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: September 25, 1990

BRIEF

OF

NASSAU POWER CORPORATION

Joseph A. McGlothlin
Vicki Gordon Kaufman
Lawson, McWhirter, Grandoff and Reeves
522 East Park Avenue
Suite 200
Tallahassee, Florida 32301
904/222-2525

Michael Naeve
Skadden, Arps, Slate, Meagher and Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005
202/371-7070

Attorneys for Nassau Power Corporation

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INTRODUCTORY STATEMENT

The controversy surrounding the subscription of the 1996 statewide avoided unit may appear daunting, but the Commission has already laid the foundation for the answer. The regulatory framework governing the Commission's cogeneration policy has been built over time. The question of subscription priority facing the Commission is part of an evolving continuum.

While the Commission is considering an order on Proposed Agency Action that will add to that framework, the answer to the primary question before it lies primarily in rules, decisions, and principles which have been in place for some time. Any effort to view the subscription priority question in context must include a consideration of how and when the Commission designated the procedures which Qualifying Facilities ("QFs") were instructed to follow--and on which they are now entitled to rely. For that reason, the following Statement of the Case and of the Facts begins prior to the time the Commission designated the 500 MW 1996 coal-fired unit as the statewide avoided unit.[1/]

1/ Nassau Power Corporation ("Nassau Power") submits that the Statement of the Case and of the Facts includes only undisputed facts, and that these encompass all the facts necessary to a determination that Nassau Power is first to subscribe the 1996 statewide avoided unit.

STATEMENT OF THE CASE AND OF THE FACTS

On December 26, 1989 the Commission entered Order No. 22341. That order established a 1993 combined cycle unit as the statewide avoided unit and continued the subscription process on a "first in time, first in line" basis as articulated in Order No. 22061.

In Order No. 22341, the Commission also rejected the contention of the Florida Industrial Cogeneration Association ("FICA") that a utility must make a standard offer contract available at all times. It affirmed and continued its practice of requiring Commission review and approval prior to the date any revised standard offer tariffs and contracts become available.

Finally, in Order No. 22341 the Commission addressed the concept of a subscription limit applicable to the statewide avoided unit, but expressly left for another day certain details as to how the subscription mechanism would be implemented.

On May 21, 1990, while the 1993 combined cycle unit designated in December 1989 was in effect as the statewide avoided unit, Indiantown Cogeneration, Limited Partnership ("Indiantown") and Florida Power and Light Company ("FPL") executed a negotiated contract for a 300 MW unit having an in-service date of late 1995.

On May 25, 1990, the Commission reconsidered the question of the appropriate avoided unit, and designated a 500 MW coal-

fired unit as the statewide avoided unit which would be applicable to new contracts from that point forward. The Commission voted to require utilities to submit proposed standard offer tariffs and contracts conforming to the decision, and instructed the Staff to review and approve the tariffs administratively.

On the same day, the Commission voted to propose several criteria which would govern facets of the application of the subscription process. Two of the criteria related to whether negotiated contracts specifying units having in-service dates other than the in-service date of the statewide avoided unit would count against the subscription limit for that unit.

On May 31, 1990, FPL reported the signing of the Indiantown contract to the Commission. In its transmittal, FPL said it "expected" to count the contract toward the subscription of the new 500 MW 1996 statewide avoided unit.

On June 4, 1990, the regulated utilities (with the exception of FPC, who filed later) submitted proposed revisions to their standard offer tariffs and contracts for Staff review.

On June 6, 1990, prior to Commission review and approval of the proposed tariffs and contracts submitted by the utilities, Consolidated Minerals, Inc. ("CMI") signed the contract submitted by FPL for Staff review.

On June 12, 1990, the Staff forwarded a recommendation in which it reported the Indiantown and CMI documents and recommended that the 1996 statewide avoided unit be closed.

On June 13, 1990, the Commission Staff approved (with the exception of certain portions of Florida Power Corporation's tariff) the standard offers which had been submitted by the utilities for review, in accordance with the May 25 decision. After FPL's tariff was approved on June 13, Nassau Power immediately executed a standard offer contract with FPL to provide 435 MW of capacity.

On June 15, 1990, Nassau Power submitted a Notice of First Execution, in which it raised legal arguments challenging the legitimacy of the claims of CMI and Indiantown to subscription status and asserted that its contract was the first to subscribe the 1996 statewide avoided unit.

On June 19, 1990, the Commission denied the Staff's recommendation to close the 1996 unit to new contracts. It deferred all consideration of the issue of subscription priority.

On July 23, 1990, the Commission issued PAA Order No. 23235, which was intended to memorialize the May 25 decision fleshing out specific aspects of the subscription process. Nassau Power, AES, and FPL subsequently filed motions for clarification of the order.

On September 11, 1990, the Commission directed parties to brief the issues relating to the PAA order, as well as the overall issue of subscription priority.

SUMMARY OF ARGUMENT

The Commission has directed the parties to brief two separate issues--the prioritization of contracts which QFs have proffered to subscribe the 1996 statewide avoided unit and the policy which the Commission should articulate in PAA Order No. 23235 dealing with aspects of the subscription process.

Three principles embodied in the Commission's current rules and policies must be applied to the competing contracts. When these principles are applied to the undisputed facts which are pertinent to the question, it is clear that Nassau Power's contract with FPL is the first to subscribe the 1996 statewide avoided unit.

First, the contract between FPL and Indiantown, which was executed before the Commission designated the 1996 statewide avoided unit (and when a 1993 combined cycle unit was the statewide avoided unit), cannot count toward the 1996 statewide avoided unit adopted subsequent to the contract on a going forward basis. This does not mean that the Commission cannot approve the contract; but if approved, it would not displace the 500 MW unit.

Second, standard offer tariffs and contracts must be reviewed and approved by the Commission before the contracts are available for execution. FPL's standard offer contract and tariff were administratively approved by Staff, pursuant to the Commission's delegation of authority, on June 13, 1990.

CMI attempted to execute a standard offer contract with FPL on June 6, 1990. There was no valid, approved standard offer contract in place for CMI to execute at that time. Therefore, CMI's contract is a nullity and cannot subscribe the 1996 avoided unit.

Third, the remaining contracts must be assigned priority based on execution date. Because, for the reasons discussed above, the FPL/Indiantown contract and the CMI contract do not subscribe the 1996 avoided unit, the contract applicable to the 1996 unit having the earliest execution date is Nassau Power's contract. Therefore, Nassau Power's contract is the first to subscribe the 1996 statewide avoided unit.

As to the policy which this Commission should articulate in PAA Order No. 23235, it is Nassau Power's position that the Commission should be guided by its goal of encouraging cogeneration.

Further, negotiated contracts logically should not subscribe the statewide avoided unit when they are negotiated against--and therefore designed to defer--a different need for capacity, determined and quantified on a basis other than that associated with the designated statewide avoided unit. Nor should such contracts count against the subscription limit when the Commission has earlier determined that a need exists for some 1100 MW of capacity on a statewide basis prior to 1996.

Established principles applied to undisputed facts demonstrate that Indiantown and CMI do not subscribe the 1996 statewide avoided unit, and that Nassau Power subscribes the unit first. That determination will allow Nassau Power to proceed with the development of a project that will help reduce the consumption of oil, introduce new natural gas service to an area of Florida presently without it, and help meet Florida's capacity needs with extremely efficient, advanced technology.

ARGUMENT

I.

NASSAU POWER CORPORATION'S CONTRACT WITH FLORIDA POWER AND LIGHT COMPANY WAS THE FIRST CONTRACT TO SUBSCRIBE THE 1996 500 MW STATEWIDE AVOIDED UNIT.

