

FLORIDA PUBLIC SERVICE COMMISSION

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MEMORANDUM

January 25, 1991

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF ELECTRIC AND GAS (JENKINS, FLOYD, SHINE, ^{RJ} MERTA, TAYLOR) ^{RES}
DIVISION OF LEGAL SERVICES (CHRIST, TELLECHEA) ^{P.T. M.R.C.}

RE : DOCKET NO. 900796-EI, PETITION OF FLORIDA POWER AND LIGHT COMPANY FOR INCLUSION OF THE SCHERER UNIT NO. 4 PURCHASE IN RATE BASE, INCLUDING ACQUISITION ADJUSTMENT

AGENDA: 02/05/91 - CONTROVERSIAL AGENDA - PARTIES MAY NOT PARTICIPATE

CRITICAL DATES: NONE

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

This docket was initiated by Florida Power and Light Company (FPL or Company) on September 28, 1990, when it filed a Petition of Florida Power & Light Company For Inclusion of the Scherer Unit No. 4 Purchase in Rate Base, Including an Acquisition Adjustment. FPL does not seek any rate changes or charges to their customers.

FPL proposes to purchase 76.36% (646 MW) of Unit No. 4 of the Robert Scherer Generating Plant, a coal-fired generating unit located in Monroe County, Georgia. The total purchase price is estimated to be \$615,504,000, which exceeds the depreciated book cost for the portion of the unit to be purchased by FPL by an estimated \$111,362,307.

The following parties filed notices of intervention or petitions for leave to intervene: the Office of Public Counsel (OPC), Nassau Power Corporation (Nassau), Coalition of Local Governments (CLG), and the Florida Municipal Power Agency (FMPA). All parties were granted permission to intervene in this docket.

A hearing on this matter was held on December 12, 13 and 14, 1990. Briefs were filed on January 9, 1991.

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DISCUSSION OF ISSUES

ISSUE 1: Should the difference between FPL's purchase price and Georgia Power's net original cost of Scherer Unit 4 be given rate base treatment as an acquisition adjustment on a pro rata basis consistent with the phased purchase of the unit?

RECOMMENDATION: If the Commission finds that the purchase of Scherer Unit No. 4 should be included in rate base, then the acquisition adjustment should also be given rate base treatment on a pro rata basis consistent with the phased purchase of the unit. This amount should be amortized over the remaining life of the unit.

POSITION OF PARTIES

FPL: Yes, because FPL has shown (1) that its proposed purchase of the Scherer Unit No. 4 is necessary and useful for FPL to provide reliable service to its customers, and (2) that the acquisition of the unit will provide FPL's customers with the greatest benefits of all the available alternatives. [FPL Brief, page 30].

OPC: No. The difference between FPL's purchase price and Georgia Power's net original cost should not be recognized as an acquisition adjustment because FPL has been unable to establish that the purchase price is reasonable. A proper acquisition adjustment cannot be quantified because other options available to FPL, particularly the UPS response to the RFP with a starting date of 1996, appear to be less costly. But even the UPS costs reported by the utility appear excessive. If FPL purchases Scherer Unit No. 4, it should be allowed an acquisition adjustment equal to the difference between its lowest cost alternative and Georgia Power's net original cost consistent with the timing of that alternative. [OPC, Statement Of Issues And Positions, page 3].

NASSAU: This issue is contingent upon the threshold rate base issue. The Commission should take no action on any portion of FPL's petition--including the request for approval of an acquisition adjustment--until after any transaction has been consummated and all the pertinent facts can be reviewed. One aspect of the review would be FPL's failure to take into account Nassau's standard offer contract and the Commission's policies regarding subscription of the designated statewide avoided unit. [Nassau Post Hearing Statement Of Issues And Positions, Pages 2-3].

CLG: No. The position taken by CLG in this issue has nothing to do with the concept of acquisition adjustments. CLG believes that this issue should not even be reached by the Commission when reviewing this matter for the reason that the facts in this docket

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reveal that FPL has not presented any credible evidence to support the position it has taken that its acquisition of Scherer Unit 4 should be encouraged or authorized by the Commission. The data used by FPL to support its position is unreliable and untrustworthy. FPL has not carried the burden of demonstrating that the proposed acquisition of Scherer is reasonable and prudent. Therefore, this issue should be left undecided as not ripe for decision by this Commission. [CLG, Post-Hearing Statement Of Issues And Positions, Page 3].

FMPA: No position at this time. [Prehearing Order, page 9].

STAFF ANALYSIS: FPL's purchase of 76.36% of Georgia Power Company's Scherer Unit No. 4 for approximately \$616,387,000 would give rise to an acquisition adjustment of approximately \$111,362,000. [Tr. 648-49].

FPL stated that the acquisition adjustment should be approved because the Company has demonstrated its need for the capacity [FPL Brief, page 31], that the transaction resulted from an arm's-length negotiation [Tr. 651-52], the price is reasonable [FPL Brief, page 44], and that there are significant customer benefits [Tr. 643-44].

OPC does not appear to oppose rate base treatment of an acquisition adjustment in this case. [Tr. 689]. Witness Wright testified that OPC believes this "is not an ordinary acquisition adjustment case." [Tr. 835-36]. In fact, OPC recommends rate base treatment for an acquisition adjustment "equal to the difference between its lowest cost alternative and Georgia Power's net original cost consistent with the timing of that alternative." [OPC, Statement of Issues and Positions, page 3]. OPC based its negative response to this issue on its judgment that other options available to FPL may be less costly than the purchase of Scherer Unit No. 4 and therefore the purchase price is not reasonable. [OPC Statement of Issues and Positions, page 3].

Nassau Power Corporation did not oppose approval of the acquisition adjustment. However, it stated that after the purchase transaction has been consummated and all pertinent facts reviewed, "whether to include or exclude the acquisition adjustment would be dependent upon a finding that management's decision to acquire 646 MW of Scherer 4 capacity was prudent and the costs reasonable." [Nassau Power Corporation Brief, page 6-7].

The CLG opposed rate base treatment of the acquisition adjustment, but admitted its position "has nothing to do with the concept of acquisition adjustments." Rather, CLG took the position that since FPL has not demonstrated the purchase of Scherer Unit No. 4 was reasonable and prudent, this issue would be rendered

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moot. [CLG Brief, page 12].

Long-standing Commission policy is to disallow acquisition adjustments in rate base unless the Company can demonstrate extraordinary circumstances or prove a net benefit to ratepayers. [Order No. 15598, Docket No. 850552-EU]. The most recent decisions by the Commission in the electric utility industry involved Gulf Power Company's 1988 Tax Savings Docket and its rate case. In the 1988 Tax Savings Docket, the Commission allowed 19 MW of Scherer Unit No. 3 in rate base but excluded from rate base an acquisition adjustment related to the purchase of a portion of the common facilities. In that limited proceeding, the Commission denied rate base treatment based upon the Company's failure to prove extraordinary circumstances or a net benefit to ratepayers. [Order No. 23536, page 4, Docket No. 890324-EI]. In Gulf's 1990 rate case, the Commission denied the recovery of Scherer Unit No. 3 in rates thereby rendering moot the issue involving the acquisition adjustment related to the common facilities. [Order No. 23573, page 15, Docket No. 891345-EI].

Staff agrees with OPC that this is not an ordinary acquisition adjustment case. Traditionally, acquisition adjustments have been evaluated in terms of whether utility customers should pay more (or less) for service simply because assets already devoted to their service have changed ownership. These considerations are not relevant to this proceeding since FPL has not requested that the purchase be reflected in rates at this time. [Tr. 689-90].

FPL has presented several alternatives for satisfying its capacity needs. Staff believes the acquisition adjustment should be evaluated based on whether the purchase of Scherer Unit No. 4 is necessary, reasonable, and the most cost-effective alternative available and not on a finding of extraordinary circumstances. Therefore, if the Commission accepts the purchase of Scherer Unit No. 4 as the best alternative and affords it rate base treatment, then the acquisition adjustment should also be accepted as part of the total cost of this option based on a purchase price which resulted from arm's length negotiation. Staff recommends the acquisition adjustment be given rate base treatment on a pro rata basis consistent with the phased purchase of the unit if the Commission approves the inclusion of Scherer Unit No. 4 in rate base.

ISSUE 2: Does FPL, as an individual utility interconnected with the statewide grid, exhibit a need for the additional capacity provided by Scherer Unit 4?

RECOMMENDATION: Yes, FPL has demonstrated a need for the additional capacity provided by Scherer Unit 4.

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POSITION OF PARTIES

FPL: Yes, it does. [FPL Brief, page 31].

OPC: No. FPL has not demonstrated a need for additional base load generation in 1996. Alternatives to a 1996 IGCC unit, therefore, cannot be accepted as reasonable just because they are estimated to be less costly than that unit. Even if it is accepted that base load generation is needed in 1996, UPS out of Scherer Unit No. 4 appears to be less costly than the purchase option. [OPC, Statement Of Issues And Positions, page 3].

NASSAU: Nassau has not independently measured FPL's 1996 capacity need. However, it is Nassau's position that FPL must include in its generation expansion plan the 435 MW of power which Nassau will supply to FPL pursuant to its standard offer contract and the Commission's determination that this project subscribes the statewide avoided unit before including the Scherer purchase. Failure to do so is an attempt to thwart the Commission's cogeneration policy and rules which establish subscription of the statewide avoided unit as a legitimate way to meet FPL's capacity needs. [Nassau Post Hearing Statement Of Issues And Positions, Page 3].

CLG: No position. [CLG, Post-Hearing Statement Of Issues And Positions, Page 4].

FMPA: FMPA agrees that FPL has stated a need for additional capacity, but FMPA has no position at this time as to whether or not that additional capacity can best be provided by the purchase of Scherer Unit 4. [Prehearing Order, page 9].

STAFF ANALYSIS: FPL uses two reliability criteria for system planning: a summer peak reserve margin of at least 15% and a loss-of-load probability of 0.1 day/year. [Tr. 464]. FPL needs approximately 5,400 MW of resources to satisfy these criteria and to meet it's projected demand through 1997 which the Company plans to satisfy [Tr. 466]. as indicated in the following table:

Demand Side Management Programs	1,137 MW
Repower Lauderdale/Martin No. 3 and 4	1,342 MW
Southern Company UPS	911 MW
QF approved/to be signed	538 MW
QF additional projected	600 MW
IGCC Martin No. 5 and 6	768 MW
Total	5,296 MW

Scherer Unit No. 4 would defer to a later time (which is equivalent to canceling in the 1991-1997 time frame) the first IGCC

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unit and subsequent facilities. The effective result is avoiding the construction of one 646 MW IGCC. [Tr. 470, Ex. 18, Doc. 9].

FPL initially presented this generation expansion plan in Docket Nos. 890974-EI and 890973-EI. In Order No. 23080, the prehearing officer ruled that no factual findings would be made in the above referenced docket regarding Martin Units 5 and 6 until a later date when the RFP process is complete. FPL maintains that the RFP process is complete with the selection of the Scherer UPS option as the best alternative. In the instant docket, FPL's analysis maintains that the purchase option of Scherer Unit 4 is the most cost effective alternative available to the Company when evaluated against the Scherer UPS option, the discounted and full standard offer contracts, and the Martin IGCC units. FPL believes that the phased purchase of Scherer Unit No. 4 will give the Company access to additional capacity to meet the need created in 1991 by the outage at Turkey Point Nuclear Station, and allow for flexibility in responding to changes in load conditions and/or construction requirements resulting from changes in conservation and qualifying facility forecasts that have occurred since FPL presented its expansion plan in Docket Nos. 890973-EI and 890974-EI. [Tr. 468-70].

