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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power and Light Company for determination of need for proposed electrical power plant and related facilities - Lauderdale repowering project.	DOCKET NO. 890973-EI
In re: Petition of Florida Power and Light Company for determination of need for proposed electrical power plant and related facilities - Martin Expansion project.	DOCKET NO. 890974-EI ORDER NO. 22267 ISSUED: 12-5-89

ORDER ON MOTION TO CONSOLIDATE
AND
REQUEST FOR ORAL ARGUMENT

On October 18, 1989, Florida Power and Light Company (FPL) filed a memorandum in support of its motion to consolidate the above-captioned dockets for hearing and its request for oral argument on that motion before the prehearing officer, Commissioner Betty Easley. FPL filed its motion for consolidation on July 25, 1989, simultaneous with the filing of its petitions for need determinations for two proposed electric power plants: the repowering of its Ft. Lauderdale plant (Lauderdale repowering, Docket No. 890973-EI) and new construction at its Martin site (Martin expansion, Docket No. 890974-EI). Our Staff filed its response to the motion to consolidate on November 21, 1989. The Office of Public Counsel (OPC) and Metropolitan Dade County (Dade) have been granted intervention in both of these dockets. [Orders Nos. 22097 and 21826 in Docket No. 890973-EI; Orders Nos. 22098 and 21837 in Docket No. 890974-EI.)

ORAL ARGUMENT

Pursuant to Rule 25-22.058, Florida Administrative Code, the Commission, or any member of the Commission acting as prehearing officer, may grant oral argument upon request of any party to a Section 120.57, Florida Statutes, hearing. The standard to be used in granting such a request is whether oral argument would "aid the Commission in comprehending and evaluating the issues raised by exceptions or responses." Rule 25-22.058(1), Florida Administrative Code. Granting oral

argument on pleadings is entirely discretionary with the trier of fact. Having reviewed the extensive pleadings filed by (FPL) in this docket and Staff's response, we find that oral argument is not necessary and deny FPL's request.

CONSOLIDATION

In its pleadings FPL makes several arguments in support of its motion for consolidation. First, FPL points out that the two need determination petitions are based upon the same generation expansion plan. Separate hearings on the two dockets, the Ft. Lauderdale repowerings and the Martin expansion units, would subject the Commission to a "rehearing" of the same information since both involve common issues of fact and law. The same would also be true, FPL continues, if only Martin Units 3 and 4 were heard in conjunction with the Ft. Lauderdale repowering. Unless all proposed Martin units are heard with the Ft. Lauderdale repowering, FPL argues that it will also be required to file additional need applications with DER since the processing of a need application with DER is contingent upon a finding of need by the Commission. In short, FPL argues that any bifurcation of these petitions would result in an expensive duplication of effort on behalf of two state agencies.

Second, FPL argues that unless these dockets are consolidated, its ability to present and justify its need determination request for the Ft. Lauderdale repowering and Martin Units 3 and 4 will be hindered. This is so, FPL states, because FPL is certain that the units are needed, but uncertain as to exactly in which year they will be needed within the 1993-1996 time period. FPL goes on to state that the timing of the units could be altered by licensing and construction lead times, economic factors and the results of its Request for Power Supply Proposals (RFP). The RFP is written to indicate that although FPL prefers that the electric energy and capacity become available in 1996, FPL will accept proposals in which energy and capacity become available from 1994 to 1997. The proposals are due to be filed with FPL on January 5, 1990 and screened down to a "short list" of bidders in April of that year. Should the bidding process be successful, the contracts would be executed in December of 1990.

Third, FPL argues that it will be unable to present a comprehensive evaluation of the expected environmental impacts

to DER unless all units are considered by the Commission. As mentioned above, DER will not license units unless the Commission has certified the need for those units first. Fourth, if the Commission were to determine the need for all of the units, this decision would be approximately six years in advance of the 1996 unit, a time period comparable to previous need determination decisions. Fifth, consideration of both dockets would insure that the Commission would be able to meet its five-month statutory deadline imposed by Section 403.507, Florida Statutes. Finally, FPL argues that no matter what the results of the RFP process, FPL will have to construct all of the units at the Martin site. At best, a successful RFP will only defer Units 5 and 6 out to the 1996-1998 time period. Thus, FPL concludes, waiting for the results of the RFP, as Staff suggests, is unneccessary.

Our Staff has taken the position that the request for the consolidation of these two dockets should be granted in part and denied in part. FPL should be allowed to present evidence at the currently scheduled March hearings in Docket No. 890973-EI and evidence which addresses the 1994 and 1995 planned expansions of the Martin site, Martin Units 3 and 4. This has been labeled by FPL as Option B and discussed on page 21 of their memorandum.

