

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of cogen-)	DOCKET NO. 900731-EQ
eration agreement between Florida Power)	ORDER NO. 23831
& Light Company and Indiantown)	ISSUED: 12-4-90
Cogeneration, L.P.)	
_____)	

Pursuant to Notice a Prehearing Conference was held on November 27, 1990, in Tallahassee, Florida, before Chairman Michael McK. Wilson, Hearing Officer.

APPEARANCES:

CHARLES GUYTON, ESQUIRE and MATTHEW CHILDS, ESQUIRE, Steel, Hector and Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1804
On behalf of Florida Power & Light Company

RICHARD D. MELSON, ESQUIRE and CHERYL G. STUART, ESQUIRE, Hopping, Boyd, Green and Sams, Post Office Box 6526, Tallahassee, Florida 32314
On behalf of Indiantown Cogeneration, L.P.

ROBERT V. ELIAS, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff

PRENTICE PRUITT, Esquire, Office of the General Counsel, 101 East Gaines Street, Tallahassee, Florida 32399-0863
Counsel to the Commissioners

DOCUMENT NUMBER-DATE

10712 DEC -4 1990

PSC-RECORDS/REPORTING

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PREHEARING ORDER

Background

On August 9, 1990, Florida Power & Light Company (FPL) and Indiantown Cogeneration, L.P. (ICL) filed a joint petition for a determination of need for a proposed electrical power plant and related facilities located in Martin County, Florida pursuant to Section 403.519, Florida Statutes. The proposed facility will be located near Indiantown, Florida and will be owned and operated by ICL. The proposed unit has a projected in-service date of December 1, 1995. On August 27, 1990 FPL filed a petition seeking approval of the power sales agreement executed by FPL and ICL concerning this same project. By Order, the two dockets were consolidated for the purpose of hearing. Without opposition, ICL intervened in the contract approval docket. On November 1, 1990 the Commission determined that Nassau Power Corporation (Nassau) by virtue of its June 13 filing of an executed standard offer power sales contract had first priority with respect to the right to sell 435 megawatts of electricity required by utilities in lieu of the 1996 statewide avoided unit. On November 6, 1990 Nassau filed amended petitions to intervene in both the need determination and contract approval docket. At the Prehearing Conference, both petitions were granted.

Use of Prefiled Testimony

All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits, unless there is a sustainable objection. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his testimony at the time he or she takes the stand.

Use of Depositions and Interrogatories

If any party seeks to introduce an interrogatory or a deposition, or a portion thereof, the request will be subject to proper objections and the appropriate evidentiary rules will govern. The parties will be free to utilize any exhibits requested at the time of the depositions, subject to the same conditions.

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Order of Witnesses

The witness schedule is set forth below in order of appearance by the witness' name, subject matter, and the issues which will be covered by his or her testimony.

ICL

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
J. P. Kearney	Overview of ICL and Indiantown Project; corporate strengths and experience of ICL and PGE/Bechtel; policy matters.	3, 4, 5, 7
S.A. Sorrentino	Details of Indiantown Project; project site; plant facilities; power sales agreement; steam customer; fuel supply; interconnection; associated facilities; project cost and schedule; benefits of project.	3,4,5,7
J. R. Cooper	Project financing structure; ability to finance project.	3,4,5,7

FPL

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
G. R. Cepero	Requests and supports findings sought by FPL regarding the ICL contracts.	1,2,3,4, 5,6,7
S. S. Waters	FPL's need for power from Indiantown Cogeneration, L.P. (ICL) Economics of the ICL contract and other generating alternatives Other benefits of the ICL contract	1,2,4,7

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EXHIBITS

<u>EXHIBIT</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
()	Kearney	Portions of Exhibit 1 to joint petition to determine need for electrical power plant (August, 1990)
(JPK-1)	Kearney	Sections 1.1.1 to 1.1.3 Organization Structure
(JPK-2)	Kearney	Bechtel Cogeneration Projects
(JPK-3)	Kearney	PGE/Bechtel Generating Company Advanced Projects
()	Kearney	Map of PGE/Bechtel Generating Company Projects
()	Sorrentino	Portions of Exhibit 1 to joint petition to determine need for electrical power plant (August, 1990)
()	Sorrentino	Section 1.0 (portions relating to ICL) Sections 1.3.1 to 1.3.8 Section 1.3.10 Section 1.6
()	Sorrentino	Photograph of Plant Site
(SAS-1)	Sorrentino	Location Map