Nassau does not dispute that FPL exhibits a need for additional capacity. Nassau believes that FPL has not included the Nassau Power 435 MW standard offer contract executed on June 13, 1990, in FPL's contracted or committed portion of its generation expansion plan. [Exhibit 14, Tr. pp. 316, 398, 405]. Nassau notes that FPL included the Indiantown contract in its forecast at a time when the Indiantown project has received neither contract approval nor determination of need. [Tr. 407]. On November 1, 1990, the Commission ruled that Nassau's contract subscribes the first 435 MW of the 1996 500 MW statewide avoided unit. [Tr. 398]. In Order No. 23792, the Commission stated: "the effect of queuing contracts for subscription limit purposes is to lock in a price pending further review (in a contract approval/need determination proceeding) as to whether the proposed project is the most cost-effective alternative to the purchasing utility". This Order goes on to state, "Thus, prioritization of a contract within the 500 MW subscription limit does not establish a presumption of need and does not mean the applicants need determination will be rubber stamped." "Contracts within the queue must still be evaluated against individual utility need at a need determination proceeding". Nassau's witness Dr. Thomas stated that Nassau believes the Commission's requirement that a cogenerator prove that its project meets an individual utility's need in determination of need proceedings is inconsistent with the Commission's rules and policies requiring a statewide market for standard offers and does not waive its right to argue that point at the appropriate time.

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[Tr. 398].

FPL's witness Cepero indicated that FPL had not determined that the Nassau Power or any of the other standard offers were needed or cost effective for FPL, so short of that determination, FPL elected to include them as potential QF's and not firm capacity resources. [Tr. 316]. FPL cross examined Dr. Thomas on various issues of Nassau Power's standard offer contract including but not limited to the facilities location, interconnection agreement, and fuel of the unit. Issues of this nature are more appropriately reserved for a determination of need proceeding. Staff is puzzled as to why the ICL project, which has not been issued a need determination nor has the contract been approved by this Commission, was included as a firm capacity resource, and the Nassau contract was excluded. None the less, the decision as to include or exclude a resource in the reliability analyses is at the discretion of the applicant utility and the Commission's role is to review the appropriateness of that plan.

In conclusion, FPL has demonstrated a need for some type of additional capacity. The issue relating to the purchase of Scherer as the most cost-effective means of meeting this capacity need is addressed in Issue 8.

ISSUE 3: Is the capacity to be provided by the purchase of Scherer Unit 4 reasonably consistent with the needs of Peninsular Florida, taking into consideration timing, impacts on the reliability and integrity of the Peninsular Florida grid, cost, fuel diversity and other relevant factors?

RECOMMENDATION: Yes. There are several elements to this issue, each of which is addressed in other issues. The role of the Scherer Unit No. 4 purchases in meeting an identified need for capacity, including the timing of that need, is addressed in Issue Nos. 2, 6, and 7. The impact of the purchase on the reliability and integrity of the grid is addressed in Issue Nos. 10 and 13, and its impact on FPL's system reliability and integrity is addressed in Issue No. 4. Fuel diversity is addressed in Issue No. 5, and the cost-effectiveness of the Scherer purchase is addressed in Issue 8.

POSITION OF PARTIES

FPL: Yes, it is. [Brief, page 33].

OPC: No. FPL's own analyses demonstrate that additional capacity is not needed until 1996. FPL has argued that the purchase makes it possible to obtain short-term capacity and energy to offset revised projections of increased load growth in 1991 and the outage

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at Turkey Point Units Nos. 3 & 4. The revised projections of load growth, however, were based on expected reductions in electricity prices. With Iraq's invasion of Kuwait, prices have instead increased. Price elasticity should reduce consumption. FPL appears to be within reliability standards without the early purchase of Scherer Unit No. 4. Furthermore, the record does not establish that FPL could not obtain short-term capacity and energy from the Southern Company or others without agreeing to purchase Scherer Unit No. 4. [OPC, Statement Of Issues And Positions, page 3].

NASSAU: As to timing, FPL's request to add Scherer Unit 4 to rate base violates the basic economic principle that capital expenditures for capacity additions should be deferred as long as possible. FPL proposes to add Scherer Unit 4 to rate base long before its 1996 capacity need. The result of this premature addition is that on a present value basis the fixed costs of acquiring Scherer Unit 4 capacity far exceed the present value of the corresponding capacity costs associated with the discounted 1996 standard offer. Nassau incorporates by reference its positions on the other identified issues, which also treat reliability and cost. [Nassau Post Hearing Statement Of Issues And Positions, Page 5].

CLG: No. The purchase of Scherer Unit 4 has not been demonstrated to be the most cost effective means of providing capacity to FPL rate payers. While additional capacity may be warranted, the question of which is the best method by which the capacity should be acquired remains unanswered. The purchase of Scherer Unit 4 is not shown to be the best method for meeting this capacity requirement, which might be more effectively met by in-state facilities such as Nassau's plant near Jacksonville, the Martin IGCC unit or the purchase of power under a UPS with Southern Company Services. Unfortunately, the very flawed analysis by FPL has not demonstrated which of the alternatives should be selected. The most credible analysis performed in this reveals that the purchase of Scherer 4 is not the most cost effective method based on the incomplete information available to the Commission today. [CLG, Post-Hearing Statement Of Issues And Positions, Page 4].

FMFA: FMFA is concerned that the purchase of Scherer Unit 4 may have adverse effects on the reliability, integrity and utilization of the Peninsular Florida transmission grid. [Prehearing Order, page 10].

STAFF ANALYSIS: There are several elements to this issue, each of which is addressed in other issues. The role of the Scherer Unit No. 4 purchase in meeting an identified need for capacity, including the timing of that need, is addressed in Issue Nos. 2, 6,

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and 7. The impact of the purchase on the reliability and integrity of the grid is addressed in Issue Nos. 10 and 13, and its impact on FPL's system reliability and integrity is addressed in Issue No. 4. Fuel diversity is addressed in Issue No. 5. Finally, the cost-effectiveness of the Scherer purchase is addressed in Issue No. 8.

FMPA expressed concern in the Prehearing Order that the Scherer purchase "may have adverse effects on the reliability, integrity, and utilization of the Peninsular Florida Transmission grid." FMPA did not file a post hearing brief or present evidence which support this position.

ISSUE 4: How will the proposed purchase of Scherer Unit 4 affect the reliability and integrity of FPL's electric system?

RECOMMENDATION: FPL's evidence shows that the purchase of Scherer Unit No. 4 will allow FPL to maintain system reliability, as measured by the dual criteria of summer reserve margin and loss-of-load probability, and will assure the integrity of FPL's electric system.

POSITION OF PARTIES

FPL: FPL's proposed purchase of an undivided share (76.36%) of Scherer Unit No. 4 will allow FPL to continue to meet its system reliability criteria and assure the integrity of FPL's electric system. Moreover, the purchase will help reduce FPL's dependence on oil at an earlier date, provide capacity in 1991 to allow for the upgrade of Turkey Point Nuclear Station emergency power system and increase FPL's capacity gradually, thus increasing FPL's flexibility for responding to changes in load conditions or construction requirements. [FPL Brief, page 35].

OPC: The purchase of Scherer Unit No. 4 will reduce FPL's ability to make economy purchases until 1997 when the third 500 kv transmission line is projected to be in service. [OPC, Statement Of Issues And Positions, page 4].

NASSAU: The proposal to acquire Scherer 4 is but one alternative for supplying reliable capacity. FPL has not shown the proposed Scherer purchase to be advantageous relative to the discounted standard offer contract which FPL hopes to preempt by disregarding Nassau's contract, by the timing of its petition, and by its claim that it needs no more 1996 capacity than the Scherer transaction would provide. [Nassau Post Hearing Statement Of Issues And Positions, Pages 5-6].

CLG: When a Company purchases large quantities of power from a

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neighboring system, the purchase decreases the amount of power that might otherwise be available during times of emergency in the future. The proposed acquisition of Scherer 4 has not been shown by credible and sufficient evidence to improve the reliability and integrity of FPL's electric system. In fact, the West Coast 500 K1 line, which will improve these factors, was shown to be unrelated to and not contingent upon the current consideration by FPL to purchase Scherer 4. [CLG, Post-Hearing Statement Of Issues And Positions, Page 5].

FMPA: No position at this time. [Prehearing Order, page 11].

STAFF ANALYSIS: FPL's witness Waters stated that the Company's objective in its planning process is to provide adequate resources to reliably meet its customers' future demand for electric power in a cost-effective manner. [Tr. 461]. To deal with unforeseen changes in conditions that might affect these objectives, FPL uses diversity and flexibility in its planning process. [Tr. 465]. FPL uses two reliability criteria commonly accepted in the utility industry to determine the quantity of resources to maintain system reliability: (1) summer peak reserve margin of 15%, and (2) a maximum loss-of-load probability (LOLP) of 0.1 days per year. [Tr. 464]. FPL's evidence shows that the purchase of a portion of Scherer Unit No. 4 will allow FPL to continue to meet its system reliability criteria and will assure the integrity of FPL's electric system. [Tr. 468-70]. Purchasing Scherer Unit No. 4 improves flexibility by providing early capacity capable of addressing changes in the very near term; it will provide capacity in 1991 to allow for the upgrade of Turkey Point Nuclear Station emergency power system; it will reduce concern over volatile assumptions in the load forecast and QF supply; and it will gradually increase FPL's capacity -- increasing the Company's flexibility for responding to changes in load conditions or construction requirements. [Tr. 16-17, 475-76].

In summary, the evidence shows that the purchase of Scherer Unit 4 will allow the Company to maintain system reliability and integrity.

ISSUE 5: How will the proposed purchase of Scherer Unit 4 affect the adequacy of the fuel diversity for FPL's system?

RECOMMENDATION: The proposed purchase of Scherer 4 will improve the fuel diversity of FPL.

POSITION OF PARTIES

FPL: FPL's proposed purchase of an undivided interest in Scherer Unit No. 4 will help improve the fuel diversity of FPL's system in

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comparison to the present supply mix. [FPL Brief, page 37].

OPC: The purchase of Scherer Unit No. 4 will improve FPL's fuel diversity, just as UPS out of that unit or any other non-oil-fired alternative would. [OPC, Statement Of Issues And Positions, page 4].

NASSAU: Nassau takes no position on this issue. [Nassau Post Hearing Statement Of Issues And Positions, Page 6].

CLG: The proposed purchase of Scherer Unit 4 will provide no better fuel diversity for FPL than several of the other options under consideration by FPL, including the Scherer 4 UPS and the Martin option. Therefore, there would be no improvement realized by this proposed acquisition that would not otherwise be experienced in some other option by which FPL secured coal fired power. Despite the fact that FPL lists "coal by wire" purchases of power under the heading of purchased power, the power being purchased (such as the Scherer UPS) improves the effective fuel diversity of FPL as well as would the purchase of Scherer 4, and apparently at a lower cost to the FPL rate payer. [CLG, Post-Hearing Statement Of Issues And Positions, Page 5].

FMPA: No position. [Prehearing Order, page 11].

STAFF ANALYSIS: The addition of 646 MW of coal fired power to Florida Power and Light's capacity will enhance the elimination of oil fired power even though it would only be about 6% of their total power mix.

The positions of OPC and CLG are correct in that the addition of UPS out of Plant Scherer or any other non-oil fired alternative would also improve the diversification of FPL's fuel system.

ISSUE 6: Has FPL reasonably considered alternative supply side sources of capacity?

RECOMMENDATION: Yes. FPL has considered various supply side alternatives such as qualifying facilities, UPS purchases, bidding in the form of a Request for Power Supply, construction of new facilities, and the Scherer Unit No. 4 purchase.

POSITION OF PARTIES

FPL: Yes, it has. [FPL Brief, page 38].

OPC: No. FPL's consideration of alternatives has not been reasonable for two reasons. First, FPL assumed the Commission would find a need for an IGCC unit in 1996 without developing any

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record support for the assumption. Secondly, FPL's comparison of the purchase versus Scherer Unit No. 4 in a UPS configuration was performed incorrectly. The UPS had a lower cumulative present value revenue requirement and offered the same non-cost-based benefits as the purchase. However, because the RFP process did not proceed to the negotiation stage, the final cost of the UPS option is not known. Moreover, other supply-side alternatives such as peaking units and standard combined-cycle units have not been considered at all. [OPC, Statement Of Issues And Positions, page 4].

NASSAU: No. FPL has ignored the Commission's cogeneration policy by which QFs provide capacity through subscription to the designated statewide avoided unit. By refusing to include Nassau's standard offer contract in its committed 1996 resources, FPL has failed to incorporate a source of capacity provided as a direct result of the Commission's cogeneration policy. Neither FPL's misplaced legal challenges nor its flawed economic comparisons warrant that refusal. [Nassau Post Hearing Statement Of Issues And Positions, Page 6].

