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August 24, 1990

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 Response to Florida Power and Light Company's Motion for Clarification of Order No. 23235.

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

Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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FPSC-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 24, 1990

NASSAU POWER CORPORATION'S RESPONSE TO FLORIDA POWER AND LIGHT COMPANY'S MOTION FOR CLARIFICATION OF ORDER NO. 23235

Nassau Power Corporation ("Nassau"), through its undersigned counsel, pursuant to rule 25-22.037(2)(b), Florida Administrative Code, files its response to Florida Power and Light Company's ("FPL") Motion For Clarification of Order No. 23235. In support Nassau states:

1. On July 23, 1990, the Commission issued Order No. 23235 as proposed agency action. The order proposed criteria and parameters bearing on five issues related to subscription of the statewide avoided unit.

2. On August 13, 1990, FPL filed a "motion for clarification" of Order No. 23235. However, as discussed below, FPL's motion does not seek clarification of Order No. 23235, but rather attempts to persuade the Commission to issue an order which would be substantively at odds with the May 25 decision without a protest directed to or a hearing on the substantive changes sought.

3. FPL, AES, and Nassau have all requested that the Commission clarify Order No. 23235; but there is an essential

difference in the motions filed. Both Nassau and AES have pointed to the documentation associated with the Commission's decision of May 25 and have asked that Order No. 23235 be clarified to clearly conform to and implement that decision, which is both the basis for the order and the sole benchmark for its accuracy. By contrast, nowhere in its motion for clarification does FPL refer to or rely on the May 25 decision being memorialized and implemented by Order No. 23235. Instead, FPL's motion constructs arguments, cites references extraneous to the vote, and proposes language designed to have the Commission adopt a substantive determination different from the one it voted to adopt on May 25. Instead of conforming Order No. 23235 to the May 25 decision, FPL seeks to quarrel with that decision. A protest and request for further proceedings, not a motion for "clarification", would have been the appropriate vehicle for FPL to use.

4. In its discussion of Order No. 23235's statements on Issue 4, FPL argues that the Commission should not hold that negotiated contracts having in-service dates which differ from the statewide avoided unit do not count toward the current subscription limit. FPL's argument is based on an incorrect premise. FPL appears to assert that the effect of counting only contracts negotiated against the statewide avoided unit toward the subscription limit would somehow impair FPL's ability to negotiate on any other basis. FPL mistakenly attributes to the subscription limit some limiting effect on the scope of possible negotiations. In fact, however, limiting the subscription

process to those contracts negotiated against the statewide unit - as the Commission voted on May 25 - does not prohibit either the negotiation or the approval of contracts based on different parameters. The fact that such contracts do not count toward the subscription limit does not mean that they will not be approved if they are demonstrated to be prudent and in the public interest.

5. FPL states that use of the term "negotiated against" (the statewide avoided unit) is vague when used as the standard to identify contracts which count toward the subscription limit. However, the phrase "negotiated against" is not vague and means exactly what FPL suggests - that certain negotiated contracts (those with in-service dates or cost parameters which differ from those of the statewide avoided unit) do not count toward the subscription limit. This is confirmed by the written recommendation which became the vehicle for the Commission's vote as well as the discussion between Chairman Wilson and Mr. Ballinger at the May 25 Agenda Conference on the very point now raised by FPL. (Tr. 59-61).

6. FPL suggests that the language in Order No. 23235 answering the question posed by Issue 4 be "clarified" by the total deletion of the Commission's discussion. FPL's suggested action would not "clarify" the order but would instead cause the order to conflict with the vote of the Commission.

7. In its discussion of Issue 5, FPL again asks that the Commission's order be changed to reach a result which would be the opposite of the Commission's May 25 vote. The Commission's

decision on Issue 5, as embodied in Order No. 23235, now clearly states that negotiated contracts outside the boundaries of the statewide unit do not apply to the subscription limit. FPL asks the Commission to "clarify" Issue 5 to mean that all contracts, whether inside or outside the boundaries of the statewide avoided unit, apply to the subscription limit. Again, FPL does not seek consistency with the May 25 decision, and its proffered "interpretation" attempts to defy the plain meaning of Order No. 23235.

8. Throughout its pleading, FPL attempts to invoke Order No. 22341 as a basis for making the changes it seeks to the proposed agency action order. A review of Order No. 22341 reveals that FPL's reliance is wholly misplaced. PAA Order No. 23235 addresses the implementation of the subscription process. In Order No. 22341, the Commission carefully stated that it was not at that time deciding the specific questions now addressed by Order No. 23235. Instead, it reserved those determinations to future proceedings (of which PAA Order 23235 is a part). Order No. 22341, pp. 22-23. In essence, FPL seeks to attribute answers to an order which only posed the questions.

9. In addition, FPL bases its motion in part upon some claimed relationship between the subscription criteria and the plant siting process. These matters are irrelevant on their face. Further, Order No. 22341 did not prejudge the outcome of siting applications. Instead, with respect to the determination that a particular facility is needed, the Commission gave notice that it intended to regard the factfinding activities in the

annual planning process as informational only and to require individual showings to be made by applicants. Order No. 22341, p. 27.

10. Finally, in its treatment of Issue 5, FPL appears to attempt to introduce a vague challenge to the efficacy of standard offer contracts and (based again in Order No. 22341) to imply some applicable "evaluation criteria" for standard offer contracts - a notion entirely foreign to the decision FPL wants to "clarify." In fact, Order No. 22341 states, with respect to standard offer contracts in a related context:

> Second, under FPL's methodology utility's whose individual generation expansion plans did not show a need in a particular year would not have to offer standard offer contracts. This is clearly contrary to the express language of Rule 25-17.083 and the whole statewide marketing plan envisioned by our current cogeneration rules. Whatever the merits of that concept, it is the concept currently in place and must be followed until such time as those rules are changed pursuant to Section 120.54, Florida Statutes. For these reasons, we reject FPL's allocation methodology.

Order No. 22341, p. 22. The Commission in Order No. 22341 rejected the idea that standard offer contracts are evaluated against an individual utility's need.

8. The changes FPL requests this Commission to make to Order No. 23235 under the guise of "clarification" are not changes to clarify the order's meaning. Therefore, such changes may not be made on the basis of FPL's written motion. If FPL wanted the Commission to make the substantive changes to the order suggested in its motion, it should have protested Order No.

23235. It did not. The changes FPL requests are outside the scope of a motion for clarification and may not be made absent a protest and an evidentiary hearing.

CONCLUSION

The Commission should reject FPL's attempt to substantially and substantively modify, rather than clarify, the May 25 decisions on subscription implementation embodied in PAA Order No. 23235.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Nassau Power Corporation's Response to Florida Power and Light'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 24th day of August, 1990:

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