Steel Hector & Davis
Tallahassee, Florida

FILE COPY

March 20, 1991

Mr. Steve Tribble
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399

RE: DOCKET NO. 900796-EI

Dear Mr. Tribble:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Response To Public Counsel's And Nassau Power Corporation's Motions For Reconsideration Of Order No. 24165 in the above referenced docket.

ACK ✓
AFA 3
APP
CAF
CMU
CTR
EAG
LEG 1

Respectfully submitted,

Matthew M. Childs, P.A.

MMC/eg

cc: All Parties Of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power & Light Company for Inclusion of the Scherer Unit No. 4 Purchase in Rate Base, Including an Acquisition Adjustment.

Docket No. 900796-EI

/

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Power & Light Company's Response to Public Counsel's and Nassau Power Corporation's Motions for Reconsideration has been served by U.S. Mail this 20th day of March, 1991 on the following:

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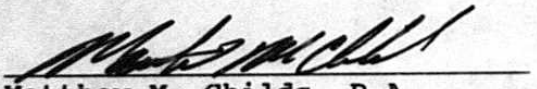

Matthew M. Childs, P.A.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power & Light Company for Inclusion of the Scherer Unit No. 4 Purchase in Rate Base, Including an Acquisition Adjustment

Docket No. 900796-EI
Filed: 3/20/91

FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO PUBLIC COUNSEL'S AND NASSAU POWER CORPORATION'S MOTIONS FOR RECONSIDERATION OF ORDER NO. 24165

FLORIDA POWER & LIGHT COMPANY, pursuant to Rule 25-22.060, Florida Administrative Code, hereby responds to the motions for reconsideration of Order No. 24165 (the "Order") filed by the 18fice of Public Counsel and Nassau Power Corporation on March 13, 1991. For the reasons set forth below, FPL respectfully requests the Commission to deny the Motions.

I. PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION

Public Counsel's motion for reconsideration ("Public Counsel's Motion") raises three points. None has merit. Each is addressed below.

A. THE RECORD SUPPORTS THE COMMISSION'S CONCLUSION THAT JEA'S GRANT OF ADDITIONAL TRANSMISSION ACCESS WAS FACILITATED BY THE SCHERER PURCHASE (POINT I).

1. Point I of Public Counsel's Motion inaccurately asserts that the only evidence of the Scherer purchase facilitating JEA's grant of additional transmission access to FPL was hearsay testimony. The record is replete with the expert opinion testimony of FPL personnel that the Scherer

purchase facilitated the additional transmission access. This testimony is based on their first-hand experience with JEA and on common sense about JEA's motivations. It is competent substantial evidence, and it is not hearsay. Moreover, Point I is irrelevant to the Commission's determination in any event, because the Commission would have more than an adequate basis for approving inclusion of the Scherer purchase in rate base even if it ignored the transmission-access benefits.

2. Three of FPL's witnesses have had extensive experience with both the Scherer purchase in particular and negotiating with JEA in general. Mr. Woody signed the original and all subsequent letters of intent concerning the Scherer purchase. See Ex. 2, Ex. 3 (signed for Mr. Woody by Mr. Cepero, Tr. 322-23) and Ex. 13, Doc. 2. Mr. Cepero has been the Director of the System Planning Department and is now Director of the Bulk Power Markets Department, in which capacity he is responsible for FPL's dealings with other utilities, including municipal utilities such as JEA. Tr. 292 (Cepero). He was in charge of negotiating all of the definitive agreements for the Scherer purchase from a technical perspective. Tr. 322 (Cepero). Mr. Denis is the current Director of the System Planning Department and is responsible for evaluating FPL's need for transmission facilities and for formulating plans to meet those needs. Tr. 168-70 (Denis).