CLG: No. The proposed purchase is not the best cost alternative for meeting the generation requirements of FPL. The studies performed by the Company to determine the best cost alternative are flawed. When corrected for error, the studies demonstrate that the purchase of Scherer Unit 4 is not the best cost supply side option. Taking into account the bias found in the studies of the alternative sources for power, it is simply not clear at this time what is the best option for FPL. Only after carefully correcting the type of study performed by FPL for such obvious biasing assumptions as the fuel escalation, depreciation, O&M escalation and basic fuel costs could this Commission be presented with sufficient facts to come to a conclusion as to which of the options available to FPL is the most cost effective. However, because of the bias found in the analysis presented by FPL, the Commission should consider calling in alternative analysts, such as an independent consulting firm selected by the Commission, to perform an unbiased and reasonable analysis of the options available to FPL. [CLG, Post-Hearing Statement Of Issues And Positions, Page 6].

EMPA: No position. [Prehearing Order, page 12].

STAFF ANALYSIS: FPL's generation expansion planning process used in evaluating the Scherer Unit No. 4 purchase looks at three sources of supply-side resources: qualifying facilities, purchased power, and new generating units. [Tr. 461]. After demand-side activities have been incorporated, FPL's base expansion plan included 538 MW of qualifying facilities that have signed contracts

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with FPL and have received Commission approval. [Tr. 461-62, 467]. Nassau Power's standard offer contract was not included in the 538 MW of QF capacity, or in the forecast document under the potential firm category. [Tr. 316, Exhibit 14]. FPL's forecast document projects an additional 590 MW of QF capacity by 1997, which reflects FPL's best estimate of the number and total capacity of qualifying facilities that will be able to provide cost-effective power to the Company. [Tr. 468, 316-17].

In June 1989, FPL issued a "Request for Power Supply Proposals" with thirty four proposals received, totalling 10,793 MW. [Tr. 173]. After review, Southern Company's proposal to sell power on a UPS basis from Scherer Unit No. 4 was determined to be the winning proposal. [Tr. 175-76]. Finally, FPL's generation expansion plan also considered new generating units as alternatives to the Scherer purchase. An IGCC facility was identified as the most cost-effective type of unit available to FPL, the same unit which was identified in FPL's recent need-determination proceedings (Docket Nos. 890973-EI and 890974-EI). [Tr. 468]. It should be noted that FPL's expansion plan shows a need which the Scherer Unit No. 4 purchase will satisfy, after all of the QF capacity identified in this forecast has been taken into account, and FPL maintains that the Scherer purchase is the most cost-effective alternative available to FPL. [Tr. 467-68].

Nassau's witness Dr. Thomas states that FPL has not included Nassau's 435 MW standard-offer contract in its generation expansion planning, while including the Indiantown Cogeneration project. Nassau believes that approval of the proposed Scherer No. 4 purchase to meet a portion of FPL's 1996 need may possibly not accommodate Nassau's project. Nassau believes that its standard-offer contract is valid and its project should be included in FPL's identification of QF facilities which will be available in 1996. [Tr. 398-401]. FPL believes that Nassau's executed "standard offer" has been unilaterally modified, specifically the form interconnection agreement has been modified to limit Nassau's obligation to pay for interconnection facilities. Nassau believes that its intent was to provide its best estimate of what facilities were necessary. Modifications to the interconnection agreement would then be the subject of negotiation with Nassau paying for those facilities which Nassau caused a need for. FPL has not executed the interconnection agreement. [Tr. 426-28]. Staff believes that questions concerning the necessity of an executed interconnection agreement as an integral part of the standard offer and all other questions concerning the Nassau project are more appropriately reserved for a determination of need proceeding. Staff would also point out that FPL has included approximately 590 MW of QF capacity in the generating expansion plan which is not under contract or approved by the Commission. [Tr. 468]. Nassau

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recognized this and stated that there may well be a need for both Nassau's project and the proposed Scherer No. 4 capacity addition. [Tr. 399-400].

In summary, although the intervening parties may disagree on which alternative is the most cost-effective, FPL has demonstrated that a wide range of supply-side alternatives to the Scherer Unit No. 4 purchase were considered.

ISSUE 7: Does FPL's power supply plan reasonably consider the ability of conservation or other demand side alternatives to mitigate the need for the capacity represented by the purchase of Scherer Unit 4?

RECOMMENDATION: Yes. FPL's power supply plan included a forecast of the impacts of the Company's demand side management plan, interruptible rates and residential load control programs.

POSITION OF PARTIES

FPL: Yes, it does. [FPL Brief, page 42].

OPC: No. FPL has not provided a record basis to give an affirmative answer. In particular, FPL has failed to account for the increased value of demand-side alternatives expected to follow from recent amendments to the Clean Air Act.

NASSAU: Nassau takes no position on this issue. [Nassau Post Hearing Statement Of Issues And Positions, Page 6].

CLG: No. FPL has not yet initiated sufficient incentives or demand side management toward shaping its load curves, both from a demand and energy perspective. Such incentives could include off-peak load incentives, such as off-peak thermal storage and other similar measures that would reduce FPL's peak load. The record in this case does not demonstrate adequate efforts on the part of FPL in this area. [CLG, Post-Hearing Statement Of Issues And Positions, Page 6].

FNPA: No position at this time. [Prehearing Order, page 12].

STAFF ANALYSIS: The objective of FPL's capacity planning process is to provide adequate resources, both generating and non-generation, to meet customers' future demand reliably and in a cost-effective manner. [Tr. 461]. FPL includes cost-effective demand side programs, and introduces these programs into the generation expansion plan first, followed by qualifying facilities, then purchased power. [Tr. 461-62].

Two witnesses questioned the adequacy of FPL's demand side management activities. OPC's witness Mr. Bartels expressed general concern regarding the treatment of demand side alternatives. [Tr. 854]. Mr. Bartels stated that the economics of the demand side management programs have probably improved due to the passage of the Clean Air Act. [Tr. 884]. Upon cross-examination, Mr. Bartels admitted that he did not know how the Commission reviews and approves demand side management plans, he had not reviewed FPL's demand side management plan, and he did not know the plan's status before the Commission. [Tr. 886]. CLG's witness Mr. Wells testified that FPL needs to pursue thermal storage as a demand side measure. [Tr. 933]. Prior to the Scherer petition, FPL prepared and submitted to the Commission a demand side management plan comprising 21 programs which was approved in Order Nos. 23560 and 23667, Docket No. 900091-EG. Appendix A to Order No. 23560 indicates that FPL has implemented a Commercial/Industrial Thermal Storage program, and is pursuing research and development projects for residential thermal storage systems and for commercial or industrial stored water heating.

The impact of FPL's conservation programs, interruptible rates and residential load control has been forecasted at approximately 1317 MW through 1997. [Tr. 467]. In summary, FPL's power supply plan reasonably considers the ability of conservation and other demand side alternatives.

ISSUE 8: Is the purchase of Scherer Unit 4 the most cost-effective means of meeting FPL's capacity needs, taking into account risk factors that are part of the cost-effectiveness analysis?

RECOMMENDATION: Yes.

POSITION OF PARTIES

FPL: Yes, it is. [FPL Brief, page 44].

OPC: No. UPS out of Scherer Unit No. 4 would be more cost effective and reduce FPL's risks by offering energy out of other units on the Southern System to meet a 90% availability factor. If FPL purchases the unit, risks can only be absorbed by the stockholders or ratepayers. [OPC, Statement Of Issues And Positions, page 5].

NASSAU: No. FPL has failed to carry its burden to show that the Scherer Unit 4 purchase is the most cost-effective means of meeting FPL's capacity needs. When a "value of deferral" analysis, similar to the methodology used by FPL to support the Indiantown project, is used to evaluate the economics of the Scherer purchase and other capacity alternatives, it is clear that the present value of the

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total of unit specific costs (capacity, O&M, and unit fuel costs) of the discounted standard offer is less by \$304 million than the Scherer purchase (even after the removal of transmission improvement costs and even though 646 MW of standard offer capacity was used in the comparison). This large difference is significant in light of the fact that the total of such costs for the Scherer scenario is \$1.9 billion. [Nassau Post Hearing Statement Of Issues And Positions, Page 7].

CLG: No. While it is not entirely clear from the record before the Commission just what is the best alternative for FPL to meet its capacity needs, the record before the Commission in this matter does clearly indicate that the best alternative is not the purchase of Scherer Unit 4. After correcting for errors in the studies provided by FPL, the best known alternative at this time is the Scherer UPS option by some \$20,000,000. The risk factors cannot even be analyzed at this time since the purchase agreement has not been completed. The Commission cannot tell from the record what risks FPL faces on the issues of fuel acquisition (since it will have a minority position relative to fuel procurement votes among the five or six owners of Plant Scherer). Other similar risk factors are simply unknown at this time. Because of this uncertainty the Commission's decision on the petition of FPL should be to deny it at this time. [CLG, Post-Hearing Statement Of Issues And Positions, Page 7].

FMPA: No position at this time. [Prehearing Order, page 13].

STAFF ANALYSIS: A summary of FPL's comparative cost analysis is contained in Exhibit 18, Document 10, which was attached to Witness Waters' prefiled direct testimony. An errata sheet was distributed at hearing which changed some of the numbers in columns 3, 4 and 5 of Document 10. [Tr. 448]. With those corrections, the cumulative present value revenue requirements (CPVRR) of the Scherer Unit 4 purchase case was less than the CPVRR of all other cases. The Scherer UPS (RFP) case was the next best alternative, showing a CPVRR (in thousands of dollars) of \$42,820,839 compared to \$42,805,613 for the purchase of Scherer Unit 4. This would yield savings of approximately \$15,000 for the Scherer Unit 4 purchase option compared to the UPS option. [Note: In the discussion that follows, all numbers will be in thousands of dollars.]

Mr. Waters revised the CPVRR for the Scherer purchase case based on a supplement to the Letter of Intent. This supplement to the Letter of Intent was entered into evidence as Exhibit 2. [Tr. 37]. The change to the CPVRR is reflected in Exhibit 22. [Tr. 455]. The revised CPVRR, shown on the next to last line on Exhibit 22, is \$42,813,923. The effect of this revision is to lessen the savings over the UPS option from approximately \$15,000 to

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approximately \$8,310.

Exhibit 20 was offered by the Company to provide more detailed information on the derivation of the CPVRRs for the various alternatives. [Tr. 455]. (We note here that this exhibit does not reflect the increased CPVRR for the Scherer purchase option discussed in the preceding paragraph). Exhibit 21, also offered by the Company [Tr. 455], shows the comparison of each alternative with the Scherer purchase. The last number in the last column on the second page of Exhibit 21 shows the savings of the Scherer purchase option compared to the UPS (RFP) option to be approximately \$15,000. It should be kept in mind that this number was later revised, based on a supplement to the Letter of Intent, to approximately \$8,310. (See paragraph above).

However, OPC Witness Bartels discovered an error on page 2 of Exhibit 21 (the comparison of the Scherer purchase option with the UPS option). [Tr. 883]. Mr. Bartels prepared a spreadsheet, identified as Exhibit 30 [Tr. 881], showing the effect of this error and the corrected CPVRR for the UPS case. The first four numbers in the next to last column on page 2 of Exhibit 21 (the comparison of the Scherer purchase option with the UPS option) are incorrect and should have been identical to those on the other three pages of the exhibit. For example, for the year 1993, the Total System CPVRR should have been \$7,614,817 instead of \$7,641,458. This has the effect of lessening the CPVRR of the UPS option by \$26,641. The result of this is that the Scherer 4 purchase option is \$20,000 more expensive than the UPS (RFP) option instead of being \$15,000 cheaper.

We should note that the discussion to this point has not taken into account any quantification of SO₂ emissions allowances. Under cross examination of Mr. Waters by Mr. Tellechea [Tr. 622], Mr. Waters offered to provide information on the cost of allowances. This was entered into evidence as Exhibit 35 [Tr. 968]. This exhibit shows that, relative to the UPS option, the Scherer purchase option has roughly a \$112,000 advantage in the cost of allowances. So, when the cost of emissions allowances are considered, the CPVRR for the Scherer 4 purchase option is roughly \$92,000 less than the CPVRR for the UPS (RFP) option.

