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BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

	:	
In The Matter of	:	DOCKET NO. 900796-EI
	:	
Petition for Inclusion of	:	<u>ORAL ARGUMENT</u>
Scherer Unit No. 4 Purchase	:	
in Rate Base, Including an	:	
Acquisition Adjustment, by	:	
FLORIDA POWER & LIGHT	:	
COMPANY.	:	

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NOV 28 1990

Florida Public Service Commission

FPSC, Hearing Room 115
101 East Gaines Street
Tallahassee, Florida 32399

Monday, November 26, 1990

Met pursuant to notice at 3:30 p.m.

BEFORE: CHAIRMAN MICHAEL WILSON
Prehearing Officer

APPEARANCES:

MATTHEW M. CHILDS, Steel, Hector & Davis, 310
West College Avenue, Tallahassee, Florida 32301-1848,
Telephone No. (904) 222-2300, appearing on behalf of
Florida Power and Light Company.

VICKI GORDON KAUFMAN, Lawson, McWhirter,
Grandoff & Reeves, 522 East Park Avenue, Suite 200,
Tallahassee, Florida 32301, Telephone No. (904)
222-2525, appearing on behalf of Nassau Power
Corporation.

DOCUMENT NO.

10573-90

11-28-90

FLORIDA PUBLIC SERVICE COMMISSION

1 APPEARANCES CONTINUED:

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5 (904) 488-9330.

6 EDWARD A. TELLECHEA and M. ROBERT CHRIST,
7 Florida Public Service Commission, Division of Legal
8 Services, 101 East Gaines Street, Tallahassee, Florida
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10 behalf of the Commission Staff.

11 CINDY MILLER, Florida Public Service
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17 REPORTED BY:

JOY KELLY, CSR, RPR
Official Commission Reporter

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P R O C E E D I N G S

(Hearing convened at 3:30 p.m.)

CHAIRMAN WILSON: Call the hearing to order.

We're here on a motion to postpone hearing and reschedule CSAR dates, filed by the Public Counsel. Take appearances of counsel.

MR. HOWE: I'm Roger Howe with the Office of Public Counsel.

MR. CHILDS: Matthew Childs of the firm of Steel, Hector and Davis, appearing on behalf of Florida Power and Light Company.

MS. KAUFMAN: Vicki Gordon Kaufman, Lawson, McWhirter, Grandoff & Reeves, appearing on behalf of Nassau Power Corporation.

MR. CHRIST: I'm Bob Christ on behalf of Commission Staff.

MR. TELLECHEA: Ed Tellechea, Staff counsel.

MS. MILLER: Cindy Miller on behalf of the Commission.

CHAIRMAN WILSON: Do we need to read a notice any more than just commenting what we're here on? All right, Mr. Howe, it's your ball.

MR. HOWE: Chairman Wilson, we had requested a postponement of a hearing and rescheduling of CSAR dates for several reasons. Mainly because this case

1 is on a very fast track. It does appear to me to be on
2 such a fast track, and expedited consideration would
3 not be fair to any of the parties concerned.

4 What Florida Power and Light has filed thus
5 far is a Letter of Intent to purchase Georgia Power
6 Company's Scherer Unit No. 4. The Letter of Intent
7 expresses the party's intentions, and how they think
8 they will proceed but it doesn't provide any concrete
9 information. The Letter of Intent also explicitly
10 states that it shall not be binding on the parties. So
11 the procedure the Commission is following in this case
12 if it sticks to the dates in the Case Assignment and
13 Scheduling Record would have the Commission go to
14 hearings on December 11, 12 and 13th without having
15 before it the definitive agreements between the
16 parties.

17 The Letter of Intent states explicitly that
18 it is contingent upon the parties entering into
19 definitive agreements by December 31st, 1990. So the
20 procedures followed by the Commission, under the
21 current schedule, would have the Commission hearings on
22 December 11 through 13 without having those definitive
23 agreements before it. We have the Commission voting on
24 February 5th, of 1991 after the definitive agreements
25 have been entered into, but without any record based on

1 those agreements.

2 The Letter of Intent states that Florida
3 Power and Light, Georgia Power, JEA and Southern
4 Companies wish to have a decision as expeditiously as
5 possible. But it appears that the drop-dead date is
6 June 30th of 1991. The Letter of Intent contemplates
7 that if decisions are not received from regulatory
8 agencies by the end of this year, that Florida Power
9 and Light will enter into unit power sales arrangements
10 with Georgia Power, and those will continue in place
11 until a final approval is received or until June 30th,
12 1991.