3. The testimony of these three witnesses about JEA's reluctance to provide additional transmission access to FPL is based on the results of extensive negotiations with JEA on this subject, not merely on the fact that JEA told them so. For

example, Mr. Woody testified that, before FPL was able to hold out the prospect of participating in the Scherer purchase as an inducement to JEA, FPL had tried and failed to secure from JEA access to enough transmission capacity to accommodate UPS purchases during the Turkey Point outages in 1991. Tr. 69. Mr. Denis testified at length about the transmission interface agreement among FPL, JEA and the City of Tallahassee, the power-transfer limit allocation issues that have arisen under that agreement, and JEA's role in resolving those issues. He too concluded that the Scherer purchase provided the motivation and incentive necessary to move JEA toward resolution. Tr. 199-209. Finally, Mr. Cepero -- FPL's chief technical negotiator on the Scherer purchase -- testified that JEA was willing to resolve the power-transfer limit allocation issues "in recognition for the value that they're receiving from this transaction . . . ." Tr. 357.

4. Messrs. Woody, Denis and Cepero are indisputably -- and undisputed -- experts on negotiations involving FPL and JEA. Opinion testimony by an expert may be based on facts and data perceived by, or made known to, him at or before a hearing. Section 90.704, Florida Statutes (1989). When these facts or data are of a type reasonably relied upon by experts in the field, the facts or data need not be admissible in evidence. Id. It is hard to imagine a more reliable source of information about another party's intent in negotiations than careful observation of that party's actions over the course of time. This is precisely the source of the conclusions by

Messrs. Woody, Denis and Cepero on the transmission-access issues, and the Commission is fully entitled to rely upon their conclusions in reaching its decision.

5. It is not clear from Public Counsel's Motion whether he is arguing that statements by JEA officials about JEA's reluctance to grant additional transmission access are hearsay. However, if he is taking that position, he is wrong. In the context in which they have been used in this proceeding, the reported statements of JEA officials are not hearsay, because they are not being offered for the truth of the matter asserted. It is a fundamental rule of evidence that a third party's statements are hearsay only when they are offered for the truth of the matter asserted. Section 90.801 (1) (c), Florida Statutes (1989). Messrs. Woody, Denis and Cepero described JEA's stated positions, not to prove that JEA held those positions in its corporate soul, but rather to report the negotiating posture FPL had to confront and to illustrate how the Scherer purchase was useful in responding to that posture. Testimony about a third party's statements can never be hearsay when the purpose of the testimony is to show that the party made the statements. See Hooper v. Barnett Bank of West Florida, 474 So. 2d 1253, 1259 (Fla. 1st D.C.A. 1985) (third-party statements not hearsay when offered to show that the plaintiff was induced to act thereby).

6. For the foregoing reasons, the Commission is entitled to rely on the testimony of FPL's witnesses concerning JEA's motivation in granting additional transmission access. However, even if the Commission were to disregard that evidence, its decision to authorize the inclusion of the Scherer purchase

in rate base would be fully justified. The Commission concluded that the Scherer purchase was the most cost-effective way of meeting identified capacity needs. It found that the Scherer purchase was approximately $93 million less expensive on a CPVRR basis than the next-best alternative, when SO2 emission credits are considered. Order at 7. While consideration was given to additional transmission access as one of three identified "strategic benefits" of the Scherer purchase over the other options (Order at 7-8), there is no reason that the Commission's decision would have or should have been different if the access benefit had not been considered.

B. FPL'S TREATMENT OF ALTERNATE ENERGY IN EVALUATING THE SCHERER UPS OPTION DOES NOT DOUBLE-COUNT THE COSTS OF SO2 EMISSION CREDITS (POINT II).

7. In Point II of his Motion, Public Counsel misapprehends the testimony of Mr. Denis and, as a consequence, erroneously concludes that FPL double-counted the costs of SO2 emission credits for the Scherer UPS option on Exhibit 36. In fact, there is nothing in FPL's treatment of alternate energy that involves any form of double-counting.

8. As the centerpiece of his argument, Public Counsel quotes Mr. Denis' testimony concerning the treatment of alternate and supplemental energy:

> (W)e 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 these effects that you're talking about potentially would come about.

Tr. 248. Public Counsel then concludes from this testimony that "the energy costs of Scherer Unit No. 4 under a UPS agreement were held at an artificially high level to compensate, at least in part for acid rain compliance." Public Counsel Motion at 4-5. Had Public Counsel paid closer attention to Mr. Denis' testimony, he would have recognized that this conclusion is completely at odds with what Mr. Denis was saying.

