

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by City of  
Lakeland for determination of  
need for McIntosh Unit 5 and  
proposed conversion from simple  
to combined cycle.

DOCKET NO. 990023-EM  
ORDER NO. PSC-99-0592-PHO-EM  
ISSUED: March 31, 1999

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 17, 1999, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

ROY C. YOUNG, ESQUIRE, Young VanAssenderp & Varnadoe, P.A.,  
225 South Adams Street, Suite 200, Tallahassee, Florida 32302  
On behalf of City of Lakeland (Lakeland).

WM. COCHRAN KEATING, IV, ESQUIRE, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
32399-0850  
On behalf of the Commission Staff (Staff).

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Pursuant to Section 403.519, Florida Statutes, the City of Lakeland filed a petition on January 6, 1999, for determination of need for a proposed electrical power plant. An administrative hearing on the petition is scheduled for April 1 and 2, 1999, to address the issues set forth in the body of this Order. To date, no person has intervened in this docket.

Based on the information reviewed, staff believes that the positions taken by Lakeland are appropriate. Therefore, staff is

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prepared to present the Commission with a recommendation at hearing for approval of the positions set forth herein.

### III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to

present evidence which is proprietary confidential business information.

- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any,

statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time. If the Commission renders a bench decision on Lakeland's petition at the hearing, no post-hearing filings will be required.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

As a result of discussions at the prehearing conference, witnesses may be excused from attending the hearing if no Commissioner assigned to hear this case seeks to cross-examine the particular witness(es). As early as possible, parties shall be notified as to whether each witness shall be required to be present at hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony shall be identified and admitted into the record.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Robert G. Siegel	Lakeland	1, 2, 3, 4, 5
Paul H. Elwing	Lakeland	1, 4, 5
Gary T. Lawrence	Lakeland	4, 5
Rolando Sanz-Guerrero	Lakeland	3, 5
Daniel J. Runyan	Lakeland	1, 2, 3, 4, 5
Myron R. Rollins	Lakeland	1, 2, 3, 4, 5
David H. McLain	Lakeland	3, 5

#### VII. BASIC POSITIONS

The City of Lakeland (Lakeland) is seeking a determination of need for C.D. McIntosh Unit 5 and its conversion to combined cycle operation. McIntosh Unit 5 is currently a simple cycle combustion turbine scheduled for commercial operation in July 1999 with a nominal rating of 249 MW. The scheduled operation date for the unit converted to combined cycle is January 1, 2002. The converted unit will have a nominal rating of approximately 369 MW.

In 1997, Lakeland issued an Invitation for Proposals (IFP) for approximately 200 MW of capacity starting in the year 2002. Lakeland began negotiations with the lowest of the 13 bidders who responded. During these negotiations, Westinghouse submitted an unsolicited proposal to provide Lakeland the first 501G simple cycle combustion turbine (McIntosh Unit 5) at a discounted price for operation in 1999, upon the condition that the unit be operated in simple cycle mode for a period of at least 18 months from start-up. After this initial period, Lakeland would be free to convert the unit to combined cycle operation.

Lakeland studied numerous alternative generating technologies and evaluated the purchase power alternatives identified in its IFP process and Westinghouse's unsolicited proposal. McIntosh Unit 5 and its proposed conversion to combined cycle was selected as the least-cost of all feasible alternatives under both base case and sensitivity analyses. None of the 66 potential conservation and demand-side management programs evaluated by Lakeland were cost-effective alternatives to the conversion of McIntosh Unit 5.

Assuming that all of Lakeland's planned unit retirements are made, operating the McIntosh Unit 5 in simple cycle mode will satisfy Lakeland's retail reliability needs at least through the year 2003. If no units on Lakeland's system are retired beyond the year 2002 and the proposed conversion of McIntosh Unit 5 to combined cycle operation is not accomplished, Lakeland's retail reliability needs could be met through the year 2007. Thus, it appears that the conversion of McIntosh Unit 5 from simple cycle to combined cycle operation is not necessary to satisfy a reliability need for Lakeland's retail load in the year 2002. The conversion will, however, enhance reliability for Lakeland's system and Peninsular Florida.

Lakeland has demonstrated an economic need for the proposed conversion. As part of its permitting process for the simple cycle unit, Lakeland agreed to reduce NOx emissions from the unit to a certain level by the year 2002. In order to satisfy this requirement, Lakeland proposes to convert McIntosh Unit 5 to combined cycle operation using proven technology to reduce emissions. The conversion will also allow Lakeland to accelerate the retirement of some of the older, less efficient generating units on its system. Lakeland contracted to sell 100 MW of power to the Florida Municipal Power Agency (FMPA) for a ten-year term, which will offset some of the conversion costs. Lakeland found that its proposed expansion plan, which includes the conversion of McIntosh Unit 5 to combined cycle, the contract with FMPA, and the retirement of certain units, is approximately \$21 million less costly than an expansion plan which includes the apparent low bid from its IFP process. Lakeland also found that its proposed expansion plan is approximately \$28 million less costly than an expansion plan which includes its next lowest self-build option. Thus, the conversion of McIntosh Unit 5 to combined cycle operation is the most cost-effective alternative available to Lakeland. Conversion to combined cycle operation will make McIntosh Unit 5 the most efficient generating unit in the state.

