

In Re: Petition of Florida Power)
& Light Company for inclusion of the)
Scherer Unit No. 4 purchase in rate)
base, including an acquisition)
adjustment)

DOCKET NO. 900796-EI
FILED: January 9, 1991

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Section 120.57(1)(b)4, Florida Statutes (1989), and Rule 25-22.056(2), Florida Administrative Code, submit the following proposed findings of fact and conclusions of law:

PROPOSED FINDINGS OF FACT

FPL'S PETITION AND THE JULY 30, 1990 LETTER OF INTENT:

1. FPL's petition referred to Section 366.076(1), Florida Statutes, which is a procedural statute permitting limited proceedings, but did not identify any substantive statutory authority for the Commission to give prior approval for the purchase of Scherer Unit No. 4.

2. FPL's petition and testimony asserted that the Commission could approve the purchase of Scherer Unit No. 4 based on a letter of intent dated July 30, 1990. [Waters, Tr. 978]

3. The original letter of intent was used by FPL to evaluate the economic and strategic value of the purchase and to file FPL's case for Commission approval of the purchase. [Cepero, Tr. 309]

4. The letter of intent on which FPL's case is based expired on December 31, 1990. [Exhibit 13] Definitive agreements will supersede the terms of the letter of intent. The definitive agreements have not been introduced into evidence or subject to review in this proceeding. The Commission's vote on February 5, 1991, will be based on a record compiled with reference to a letter of intent, with supplements, that has since expired.

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- EAG
- LEG
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- OPC
- RCH
- SEC
- WAS
- OTH

5. The original letter of intent was supplemented by a letter dated September 13, 1990. FPL did not identify this supplement or include it in its original filing even though the utility's petition was not filed until September 28, 1990. [Woody, Tr. 37-39; Cepero, Tr. 322; Exhibit 3]

6. The original letter of intent was also supplemented by a letter dated December 10, 1990, which had the effect of increasing the costs to FPL of purchasing Scherer Unit No. 4 and reducing the differential between the purchase and the UPS response to the capacity RFP. [Cepero, Tr. 322; Exhibits 2 and 22]

7. The December 10, 1990, supplement to the letter of intent requires FPL to compensate the Southern Company for its costs of construction for the third 500 kv transmission line, but those costs will not be known until the definitive agreements are negotiated and executed. [Woody, Tr. 60, 146-47, 150; Exhibit 2, page 4]

8. The original letter of intent contemplated a separate fuel supply agreement but the parties have decided instead to incorporate that agreement within the purchase and operating agreements. [Woody, Tr. 134; Cepero, Tr. 327, 368]

9. The December 10, 1990, supplement to the letter of intent provided for the Southern Companies to use best reasonable efforts to meet a 90% availability factor with supplemental energy and provide alternate energy during the transition period before FPL and JEA assume complete ownership.

10. The letter of intent, as supplemented, does not lay out all the terms and conditions that FPL will be subject to or the costs FPL will actually incur if it purchases Scherer Unit No. 4.

11. FPL has calculated that a 1% improvement in availability is worth approximately \$20 million or \$22 per kw but the penalty to Georgia Power pursuant to the December 10, 1990, supplement to the letter of intent will only be \$150,000 for each 1% reduction (to be applicable after the second closing date). [Cepero, Tr. 380-81; Exhibit 2, page 2, paragraph 3]

12. Pursuant to paragraph 21 of the original letter of intent, the letter of intent may not be construed as being legally binding on the parties. [Woody, Tr. 145; Exhibit 2; Exhibit 13]

13. The requirement in the letter of intent that the Commission must approve the transaction was imposed by FPL and can be waived by the utility. It is not considered by FPL to be a "no-deal" requirement. [Woody, Tr. 81-82]

14. Although FPL seeks expedited consideration in this case, the record indicates that the costs to FPL and its customers are less

the longer a decision is delayed. This is true at least until the June 30, 1991, deadline for the first closing. [Waters, Tr. 575-78; Exhibit 27]