9. The testimony in question is part of a colloquy between Mr. Denis and Commissioner Gunter concerning the impact of the Clean Air Act Amendments on FPL's review of the Scherer UPS proposal in the RFP process. During that colloquy, Commissioner Gunter had asked Mr. Denis

> Was there any point during the evaluation process that you might have looked at pending federal legislation as it would relate to Southern Companies and the prices that you would receive UPS power on?

Tr. 244. In response, Mr. Denis observed that the costs of complying

> will eventually cause the Southern Companies to incur additional costs pursuant to the enactment of the Clean Air Act, thereby causing an additional cost component in the incremental system energy that they produce.
>
> We expect that will result, and our projection in the company, is that will result in approximately a 50% reduction in future economy transactions that are economical to the Company <u>So there was a consideration, an implicit consideration, that there will be a higher cost system energy from other systems, thereby reduce amount of economic replacement power</u>.

Tr. 244-45 (emphasis added). From this exchange it is easy to

see that Mr. Denis was not saying, as Public Counsel mistakenly suggests, that the benefits of economy-type transactions were excluded from the UPS evaluation as some sort of proxy for the costs of Clean Air Act compliance. Rather, he testified that FPL expects the compliance costs to reduce substantially the level of economy-type transactions that will be economically viable. Recognition of this economic reality in no way accounts for the direct costs of compliance, however. The cost of SO2 emissions credits for running Scherer Unit No. 4 -- or any other unit on the Southern Companies system -- under the UPS proposal must be taken into account separately to give a proper comparison to the costs of the Scherer purchase, where a substantial portion of the SO2 emission credits required to operate the plant are already included in the purchase price.

10. The purpose of reconsideration is to bring to the attention of the Commission points which have been overlooked or which it has failed to consider. Reconsideration is not for the purpose of merely rearguing points with which a party disagrees. Diamond Cab Co. of Miami v. King, 146 So. 2d 889, 891 (Fla. 1962). Public Counsel has not heeded this limitation here. The issue of SO2 emission credits was thoroughly explored at the hearings in this docket and was briefed extensively. So was the issue of alternate energy. Public Counsel's Point II is nothing more than an attempt to reargue those issues by repackaging them, and it should be rejected.

C. NO FURTHER ADJUSTMENTS TO FPL'S CPVRR ANALYSES ARE WARRANTED (POINT III).

11. Point III of Public Counsel's Motion urges the Commission to make unspecified additional adjustments to FPL's CPVRR analysis of the Scherer UPS option beyond those suggested by Mr. Bartels in Exhibit 30. Whereas Public Counsel's Point II is an attempt to reargue well-explored issues, Point III errs to the opposite extreme: it is trying to raise a completely new issue well after the opportunity of the parties to address that issue has passed.

12. Exhibit 30 calculated the impact of specific errors for the years 1991, 1992 and 1993 on Mr. Waters' CPVRR analysis of the Scherer UPS option. No other years were addressed in his adjustment. Public Counsel's Finding of Fact No. 31 specifically proposed to the Commission that Mr. Bartels' adjustment for those three years -- and no others -- be made to the CPVRR analysis. The Commission accepted this Finding and incorporated the adjustment into its assessment of the cost-effectiveness of the supply options. Order at 6-7, 17. Thus, the Commission took precisely the action requested by Public Counsel.

13. Notwithstanding that he got exactly the relief he requested -- and all that the record supports -- Public Counsel is now trying belatedly for more. In spite of the finding in the Order that there are over $ 93 million in CPVRR benefits to the Scherer purchase, Public Counsel wants the Commission to ignore those benefits on the supposition that there might be

other errors in the CPVRR analyses and that those errors could in theory offset the benefits. Public Counsel's suggestion would truly be regulation by speculation. There is no basis in the record to conclude that any additional adjustments should be made or that, if there were, they would favor the Scherer UPS option. It would be a great disservice to FPL's ratepayers to ignore benefits demonstrated in the record on the off chance that there might be a better deal lurking around the corner.