13 Since the critical date is June 30th of 1991,
14 there appears to be no reason for the Commission to
15 hurry to vote by February 5th of 1991, which would be
16 four months in advance of any evident drop-dead date,
17 and would also require the Commission to vote on a
18 record that does not include the definitive agreements.
19 On that basis, we request that the hearing be postponed
20 and the CSAR date be rescheduled.

21 CHAIRMAN WILSON: Ms. Kaufman, I believe you
22 filed something in support of Public Counsel's motion;
23 joined in it.

24 MS. KAUFMAN: We did, Chairman.

25 CHAIRMAN WILSON: Do you have any further

1 argument?

2 MS. KAUFMAN: Yes, I do. As you noted, we
3 joined in Public Counsel's motion. We agreed that the
4 expedited schedule that's being followed in this case
5 is not only prejudicial to the parties but it's
6 unnecessary.

7 As Mr. Howe pointed out, what I guess we're
8 now referring to the drop-dead date, is June 30th,
9 1991; over six months away. If the Commission proceeds
10 under the current schedule, they will not reach the
11 December 31, 1990 date that Florida Power and Light had
12 requested. They won't vote, as Mr. Howe pointed out,
13 until February 5th. We believe that there is plenty of
14 time before June 30th, 1991 in order to accommodate a
15 more reasonable schedule in this case.

16 I think that what's clear from what's been
17 filed in this case so far, and that would include the
18 pre-prehearing conference that the parties attended in
19 which I believe approximately 22 issues were
20 identified, is that the issues in this case are very
21 complex. And that they are going to require some
22 detailed analysis in order for an informed decision to
23 be made; and, therefore, we would join in Public
24 Counsel's motion that a more reasonable schedule be
25 followed in this case. And I think we can do that and

1 still accommodate the June 30th date. Thank you.

2 MR. CHILDS: Let me try to respond to those.

3 Commissioner, we filed our petition on
4 September the 28th, 1990. And with that petition, we
5 filed the prepared testimony of Messrs. Woody, Shapiro,
6 Dennis, Waters and Gower.

7 In the petition, we asked for expedited
8 consideration, and we filed the testimony of our
9 witnesses with the petition in order to support the
10 expedited consideration that we requested. And I make
11 that point because I think that in terms of the
12 argument that the issues are complex, and that parties
13 need additional time, that the parties have had two
14 months at least since the petition was filed with all
15 of the testimony. I don't think that it is all that
16 unusual for the Commission to permit or to have a
17 hearing held 2 or 2-1/2 months after testimony is
18 filed.

19 The other thing that I want to address in
20 terms of the prejudice to the parties in getting
21 prepared is the time between our filing, both of our
22 petition and the testimony, for discovery and that was
23 the point that was made. I think it's implicit when
24 someone says it's prejudice, and I believe it was in
25 the Office of Public Counsel's original filing.

1 We had a copy of the filing hand delivered to
2 the Office of Public Counsel on September 28th when we
3 filed. They did file to intervene not quite a month
4 later on the 22nd of October. On the day that they
5 filed their Motion to Postpone the proceeding, that was
6 the first day that they served us with discovery.

7 CHAIRMAN WILSON: What date was that?

8 MR. CHILDS: 11-9. November 9. They served
9 us with, counting all the parts, 43 interrogatories.
10 Those were mailed. On the 15th of November they served
11 us with another 68 interrogatories. I believe that
12 Public Counsel's intention is to conduct between five
13 and seven depositions between now and the time we go to
14 hearing. I believe we can accommodate them.

15 I don't want to be critical of their position
16 because I know that it's difficult getting prepared for
17 a hearing, but I think there's been substantial time,
18 and I think that, in fact, the burden has been shifted
19 back to FPL because now we're facing really a substantial
20 effort to try to answer the interrogatories, make our
21 people available for depositions, cover those depositions
22 very shortly before we're going to hearing. We have made
23 extreme effort to expedite responses to the interroga-
24 tories so that they are delivered just as fast as we have
25 them and we have done so, so far. I don't have the tally

1 as to those that we've given early, but we have been able
2 to give some early and try to respond as promptly as we
3 can.

4 I want to come back to the comment about the
5 drop-dead date, and the argument that maybe you don't
6 need to do it -- have the hearing as currently
7 scheduled.

8 In our petition and in the Letter of Intent
9 that we attached to that petition, we note that the
10 approvals associated with this transaction will include
11 those by the Securities and Exchange Commission and by
12 the Federal Energy Regulatory Commission, the FERC.