This portion of Nassau Power's brief addresses the manner in which the Commission should assign priority to the contracts which have attempted to subscribe to the 1996 500 MW statewide avoided unit. This analysis is based on three principles which were in effect at the time the contracts in question were executed:

1. A negotiated contract cannot be counted against a statewide avoided unit that had not been adopted at the time the contract was executed;

2. Standard offer tariffs and contracts submitted by utilities are unavailable for execution until they have been reviewed for conformity with the Commission's requirements and administratively approved;

3. Subscription status is determined on a "first in time, first in line" basis.

These are legal principles that must be applied to the undisputed facts. When these principles are applied, Nassau Power's contract is the first to subscribe the 500 MW statewide avoided unit.

A. A Negotiated Contract Cannot Be Counted Against A Statewide Avoided Unit That Was Not In Existence At the Time the Contract Was Signed.[2/]

This issue relates to whether the FPL/Indiantown contract should count toward the 1996 statewide avoided unit approved by the Commission on May 25. On May 21, 1990, Indiantown and FPL entered into a contract for the sale and purchase of 300 MW of capacity. It is uncontroverted that the FPL/Indiantown contract was executed on May 21, 1990, prior to the Commission's May 25 decision to designate the 500 MW unit. It is also uncontroverted that on May 21, 1990 the statewide avoided unit was a 1993 385 MW combined cycle unit. Order No. 22341.

To determine that the FPL/Indiantown contract does not count toward the subscription limit set for the 1996 statewide avoided unit, the Commission need only determine to which statewide avoided unit the contract would have been applied--if at all--had either FPL or Indiantown notified the Commission immediately on May 21 of its execution. At the time the FPL/Indiantown contract was executed, the 1993 385 MW

2/ Section III of this brief addresses whether or not negotiated contracts should count toward the subscription limit within the context of PAA Order No. 23235. Even if the Commission decides that negotiated contracts should count toward the subscription limit, that decision does not affect the issue of whether a negotiated contract may count against the subscription limit of an avoided unit which was not in existence when the contract was signed.

combined cycle unit provided the only possibly applicable statewide in-service date and capacity limit.[3/]

A utility negotiates for QF capacity against either its own identified capacity needs or the statewide unit in place at the time. This principle is implicit in Order No. 17480, in which the Commission first addressed the subject of a subscription limit. In that order the Commission stated:

> Subscription to standard offer contracts should be limited to the number of megawatts of the unit upon which the offers are based.

Order No. 17480 at p. 13, emphasis supplied. Like standard offers, negotiated contracts must be based on (negotiated against) specifically identified units. Fundamentally, the FPL/Indiantown contract cannot subscribe against an avoided unit which had not even been designated when the negotiations took place and when the contract was executed. Just as Royster Phosphates was too late to subscribe to a unit which the Commission had closed as fully subscribed, Order No. 22061, Indiantown was too early to subscribe to a unit which had not yet been designated.

[3/] Since the Indiantown contract for 1995 obviously could not have subscribed the 1993 statewide avoided unit, the parties to the contract necessarily contemplated justifying approval by reference to the timing and the economics of FPL's individually quantified capacity needs.

At its May 25 Agenda Conference the Commission very explicitly noted that the new 1996 statewide avoided unit was to be available on a going forward basis. Specific reference was made to previously executed contracts which would count against the avoided unit in place at the time of execution in the following exchange:

> COMMISSIONER EASLEY: I need a what happens next type question. Hypothetically, let's say we go along with Commissioner Beard's motion and we designate from this point forward the '96 coal unit as the avoided unit, my understanding is the current contracts remain in place because they were done under the combined cycle.
>
> CHAIRMAN WILSON: That's right.
>
> MS. BROWNLESS: Yes, ma'am, the ones that have been signed.

Tr. 42. Emphasis supplied. The FPL/Indiantown contract is clearly covered by the scenario described by Commissioner Easley in conjunction with the May 25 vote.

The fact that the FPL/Indiantown contract does not count toward the 1996 500 MW subscription limit does not eliminate the possibility that the Commission may approve the FPL/Indiantown contract as having merit from FPL's standpoint. However, the contract cannot count toward the 1996 statewide avoided unit because that unit was not designated until after the FPL/Indiantown contract was negotiated and signed.

B. A Standard Offer Contract and Tariff Are Unavailable Until They Have Been Reviewed and Approved.

This issue relates to whether the contract which CMI attempted to execute on June 6, 1990 can subscribe the 500 MW unit. Resolution of this question turns on whether CMI could execute the standard offer contract before the contract and related tariffs were approved.[4/] The answer to this question is governed by statutory requirements and the Commission rules, orders and practices which were in place at the time CMI's contract was purportedly executed.

It is fundamental that Commission decisions regarding changes in tariffs, regulations and contracts of regulated utilities by law must be given prospective application; and, where such decisions are implemented by tariffs submitted by the utility, the tariffs do not become operative until approved by the Commission. Section 366.07, Florida

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4/ On August 30, 1990, CMI filed a petition to initiate "determination of need" proceedings under the Florida Power Plant Siting Act relative to its proposed plant. A review of CMI's petition reveals that much of it is devoted to the question of subscription priority and the legal issue associated with the date it attempted to invoke the standard offer tariff. Nassau Power submits that the issue of subscription priority must be resolved prior to, rather than in, individual applications for site approval, and that the issue properly belongs in this docket.

Statutes;[5/] City of Miami v. Florida Public Service Commission, 208 So.2d 249 (Fla. 1968); Florida Power Corporation v. Continental Testing Laboratories, Inc., 243 So.2d 195 (Fla. 4th DCA 1971). The utilities' cogeneration tariffs and contracts fall within the statutory requirement.

The Commission's current cogeneration rules and prior orders are consistent with this requirement and confirm that CMI's execution of the contract seven days before approval of the revised standard offer is a nullity. Rule 25-17.083(3), Florida Administrative Code, explicitly provides that:

> Each utility shall submit a tariff containing a standard offer for the purchase of firm energy and capacity from any qualifying facility in the State for approval by the Commission.

Emphasis added. See also, rule 25-17.083(3)(b) which sets out what each standard offer shall contain upon approval by the Commission.

The issue of the availability of a standard offer contract prior to the time it has received Commission approval was raised and decided in 1989. In Docket No. 890004-EU, the

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[5/] Section 366.07, Florida Statutes (1989), provides in part:

> [T]he Commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

Commission designated a new statewide avoided unit. FICA contended in the proceedings on the new unit that rule 25-17.083(3) requires each utility to have a standard offer in place and available to QFs at all times. The Commission rejected FICA's argument.

Order No. 22341 explicitly states that the rule does not require a standard offer to be in place at all times.[6/] More importantly, while the Commission sought in that order to minimize the amount of time during which no standard offer was available by providing for an expeditious review of proposed tariffs, it affirmed and continued its usual procedure of delaying the implementation and availability of new tariffs until the necessary review and approval had been accomplished. Order No. 22341 at p. 29. The Commission explicitly followed the same procedure of providing for review and prior administrative approval when it designated the 1996 statewide avoided unit on May 25. (Tr. 56-58). The approval of FPL's tariff and contract took place on June 13, 1990. (A-1, A-2).[7/]

6/ See also, Order No. 22061. This order closed the 1995 standard offer to subscription because the subscription limit had been slightly exceeded. Because the Commission had not yet voted on the next statewide avoided unit, there was a hiatus during which no standard offer contract was available.

7/ Pertinent documents are included in the Appendix to this brief and are referred to by Appendix page number (A-__).

Requiring approval of the tariffs before making the standard offer available is also the only logical approach from a practical administrative viewpoint. The possibility exists that a tariff submitted by a utility may be disapproved or that modification may be required. This was illustrated in this docket by the Commission's action on Florida Power Corporation's ("FPC") nonconforming tariff, which was submitted after the May 25 vote. On July 31, the Commission approved Staff's recommendation to reject and suspend a portion of FPC's tariff. It simultaneously affirmed the administrative approval which Staff had given to the balance of the tariff only as of June 13, 1990.