II. NASSAU POWER CORPORATION'S MOTION FOR RECONSIDERATION

15. Nassau argues in its motion for reconsideration ("Nassau's Motion") that the Commission should reconsider its finding that the Scherer purchase is the most cost-effective option because the Commission "overlooked significant flaws" in FPL's comparative analyses of the various alternatives. Nassau gives four reasons in support of its Motion. However, none of the reasons justifies the Commission reconsidering the Order.

16. In the introductory paragraph of its Motion, Nassau makes an observation that FPL's comparative analysis "indicated a minuscule (0.5%) difference in total costs between the Scherer 4 purchase and the discounted standard offer." One can only speculate as to why Nassau made this observation, since the reason is not clear from reading the Motion. Regardless of the reason, however, Nassau's reduction of the substantial CPVRR difference between the two alternatives to a percentage of total

system operating costs is specious and misleading. Mr. Waters addressed this specific point on cross-examination by Nassau's counsel and stated that looking at the difference between alternatives as a percentage of total costs is not a good way to analyze the alternatives. Tr. 566-67. While the $216 million difference in total costs between the two alternatives can be made to look small if it is divided by the billions of dollars in total system operating costs, the difference remains real and significant. Opportunities to save ratepayers $216 million should not be overlooked merely because the savings are a small fraction of total costs. Id.

A. FPL FULLY EXPLAINED THE REASONS FOR THE DIFFERENT FUEL FORECASTS

17. In Point 1(a) of Nassau's Motion, Nassau claims that FPL's comparative analysis is flawed because there is no support for the differential in fuel costs utilized by FPL in its analysis. This allegation is inaccurate. There is extensive record support for FPL's forecasted fuel costs and extensive support for why FPL's projected fuel costs under the Scherer purchase option are different than those projected by the Southern Companies (used throughout to refer to the Georgia Power Company as well) under the Scherer UPS option. Tr. 1058-60, 1066, 1079, 1080 and 1087-92 (Silva). Indeed, the Commission found that FPL witness Silva "fully explained FPL's reasoning for the different fuel forecasts." Order at 35 (Commission's rejection of the Coalition of Local Governments'

Proposed Finding of Fact No. 9). The Commission also rejected Public Counsel's Proposed Finding of Fact No. 80, which claimed that FPL could not reasonably be expected to be able to purchase coal at a delivered price significantly below what the Southern Companies can obtain coal for. Order at 27. These two findings by the Commission directly refute Nassau's claim that the Commission overlooked FPL's analysis of the differential in fuel costs.[1/] They also make it abundantly clear that Nassau is attempting to reargue a point which was exhausted at the hearings. This is not a proper basis for a motion for reconsideration. See ¶ 10, supra.

18. As specific support for Point 1(a), Nassau claims that the Staff's recommendation on Issue No. 11, accepted by the Commission, is wrong because it recognizes that the differential in projected coal costs between the Scherer purchase option and the Scherer UPS option can be partially explained by the fact that "Southern's estimates and FPL's estimates represented different points in time and different conditions." Nassau claims that this explanation should be disregarded because "if conditions and prices change downward for FPL, they will change downward for Southern as well." Nassau's argument misconstrues FPL's testimony on this point.

1/ It is noteworthy that while Nassau is requesting the Commission to reconsider the record evidence on this issue, the Staff could not even discern what Nassau's position was on this issue. Staff Recommendation at 25.

19. Mr. Silva testified that the issue of "timing" refers to situations where one company can take advantage of favorable market conditions and prices while another company cannot because it is locked into an unfavorable long-term contract that does not necessarily reflect poor procurement strategy on its part. Tr. 1087. That situation existed here. The Southern Companies are locked into a very unfavorable long-term coal contract (which would obviously impact its UPS fuel cost projections), whereas FPL can reasonably be expected to enter into more favorable coal contracts under existing and projected market conditions.[2/] As a result, and contrary to what Nassau suggests, the Southern Companies are not able to benefit from favorable changes in market conditions and prices to the extent FPL can. Based on this economic reality, the Commission properly accepted Staff's recommendation that FPL has reasonably projected that its cost per ton of coal under the Scherer purchase option is less than the high cost per ton of coal under the Scherer UPS option.