COST COMPARISON OF PURCHASE VERSUS UPS RESPONSE TO RFP:

15. FPL does not require additional capacity until 1996. [Woody, Tr. 23] The purchase of Scherer Unit No. 4 is intended to address a 1996 need. [Waters, Tr. 573, 1042]

16. The Commission has never determined the need for additional base load generation generally or an IGCC unit specifically on FPL's system for an in-service date of 1996. [Wright, Tr. 735; Bartels, Tr. 849, 860]

17. FPL included the 1996 IGCC unit in its generation expansion plans solely for the purpose of establishing an "avoided cost" basis against which other alternatives could be evaluated. The IGCC simply served as a future option required to balance the demand/supply mix in FPL's studies. [Waters, Tr. 461; Bartels, Tr. 860]

18. The Electric Power Research Institute (EPRI) classifies the IGCC Technology Development Rating as "Demonstration" and its Design Cost Estimate Rating as "Preliminary." [Bartels, Tr. 849]

19. FPL's petition and evidence assumed that the purchase of Scherer Unit No. 4 was economical because it was more cost effective than the Scherer Unit No. 4 UPS response to the RFP, which, in turn, was more cost effective than the 1996 IGCC unit. Such an analysis is meaningful only if FPL first demonstrated the need for the IGCC unit (in the absence of such alternatives), which was not done in this case. [Bartels, Tr. 858]

20. FPL did not include Nassau Power Corporation's contract for 435 megawatts in its generation expansion plans. [Cepero, Tr. 316]

21. Because of the cost of coal and overcapacity on the Southern System, Scherer Unit No. 4 operated at a 17% capacity factor in 1989. The low capacity factor was because Scherer Unit No. 4 under economic dispatch was not the economical source of energy to deliver to FPL under UPS commitments much of the time. [Woody, Tr. 53-54; Exhibit 4; Waters, Tr. 536-37]

22. Approximately 50 megawatts of Scherer Unit No. 4 is in Georgia Power's retail jurisdictional rate base. [Woody, Tr. 93-94]

23. FPL has not disclosed exactly how it concluded the UPS response was the best option under the RFP. [Wright, Tr. 726, 732-33, 754; Bartels, Tr. 865]

24. FPL has not provided comparisons against other supply-side alternatives such as combustion turbines or standard combined-cycle generation. [Bartels, Tr. 859-60]

25. FPL has not provided the dollar impact or system reliability impact of the reduced ability to make other firm and economy purchases after the purchase of Scherer Unit No. 4 takes place.

26. The proposed schedule to phase in the Scherer Unit No. 4 purchase does not correspond to specific capacity needs in specific years. [Waters, Tr. 618]

27. The '90-'91 summer peak reserve margin of 17% calculated without the Turkey Point units is within FPL's reliability criteria which calls for a minimum summer peak reserve margin of 15%. [Waters, Tr. 464, 618-19] FPL's reliability standards, even with projections of increased short-term load growth and delayed QF capacity, are not violated before 1995-96. [Waters, Tr. 470]

28. JEA, as a municipal utility, receives benefits from early ownership of Scherer Unit No. 4 in the form of lower capital costs and freedom from income taxes that are not applicable to FPL as an investor-owned utility. [Cepero, Tr. 360]

29. FPL has agreed to pay approximately \$953 per kw for Scherer Unit No. 4. FPL calculated a "break-even" amount of \$935 per kw in June 1990. [Cepero, Tr. 350; Exhibit 15]

30. FPL asserted that the purchase option was "the lowest cost," "economically superior," "most economically beneficial," and "the least cost alternative for that capacity need in '96 '97." [Woody, Tr. 19, 23, 158]