It is well that the Commission's requirement of prior approval would have invalidated any attempt to execute FPC's tariff immediately upon submission. Otherwise, the Commission could find itself in the bizarre position of having to choose between the application of an approved tariff versus a different unapproved but executed tariff, with parties pushing the Commission to choose that tariff most favorable to their respective interests. The Commission could find itself in the position of having two competing standard offers for one period--a standard offer executed by parties before Commission approval and a standard offer executed after modification and approval. Such unwieldy administrative problems are avoided by the Commission's current process, which mandates that a standard offer tariff must be approved before it becomes available.

Thus, the Commission's rules and practice have consistently required that a standard offer tariff be reviewed and approved before it is deemed available for execution. On June 6, 1990 FPL's revised standard offer had not been so approved and so was unavailable on that day and for six days thereafter. Therefore CMI's contract, which it tried to execute on June 6, is invalid and cannot count toward the 500 MW subscription unit.

While the issue of legal efficacy is dispositive, there is an equitable consideration as well. Nassau Power could have similarly ignored the Commission's requirements and rushed to preempt others. Instead, it adhered to the letter of those requirements. It would be inequitable to penalize a party who assiduously followed the Commission's rules by giving preferential treatment to one who did not.

C. The Remainder of the Contracts Which Have Attempted to Subscribe to the 1996 Statewide Avoided Unit Are Governed By the "First in Time, First in Line" Rule.

Several additional standard offer contracts were filed with the Commission after Nassau Power's June 13 contract. These contracts must be prioritized by execution date.

The Commission has specifically articulated the basic rule of contract prioritization as "first in time, first in line." Order No. 22061 at p. 4. Under this previously established criterion, Nassau Power's contract--the first

standard offer contract to be executed after approval of FPL's contract and tariff on June 13--must take precedence over contracts filed after June 13.

The above analysis demonstrates that Nassau Power's contract is the first to subscribe the 500 MW unit. Further, it is clear that the determination of this issue depends neither on the resolution of any dispute of material fact nor the outcome of any proceedings related to PAA Order No. 23235. Nassau Power is entitled to an immediate ruling that Indiantown and CMI do not subscribe the 1996 statewide avoided unit, and that Nassau Power is first to subscribe the unit.

II.

ADDITIONAL CONSIDERATIONS

Nassau Power submits that the foregoing treatment of undisputed facts and settled legal principles establishes Nassau Power's entitlement to subscription priority. However, Nassau Power is aware of the contentions by some that arrangements for interconnection and QF status may bear on the subscription issue. In the event the Commission determines to take those factors into account, Nassau Power supplies the following analysis:

A. Interconnection.

From time to time questions have been directed to whether the claimants have signed interconnection agreements. On June 13, 1990, the same day it executed the standard offer contract, Nassau Power signed and tendered to FPL the utility's standard interconnection agreement, completed to reflect the detailed analysis which Nassau Power's engineers had performed of the facilities needed to interconnect the cogeneration unit with FPL's system at FPL's Yulee substation. (A-3 - A-8). Since execution of the interconnection agreement, Nassau Power has met with FPL on the engineering of the interconnection facilities. Nassau Power has developed detailed schematic drawings illustrating the planned interconnection. (A-9 - A-11).

Nassau Power's tender of an executed interconnection agreement, complete with the identification of needed facilities and associated costs, surpasses the requirements which the Commission has imposed on QFs in the past pursuant to the construction of its rules. For instance, at least one contract was approved on the basis of a clause in the power purchase contract requiring the QF and utility to negotiate an interconnection agreement in the future. Docket No. 900137-EQ (contract between FPL and Royster).

The Commission's rules do not require a consummated interconnection agreement, including the utility's signature, as a condition precedent to the execution of a standard offer contract. While rule 25-17.082(1) states that the utility shall purchase energy upon compliance by the QF with rule 25-17.087 (the rule governing interconnection), the latter rule encompasses detailed technical specifications, operating considerations, a separate "application for interconnection" designed to follow the basic interconnection agreement, and other details that obviously relate to implementation, physical construction, and operational practices.

That the "purchase" of rule 25-17.082(1) refers to payment for energy which flows after physical interconnection, not the initial signing of contracts, is demonstrated by the fact that rule 25-17.082(1) requires that purchase to be governed by either "rates which have been agreed upon" or the tariff rate. Implicit in the quoted phrase is recognition

that the contractual rates will have been decided prior to the "compliance" by the QF with all portions of the interconnection rule. To require all the myriad of interconnection steps to occur prior to execution of the standard offer contract would require details, specifications, and arrangements available only far into project development to be delivered before the basic power purchase arrangements have been established--an illogical and unworkable sequence, and one not mandated by the rule.

B. Qualifying Facility Status.

Nassau Power filed its QF documentation with the FERC on June 13, 1990. By contrast, public records on file at the FERC disclose that Indiantown did not seek to establish QF status until August 22, 1990, and that CMI did not do so until July 9, 1990, both well after Nassau Power.

III.

NEGOTIATED CONTRACTS WITH IN-SERVICE DATES WHICH DIFFER FROM THE STATEWIDE AVOIDED UNIT SHOULD NOT COUNT TOWARD THE SUBSCRIPTION LIMIT.

PAA Order No. 23235 was issued on July 23, 1990. It became the subject of various motions for clarification, which were argued to the Commission on September 11. During that Agenda Conference the parties were asked to brief the issue of the decision which should be embodied in PAA Order No. 23235.[8/]

The purpose of the PAA was to attempt to answer certain questions concerning the subscription mechanism which the Commission had raised in Order No. 22341. The limited issues which the Commission will decide within the context of PAA Order No. 23235 involve decisions of policy which the Commission must consider in light of its cogeneration objectives.

8/ Commissioner Wilson inquired as to what practical effect the more abstract points would have on the immediate subscription issue. From Nassau Power's perspective, a ruling by the Commission that negotiated contracts for units having in-service dates different than that of the statewide avoided unit do not count against the subscription limit will constitute a second, independent reason why the Indiantown contract does not subscribe the 1996 statewide avoided unit. The first threshold reason lies in the fact that the statewide unit had not even been designated when the contract was signed.

The policy decisions which the Commission must make are embodied in the questions raised by Issues 4 and 5. Issue 4 states:

> 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?

Issue 5 states:

> 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 toward that utility's subscription unit?

These issues turn on the relationship between negotiated contracts and the subscription limit applicable to the statewide avoided unit.

Nassau Power submits that to arrive at the appropriate answer to Issues 4 and 5, the Commission must first decide upon the goal it wants to achieve. Governing statutes and prior Commission decisions provide some guidance.

Section 366.81, Florida Statutes (1989), mandates that the Commission encourage the development of cogeneration. The Legislature has clearly directed the Commission to fashion policy which promotes cogeneration. The Commission itself has often articulated a policy of encouraging cogeneration. See Order No. 9970 at 6; Order No. 11911 at 1; Order No. 12443 at 4. If it is the Commission's goal to realize the benefits

of increased use of cogeneration--especially at this point in Florida's history when capacity is critically needed--a policy must be fashioned which will achieve that goal.

In the context of Issues 4 and 5, more cogeneration will be encouraged if negotiated contracts having in-service dates other than that of the statewide avoided unit do not count toward that unit's subscription limit. The reason for this is obvious. If negotiated contracts which have different in-service dates and which are based on units other than the statewide avoided unit count toward the subscription limit, the subscription limit of the statewide avoided unit will be reached more quickly, and fewer opportunities for cogenerated power will be available. The utilities will be able to reject standard offer contracts on the basis that the subscription limit has already been met by negotiated contracts which may very well have been based on units scheduled to come on line in different years and which do not avoid the capacity needed in the subscription year.

