

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for determination )  
of need for proposed electrical power ) Docket No. 900709-EQ  
plant and related facilities, Indiantown )  
- Project, by FLORIDA POWER & LIGHT COMPANY ) Filed: Dec. 21, 1990  
and INDIANTOWN COGENERATION, L.P. )  
)

**INDIANTOWN COGENERATION, L.P.'s  
PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND RECOMMENDED ORDER**

Pursuant to notice, a formal hearing was held in this docket before the Florida Public Service Commission (Commission) by its duly designated Hearing Officer, CHAIRMAN MICHAEL MCK. WILSON, on December 5, 1990, in Tallahassee, Florida.

**APPEARANCES**

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#### STATEMENT OF THE ISSUE

The ultimate issue in this proceeding is whether the joint petition of Florida Power & Light Company (FPL) and Indiantown Cogeneration, L.P. (ICL) for an affirmative determination of need pursuant to Section 403.519, Florida Statutes, for a proposed 270-330 MW coal-fired electrical power plant and associated facilities to be located in Martin County, Florida should be approved, approved with conditions, or denied.

At the Prehearing Conference held on November 27, 1990 the parties identified seventeen factual issues for resolution in this proceeding. Those issues are specifically stated in the Prehearing Order in this proceeding, Order No. 23830, issued December 4, 1990.



PRELIMINARY STATEMENT

On August 9, 1990, FPL and ICL (Petitioners) filed a joint petition for a determination of need for a proposed electrical power plant and related facilities to be located in Martin County, Florida, pursuant to Section 403.519, Florida Statutes. The proposed facility, known as the Indiantown Project, will be located near Indiantown, Florida and will be owned and operated by ICL. The net electrical power from the facility will be sold to FPL pursuant to an Agreement For The Purchase of Firm Capacity and Energy between Indiantown Cogeneration, L.P. and Florida Power & Light Company, dated May 21, 1990 and amended December 5, 1990 (the "Power Sales Agreement"). The proposed unit has a projected in-service date of December 1, 1995. On August 27, 1990, FPL filed a petition pursuant to Rules 25-17.080 through 25-17.091, Florida Administrative Code, seeking approval of the Power Sales Agreement. By Order, the two dockets were consolidated for purposes of hearing.

The Florida Municipal Power Agency (FMPA), a wholesale customer of FPL, sought and was granted intervention in this docket. Air Products and Chemicals, Inc. initially sought intervention but later withdrew its request. At the prehearing conference held pursuant to notice on November 27, 1990, Nassau Power Corporation (Nassau), a company which had tendered an executed standard offer power sales contract

to FPL on June 13, 1990, was granted intervention in this docket. At the outset of the final hearing, Nassau withdrew its intervention.

At the final hearing, ICL presented the testimony of Joseph P. Kearney, President and Chief Executive Officer of ICL and of PG&E-Bechtel Generating Company; Stephen A. Sorrentino, Project Development Manager for PG&E-Bechtel Generating Company with overall responsibility for managing the development of the Indiantown Project; and John R. Cooper, Vice President -- Finance of PG&E-Bechtel Generating Company. FPL presented the testimony of G.R. Cepero, FPL's Director of Bulk Power Markets, and Samuel S. Waters, FPL's Manager of Power Supply Planning. No other party presented any testimony. Petitioners offered Exhibits 2 through 18, Exhibits 20 through 25, and Exhibits 27 through 30, which were received into evidence. The Commission Staff offered Exhibits 1 and 31, which were received into evidence. The Hearing Officer requested Late-Filed Exhibits 19 and 26, which were filed subsequent to the hearing and received into evidence without objection.

The transcript of the hearing (2 volumes) was filed on December 7, 1990. The parties filed Proposed Recommended Orders and/or Post-Hearing Statements on December 21, 1990. A ruling on each proposed finding has been made in the Appendix attached to this Recommended Order.



## FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are made:

### I. THE PARTIES

1. FPL is a public utility regulated by the Commission. FPL's service area spans 35 Florida counties and contains approximately 27,650 square miles with a population of approximately 5.9 million. (Ex. 2, p. 14)

2. (a) ICL is a limited partnership formed as the vehicle for PG&E-Bechtel Generating Company to construct, own and operate the Indiantown Project. (Kearney, Tr. 24) ICL's general partners are Toyon Enterprises, a wholly-owned subsidiary of PG&E Generating Company, and Palm Power Corporation, a wholly-owned subsidiary of Bechtel Generating Company. (Kearney, Tr. 24; Ex. 4) PG&E Generating Company is also a limited partner of ICL. Id. Additional limited partners may be admitted at a later date. (Ex. 2, p. 12)

(b) PG&E-Bechtel Generating Company is a general partnership between PG&E Generating Company and Bechtel Generating Company. (Kearney, Tr. 21, 27; Ex. 4) PG&E Generating Company is a subsidiary of PG&E Enterprises, which in turn is a subsidiary of Pacific Gas & Electric Company, the largest combined electric and gas utility in the country. (Kearney, Tr. 21-22, 28) Bechtel Generating

Company is a subsidiary of Bechtel Enterprises, which in turn is a wholly-owned subsidiary of Bechtel Group, Inc., one of the largest engineering, construction and development companies in the world. (Kearney, Tr. 21-22, 28)

3. FMPA is a generation and transmission utility supplying electric capacity and energy to certain of its members in FPL's service area through its own generation resources and through the purchase of power and transmission services from other utilities. (FMPA Amended Petition to Intervene, ¶1)

## II. THE INDIANTOWN PROJECT

4. The Indiantown Project is a 270-330 MW, coal-fired cogeneration facility to be located in southwestern Martin County, Florida, about three miles northwest of Indiantown, nine miles east of Lake Okeechobee, and approximately three miles southeast of FPL's Martin Plant. (Sorrentino, Tr. 50, 69-70; Cepero, Tr. 170; Ex. 2, p. 18; Ex. 9) The projected commercial operation date for the plant is December 1, 1995. (Kearney, Tr. 25; Cepero, Tr. 170)

5. The plant site is adjacent to the Caulkins citrus processing plant, an abandoned Florida Steel facility, and vacant land zoned for industrial use. (Sorrentino, Tr. 50, 69-70; Exs. 2, 10, 17) State Road 710 and the CSX Railroad line are adjacent to the northern boundary of the site. Id.