31. FPL's analyses that purported to show that the purchase of Scherer Unit No. 4 was less expensive on a present value basis than the UPS response to the RFP were done incorrectly. [Waters, Tr. 471; Exhibit 18 (Document 10)] The total system CPVRR for each of the four scenarios shown on Exhibit 21 should have been the same for the first four years, 1990-1993. [Waters, Tr. 570-72, 990; Bartels, Tr. 877, 882-83; Exhibit 30] The Scherer UPS case, however, was approximately \$3 million higher than the other three in 1991, \$11 million higher in 1992, and \$27 million higher in 1993. [Waters, Tr. 568-74; Exhibit 21, page 2, column 15; also Exhibit 19, page 4 of 6, column 12, and Exhibit 20, page 2, column 12]

32. The extent to which the error for earlier years in Exhibit 21 propagated through later years is unknown, but the system savings of \$15 million attributed to the purchase has to have been overstated by at least \$27 million, making UPS a better deal by no less than \$12 million. When the December 10, 1990, supplement to the Letter of Intent (which reduced the \$15 million by \$8.3

million) is considered, UPS is better by approximately \$20 million. [Bartels, Tr. 883; Exhibit 30]

33. Analyses provided by FPL show that it is less costly to the utility to delay acquiring additional capacity until 1996. [Waters, Tr. 573; Exhibit 21] If receipt of UPS is delayed until 1996, the UPS response to the RFP would provide savings of approximately \$79 million over the purchase of Scherer Unit No. 4 proposed by FPL. [Bartels, Tr. 874, 877, 883; Exhibit 30].

34. FPL's purchase of Scherer Unit No. 4 will require the utility to expend capital for capacity in years prior to the 1996 need for that capacity. [Woody, Tr. 29]

35. FPL assumed in its analyses that it would be able to dispatch Scherer Unit No. 4 in 1991, even though Southern Companies reserved the right to dispatch the unit until 1995. [Waters, Tr. 592; Exhibit 2, page 3, paragraph 5]

36. In its UPS response to the RFP, Georgia Power stated that alternate energy would be available from units on the Southern System under terms consistent with the 1988 UPS agreement. [Denis, Tr. 229-40] In its comparison of the purchase of Scherer Unit No. 4 versus UPS, however, FPL assumed unit fuel costs for UPS based on energy prices in the RFP response even though it was stated explicitly in Exhibit 10 (at Form 8, Exhibit 8.2.1, Page 7 of 14), that "Energy price is composed of fuel and losses. (Excludes Variable O&M) Actual energy costs should be lower due to the proposal to make Alternate energy available." [Waters, Tr. 517, 534, 552, 585] Recognizing the availability of alternate energy in the UPS response (which would not be available after the transition period for the purchase), would increase the savings of the UPS option over the purchase option above the \$79 million identified in Exhibit 30. [Bartels, Tr. 875]

37. The fact that the UPS option is the best of the alternatives considered by FPL does not mean it is the best option overall, only that it is the best of the ones presented. [Bartels, Tr. 883] It is not known whether corrections comparable to those made to UPS should also be made to the standard offer evaluation. [Bartels, Tr. 884]

38. The majority of energy FPL receives today from its 1982 UPS agreement, which includes Scherer Unit No. 4 in the generation mix, is Schedule R. [Cepero, Tr. 346]

39. In its comparison of the Scherer purchase versus UPS, FPL used both a higher fuel cost which assumed all energy would be provided by Unit No. 4 and a higher transmission cost which recognized that energy would, in fact, originate from various units on the Southern System because of the alternate and supplemental energy provisions

of the UPS response to the RFP. [Denis, Tr. 238-42; Cepero, Tr. 355; Waters, Tr. 588-89; Bartels, Tr. 875]

40. FPL's use of energy prices from the UPS response to the capacity RFP, which were expressed "in dollars per megawatt hour delivered to the border," and the transmission charges listed in the RFP response, which assumed energy being delivered from various units on the Southern system, makes it unclear whether there was a double-counting of some transmission charges associated with the UPS proposal when FPL compared the purchase of Scherer Unit No. 4 versus UPS out of that unit. [Waters, Tr. 517]

41. Both the fuel costs and transmission costs could have been subject to negotiations had FPL continued with the RFP process and attempted to reach a final agreement on the UPS response to the RFP. [Waters, 1005-06]