It is clear from the above discussion that, when looking at the total cumulative present value revenue requirements over a thirty-year period, there may not be a significant difference between the UPS option and the Scherer 4 purchase option. In fact, the \$92,000 savings derived above is approximately two-tenths of one percent of total CPVRR of either option. The Commission may, therefore, want to consider other strategic concerns or benefits not specifically quantified in the record. Some of the additional

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benefits claimed by FPL were:

(1) that the joint participation by JEA in the purchase of Scherer Unit 4 paved the way for additional transmission interface capability from JEA. [Tr. 67-68]. This is important since JEA owns the remaining transmission capacity currently available on the Southern/Florida interface. [Tr. 70].

(2) facilitation of the expansion of the Southern/Florida transmission interface [Tr. 472]

(3) assuming the unit life will extend beyond thirty years, FPL will not have to replace the capacity, as it would under the UPS arrangement [Tr. 472]

With regard to item (2), it is not clear from the record that this benefit is unique to the Scherer purchase option. See Staff Analysis for Issue 13.

One element that is of some concern to Staff is the possibility that, because of the phased purchases of Scherer Unit 4 capacity prior to FPL's stated 1996 need, the Company may have excess capacity for years prior to 1996.

ISSUE 9: Will FPL be able to deliver electricity from Scherer Unit No. 4 to its load centers in the same time frames in which it is proposing to add investment to rate base?

RECOMMENDATION: Yes. FPL will be able to transmit all the electricity from the Scherer unit into Florida pursuant to the letter of intent without violating the system transfer limits.

POSITION OF PARTIES

FPL: Yes. [FPL Brief, page 53].

OPC: Yes. FPL should be able to receive energy out of Scherer Unit No. 4 consistent with the proposed phase-in of the purchase. [OPC, Statement Of Issues And Positions, page 5].

NASSAU: Nassau has no position on this issue. [Nassau Post Hearing Statement Of Issues And Positions, Page 8].

CLG: No position. [CLG, Post-Hearing Statement Of Issues And Positions, Page 7].

FMPA: No position at this time. [Prehearing Order, page 14].

STAFF ANALYSIS: FPL provided evidence that the purchase of Scherer

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Unit No. 4 will not necessitate expansion of the Florida/Southern transmission interface. FPL's witness Mr. Waters testified that FPL will be able to transmit all the electricity from the Scherer unit into Florida pursuant to the schedule of intent without violating the system transfer limits. [Tr. 976, Ex, 13, Doc. 3]. FPL's witness Mr. Woody further explained that FPL feels that there is a need to expand the interface in order to improve the reliability of its system and obtain associated economic benefits for its customers; but expansion is not required to make the purchase of the Scherer unit possible. [Tr. 57-58, 98, 271].

OPC and FPL are in agreement on this issue, while the other parties have not taken a position on this issue.

ISSUE 10: If any transmission facilities and/or upgrades are required to accommodate the purchases of energy and capacity already under contract to FPL and the proposed Scherer purchase, what is the cost of such transmission facilities and/or upgrades and who will bear such cost?

RECOMMENDATION: Transmission facilities and/or upgrades are not required to accommodate the purchases of energy and capacity already under contract to FPL and the proposed Scherer purchase.

POSITION OF PARTIES

FPL: The existing transmission facilities are adequate to transmit power generated by FPL's share of Scherer Unit No. 4 into Florida. However, the Southern Companies have agreed in their letter of intent with FPL to use best reasonable efforts to improve and upgrade the transmission facilities comprising the intertie with Florida. [FPL Brief, page 55].

OPC: It appears that neither additional facilities nor upgrades will be needed specifically to receive energy and capacity subject to existing contracts or for the purchase. However, FPL's petition suggests that additional transmission would be necessary, stating at page 5: "FPL's purchase of an ownership interest in Scherer is contingent upon obtaining definitive agreements for all aspects of transmission capability necessary to transmit FPL's share of the Unit output to FPL's service area." In Exhibit 15, page 2 of 10, expansion is listed under "conditions of sale." In Exhibit 5, FPL stated that the purchase would necessitate expansion of the Southern/Florida transmission interface. Although the physical capacity exists for existing contracts and the purchase, additional transmission capacity will be needed for reliability and economy interchange. Costs are not sufficiently quantified on the record of this proceeding. [OPC, Statement Of Issues And Positions, page 5].

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NASSAU: Nassau's standard offer contract was executed on June 13, 1990 (before the letter of intent and before any definitive Scherer contracts). Therefore FPL must ensure that there is sufficient transmission capacity available for the Nassau project. [Nassau Post Hearing Statement Of Issues And Positions, Page 8].

CLG: No position. [CLG, Post-Hearing Statement Of Issues And Positions, Page 8].

FMFA: No position at this time. [Prehearing Order, page 14].

STAFF ANALYSIS: FPL Witness Woody testified that there is sufficient interface capacity to transmit all Scherer 4 power into Florida. [Tr. 57]. However, Mr. Woody also noted that, in order to enhance the reliability of the system and to allow for economy purchases, more transmission interface is needed. [Tr. 57-58; Tr. 95-98]. FPL Witness Waters testified in like manner in his rebuttal testimony to OPC's Witness Wright. [Tr. 976]. As stated above in its position on this issue, OPC now agrees that additional facilities and upgrades will not be needed to accommodate existing contracts or the purchase of Scherer Unit 4.

ISSUE 11: Are the fuel supply and transportation costs presented in FPL's economic analysis for Scherer Unit 4 reasonable and prudent?

RECOMMENDATION: Staff is of the opinion that the fuel and transportation forecasts as presented by FPL are reasonable on their face and should be accepted for purposes of this proceeding.

POSITION OF PARTIES

FPL: Yes, they are. [FPL Brief, page 57].

OPC: No. It is not reasonable to assume that FPL will be able to purchase coal at prices significantly below those obtainable by the Southern Companies. FPL's purported "strategy" has not been explained in detail or shown to be reasonable or feasible. In particular, FPL has not shown how it can implement its own strategy if the source of coal is subject to a majority vote with other co-owners and if FPL will only 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] [OPC, Statement Of Issues And Positions, page 6].

NASSAU: No, for the reasons set forth in Nassau's position on Issue 8 which Nassau incorporates herein by reference. [Nassau Post Hearing Statement Of Issues And Positions, Page 9].

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CLG: No. The assumptions developed by FPL in presenting its economic analysis have been shown to be unreliable and biased. The costs assumed by FPL in its analyses of the various options, including the Scherer purchase option, the Martin IGCC option and the Scherer UPS option are not supportable and have introduced a significant and damaging bias into the entire analysis. Nearly every assumption relating to fuel and transportation made by FPL is clearly intended to improperly bias the FPL study against every option other than the Scherer 4 purchase option. The fuel escalation methodologies are inconsistent and therefore biased, apparently overstating the expense of fuel for one of the options by some \$500,000,000. The full extent of the error and bias can only be estimated at this time, but FPL has demonstrated that it is unwilling or unable to fairly present fuel and transportation costs for the various options in a reliable manner. The Commission should order this work performed by an independent consultant. [CLG, Post-Hearing Statement Of Issues And Positions, Page 8].

FMPA: No position. [Prehearing Order, page 15].

STAFF ANALYSIS: OPC takes the position that FPL has stated that they can purchase fuel for Plant Scherer at a price cheaper than what Southern can obtain it. Staff has reviewed the record and we believe that the parties have misunderstood exactly what Mr. Silva really said on this issue. At Tr. 1088, lines 21 through 24, Mr. Silva, in replying to a question from Mr. Murrell on the \$7.50 savings that FPL had indicated they could obtain if they purchased their own fuel, said

No. I'd like to again restate it. We think that we can buy at that \$7 per ton better than the number that has been stated in the Southern Company UPS bid.

Page 1 of Exhibit 23 at Line 24 under the Scherer UPS heading shows \$65.89 per ton purchase price while under the Scherer purchase heading shows \$56.16 per ton. Our calculations indicate that the differential is approximately \$9.50 per ton. Mr. Silva's contention, at Tr. 1066 Lines 12 through 18 and Tr. 1079 Lines 1 through 25, is that the current market is in a flux and that it is basically a buyer's market. Based upon Staff's understanding of the present market conditions, we would agree with FPL's conservative opinion.

NASSAU's position is that their position on ISSUE 8 is the same as their position on ISSUF 11. Staff has reviewed NASSAU's position on ISSUE 8 and do not find any way of applying a position on present value analyses to a position on the prudence of fuel supply and transportation forecasts.

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CLG's position is that the forecasts are biased due to different assumptions being used and different escalation factors being used for the various power supply options. Staff in the beginning of this hearing process did have a similar problem. However after going through the hearing process and reviewing all of the exhibits and testimony of the witnesses in this hearing we realize that, of necessity, there will be differences in forecasts for the four basic power supply scenarios. (Plant purchase, UPS purchase, Martin IGCC and Standard Offer)

The Standard Offer fuel forecast is based upon the costs to provide power to a 500 MW coal-fired statewide avoided unit. FPL correctly used fuel costs and escalations from St. Johns River Power Park (SJRPP) since any coal fired unit built today or in the future would necessarily be required to have a scrubber included pursuant to NSPS requirements.

Mr. Silva in his testimony at Tr. 1079 Lines 1 through 25 and Tr. 1080 Lines 1 through 6 makes the correct assumptions of what fuel costs would be for Plant Scherer 4 if they were to purchase that unit. The forecasts of fuel prices at Plant Scherer are based upon known costs in today's market for fuel and transportation and should be accepted on their face. What is not known will be the type of fuel to be burned in the plant in 1995. That is, will the fuel be Appalachian coal or Western coal? There is considerable speculation as to the fuel type in the future and absent any decisions on the part of the Southern Company, today, we must look to the forecasts as provided in this proceeding. We have therefore reviewed the present coal contracts and transportation contract and find that the prices paid are comparable to other NSPS compliance coal plants.

The presentations by FPL on the forecasts for fuel for the Martin IGCC plants are purely speculative in nature and whether the forecast utilizes one year contracts or multiple year contracts can only be based upon conjecture. FPL's fuel division has consistently, in the past, provided this Commission with conservative, prudent forecasts on the price of fuel. Therefore we have not seen any evidence to refute Mr. Silva's forecast.

Finally we come to the UPS purchase fuel costs which start out higher by approximately \$9.50 per ton than the Plant Scherer purchase option. The UPS purchase option is predicated upon a capacity factor of 90%. (See Line 18 of page 1 of Exhibit 23) It is the opinion of the staff that this power will have to come from more than one unit in the Southern system in order to provide the guaranteed 90% capacity factor. Therefore the costs will rise as the power is drawn from more expensive units further down in the hierarchy. This is very likely the reason for the significant

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difference in the base cost between the UPS option and the Plant Purchase option.

ISSUE 12: Does the schedule being followed by the Commission in this case afford all interested parties adequate opportunity to protect their interests?

RECOMMENDATION: Yes.

POSITION OF PARTIES

FPL: Yes, it does. [FPL Brief, page 63].

OPC: No. FPL did not provide detailed supporting documentation with its petition and testimony. Intervenors had to elicit even rudimentary background information through discovery, but testimony had to be filed before discovery responses were received. The Commission allowed expert witnesses to address all issues raised in the Company's direct case, but those witnesses and the Commission itself were forced to react at hearing to extensive spreadsheets and data compilations that should have been subject to scrutiny before the hearing. The absence of definitive agreements prevented thoughtful analysis of critical aspects of the transaction. The requirement for expedited consideration was imposed by FPL and could have been waived by it. Since the critical date under the letter of intent is June 30, 1991, six months after the definitive agreements were to be signed, there was no apparent need to proceed to hearing on letters of intent that would be superseded before the Commission would take a final vote. [OPC, Statement Of Issues And Positions, page 6].

NASSAU: No. FPL filed its petition to include the purchase price of Scherer Unit 4 in rate base in late September. Along with its petition, FPL filed threadbare direct testimony which included little back-up data for the concluding statements contained therein. No support was provided for the economic conclusions contained in the petition and testimony claiming Scherer Unit 4 to be the most cost-effective alternative.

FPL combined a scant filing with a request for an expedited schedule, resulting in a hearing held ten weeks after FPL's initial filing. This schedule was based on an approval deadline self-imposed by FPL which FPL may waive and still consummate the transaction.