6. The site for the Indiantown Project consists of two parcels of land totaling approximately 325 acres.

(Sorrentino, Tr. 50-51, 69-70; Ex. 10) ICL has exclusive three year options to purchase these parcels. Id.

7. The site is an excellent location for a cogeneration project. It is adjacent to the project's steam customer and has direct access to the CSX rail system and State Road 710. (Sorrentino, Tr. 51-52) FPL's existing Martin-Indiantown 230 kV transmission line traverses the plant site. (Sorrentino, Tr. 51-52; Cepero, Tr. 170) Load flow studies show that the plant can be efficiently integrated into the existing bulk power system by interconnection with that transmission line. (Ex. 2; p. 37) No new off-site transmission lines will be required. (Sorrentino, Tr. 63; Waters, Tr. 256) This reduces the licensing risks compared to a facility which might require significant transmission additions. (Cepero, Tr. 172) The design work necessary to support a final interconnection agreement is currently underway. (Sorrentino, Tr. 64; Ex. 2, p. 37)

8. The site is located close to FPL's load center. (Ex. 25, p. 2) Because of that location, it is not expected to experience any significant transmission losses. Id. Further, the project's location will significantly contribute to FPL's system reliability and integrity.

(Waters, Tr. 251) In particular, the project will have no negative impact on FPL's ability to obtain emergency assistance from the utilities with which it is interconnected. (Waters, Tr. 251, 264-270, 272, 282-283; Ex. 25) Relative to the Martin plant site, there is no capacity penalty associated with the project's location. Id. In other words, every 100 megawatts of capacity from the Indiantown Project will provide 100 megawatts of reliability benefit to FPL. Id. This contrasts with projects located in other areas of the state, where 100 megawatts of capacity might provide as little as 78 megawatts of reliability benefit due to impacts on the transmission system. Id. In addition, the integration of the Indiantown Project will not require FPL to curtail any other current uses of its transmission system. (Waters, Tr. 281-282)

9. The facility will consist of a single pulverized coal boiler, a steam turbine generator, and associated equipment. (Sorrentino, Tr. 52-54) This is a well established and highly reliable electric generating technology. (Id.; see Cepero, Tr. 197)

10. The plant will be designed to comply with all applicable environmental standards. (Sorrentino, Tr. 54) The provisions of the recently enacted Clean Air Act Amendments will have no significant impact on the



facility. The facility is exempt from the acid deposition control provisions of these amendments (i.e., the SO<sub>2</sub> emission offset requirements) because the Power Sales Agreement for the facility was signed on May 21, 1990, well in advance of the effective date of the law. (Sorrentino, Tr. 81-83; Ex. 19) The more stringent limitations established by the amendments for facilities located in "nonattainment areas" also will not apply to the Indiantown Project, since it is located in an area which is presently designated as an "attainment area" for all pollutants for which national ambient air quality standards have been established. Id.

11. The plant will burn approximately one million tons per year of coal. (Sorrentino, Tr. 62) Coal will be obtained from one or more coal suppliers in the Southern Appalachian coal region. Id. Coal is a domestically-sourced, readily available fuel with a history of stable pricing. (Kearney, Tr. 30; see Sorrentino, Tr. 67) These factors reduce the potential of supply interruptions and significant fuel price increases, and result in a stable and secure fuel supply. (Sorrentino, Tr. 67; Cepero, Tr. 172)

12. At least 50% of the plant's coal requirements will be purchased under long term contracts, with the remainder being obtained by either long term contracts or spot purchases. (Sorrentino, Tr. 62) ICL expects to issue a

request for proposals for fuel supply during mid-1991, and to enter into a firm contract prior to the financial closing for the facility in mid-1992. Id. ICL has obtained preliminary expressions of interest from a number of potential fuel suppliers, and ICL's affiliates have recent experience in coal acquisition for similar facilities. (Sorrentino, Tr. 62-63, 89-90)

13. ICL will maintain approximately a seven day fuel inventory in active storage, with an additional 30 days' supply in an emergency coal pile. (Sorrentino, Tr. 73-74, 87-89) The site has the physical capability of accommodating a larger coal inventory if conditions warrant increasing the amount of coal stored on site. (Sorrentino, Tr. 88-89)

14. The plant will use small quantities of gas or distillate fuel oil for start-up purposes. (Sorrentino, Tr. 55, 88-89) These fuels can also be used for supplemental firing in the main boiler during periods of peak demand, and may be used in an auxiliary boiler to meet steam requirements when the main boiler is out of service. (Sorrentino, Tr. 55, 88-89; Ex. 2, p. 36) ICL has a letter of intent with Indiantown Gas Company to provide natural gas to the project for these purposes. (Ex. 16)

15. Coal will be transported by the CSX Railroad, which has an existing rail line adjacent to the site.



(Sorrentino, Tr. 63) ICL has a letter of intent with CSX Transportation for transportation of both coal and limestone to the site, and for backhaul of ash. (Sorrentino, Tr. 45, -63, 100-101; Ex. 15)

16. FPL's system today relies on coal-fired generation, excluding coal-by-wire purchases, for approximately 2% of its energy requirements. (Waters, Tr. 284) The Indiantown Project and the planned purchase of Plant Scherer will increase the percentage of coal-fired generation on FPL's system to roughly 8 or 9% in 1996. Id. Therefore, the purchase of coal-fired power from ICL will contribute to maintaining or improving FPL's fuel diversity. (Waters, Tr. 256, 271, 283; Cepero, 197-198)

17. The record demonstrates that ICL's fuel selection and fuel procurement plan provides adequate assurance regarding the availability of fuel for the Indiantown Project [Issue 10] and further demonstrates that the project will contribute toward maintaining adequate fuel diversity for FPL's system [Issue 11].