42. In its UPS response to the RFP, Georgia Power offered energy from other units to afford a 90% availability factor. [Waters, Tr. 510; Exhibit 10]

43. Based on the 90% availability under the UPS response to the RFP, system fuel costs should be less than for the purchase option, but FPL portrays them as being higher. [Bartels, Tr. 876; Exhibit 23]

44. There is no explanation in the record why, during the years 2005 through 2010, FPL has the UPS option with its higher availability being dispatched at a lower level than the Scherer 4 purchase with its lower availability. [Bartels, Tr. 876; Exhibit 24]

45. FPL assumed an availability of 85% for the purchase option and the model used gave a capacity factor of 85%, which assumes "the unit is running full blast every minute of every hour that the unit is available for service." In 1988, coal units of similar size experienced an equivalent availability factor of 85.4% on average but a net capacity factor of 62.6%. [Waters, Tr. 505-07, 538, 556; Exhibit 26] In the UPS response to the capacity RFP, the Scherer Plant was projected "to operate between 46% and 56% of capacity." [Exhibit 10 (at Form 7, Exhibit 7.1.1, page 2 of 9)]

46. There is no evidence that Georgia Power withdrew its UPS response to the RFP. The fact that FPL concluded in May or June of 1990 that the UPS response to the RFP was the winner but held off notifying Georgia Power until it could negotiate terms of the purchase indicates that FPL believed it could enter a UPS contract for up to 848 MW beginning in either 1994 or 1996. [Denis, 252-53; Exhibit 11]

47. It is not known what the final terms of a UPS contract for Scherer Unit 4 would have been because the final step of the RFP

process, i.e. negotiation of a final agreement, was never taken. [Denis, Tr. 217, 239, 251]

48. The purchase option would allow FPL to earn a return on \$615 million whereas the UPS option would require FPL to pay a return on approximately \$500 million.

OTHER BENEFITS FPL ASCRIBED TO THE PURCHASE:

49. In its RFP response, Georgia Power stated it was flexible on the starting date and offered to make UPS sales beginning as early as 1990 at prices lower than those reflected in the RFP response for years preceding 1994. [Woody, Tr. 63-65; Denis, Tr. 236; Exhibit 10 (at Form 8, Exhibit 8.3.1, page 11 of 14)] Earlier, at a November 30, 1989, meeting, Southern Company representatives indicated they would be willing "to consider just about any kind of sale" in the near-term before the dates contemplated in the RFP. [Woody, Tr. 63-66, 86; Denis, Tr. 196-97, 220; Exhibit 7, page 1] Therefore, both the purchase and UPS offered the opportunity to reduce FPL's dependence on oil at an earlier date. [Woody, Tr. 66]

50. There is no evidence establishing that the cost to FPL of reducing its reliance on oil in the near-term by purchasing Scherer Unit No. 4 is cost-effective. [Woody, Tr. 30]

51. Both the purchase and the UPS out of Scherer Unit No. 4 would reduce FPL's total investment while locking in the price of the unit.

52. Both the purchase and the UPS could provide capacity in 1991 to meet projections of increased load growth and allow for the upgrade of the Turkey Point nuclear station. The projection of increased load growth, however, is likely in error because FPL assumed reduced prices would stimulate usage and the opposite has occurred because of rising oil prices. [Waters, Tr. 594, 620]

53. Both the purchase and the UPS would provide capacity and energy from an existing unit with known performance and costs.

54. In its RFP response, Georgia Power offered FPL up to 848 MW for a period of 30 years or for the life of the unit. [Exhibit 10, page 2] Therefore, both the purchase and the UPS offered the potential for a unit life beyond 30 years. Moreover, even if the UPS were for only 30 years, it would not terminate until the year 2026. This is only 3 years before the unit's 40-year life would expire in the year 2029. Thus, there is no significant benefit to the purchase even when compared to a 30-year UPS agreement. [Wright, Tr. 738-39]

CONSTRUCTION OF THIRD 500 KV TRANSMISSION LINE:

