

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for
Determination of Need for an
Electrical Power Plant in
Okeechobee County by Okeechobee
Generating Company, L.L.C

DOCKET NO. 991462-EU
ORDER NO. PSC-00-0291-PCO-EU
ISSUED: February 11, 2000

ORDER ON INTERVENORS' MOTIONS TO COMPEL, PETITIONER'S MOTIONS FOR
PROTECTIVE ORDER, AND MOTION FOR LEAVE TO FILE ADDITIONAL
INTERROGATORIES

I. BACKGROUND

On September 24, 1999, Okeechobee Generating Company, L.L.C. ("OGC"), filed a Petition for Determination of Need for an Electrical Power Plant. OGC proposes to construct a 550 megawatt natural gas-fired, combined cycle electrical power plant in Okeechobee County, Florida, to commence commercial operation in April 2003. An administrative hearing on OGC's petition is set for March 20-22, 2000.

By Order No. PSC-99-2153-PCO-EU, issued November 4, 1999, Florida Power & Light Company ("FPL"), Florida Power Corporation ("FPC"), Tampa Electric Company, and the Legal Environmental Assistance Foundation, Inc., were granted leave to intervene in this docket. The parties have filed several motions concerning the production of certain items and responses pursuant to discovery requests made in this docket, as set forth below.

On November 12, 1999, FPC filed a Motion to Compel OGC to respond to certain discovery requests to which OGC objected ("FPC's First Motion to Compel"). On November 18, 1999, OGC filed a Motion for Enlargement of Time to file its response to FPC's First Motion to Compel. There was no objection to OGC's motion. On November 22, 1999, OGC filed its Response to FPC's First Motion to Compel, arguing that FPC's motion should be denied in its entirety.

On January 18, 2000, FPC filed another Motion to Compel OGC to respond to FPC's Second Request for Production of Documents ("FPC's Second Motion to Compel"). On January 25, 2000, OGC filed its Response to FPC's Second Motion to Compel, requesting that FPC's Second Motion to Compel be denied.

On November 23, 1999, FPL filed its Motion to Compel OGC to respond to certain requests in FPL's First and Second Sets of Interrogatories and First and Second Requests for Production of Documents ("FPL's First Motion to Compel"). In its motion, FPL

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asserts that OGC submitted its responses to the above interrogatories and production requests on November 16 and 17, 1999, but refused to provide complete responses to most of FPL's discovery requests. On November 30, 1999, OGC filed its Response to FPL's Motion to Compel, asserting that FPL's motion should be denied in its entirety. On January 5, 2000, FPL filed a Supplemental Motion to Compel responses by OGC to certain discovery requests ("FPL's Supplemental Motion to Compel"). On January 18, 2000, OGC filed its Response to FPL's Supplemental Motion to Compel, stating that it should be denied and that a portion of the motion is now moot.

On December 6, 1999, FPL filed its Motion for Leave to Propound Additional Interrogatories Upon OGC, requesting that we grant leave to serve an additional 200 interrogatories upon OGC. On December 13, 1999, OGC filed its Response to FPL's Motion for Leave to Propound Additional Interrogatories, requesting that it be denied on the grounds that FPL failed to demonstrate good cause for expanding the number of interrogatories in this case.

On December 21, 1999, FPL filed a Motion to Compel OGC to respond to FPL's Third and Fourth Sets of Interrogatories and Third Request for Production of Documents ("FPL's Second Motion to Compel"). On December 27, 1999, OGC filed a Motion for Enlargement of Time to file its response to FPL's Second Motion to Compel. There was no objection to OGC's motion. On January 4, 2000, OGC filed its Response to FPL's Second Motion to Compel, stating that it should be denied in its entirety.

On December 23, 1999, OGC filed its First Motion for Protective Order to limit the conditions under which Altos Management Partners, Inc. ("Altos") and MarketPoint, Inc. ("MarketPoint") will make available certain computer models used in support of OGC's petition for determination of need, and to limit the use that may be made of those models and of the results of analyses prepared by other parties. On December 29, 1999, FPL filed a Motion for Enlargement of Time to respond to OGC's First Motion for Protective Order. There was no objection to FPL's motion. On January 5, 2000, FPL and FPC filed responses to OGC's First Motion for Protective Order.