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<u>EXHIBIT</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(SAS-2)</u>	Sorrentino	Site Plan
<u>(SAS-3)</u>	Sorrentino	Comparison Between ICL Contract and Standard Offer Contract
<u>(SAS-4)</u>	Sorrentino	ICL Project Schedule
<u>(SAS-5)</u>	Sorrentino	ICL Agreement in Principle with Caulkins Citrus
<u>(SAS-6)</u>	Sorrentino	ICL (Bechtel) Letter of Intent with Caulkins Citrus
<u>(SAS-8)</u>	Sorrentino	ICL Letter of Intent with CXS Railroad
<u>(SAS-9)</u>	Sorrentino	ICL Letter of Intent with Indiantown Gas
<u>()</u>	Cooper	Portions of Exhibit 1 to joint petition to determine need for electrical power plant (August, 1990). - Section 1.3.9
<u>(GRC-1)</u>	Cepero	Composite Exhibit Consisting of:
	Document No. 1	Agreement for the purchase of firm capacity and energy between Indiantown Cogeneration, L.P. and Florida Power & Light Company

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<u>EXHIBIT</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
	Document No. 2	Graph Illustrating Performance Based capacity pricing provisions of the ICL/FPL Agreement
	Waters	Composite Exhibit Consisting of:
<u>(SSW-1)</u>	Document No. 1	Summary of FPL's Summer Peak Demand, Winter Peak Demand and Net Energy for Load Forecast
	Document No. 2	FPL's Fuel Forecast
	Document No. 3	FPL's Annual Targets for Non-Firm Service Programs
	Document No. 4	FPL's Financial and Economic Assumptions
	Document No. 5	Summary of FPL Assumptions on Cost and Performance of New Generating Units
	Document No. 6	Loss of Load Probability Graph
	Document No. 7	FPL Expansion Plans with and without Potential Qualifying Facilities
	Document No. 8	Graph of Relative Economics of ICL Project and FPL's 1996 IGCC Unit

STATEMENTS OF BASIC POSITIONS

Florida Power & Light Company (FPL): The ICL/FPL contract is a vigorously negotiated contact that has a number of unique and

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beneficial features. It facilitates the development of cost-effective, reliable QF capacity in Florida, and it satisfies the Commission's stated preference for negotiated contracts. The ICL/FPL contract meets the criteria for contract approval and cost recovery in Rule 25-17.083(2). The costs associated with the ICL contract are also less than the costs associated with the unit FPL would build to meet its capacity need. The Contract should be approved. Cost recovery should be authorized, and the findings requested by FPL should be made.

Indiantown Cogeneration, L.P. (ICL): The Agreement for Purchase and Sale of Capacity and Energy ("Agreement") between Indiantown Cogeneration, L.P. and Florida Power & Light Company should be approved. That contract provides a reliable source of capacity and energy to FPL at substantial savings compared to its own avoided cost. The Commission should also make affirmative findings on Issues 3 through 6, since such findings are a condition precedent to FPL's obligations under the Agreement.

STAFF: Staff takes no basic position at this time.

STATEMENT OF ISSUES AND POSITIONS

ISSUES OF FACT

Sufficiency of the Data

ISSUE 1: Will the purchase of firm energy and capacity under the ICL/FPL contract result in the economic deferral or avoidance of capacity construction?

FPL: Yes, both FPL and the State of Florida have a need for additional capacity in 1996, and the ICL contract is more cost effective than either the capacity FPL would build to meet its need or the statewide avoided unit. Moreover, the ICL contract would result in the economic deferral or avoidance of those units. (Waters)

ICL: Agree with FPL.

STAFF: No position at this time.

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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 the year-by-year deferral of the capacity to be avoided or deferred by the contract?

FPL: Yes, this is true regardless of whether an FPL specific unit or the statewide avoided unit would be the unit avoided or deferred by the contract. (Waters)

ICL: Yes, by approximately \$90 million.

STAFF: No position at this time.

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

FPL: Yes, the ICL/FPL contract contains myriad security provisions designed to protect FPL's customers in the event ICL fails to perform, as well as a number of provisions designed to assure ICL's performance. This is the maximum security FPL could negotiate with ICL, and the Commission should find it to be adequate. (Cepero)

ICL: Yes. The contract contains numerous security provisions to protect FPL and its customers. These include: a series of milestones that ICL is contractually obligated to meet, culminating in the commercial operation date of the facility; \$9 million of security for payment of \$750,000 per month in liquidated damages in ICL fails to begin commercial operation according to the terms and conditions of the agreement; security of up to \$50 million against ICL's obligation to pay a termination fee to FPL in the event the Agreement were prematurely terminated; a \$5 million cash reserve fund to ensure continued QF status and a \$30 million cash reserve fund to support major overhauls of the plant, on which FPL has a lien to secure all of ICL's obligations to FPL; a 10% minimum equity requirement; and a second mortgage in favor of FPL to secure all of ICL's obligations to FPL. (Kearney, Sorrentino, Cooper).