At hearing, even the Commissioners complained of their inability to locate data in the record supporting FPL's conclusions. [Nassau Post Hearing Statement -Of Issues And Positions, Page 9].

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CLG: No. The schedule did not a [sic] afforded [sic] reasonable period of time to review the material provided by FPL in response to the data inquiries of the parties in this extremely important potential procurement. What little discovery was attainable during this short period was available within only days (and for some items only hours) before the hearings commenced, leaving no reasonable time period for parties and their experts and attorneys to prepare for the hearings. The intervenors were unable to fully assimilate the data made available by the time the hearings took place in this docket. FPL has had an advantageous opportunity to review carefully how it would analyze this opportunity to purchase Scherer 4, and has had a far superior opportunity to evaluate the data that is available. On the other hand, parties such as CLG have had an unreasonably short time to evaluate the data from discovery of other parties, and have had no opportunity to follow up on its initial discovery requests with supplemental requests for information that has come to light during recent depositions and review of discovery documents made available to other parties in this docket. This schedule has been damaging and prejudicial to the intervenors. [CLG, Post-Hearing Statement Of Issues And Positions, Page 9].

FMPA: No. [Prehearing Order, page 16].

STAFF ANALYSIS: On November 9, 1990, the Office of Public Counsel (OPC) filed a Motion to Postpone Hearing and Reschedule CASR Dates with the Public Service Commission in this docket. On November 13, 1990 Nassau filed a Joinder in Public Counsel's Motion to Postpone Hearing and Reschedule CASR Dates as did CLG. FPL filed a response to these motions on November 14, 1990. On November 27, 1990, informal oral arguments were held on these motions. FPL, OPC, and Nassau were present and argued the positions they initially presented in their motions. Commissioner Wilson, the prehearing officer in this docket, denied the motions of OPC, CLG and Nassau. See Order No. 23827, issued on December 4, 1990.

ISSUE 13: What effect, if any, does the Scherer Unit 4 purchase have on the Southern/Florida interface?

RECOMMENDATION: The record fails to reflect what effect the Scherer Unit 4 purchase will have on the Southern/Florida interface.

POSITION OF PARTIES

FPL: FPL's proposed purchase of an undivided interest in Scherer Unit No. 4 will facilitate the upgrade and improvement of the Southern/Florida transmission interface. [FPL Brief, page 64].

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OPC: The purchase will prevent FPL from receiving additional economy and reliability interchange until 1997 when the proposed third 500 kv line is scheduled to be in service. All indications are that the third line would have been built whether or not FPL agreed to purchase Scherer Unit No. 4. [OPC, Statement Of Issues And Positions, page 6].

NASSAU: Nassau has no position on this issue. [Nassau Post Hearing Statement Of Issues And Positions, Page 10].

CLG: The proposed acquisition has not been shown by competent evidence to provide any improvement to the Southern/Florida interface other than what would result with or without the purchase of Scherer 4. [CLG, Post-Hearing Statement Of Issues And Positions, Page 9].

FMPA: FMPA is concerned that the purchase of Scherer Unit 4 would delay the addition of needed capacity in south Florida to support the Florida transmission grid. [Prehearing Order, page 17].

STAFF ANALYSIS: The Letter of Intent entered into by FPL, JEA and the Southern Companies states that "Southern Companies will utilize best reasonable efforts to negotiate with electric utilities in peninsular Florida for the construction of additional transmission facilities so as to increase the Southern/Florida interface in an effort to make an additional 500 MW of interface capability available to FPL." [Cepero, Exhibit 13, Document 2]. However, there is no way to predict with any certainty the efficacy of these "best reasonable efforts." Moreover, as Witness Wright points out, it is unclear that the sale of Scherer Unit 4 provides different incentives to Georgia Power to expand the interface than would long-term UPS sales from Scherer Unit 4.

ISSUE 14: Under what circumstances should the portion of the purchase price of assets in excess of book value (the "acquisition adjustment") be given "rate base treatment," such that amortization may be included in operating expenses and the unamortized acquisition adjustment may be included in rate base?

RECOMMENDATION: It would be appropriate to include the acquisition adjustment in rate base if the Commission finds that there is a capacity need and that the purchase option is reasonable and the most cost-effective alternative.

POSITION OF PARTIES

FPL: Rate base treatment is appropriate when the asset is useful to the acquiring utility in providing service to its customers, and the acquisition of the assets results in benefits to those

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transmission access disputes that may arise from the Scherer Unit 4 purchase?

RECOMMENDATION: No.

POSITION OF PARTIES

FPL: As a general matter, proper issues of transmission access brought before the Commission should be addressed by it. However, transmission dispute issues were raised during the course of this hearing. This issue should be dropped. [FPL Brief, page 68].

OPC: No position is taken on this issue. [OPC, Statement Of Issues And Positions, page 7].

NASSAU: The Commission should address the effect of the proposed Scherer Unit 4 purchase on Nassau's standard offer contract to sell 435 MW to FPL. Nassau's contract was executed prior to any arrangements for the proposed Scherer purchase. Therefore the Commission must ensure that FPL provides sufficient transmission capacity for Nassau's project. [Nassau Post Hearing Statement Of Issues And Positions, Page 10].

CLG: No position. [CLG, Post-Hearing Statement Of Issues And Positions, Page 10].

FMPA: FMPA believes that the Commission should acknowledge that transmission access constraints will or may arise from the Scherer Unit 4 purchase, and the Commission should either afford all interested parties an opportunity to address those issues in this docket or in the alternative, to open an additional docket to address those issues. [Prehearing Order, page 18].

STAFF ANALYSIS: There has been no need determination for the Nassau Power project. Consequently, there currently cannot be a transmission access dispute. In the future, however, if it is determined that there is a need for the Nassau Power project, and as a result, a transmission access dispute does arise, then Nassau should petition the Commission to resolve the dispute.

ISSUE 16: Is the purchase of an undivided ownership interest in Scherer Unit No. 4 a reasonable and prudent investment necessary to enable FPL to meet its forecast 1996 system load requirements?

PRIMARY RECOMMENDATION (JENKINS): The Commission should find that, if the final contract does not substantially differ from the Letter of Intent and representations made in this docket by FPL, the purchase cost should be placed in rate base, and at a later time in base rates pursuant to a rate case or limited scope proceeding.

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The only issues in the next rate case or limited scope proceeding should be issues related to O&M, rate design, and any increase in capital costs.

SECONDARY RECOMMENDATION (FLOYD): The purchase of an undivided ownership interest in Scherer Unit No. 4 appears to be a reasonable and cost-effective investment that will enable FPL to help meet its forecast 1996 system load requirements. The Commission should not make a final determination of prudence until the Company requests to reflect the ownership in its rates.

POSITION OF PARTIES

FPL: Yes, it is. [FPL Brief, page 69].

OPC: No. On the record of this proceeding, FPL's purchase of Scherer Unit No. 4 beginning in 1991 has not been shown to be the most cost-effective alternative available to the utility to meet its forecast 1996 system load requirements. [OPC, Statement Of Issues And Positions, page 7].

NASSAU: The discussion of the preceding issues demonstrates that the proposed Scherer Unit 4 purchase is not a reasonable and prudent investment, especially in light of the fact that the Commission does not even have before it for analysis the definitive contracts memorializing the transaction. However, even if the Commission decides otherwise, it must take into account the 435 MW which Nassau will provide to FPL pursuant to its June 13 contract. [Nassau Post Hearing Statement Of Issues And Positions, Page 11].

CLG: No. FPL has not provided sufficient credible evidence to support its contention that the petition should be granted. The studies which FPL would have the Commission rely upon have been demonstrated to contain both errors and intentional bias, causing the studies and all resulting analyses to be without credibility. Additionally, there is no reason for the Commission to proceed in this matter before seeing the final documents agreed to by and between FPL and GPC. The Commission is aware of the several changes that were required to the documents originally sponsored by FPL's Mr. Waters as a result of the changes in the pending deal which resulted during the negotiations that have been on-going between FPL and GPC. In order to reach a decision in this matter at this time, the Commission would be required to enter its order on supposition and speculation, and this should be avoided. [CLG, Post-Hearing Statement Of Issues And Positions, Pages 10-11].

EMPA: No position at this time. [Prehearing Order, page 19].

PRIMARY STAFF ANALYSIS (JENKINS): If the final contract does not

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significantly differ from the Letter of Intent and other representations made in this docket I believe the issues surrounding the contract should be put to rest. That is, I recommend approving the contract, with the acquisition adjustment, placing the costs in base rates as petitioned, and, further, increasing base rates to cover the capital costs for the plant in FPL's next rate case or limited scope proceeding. I would recommend the same for O&M except O&M may be lower than projected. Otherwise I would recommend similar treatment. Similarly for fuel, which is an ongoing issue for all plants.

In the future, I would prefer to have the results of a bid process result in a total number (capital, O&M, and fuel) that is based on an ROE reflecting the risk of a total dollar cap, or a formula for O&M and fuel.

SECONDARY STAFF ANALYSIS (FLOYD): Based on the discussion in Issues 2, 3 and 8, Staff finds that FPL has demonstrated that it has a 1996 need for capacity and that the purchase of Scherer Unit 4 appears to be the most cost-effective means to meet that need. However, it is premature to render a final determination of prudence for the purchase of the unit. We agree with OPC Witness Bartels, that the record is lacking in that the purchase contract, a fundamental piece of evidence, was not available. [Tr. 863]. In addition, a determination of prudence should not be made until the FPSC examines the books and records of the Company as part of its regular activities when the Company decides to reflect this purchase in its rates.

ISSUE 17: Should FPL be authorized to include the purchase price of its undivided share of Scherer Unit No. 4, including the acquisition adjustment, in rate base?

RECOMMENDATION: The Company should be authorized to include the purchase price of its undivided share of Scherer Unit No. 4, including the acquisition adjustment, in rate base as those purchases are made.

POSITION OF PARTIES

FPL: Yes. FPL should be authorized to include its Scherer Unit No. 4 purchases in rate base, including the acquisition adjustment, as those purchases are made. [FPL Brief, page 70].

OPC: No. The Commission does not have an adequate evidentiary basis to conclude that the purchase of Scherer Unit No. 4 beginning in 1991 is prudent and in the best interest of FPL's customers. In particular, the expired letter of intent, as supplemented, does not provide an adequate legal basis for the Commission to meet its

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obligation under Section 366.06(1), Florida Statutes (1989), to investigate and determine the actual legitimate costs of the purchase to FPL. As such, it would be premature to allow FPL to include costs in rate base without knowing what those costs are and without knowing whether all reasonable alternatives have been properly evaluated. [OPC, Statement Of Issues And Positions, page 7].

NASSAU: No. See Issue 16. [Nassau Post Hearing Statement Of Issues And Positions, Page 11].

CLG: No. FPL should not be encouraged in any manner to purchase Scherer Unit 4. It stands to reason, therefore, that the Commission should not reach this issue, and should instead find that FPL failed to provide sufficient credible evidence to support the petition of FPL, which should be denied. [CLG, Post-Hearing Statement Of Issues And Positions, Page 11].

FMPA: No position. [Prehearing Order, page 19].

STAFF ANALYSIS: Since FPL has demonstrated that it has a need for the Scherer Unit 4 purchase, and since the Scherer Unit 4 purchase appears to be the most cost effective alternative, it should be authorized to include its phased purchase in rate base as those purchases are made. This would include a pro rata amount for the acquisition adjustment as suggested in the Staff recommendation for Issue 1.

ISSUE 18: In the event FPL's petition is approved, should the Commission impose guarantee requirements on the electrical output of the unit and delivery to FPL and limit the amount of total investment, operation and maintenance expenses and fuel costs that will be allowed for recovery through rates?

RECOMMENDATION: No.

POSITION OF PARTIES

FPL: No, it should not. The Commission should review FPL's estimates of the costs associated with purchasing and operating its portion of Scherer Unit No. 4 to determine if those costs are reasonable and prudent. If the Commission determines that the estimates are reasonable and that, based on these estimates, the purchase is prudent, then the Commission should approve the purchase of Scherer Unit No. 4 by FPL. Of course, the Commission may review in the future actual costs of operating the plant, such as of those actual expenditures, taking into consideration all factors surrounding the expenditures at the time they are made. But it would be inappropriate to limit such review to a comparison

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of the actual expenditures with the estimates that have been made at this time, as Public Counsel suggests in this issue. [FPL Brief, page 72].

