

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company for determination of need for proposed electrical power plant and related facilities - Lauderdale re-powering project.) DOCKET NO. 890973-EI
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In re: Petition of Florida Power & Light Company for determination of need for proposed electrical power plant and related facilities - Martin Expansion Project.) DOCKET NO. 890974-EI
) ORDER NO. 22826
) ISSUED: 4-16-90
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The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER DENYING RECONSIDERATION
OF RULINGS

BY THE COMMISSION:

On July 25, 1989, Florida Power & Light Company (FPL) filed its petition for a need determination for the repowering of its Fort Lauderdale plant, Docket No. 890973-EI, simultaneous with the filing of a motion to consolidate this need determination petition with FPL's need determination petition for the construction of Martin Units 3, 4, 5 and 6, Docket No. 890974-EI. Order No. 22267, issued on December 5, 1989, partially denied FPL's request for consolidation of the two dockets and limited the findings the Commission would make pursuant to the consolidated hearing to the Lauderdale repowering and Martin Units 3 and 4 only.

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ENCL RECORDS/REPORTING

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On February 23, 1990, a prehearing conference was held in this matter, with Commissioner Betty Easley serving as prehearing officer. At that conference, Commissioner Easley ordered Charles H. Bronson (Bronson) and Hadson Development Corporation (Hadson) to participate in this proceeding as a joint intervenor (Bronson-Hadson). Broward County (Broward) had previously been granted intervenor status by Order No. 22386, issued on January 9, 1990.

During the prehearing conference, the issues and positions enumerated in the draft prehearing order were reviewed and additional issues were also considered. Commissioner Easley ruled that certain of Broward's and Bronson-Hadson's issues would be excluded from consideration in this proceeding. At the prehearing conference, at the request of FPL and Bronson-Hadson, all parties agreed to an expedited schedule for the consideration by the full panel of the prehearing officer's rulings. This expedited schedule was approved by Chairman Wilson on Friday, February 23, 1990.

Pursuant to that schedule, Broward and Bronson-Hadson filed their written motions for reconsideration of the ruling on Monday, February 26, 1990; the response of FPL opposing reversal of the rulings was filed on Wednesday, February 28, 1990; and Staff's recommendation was filed on Friday, March 2, 1990. Simultaneous with the filing of the motions for reconsideration, Broward and Bronson-Hadson also filed requests for oral argument before the full panel. Pursuant to Commission procedure, Commissioner Easley denied that request on Thursday, March 2, 1990, in Order No. 22631. When Broward was notified of this ruling, counsel indicated that Broward wished to seek full panel review of this ruling also.

ORAL ARGUMENT

Rule 25-22.058, Florida Administrative Code, states that the Commission may grant oral argument where it would "aid the Commission in comprehending and evaluating the issues raised by exceptions or responses." Rule 25-22.058(1), Florida Administrative Code. In this instance, both Broward and Bronson-Hadson have already given extensive oral presentations at the prehearing conference as well as filed written motions in support of their position.

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The arguments presented at the prehearing conference were the same as those found in the motions. There is no indication in either motion that circumstances have changed since the date on which the written motions were filed which would give rise to any additional arguments. Further, if oral argument were to be granted, it would have to occur at an agenda conference in order to comply with statutory noticing requirements, a deviation from normal Commission procedure.

The grant of oral argument on any motion or pleading filed with this body is totally discretionary. Under the circumstances found in these dockets and discussed above, we find that oral argument will not aid us in evaluating the issues raised and would constitute a deviation from normal Commission procedure. For these reasons, we will deny the requests of Broward and Bronson-Hadson for oral argument on their request for reconsideration of the prehearing officer's rulings to exclude certain issues from this proceeding.

