

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of)	DOCKET NO. 900731-EQ
cogeneration agreement between FLORIDA)	
POWER & LIGHT COMPANY and INDIANTOWN)	ORDER NO. 23711
COGENERATION, L. P.)	
<hr/>		ISSUED: 10-31-90

ORDER ON PREHEARING PROCEDURE

Pursuant to the provisions of Rule 25-22.038, Florida Administrative Code, all parties and Staff are hereby required to file with the Director of Records and Reporting a prehearing statement on or before November 15, 1990. Each prehearing statement shall set forth the following:

- (a) all known witnesses that may be called and the subject matter of their testimony;
- (b) all known exhibits, their contents, and whether they may be identified on a composite basis and witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue;
- (f) a statement of each policy question the party considers at issue and which of the party's witnesses will address the issue;
- (g) a statement of the party's position on each issue identified pursuant to paragraphs (d), (e) and (f) and the appropriate witness;
- (h) a statement of issues that have been stipulated to by the parties;
- (i) a statement of all pending motions or other matters the party seeks action upon; and

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- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefor.

The original and fifteen copies of each prehearing statement must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of November 15, 1990. Failure of a party to timely file a prehearing statement shall be a waiver of any issues not raised by other parties or by the Commission Staff. In addition, such failure shall preclude the party from presenting testimony in favor of his or her position on such omitted issues. Copies of prehearing statements shall also be served on all parties. Prehearing statements shall substantially conform to the Florida Rules of Civil Procedure requirements as to form, signatures, and certifications.

In addition to the filing with the Division of Records and Reporting, each party shall file a copy of its Prehearing Statement with the Division of Legal Services, Room 226, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0863, on computer diskette formatted to the specifications of Word Perfect Version 5.1.

This docket shall be and is hereby consolidated with Docket No. 900709-EQ (Joint Petition of Indiantown Cogeneration, L. P. and Florida Power and Light Company for Proposed Electrical Power Plant and Related Facilities - Indiantown Project) for the purposes of pre-filing exhibits and testimony and for the conduct of the prehearing and hearing. The parties shall file separate Prehearing Statements, Proposed Recommended Orders and subsequent pleadings as appropriate. If a party is sponsoring testimony or an exhibit which will be offered as evidence in both proceedings it shall be filed in Docket No. 900709-EQ and identified as being applicable to both the need determination and contract approval.

Each party is required to prefile all exhibits and all direct testimony it intends to sponsor in written form. Prefiled testimony shall be typed on standard 8 1/2 x 11 inch transcript quality paper, double spaced, with 25 numbered lines, in question and answer format, with a sufficient left margin to allow for binding. An original and fifteen copies of each witness' prefiled testimony and each exhibit must be received by the Director of

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Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the due date. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony. Copies of all prefiled testimony shall also be served by the sponsoring party on all other parties. Direct testimony of Staff and all Intervenors must be filed with the Director of Records and Reporting on or before November 6, 1990. Finally, rebuttal testimony, if any, must be filed on or before November 15, 1990.

A final prehearing conference will be held beginning at 9:30 a.m., November 27, 1990, in Room 106, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, will be met in this case and the following shall apply:

- (1) Any party who fails to attend the final prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in his or her prehearing statement.
- (2) Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: he or she was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issues; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.
- (3) Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith

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to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, he or she shall bring that fact to the attention of the prehearing officer. If the prehearing officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify his or her position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in his or her post-hearing statement.

To facilitate the management of documents in this docket, parties and Commission Staff shall submit an exhibit list with their respective prehearing statements. Exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the Exhibit Number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 870675-EQ
J. Doe Exhibit No. _____
Cost Studies for Minutes Of Use by Time of Day

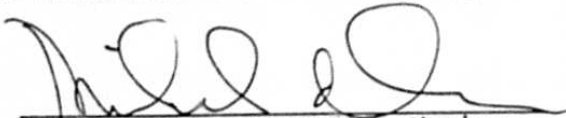
The following dates have been established to govern the key activities of this proceeding in order to maintain an orderly procedure.

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1. October 24, 1990 - Direct Testimony to be filed
2. November 6, 1990 - Staff/Intervenor Testimony to be filed
3. November 15, 1990 - Prehearing Statements to be filed
4. November 15, 1990 - Rebuttal Testimony
5. November 27, 1990 - Prehearing Conference
6. December 5-7, 1990 - Hearings

Attached to this order as Appendix "A" is a tentative list of the issues which will be addressed in this proceeding. Prefiled testimony and prehearing statements shall be addressed to the issues set forth in Appendix "A".

By ORDER of Chairman Michael McK. Wilson, Hearing Officer,
this 31st day of OCTOBER, 1990.



MICHAEL MCK. WILSON, Chairman
and Hearing Officer

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APPENDIX "A"

LIST OF ISSUES

ISSUE 1: (LEGAL ISSUE) What is the appropriate standard of economic comparison by which to judge the ICL contract?

ISSUE 2: Over the life of the ICL/FPL contract, will the cumulative present worth of the firm capacity and energy payments be equal to or less than the value of deferral of the capacity to be avoided or deferred by the contract?

ISSUE 3: Does the ICL/FPL contract contain adequate security provisions to protect FPL's customers in the event ICL fails to perform?

ISSUE 4: Is the ICL/FPL contract reasonable, prudent and in the best interest of the FPL's ratepayers?

ISSUE 5: Should FPL be allowed to recover from its customers all payments for energy and capacity in connection with the ICL/FPL contract?

ISSUE 6: Should FPL be required to resell to another utility energy and capacity purchased under the ICL/FPL contract, if it is in the best interest of FPL's customers to retain the power?

ISSUE 7: Should the cogeneration agreement between FPL and ICL be approved?