13 It's not a transaction where it's simply okay
14 if the Public Service Commission says it's all right,
15 we'll go ahead with it. There are other approvals
16 required. Those approvals are going to be necessary
17 before there can be a closing by June 30 of next year.

18 The hearing date -- and Public Counsel is
19 right in talking to you about a vote on February 5th.
20 That's when I believe your CSAR schedules the vote. If
21 we move the hearing, we move back, I believe, all other
22 times from the date the hearing is held. And I think
23 we put a real threat of not having the proceeding
24 concluded, and not having a final order from this
25 Commission in time. And I realize, and I hope you take

1 it just as argument when I say this, but Florida Power
2 and Light Company firmly believes this is an extremely
3 attractive alternative for it to pursue. It would be,
4 I believe, disadvantaged if the schedule is changed to
5 put pressure on the ability to close this transaction.
6 And I say it's argument because I'm not suggesting any
7 prejudging. But this is our thinking, is that it would
8 put extreme pressure on the ability to close the
9 transaction and to keep what we believe is a favorable
10 transaction available to FPL and its customers.

11 And for those reasons, I would urge you to
12 conclude that there has not been a prejudice
13 transferred to the other parties because of the
14 schedule. And that, in fact, a delay of this
15 proceeding could increase significantly the risk of the
16 transaction continuing to be available. Thank
17 you.

18 CHAIRMAN WILSON: What part of the discovery
19 have you been able to respond to at this point? Have
20 you done all the November 9th interrogatories, have you
21 responded to all of those as of yet?

22 MR. CHILDS: The November 9 is -- I think our
23 schedule was to have -- we haven't filed any of those
24 that were served on us on the 9th. My notes reflect
25 that seven of those, and that does not include the sub

1 parts, were supposed to be completed by today for
2 routing, but those would really not be responded to
3 until, according to my information, December the 12th,
4 which in the midst of the hearing. But we will have
5 them before the hearing.

6 Commissioner, I'm sorry, I concluded but
7 there is one thing I would like to add, if I could, on
8 the argument.

9 CHAIRMAN WILSON: (Nods head)

10 MR. CHILDS: The comment about not having the
11 definitive agreements, and it is clear that the
12 parties, Florida Power and Light Company and Georgia
13 Power, duly contemplate having definitive agreements.
14 We think we're going to have them before the hearing.
15 On the other hand, I think it's important to consider
16 that the decisions that are presented to this
17 Commission for consideration, or the evaluations in the
18 planning process, are routinely made upon the basis of
19 estimates of what technology to select, the costs
20 associated with it, the operating parameters associated
21 with those, and comparison process without there being
22 definitive agreements. And I realize that they are not
23 definitive agreements and we wish they were.

24 But on the other hand, we felt that in view
25 of the time schedule that we had and in view of what we

1 think is certainty as to those items that need to be
2 resolved between the parties and the potential
3 significance of those items as to the overall price,
4 and terms and conditions, we can give the Commission
5 and the parties a very good view of why we believe this
6 is a proper alternative and why it is, when looked at
7 by others, the proper alternative.

8 CHAIRMAN WILSON: Ms. Kaufman, have you filed
9 any discovery?

10 MS. KAUFMAN: We have not, Chairman Wilson.
11 We are scheduling depositions now. If I might comment
12 on that. One reason I believe that Nassau, and the
13 main reason that Nassau did not intervene in this
14 proceeding sooner is that, if you'll recall, the
15 Commission just voted on November 1 in regard to our
16 contract. And so part of that time we were not even
17 sure what the status of our 435 megawatt contract was.
18 And we did not want to expend the resources to become
19 involved in this proceeding unless we determined that
20 it was absolutely necessary. So we have not filed any
21 interrogatories or requests for production, but we are
22 attempting to schedule depositions now.

23 MR. CHILDS: Commissioner, we have responded.
24 The Staff started their discovery a little earlier.
25 Staff, so far as I know, has three sets of

1 interrogatories outstanding, and they started on the
2 26th of October. We have responded to eight of the
3 first 18. We've responded to two of the second 12, and
4 three, I believe, of the third set, which included
5 three questions, and intend to be able to respond to
6 the remainder by tomorrow.

7 CHAIRMAN WILSON: Ms. Kaufman, do you intend
8 to sponsor a witness?

9 MS. KAUFMAN: Yes, Chairman Wilson, we have
10 filed, in accordance with the CASR, some very brief
11 testimony. We filed that on Wednesday. Certainly it's
12 by no means the type of analysis we would do if we had
13 sufficient time to do discovery and to do a complete
14 analysis of the testimony of Florida Power and Light.