18. ICL has certified to the Federal Energy Regulatory Commission (FERC) that the project will be constructed and operated as a "qualifying facility" under the Public Utility and Regulatory Policies Act of 1978 and FERC's implementing regulations. (Sorrentino, Tr. 61) As a cogeneration facility, the facility will use fuel more efficiently than a traditional generating plant. (Sorrentino, Tr. 67)

19. The steam customer for the facility is Caulkins Indiantown Citrus Company (Caulkins). (Sorrentino, Tr. 61, 71; Ex. 2, p. 33-34) The Caulkins plant produces concentrates and extracts from the juice of citrus fruits. Id. Caulkins uses steam in an evaporation process for producing citrus concentrate, and in a drying process in which pulp and peel are used to create cattle feed. Id.

20. ICL has an Agreement in Principle with Caulkins under which ICL will provide all of Caulkins' steam requirements, up to a maximum of 215,000 pounds per hour. (Sorrentino, Tr. 61; Ex. 13) Under the agreement Caulkins will, at a minimum, take the amount of steam necessary for ICL to maintain qualifying facility status. (Ex. 13, ¶2) Caulkins' current thermal energy requirements on an annualized basis are sufficient to support QF status for the Indiantown Project. (Sorrentino, Tr. 84-85) Following a planned expansion by Caulkins, those requirements will be approximately double the required QF minimum. Id.

21. Cooling and process water for the facility will be obtained from agricultural waste water in the Taylor Creek-Nubbin Slough, located approximately 20 miles north of the project site. (Sorrentino, Tr. 55, 64, 72) The use of this water source has been encouraged by the South Florida Water Management District. (Sorrentino, Tr. 95-97; Ex. 2, p. 37)



22. Transportation of this water from the Taylor Creek-Nubbin Slough will require construction of an approximate 20-mile water pipeline. (Sorrentino, Tr. 64, 72; Ex. 2, p. 37) That buried pipeline will be installed in existing CSX Railroad right-of-way. Id. The use of the railroad right-of-way for this purpose is contemplated by the letter of intent between ICL and CSX Transportation. (Ex. 15, ¶3)

23. Inasmuch as no new off-site transmission facilities are required for the ICL project (see Finding No. 7), the record demonstrates that the water pipeline is the only associated off-site facility required in connection with the project [Issue 15].

24. The estimated total capitalized cost for the facility is approximately \$600 million, or approximately \$2,000 per kW. (Sorrentino, Tr. 66-67) At a 5% escalation rate, this translates into approximately \$505 million, or \$1,683 per kW, in January 1991 dollars. (Sorrentino, Tr. 156) The capacity pricing formula to FPL is fixed by terms of the Power Sales Agreement, so that ICL bears the financial and other risks associated with construction of the project, including all escalation and interest rate risk. (Sorrentino, Tr. 66-67, 91; Waters, Tr. 288)

25. The project schedule calls for commercial operation by December 1, 1995. (Sorrentino, Tr. 64; Cepero, Tr. 170) To support this timetable, the Site Certification

Application is scheduled for submission to the Florida Department of Environmental Regulation (DER) in December, 1990 and construction is scheduled to begin by July, 1992. (Sorrentino, Tr. 64-65; Ex. 12) Construction start could slip a few months without placing the December 1, 1995 in-service date in jeopardy. (Sorrentino, Tr. 81-82)

26. ICL plans to finance the project using a combination of equity and nonrecourse project debt. (Cooper, Tr. 122, 126) Under Section 21.7 of the Power Sales Agreement, the project is required to have a minimum of 10% equity, and ICL currently anticipates an initial equity investment in the 10-15% range, or \$60 million to \$90 million. Id. ICL's parents and affiliates have a proven track record of arranging financing for similar types of projects. (Cooper, Tr. 124, 126-127) Bechtel Enterprises has arranged over \$700 million of financing for five independent power projects in which it has been an investor, and PG&E-Bechtel Generating Company has arranged \$750 million of financing for two large cogeneration projects which are scheduled for closing within the next two months. Id.

27. PG&E-Bechtel Generating Company will have overall responsibility for managing the development, construction and operation of the project. (Kearney, Tr. 25-26; Sorrentino, Tr. 65) PG&E-Bechtel Generating Company was

organized in 1989 to be the exclusive vehicle for Pacific Gas & Electric Company (PG&E) and Bechtel Group, Inc.

(Bechtel) to participate in the non-utility power production business. (Kearney, Tr. 21, 27) PG&E-Bechtel Generating Company has eleven projects, totaling approximately 1970 MW, in advanced stages of development, and eight additional projects, totaling approximately 1305 MW, in earlier stages of development. (Kearney, Tr. 23, 28; Ex. 6) These projects are in addition to 15 cogeneration projects in which Bechtel has had a development or construction role. (Kearney, Tr. 22, 28; Ex. 5)

28. ICL expects that Bechtel Power Company will design and construct the Indiantown Project, although FPL's required approval of the architect/engineer has not yet been obtained. (Sorrentino, Tr. 65; Cepero, Tr. 199-200) Financing for the plant will be arranged by PG&E-Bechtel Generating Company, and day-to-day operations will be the responsibility of PG&E Operating Services, a subsidiary of PG&E Enterprises. (Sorrentino, Tr. 65-66)

29. ICL's access to the skill, experience and resources provided by PG&E and Bechtel, each of which has substantial long-term experience in the electrical power business, provide confidence that the project will be viable, reliable, and economic. (Kearney, Tr. 22, 23, 30; Cepero, 172, 177, 197)



### III. THE POWER SALES AGREEMENT

30. The sale of capacity and energy from the Indiantown Project is governed by the terms of the Power Sales Agreement between ICL and FPL, executed on May 21, 1990.