On January 18, 2000, OGC filed its Second Motion for Protective Order, to prohibit discovery by FPL and FPC of certain confidential, proprietary business information and trade secrets of PG&E Generating Company, L.L.C. On January 25, 2000, FPL and FPC filed responses to OGC's Second Motion for Protective Order, both

requesting that OGC's motion be denied.

On February 7, 2000, Oral Argument was heard by this Prehearing Officer, concerning these motions. FPL's motions to compel, FPC's motions to compel, and OGC's motions for protective order revolve around three particular matters in dispute: (1) production of certain computer models relied upon by OGC witness Dale M. Nesbitt; (2) production of certain documents that OGC considers highly sensitive, proprietary, confidential business information; and (3) responses to certain requests for admissions propounded upon OGC by FPC.¹ This Order first addresses these motions. Rather than address each particular motion individually, this Order addresses the three areas in dispute. This Order then addresses FPL's motion for leave to propound additional interrogatories. Given that no party objected to any of the parties' motions for enlargement of time as cited above, those motions for enlargement of time are hereby granted.

II. ALTOS COMPUTER MODELS

Through their discovery requests to OGC, FPL and FPC seek access to computer models and software owned by Altos Management Partners, Inc. ("Altos") and MarketPoint, Inc. ("MarketPoint") that OGC witness Dale M. Nesbitt relied upon in the preparation of his prefiled direct testimony in this docket. Specifically, these models include the Altos North American Regional Electric Model, the Altos North American Regional Gas Model, and MarketPoint, the economic modeling software in which these models are implemented (collectively, the "Altos models" or "models").

In their motions to compel, FPL and FPC assert that OGC is required, under current case law, to provide access to computer models upon which OGC relies to support its petition for determination of need in this docket. In response to the motions to compel, OGC argues that it can not be compelled to produce the Altos models because they are not in OGC's possession, custody, or control. Further, OGC points out that none of the cases cited by FPL and FPC require production of third-party proprietary computer

¹Also at issue were certain of FPL and FPC's interrogatories that would require responses from OGC's expert witness, Dale M. Nesbitt. Based on FPL and FPC's representation at Oral Argument that each would make reasonable payment for witness Nesbitt's time spent responding to these interrogatories, this matter is no longer at issue.

models at no cost to the party seeking production. OGC also points out that one of the cited cases required payment of a third-party's typical licensing fee by the party seeking discovery. Finally, OGC states that FPL and FPC, when relying on third-party proprietary computer models which are sought through discovery, have historically argued that such models can only be obtained through payment of a licensing fee to the third-party.

In its motion for protective order, OGC again raises the arguments made in response to FPL and FPC's motions to compel production of the Altos models. In addition, OGC asserts that Altos and MarketPoint have agreed to make the models available for review under certain terms. This list of terms is attached to this Order as Attachment A. OGC states that the Altos models were offered to be made available to FPL and FPC under these terms on December 7, 1999. FPL and FPC did not agree to these terms. OGC seeks a protective order that would require disclosure only under these terms.

In their responses, FPL and FPC assert that the Altos models should be made available by Altos under a short-term, limited-use license that would limit the use of the Altos models by FPL and FPC for two months for purposes of litigation on this docket. At the February 7, 2000, Oral Argument, FPL and FPC indicated that they would each pay up to \$17,000 for such a license. FPL and FPC assert that such short-term, limited-use licenses are commonly offered by software makers. In the alternative, FPL argues that the Altos models should be provided under the terms offered by OGC on December 7, 1999, with the following modifications:

1. Elimination of the requirement that FPL turn over, and waive evidentiary objections to, all work product and trial preparation materials based on the models;
2. Elimination of the requirement that FPL's consultants' use of the models be supervised by Altos personnel;
3. Elimination of the requirement that FPL never criticize the validity of the models, even in future proceedings before the Commission; and
4. Permitting access to the models not only at the Commission, but also at Altos' offices in San Jose, California.

It is clear that OGC does not have possession, custody, or control of the Altos models requested by FPL and FPC. However, the case law is clear that a party who wishes to rely upon computer models in support of its position must make such models available

for review by parties who request the models. See, e.g., Bartley v. Isuzu Motors, 151 F.R.D. 659 (D.Col.1993). Further, production of the Altos models is consistent with the Commission's findings in Order No. PSC-98-1298-PCO-TP, issued October 6, 1998, in Docket No. 980696-TP, where a party was required to provide "reasonable access" to requested third-party proprietary information upon which it relied in that proceeding, even though that party did not have possession, custody, or control of the requested information.

