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October 9, 1990

Mr. Steve Tribble
Director of Records and Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32301

RE: Docket No. 900004-EU

Dear Mr. Tribble:

Enclosed please find the original and 15 copies of Florida Power & Light Company's Supplemental Brief on Subscription in the above-captioned docket.

Very truly yours,



Bonnie E. Davis

BED:do
Enclosures

cc: All Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Planning hearing on load fore-) Docket No. 900004-EU
casts, generation expansion plans,)
and cogeneration prices for Peninsular) Filed: Oct. 9, 1990
Florida's electric utilities)
_____)

SUPPLEMENTAL BRIEF ON SUBSCRIPTION

1. In May, 1990 the Commission established a 500 MW base load coal unit as the statewide avoided unit and imposed a 500 MW subscription limit on the availability of the standard offer containing prices based on that unit. At the time of this action the Commission left for future consideration the issues concerning implementation of the subscription limit. This brief considers (1), which contracts for the purchase of Qualifying Facility (QF) power should be considered as candidates for filling the subscription, and, (2), what criteria should be used to determine which projects should actually be selected to fill the subscription. It is intended to supplement FPL's brief on subscription filed on September 25, 1990. They should be read together for a full exposition of FPL's position on the issues surrounding implementation of the subscription limit.

2. That the issues addressed in this brief need be resolved at all arises from the fact that FPL has negotiated one QF contract and received standard offer contracts, and contract proposals, which, in aggregate, are far in excess of the additional capacity FPL projects it will need during the 1996 - 1997 time frame. FPL's need for additional capacity during these

years is a portion of the need represented by the 500 MW statewide avoided unit and the associated subscription limit.

CANDIDATES FOR SUBSCRIPTION

3. The 500 MW subscription limit was imposed in May 1990 in conjunction with the designation of a 500 MW base load coal unit as the statewide avoided unit. The subscription limit was intended to make the standard offer available only so long as the utilities' individual needs for additional power represented in the 500 MW limit remained unmet. It was to be a means of achieving the policy objective of purchasing that amount of cost-effective capacity that is needed by the state as a whole and the individual purchasing utility. It was not intended to be a fixed entitlement to supply 500 MW of power at the standard offer price.

4. Therefore, all contracts, whether negotiated or standard offer that, as a factual matter, meet the need of the individual utility included in the subscription limit should count toward filling that limit. Whether a proposed capacity purchase would defer the need on which the subscription limit is based is a question of fact that should be answered with the customary analytical tools of generation expansion planning. It is not the sort of issue that can or should be determined on a before-the-fact basis by selection of relatively arbitrary factors such as in-service dates or what was in the mind of the parties at the time a contract was negotiated. Rather the focus should be on the factual implications that flow from the project's proposed

in-service date, and other terms and conditions that influence the degree of match between the individual utility's need and the QF's proposed project.

5. Nassau Power urges the Commission to find that the contract FPL negotiated with ICL for the purchase of 300 MW cannot count toward filling the subscription because it was executed before the Commission approved the standard offer tariffs associated with the subscription limit. However, FPL's need for additional power in 1996-1997 that is represented in the 500 MW subscription limit had been known to FPL and potential power suppliers long before May of 1990. To suggest as Nassau Power does, that FPL was unable to take any steps to meet that need before the Commission approved the standard offer tariffs belies FPL's duty to secure needed generating resources in a prudent and reasonable fashion and negates the Commission's long and frequently expressed preference for negotiated contracts. Nassau Power's position also assumes that the amount and timing of generating resources to be added to a utility's system are immutably fixed at a certain point in time. This is not the case at all. Any change in a utility's need that was represented in the subscription limit, either because additional generating resources have been obtained, or because changes in the load forecast change the projected level of need, should affect the continued availability of the standard offer associated with the subscription limit. Nassau Power hints that no harm would be done if the Commission approved the ICL contract but did not count it

toward FPL's share of the subscription limit. To the contrary this suggested result places FPL in the position of having to contract for more capacity than it needs and ignores the likelihood that an affirmative determination of need could not be secured for the unneeded capacity.

6. The issue of need must turn on an examination of the magnitude and timing of need that is utility specific and up to date. The present subscription limit was based on a generic unit taken from the FCG study; it is not a unit that appears in any of the generation expansion plans of the individual utilities. Therefore to determine whether a particular capacity purchase counts toward the subscription limit, the underlying need of the utility making the purchase must be examined.