Nassau Power's motion for clarification of Order No. 23235 was based on ambiguous language which appeared to fail to conform to the recommendation and decision of May 25, 1990. Staff has since explained that the discrepancy seen by some parties in Order No. 23235 stemmed from a miscommunication between Staff and Commissioners. Nassau Power believes that explanation has the effect of returning the issue to a

new consideration of the merits of counting negotiated contracts against the subscription limit.

The Staff's position favoring the counting of contracts having earlier in-service dates toward the subscription limit is articulated in its recommendation of August 30, 1990. With due respect to Staff, Nassau Power disagrees with Staff's position and submits that the analysis upon which Staff's recommendation is based is internally inconsistent and flawed. On the one hand, Staff argues that negotiated contracts count against the statewide avoided unit on the basis that the statewide avoided unit establishes the total need for cogeneration. At the same time, Staff acknowledges that utilities should be allowed to negotiate contracts even after the statewide avoided unit is fully subscribed. These views are obviously contradictory.[9/] See Staff recommendation, p. 4.

Staff rightly sees the need and the opportunity for unlimited, cost-effective negotiations that are unrelated to the statewide avoided unit. However, Staff's attempt to relate "earlier" negotiated units and the subscription limit is untenable. Staff's rationale appears to be based on the assumption that the statewide avoided unit is by definition

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9/ While the mechanics of the subscription limit may still be at issue, it is clear that both Staff and Commissioners believe that the subscription limit associated with the statewide avoided unit should not impede or limit negotiated contracts.

the "next" need for capacity and therefore must subsume any and all units having earlier in-service dates which could be identified in individual utility plans. The recent exercise the Commission went through when reconsidering the designation of the 1993 combined cycle unit shows that the concept does not fit the facts.

In Order No. 22341, the Commission found that generation expansion plans of the three peninsular utilities and of the FCG showed a need of 2112 MW and 2305 MW respectively through 1995. The Commission then identified 1155 MW in the form of three sequential combined cycle units needed no later than 1995 as the statewide avoided units. The need for that capacity did not disappear when the Commission subsequently replaced the combined cycle units with a 1996 base load unit for purposes of quantifying capacity payments to QFs. Whether viewed from the perspective of statewide planning or from the results of the utilities' individual plans, it is clear that the capacity need quantified by the current 1996 statewide avoided unit is <u>in addition to</u> earlier identified units and is not displaced by QFs who satisfy the need for those earlier units through negotiated contracts. Illustratively, if a utility's individual generation expansion plan calls for a capacity addition in 1994 and a QF negotiates to meet that need, that negotiated contract should not count against the different need separately identified in the form of the statewide avoided unit.

Next, Staff bases its position that negotiated contracts for "earlier" units must count toward the subscription limit upon rule 25-17.083, which says a cogeneration unit generally must defer a capacity need on a statewide basis to qualify for cost recovery. The Staff's proposal for the treatment of "earlier" units is inconsistent with its proposed treatment of later units, which could be approved without reference to the subscription limit if measured successfully against the utility's own individual generation expansion plan. The problem is that the Staff position equates the cost recovery criteria of the rule with subscription priority, when the two concepts are completely different. In fact, the subscription process is not treated in the rules, but "grew up" by order well after the rules were adopted. There is no reason and no need to entangle the two.

In light of the foregoing discussion, Nassau Power suggests that the following language in response to the questions posed by Issues 4 and 5 be incorporated in the PAA issued as a result of the briefs filed in this docket:

> Issue 4: 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?

Any negotiated contract based on a unit with an in-service date which differs from the in-service date of the current statewide avoided unit does not count toward the statewide avoided unit. Further, any such negotiated contract will be evaluated for cost recovery purposes against a utility's individual

needs and costs, i.e., evaluated against the units identified in each utility's own generation expansion plan.

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 toward that utility's subscription unit?

The subscription limit applicable to the statewide avoided unit applies only to negotiated contracts based on units having the same in-service date as the statewide avoided unit.

This language will encourage cogeneration by permitting contracts to be negotiated based on each utility's individual needs without interfering with the subscription limit associated only with the statewide avoided unit.

IV.

THE NEED FOR A DECISION

On several occasions, the Commissioners have expressed an interest in knowing more about the proposed projects underlying the several contracts which have been tendered against the statewide avoided unit. As has been stressed in this brief, the Commission has prescribed a subscription process that is based on "first in time, first in line" (Order No. 22061, issued October 17, 1989). Nassau Power faithfully adhered to the Commission's procedures and is now entitled to rely upon them. At the same time, Nassau Power is enthusiastic about the merits of its project. Further, Nassau Power believes that the following information will show the Commission why a decision confirming Nassau Power's entitlement to subscription priority should be entered expeditiously to enable the project to stay on its development time line.10/

Nassau Power intends to construct a 435 MW gas-fired combined cycle cogeneration facility on Amelia Island in Nassau County. The project will utilize an extremely efficient, advanced gas turbine technology having a heat rate of approximately 7,200 BTUs per kWh.

10/ The full details of the proposal will of course come before the Commission when Nassau Power files its petition for a determination of need under the Florida Electrical Power Plant Siting Act.

The development of steam host arrangements for the project between Nassau and ITT Rayonier is on course. Nassau Power's parent and the mill's management have conducted discussions for over a year. Nassau Power and mill personnel are currently engaged in a comprehensive, cooperative energy audit of the mill by a third party, independent engineering firm.[11/] (A-12).

Nassau Power's project would produce steam which the mill would use to offset the portion of the mill's steam requirements which is presently produced by burning oil.

Nassau Power has secured a commitment from the turbine manufacturer guaranteeing turbine performance, specifications, price and delivery date.

The primary and back up source of fuel for Nassau Power's project is natural gas. Southern Natural Gas Company has executed a Letter of Understanding detailing its willingness to construct a pipeline to provide natural gas transportation service to Nassau Power's facility once the standard offer contract with FPL has met regulatory approval. (A-13 - A-14). This pipeline would serve not only Nassau Power's project but would also provide natural gas service to

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11/ It has been the experience of Falcon Seaboard in its five existing cogeneration projects--and of its expert consultants who have knowledge of projects nationwide--that the completion of arrangements between the QF and steam host occurs well after completion of the power purchase contract in the great majority of instances.

surrounding counties currently without such service. The primary natural gas source for the project is natural gas reserves, owned all or in part by Nassau Power's parent, Falcon Seaboard Energy Corporation.[12/] Nassau Power is working with Southern Natural Gas Company to provide firm backup fuel for the project.

Based on the experience of Nassau Power's parent (Falcon Seaboard Power Corporation) with projects elsewhere, and based upon the pattern of experience within the cogeneration industry generally, Nassau Power's project has developed faster than is typical for one of this size having an in-service date of 1996. However, regulatory confirmation of the power purchase agreement is necessary to enable the project to stay on course.

12/ Falcon Seaboard is actively engaged in the development of offshore reserves of gas, and recently added to its holdings of offshore gas rights.

CONCLUSION

Based on undisputed facts, Nassau Power was the first to execute a contract subscribing the 500 MW, 1996 statewide avoided unit. Nassau Power is entitled to a determination that its project subscribes the unit. Its claim arises by virtue of strict, careful adherence to the Commission's procedures and requirements. The Commission must ignore the invitation to apply the 1996 statewide avoided unit retroactively toward a contract executed when a different statewide avoided unit was in place. It must reject the claim of a contract which attempted to "preempt the field" by circumventing the tariff approval process explicitly required by the Commission.

The Commission's decision will enable Nassau Power to continue to develop a project that combines advanced technology, environmentally superior fuel, the displacement of significant quantities of oil, and a new source of natural gas for Florida.