15 CHAIRMAN WILSON: Mr. Howe, have you filed
16 testimony as well?

17 MR. HOWE: Yes. We have filed the testimony
18 of two individuals, Carlton Partells, from Energy
19 Resources System Group, PSRG. I'm more familiar with
20 the acronym, and from Schef Wright.

21 In each of those testimonies the witnesses
22 state that they, as our office is, are basically forced
23 to oppose this because the data available at this time
24 is insufficient. Whether we will ultimately be in
25 opposition to Florida Power and Light's purchase of

1 Scherer Unit No. 4, we don't know. It depends on
2 whether it does turn out to be the best deal for the
3 customers.

4 CHAIRMAN WILSON: Do you have any concluding
5 argument?

6 MR. HOWE: Yes, Chairman Wilson. I'd like to
7 point out to you this is not a normal circumstance.
8 We're dealing here with a utility that has its load
9 center towards the southern part of Florida. The
10 Scherer Unit No. 4 is north of Macon, Georgia. It's a
11 long ways away from a load center.

12 There is also the fact that we're being asked
13 to proceed on a Letter of Intent that by its own terms
14 says there will be more definitive agreements. I point
15 out some of those agreements that are not normal
16 incidents of additional plant, as Mr. Childs mentioned.

17 There is to be a definitive agreement on the
18 purchase of the unit; a definitive agreement on the
19 transmission expansion service to get the power to
20 Florida, to get it through JEA to Florida Power and
21 Light; an operation and maintenance agreement; a fuel
22 supply agreement; a unit power sales agreement and an
23 assignment of JEA's UPS obligation to Southern Company
24 to Florida Power and Light. These are all the
25 definitive agreements that are going to be -- that are

1 identified in the Letter of Intent. And so I don't
2 believe this is in the nature of a normal plant
3 addition. Additionally, the capacity is identified as
4 being necessary in 1996. And we're dealing with
5 additions of capacity to Florida Power and Light's rate
6 base in 1991.

7 CHAIRMAN WILSON: When will -- if this
8 current time schedule is maintained, would you be able
9 to complete your responses to the interrogatories that
10 have been filed by the parties? First of all, Mr. Howe,
11 do you anticipate any further interrogatories being filed?

12 MR. HOWE: Perhaps I should state we've also
13 -- interrogatories have been filed by the Coalition of
14 Local Governments also.

15 CHAIRMAN WILSON: They are not here.

16 MR. HOWE: I don't believe they are here
17 today. And they have also filed testimony.

18 CHAIRMAN WILSON: They are still not here.

19 MR. HOWE: I may be filing discovery on their
20 evidentiary presentation through Mr. Wells, Pat Wells,
21 who's gone into some detail in the fuel supply
22 decisions which haven't been addressed in detail yet in
23 the discovery.

24 In conversation with Mr. Childs, I guess it
25 was last Wednesday before the Thanksgiving holiday, I

1 stated I would like to schedule depositions as quickly
2 as possible. It would be our intent to depose three of
3 the four witnesses who have prefiled testimony as well
4 as Mr. Usery of Southern Company Services and Mr.
5 Williams of Georgia Power, the two other individuals
6 who signed the Letter of Intent.

7 CHAIRMAN WILSON: All right. And when will
8 those take place?

9 MR. HOWE: We haven't set a date as yet. One
10 of the things we discussed, I believe, was that next
11 week some of Florida Power and Light's witnesses are
12 going to be in the ICL hearings. Is that correct?

13 MR. CHILDS: Would you like to do them this
14 week all on one day?

15 MR. HOWE: Yeah. I said that we could try to
16 do them this week. I think we will need close to one
17 day for each.

18 MR. CHILDS: Make them all available -- if
19 you have the people to take the depositions, we'll make
20 them all available.

21 MR. HOWE: Okay. We could perhaps then
22 schedule them for this week. Now, what comes out of
23 those depositions, I'm sure you're familiar with --
24 aware that documents may be referred to, individuals
25 may be referred to that necessitates further deposition

1 and discovery.

2 MS. KAUFMAN: Chairman Wilson, Nassau would
3 point out that they are involved heavily in the
4 Indiantown hearing that's scheduled for next week. And
5 I'm not sure what our availability will be to dispatch
6 personal to depositions in the Scherer case the week
7 preceding that other hearing.

8 CHAIRMAN WILSON: I have the same problem,
9 I'm involved in them too.

10 When Mr. Childs do you -- can you commit to
11 -- if we maintain the current schedule, responding to
12 interrogatories, discovery that had been filed by the
13 parties?