20. Nassau's other argument on Point 1(a) is that the Commission should reconsider the differential in fuel costs

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2/ Tr. 1087-88, 1091-92. While it is true that FPL will have to participate in the unfavorable long-term contract by purchasing Scherer Unit No. 4, it is only required to buy a maximum of 19% of the coal delivered to the plant site under this long-term contract. In contrast, the amount of coal that could be assigned to FPL's purchases from these contracts under the Scherer UPS option is open-ended. Tr. 1088 (Silva).

utilized by FPL because the Commission has found that FPL will not have "sole responsibility for Scherer Unit No. 4 fuel purchases" or will not have "a majority of votes in determining fuel procurement strategies."[3/] This argument is without merit for two reasons. First, there is no record evidence whatsoever to suggest that the other Scherer plant co-owners do or will disagree with FPL's fuel procurement strategy. Second, it seems inherently reasonable that all the co-owners, having the same interests, would want to benefit to the maximum extent possible from favorable market conditions and prices to procure coal for the Scherer plant. Tr. 371-78 (Cepero). As Mr. Silva testified, FPL expects to be able to tailor its procurement to focus on minimizing the costs specifically for Scherer Unit No. 4, yet benefit from the volume discounts and experience of the Southern Companies. Tr. 1086. Furthermore, the record evidence is clear that FPL will be able to procure coal for Scherer Unit No. 4 on the basis of high, uniform and predictable delivery volumes because of the greater certainty about the unit's capacity factor. Tr. 520 (Waters), 1091-92 (Silva). These same factors should apply to the other co-owners as well. In

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3/ While FPL is not disputing the Commission's acceptance of these findings, it is necessary to point out that these findings cannot be read as broadly as Nassau suggests. Mr. Cepero testified that the decision of where to go to obtain the coal for Plant Scherer will be a joint decision of all owners, but the decision of "term, price, volume, mix between long-term firm, spot, that will be Florida Power & Light's." Tr. 375, 377-78.

contrast, these factors will not be present if the Southern Companies dispatch energy from Scherer Unit No. 4 as part of their overall system under a UPS arrangement.

B. THE SCHERER PURCHASE OPTION IS SUPERIOR TO THE STANDARD OFFER OPTION WITH OR WITHOUT THE ADDITIONAL TRANSMISSION CAPABILITIES

21. In Point 1(b) of Nassau's Motion, Nassau claims that FPL's comparative analysis is flawed because it improperly considered economic benefits FPL expects to derive from "transmission improvements which would have occurred" regardless of whether FPL purchased Scherer Unit No. 4. The problem Nassau has, however, is that the standard offer option loses whether or not the 500 MW of additional transmission is considered in the comparative analysis. Consequently, there is simply no record basis for the Commission ever to reach the conclusion that the standard offer option is the best alternative.

22. Document 10 to Mr. Waters' prefiled testimony (Ex. 18) did not evaluate either (1) the Scherer purchase option without the 500 MW of additional transmission, or (2) the standard offer option ("statewide avoided unit" option) with the 500 MW of additional transmission. FPL did, however, subsequently perform these additional analyses in response to Public Counsel's Interrogatory No. 31(p). The CPVRR for all the alternatives were then set out on Exhibit No. 36 (with minor corrections reflected in Exhibit No. 30). Appendix I, attached to this response, sets out the pertinent comparisons between the Scherer purchase option and the standard offer option (with 20%

risk) and makes it patently obvious that the result is always the same: either with or without the additional 500 MW of transmission, the Scherer purchase option is far superior to the standard offer option, with or without the additional transmission. In fact, the Scherer purchase option is superior even though the standard offer option does not impose any location penalty for a facility that is, for example, located in north Florida.

23. As a final comment on this point, FPL would note that footnote no. 2 on page 3 of the Motion is completely irrelevant. The transmission-access issue was withdrawn as an issue in this docket by Nassau itself. See Transcript of Prehearing Conference Held on December 3, 1990, at 31.