Joseph A. McGlothlin
Vicki Gordon Kaufman
Lawson, McWhirter, Grandoff
and Reeves
522 East Park Avenue
Suite 200
Tallahassee, Florida 32301
904/222-2525

Michael Naeve
Skadden, Arps, Slate,
Meagher and Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005
202/371-7070

Attorneys for Nassau Power
Corporation

APPENDIX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Brief of Nassau Power Corporation has been furnished by U.S. Mail to the following parties of record, this 25th day of September, 1990:

Michael Palecki
Fla. Public Service Commission
Division of Legal Services
101 East Gaines Street
Tallahassee, FL 32399

Lee L. Willis
James D. Beasley
Ausley, McMullen, McGehee
Carothers and Proctor
Post Office Box 391
Tallahassee, FL 32302

Susan Clark, General Counsel
Division of Appeals
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399

Jack Shreve, Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Claude Pepper Building
Room 812
Tallahassee, FL 32399-1400

Matthew M. Childs
Steel, Hector and Davis
215 S. Monroe Street
First Florida Bank Building
Suite 601
Tallahassee, FL 32301-1804

Gail P. Fels
Assistant County Attorney
Metro-Dade Center
111 N.W. First Street
Suite 2810
Miami, FL 33128

James P. Fama
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733

Mike Peacock
Florida Public Utilities
Post Office Box 610
Marianna, FL 32446

Paul Sexton
Richard Zambo, P.A.
211 S. Gadsden Street
Tallahassee, FL 32301

Ann Carlin
Gainesville Regional Util.
P. O. Box 490, Suite 52
Gainesville, FL 32602

Edison Holland, Jr.
Beggs and Lane
Post Office Box 12950
Pensacola, FL 32576

William J. Peebles
Frederick M. Bryant
Moore, Williams and Bryant
Post Office Box 1169
Tallahassee, FL 32302

Richard D. Melson
Hopping, Boyd, Green & Sams
Post Office Box 6526
Tallahassee, FL 32314

Ray Maxwell
Reedy Creek Utilities Company
Post Office Box 40
Lake Buena Vista, FL 32830

Roy Young
Young, Van Assenderp,
Varnadoe and Benton
225 South Adams Street
Post Office Box 1833
Tallahassee, FL 32302-1833

Susan Delegal
115 S. Andrew Avenue, Rm. 406
Ft. Lauderdale, FL 3301

Talquin Electric
Post Office Box 1679
Quincy, FL 32351

Barney L. Capehart
601 N.W. 35th Way
Gainesville, FL 32605

Cogeneration Program Manager
Governor's Energy Office
301 Bryant Building
Tallahassee, FL 32301

John Blackburn
Post Office Box 405
Maitland, FL 32751

E. J. Patterson
Florida Public Utilities Co.
Post Office Drawer C
West Palm Beach, FL 33402

Suzanne Brownless
Oertel, Hoffman, Fernandez
and Cole
Post Office Box 6507
Tallahassee, FL 32314-6507

Florida Keys Electric Coop.
E. M. Grant
Post Office Box 377
Tavernier, FL 33070

Edward C. Tannen
Jacksonville Electric Auth.
1300 City Hall
Jacksonville, FL 32202

City of Chattahoochee
Attn: Superintendent
115 Lincoln Drive
Chattahoochee, FL 32324

Department of Energy
Attn: Lee Rampey
Southeast Power Adm.
Elberton, GA 30635

Florida Rural Electric Coop.
Post Office Box 590
Tallahassee, FL 32302

Alabama Electric Cooperative
Post Office Box 550
Andalusia, AL 37320

Gene Tipps
Seminole Electric Coop.
Post Office Box 272000
Tampa, FL 33688-2000

Patrick K. Wiggins
Wiggins and Villacorta
501 E. Tennessee St., Ste. B
Tallahassee, FL 32308

Guyte P. McCord, III
Post Office Box 82
Tallahassee, FL 32302

Bruce May
Holland and Knight
Post Office Drawer 810
Tallahassee, FL 32302

Quincy Municipal Electric
Light Department
Attn: William Johnson
Post Office Drawer 941
Quincy, FL 32351

Joseph A. Mc Glothlin

State of Florida

JOSEPH D. JENKINS
Director
Division of Electric and Gas
(904) 488-8501

Public Service Commission

June 13, 1990

Mr. David Mills
Supervisor, Rates & Tariffs
Florida Power & Light Company
Post Office Box 029100
Miami, Florida 33102

AUTHORITY NO. E-90-24

Dear Mr. Mills:

We are returning herewith, approved, one copy of the following tariff sheets for Florida Power & Light Company:

Third Revised Sheet No. 9.850	Fourteenth Revised Sheet No. 10.203
Third Revised Sheet No. 9.851	Eighth Revised Sheet No. 10.204
Third Revised Sheet No. 9.852	Seventh Revised Sheet No. 10.205
Third Revised Sheet No. 9.853	Third Revised Sheet No. 10.206
Original Sheet No. 9.854	Second Revised Sheet No. 10.207
Third Revised Sheet No. 10.200	Second Revised Sheet No. 10.208
Fourth Revised Sheet No. 10.201	Fourth Revised Sheet No. 10.209
Third Revised Sheet No. 10.202	Third Revised Sheet No. 10.210
	Second Revised Sheet No. 10.211
	Second Revised Sheet No. 10.212
	Second Revised Sheet No. 10.213

First Revised Sheet No. 10.214

These tariff sheets were approved by Commission Authority No. E-90-24, to become effective June 13, 1990 and will be incorporated into the official tariff of Florida Power and Light Company on file with this Commission.

Very truly yours,

Robert L. Trapp

Robert L. Trapp
Assistant Director

RLT/bc
Attachments
cc: Joseph Jenkins

STANDARD OFFER CONTRACT FOR THE PURCHASE OF
FIRM CAPACITY AND ENERGY FROM A QUALIFYING FACILITY

THIS AGREEMENT is made and entered into this_____day of_____, 19____ by and between _____, hereinafter referred to as "QF" and Florida Power & Light Company, hereinafter referred to as "FPL" or the "Company"; a private utility corporation organized under the laws of the State of Florida. The QF and FPL shall collectively be referred to herein as the "Parties".

WITNESSETH:

WHEREAS, QF desires to sell, and FPL desires to purchase electricity to be generated by the QF consistent with Florida Public Service Commission (FPSC) Rules 25-17.080 through 25-17.087 of Order No. _____, Docket No. 900004-EU; and

WHEREAS, QF has signed an Interconnection Agreement with the utility in whose service territory the QF's generating facility is located, attached hereto as Appendix A; and

WHEREAS, the FPSC has approved this following Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility;

NOW, THEREFORE, for mutual consideration the Parties agree as follows:

1. Facility

QF contemplates installing and operating a _____KVA_____generator located at _____. The generator is designed to produce a maximum of _____kilowatts (KW) of electric power at an 85% power factor, such equipment being hereinafter referred to as "Facility."

2. Term of the Agreement

This Agreement shall begin immediately upon its execution by the parties and shall end at 12:01 a.m., _____, 20____.

Notwithstanding the foregoing if construction and commercial operation of the Facility are not accomplished by QF before January 1, 1996, this Agreement shall be rendered of no force and effect.