We agree with our Staff. Although it is true that the series of units proposed in the need determination dockets before us are all the result of the same generation expansion plan, we are not persuaded that that fact alone justifies our consideration at this time of all of the units in light of our statutory requirements. Section 403.519, Florida Statutes, requires that we "shall take into account . . . whether the proposed plant is the most cost-effective alternative available." Rule 25-22.081 requires a discussion of the major available generating alternatives including purchases, and "an evaluation of each alternative in terms of economics, reliability, long term flexibility and usefulness. . ." Clearly, the RFP represents an "available generating alternative" to the construction of Units 5 and 6 which should be completed prior to our consideration of the cost-effectiveness of those units.

We are willing to consider the need for the Lauderdale repowering and Martin Units 3 and 4 at this time since FPL has

represented in its memorandum that the RFP process cannot be realistically expected to produce viable options to those units. That statement is premised on the assumption that there is no existing capacity available in the state or elsewhere which with little or no modification could meet the needs of FPL beginning in 1993. If capacity does not already exist, then the short lead time, three to five years, for the construction of new capacity would make it almost impossible for the bidding process to reach a conclusion and licensing and construction to be completed by an outside party to satisfy those needs.

This conclusion is supported by the fact that in its RFP FPL has stated that the bidder would be responsible for obtaining the necessary need determination and would not be allowed to construct capacity at FPL's Martin site. Thus, even were we to consider the need for Units 5 and 6, we would potentially be certifying a need which would be filled by another entity at another site. Therefore, consistent with this Commission's ruling in Order No. 19468, we find that the RFP process must be complete before we reach the merits of a need application for Martin Units 5 and 6. In re: Petition of Seminole Electric Cooperative, Inc., Tampa Electric Company and TECO Power Services to determine need for electrical power plant, Order No. 19468, issued on June 8, 1988 at pages 3-6.

FPL further argues that it will be required to prepare and try two need determination cases before both the Commission and DER within a short time if these dockets are not consolidated and all units are not ruled upon. Under this ruling, FPL will be required to file an additional need determination application with both this agency and DER in the spring of 1991, approximately one year after the scheduled hearing for the Lauderdale repowering and Martin Units 3 and 4. Pursuant to Chapter 403 and DER procedural rules, however, FPL can go forward at this time and seek ultimate site certification for the Martin site consistent with the construction of Units 5 and 6. This ultimate site certification will allow FPL to streamline its 1991 need determination application at DER, decreasing the licensing time by approximately three months, and giving FPL grandfathered rights regarding some air quality control standards. Again, we note that FPL has stated in its RFP that a successful bidder is responsible for the permitting and licensing of its capacity at

its own site. FPL should be able to successfully site the Martin Unit 5 and 6 projects in the same time that its bidders can site capacity which fills the same need.

We find unpersuasive the arguments that failure to fully consolidate will hinder FPL's ability to present a comprehensive evaluation of either its generation expansion plans before this body or the expected environmental impacts before DER. There is nothing to prohibit FPL from giving an explanation of its current generation expansion plan if it believes that such information will be beneficial to the Commission's understanding of its case, and we would urge it to do so. We also find FPL's timeliness argument to be without merit. As is stated in FPL's memorandum, it does not expect to file its certification applications with DER until December 1 and 31, respectively, for the Lauderdale and Martin units. The current hearings are set for March of 1990. That will give us more than enough time to meet the five month statutory deadline imposed by Chapter 403.

We wish to make clear that this ruling does not relieve FPL of presenting testimony on the progress of the RFP in the March hearing. This RFP may have some impact on the 1994 or 1995 Martin units proposed by FPL. This would be true, for example, if prior to the hearing date FPL had concluded that it had a viable bidder for capacity in the years 1994 or 1995.

Under the current need determination statutes, the Commission is required to make certain findings both as to need and as to the most economic means of meeting that need. Based upon current available information, Option B as described above provides the Commission with the proper procedural vechicles to do so.

Based upon the above, it is

ORDERED by Commissioner Betty Easley, Prehearing Officer, that the motion for consolidation filed by Florida Power and Light Company is granted in part and denied in part as discussed in the body of this order. It is further

ORDERED that the request for oral argument on its motion for consolidation filed by Florida Power and Light Company is hereby denied.

By Order of Commissioner Betty Easley, Prehearing Officer, this 5th day of DECEMBER, 1989.

Betty Easley

BETTY EASLEY, Commissioner and
Prehearing Officer

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