OPC: Yes. If the Commission should go so far as to allow the purchase in rate base with an acquisition adjustment at this time, FPL should be allowed to recover no more than it would have recovered for the most cost-effective alternative. At this time, that appears to be Scherer Unit No. 4 under the UPS response to the RFP beginning in 1996. However, even the cost of this proposal should be adjusted downward to recognize that the negotiation stage of the RFP process was never conducted and to adjust fuel costs downward to recognize that alternate energy and Schedule R energy would have been available under UPS. [OPC, Statement Of Issues And Positions, page 8].

NASSAU: Nassau has no position on this issue. [Nassau Post Hearing Statement Of Issues And Positions, Page 12].

CLG: Yes. CLG supports the position of Public Counsel in this matter on this issue, and incorporates by reference the reasoning used by Public Counsel on this Issue 18. [CLG, Post-Hearing Statement Of Issues And Positions, Page 11].

FMPA: No position. [Prehearing Order, page 20].

STAFF ANALYSIS: There was no testimony given by any party in this proceeding to support the proposition that guarantee requirements on the electrical output of the unit be imposed by the Commission in the event FPL's petition is approved. Neither is there testimony by any party that proposes to limit the O&M and fuel costs to be allowed for recovery.

OPC Witness Wright did propose to limit the amount of investment to be included in rate base for FPL's share of Scherer Unit 4 to approximately \$616,386,688. He also proposed to limit the nominal fixed cost revenue requirements for generation and transmission associated with the plant to \$3,098,838,000. [Tr. 740]. Witness Wright goes on to say that he doubts that it would be appropriate to allow for future fluctuations in FPL's actual allowed cost of debt and equity capital as they would apply to the capital revenue requirements associated with the purchase of Scherer Unit 4. [Tr. 18-19].

Staff does not support the proposal by Witness Wright and agrees with Witness Gower that such a proposal is inconsistent with cost-based rate regulation [Tr. 1118]. Witness Gower goes on to point out that, under cost-based regulation, investors are willing to accept generally lower returns on their capital. [Tr. 1119].

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Staff further agrees with Witness Gower that the proposal by Witness Wright would have the effect of encouraging utilities to avoid long-run decisions and consider only projects that have shorter planning horizons and a lower risk of error. [Tr. 1121].

In questioning by Chairman Wilson, Mr. Wright agreed that the implication of his proposal is that the generating pieces of business be, in essence, separated from transmission and distribution. [Tr. 773]. Staff believes that there is not sufficient basis in this proceeding to depart from traditional ratemaking for the Scherer Unit 4 purchase. The long-term policy implications of such a departure are immense. And Mr. Wright pointed out under questioning by Commissioners Wilson, Gunter and Easley that long-term policy was really beyond the scope of his testimony. [Tr. 789, line 19].

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ISSUE 19: Should the Commission accept the Findings of Fact proposed by the Office of Public Counsel (OPC)?

RECOMMENDATION: See Staff Analysis below.

STAFF ANALYSIS: The Office of Public Counsel has proposed 106 findings of fact, which are discussed individually by number below.

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.

This statement is clearly not a finding of fact but rather a conclusion of law. Nevertheless, we will address it. FPSC Staff concurs in part and disagrees in part with this conclusion. Section 366.076(1), Florida Statutes, is not solely procedural in nature. Section 366.076(1) is also substantive in that it also authorizes the Commission to act. We agree with OPC that FPL did not identify any substantive statutory authority for the Commission to give prior approval for the purchase of Scherer Unit No. 4. Nevertheless, it is clear that the Commission has the authority pursuant to Section 366.06(1), Florida Statutes.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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.

FPSC Staff concurs with this finding.

5. The original letter of intent was supplemented by a letter dated September 13, 1990. FPL did not identify this supplement or

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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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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.

FPSC Staff concurs with this finding.

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.

FPSC Staff concurs with this finding.

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

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be applicable after the second closing date). [Cepero, Tr. 380-81; Exhibit 2, page 2, paragraph 3]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding while pointing out that FPL made some gross assumptions that none of the other terms of the agreement would change. FPL assumed that the Company could substitute UPS power for a Scherer capacity payment after June 1991, and that the transmission arrangement with JEA is in place, and all other arrangements would remain. [Tr. 578]

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]

FPSC Staff disagrees with this first finding. Based on LOLP analysis in which only the contracted and approved resources were included, FPL needs approximately 200 MW of additional capacity by 1995. [Tr. 468] FPSC Staff concurs with the second finding.

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]

FPSC Staff concurs with this finding.

17. FPL included the 1996 IGCC unit in its generation expansion plans solely for the purpose of establishing an "avoided cost"

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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]

FPSC Staff disagrees with this finding of fact. FPL's first step in the planning process is to identify the amount of resources needed to maintain power supply system reliability. An expansion plan consisting entirely of FPL constructed generating units is then identified which form the basis for establishing an "avoided cost" against which all other alternatives can be evaluated. Demand side programs are introduced into the plan first, followed by qualifying facilities, then purchased power. Each of these resources is added to the plan to the extent it is available and cost-effective. Remaining needs are met through the addition of new generation capacity i.e. the 1996 IGCC unit. [Tr. 461-2, 466] The 1996 IGCC appeared in both the base plan and the final plan which includes a mix of supply and demand side alternatives.

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]

FPSC Staff agrees with this finding of fact while pointing out that a number of IGCC units are in operation which are not as large as the 768 MW unit which FPL has identified.

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]

FPSC Staff agrees with the first sentence of this finding of fact, but disagrees with the conclusion concerning whether FPL demonstrated a need for the IGCC unit. OPC's transcript reference does not support the above statements concerning FPL's demonstration of need for the 1996 IGCC unit.

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

FPSC Staff concurs with this finding.

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

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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]

FPSC Staff concurs with this finding.

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

FPSC Staff concurs with this finding while pointing out that Mr. Woody stated that: "It is my understanding that very little of Scherer Unit 4 had been allowed in the rate base, and I'm saying perhaps 50 MW". [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]

FPSC Staff concurs with this finding.

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

FPSC Staff disagrees with this finding while pointing out that FPL previously performed this comparison in the Lauderdale Repowering and Martin Unit Nos. 3 and 4 need determination. The review of the results of FPL's planning process and the comparison of the economics of alternative means of meeting capacity needs is included in the testimony of FPL's witness Waters. [Tr. 461-471]

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.

Staff disagrees with this finding as it is not supported by a transcript reference, and is not identified in the record.

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]

FPSC Staff concurs with this finding.

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

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projections of increased short-term load growth and delayed QF capacity, are not violated before 1995-96. [Waters, Tr. 470]

FPSC Staff agrees with the first finding of fact while pointing out that the winter reserve margin of 13% and the summer reserve margin of 17% includes the 800 MW of countermeasures of purchased power and other options to meet the need for the 1990-1991 period. [Tr. 618-19] FPSC Staff agrees with the second finding of fact.

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]

FPSC Staff concurs with this finding.

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]

Staff agrees with this finding of fact while pointing out that this calculation is based on a series of assumptions, such as a modeled availability of 83% versus an expected availability of 85%, and assuming considerably higher O&M in the purchase option. [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]

FPSC Staff concurs with this finding.

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]

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FPSC Staff agrees with this finding of fact, while pointing out that FPL identified additional benefits affecting their decision to purchase Scherer Unit No. 4. [Tr. 472]

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]

FPSC Staff concurs with this finding, while pointing out that the UPS savings of approximately \$20 million represents five one-hundreds of one percent of the total system CPVRR. [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].

FPSC Staff concurs with the first finding of fact, while pointing out that FPL's witness Waters indicated that it was not an option to purchase the Scherer unit and not take the early years prior to 1996. Mr. Waters also indicated that there is certain value in the earlier years which address the coverage of the Turkey Point unit dual outage and result in favorable long term economics. [Tr. 574] FPSC Staff concurs with the second finding of fact, while pointing out that OPC's witness Mr. Bartels discussed the various intangibles associated with purchasing the Unit, ultimately effecting the conclusions which will be reached concerning the long term economics. [Tr. 877-83] The \$79 million savings represents eighteen one-hundreds of one percent of the total system CPVRR. [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]

FPSC Staff concurs with this finding.

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]

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FPSC Staff concurs with this finding, while pointing out that FPL assumed for modeling purposes that the Company could dispatch the unit. This is a result of committing the unit and scheduling the energy in a manner very similar to dispatching the unit. [Tr. 592-93]

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]

FPSC Staff disagrees with this finding and the conclusion reached concerning increased savings, as the record does not support or reference the statements identified as Mr. Bartels.

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]

FPSC staff disagrees with this finding of fact, as OPC's witness Bartels is expressing his personal opinion based upon a belief that FPL had failed to consider demand-side management or conservation options. Mr. Bartels, under cross examination admitted that he was not aware with or had he reviewed FPL's demand-side management plan for the 1990's. [Tr. 886] Staff does not believe that OPC can propose a finding of fact from the following statement: "it is not known whether corrections comparable to those made to UPS should also be made to the standard offer evaluation", when this statement is based upon a conclusion of a witness.

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]

FPSC Staff agrees with this finding of fact.

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]

FPSC Staff agrees with this finding except for the assumption that the higher fuel cost would be assumed to come from only Scherer Unit No. 4. Staff's position is that the higher fuel cost is a result of the 90% capacity factor for the UPS sale. UPS power from Scherer No. 4 would have to be augmented from more expensive units lower in the dispatch hierarchy to achieve a 90% capacity factor. See Staff's analysis in Issue 11.

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]

Staff does not understand this finding. We have reviewed the transcript citation and are unable to confirm the statement that "it is unclear whether there was a double-counting of some transmission charges associated with the UPS proposal..."

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

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FPSC Staff does not concur with this finding as it would not necessarily be true. In order to get 90% availability, power would have to come from more than one unit which will probably be lower in the hierarchy of dispatch.

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]

FPSC Staff concurs with this finding.

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)]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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.

FPSC Staff does not concur with this finding. The UPS option would not require FPL to pay a return on approximately \$500 million. The return FPL would pay is built into the \$500 million.

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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]

FPSC Staff concurs with this finding.

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]

FPSC Staff does not concur with this finding. Mr. Woody said at Line 11, page 30 - "We will have a later witness that will cover the economic evaluation".

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.

Staff does not understand this finding. We do concur that FPL's investment would be reduced relative to the construction of its own IGCC 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]

FPSC Staff concurs in part with this finding. Mr Waters agreed to that statement only for 1991 and not beyond.

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

FPSC Staff concurs with this finding.

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

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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]

Staff concurs with this finding except for the last sentence. We think a more accurate statement from the record is "... the real benefit of the potential extended life of Scherer 4 is questionable. In the first place, this benefit is speculative, and in the second, even if the unit should attain its estimated life of 40 years, the incremental benefit may not be nearly as great as FPL's witnesses' testimony might lead one to think." [Wright, Tr. 738]

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

Staff concurs with this finding except that it is not clear as to the timing of the enhancement. Mr. Waters' response to Mr. McGlothlin's question that "it's reasonable" was in reference to the time period between "now and 2018" of Mr. McGlothlin's question. [McGlothlin, Tr. 531, line 25]

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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]

Staff concurs with this finding except that it is not clear as to the timing of the construction. Mr. Denis seems to imply that it would be constructed after the year 2000. [Denis, Tr. 263, line 17]

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

Staff concurs with this finding in part. We believe that the combination of UPS purchases and the phased purchase of Scherer Unit 4 would have this effect. [Woody, Tr. 97-98]

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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by Mr. Howe. This is somewhat more tentative than the conclusion stated in this finding. [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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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

FPSC Staff concurs with this finding.

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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]

FPSC Staff concurs with this finding.

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

FPSC Staff concurs that Mr. Wells said this. It is not a statement of fact but a position of the party.

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]

FPSC Staff does not concur with this finding. Mr. Waters said he didn't know and deferred to Witness Silva.

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]

FPSC Staff concurs that Mr. Wells said this. It is not a statement of fact but a position of the party.

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]

FPSC Staff concurs with this finding.

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

FPSC Staff concurs in part to this finding. Mr. Silva also said a spur could be built to the CSX 35 miles away.