3. Sale of Electricity by QF

FPL agrees to purchase all of the electric power generated at the Facility and transmitted to FPL by QF. The purchase and sale of electricity pursuant to this Agreement shall be construed as a ( ) net billing arrangement or ( ) simultaneous purchase and

(Continued on Sheet No. 9.851)

QF Interconnection Cost Estimate

Itemized list of activities to be provided by FPL at Yulee Substation - "Interconnection Facilities"

Item		
I.	One (1) Full-Tension 230 KV Deadend Structure, Foundation and Associated Insulators and Hardware	$80,000
II.	One (1) 230 KV Motor-Operated Isolation Disconnect, with Supporting Structures	$13,000
III.	Additional 230 KV Outdoor Bus Segment with Associated Insulators, Structures, Foundations and Connectors	$200,000
IV.	Two (2) new 230 KV SF_6 Gas Circuit Breakers with Associated 230 KV Manual Isolation Disconnect Switches, Foundation and Connectors	$256,000
V.	One (1) Set of Bi-Directional 230 KV Reactive Revenue Metering Equipment including: - Three (3) 230 KV Potential Transformers - Three (3) 230 KV Current Transformers - One (1) GEM-II Bi-Directional Electronic Meter with Pulse Initiator - Associated Support Structures, Foundations, and Connections - Metering Panel	$78,000
VI.	One (1) Single-Phase Power Line Carrier Communication Equipment containing: - One (1) Line Trap - One (1) 230KV CCVT - One (1) Tuner Accessory - One (1) Transmitter/Receiver - One (1) Transfer Trip Option	$64,000
VII.	One (1) 230KV Transmission Line Relaying Package including: - Impedance Relays - Transfer Trip Unit - Relay Panel	$35,000
VIII.	SCADA System Remote Terminal Unit (RTU) with Communication Link	$20,000

IX.	Expansion of Existing FPL Yulee Substation including: - Additional Grounding - Additional Raceways and Cables - Bus Differential Relaying	$243,000
	Total Estimated Cost for FPL "Interconnect Facility"	$989,000

QF Interconection Cost Estimate

Item		
I.	Three (3) Generator Stepup Transformers with Associated Lightning Arresters and Foundations	$7,644,000
II.	One (1) 230/4.16 KV Auxiliary Power Transformer with Associated Lightning Arresters and Foundations	$490,000
III.	Four (4) 230 KV Motor-Operated Disconnect Switches, Supporting Structures and Foundations	$52,000
IV.	Five (5) 230 KV SF_6 Gas Circuit Breakers with Associated 230 KV Manual Isolation Disconnect Switches, Foundations and Connectors	$640,000
V.	Outdoor 230 KV Buswork Insulators, Connectors, Supporting Structures and Foundation to form a 5-Position Ring Bus Substation/Switchyard	$1,000,000
VI.	One (1) 230 KV Full-Tension Deadend Structure, Foundation, Hardware and Connectors with 230 KV Manual Isolation Disconnect Switch	$80,000
VII.	Fenced Site with 6" Crushed Stone Cover and Grounding Grid to meet IEEE-80	$649,000
VIII.	Control Building containing: - Battery, Charger, and D.C. Panel - Control Power System - Relay and Protection Panels (Transformer and Bus) - Communication Panels - Metering Panels - HVAC Systems - Transmission Line Relaying - Synchronizing Check Relaying	$760,000
IX.	Control Raceway and Cable System	$220,000
X.	Lightning Protection System and Outdoor Lighting System	$35,000
XI.	One (1) Single-Phase Power Line Carrier Communication Equipment containing: - One (1) Line Trap - One (1) 230 KV CCVT - One (1) Tuner Accessory - One (1) Transmitter/Receiver - One (1) Transformer Trip Option	$64,000

XII.	Approximately 12 miles of 230 KV H-Frame Wood Transmission Line including a Steel Tower Crossing of the Intercoastal Waterway	$9,179,000
	Total Estimated Cost for NPC High Voltage System Required Deliver Power to FPL Yulee Substation "Interconnection Facility"	$20,813,000

Interconnection Facilities by FPL

Itemized list of facilities to be provided by FPL at Yulee Substation - "Interconnection Facilities"

Item

I. One (1) Full-Tension 230 KV Deadend Structure, Foundation and Associated Insulators and Hardware

II. One (1) 230 KV Motor-Operated Isolation Disconnect, with Supporting Structures

III. Additional 230 KV Outdoor Bus Segment with Associated Insulators, Structures, Foundations and Connectors

IV. One (a) Set of Bi-Directional 230 KV Reactive Revenue Metering Equipment including:

- Three (3) 230 KV Potential Transformers
- Three (3) 230 KV Current Transformers
- One (1) GEM-II Bi-Directional Electronic Meter
- with Pulse Initiator
- Associated Support Structures, Foundations, and Connections
- Metering Panel

VI. One (1) Single-Phase Power Line Carrier Communication Equipment containing:

- One (1) Line Trap
- One (1) 230 KV CCVT
- One (1) Tuner Accessory
- One (1) Transmitter/Receiver
- One (1) Transfer Trip Option

VII. One (1) 230 KV Transmission Line Relaying Package including:

- Impedance Relays
- Transfer Trip Unit
- Relay Panel

VIII. SCADA System Remote Terminal Unit (RTU) with Communication Link

IX. Expansion of Existing FPL Yulee Substation including:

- Additional Gounding
- Additional Raceways and Cables
- Bus Differential Relaying

NOTE: Should FPL's analysis indicate that modifications and/or additional facilities reasonably are required, NPC agrees to compensate FPL for such modifications.

Interconnection Facilities by NPC

Item

I. Three (3) Generator Stepup Transformers with Associated Lightning Arresters and Foundations

II. One (1) 230/4.16 KV Auxiliary Power Transformer with Associated Lightning Arresters and Foundations

III. Four (4) 230 KV Motor-Operated Disconnect Switches, Supporting Structures and Foundations

IV. Five (5) 230 KV SF_6 Gas Circuit Breakers with Associated 230 KV Manual Isolation Disconnect Switches, Foundations and Connectors

V. Outdoor 230 KV Buswork Insulators, Connectors, Supporting Structures and Foundation to form a 5-Position Ring Bus Substation/Switchyard

VI. One (1) 230 KV Full-Tension Deadend Structure, Foundation, Hardware and Connectors with 230 KV Manual Isolation Disconnect Switch

VII. Fenced Site with 6" Crushed Stone Cover and Grounding Grid to meet IEEE-80

VIII. Control Building containing:

- Battery, Charger, and D.C. Panel
- Control Power System
- Relay and Protection Panels (Transformer and Bus)
- Communication Panels
- Metering Panels
- HVAC Systems
- Transmission Line Relaying
- Synchronizing Check Relaying