(Ex. 20) The termination fee provisions of the Power Sales Agreement were modified by a contract amendment executed on December 5, 1990. (Cepero, Tr. 162-163; Ex. 22)

31. The Power Sales Agreement has an initial term of 30 years. (Cepero, Tr. 170; Ex. 20, §3.3) The plant has a nominal net electrical output of 300 MW. (Cepero, Tr. 170) The actual committed capacity from the plant will be designated by ICL based on pre-operational tests, and must be in the 270 MW to 330 MW range, unless FPL agrees otherwise. (Cepero, Tr. 170-171; Ex. 20, §5.13)

32. The anticipated commercial operation date for the facility is December 1, 1995, although the Power Sales Agreement permits a commercial operation date as early as September 1, 1995. (Cepero, Tr. 170; Ex. 20 §1.14) Capacity payments begin on the commercial operation date. (Sorrentino, Tr. 115-116) Any energy available from the facility prior to the commercial operation date will be purchased by FPL under the terms of the Agreement. (Cepero, Tr. 184; Sorrentino, Tr. 116; Ex. 20, §6.1)

33. The Power Sales Agreement contains a number of provisions designed to provide reasonable assurance that the facility will be completed on-time. (Cepero, Tr. 174; Sorrentino, Tr. 74-75)

(a) First, the agreement provides a series of milestones designed to maintain progress toward completion of the facility. These include: (i) contractual deadlines for filing the need determination application and the site certification application for the facility (§3.5.1, 4.2.2); (ii) construction loan closing within 36 months from the date of execution of the agreement (§3.4); and (iii) start of construction within 39 months from the date of execution of the agreement (§3.4). (Cepero, Tr. 174-175)

(b) Second, the contract requires that \$9 million of completion security be furnished on the following schedule: (i) \$1 million within 15 days following Commission approval of the Power Sales Agreement, (ii) \$2 million within 15 days following certification of the facility under the Power Plant Siting Act, and (iii) \$6 million within 15 days after closing of the construction loan for the facility. (Cepero, Tr. 177; Ex. 20, §4.1) This completion security is forfeited at the rate of \$750,000 for every month (and on a pro rata basis for partial months) that the commercial operation date is delayed beyond December 1, 1995. (Sorrentino, Tr. 58; Ex. 20, §4.2.1) FPL



additionally has the right to terminate the contract in the event that the commercial operation date is not achieved by December 1, 1996. (Sorrentino, Tr. 114; Ex. 20, §3.4) Both the December 1, 1995 and December 1, 1996 dates are subject to delay for up to, but no longer than, five additional months as a result of force majeure. (Sorrentino, Tr. 112, 114-115) The Power Sales Agreement's definition of force majeure is very narrow, and excludes, for example, equipment breakdown caused by its design, construction, operation or maintenance, or otherwise caused by an event originating in the facility. (Ex. 20, §1.28)

(c) Third, ICL must submit an integrated engineering, procurement and construction schedule, and a start-up and test schedule, for FPL's review, and must submit monthly progress reports to FPL until the commercial operation date (§5.5). (Cepero, Tr. 176)

34. The Power Sales Agreement also contains a number of provisions intended to assure that the facility will be designed as a utility grade plant capable of reliable, high capacity factor operation. These include: (a) FPL has the right to approve the selection of the architect/engineer for the facility, who must be instructed to design and construct the facility to be capable of operating reliably with a capacity billing factor of at least 87% during the initial term of the Power Sales Agreement (§5.1); (b) ICL is



required to obtain a minimum \$60 million liquidated damages provision from its prime contractor to guarantee performance levels and completion date (§5.3); and (c) ICL must arrange to have its lenders designate an independent engineering firm to review and evaluate the design of the facility, and must make any changes determined to be necessary by that firm unless FPL concurs with ICL that such changes are unnecessary (§5.4). (Cepero, Tr. 175-177; Sorrentino, Tr. 58)

35. The Power Sales Agreement also contains a number of provisions designed to assure that the facility will operate reliably throughout the term of the agreement. (Cepero, Tr. 128; Sorrentino, Tr. 75) These include: (a) the previously mentioned provisions to assure that the basic facility design is sound (see ¶34); (b) ICL must arrange for review of the facility's operation and maintenance plan by an independent engineer (subject to FPL's approval) to determine that the plan is effective and that it will allow the facility to operate with a capacity billing factor of at least 87% (§5.8, 5.9); (c) an independent review of the facility's operation and maintenance plan must be performed on a periodic, on-going basis (§13.14); (d) the parties must mutually develop written operating procedures to integrate the facility into FPL's electric system (§5.7); (e) ICL must enter into long-term fuel supply agreements, with market

price reopener provisions, for at least 50% of the facility's fuel requirements (§§3.5.2, 3.5.8); and (f) ICL has agreed that the facility will be managed by PG&E-Bechtel Generating Company, or one of ICL's general partners (§21.10). (Cepero, Tr. 178-180; Sorrentino, Tr. 58-60)

36. The Power Sales Agreement also contains a number of provisions to assure the reliable operation of the facility during times of highest electrical demand. (Cepero, Tr. 180; Sorrentino, Tr. 75) These include: (a) ICL may only schedule outages during periods approved by FPL (§13.11); (b) ICL cannot schedule a maintenance shutdown of the facility during on-peak hours in December, January, February, June, July, August, or September 1 to September 15 of any year (§5.10, 13.11); (c) the facility is subject to dispatch by FPL (§13.6); and (d) as discussed below, the contract contains pay-for-performance provisions which give a financial incentive for high capacity factor performance during on-peak hours. (Cepero, Tr. 180-182; Sorrentino, Tr. 57-58)

37. The Power Sales Agreement allows FPL to economically dispatch the facility, to commit and decommit the facility, and to control both the real and reactive power from the facility. (Cepero, Tr. 182-183; Sorrentino, Tr. 56; see Waters, Tr. 268) This provision allows the facility to be treated as if it were an FPL unit, thus



creating the opportunity for FPL to reduce its system costs. Id.

38. In addition to minimizing transmission losses and enhancing the reliability of FPL's system (see Finding No. 8) the facility's location near FPL's load center also helps FPL minimize its production costs by reducing the need for additional transmission facilities and by reducing FPL's losses when compared to other sources of generation. (Cepero, Tr. 182) In addition, the project's location is helpful to FPL's ability to use the facility for voltage support. Id.

39. Under the Power Sales Agreement, capacity payments are on a pay-for-performance basis. The base capacity payment, assuming the plant operates in the 87% to 92% capacity billing factor range, is \$23,000 per MW/month (\$23 per kW/month) for the first twenty years of the contract. (Cepero, Tr. 185-186; Sorrentino, Tr. 57; Ex. 20, Appendix A) This base payment declines by 50% in the twenty-first year, and declines annually thereafter. Id.