With regard to production of the Altos models, the sole issues left for resolution are whether OGC has provided FPL and FPC "reasonable access" to the models, and, if not, what terms constitute "reasonable access." As stated above, OGC has offered to provide the Altos models for review by FPL and FPC under the terms listed in Attachment A to this Order. FPL and FPC have countered that a short-term, limited-use license would be more reasonable. In the alternative, FPL has asserted that a modified version of the terms offered by OGC would be reasonable.

FPL and FPC assert that short-term, limited-use licenses are commonly offered in the industry. However, according to OGC's representations at Oral Argument on this issue, Altos, in its normal course of business, does not offer such a license for the requested models. The parties have not addressed the question of whether the Commission has the authority to require Altos to prepare a short-term, limited-use license for the benefit of intervenors to this docket and Commission staff. It is not necessary to reach this question, however, because a more reasonable alternative exists.

OGC, with Altos' and MarketPoint's consent, has offered the list of terms in Attachment A under which the Altos models would be made available for review in this docket. Generally, these terms appear to provide intervenors and Commission staff with reasonable access to the Altos models. As set forth above, FPL has argued that some of these terms are unduly restrictive and should be modified if a short-term, limited-use license is not made available. Upon consideration of the pleadings and the Oral Argument on this matter, I find that OGC, to provide reasonable access to the Altos models, shall provide intervenors and Commission staff with access to the Altos models on the terms set forth in Attachment A, as modified below.

First, the requirement that all runs made by intervenors and Commission staff using the Altos model be furnished to OGC and Commission staff is unnecessary to protect Altos' proprietary

interests in its computer models and, therefore, shall be eliminated. If the Commission staff or any party wishes to obtain any of these runs for use in this proceeding, they may request these runs subject to applicable rules of discovery. All runs made by intervenors and Commission staff using the Altos model shall be returned to OGC and Altos at the close of this proceeding. Further, the condition that the parties agree that all such information may be introduced as part of the record in this proceeding is unnecessary to protect Altos' proprietary interests and, therefore, shall be eliminated. Applicable evidentiary rules shall govern questions of what information may be made a part of the record of this proceeding.

Second, the requirement that an Altos professional be present to supervise any outside consultant's use of the models is unnecessarily restrictive in light of the other protective terms set forth in Attachment A and, therefore, shall be eliminated. Such supervision would make OGC and Altos privy to FPL's trial preparations. OGC asserts that Altos is concerned that certain consultants whose businesses compete with Altos may copy the models or otherwise use them to gain competitive advantages. However, other terms of OGC's proposal provide the following: (1) the models will be made available on a single computer; (2) a log will be kept to identify each person who accesses the model; (3) no one will be permitted to copy the models or any supporting materials for use elsewhere; (4) use of the models is limited to the purposes of this proceeding and no disclosure or communication about the models may be made outside the record of this proceeding; and (5) each person who accesses the model will be required to guarantee personal compliance with a protective agreement containing these terms. Considering that the terms offered OGC and Altos do not preclude consultant's from reviewing the model, a protective agreement containing at least the terms stated above should provide Altos with adequate protection from the harm they seek to avoid.

Third, the requirement that no party to this proceeding may disparage, decry, "badmouth," or otherwise criticize the Altos models outside the record of this proceeding is overly restrictive and shall be clarified. FPL is concerned that this provision will limit their ability to challenge the models in any future dockets, particularly future need determination dockets for merchant plants. Based on representations made by OGC at Oral Argument, such a limitation was not intended. Therefore, this condition for access to the models should be clarified to state that it does not limit parties' ability to challenge the Altos models in future litigation involving the models.

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Fourth, the Altos models shall be made available both on a computer at the Commission and on a computer at Altos' offices in San Jose, California. FPL has asserted that its consultants are located in California and, therefore, that making the models available in California would avoid the time and expense associated with travel to review the models in Florida. After Oral Argument, OGC confirmed to staff counsel that providing the models at both locations is acceptable.