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]

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FPSC Staff does not concur with this finding. Witness Silva, at Tr. 1078, said that Col. 4 "came as part of the capacity RFP bid that we received from Georgia Power".

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff does not concur with this finding. Mr. Silva did not say this. Mr. Murrell, counsel for CLG, offered this in his questioning of Mr. Silva.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff does not concur with this finding. Witness Denis, at Tr. 248, said "...we discounted any credits of alternate and supplemental energy with regards to having a price impact -- not with regards to availability, but with regards to price impact -- because of a belief that some of the effects that you're talking about potentiality would come about. So we did not want to have false economics in that evaluation."

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]

FPSC Staff concurs in part with this finding if the present coal being burned, at 1.08 lbs. of SO₂ per million Btu's, is used.

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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]

FPSC Staff concurs with this finding if Waters' position of needing to get allowances for an IGCC unit is also included.

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]

FPSC Staff concurs in part with this finding. Mr. Denis replied to this statement from Commissioner Gunter saying that it was one part of the equation.

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

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs that FPL's witness Mr. Cepero stated the first and that OPC's witness Mr. Bartels stated the second.

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.

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs in part and disagrees in part. Mr. Waters at Line 4 of Tr. 997 said, in answer to a question on the dollar quantification of SO₂ allowances, "In that bid I don't believe that there are any".

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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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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.

FPSC Staff does not concur with this finding. Witness Waters stated at Lines 22 through 24 of Tr. 1012 "That's correct. The figure was brought out subsequent to the RFP as part of their negotiation process".

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

FPSC Staff concurs with this finding.

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]

FPSC Staff concurs with this finding.

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.

Staff concurs with all but the last sentence in this finding. There was some underlying support provided for the comparisons. We agree that discovery was required to get a complete picture of the genesis of the proposed purchase of Scherer Unit No. 4 and the relationship of the purchase to the RFP process.

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

FPSC Staff concurs in part and disagrees in part with this finding. Intervenors were given from September 28, 1990 to November 21, 1990 to retain expert witnesses and prefile testimony. We recognize that some discovery was received by intervenors after testimony was filed but there is nothing in the record stating exactly when intervenors received their discovery and how much of the discovery was received 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

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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]

FPSC Staff concurs with the finding that FPL's rebuttal testimony 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. [Tr. 987-88. Ex. 35,36] Staff cannot determine what constitutes "all of the detailed supporting schedules" as referenced in this proposed finding of fact and therefore disagrees with this portion of the proposed finding of fact.

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]

FPSC Staff concurs in part and disagrees in part with this finding. We agree that the Commission will not vote until February 5, 1991, and since the letter of intent expired on December 31, 1990 the first closing date could not be met. We also agree that the absolute deadline was not until June 30, 1991. However, there is nothing in the record reflecting OPC's assertion that 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. We also concur with OPC's finding stating that 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. It should also be noted that witness Waters also added to his assertion "to be responsive to this particular request, we've made gross assumptions. And that is that none of the other terms of the agreement would change." [Waters, Tr. 578]

ISSUE 20: Should the Commission accept the Findings of Fact proposed by the Coalition of Local Governments (CLG)?

RECOMMENDATION: See Staff Analysis below.

STAFF ANALYSIS: The Coalition of Local Governments has proposed 33 findings of fact, which are discussed individually by number below.

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1. Georgia Power Company ("GPC") indicated in its RFP response that alternate energy would be available to Florida Power & Light Company ("FPL") from units of the Southern Company Services system under terms consistent with the 1988 UPS. [Denis, TR 229-240.]

FPSC Staff concurs with this finding.

2. In its response to the RFP, GPC stated that it offered to make UPS sales to FPL beginning as early as 1990 at prices lower than those reflected in the RFP responses for the years preceding 1994. [Denis, TR 236.]

FPSC Staff concurs with this finding.

3. Under both the Scherer 4 purchase option and the Scherer UPS option, FPL could reduce its dependence upon oil at an equally early date. [Woody, TR 66.]

FPSC Staff concurs with this finding.

4. Under the conditions existing as reflected in the foregoing two findings of fact, both the Scherer 4 purchase and the Scherer UPS could provide capacity in 1991 to allow for the upgrade of the Turkey Point nuclear station.

FPSC Staff concurs with this finding.

5. The FPL employee who was allegedly the employee who is said to have heard from Jacksonville Electric Authority ("JEA") that it would not grant additional transmission capacity to FPL unless the purchase of Scherer 4 was consummated FPL and JEA did not appear as a witness in this case. [Woody, TR 114.]

FPSC Staff concurs with this finding.

6. No JEA employee or agent appeared as a witness in this matter to address the alleged position presented by FPL that it would refuse to grant FPL additional transmission capacity unless the Scherer 4 purchase is consummated FPL and JEA. [Transcript 1-end.]

FPSC Staff concurs with this finding.

7. Joint efforts with Florida Power Corporation to secure permits for and build a west coast Florida 500 Kv transmission line connecting with Southern Company Services are not contingent upon the purchase by FPL of Scherer 4. [Woody, TR 115.]

FPSC Staff concurs with this finding.

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8. FPL began discussions with Florida Power Corporation for the west coast 500 KV line as early as March 27, 1990, prior to executing the original Letter of Intent regarding the potential purchase of Scherer 4. [Woody, TR 54-58; Exhibit 5.]

FPSC Staff concurs with this finding.

9. The UPS cost analysis by FPL has been overstated for such factors as fuel and escalation. Fuel cost differences used by FPL show an unreasonable and unexplained disparity and the use of the different fuel costs have not been adequately explained by FPL. [Bartels, TR 874.]

FPSC Staff disagrees with this finding. Mr. Silva at Tr. 1080 through Tr. 1085 fully explained their reasoning for the different fuel forecasts. See also Staff analyses of ISSUE 11.

10. Errors have been found in FPL's analyses of the capacity options, including specifically the errors shown to be present in Exhibit 21. When the analyses are corrected for these errors, the result is that the apparent best option for FPL for increasing capacity is shown to be the Scherer UPS option. [Bartels, TR 883.]

FPSC Staff disagrees with this finding. Witness Bartels said, at Lines 18 through 21 Tr. 883, "This does not say that the UPS is the best option. It just says that out of the options that are presented here it's the -- shows it's the cheapest option."

11. The methodology used to develop escalation factors for coal used in the different options should be similar in order to be reasonably accurate. [Bartels, TR 903.]

FPSC Staff disagrees with this finding. It is not a statement of fact, but a position of the party.

12. The methodology used to determine the fuel escalation for fuel in the Martin IGCC evaluation was significantly different from the methodology used in the evaluation of fuel in the Scherer purchase. [Silva, TR 1081; Wells, TR 953; Waters, TR 606.]

FPSC Staff concurs with this finding.

13. The materials provided by FPL do not justify the use of the different escalation factors used in the various option evaluations by FPL. The use of the different escalation factors has materially influenced the result of the option evaluations. [Bartels, TR 888.]

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FPSC Staff disagrees with this finding. Mr. Silva in his testimony at Tr. 1080 through 1085 clearly demonstrates why he used different escalation factors for known and unknown factors.

14. In order for the Commission to accept the result of the FPL cost studies, the Commission must find that the cost studies and forecasts are reasonable and that FPL did a reasonable job on developing the cost studies and fuel forecasts. [Waters, TR 603, 613.]

FPSC Staff does not concur with this finding. It is a mixed question of fact and law.

15. The FPL planning models are, under the best of circumstances, capable of providing forecasts that benchmark system production costs within approximately 2%. [Waters, TR 501.] The estimated difference in benefits determined by FPL comparing the Scherer purchase option and the Scherer UPS option are less than 2%.

FPSC Staff does not agree with this finding. Witness Waters testified that there is a 2% error when comparing PROSCREEN to PROMOD and that PROMOD actual results are within 1% [Waters, Tr. 503].

16. Fuel costs constitute a large percentage of total power production costs for a coal fired unit, such as Scherer 4. [Thomas, TR 434.]

FPSC Staff concurs in part and disagrees in part with this finding. Witness Thomas did not specifically mention Scherer 4.

17. FPL intends to use Georgia Power Corporation as its fuel procurement agent. [Cepero, TR 377-378.]

FPSC Staff disagrees with this finding. Mr. Cepero said that Georgia Power would be FPL's representative in visiting the mine sites, making sure the contracts are complied with and receiving the coal.

18. In the event FPL purchases Scherer 4, it intends to participate in joint procurement with the other co-owners of units at the Scherer plant site, including Georgia Power Company, Oglethorpe Power Corporation, MEAG and Jacksonville Electric Authority. [Cepero, TR 372.]

FPSC Staff concurs in part and disagrees in part with this finding. Witness Cepero did not specifically name the co-owners.

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19. FPL intends to use GPC as its procurement agent to execute FPL's procurement strategy. [Cepero, TR 372-373.]

FPSC Staff concurs in part and disagrees in part with this finding. Witness Cepero said that Georgia Power would be FPL's "agent" not "procurement agent".

20. Fuel procurement for the Plant Scherer (all units) will be from joint decisions made by all owners of the units at the Plant Scherer site. [Cepero, TR 375.]

FPSC Staff concurs with this finding.

21. FPL will not have a majority of the votes to be cast in determining the fuel procurement policy at Plant Scherer. [Cepero, TR 375.]

FPSC Staff concurs with this finding.

22. Oglethorpe Power Corporation will have the largest number of votes to cast on the procurement policy decisions at Plant Scherer. [Cepero, TR 375.]

FPSC Staff concurs with this finding.

23. One decision that could be made by the group decision at Plant Scherer is to change procurement strategy from using eastern bituminous coal to western subbituminous coal. [Cepero, TR 375.]

FPSC Staff concurs with this finding.

24. FPL has not interviewed Oglethorpe Power Corporation or any other joint owner other than Georgia Power to determine what changes the other owners suggest in procurement strategy at Plant Scherer. [Cepero, TR 369.]

FPSC Staff concurs in part and disagrees in part with this finding. Witness Cepero did say that he had reviewed the co-owner agreements.

25. Scherer Unit 4 is substantially similar to the other three units at Plant Scherer from the standpoint of heat rate and basic equipment. [Cepero, TR 367-368.]

FPSC Staff concurs with this finding.

26. FPL has until the end of June, 1991 during which to decide to purchase Scherer Unit 4. [Woody, TR 95.]

FPSC Staff concurs with this finding.

27. It is unlikely that FPL could purchase coal for the same generating unit at a cost of more than \$7.00 per ton cheaper than GPC and SCS. [Wells, TR 943.]

FPSC Staff concurs in part and disagrees in part with this finding. Witness Wells made this statement. Witness Silva said that he could purchase coal for less than the UPS offer. [Tr. 1088]

28. Using a similar fuel escalation factor for the Martin IGCC option as that used for the Scherer purchase option decreases the expected cost of fuel for the Martin option by approximately \$500,000,000. [Wells, TR 943.]

FPSC Staff disagrees with this finding. It is not supported by the record.

29. The likely fuel escalation for lower quality coal usable in the Martin option would be less than the escalation factor used for the higher quality coal required to be used in Scherer 4.

FPSC Staff disagrees with this finding. It is not a statement of fact, but a position of the party.

30. The record contains competent expert opinion to the effect that the fuel escalation factors used by FPL to compare the costs of the capacity options were incorrect and unreliable. [Wells, TR 948.]

FPSC Staff disagrees with this finding. Witness Silva at Tr. 1080 through 1085 fully explained his fuel forecasts.

31. Under the expected purchase arrangement with GPC, in the event FPL purchases Scherer 4, FPL will be required to assume a ratable proportion of the existing fuel contracts at Scherer. [Wells, TR 962-963; Silva, TR 1087.]

FPSC Staff concurs with this finding.

32. The coal selected by FPL as the proposed feedstock for the Martin IGCC option is relatively rare coal located so far from the plant site in Florida that it suffers a freight disadvantage of approximately \$2.50 per ton. [Wells, TR 954-955; Silva, TR 1094-1097.]

FPSC Staff disagrees with this finding. It is not a statement of fact, but a position of the party.

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FPSC Staff concurs with this finding.

27. It is unlikely that FPL could purchase coal for the same generating unit at a cost of more than \$7.00 per ton cheaper than GPC and SCS. [Wells, TR 943.]