40. If the plant operates above the 92% capacity billing factor level, then there is a 2 percentage point bonus for every 1 percentage point increase in capacity billing factor up to 97%, where the capacity payments are capped. (Cepero, Tr. 187; Sorrentino, Tr. 57; Ex. 20, §§8.6, 8.7, Appendix A; Ex. 21) If the plant operates below



the 87% capacity billing factor level, then there is a 2 percentage point penalty for every 1 percentage point decrease in capacity billing factor down to 55%. Id. No capacity payment is made in any month in which the capacity billing factor is less than 55%. Id.

41. The calculation of the capacity billing factor gives extra weight to performance during on-peak hours, which are noon to 9:00 p.m. from April 1 through October 31, and 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. from November 1 to March 31. (Ex. 20, §§ 1.12, 1.46) The target level for performance during these hours is a 93% capacity factor, and on-peak performance above or below this level is given greater weight in calculation of the capacity billing factor. (Sorrentino, Tr. 57; Ex. 20 §1.12) These provisions provide ICL with a significant financial incentive to produce energy during the on-peak periods when the capacity and energy are of greatest value of FPL and its customers. (Cepero, Tr. 187; Sorrentino, Tr. 57)

42. Taken together, FPL's right to dispatch the facility, the maintenance scheduling restrictions in the Power Sales Agreement, and the financial incentives in that agreement for high capacity factor on-peak performance provide reasonable assurance that the energy and capacity from the Indiantown Project will be available when most needed by FPL's customers.

43. Under the Power Sales Agreement, monthly energy payments are based on a target energy cost of \$23.20 per MWH, as adjusted quarterly from the first quarter of 1990 to track changes in the cost of coal, coal transportation, and lime and ash disposal. (Cepero, Tr. 184-185; Sorrentino, Tr. 56; Ex. 20, §8.1, 8.3, App. I) This base energy rate is premised on the cost of fuel for the St. Johns River Power Park (SJRPP) units, adjusted for a transportation differential to Indiantown and for ICL's expected consumption of lime and costs for ash disposal. (Cepero, Tr. 184; 213-214) The monthly payments are further adjusted to reflect the hourly effect of changes in the efficiency of the facility caused by FPL dispatch. (Cepero, Tr. 185; Sorrentino, Tr. 56)

44. Once a year, the actual energy cost for the facility is calculated (subject to audit by FPL), and ICL and FPL share in any difference between the actual energy cost and the target energy cost. (Cepero, Tr. 187-188; Ex. 20, §8.4, 10.1 to 10.3) Energy costs related to the production of steam are ICL's sole responsibility, and are excluded from the calculation. (Ex. 20, App. I, ¶D.1, D.3) If the actual energy cost is less than the target, ICL and FPL share 50/50 in the energy cost savings. (Cepero, Tr. 188; Sorrentino, Tr. 156-160) If the actual energy cost is greater than the target, ICL and FPL share the first 10%

of additional energy cost on a 60/40 basis, and ICL bears all the additional energy cost above 110% of the target. Id. This provision caps FPL's responsibility for energy costs at 104% of the target rate. Id.

45. These energy payment provisions give ICL a substantial incentive to minimize the energy costs for the facility, and enable FPL's customers to share in any savings achieved while limiting their exposure to increased costs. (Cepero, Tr. 188, 217-218; Waters, Tr. 285; Sorrentino, Tr. 56, 156-160; Ex. 20, §8.4) In the absence of such a split of savings provision, ICL would be entitled to all energy cost savings and no savings would be available to be credited to FPL's customers. (Cepero, Tr. 226) FPL's economic analysis shows that the Indiantown Project remains approximately \$76 million more cost-effective than FPL's own avoided unit even if FPL's share of the energy cost reaches the 104% cap permitted under the Power Sales Agreement. (Waters, Tr. 296)

46. The Power Sales Agreement also contains a number of provisions designed to protect FPL in the event that the facility fails to perform. (Cepero, Tr. 188-189) These include:

(a) ICL must provide \$9 million completion security against which FPL can draw \$750,000 per month as liquidated damages in the event the facility does not



achieve its December 1, 1995 commercial operation date, except as the date may be extended for up to 5 months by force majeure (§4.1, 4.2). This monthly amount is representative of what it could cost FPL to make obtain replacement power on a short-term basis. (Cepero, Tr. 203-204)

(b) In the event that the agreement is prematurely terminated, ICL is obligated to pay FPL a termination fee equal to the cumulative difference between payments to ICL under the agreement and FPL's avoided cost for an IGCC unit, calculated on a year-by-year value of deferral basis. (Ex. 20, §3.8; Ex. 22) Exhibit 23 shows that the termination fee payable in each year is equal to the difference between the payments to ICL under the agreement, and FPL's own avoided cost for an IGCC unit. This obligation is secured by (i) termination fee security in the form of cash or a letter of credit which starts at \$13 million in the first year of operation up to a maximum of \$50 million in the fifth year of operation (§21.1); (ii) a first lien on the QF status reserve fund described below (§21.2); (iii) a second lien on the maintenance reserve fund described below (§21.4); and (iv) a second mortgage on the facility, also described below (§21.5). (Cepero, Tr. 189-193; Sorrentino, Tr. 59-60) Exhibit 23 shows that the total security for payment of the termination fee exceeds the

termination fee obligation in each year. Similarly, Exhibit 24 shows that the termination fee payable under the Power Sales Agreement is greater than the termination fee liability which would be calculated if a statewide pulverized coal unit, rather than FPL's own IGCC unit, was used as the basis for calculating the termination fee liability.

(c) ICL is required to maintain a QF status reserve fund which starts at \$500,000 during the first year of commercial operation and increases to a maximum of \$5 million by the tenth year of operation (\$21.2). This fund is available to ICL to take whatever action is necessary to maintain its qualifying facility status, including building or securing a new steam host. (Sorrentino, Tr. 103, 107) FPL has a first lien on this fund as additional security for payment of any termination fee liability. (Cepero, Tr. 190, 194-195; Sorrentino, Tr. 59, 86, 107)

(d) ICL is required to maintain a maintenance reserve fund which starts at \$3 million in the first year of operation and increases to \$30 million in the tenth year of operation (\$21.4). (Cepero, Tr. 190; Sorrentino, Tr. 59, 103-105) The fund can be used for major maintenance or overhaul to the plant (\$21.4.2), but can never fall below \$10 million. Id. This provision can be satisfied by a similar reserve fund required by ICL's lenders, including a



debt service reserve fund. Id. FPL has a second lien on such fund to secure all of ICL's obligations, including any termination fee liability, if ICL's lenders require a similar fund. Id. FPL has a first lien on the fund if a similar fund is not required by ICL's lenders, or when ICL's project debt is fully paid. Id.