In sum, I find that OGC shall make the Altos models available for review by intervenors and Commission staff under the terms offered in Attachment A to this Order, which by reference is incorporated herein, as modified above. These models shall be made available for review no later than Tuesday, February 15, 2000.

III. PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION

Also at issue is the production of certain documents and information that OGC claims to be highly sensitive, proprietary confidential business information: (1) the PG&E Generating Project Pro Forma for the Okeechobee Generating Project ("PG&E Pro Forma") and a memorandum from Doug Egan to PG&E Generating's department heads dated August 18, 1999 ("memorandum"); (2) portions of OGC's Precedent Agreement with Gulfstream Natural Gas System ("Gulfstream Precedent Agreement"); (3) an ABB Bid Summary for gas turbines dated June 8, 1999 and related adjustment sheet ("ABB Bid Summary"); and (4) certain project cost data, including cost of capital, development costs, and detailed project construction costs. OGC asserts that these documents and data are protected under Section 90.506, Florida Statutes, which provides that a person has a privilege to refuse to disclose, and to prevent others from disclosing, a trade secret owned by that person.

Pursuant to Section 366.093(2), Florida Statutes, the Commission may, upon a finding that discovery will require the disclosure of proprietary confidential business information, issue appropriate protective orders. The standard for determining what constitutes proprietary confidential business information under this section is set forth in Section 366.093(3), Florida Statutes.

In determining whether the documents and data at issue in this proceeding should be protected from disclosure, one must first determine whether the moving party, OGC, has demonstrated that the material at issue is entitled to confidential treatment. See, e.g., Eastern Cement Co. V. Dep't of Env'tl. Reg., 512 So. 2d 264 (Fla. 1st DCA 1987). If the moving party meets this burden, the

burden shifts to the opposing party to show that it has a reasonable necessity for use of the information at trial. Id.; see also, Becker Metals Corp. V. West Fla. Scrap Metals, 407 So. 2d 380 (Fla. 1st DCA 1981). The parties agree that this is the appropriate standard to apply in this case.

A. PG&E Pro Forma, Memorandum, Cost Data

In its Second Motion for Protective Order and its statements at Oral Argument, OGC asserts that the PG&E Pro Forma and related memorandum are responsive to certain of FPL and FPC's discovery requests. OGC seeks a protective order shielding the PG&E Pro Forma and memorandum in their entirety from disclosure. OGC asserts that these documents contain highly confidential, proprietary business information, including PG&E Generating's forward price curves for energy and capacity, natural gas transportation costs, costs of capital, rates of return, net revenue projections, and other sensitive information. In addition, OGC asserts that the PG&E Pro Forma contains economic information and assumptions that form the basis for how PG&E Generating makes business decisions concerning many issues, including risk management and investment decision-making. OGC claims that the memorandum contains confidential, proprietary business information concerning PG&E Generating's development plans outside of Florida. Finally, OGC asserts that the project cost data at issue, including cost of capital, development costs, and detailed project construction costs, is highly sensitive confidential, proprietary business information.

OGC contends that a protective order limiting the use of these documents and data to litigation purposes in this case will not adequately protect the interests of PG&E Generating and OGC. OGC notes that affiliates of both FPL and FPC directly compete with PG&E Generating in wholesale generation markets in other regions of the United States, and, therefore, disclosure of such information would cause significant economic and business injury to PG&E Generating.

OGC contends that FPL and FPC do not have a reasonable necessity for the use of these documents and data at hearing. OGC suggests that the only possible use for this information would be to question the financial viability of the proposed power plant. OGC asserts that FPL and FPC already have extensive information available to them to test the financial viability of the proposed plant. First, OGC states that it has provided extensive information in this docket to support its allegations concerning

the proposed plant's financial viability, including forward price curves, fuel cost projections, and similar data. Second, OGC contends that FPL and FPC have access to energy pricing information through industry sources and most probably have developed their own information regarding forward price curves, fuel costs, and the like. Finally, OGC asserts that FPL and FPC have the ability to make informed estimates regarding cost of capital.