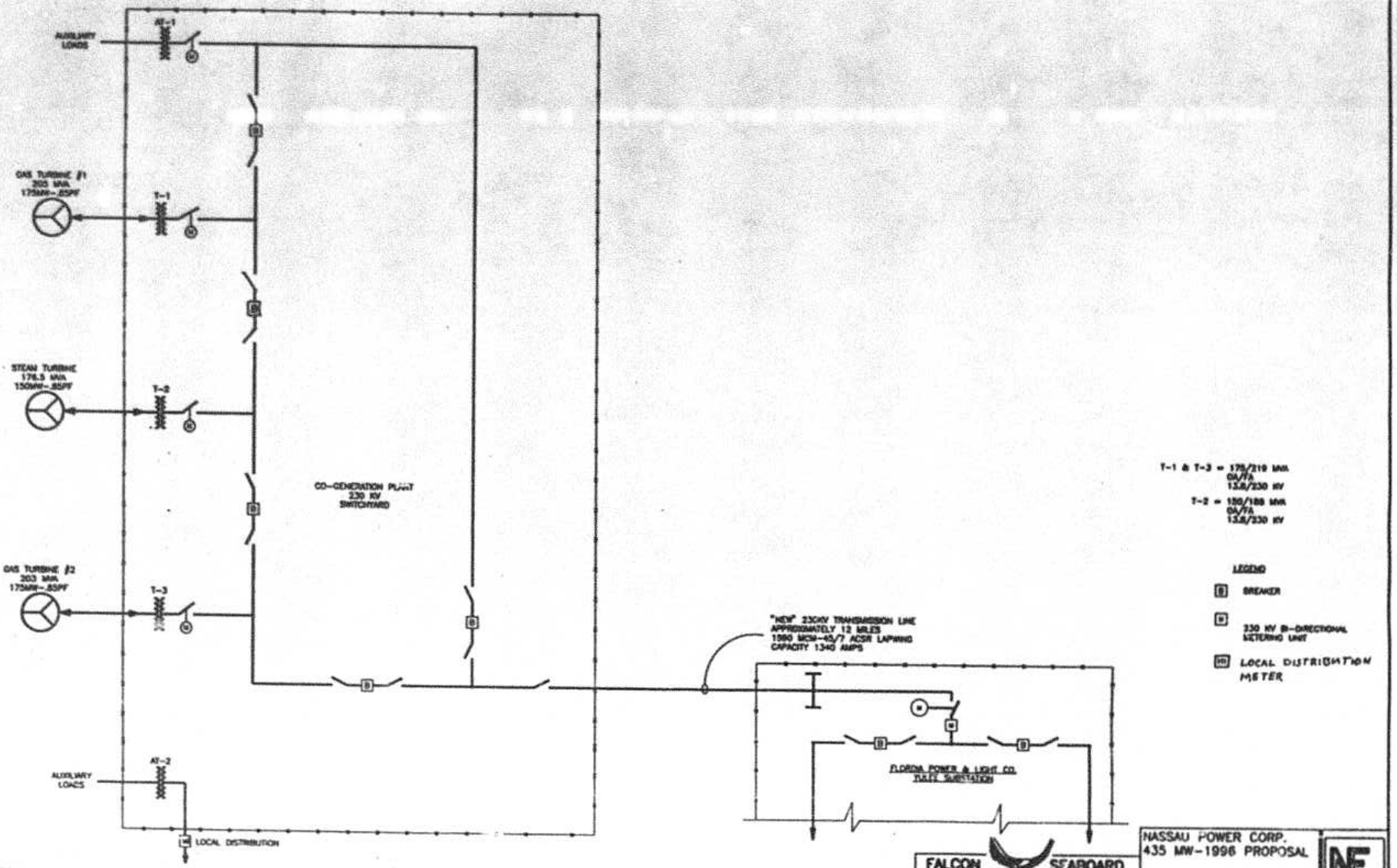
IX. Control Raceway and Cable System

X. Lightning Protection System and Outdoor Lighting System

XI. One (1) Single-Phase Power Line Carrier Communication Equipment containing:

- One (1) Line Trap
- One (1) 230 KV CCVT
- One (1) Tuner Accessory
- One (1) Transmitter/Receiver
- One (1) Transformer Trip Option

XII. Approximately 12 miles of 230 KV H-Frame Wood Transmission Line including a Steel Tower Crossing of the Intercoastal Waterway



A-9

PRELIMINARY
FOR APPROVAL
CONSTRUCTION
AS BUILT

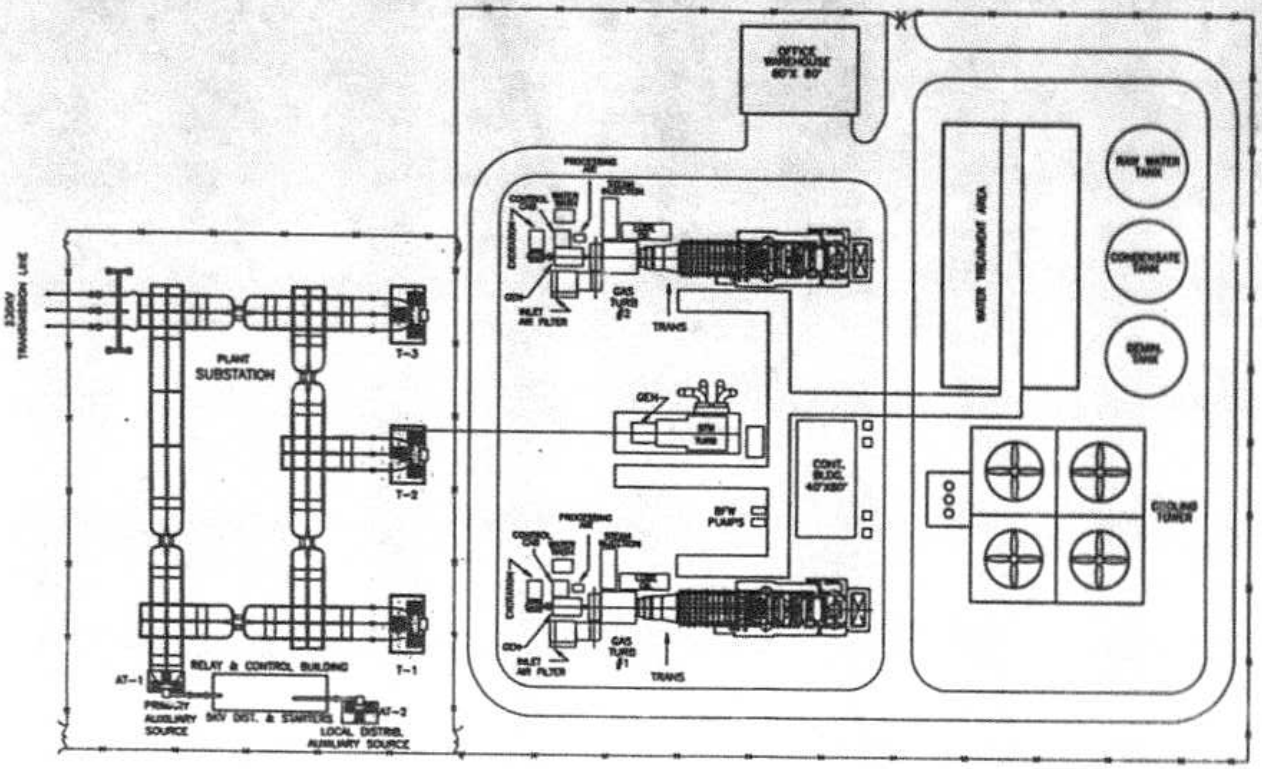
FALCON SEABOARD

NASSAU POWER CORP.
435 MW-1996 PROPOSAL

HIGH VOLTAGE INTERCONN.