55. FPL and Florida Power Corporation began discussing a third 500 kv transmission line as early as March 27, 1990. [Woody, Tr. 54-58; Exhibit 5] In the letter of intent between FPL and FPC, FPL's participation in construction of the third line is not conditioned upon its purchase of Scherer Unit No. 4 or upon Commission approval of that transaction. [Woody, Tr. 115; Exhibit 6]

56. If FPL had proceeded under the UPS response to the RFP, it would still have been interested in construction of a third 500 kv line. [Denis, Tr. 261; Wright, Tr. 737]

57. Major Florida utilities were negotiating the transfer limit allocation into Florida across the Southern/ Florida transmission interface as early as December 11, 1989. [Denis, Tr. 200; Exhibit 9]

58. It is reasonable to assume that, for purposes of system reliability or for purposes of firm sale transactions, that an enhancement to the Southern/Florida transmission interface would occur without either the purchase of Scherer Unit No. 4 or UPS sales in response to the RFP. [Waters, Tr. 531-32]

59. Portions of the Kathleen to Orange River 500 kv line segment would be built in any event for reasons other than transfer capability increase (e.g. load serving needs). [Denis, Tr. 263; Exhibit 12, page 2]

60. In his Document 10 (Exhibit 18), Mr. Waters assumed the Southern/Florida transmission interface would be expanded only in conjunction with the Scherer Unit No. 4 purchase and UPS options. [Waters, Tr. 529-30]

61. In his Document 10 (Exhibit 18), Mr. Waters assumed that no enhancement of the Southern/Florida transmission interface would occur for the next thirty years for the IGCC and standard offer scenarios. [Waters, 530]

62. The purchase of Scherer Unit No. 4 would leave FPL with no capability to assist during a unit outage or make additional economy purchases that provide a reliability benefit and economic benefit to FPL's customers until 1997 when the third 500 kv line is scheduled to be in service. [Woody, Tr. 97-98; Cepero, Tr. 343; Waters, Tr. 591-92, 975]

63. Without the third 500 kv line and the additional 450 megawatts FPL could import over it, FPL would have to build more capacity in the South Florida area. [Woody, Tr. 99]

64. FPL imposes a "location penalty" to the calculated cost per KW in its evaluation of QF's remote to the utility's load centers.

It would be approximately 25% for a QF located in Central Georgia. FPL did not apply a location penalty to its claimed \$953 per KW for Scherer Unit No. 4. [Cepero, Tr. 335-36]

65. Instead of a location penalty, FPL included the expected transmission cost for expansion of the Southern/Florida transmission interface as a cost associated with the purchase of Scherer Unit No. 4 as well as UPS. [Waters, Tr. 495] By including the transmission costs and picking up associated economy purchases, the total cost with transmission is less than the total cost without transmission. [Waters, Tr. 985] This method of recognizing the "penalty" actually reduces the cost of purchasing and UPS by reducing total system fuel cost in Mr. Waters' Document 10. [Exhibits 18 and 36]

66. FPL has assumed a cost of \$180 million for enhancements to add an additional 500 MW to FPL's import capability over the Southern/Florida interface. [Waters, Tr. 474] Since FPL will actually receive only 450 MW of additional import capability, the \$180 million equates to an additional \$400 per KW on the purchase. [Woody, Tr. 98; Wright, Tr. 738]

ALLOCATION OF TRANSMISSION CAPACITY WITH JEA:

67. FPL was engaged in negotiations to allocate its joint transmission interface with JEA even before purchase negotiations began. [Cepero, Tr. 358]

68. The transfer limit allocation for the Southern/Florida interface was consummated on May 14, 1990. [Denis, Tr. 200] FPL and JEA, as the Joint Operating Partners (JOP), received 2784 megawatts pursuant to that allocation, of which FPL is entitled to 1492 megawatts. [Denis, Tr. 203-204]

69. Although the decision to purchase Scherer Unit No. 4 provided motivation for JEA to enter a letter of intent to give FPL sufficient transmission service to receive additional capacity and energy from the Southern System to offset the outage at Turkey Point, FPL could have reached an agreement for allocation of the 2784 megawatts if the purchase was not under consideration. [Denis, Tr. 209]