In their responses to OGC's Second Motion for Protective Order and their statements at Oral Argument, FPL and FPC assert that these documents and data are reasonably necessary for their use at hearing to test OGC's economic viability assertions and to determine whether the costs of OGC's power to Florida utility customers will result in exorbitant rates of return flowing to PG&E Generating in California. FPL and FPC state that OGC has placed the economic viability of its proposed plant at issue in this proceeding by asserting that there is a need for its proposed plant based on the relative economics of the plant versus existing sources of electric power. FPL and FPC assert that the only support offered by OGC on this issue is witness Nesbitt's analysis using the Altos models, which is based on generic and hypothetical inputs rather than inputs specific to the proposed plant. FPL and FPC further assert that witness Nesbitt's analysis must be tested against PG&E's internal analyses of the proposed plant's economic viability to determine whether a different result would be reached using the "real" data for the proposed plant. FPL and FPC contend that witness Nesbitt's analysis and generally available industry information are not sufficient to allow economic viability to be tested.² FPL and FPC assert that OGC and PG&E Generating would be adequately protected from the harm they seek to avoid through reasonable protective measures applicable to the disclosure of this information.

²FPL asserts that OGC has not sufficiently identified the contents of the memorandum to allow FPL to fully evaluate OGC's claims that the memorandum is confidential. Therefore, FPL requests that the Prehearing Officer conduct an in camera inspection of the memorandum to determine whether it contains confidential information relevant to this proceeding. At Oral Argument, OGC stated that the memorandum contains "a fair amount" of information concerning the development of other PG&E projects outside of Florida, and that such information may be difficult to separate from information related to its proposed plant. OGC indicated that it was agreeable to an in camera inspection of this document to determine the document's discoverability.

Upon consideration of the parties' pleadings and the arguments provided at Oral Argument, I find that the PG&E Pro Forma and the project cost data described above constitute proprietary confidential business information pursuant to Section 366.093(3), Florida Statutes. Further, I find that FPL and FPC do not have a reasonable necessity for use of these documents and data at hearing. Therefore, this information shall be protected from disclosure in this proceeding in its entirety. In addition to the data provided to support witness Nesbitt's analysis, substantial information from both outside and internal sources is available to FPL and FPC for purposes of testing the economic viability of the proposed project. The potential economic harms that could result from disclosure of these documents and data are not justified in light of the fact that FPL and FPC have other avenues available to test the economic viability of the proposed plant in this docket. Further, as noted by OGC, it is OGC's burden in this docket to prove the allegations in its petition, and to the extent that FPL and FPC wish to challenge the proof or adequacy of the proof offered by OGC, they have ample information available for them to do so. As to the memorandum, OGC shall provide that document for an in camera inspection by the Prehearing Officer to determine its discoverability in this docket.

B. Gulfstream Precedent Agreement and ABB Bid Summary

In response to the discovery requests of FPL and FPC, OGC has identified additional documents and data that it has not disclosed on the grounds that the documents and data are proprietary, confidential business information. The parties do not specifically address these documents and data in their pleadings, but there was substantial discussion regarding this information at oral argument.

First, in response to FPL and FPC's discovery requests, OGC has provided a copy of the Gulfstream Precedent Agreement with contract conditions and gas transportation pricing information redacted. OGC asserts that the redacted terms are regarded as proprietary confidential business information by both OGC and Gulfstream, and that the information is the subject of a confidentiality agreement between OGC and Gulfstream. OGC further asserts that the redacted contract conditions and pricing terms were individually negotiated between OGC and Gulfstream, and that disclosure of this information would harm the competitive interests of OGC vis-a-vis its competitors and Gulfstream vis-a-vis its customers. OGC contends that FPL and FPC do not have a reasonable necessity for use of this information at hearing.

Second, in response to FPL and FPC's discovery requests, OGC has provided an ABB Reference Guide for the GT 24 gas turbines that it intends to use as part of its proposed plant. OGC identified two other documents responsive to FPL and FPC's requests: an ABB Bid Summary for gas turbines and a related "adjustment sheet."³ According to OGC, the ABB Bid Summary includes detailed cost information concerning the price that OGC would pay to ABB for gas turbines for the proposed project. OGC asserts that this information is regarded as proprietary confidential business information by both OGC and ABB, and that the information is the subject of a confidentiality agreement between OGC and ABB. OGC further asserts that the redacted contract conditions and pricing terms were individually negotiated between OGC and ABB, and that disclosure of this information would harm the competitive interests of OGC vis-a-vis its competitors and ABB vis-a-vis its customers. OGC contends that FPL and FPC do not have a reasonable necessity for use of this information at hearing.