C. FPL'S ANALYSIS DID NOT ARTIFICIALLY INCREASE THE COST OF THE UPS OPTION BY ASSUMING THAT FPL'S ENERGY COST WILL BE THE SAME AS THE ENERGY COST FROM SCHERER UNIT NO. 4

24. In Point 1(c) of Nassau's Motion, Nassau claims that FPL's comparative analysis is flawed because it "artificially increased the cost of the UPS alternative by assuming that FPL's energy price will be that of energy from Scherer 4." This accusation is inaccurate. In its analysis, FPL used the fuel prices furnished by the Southern Companies in response to the RFP. Tr. 517-19 (Waters). Contrary to what Nassau would have the Commission believe, this testimony does not support Nassau's conclusion that FPL assumed its energy price under a UPS arrangement would be the price of energy from Scherer Unit No. 4.

25. More important, Point 1(c) represents the most obvious attempt by Nassau to reargue a point that was extensively explored at the hearings (Tr. 225-30, 240-41, 244-45, 340, 342-43, 532, 536-37 and 590) and thoroughly addressed by the parties in their briefs and post-hearing statements of issues and positions. As stated in paragraph 10, supra, reconsideration is not an opportunity for a party to merely reargue points with which it disagrees. Consequently, Nassau's attempt to argue this point on reconsideration by claiming that the Commission overlooked the record evidence in reaching its decision must be emphatically rejected.

26. This argument must be rejected for the additional reason that Nassau is relying on purely historical data to support its argument. Nassau relies on the Commission's acceptance of Public Counsel's Finding of Fact No. 21 to assert that Scherer Unit No. 4 operates at a 17% capacity factor. The implication is that the unit always has and always will operate at only a 17% capacity factor. This is completely unfounded. While it is correct that Scherer Unit No. 4 operated at a 17% capacity factor in 1989 (as noted in Public Counsel's Finding of Fact No. 21), there is absolutely no record evidence that suggests that the unit will operate at that low capacity factor in the future. In fact, the record and common sense suggest to the contrary. See, e.g., Order at 20. Merely by selling Scherer Unit No. 4, the Southern Companies will have to operate the rest of its system at higher capacity factors. And as the demand on the Southern Companies' system grows, it is also

obvious that there will be less energy available from the rest of the system to serve as Alternate Energy.

27. Nassau's argument on Point 1(c) should be rejected for the additional reasons set forth in FPL's Brief at 51. There, FPL summarized the record evidence that showed that FPL's interchange agreements with the Southern Companies entitle it to purchase energy on a split-the-savings basis that is similar to "Alternate Energy." Tr. 340, 342-43 (Cepero). Moreover, the savings being split under the Scherer UPS option would take the Scherer Unit No. 4 operating costs as a starting point. If the unit were operated at a lower capacity factor because energy is being provided from other units, its operating costs will be higher, along with the resulting split-the-savings price. Tr. 240-41 (Denis). Finally, the issue of split-the-savings purchases from the Southern Companies may become largely moot, as Clean Air Act compliance costs and other factors drastically change the economics of those purchases and reduce their availability. Tr. 244-45 (Denis), 532, 590 (Waters).

D. FPL PROPERLY INCLUDED IN ITS ANALYSIS, AND THE COMMISSION PROPERLY CONSIDERED, THE VALUE OF EMISSION CREDITS FPL WOULD HAVE TO PAY FOR UNDER THE UPS OPTION

28. In Point 1(d) of Nassau's Motion, Nassau claims that FPL's comparative analysis is flawed because it incorporated the estimated cost of SO2 emission credits FPL would expect to have to pay for under the Scherer UPS option. Nassau argues that FPL will not have to purchase any emission credits in order for the Southern Companies to operate Scherer

Unit No. 4 at the 90% capacity level called for by the UPS proposal because (1) the Southern Companies have never expressly told FPL that it will have to pay for emission credits; and (2) the Southern Companies will receive "free" emission credits as owner of the unit. Nassau's Motion at ¶ 1(d) (citing Public Counsel's Findings of Fact Nos. 96-98 as support for its argument). Nassau concludes, therefore, that the Commission erred in considering the estimated cost of emission credits FPL testified it could reasonably expect to pay for under the Scherer UPS option to support its finding that the Scherer purchase option is the most cost-effective alternative available to FPL. Nassau's arguments are simply wrong.