NORTHERN ENGINEERING INC.
HOUSTON, TEXAS

DWG. NO. 101



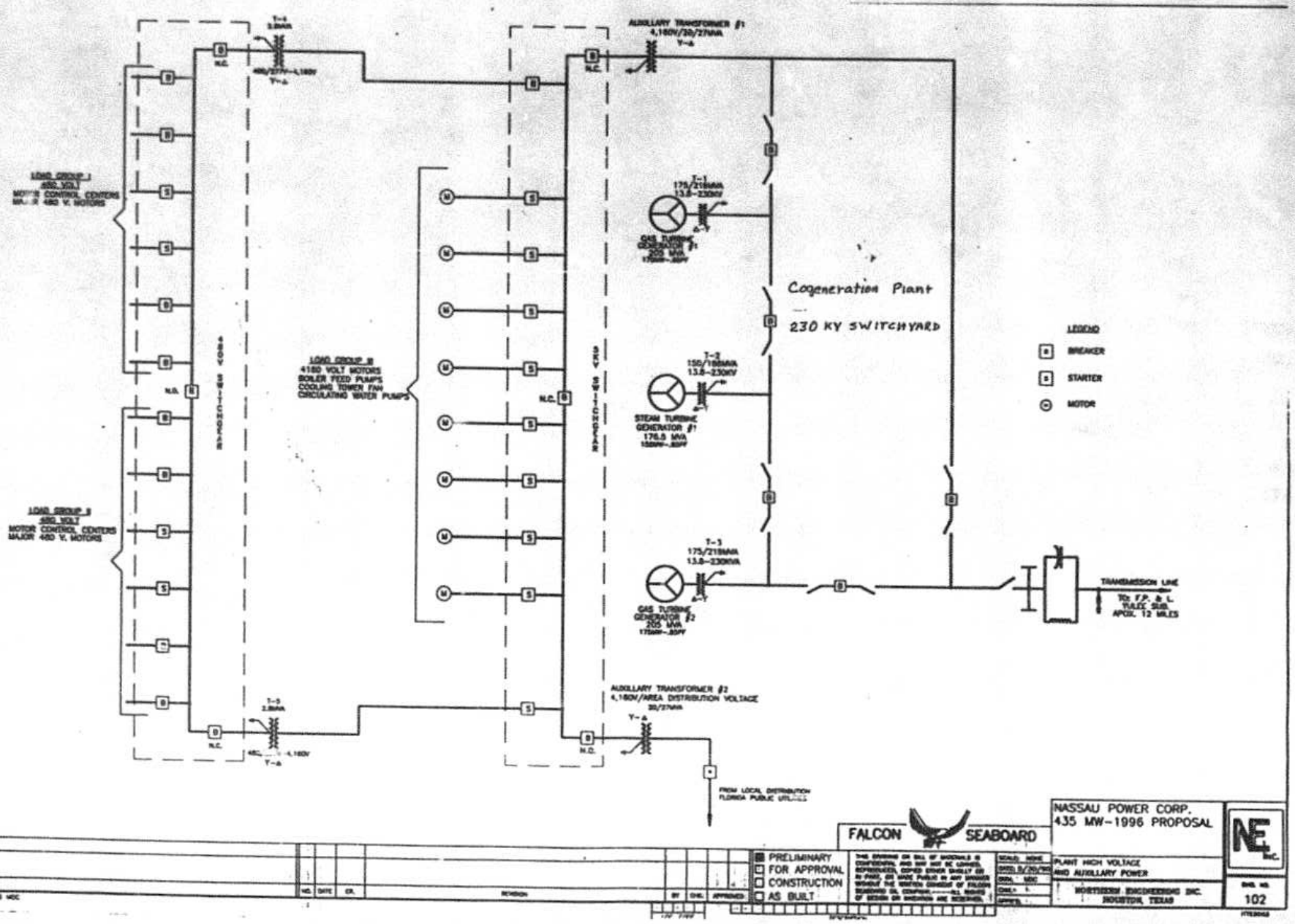
25' 0 25' 50' 100' 150'

FALCON SEABOARD

NASSAU POWER CORP.
435 MW - 1998 PROPOSA
PLANT & ELEC. INTERCONN
PLOT PLAN

☒ PRELIMINARY
☐ FOR APPROVAL
☐ CONSTRUCTION
☐ AS BUILT

A-10


AUXILIARY TRANSFORMER #1
4,160V/30/27MVA
Y-Δ
T-1
175/218MVA
13.8-230KV
GAS TURBINE GENERATOR #1
205 MVA
Cogeneration Plant
230 KV SWITCHYARD
T-2
150/188MVA
13.8-230KV
STEAM TURBINE GENERATOR #1
176.5 MVA
T-3
175/218MVA
13.8-230KV
GAS TURBINE GENERATOR #2
205 MVA
LEGEND
BREAKER
STARTER
MOTOR
TRANSMISSION LINE
LOAD GROUP I
480 VOLT
MOTOR CONTROL CENTERS
MAJOR 480 V. MOTORS
LOAD GROUP II
4160 VOLT MOTORS
BOILER FEED PUMPS
COOLING TOWER FAN
CIRCULATING WATER PUMPS
LOAD GROUP III
480 VOLT
MOTOR CONTROL CENTERS
MAJOR 480 V. MOTORS
AUXILIARY TRANSFORMER #2
4,160V/AREA DISTRIBUTION VOLTAGE
Y-Δ
FROM LOCAL DISTRIBUTION
FALCON SEABOARD
PRELIMINARY
FOR APPROVAL
CONSTRUCTION
AS BUILT
NASSAU POWER CORP.
435 MW-1996 PROPOSAL
PLANT HIGH VOLTAGE
AND AUXILIARY POWER
NORTHERN ENGINEERING INC.
HOUSTON, TEXAS
102

ITT Rayonier Inc.

Fernandina Division

Post Office Box 2002
Fernandina Beach, Florida 32034-2002
(904) 261-3611

September 17, 1990

Mr. Phillip N. Cantner
Falcon Seaboard Power Corporation
Five Post Oak Park, Suite 1400
Houston, Texas 77027

Re: ITT Rayonier/Nassau Power Corporation

Dear Mr. Cantner:

This is in response to our previous conversations regarding ITT Rayonier's position relative to your proposal to construct a 435 MW cogeneration facility at the site of our Amelia Island mill.

As we have discussed, our large steam requirements, which we now meet by burning fuel oil, hogged wood waste and reusable pulping chemicals, constitute a significant component of our costs of production. We are interested in pursuing avenues by which we can provide or procure that steam more economically and efficiently.

During the course of our discussions with your company over the past months, we have come to regard your proposal as holding the promise of benefits - economic and environmental - in that regard. While we have not negotiated a steam contract at this point, we have undertaken to participate with you in a comprehensive, cooperative energy audit of the mill and related analyses designed to measure and quantify the opportunities which the proposed project would afford. The results of this cooperative study will be one of the ingredients as we evaluate the feasibility of your proposed plant coexisting with ours, and will be the first step as we determine whether negotiations directed toward an agreement are justified.

I look forward to continued progress in our efforts to realize a mutually beneficial relationship.

Sincerely,

ITT RAYONIER INC.

Stephen D. Olsen

Stephen D. Olsen
GENERAL MANAGER

SDO32/ldv

Post Office Box 2563
Birmingham AL 35202 2563
205 325 3834
205 325 7490 FAX

Vice President
Project Development

SOUTHERN NATURAL GAS

September 18, 1990

Nassau Power Corporation
5 Post Oak Park
Suite 1400
Houston, Texas 77027

Attention: Mr. Philip N. Cantner
Vice President and Manager
Power Systems Divisions

Re: Natural Gas Service to a Proposed Cogeneration Facility near Jacksonville, Florida

Gentlemen:

This letter is written in response to your request that Southern Natural Gas Company ("Southern") and/or an affiliate, including but not limited to South Georgia Natural Gas Company, provide firm transportation service and/or supply natural gas volumes up to 80,000 dekatherms per day to a cogeneration project which Nassau Power Corporation ("Nassau") intends to build near Jacksonville, Florida assuming that Nassau's standard offer to sell power to Florida Power & Light Company ("FPL") is accepted.

Southern is extremely interested in pursuing the opportunity to participate in your project to sell power to FPL. In order to be able to provide firm transportation for up to 80,000 dekatherms of gas per day, Southern will have to construct significant additions to its pipeline system, and Southern understands that its new pipeline facilities must be completed prior to the anticipated commercial operations date of Nassau's cogeneration project in 1995, or at any other mutually agreed to date.

When Nassau's standard offer is accepted, Southern shall promptly advise Nassau of the cost of the facilities necessary to provide the requested firm transportation service. If the cost is mutually satisfactory to both Southern and Nassau, they will promptly enter into a 20-year Service Agreement for the transportation service, and Southern will thereafter make the necessary regulatory filings to obtain authorization to construct and install said facilities.

This letter of Understanding does not constitute a binding commitment by either party; it being the intention of the parties to wait until after Nassau receives confirmation by the PSC before entering into any contractual arrangements for the project.

In the event that Nassau's proposal to FPL is successful, Southern looks forward to becoming part of a successful project.

Very truly yours,

SOUTHERN NATURAL GAS COMPANY

AGREED AND ACCEPTED THIS 19 DAY OF SEPTEMBER, 1990.

NASSAU POWER CORPORATION

JCY/dh