14 MR. CHILDS: Commissioner, I don't have a
15 commitment date. I will put it -- try to explain it
16 this way: One of the requests that -- Mr. Howe
17 mentioned the Coalition of Local Governments, I think
18 that's due the 24th, which is after the hearing. The
19 second set of Public Counsel is due on the 14th and the
20 first is due on the 12th, which is, you know, right in
21 the middle of the hearing. We intend to make all those
22 answers available prior to the commencement of the
23 hearing and as soon as possible. We have I can't say
24 that I'll have all the answers by this Friday. I'd
25 like to but if their answers are completed and

1 available we will.

2 This is a substantial number of interrogatories.
3 Over hundred interrogatories by the Office of Public
4 Counsel, so it takes a significant amount of effort, but
5 we will have them before the hearing, and as soon as
6 possible.

7 CHAIRMAN WILSON: Were the interrogatories
8 served on the 13th mailed or hand delivered?

9 MR. CHILDS: The interrogatories, the first
10 set, was dated the 9th of November and they were
11 mailed.

12 MR. HOWE: If I might on that point, we did
13 mail them but I'm just operating on representations --
14 I had my secretary call and I thought, Matt, that she
15 had arranged for somebody from your office to come over
16 and pick them up.

17 MR. CHILDS: No. Roger, I don't know that
18 she called. I know they were mailed and I got them
19 stamped in on the 12th.

20 MR. HOWE: I apologize.

21 MR. CHILDS: And the second set was hand
22 delivered, they're dated the 15th. That's when we got
23 them.

24 CHAIRMAN WILSON: Is the second set mailed or
25 hand delivered.

1 MR. CHILDS: Hand delivered.

2 MR. HOWE: I think both. We mailed a copy
3 and then what we do is we have called your office and
4 asked that you be nice enough to send somebody over to
5 pick them up.

6 MR. CHILDS: That's hand delivered?

7 MR. HOWE: I think that's how it works.

8 MR. CHILDS: And we do it, right.

9 MR. HOWE: As far as I know. I never
10 questioned it. (Laughter)

11 CHAIRMAN WILSON: Well, I haven't heard
12 anything that would compel postponing the hearing.

13 I'm taking, Mr. Childs, your representations
14 to be a commitment to provide the answers to these
15 interrogatories and this discovery prior to hearing.
16 During the hearing, if as a result of information that
17 has come out in discovery or interrogatories, the
18 witnesses for either Public Counsel or Nassau Power
19 must go beyond the originally filed testimony, we will
20 be mindful of the fact you have had discovery come in
21 prior to the filing of that testimony, and we'll be
22 lenient with respect to that. Otherwise we're going to
23 stick to this schedule.

24 MR. CHILDS: Thank you.

25 CHAIRMAN WILSON: So the motion is denied.

1 Thank you all.

2 Mr. Childs, that also includes a commitment
3 that as interrogatories or discovery is ready, it would
4 be forwarded to Public Counsel or to Nassau Power and
5 not wait until the last moment or until everything is
6 ready at one time. But as individual items are ready,
7 you would provide that to the parties.

8 MR. TELLECHEA: I'd like the record to
9 reflect that I notified everyone by telephone -- was it
10 last -- actually the week before last that there would
11 be oral arguments held today. All parties were
12 notified.

13 CHAIRMAN WILSON: I should have called on you
14 earlier to determine what kind of notice had been given
15 for this. I appreciate your reminding me. Okay.
16 Thank you. We're adjourned.

17 (Whereupon, hearing adjourned at 4:00 p.m.)

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1 F L O R I D A)
:
2 COUNTY OF LEON)

CERTIFICATE OF REPORTERS

3 I, JOY KELLY, CSR, RPR, Official Commission
4 Reporter

5 DO HEREBY CERTIFY that the Oral Argument, in the
6 captioned matter, Docket No. 900796-EI, was heard by the
7 Florida Public Service Commission Prehearing Officer at
8 the time and place herein stated; it is further

9 CERTIFIED that I reported in shorthand the
10 proceedings held at such time and place; that the same has
11 been transcribed under my direct supervision, and that
12 this transcript, consisting of 20 pages, constitutes a
13 true and accurate transcription of my notes of said
14 proceedings; it is further

15 CERTIFIED that I am neither of counsel nor
16 related to the parties in said cause and have no interest,
17 financial or otherwise, in the outcome of this docket.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 at Tallahassee, Leon County, Florida, this 28th day of
20 November, A.D., 1990.


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