FPL and FPC assert that they have a reasonable necessity for use of the redacted price terms and contract conditions in the Gulfstream Precedent Agreement to test the economic viability of the proposed plant. FPL and FPC also assert that they have a reasonable necessity for use of the cost information provided by the ABB Bid Summary and adjustment sheet for the same purposes. FPL proposes protective measures that would limit disclosure of these terms to FPL's outside counsel and consultants. FPL asserts that such measures would protect OGC from the harm it seeks to avoid by preventing disclosure of this information to personnel of FPL or its affiliates. FPC suggests that the protective measures proposed by FPL should be extended to provide for disclosure to those utility personnel involved in making decisions regarding this litigation. FPC further contends that OGC has not provided sufficient information to support its claim that this information should be protected.

Upon consideration of the arguments presented, I find that the documents and data at issue constitute proprietary confidential business information pursuant to Section 366.093(3), Florida Statutes. Specifically, I find that these negotiated contract

³According to OGC, the ABB Bid Summary does not include bids specifically for the proposed plant. Apparently, the related adjustment sheet is used to adjust the bids to reflect project-specific information to arrive at an appropriate project-specific bid.

terms, if disclosed, would impair the competitive business interests of OGC, Gulfstream, and ABB. For the same reasons, the Commission has consistently found such negotiated contract terms to be proprietary confidential business information. See, e.g., Order No. PSC-99-1007-CFO-EI, issued May 19, 1999, and Order No. PSC-99-1244-CFO-EI, issued June 24, 1999. Further, I find that FPL and FPC do not have a reasonable necessity for use of these documents and data at hearing. As stated above, substantial information from both outside and internal sources is available to FPL and FPC for purposes of testing the economic viability of the proposed project. The potential economic harms that could result from disclosure of these documents and data are not justified in light of the fact that FPL and FPC have other avenues available to test the economic viability of the proposed plant in this docket. Accordingly, OGC shall not be compelled to disclose the redacted portions of the Gulfstream Precedent Agreement, the ABB Bid Summary, and the adjustment sheet related to the ABB Bid Summary.

IV. REQUESTS FOR ADMISSIONS

In its First Motion to Compel, FPC requests that OGC be compelled to respond to certain of FPC's Requests for Admissions to OGC. First, FPC moves to compel OGC to respond to Requests Nos. 29 and 30, which state:

29. Florida retail utilities are planning to add capacity of similar technology and design as what will be used for the proposed project; and
30. From 1999 through 2008, existing Peninsular Florida utilities are projecting the addition of nearly 7,000 MW of gas-fired combined cycle capacity consistent with the advanced technology, natural gas-fired combined cycle design of the Project.

FPC asserts that these two requests are essentially excerpts from OGC's need determination petition, and, thus, that OGC should not be able to refuse to admit the statements' truth or deny them. In its response, OGC asserts that it cannot admit or deny these statements because it has no first-hand knowledge of what Florida utilities are planning or projecting to do. OGC states that it is prepared to admit that Florida utilities have published plans and projections which indicate that those utilities intend to add the new capacity referenced in FPC's requests. Because OGC does not have the first-hand knowledge required to admit or deny these statements, I find that OGC shall not be compelled to respond to

these requests.

Second, FPC moves to compel OGC to respond to Requests Nos. 41-44, which state:

41. PG&E may seek in the future to develop other power plants in Florida;
42. If PG&E seeks in the future to develop other power plants in Florida, it may or may not use OGC to do so;
43. PG&E has not filed a ten-year site plan with the Commission; and
44. PG&E is not a Florida electric utility.

FPC asserts that because OGC has relied on the experience and corporate backing of its PG&E affiliates to demonstrate the viability of the proposed plant, OGC should be compelled to admit or deny these statements concerning those affiliates. In its response, OGC asserts that these requests for admissions are procedurally infirm in that they request admissions from a non-party. OGC notes that Rule 1.370(a), Florida Rules of Civil Procedure, limits a party to serving requests for admissions on any other party. OGC states that PG&E is not a party and that OGC cannot be charged with knowledge of PG&E's future plans or status.

