9 reservation about taking '96 and going back to '94 and
10 '95. I just have to say I don't --

11 COMMISSIONER GUNTER: I think that was just
12 discussion, just indicating that there are
13 possibilities if we get into a jam.

14 COMMISSIONER EASLEY: Well, I understand. But I
15 have problems with that as being one of the solutions
16 to the jam. I just thought --

17 CHAIRMAN WILSON: I do, too. Is there some
18 problem with the logic?

19 COMMISSIONER EASLEY: Well, based on the
20 discussion that we have been having here today, there
21 should not be.

22 CHAIRMAN WILSON: That is sort of what my problem
23 was.

24 COMMISSIONER EASLEY: Okay.

25 MS. BROWNLESS: I need to be very clear what you