29. FPL expained in very precise detail in its Brief why it would have to pay the Southern Companies under a UPS agreement for emission credits:

> While it is true that Scherer Unit No. 4 and other Southern Companies units will receive a certain quantity of "free" emission credits by operation of law under the amended Clean Air Act, the Southern Companies will not receive sufficient "free" credits for all its system units to operate at capacity factor levels required to meet system energy requirements. Tr. 349 (Cepero); Ex. 15, p. 5. This would be true even if they provided no energy to FPL.
>
> As a result, the Southern Companies will have to purchase on the market whatever quantity of additional emission credits are necessary to operate Scherer Unit No. 4 at the 90% capacity level called for by the UPS proposal. Federal law prohibits the unit from operating unless the Southern Companies have purchased the necessary emission credits. It is the cost of these additional emission credits for which FPL can expect to pay under a UPS agreement. After all, it is unrefuted that GPC considers these emission credits to be a valuable system asset (Tr.

> 393-94 (Cepero)) and there is no reasonable basis for FPL to expect that the Southern Companies will "lease" the emission credits needed to run Scherer Unit No. 4 to FPL at no cost under a UPS agreement. Tr. 1008-09 (Waters).

FPL's Brief and Post-Hearing Statement of Issues and Positions at 23-24 (emphasis supplied). Given this unrefuted record evidence, it is clear that there is no flaw in FPL's analysis and that the Commission's consideration of the value of the emission credits is supported by substantial record evidence. Therefore, Nassau's reliance on Public Counsel's Finding of Fact No. 98 -- that the Southern Companies will receive a certain number of emission credits "for free" as the owner of Scherer Unit No. 4 if the unit is not sold to FPL -- to support its argument that FPL will not have to pay for emission credits under the Scherer UPS option has no merit whatsoever.

30. The fact that FPL quoted from its Brief in responding to Point 1(d) also emphasizes the very obvious fact that Nassau's arguments on Point 1(d) are yet another attempt to reargue points which were discussed extensively on the record and in the parties' briefs. Obviously the Commission agreed, and Nassau disagrees, with FPL's record evidence that it could reasonably expect to pay for emission credits under the UPS Scherer option. Such a disagreement, however, is no basis for the Commission to reconsider its finding on this issue.

31. Nassau's reliance on Public Counsel's Findings of Fact Nos. 97 and 98 -- that the UPS proposal submitted by the

Southern Companies did not include any costs associated with emission credits and that the Southern Companies never told FPL that it will have to pay for emission credits under a UPS agreement -- is similarly without merit. FPL specifically acknowledged that the UPS proposal submitted by the Southern Companies neither included nor excluded the estimated value of the emission credits in the quoted cost of energy; but FPL also made it abundantly clear in the record that it would be irresponsible and reflect poor management on FPL's part not to expect to have to compensate the Southern Companies for emission credits under a UPS agreement. Tr. 1008-09 (discussion between Chairman Wilson and Waters).

WHEREFORE, FPL respectfully requests the Commission to deny Public Counsel's and Nassau's Motions for Reconsideration of Order No. 24165.

Respectfully submitted,

STEEL HECTOR & DAVIS
215 South Monroe Street
Suite 601
Tallahassee, Florida 32301
Attorneys for Florida Power
& Light Company

By: _____
Matthew M. Childs, P. A.
John T. Butler
Greg N. Anderson

APPENDIX I

ALTERNATIVE	TOTAL CPVRR (in 000's) WITH 500 MW OF ADDITIONAL TRANSMISSION	TOTAL CPVRR (in 000's) WITHOUT 500 MW OF ADDITIONAL TRANSMISSION
Scherer Purchase	$42,813,923[1]	$42,897,000[2]
Standard Offer (with 20% risk)	$43,024,430[3]	$43,021,755[1]

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1. Order No. 24165 at 7.

2. This figure represents the total CPVRR for the Scherer Purchase Option reflected in Ex. 30 ($42,813,923) increased by the difference between (1) the total CPVRR for the Scherer Purchase Option with 500 MW of additional transmission reflected in Ex. 36 ($42,805,613) and (2) the total CPVRR for the Scherer Purchase option without 500 MW of additional transmission reflected in Ex. 36 ($42,888,690).

3. Ex. 36.