(e) FPL will hold a second mortgage on the facility to secure all of ICL's obligation to FPL, including any termination fee liability. (Ex. 20, §21.5) The value of this second mortgage is protected by the requirement that ICL have a minimum 10% equity investment in the project (§21.7); by a levelization formula which requires ICL's equity investment to increase over time, either through reduction in the project debt and/or appreciation in the fair market value of the facility (§21.6 and Appendix M); and by limits on distributions to ICL's partners during the period in which ICL may be liable for payment of a termination fee (§21.9). (Cepero, Tr. 190-191; Sorrentino, Tr. 107-111) The estimated value of this second mortgage interest ranges from a minimum of \$ 102 million in the first year of operation to over \$ 650 million by the nineteenth year of operation, which is projected to be the last year in which any termination fee liability exists. (Ex. 23)

47. Taken together, the experience of the sponsors of the Indiantown Project and the provisions of the Power Sales

Agreement discussed above provide reasonable assurance that the Indiantown Project will be a reliable long-term source of power to assist in meeting FPL's capacity needs beginning in 1996, and that FPL's ratepayers will be adequately protected in the event of ICL's failure to perform in accordance with the requirements of the agreement. (See, Cepero, Tr. 173, 193)

#### IV. FPL'S NEED FOR POWER

48. FPL's capacity planning process has three basic steps: (i) quantification of the timing and amount of resources necessary to maintain an adequate level of system reliability; (ii) identification of available alternatives to meet the need and definition of an "avoided cost" basis against which the alternative can be compared, and (iii) optimization of the alternatives to identify a power supply plan that provides favorable economics while properly addressing risk and uncertainty. (Waters, Tr. 237-238)

49. The quantification of the timing and amount of capacity needs begins with the preparation of a forecast of FPL's demand and energy requirements. (Waters, Tr. 238) FPL presented a detailed 20-year forecast of customers, sales, and peak demand. (Ex. 3, App. B and C) This load forecast includes the impact of FPL's conservation efforts. (Waters, Tr. 244) These efforts provide



approximately 126 MW of incremental demand reductions from 1989 through 1997, for a total of 750 MW by 1997. (Id.; Ex. 3, p. 57-62) This forecast shows that FPL's summer peak demand is expected to grow from approximately 13,341 MW in 1990 to approximately 15,421 MW by 1996. (Ex. 3, App. C, p. 47; Ex. 27, Doc. 1) This load forecast was reviewed by the Commission and found reasonable for planning purposes in the need determination proceedings for FPL's Lauderdale Repowering and Martin Expansion projects. (Waters, Tr. 245-246; see Order No. 23079, p. 4; Order No. 23080, p. 4) The load forecast is similarly found to be reasonable for planning purposes in this docket. [Issue 3]

50. The timing and amount of FPL's need is determined by comparing the forecast of demand to existing and committed resources to determine if FPL's reliability criteria are met. (Waters, Tr. 238) For this purpose, the maximum cost effective level of demand side management reductions is taken into account. These reductions total 1,003 MW by 1997, including both residential load control and interruptible rates for larger customers. (Waters, Tr. 244-245; Ex. 27, Doc. 3) When these demand side management measures are considered together with the conservation discussed above, the record shows that FPL is expected to have over 1,750 MW of total demand side savings by 1997, and therefore has reasonably considered the ability of

conservation to mitigate the need for the capacity represented by the Indiantown Project. [Issue 14]

51. FPL uses two reliability criteria to determine the timing and amount of its capacity needs: summer reserve margin and loss of load probability (LOLP). FPL plans its system to maintain a minimum summer reserve margin of 15% and a maximum LOLP of 0.1 days/year. (Waters, Tr. 239) These criteria are commonly used in the utility industry, and were reviewed by the Commission and found reasonable for planning purposes in the need determination proceedings for FPL's Lauderdale Repowering and Martin Expansion projects. (Waters, Tr. 245-246; see Order No. 23079, p. 4; Order No. 23080, p. 4) Those reliability criteria are similarly found to be reasonable for planning purposes in this docket. [Issue 2]

52. FPL's analysis of its additional capacity need takes into account FPL's existing generating capacity; the 515 MW of QFs which were under contract to FPL prior to the ICL contract; the additional capacity resulting from the repowering of Lauderdale Unit Nos. 4 and 5 in 1993 and the addition of Martin Unit Nos. 3 and 4 in 1994 and 1995; and the power purchases under FPL's 1982 and 1988 agreements with the Southern Companies. (Waters, Tr. 247) Through the use of the TIGER reliability model, the analysis also takes into account the availability of assistance from the other



utilities with which FPL is interconnected. (Ex. 3, p. 13-14)

53. FPL's analysis shows that it reaches undesirable levels of LOLP beginning in 1995, and therefore needs additional capacity beginning in that year. (Waters, Tr. 248; Ex. 27, Doc. 6) The analysis shows that without any additional QF capacity not already under contract, FPL requires a total of approximately 900 MW of additional capacity by 1996 in order to meet the 0.1 day/year reliability target. (Waters, Tr. 248) The record thus demonstrates that FPL, as an individual utility interconnected to the statewide grid, has a need for additional capacity in 1996. [Issue 4]

54. FPL's analysis then identifies the available utility construction alternatives to meet the capacity need. The economic analysis of these alternatives is based on a series of economic assumptions and on cost parameters for the various generating alternatives as shown on Exhibit 27, Documents 4 and 5. (Waters, Tr. 245-246)

55. The economic analysis of alternatives also makes use of FPL's May, 1989 most likely fuel forecast. (Waters, Tr. 244) This forecast, which is developed using a scenario approach, is a 30-year projection of the price and availability of fossil fuels. (Ex. 3, p. 37) The fuel forecast, which is described in detail in Section III.B and

Appendix D of Exhibit 3, and summarized on Exhibit 27, Document 2, was reviewed by the Commission and found reasonable for planning purposes in the need determination proceedings for FPL's Lauderdale Repowering and Martin Expansion projects. (Waters Tr. 245-246; see Order No. 23079, p. 6; Order No. 23080, p. 6) FPL's fuel forecast is similarly found to be reasonable for planning purposes in this docket. [Issue 9]

56. Based on these assumptions and forecasts, FPL's analysis shows that the most cost-effective utility construction alternative for meeting the 900 MW need in 1996 would be the construction of two 768 MW integrated gasification combined cycle (IGCC) units. (Waters, Tr. 249) Thus, an IGCC unit is FPL's "avoided unit" for 1996. (Ex. 2, p. 64) As such, it is the appropriate basis for the cost-effectiveness evaluation of the Indiantown Project.