70. At the time FPL decided Scherer Unit No. 4 in a UPS configuration won the RFP, FPL did not have sufficient transmission capacity allocated to it to receive the energy through the jointly owned transmission facilities with JEA in 1994. The absence of such an agreement did not deter FPL from finding the UPS response was most favorable. [Denis, Tr. 259-60]

71. FPL felt it could work out more favorable transmission arrangements with JEA under the purchase agreement than it could under the UPS response to the capacity RFP. [Cepero, Tr. 357]

FUEL COSTS:

72. All the RFP responses were evaluated against FPL's own fuel cost projections and FPL deemed most, if not all, to be reasonable. [Denis, Tr. 179]

73. Under the purchase agreement, FPL (and JEA) will be allocated 25% of the existing long-term contracts for coal at Plant Scherer without regard to the availability or capacity factor out of Unit No. 4. [Cepero, Tr. 338]

74. FPL believes its obligations under existing long-term fuel supply contracts will be offset by its opportunity to participate in the competitive bids and volume transportation benefits which are available to the Southern Companies. [Cepero, Tr. 352]

75. FPL will have "the right to go and request Georgia Power to incorporate [FPL's fuel supply] strategy into the bids they will seek for coal deliveries to Scherer 4." [Cepero, Tr. 373]

76. Where FPL goes for coal supplies will be a joint decision of all owners of Plant Scherer. [Cepero, Tr. 375]

77. FPL used a 7.15% escalation factor for Martin fuel and a 4.99% escalation for coal under the purchase option. [Waters, Tr. 602; Silva, Tr. 1082; Exhibit 23]

78. Poorer quality coals should escalate at a lesser rate than higher quality coals. [Wells, Tr. 943, 949-54]

79. FPL doesn't know why a heating value of 12,000 Btu's per pound was used in the Scherer purchase case in Exhibit 23, page 1, line 22 while 12,479 Btu's per pound were used for UPS. [Waters, Tr. 607]

80. FPL cannot reasonably be expected to be able to purchase coal at a delivered price significantly below what the Southern Companies can obtain coal for. [Wells, Tr. 943, 956]

81. FPL has specified, without explanation, a high-sulfur-content coal and high-Btu coal for its Martin IGCC unit that is only available in Pennsylvania and perhaps northern West Virginia when other high-sulfur coals can be obtained much closer to Florida. [Wells, Tr. 954-55]

82. Plant Scherer is served only by the Norfolk Southern Railroad. [Silva, Tr. 1062]

83. When comparing the UPS versus the purchase option, Mr. Waters used the projected energy prices from Exhibit 10 (Form 8, Exhibit 8.2.1, page 7 of 14) as the UPS fuel costs. It is not known where Mr. Silva extracted the \$65.89 per ton cost used in Exhibit 23, page 1, line 24, column 4. [Waters, Tr. 517, 534, 552, 585; Silva, Tr. 1078]

84. If the actual fuel cost to Georgia Power was less than projected in the UPS response to the capacity RFP, that benefit would have been passed through to FPL. [Silva, Tr. 1089]

85. FPL used the B&O Fairmont District to develop transportation costs for the Martin site. FPL could have selected a rate district from which the cost of transportation was \$2.50 per ton less than that from the Fairmont District. [Silva, Tr. 1094-97]

86. FPL escalated the Martin option without removing the fuel component from the GNP implicit price deflator and adding an additional fuel element to 40%. This methodology was not used to evaluate the Scherer Unit No. 4 purchase option. [Silva, Tr. 1099]

EMISSION ALLOWANCES:

87. FPL implicitly considered the cost of emission allowances under the UPS response to the RFP by employing the energy prices given in the RFP response for Scherer Unit No. 4 and not recognizing the fact that alternate energy would be available from other units. [Denis, Tr. 244-48]