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STAFF: No position at this time.

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

FPL: Yes. The contract is the result of extensive negotiations with a proven QF developer. FPL has negotiated provisions that provide assurance that the project will be timely built, operate reliably, operate when needed most and operate to minimize total production costs. There are a number of negotiated contract provisions that enhance the value of this contract to FPL and its customers, and the cost under the contract is less than the cost FPL would incur to build its own capacity or the cost of the statewide avoided unit. (Cepero, Waters)

ICL: Yes. The contract provides a reliable and cost-effective means of meeting a portion of FPL's need for additional capacity in 1996. In addition to being less costly than FPL's own avoided unit, the contract contains a number of features that are of value to FPL and its ratepayers. These includes: dispatchability; pay-for-performance provisions with substantial incentives for high capacity factor and on-peak operation; operational and other provisions designed to insure the capability of high capacity factor operation; and numerous financial provisions, restrictions and security provisions designed to protect FPL and its ratepayers. In addition, the project is backed by sponsors with substantial experience in all phases of the electric power business; is ideally located close to FPL's load center; and is based on a proven coal-fired technology that uses a stable domestically-sourced fuel. (Kearney, Sorrentino, Cooper)

STAFF: No position at this time.

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

FPL: Yes. The contract is prudent for cost recovery purposes and satisfies all appropriate criteria. (Cepero)

ICL: Yes. (Kearney, Sorrentino, Cooper)

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STAFF: No position at this time.

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?

FPL: No. If it is in the best interest of FPL's customers for FPL to retain the power provided by ICL, FPL should do so and should not be required to resell such power.

ICL: No.

STAFF: No.

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

FPL: Yes. (Cepero, Waters)

ICL: Yes. (Kearney, Sorrentino, Cooper)

STAFF: No position at this time.

Issue of Law

ISSUE 8: In determining QF contract prudence and cost recovery pursuant to Rule 25-17.083(2), may the Commission consider as the basis for comparison a utility specific unit, or must it use a statewide avoided unit?

FPL: The criteria for contract prudence and cost recovery in Rule 25-17.083(2) are "generally" applicable. Given the Commission's interpretation of the Power Plant Siting Act to the effect that the Commission should consider an individual utility's need for power when determining the need for a QF selling to a utility, and given the Commission's decision to consider contract approval and need determinations for QFs contemporaneously, the Commission may also consider utility specific avoided costs in determining QF contract prudence and cost recovery.

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ICL: Yes. The ICL contract is designed to meet FPL's need for additional capacity in 1996. That need would otherwise be met by an FPL-constructed IGCC unit. Under Order No. 22341, the purchasing utility's avoided cost is the appropriate basis of evaluation for need determination purposes. That same standard of evaluation, FPL's own avoided cost associated with its 1996 IGCC unit, should be used for contract approval purposes. This consistency in the economic standard is logical and appropriate, and nothing in the Commission's rules or policies requires a different result.

It is inappropriate to compare the ICL contract to the standard offer price in effect at the time the contract was signed. That price was based on a 1993 combined cycle unit and ICL's project does not meet a 1993 need.

It is also inappropriate to compare the ICL contract to the standard offer price for 1996 established after its contract was signed. To use that price as a basis for comparison would give the Commission's redesignation of the statewide avoided unit an unfair retroactive effect.

ICL reserves the right to develop its position on this legal issue more fully in its post-hearing brief.

STAFF: No position at this time.

E. Stipulated Issues

None at the present time.

F. Pending Motions

None.

G. Other Matters

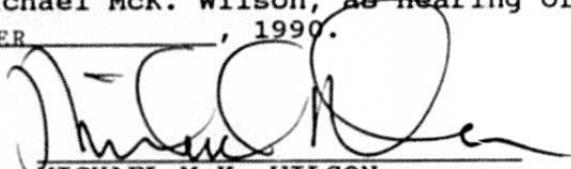
Subsequent to the Prehearing Conference, Nassau Power Corporation withdrew from this docket.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that these proceedings shall be governed by this Order unless modified by the Commission.

By ORDER of Chairman Michael McK. Wilson, ~~as~~ Hearing Officer
this 4th day of DECEMBER, 1990.



MICHAEL MCK. WILSON,
Chairman and Hearing Officer

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