57. The Indiantown Project is a more cost-effective alternative for meeting a portion of FPL's 1996 capacity need than the IGCC unit. (Waters, Tr. 252) The Indiantown Project saves approximately \$90 million (1990\$) cumulative present value of revenue requirements (CPVRR) over a thirty year period compared to an equivalent amount of IGCC capacity. (Waters, Tr. 252; Ex. 27, Doc. 8) The Indiantown Project also saves approximately \$73 million over a thirty year period when compared to an equivalent amount of IGCC



capacity on a year-by-year value of deferral basis.

(Waters, Tr. 252; Ex. 29)

58. The Indiantown Project is also a more cost-effective alternative for meeting a portion of FPL's 1996 capacity need than 300 MW of standard offer capacity priced at 80% of the statewide avoided unit. (Waters, Tr. 254-256; Ex. 2, p. 66-67) Although the present value of the payment stream for 300 MW of standard offer capacity is somewhat less than 300 MW of capacity under the Power Sales Agreement with ICL, a simple price comparison does not consider all the elements of value that must be included in a full cost-effectiveness evaluation. (Id.; Ex. 25) The Indiantown Project and the Power Sales Agreement with ICL provide a number of substantial benefits to FPL that are simply not available to FPL under the standard offer contract. (Cepero, Tr. 200-202; Waters, Tr. 254-256; Sorrentino, Tr. 60; Ex. 11; Ex. 25) These include provisions which offer more than the typical assurance that the unit will be built on time (Cepero, Tr. 173-177), that the unit will operate reliably (Cepero, Tr. 178-180), that the unit will be available when most needed (Cepero, Tr. 180-182), and that the unit will minimize FPL's production costs (Cepero, Tr. 182-184). When these contract provisions and other risk reducing factors are taken into account, the Indiantown Project is a more cost-effective alternative than a

comparable amount of standard offer capacity. (Waters, Tr. 255; Ex. 25)

59. Even if the relative value of the ICL contract provisions over those contained in the standard offer contract were not considered in assessing cost-effectiveness, the record in this case demonstrates that the Indiantown Project is a more cost-effective alternative for meeting FPL's capacity needs in 1996 than the specific standard offer capacity potentially available to FPL. (Ex. 31)

60. In our Order on Subscription issued on November 21, 1990 in Docket No. 900004-EU, we held that the maximum amount of standard offer capacity to be purchased at prices associated with the 1996 pulverized coal unit was 500 MW. (Order No. 23792, p. 3) We also held that the contracts eligible under this subscription limit were Nassau Power Corporation (435 MW) and Cypress Energy Project I (65 MW), and that all other standard offer contracts were null and void. (Order No. 23792, p. 4-5)

61. The record in this case shows that the 300 MW of capacity to be purchased from ICL under the Power Sales Agreement is less costly than the equivalent amount of capacity from Nassau Power Corporation, when the relative location value of the two projects is taken into account. (Exs. 25, 31) On a value of deferral basis, ICL's contract



is \$136 million (1990\$) less costly than a comparable amount of capacity from Nassau Power, even without quantifying the value of economy purchases which would be lost if FPL purchased from Nassau Power. (Ex. 31; see Waters, Tr. 264-270)

62. The record also shows that the 65 MW of standard offer power available from Cypress Energy, while roughly \$13 million less costly than a comparable amount of capacity from the Indiantown Project, is not sufficient to allow FPL to meet its reliability criteria in 1996. (Ex. 31) Consequently, the Indiantown Project is a more cost-effective way of satisfying FPL's 1996 need than either of the standard offer contracts which might be considered as potential alternatives.

63. The Indiantown Project is also a better alternative for helping to meet FPL's 1996 capacity needs than potential power purchases from other third parties. (Waters, Tr. 252-254) At the time the Power Sales Agreement was signed, FPL had received bids under its RFP capacity solicitation and had performed a preliminary review of such proposals. Id. While one or more of those proposals may ultimately develop into an attractive project for meeting a portion of FPL's capacity needs in 1997 or later years, none of them is currently an alternative to the Indiantown Project for meeting the 1996 need. Id.

64. The Indiantown Project will contribute 300 MW toward the total 900 MW of capacity needed by FPL in 1996 and is an integral part of meeting FPL's necessary reliability level. (Waters, Tr. 250-251) As noted above, the Indiantown Project is the most cost alternative for meeting the 300 MW increment of need that it is intended to satisfy.

65. Absent ICL's contribution toward meeting FPL's need, FPL's system reliability would degrade to unacceptable levels in 1996, increasing the likelihood of service interruptions. (Waters, Tr. 250-251; Ex. 28, revised p. 60) The record thus demonstrates that FPL has a need for the capacity represented by the Indiantown Project [Issue 5], that there would be adverse consequences to FPL and its customers if the Indiantown Project is not completed in the approximate time frame provided in the Power Sales Agreement [Issue 6], and that FPL has reasonably considered other potential alternative supply side sources of capacity [Issue 12].

66. FPL's need for additional capacity in 1996 is part of a statewide need for approximately 1,060 MW of new capacity in 1996. (Waters, Tr. 256) The ICL unit would represent 28% of this total planned capacity. Id. The 300 MW to be provided by the ICL unit is also less than the cumulative Peninsular Florida need of 2,058 MW by 1996 which



remains unsatisfied after all prior QFs and previously certified capacity additions are taken into account. (Ex. 2, pp. 71-72) As a coal unit, the Indiantown Project is consistent with the type of capacity designated as the statewide avoided unit, and will help to maintain adequate fuel diversity on a Peninsular Florida basis.