88. Emission allowances for Scherer Unit No. 4 are to be calculated at a 65% capacity factor which FPL estimates will permit operation of the unit at a 72% capacity factor. [Denis, Tr. 269; Waters, Tr. 511-12]

89. FPL will have to purchase or otherwise acquire sufficient emission allowances to permit operation of Scherer Unit No. 4 at an 85% capacity factor if it purchases the unit. [Waters, Tr. 512]

90. If FPL tries to meet an 85% capacity factor with only 20,746 tons of emission allowances, it will have to achieve approximately a 30% reduction in the delivered price of coal to Scherer Unit No. 4 for the economics to work out. [Denis, Tr. 275]

91. An EPA administrator will have some latitude to modify the emission allowances FPL might receive. [Cepero, Tr. 328]

92. FPL assumes there will be some costs of compliance with the Clean Air Act amendments with respect to its existing UPS contracts but terms have not been negotiated, so the amount is unknown. [Cepero, Tr. 393] There is no evidence, however, that the FERC

will permit emission allowance charges to be added to wholesale UPS contracts. [Bartels, Tr. 1027]

93. FPL first attempted to quantify and ask the Commission to consider how emission allowances would purportedly increase the UPS offer through the rebuttal testimony of Mr. Waters on the afternoon of the last day of hearings. [Waters, 987] The additional \$128 million FPL ascribed to the UPS response to the RFP was not in Mr. Waters' (or any other FPL witness's) prefiled direct or rebuttal testimony or exhibits.

94. FPL took the UPS response filed by Georgia Power without modification for all purposes except to add \$128 million for emission allowances. [Waters, Tr. 997]

95. The economic analyses of the various RFP responses was performed by persons reporting to Mr. Waters, and did not include any quantification of costs associated with emission allowances. [Waters, Tr. 998-999]

96. Georgia Power's UPS response to the RFP did not include any costs associated with emission allowances. FPL has not been quoted any price Georgia Power might assign to the allowances, nor has FPL been told by Georgia Power that it would have to pay for allowances under the UPS proposal. [Waters, Tr. 999, 1005]

97. FPL has never been informed that Georgia Power's UPS response to the RFP would have to be increased in cost to account for emission allowances. [Waters, Tr. 999-1000]

98. Georgia Power, as owner of Scherer Unit No. 4, will receive emission allowances for the unit at no cost to Georgia Power. [Waters, Tr. 1004]

99. If Georgia Power was to meet its commitment to FPL under the UPS proposal, it would necessarily have to use credits given for Scherer Unit No. 4 to provide the energy out of that unit. [Waters, Tr. 1005-06]

100. The escalated \$700 per ton figure used by FPL in Exhibit 36 to quantify emission allowances for the UPS response to the RFP was provided by Georgia Power during the negotiations on the purchase before FPL informed Georgia Power, on July 31, 1990, that the UPS was the winner under the RFP. The possibility that there might be emission allowance costs associated with the UPS proposal did not enter into FPL's decision that the UPS offer was the best response to the RFP. [Waters, Tr. 1013] Effectively, FPL is claiming it ignored an identified cost at the time it found the UPS proposal the best response to the RFP.

ACQUISITION ADJUSTMENT:

101. Some value for the emission allowances is included in the acquisition adjustment. [Woody, Tr. 164]

102. FPL sought prior approval for the acquisition adjustment "because of the uncertainty of the regulatory treatment of the Acquisition Adjustment associated with the purchase of Scherer Unit No. 4." [Petition, at 1] FPL is seeking Commission approval for the purchase transaction at this time so the utility will be able to move the acquisition adjustment above the line. [Cepero, Tr. 323-24; Gower, Tr. 689]

PROCEDURES FOLLOWED IN THIS CASE:

103. FPL filed its petition and the direct testimony of five witnesses on September 28, 1990. Neither the petition nor testimony disclosed the genesis of the proposed purchase of Scherer Unit No. 4 or the relationship of the purchase to the RFP process. There was no underlying support provided for the comparisons that FPL contended showed the purchase to be the most cost effective option available to it.