I find that OGC shall not be compelled to respond to Requests Nos. 41-44. As to Requests Nos. 41 and 42, OGC should not be compelled to admit or deny statements regarding the business plans of an affiliate not a party to this proceeding. Further, these requests appear to have questionable relevance to this proceeding. As to Request No. 43, OGC should not be compelled to admit or deny that its non-party affiliate has filed particular papers with the Commission. Whether PG&E has filed a ten-year site plan with the Commission appears to have questionable relevance to this proceeding. Further, if such papers have been filed with the Commission, FPC can ascertain the answer to its question through a simple inspection of public records. Request No. 44 appears to ask OGC to admit or deny to a legal conclusion regarding the status of its non-party affiliate. OGC shall not be compelled to admit or deny this legal conclusion.

Third, FPC moves to compel OGC to respond to Request No. 55, which states:

55. Absent a statutory or contractual commitment to sell its power to a particular retail utility in the State of Florida, OGC would be free to enter into short-term contracts to sell its power any time it chooses to any utility or power marketer it chooses either inside or outside the State, making that power unavailable to other utilities in Florida that may need the power resources during the period of those short-term contracts.

OGC objects to this request on the basis that it is vague, argumentative, and compound. FPC asserts that the request simply asks whether under certain very specific circumstances the power from OGC's proposed plant would be unavailable in Florida. I find that OGC shall not be compelled to respond to this request. The request is compound and vague to the point that a simple admission or denial of the statement could be interpreted in more than one way.

V. MOTION FOR LEAVE TO PROPOUND ADDITIONAL INTERROGATORIES

FPL requests leave to propound 200 additional interrogatories on OGC in this docket. In support of its request, FPL asserts that additional interrogatories are necessary so that FPL can fill in the gaps in OGC's "incomplete and often vague" need determination petition and prefiled testimony. FPL also contends that additional interrogatories will allow it to better prepare for depositions of expert witnesses in this docket, making those depositions shorter and less complex. FPL acknowledges that, counting subparts, it has exceeded the 200 interrogatory limit set forth in the Order Establishing Procedure issued in this docket, but explains that this complex case with extensive expert testimony lends itself to more than 200 interrogatories.

In its response to FPL's motion, OGC argues that FPL's arguments in support of its motion are without merit and, thus, that FPL has not shown good cause for leave to propound 200 additional interrogatories. OGC contends that this case is no more complex than the merchant plant need determination docket initiated by Duke New Smyrna, in which a limit of 200 interrogatories was established and adhered to. Further, OGC points out that FPL's motion expressly contemplates filing additional interrogatories on OGC's expert witnesses. OGC argues that Rule 1.280(b)(4)(A), Florida Rules of Civil Procedure, limits the types of interrogatories that may be served on expert witnesses and objects to the possibility that FPL may propound additional unauthorized interrogatories on its expert witnesses, thus requiring OGC to pay

expert witnesses for their time spent preparing responses and obstructing OGC's case preparation by tying up its experts with interrogatories. As to FPL's argument that additional interrogatories are necessary to allow FPL to fill in the gaps of OGC's incomplete and vague petition, OGC asserts that additional interrogatories are not the proper remedy for alleged pleading deficiencies. OGC points out that, counting subparts, FPL has already propounded 243 interrogatories upon OGC in this proceeding.

Upon consideration of the parties' pleadings, I find that FPL has not shown good cause for leave to propound 200 additional interrogatories on OGC. The Order Establishing Procedure issued in this docket allows parties to propound up to 200 interrogatories on a party. As it concedes, FPL has already exceeded this limit. Allowing FPL to propound an additional 200 interrogatories on OGC is entirely unreasonable. However, in balancing the benefits that additional interrogatories would provide in terms of simplifying depositions against the burden on OGC of responding to such interrogatories, I find that granting FPL leave to propound 30 additional interrogatories, including subparts, on OGC is reasonable. To the extent that these additional interrogatories require responses to be prepared by OGC's expert witnesses, FPL shall make reasonable payment to OGC for those witnesses' time, consistent with the parties' agreement at Oral Argument.

