

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Hearings on load forecasts,) DOCKET NO. 900004-EU
generation expansion plans and)
cogeneration prices for Peninsular) FILED: August 29, 1990
Florida's electric utilities.)

AES' RESPONSE TO MOTIONS FOR CLARIFICATION
OF ORDER NO. 23235

Pursuant to Rule 25-22.039, Florida Administrative Code, AES Corporation (AES) through its undersigned attorneys, files its Response to Motions for Clarification of Order No. 23235 in the above docket and states:

1. On July 23, 1990, the Commission issued Proposed Agency Act'on Order No. 23235. This order discusses five issues related to prioritizing cogeneration contracts and "counting" them toward the subscription limit associated with a statewide avoided unit.

2. On August 13, 1990, Florida Power and Light Company (FPL) and Nassau Power Corporation (Nassau Power) filed motions for clarification of Order No. 23235 as did the AES Corporation. On August 20, 1990 Consolidated Minerals, Inc. (CMI) filed a petition to intervene in the docket and its response to the motions for clarification of FPL, AES and Nassau Power. On August 27, 1990, the Florida Industrial Cogeneration Association (FICA) filed its response to the motions for clarification.

3. In its motion for clarification, FPL appears to make the argument that if the current language of Issue No. 4 is retained, two errors could be made. First, negotiated contracts for years earlier than the in-service date of the standard offer would not count toward the subscription limit. Second, negotiated contracts of whatever in-service date which are negotiated against the purchasing utility's own avoided cost would not count toward the subscription limit. FPL Motion at 3-4. In order to cure this problem, FPL advocates simply saying "no" to the issue and deleting the remainder of the language.

4. Implicit in FPL's characterization of these two statements as erroneous is the contention that Order No. 23235, and the Commission vote on which the order is based, do not support those propositions. AES disagrees. As is stated in AES' motion for clarification, the Staff recommendations, the vote sheet and the transcripts of the agenda conference all clearly indicate that the propositions which FPL characterizes as "errors" are, in fact, the decision of the Commission. The Commission voted to apply only those negotiated contracts with in-service dates which are the same as that of the statewide avoided unit to the subscription limit associated with that unit. All other negotiated contracts, either with in-service dates before or after that of the statewide avoided

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FPSC-BUREAU OF RECORDS

unit, do not count toward the subscription limit.

AES' position is the only one supported by the record and in accord with the discussion in Issue No. 5 where it is stated:

[W]e find that the subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be judged against each utility's own avoided cost.

Order No. 23235 at 3.

5. FPL does not cite to any documentation to support its position but relies upon references to previous Commission orders. Two of the orders relied upon by FPL, Orders Nos. 23079 and 23080, are orders granting determinations of need for FPL's Lauderdale Repowering and Martin Units 3 and 4. These appear to be completely irrelevant to the issues being discussed in Order No. 23235.

FPL also cites the last Planning Hearing Order, Order No. 22341, for the proposition that utilities and qualifying facilities should not "rely on the costing parameters associated with the current statewide avoided unit." FPL's Motion at 4. The section of Order No. 22341 cited by FPL talks about need determinations for qualifying facilities and the use of planning hearing information in those determinations. It simply has no relevance to Order No. 23235 or the issues raised in that order.

AES is unsure what point FPL is trying to make by citing these orders. If FPL is commenting on the wisdom changing the use of Planning Hearing information in qualifying facility need determination proceedings, AES respectfully suggests that those concerns should have been raised in either a motion for reconsideration or appellate challenge of Order No. 22341. They have no place in this docket and do not represent a "clarification" of this order.

6. In its motion for clarification, CMI states that the Commission did not intend to retroactively apply the 500 MW coal-fired unit standard or subscription limit to qualifying facility contracts negotiated against prior statewide avoided units and executed prior to May 25, 1990. AES agrees that the criteria set

forth in Order No. 23235 has prospective application only. Any contract signed when the 1993 combined cycle standard offer was in effect should not be applied against the 1996 500 MW subscription limit.

7. AES supports the contention of FPL, CMI and Nassau Power that the order in its current form is ambiguous and needs clarification. In order to properly state the Commission's decision on May 25, 1990, AES urges the Commission to clarify Order No. 23235 as stated in Paragraph 10 of AES' Motion for Clarification filed on August 13, 1990. Such clarification would be consistent with the Commission's vote and the motions for clarification filed by Nassau Power, CMI and the Florida Industrial Cogeneration Association.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the AES' RESPONSE TO MOTIONS FOR CLARIFICATION OF ORDER NO. 23235 by Terry Cole on Behalf of AES Cedar Bay, Inc. has been furnished by hand delivery to Michael Palecki, Florida Public Service Commission, Division of Legal Services, 101 East Gaines Street, Tallahassee, Florida 32399 and by U.S. Mail to the following on this 29 day of August, 1990.

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