104. Intervenors were given approximately eight weeks to retain expert witnesses and prefile testimony. Most discovery was received by intervenors after testimony was filed.

105. All of the detailed supporting schedules for the company's case were introduced for the first time at hearing and were unavailable to intervenors' witnesses in the preparation of their prefiled testimony. A September 13, 1990, supplement to the letter of intent was introduced by intervenors. [Exhibit 3] Company testimony and exhibits were revised at the hearing based on a December 10, 1990, supplement to the letter of intent. [Exhibits 2 and 22] FPL, on rebuttal, asserted for the first time that the UPS option should be evaluated in light of an additional \$128 million of acid rain expense attributable to that option. [Waters, Tr. 987; Exhibit 36]

106. Since the Commission will not vote until February 5, 1991, and the letter of intent expired on December 31, 1990, with definitive agreements to be executed by that date, the first closing date could not be met. The absolute deadline was not until June 30, 1991. A delay in the hearing would have given experts an opportunity to evaluate discovery and allowed the Commission to consider evidence on all the terms of the actual purchase transaction. Moreover, the longer the delay in reaching a final decision (until June 30), the lower the cost to FPL and its customers if the purchase is ultimately approved. [Waters, Tr. 575-78; Exhibit 27]

PROPOSED CONCLUSIONS OF LAW

1. FPL is the party seeking affirmative relief and, as such, must prove its case by a preponderance of the evidence.
2. Pursuant to Section 366.06(1), Florida Statutes (1989), the Commission must investigate and determine the the actual legitimate costs of FPL's investment in Scherer Unit No. 4.
3. The letters of intent and supplements submitted in this case do not provide an adequate legal basis for the Commission to satisfy its duty under Section 366.06(1), Florida Statutes (1989).
4. FPL has not identified the specific rules and statutes entitling it to the requested relief as required by Rule 25-22.036(7))(a)4, Florida Administrative Code, other than to refer in its petition to Section 366.071 which permits the Commission to conduct limited proceedings and is procedural in nature.
5. FPL has failed to establish on the record of this proceeding that the purchase of Scherer Unit No. 4 is the most cost-effective alternative to meet its capacity and energy needs in 1996.
6. FPL has failed to establish on the record of this proceeding that other, noncost-based benefits FPL ascribed to the purchase of Scherer Unit No. 4 are not equally applicable to the UPS response to the RFP.
7. If the Commission decides that it can go forward at this time and approve FPL's purchase of Scherer Unit No. 4 on the schedule proposed by the utility, it should limit FPL's recovery of costs to what FPL would have been allowed in rates if it had entered into a 30-year UPS contract for Scherer Unit No. 4 beginning in 1996 with adjustments for the availability of alternate and Schedule R energy and reflecting the benefits of negotiations if the RFP process had been proceeded to conclusion.
8. Statements by FPL witnesses that Jacksonville Electric Authority would not provide transmission service to permit FPL to import short-term capacity and energy to meet increased load projections and to offset the Turkey Point outages if JEA had not participated in the purchase of Scherer Unit No. 4 were hearsay that, pursuant to Section 120.58(1)(a), Florida Statutes (1989), cannot form the basis for a Commission finding. [Woody, Tr. 67-75, 114; Cepero, Tr. 357; Waters, Tr. 1044-45] Rule 25-22.048(3), Florida Administrative Code; Harris v. Game and Fresh Water Fish Commission, 495 So.2d 806, 809 (Fla. 1st DCA 1986).
9. This Commission could alleviate FPL's concerns with respect to the acquisition adjustment by declaring that traditional regulatory policy against acquisition adjustments is not applicable to the

facts of this case so FPL will be permitted to include the difference between a prudent purchase price and Georgia Power's net original cost in rate base at the appropriate time. [Woody, Tr. 123-24]

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 900796-EI

I HEREBY CERTIFY that a true and correct copy of the Citizens' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, has been furnished by U.S. Mail or by *hand-delivery to the following on this 9th day of January, 1991.

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