Based on the foregoing, it is therefore

ORDERED that Okeechobee Generating Company, L.L.C., shall respond to the discovery requests of Florida Power & Light Company and Florida Power Corporation in this docket as set forth in the body of this Order. It is further

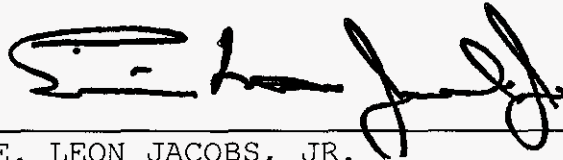
ORDERED that all motions for enlargement of time cited in Section I of this Order are hereby granted. It is further

ORDERED that Okeechobee Generating Company, L.L.C., shall provide for in camera inspection by this Prehearing Officer, the memorandum from Doug Egan to PG&E Generating's department heads dated August 18, 1999, as set forth in the body of this Order. It is further

ORDERED that Florida Power & Light Company is hereby granted leave to propound 30 additional interrogatories on Okeechobee Generating Company, L.L.C., under the terms set forth in the body of this Order.

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By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 11th Day of February, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review

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of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

PROPOSED TERM SHEET FOR ACCESS TO ALTOS MODELS, 12/7/99

Altos and MarketPoint will make available and load the models onto a single computer at the FPSC under a protective agreement to be incorporated into a protective order issued by the FPSC.

No one may copy the models or any supporting materials for use elsewhere. All use of the models must be done on-site at the FPSC on the computer upon which MarketPoint is installed.

Nesbitt and Blaha will conduct a two-day workshop/training session on the models in Tallahassee on dates to be arranged. At this time, dates in the first two weeks of January are possible. OGC will pay for the workshop. All parties to the case will be permitted to attend.

No licensing fees will be required from the parties to the case nor from the FPSC.

The FPSC will maintain a log book that details every person who accesses the model, including the person's name, title, date, time, and employer or affiliation.

Unlimited access will be provided to the models for FPSC personnel and full-time, bona fide FPL, FPC, and TECO company employees during regular business hours at the FPSC.

If FPC, FPL, or TECO wish to hire a consultant, then each and every hour of the consultant's access must be directly supervised by an Altos professional. The organization who has hired the consultant must pay the Altos professional's labor and travel expenses (\$225 per hour plus actual, reasonable out-of-pocket travel costs). Prior to such access, the sponsoring organization must execute a time and materials contract with Altos and must prepay for 40 hours of Altos' professional time. If the sponsoring organization uses less than 40 hours, then the remaining balance will be refunded on a pro rata basis. Payments to Altos for such supervision must be made within 15 working days of receipt of Altos invoices.

All runs made on the FPSC computer, including all inputs and all outputs of such runs, must be furnished to the FPSC Staff and to OGC. It is expressly understood that such information may be introduced as part of the record of this proceeding.

Any additional technical support will be provided by Altos at the requesting utility's expense. (Nesbitt @ \$300 per hour, Blaha @ \$200 per hour)

Use of the MarketPoint software and the Altos NARE and NARG models will be limited to the OGC proceeding. There will be no use of either MarketPoint or the NARE or NARG models for any commercial purpose under this agreement.

The models will be maintained at the FPSC for the duration of the need determination proceeding for the Okeechobee Generating Project before the FPSC. The models may be retrieved by Altos at any time on or after the day following the conclusion of the hearings in this proceeding.

There will be no communication or disclosure whatsoever about the models (including MarketPoint and the NARE and NARG models), data, or results outside the record of this proceeding, including advising others to look at the record of the proceeding and also including furnishing copies of the record to others. No party to this proceeding will disparage, decry, "badmouth," or otherwise criticize the models in any situation, context, or venue whatsoever outside the record of this proceeding.

Each individual who accesses the model will sign a statement that personally guarantees compliance with this agreement. There will be personal as well as corporate guarantees for all persons who access the models.

All parties to this agreement agree to provide reciprocal access, on fundamentally the same terms as set forth herein, to any models used by any of FPL's, FPC's, or TECO's witnesses or experts in this proceeding.

One copy of the user's manual will be provided to the FPSC to be held, subject to a confidential protective order, for use in the course of this proceeding. Neither user's manual nor any portion thereof will be introduced into the written record of this proceeding, except as a confidential document under applicable Florida law and rules, because that user's manual is the confidential, valuable, and competitively sensitive property of Altos.