MOTION OF BRONSON-HADSON

The issues raised by Bronson-Hadson which were excluded by the prehearing officer are as follows:

1. Has FPL properly prioritized demand-side conservation measures and Qualifying Facilities (QFs) in developing [its] proposed plans? (Prehearing Issue 26)
2. If the Commission determines need for the [project] proposed by FPL, what will be the resulting impact on the development of qualifying facilities? (Prehearing Issue 27)
3. Does the certification of a specific unit affect the Commission's ability to designate that unit as the statewide avoided unit pursuant to Rule 25-17.083, Florida Administrative Code? (Prehearing Issue 32)
4. Do QF's have a right under Federal and/or State law to provide capacity in lieu of any of the units identified by FPL in its reference plan? (Additional Legal Issue "b")

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5. May the Commission lawfully certify the need for the plants proposed by FPL without first providing QF's an opportunity to supply that capacity at the costs identified in FPL's filing? (Additional Legal Issue "c")
6. Is the Commission required to afford QF's the opportunity to provide substitute capacity for FPL's proposed Martin Units 3 and 4? (Prehearing Issue 34, Docket 890974-EI)

Issue 1: While this issue appears to deal with the methodology by which FPL executes its generation expansion plan, discussion by the Intervenor at the prehearing conference indicates that it was raised merely as a vehicle by which to address QF pricing concerns. This pricing issue was specifically decided in the most recent planning hearing and recorded in Order No. 22341. We fully support the prehearing officer's ruling that this issue is not germane to a need determination proceeding and find that it is inappropriate to relitigate such an issue here.

Issue 2: Intervenor has identified this issue as a "QF incentive" issue and again attempt to raise cogeneration pricing and avoided unit designation matters in this proceeding. These concerns are not properly raised in the context of a need determination proceeding and we affirm the prehearing officer's ruling to exclude this issue.

Issue 3: This was raised as a "legal" issue. Our Staff concurs with FPL that its resolution is not necessary to the disposition of a need determination case. Although the parties to these dockets seem to be in agreement that the Commission's determination of need for a particular unit will not make that unit ineligible for future designation as the avoided unit for QF pricing purposes, our Staff is concerned that a final resolution of this issue here might affect the right of other parties not participating in this proceeding. Further, there are at least three other avenues available to the Intervenor to resolve this issue: the cogeneration rulemaking proceedings (Docket No. 891049-EU), a petition for declaratory statement, or a petition for adoption or amendment of a rule. Under these circumstances, we find that the exclusion of this issue is justified.

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Issues 4 and 5: Both these issues relate to our implementation of PURPA and QF rights under our cogeneration rules. Clearly, these issues are outside the scope of a need determination proceeding; their resolution is unnecessary for our final disposition of these need dockets; and, as discussed above, the Intervenor's have other forums in which to pursue these issues. We affirm the prehearing officer's decision to exclude these issues.

Issue 6: This issue was raised for reconsideration by Bronson-Hadson only. We note, again, that the resolution of this "legal" issue is unnecessary to the disposition of this case. Further, this issue attempts to address QF pricing and the designation of the avoided unit and is therefore properly addressed by our rules on cogeneration and the ongoing planning hearing dockets. We affirm the prehearing officer's decision to exclude this issue from consideration.

Based upon the rulings discussed above, we hereby deny Bronson-Hadson's motion for review of prehearing rulings excluding certain issues from this proceeding.

MOTION OF BROWARD COUNTY

Broward has, like Bronson-Hadson, raised for reconsideration Issues 1-5 discussed above. For the reasons discussed above, we find that those issues should be excluded from consideration in these dockets. In addition, Broward wishes the full panel to also include the following issue:

Are FPL's projected costs for the proposed units consistent with the projected costs of the current avoided units?

To the extent this issue raises questions regarding the costs of FPL's proposed units, we find that it is germane to this proceeding. We note that Prehearing Issues 7 and 15 provide an opportunity for Broward to raise these concerns. However, Broward appears to intend that this issue address avoided cost designation and pricing. On those grounds, and as discussed previously, we affirm the prehearing officer's ruling to exclude this issue from consideration.

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For the reasons stated above, we find that Broward's motion for reconsideration of the rulings of the prehearing officer to exclude certain issues should be denied.

Therefore, it is

ORDERED by the Florida Public Service Commission that the request for reconsideration of the prehearing officer's denial of the requests for oral argument made by Bronson-Hadson and Broward County is hereby denied. It is further

ORDERED that the motion filed by Bronson-Hadson for the reversal of the prehearing officer's rulings to exclude certain issues is hereby denied as discussed in the body of this order. It is further

ORDERED that the motion filed by Broward County for the reversal of the prehearing officer's rulings to exclude certain issues is hereby denied as discussed in the body of this order.

By Order of the Florida Public Service Commission
 this 16th day of APRIL, 1990.

 STEVE TRIBBLE, Director
 Division of Records and Reporting

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by: Kay Flynn
 Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.