67. The Indiantown Project is a cost-effective alternative for meeting the Peninsular Florida capacity need when compared to the statewide avoided unit, a 1996 pulverized coal unit. The Indiantown Project saves approximately \$67 million on a value of deferral basis when compared to such a unit. (Waters, Tr. 254; Ex. 30)

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this docket pursuant to Chapters 120 and 366, Florida Statutes, Section 403.519, Florida Statutes, and Chapter 25-22, Florida Administrative Code.

2. The information provided in this docket satisfies the informational requirements of Rule 25-22.081, Florida Administrative Code, and is sufficient to enable the Commission to evaluate the proposed Indiantown Project.

[Issue 1]

3. Under Section 403.519, Florida Statutes, in considering the need for a proposed electrical power plant the Commission must take into account:

. . .the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant of its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant.

4. The Commission has previously held that a cogeneration project must be measured by reference to the needs and avoided costs of the purchasing utility. (Order No. 22341, pages 25-27) Thus, the Indiantown Project must be evaluated by reference to FPL's needs.

5. In evaluating the need for the Indiantown Project, FPL has shown a need for 900 MW of additional capacity in 1996 in order to maintain the reliability and integrity of its electric system. This need remains after the conservation measures proposed by FPL have been taken into account. The Indiantown Project will contribute 300 MW toward meeting that capacity need. The favorable location of the Indiantown Project on the electric grid; the strength and experience of its sponsors; the use of a stable, domestically-sourced fuel and a proven coal-fired



technology; and the numerous provisions of the Power Sales Agreement which are designed to assure the timely completion and reliable long-term operation of the facility combine to provide reasonable assurance that the project will contribute to the reliability and integrity of FPL's electric system. The first criteria of Section 403.519 is therefore satisfied by the Indiantown Project. [Issue 7]

6. FPL has a need for 900 MW of additional capacity in 1996 in order to assist it in providing adequate electricity to its customers. The same factors which demonstrate that the Indiantown Project will contribute to the reliability and integrity of FPL's electric system also demonstrate that it will contribute toward providing FPL with adequate electricity to meet the needs of its customers. The adequacy of the power to be provided by the Indiantown Project is further supported by contractual provisions that restrict maintenance scheduling during peak months, that allow FPL to dispatch the unit, and that provide substantial economic incentives for performance during peak hours, thereby assuring that the electricity from the facility will be available to FPL during those time periods when it is most needed. The second criteria of Section 403.519 is therefore satisfied by the Indiantown Project. [Issue 8]

7. FPL's own avoided unit for 1996 is an IGCC unit. FPL's studies show that such a unit is the most cost-

effective utility construction alternative available to FPL to meet its 1996 need. The Indiantown Project is a more cost-effective alternative than that avoided unit, saving approximately \$90 million (1990\$) on a cumulative present value of revenue requirements basis and saving approximately \$73 million (1990\$) on a year-by-year value of deferral basis compared with an equivalent amount of IGCC capacity. Other alternatives potentially available to FPL, such as purchase of standard offer capacity or purchases from other third parties, are either not cost-effective when location and other risk factors are taken into account, or represent projects which are not yet as well developed and defined as the Indiantown Project and thus are better suited as possible alternatives to meet FPL's capacity needs in 1997 or later years. The record demonstrates that the Indiantown Project is the most cost effective alternative available to FPL to meet the 300 MW increment of capacity need that it is intended to satisfy. The third criteria of Section 403.519 is therefore met by the Indiantown Project. [Issue 13]

8. FPL's power supply plan includes over 1,750 MW of demand side reductions by 1997, including 750 MW of reductions due to conservation programs. The 900 MW of additional capacity required in 1996 represents the need which remains after these cost-effective conservation and demand side management programs are taken into account. The



record therefore demonstrates that FPL has adequately considered the ability of conservation to mitigate the need for the additional capacity represented by the Indiantown Project. [Issue 14]

9. In prior need determination cases, the Commission has considered the consistency of the individual utility's need with the needs of Peninsular Florida as part of its inquiry into "other matters within its jurisdiction." The record shows that FPL's need for capacity is part of the larger Peninsular Florida need for capacity in 1996. By contributing to meeting FPL's need on a reliable and cost-effective basis, the Indiantown Project will contribute to meeting the statewide need on a similar basis. [Issue 16]

10. This Commission has also stated a policy to encourage utilities to enter into negotiated cogeneration contracts. For example, in Order No. 12634, amending the cogeneration rules, we stated:

[S]ubject to our ability to control the pass through of costs to ratepayers, utilities and QFs are in a far better position than we are to define their mutual obligations and daily working relationship. Therefore, we retain our preference of individually negotiated contracts, and continue to encourage them whenever possible.

Order No. 12634, page 13 (83 FPSC 10:152, 162)

The Power Sales Agreement in this case is an example of the type of contract that the Commission has sought to

encourage. Through the negotiation process, the parties have achieved provisions which give ICL the opportunity on a pay-for-performance basis to achieve revenues greater than those available under the 80% standard offer contract, but still below full avoided cost. In exchange, FPL has obtained a project with substantial sponsors, a favorable location, and numerous contractual provisions whose value is not easily quantifiable but which nevertheless provide substantial benefits to FPL, including assurance that the facility will operate reliably at a high level of performance in a way that is most beneficial to FPL and its ratepayers.

#### RECOMMENDATION

11. Based upon the record of this proceeding and the findings of fact and conclusions of law recited herein, it is RECOMMENDED that the Florida Public Service Commission:

(a) adopt a final order holding that a need exists for all of the coal-fired capacity represented by the Indiantown Project and its associated facilities (that is, up to 330 MW) and that the project satisfies all of the statutory requirements of Section 403.519, Florida Statutes; and



(b) transmit that final order to the Department of Environmental Regulation as the Commission's report pursuant to Section 403.507(2)(a), Florida Statutes.

Entered this \_\_\_\_\_ day of January, 1991.

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MICHAEL MCK. WILSON,  
as Hearing Officer

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THE FOREGOING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER ARE RESPECTFULLY SUBMITTED THIS 21st DAY OF DECEMBER, 1990.

HOPPING BOYD GREEN & SAMS

By:

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