FPSC Staff concurs in part and disagrees in part with this finding. Witness Wells made this statement. Witness Silva said that he could purchase coal for less than the UPS offer. [Tr. 1088]

28. Using a similar fuel escalation factor for the Martin IGCC option as that used for the Scherer purchase option decreases the expected cost of fuel for the Martin option by approximately \$500,000,000. [Wells, TR 943.]

FPSC Staff disagrees with this finding. It is not supported by the record.

29. The likely fuel escalation for lower quality coal usable in the Martin option would be less than the escalation factor used for the higher quality coal required to be used in Scherer 4.

FPSC Staff disagrees with this finding. It is not a statement of fact, but a position of the party.

30. The record contains competent expert opinion to the effect that the fuel escalation factors used by FPL to compare the costs of the capacity options were incorrect and unreliable. [Wells, TR 948.]

FPSC Staff disagrees with this finding. Witness Silva at Tr. 1080 through 1085 fully explained his fuel forecasts.

31. Under the expected purchase arrangement with GPC, in the event FPL purchases Scherer 4, FPL will be required to assume a ratable proportion of the existing fuel contracts at Scherer. [Wells, TR 962-963; Silva, TR 1087.]

FPSC Staff concurs with this finding.

32. The coal selected by FPL as the proposed feedstock for the Martin IGCC option is relatively rare coal located so far from the plant site in Florida that it suffers a freight disadvantage of approximately \$2.50 per ton. [Wells, TR 954-955; Silva, TR 1094-1097.]

FPSC Staff disagrees with this finding. It is not a statement of fact, but a position of the party.

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33. FPL determined that the Georgia Power UPS was the winning bid under the RFP process, despite the alleged concern on the part of FPL regarding its ability to reach an agreement with JEA for transmission capacity into the FPL territory.

FPSC Staff concurs with this finding.

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PROPOSED CONCLUSIONS OF LAW BY OPC

ISSUE 21: Should the Commission accept the Conclusions of Law proposed by the OPC?

RECOMMENDATION: See Staff Analysis below.

STAFF ANALYSIS: The OPC has proposed 9 conclusions of law for adoption by this Commission. Staff's recommendation as to each proposal is listed below.

1. FPL is the party seeking affirmative relief and, as such, must prove its case by a preponderance of the evidence.

FPSC Staff concurs with this conclusion.

2. Pursuant to Section 366.06(1), Florida Statutes (1989), the Commission must investigate and determine the actual legitimate costs of FPL's investment in Scherer Unit No. 4.

FPSC Staff concurs with this conclusion.

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).

FPSC Staff rejects this conclusion. The letters of intent and the supplements submitted in this case provide sufficient cost information so that the Commission may determine whether there is a capacity need and the purchase option is reasonable and cost-effective.

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.

FPSC Staff concurs in part and disagrees in part with this finding. Section 366.071, Florida Statutes, is not solely procedural in nature. Section 366.071 is also substantive in that it also authorizes the Commission to act. We agree with OPC that 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, but we do note that the Commission has the authority to waive its own rules as long as those rules are procedural in nature.

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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.

FPSC Staff rejects this conclusion. FPL has met their burden in proving 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.

FPSC Staff rejects this conclusion. FPL has met their burden in proving 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.

This statement is not a conclusion of law nor is it a proposed finding of fact. This statement is a proposed policy which OPC would like the Commission to adopt. Policy positions are completely within the Commissions discretion, and therefore, we reject OPC's proposal.

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).

FPSC Staff rejects this conclusion. To the extent that counsel for OPC is attempting to raise an evidentiary objection as to the admissibility of hearsay evidence, it is doing so far too late in the proceeding. Objections must be made contemporaneously

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with the presentation of the evidence, or they are waived. Section 90.104(1)(a), Florida Statutes (1989); Marks v. Del Castillo, 386 So.2d 1259 (Fla. 3rd DCA 1980), pet. for rev. den., 397 So.2d 778 (Fla. 1981).

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]

This statement is not a conclusion of law nor is it a proposed finding of fact. This statement is a proposed policy which OPC would like the Commission to adopt. Policy positions are completely within the Commission's discretion, and therefore, we reject OPC's proposal.

PROPOSED CONCLUSIONS OF LAW BY CLG

ISSUE 22: Should the Commission accept the Conclusions of Law proposed by the CLG?

RECOMMENDATION: See Staff Analysis below.

STAFF ANALYSIS: The CLG has proposed 25 conclusions of law for adoption by this Commission. Staff's recommendation as to each proposal is listed below.

1. A petitioning utility has the burden of proof to demonstrate by convincing evidence that the relief sought is reasonable and appropriate.

Rejected. Not a correct statement of the law.

2. FPL has failed to demonstrate that the proposed purchase of Scherer Unit No. 4 would substantially improve the ability of FPL to import power into Florida and to its service territory.

Rejected. Mixed question of fact and law.

3. FPL has failed to demonstrate by competent evidence that its ratepayers would benefit from substantial additional benefits under the Scherer Unit No. 4 purchase.

Rejected. Mixed question of fact and law.

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4. There is no compelling reason to render a decision in this matter regarding the appropriate treatment of a proposed purchase of Scherer Unit No. 4 until such time as the actual agreements controlling the sale of the unit are available for review by the Commission and intervenors.

Rejected. Mixed question of fact and law.

5. FPL does not require the Commission's permission or approval to purchase an interest in Scherer Unit 4.

Accepted.

6. There is no legal requirement that FPL receive approval from the Commission prior to purchasing Scherer Unit 4.

Accepted.

7. An analysis to compare the expected costs of the capacity options available to FPL is an integral part of this docket as it forms the basis on which the Commission can determine whether the proposed purchase is a reasonable and prudent action and whether the customers of FPL would realize the benefits FPL asserts are available under this purchase.

Rejected. Mixed question of fact and law.

8. The analysis performed by FPL contained substantial errors and, when corrected for these errors, indicates that the purchase of Scherer Unit No. 4 is not the lowest cost option available to FPL to meet its capacity requirements for 1996.

Rejected. Mixed question of fact and law.

9. The assumptions made by FPL in its analysis of the present value revenue requirements for the options available to FPL were made in such a manner as to unreasonably bias the data to favor the analysis of the purchase of Scherer Unit No. 4.

Rejected. Not a question of law but one of fact.

10. The analysis performed by FPL to evaluate the options available to FPL to provide capacity in 1996 are so biased and error laden, that the Commission has determined that the analysis should be performed by an outside consultant, rather than FPL.

Rejected. Not a question of law but one of fact.

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11. An independent consultant should be retained by the Commission at the cost of FPL to determine the appropriate escalation, depreciation and fuel cost factors to be used in the analysis of the options available to FPL, including the Scherer purchase, the Scherer UPS, the Martin IGCC project, the Nassau Power project and Standard Offer options.

Rejected. Not a question of law but one of fact.

12. FPL has failed to show by competent evidence that the purchase of Scherer Unit No. 4 would materially improve its ability to reach an agreement with JEA regarding transmission of power into Florida for FPL's customers.

Rejected. Mixed question of fact and law.

13. FPL has failed to show by competent evidence that it would be unable to meet its capacity requirements in 1996 by methods other than the purchase of Scherer Unit No. 4, which other methods may be at a lower expense to the customers of FPL.

Rejected. Mixed question of fact and law.

14. FPL has failed to show by competent and convincing evidence that the purchase of Scherer Unit 4 is a reasonable and prudent investment necessary to enable FPL to meet its forecast 1996 system load requirements.

Rejected. Mixed question of fact and law.

15. The petition of FPL in this matter should be denied without prejudice to FPL to petition this Commission upon the completion of the independent study ordered above regarding the best cost method for FPL to meet its 1996 capacity requirements.

Rejected. Mixed question of fact and law.

16. The issue of whether an acquisition adjustment should be given rate base treatment (Issues 1 and 14) is not reached as being not ripe for decision in light of the ruling of this Commission that FPL has not demonstrated the purchase of Scherer Unit No. 4 to be reasonable and prudent.

Rejected. Mixed question of fact and law.

17. The issue of whether the capacity to be provided by the purchase of Scherer Unit No. 4 is reasonable consistent with the needs of peninsular Florida (Issue 3) is not reached as being not ripe for decision in light of the ruling of this Commission that

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FPL has not demonstrated the purchase of Scherer Unit No. 4 to be reasonable and prudent.

Rejected. Mixed question of fact and law.

18. The issue of how the proposed purchase of Scherer Unit No. 4 will affect the reliability and integrity of FPL's electric system (Issue 4) is not reached as being not ripe for decision in light of the ruling of this Commission that FPL has not demonstrated the purchase of Scherer Unit No. 4 to be reasonable and prudent.

Rejected. Mixed question of fact and law.

19. The issue of how the proposed purchase of Scherer Unit 4 will affect the adequacy of the fuel diversity for FPL's system (Issue 5) is not reached as being not ripe for decision in light of the ruling of this Commission that FPL has not demonstrated the purchase of Scherer Unit No. 4 to be reasonable and prudent.

Rejected. Mixed question of fact and law.

20. The Commission has determined that the errors and biasing assumptions used by FPL in its analyses of the supply side sources of capacity demonstrates that FPL has not reasonably considered such supply side sources of capacity (Issue 6).

Rejected. Not a question of law.

21. Issue 8, regarding whether the purchase of Scherer Unit 4 is the most cost effective means of meeting FPL's capacity needs is answered in the negative without prejudice to FPL to represent this matter for consideration upon completion of the independent study ordered in this matter.

Rejected. Not a question of law.

22. The fuel supply and transportation costs presented in FPL's economic analyses for Scherer Unit 4 (Issue 11) are found to not be reasonable and prudent.

Rejected. Not a question of law.

23. The Commission determines that FPL has not demonstrated that the purchase of an undivided ownership interest in Scherer Unit No. 4 is a reasonable and prudent investment necessary to enable FPL to meet its forecast 1990 system load requirements (Issue 16).

Rejected. Not a question of law.

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FPL has not demonstrated the purchase of Scherer Unit No. 4 to be reasonable and prudent.

Rejected. Mixed question of fact and law.

18. The issue of how the proposed purchase of Scherer Unit No. 4 will affect the reliability and integrity of FPL's electric system (Issue 4) is not reached as being not ripe for decision in light of the ruling of this Commission that FPL has not demonstrated the purchase of Scherer Unit No. 4 to be reasonable and prudent.

Rejected. Mixed question of fact and law.

19. The issue of how the proposed purchase of Scherer Unit 4 will affect the adequacy of the fuel diversity for FPL's system (Issue 5) is not reached as being not ripe for decision in light of the ruling of this Commission that FPL has not demonstrated the purchase of Scherer Unit No. 4 to be reasonable and prudent.

Rejected. Mixed question of fact and law.

20. The Commission has determined that the errors and biasing assumptions used by FPL in its analyses of the supply side sources of capacity demonstrates that FPL has not reasonably considered such supply side sources of capacity (Issue 6).

Rejected. Not a question of law.

21. Issue 8, regarding whether the purchase of Scherer Unit 4 is the most cost effective means of meeting FPL's capacity needs is answered in the negative without prejudice to FPL to represent this matter for consideration upon completion of the independent study ordered in this matter.

Rejected. Not a question of law.

22. The fuel supply and transportation costs presented in FPL's economic analyses for Scherer Unit 4 (Issue 11) are found to not be reasonable and prudent.

Rejected. Not a question of law.

23. The Commission determines that FPL has not demonstrated that the purchase of an undivided ownership interest in Scherer Unit No. 4 is a reasonable and prudent investment necessary to enable FPL to meet its forecast 1996 system load requirements (Issue 16).

Rejected. Not a question of law.

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24. The Commission determines that FPL should not be authorized at this time to include the purchase price of its undivided share of Scherer Unit 4, including acquisition adjustment, in rate base (Issue 17).

Rejected. Not a question of law.

25. The issues of guarantee requirements on the electrical output of the unit and delivery to FPL and limits on the amount of total investment, operation and maintenance and fuel costs (Issue 18) is not ripe for determination at this time in light of the Commission's ruling finding that the purchase of Scherer Unit 4 is not reasonable and prudent.

Rejected. Mixed question of fact and law.