CRITERIA FOR SUBSCRIPTION

7. The Commission has made clear that it will not grant an affirmative determination of need for any proposed QF project without a showing that the project both defers capacity and is cost effective to the individual purchasing utility. Any project over 75 MW must obtain an affirmative determination of need under the Power Plant Siting Act before it can be constructed. In making a determination of need, the Act directs the Commission to consider:

- (1) the need for electric system reliability and integrity;
- (2) the need for adequate electricity at a reasonable cost;

(3) whether the proposed plant is the most cost effective alternative available;

(4) the conservation measures reasonably available which might mitigate the need for the plant; and,

(5) other matters within the Commission's jurisdiction it deems relevant (Sec. 403.519, Fla. Stat. (Supp 1990)).

Additionally, in December 1989, the Commission explicitly held that the factual findings which led to the selection of the statewide avoided unit would not "be used as a surrogate" for the factual findings required by the PPSA in need proceedings for either utilities or potential QFs (Docket No. 890004, Order No. 22341, p. 25). Previous decisions in which the Commission had held that any contract at standard offer or lower prices that fell within the current subscription limit was deemed to meet the statutory criteria and entitled to an affirmative determination of need were expressly overruled. (Id. at p. 26). Henceforward, the Commission said, "a finding must be made that the proposed capacity is the most cost effective means of meeting purchasing utility X's capacity needs in lieu of other demand and supply side alternatives" (Id.). From this FPL concludes that nothing is to be gained by counting a proposed project in the subscription limit if an affirmative determination of need cannot be secured for it.

8. Therefore, the QF projects actually chosen to fill the subscription limit from among those eligible, by virtue of their potential to defer an individual utility's need, should be selected on the basis of their relative merits. This is

consistent with the statutory duty of the Commission to certify the need for a particular capacity addition after "taking into account" whether it is the most cost effective alternative available to the utility. (Sec. 403.519, Fla. Stat. (Supp 1990)). The date of contract execution has little to do with the merits of a proposed QF project. Rather price, reliability, and other factors that are of value to the utility and its ratepayers should be examined. Many of these factors, such as location, size, technology, and fuel type, are not covered in the standard offer contract. As previously noted by FPL, this approach would frankly acknowledge that all potential QFs are not presumptively equal and that the priority of their selection should be based on something more than a race to the mailbox. FPL would also suggest however, that it is not necessary or desirable to settle in advance the nuances of all the criteria that are ultimately used to evaluate a QF proposal. What is of value to a utility and its ratepayers may change over time. Also the nature of the offers may themselves suggest refinements or additions to the criteria by which they should be judged.

9. Even if the Commission rejects the approach urged by FPL and establishes a queue for the subscription limit based on the priority of contract execution, it cannot be given controlling weight in a determination of need proceeding because the Commission must "take into account...whether the proposed [QF] is the most cost-effective alternative available". (*Id.*). This means a contract first in line based on execution date has no

greater claim to an affirmative determination of need than a subsequently executed contract that has greater merit. This is not an undesirable result. It promotes selection of the capacity supply option that is of greatest benefit to a utility's ratepayers. It does suggest, however, that it is not worth the Commission's time and effort to establish a subscription queue on the basis of contract execution date since it would have no real bearing on which proposals ultimately receive an affirmative determination of need.

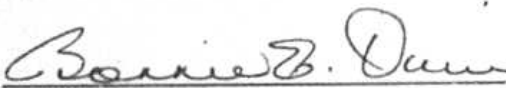
10. If the approach suggested by FPL is adopted, the Commission will have to address two broad factual issues: which of the proposals would defer an individual utility's need, if any; and, of those, which has greater merit. These issues are the essence of a need determination proceeding and the place they should be addressed. The Commission should limit participation to those potential QFs who furnish information sufficient to allow the Commission to make the required factual findings about their proposals; that is, a potential QF must have committed to the terms and conditions on which it will supply power. Greater weight should be accorded those proposals with a greater likelihood of actually achieving commercial operation. In some circumstances the Commission may determine a particular project is more likely to come to fruition simply because more of the attendant arrangements have been reduced to binding contractual obligations. In this way time is recognized but only to the extent it is relevant to the wisdom of the ultimate decision.

11. FPL does believe there are disputed issues of material fact concerning both of the issues briefed herein and that a formal fact finding hearing will be necessary to resolve them. FPL will participate in such a hearing.

12. It bears repeating that resolution of the issues surrounding the subscription limit is not a mere academic exercise. The manner selected by the Commission to resolve these issues will have a profound impact on the existence of, the integrity, the cost, and the reliability of the electrical generating resources for the State for many years to come. It is for this reason that FPL urges the Commission to adopt an approach that will force selection of additional QF resources in the amount needed and of the best available value to FPL and its ratepayers.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 900004-EU

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Supplemental Brief has been furnished to the following individuals by Hand Delivery or U. S. Mail on this 9th day of October, 1990.

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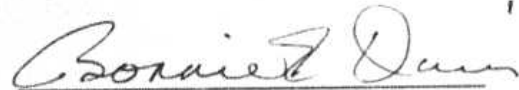
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