

VOTE SHEET

DATE: February 5, 1991

RE: ~~DOCKET NO. 900796-EI~~ - Petition for inclusion of Scherer Unit No. 4 purchase in rate base including an acquisition adjustment, by FLORIDA POWER AND LIGHT COMPANY.

Issue Final decision on Florida Power and Light Company's petition for inclusion of the Scherer Unit No. 4 purchase in rate base, including acquisition adjustment. Detailed issues are shown on the attached Supplemental Issue Listing.

APPROVED - FPL's petition was approved as reflected in the decisions on the attached pages.

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

James Smith
Michael Nelson
Bill [unclear]
Billy [unclear]

REMARKS/DISSENTING COMMENTS:

PSC/RAR33 (5/90)

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FPSC-RECORDS/REPORTING

SUPPLEMENTAL ISSUE LISTING

FLORIDA POWER AND LIGHT COMPANY

DOCKET NO. 900796-EI

FEBRUARY 5, 1991

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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ISSUE 15: Should the Commission address in this docket transmission access disputes that may arise from the Scherer Unit 4 purchase?
RECOMMENDATION: No.

APPROVED

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: 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, that 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. The only issues in the next rate case or limited scope proceeding should be issues related to O&M and rate design.

APPROVED

SECONDARY RECOMMENDATION: 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.

DENIED

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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.

APPROVED

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.

APPROVED

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

RECOMMENDATION: 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.

APPROVED

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.

APPROVED

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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.

APPROVED

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.

APPROVED

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

FPSC Staff concurs with this finding.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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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.

APPROVED

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.

APPROVED

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

FPSC Staff concurs with this finding.

APPROVED

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.

APPROVED

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.

APPROVED

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]

APPROVED

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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.

APPROVED

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.

APPROVED

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

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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

FPSC Staff concurs with this finding.

APPROVED

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]

APPROVED

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.

APPROVED

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]

APPROVED

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.

APPROVED

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.

APPROVED

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

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.

APPROVED

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.

APPROVED

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]

APPROVED

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.

APPROVED

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]

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]

APPROVED

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]

APPROVED

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]

APPROVED

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.

APPROVED

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]

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]

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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..."

APPROVED

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.

APPROVED

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.

APPROVED

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]

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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".

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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

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]

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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]

APPROVED

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]

APPROVED

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.

APPROVED

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.

APPROVED

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]

APPROVED

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.

APPROVED

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.

APPROVED

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

FPSC Staff concurs with this finding.

APPROVED

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

Staff does not concur with the way this finding is worded. The \$400 per KW relates to the purchase of additional transmission plant. [Wright, Tr. 738]

APPROVED

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

FPSC Staff concurs with this finding.

APPROVED

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

FPSC Staff concurs with this finding.

APPROVED

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

Staff finds that Mr. Denis used the phrase "... we may have ultimately reached an agreement ..." when he was asked the question by Mr. Howe. This is somewhat more tentative than the conclusion stated in this finding. [Denis, Tr. 209]

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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]

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".

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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."

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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".

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED 42

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.

APPROVED

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 part of their negotiation process".

APPROVED

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

FPSC Staff concurs with this finding.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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

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.

APPROVED

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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]

APPROVED

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

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

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.

APPROVED

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.

APPROVED

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.

APPROVED

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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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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."

APPROVED

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.

APPROVED

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.

APPROVED

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.]

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.

APPROVED

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.

APPROVED

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].

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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".

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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]

APPROVED

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.

APPROVED

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.

APPROVED

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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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

PROPOSED CONCLUSIONS OF LAW BY OPC

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

RECOMMENDATION: 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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

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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 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).

APPROVED

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 Commissions discretion, and therefore, we reject OPC's proposal.

APPROVED

PROPOSED CONCLUSIONS OF LAW BY CLG

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

RECOMMENDATION: 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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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

Accepted.

APPROVED

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

Accepted.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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

Rejected. Mixed question of fact and law.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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.

APPROVED

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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.

APPROVED