VIII. ISSUES AND POSITIONS

The position listed for each issue is the position adopted by Lakeland after discussions with staff. Staff recommends approval of all positions.

**ISSUE 1: Has the City of Lakeland demonstrated a need for the proposed power plant, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?**

**POSITION:** The conversion of McIntosh Unit 5 to combined cycle operation does not appear to be necessary to satisfy a reliability need for Lakeland's retail load in the year 2002. However, the proposed conversion will allow Lakeland to cost-effectively satisfy its environmental requirements by retiring older, less efficient units and gaining the revenue from its contract with the Florida Municipal Power Agency. In addition, the proposed conversion will enhance the reliability of both Lakeland's system and Peninsular Florida.

**ISSUE 2: Has the City of Lakeland demonstrated a need for the proposed power plant, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?**

**POSITION:** The conversion of McIntosh Unit 5 to combined cycle operation does not appear to be necessary to satisfy a reliability need for Lakeland's retail load in the year 2002. However, the proposed conversion will allow Lakeland to cost-effectively satisfy its environmental requirements by retiring older, less efficient units and gaining the revenue from its contract with the Florida Municipal Power Agency. McIntosh Unit 5 and its proposed conversion to combined cycle was selected as the least-cost of all feasible alternatives reviewed under both base case and sensitivity analyses.

**ISSUE 3:** Has the City of Lakeland demonstrated that the proposed power plant is the most cost-effective alternative available, as this criterion is used in Section 403.519, Florida Statutes?

**POSITION:** Yes. The proposed conversion of McIntosh Unit 5 to combined cycle operation is the least-cost alternative among the alternative generating technologies, feasible IFP alternatives, and the unsolicited proposal from Westinghouse evaluated by Lakeland. In combined cycle mode, McIntosh Unit 5 was found to be approximately \$21 million less costly than the apparent low bid from the IFP process and \$28 million less costly than the next lowest self-build option.

**ISSUE 4:** Are there any conservation measures taken by or reasonable available to the City of Lakeland which might mitigate the need for the proposed power plant?

**POSITION:** No. Lakeland evaluated 66 potential conservation and demand-side management programs using the FIRE model to compare against the least-cost alternative. No conservation or demand-side management programs proved to be cost-effective.

**ISSUE 5:** Should the Commission grant the City of Lakeland's petition to determine need for the proposed conversion of McIntosh Unit 5 to combined cycle?

**POSITION:** Yes.

**ISSUE 6:** Should this docket be closed?

**POSITION:** Yes. This docket should be closed after the time for filing an appeal has run.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Petitioner	Lakeland	_____	Need for Power Application
		(LAK - 1)	
Elwing	Lakeland	_____	Table of Contents of Need for Power Application showing witnesses sponsoring subsections
		(LAK - 2)	
Lawrence	Lakeland	_____	Executive Summary, Sections 1.0, 2.0, 3.0, 17.0, 18.0-18.1, and 20.0
		(LAK - 1)	
Sanz-Guerrero	Lakeland	_____	Corrections to proffered sections
		(PHE - 1)	
Runyan	Lakeland	_____	Sections 7.0, 8.0-8.2, and Appendix 21.1
		(LAK - 1)	
Rollins	Lakeland	_____	Corrections to proffered sections
		(GTL - 1)	
Sanz-Guerrero	Lakeland	_____	Sections 10.1-10.2, Appendix 21.2, and Appendix 21.3
		(LAK - 1)	
Runyan	Lakeland	_____	Corrections to proffered subsections and appendices
		(RSG - 1)	
Runyan	Lakeland	_____	Contents Table, Sections 8.3, 9.0, 10.3, 12.0, 13.0, 14.0, 15.0, and 18.2
		(LAK - 1)	
Rollins	Lakeland	_____	Corrections to proffered sections
		(DJR - 1)	
Rollins	Lakeland	_____	Sections 4.0, 5.0, 6.0, 11.0, and 16.0
		(LAK - 1)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		_____	Corrections to
		(MRR - 1)	proffered sections
McLain	Lakeland	_____	Section 19.0
		(LAK - 1)	
		_____	Corrections to
		(DHM - 1)	proffered section

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

Based on the information reviewed, staff believes that the positions taken by Lakeland are appropriate. Therefore, staff is prepared to present the Commission with a recommendation at hearing for approval of the positions set forth herein.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. OTHER MATTERS

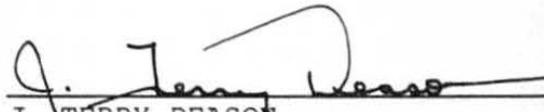
As stated above, staff is prepared to present the Commission with a recommendation at hearing for approval of the positions set forth herein. At the prehearing conference, the possibility that the Commission may wish to render a bench decision at the conclusion of the hearing was discussed. Counsel for Lakeland had no objection to preserving the option of a bench decision. Accordingly the Commission has the option to render a bench decision in this matter.

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It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 31st day of March, 1999.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial

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review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.