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June 9, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida
Docket No. 981890-EU

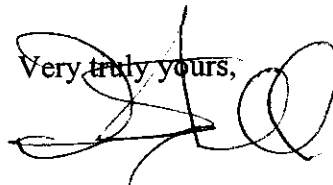
Dear Ms. Bayo:

Enclosed for filing in the above docket on behalf of Florida Power Corporation are the original and fifteen (15) copies of Florida Power Corporation's Request for Status Conference.

We request you acknowledge receipt and filing of the above by stamping the additional copy enclosed.

If you or your Staff have any questions regarding this filing, please contact me at (727) 821-7000.

Very truly yours,



Gary L. Sasso

WDH, for

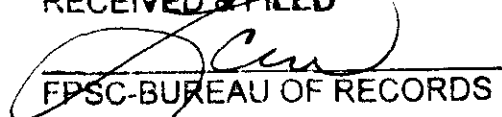
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- RRR _____
- SEC 1
- WAW _____
- OTH _____

Enclosures

cc: Counsel of Record

GLS:jlc

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CARLTON, FIELDS, WARD, EMMANUEL, SMITH, & CUTLER, P.A.

TAMPA ORLANDO PENSACOLA TALLAHASSEE WEST PALM BEACH ST. PETERSBURG MIAMI

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation)	
into the aggregate electric)	DOCKET NO. 981890-EU
utility reserve margins planned)	
for Peninsular Florida.)	Submitted for filing: June 9, 1999
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**FLORIDA POWER CORPORATION'S
REQUEST FOR STATUS CONFERENCE**

Florida Power Corporation ("Florida Power" or the "Company") requests that the Commission conduct a status conference to address the statutory (or regulatory) authority, scope, character, and schedule of this proceeding. In support of this Request, Florida Power states the following:

1. This docket was opened on or about December 17, 1998 in response to a request to establish a docket regarding a "generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida."

2. Subsequently, the Commission issued an Order Establishing Procedure, indicating, among other things, that testimony would be taken and a hearing conducted. In its Order Establishing Procedure, the Commission cited at least four provisions of the Administration Commission's Uniform Rules of Procedure which describe the powers of Presiding Officers in proceedings involving decisions affecting substantial interests or hearings involving disputed issues of material fact. See Fla. Admin. Code R. 28-106.206, 28-106.209, 28-106.211 and 28-106.215; Fla. Stat. §120.569 (Supp. 1998); Fla. Stat. §120.57 (Supp. 1998).

3. Based upon information and belief, however, the Commission has not formally initiated proceedings pursuant to Section 120.57, Florida Statutes. See Fla. Admin. Code R. 28-106.201. According to the Administration Commission's Uniform Rules of Procedure, a formal petition to initiate proceedings has several requirements, including, "a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or

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modification of the agency's proposed action." Fla. Admin. Code R. 28-106.201. There is no indication that the Commission has been excepted from this Rule. See Fla. Stat. §120.54(5)(Supp. 1998); Fla. Admin. Code R. 25-40.001.

4. With the advent of the Commission's determination of need in the Duke New Smyrna docket (Case No. 981042-EM), the Commission Staff undertook to substitute "merchant plant" issues for "reserve margin" issues at an issues identification conference in this docket. Recognizing that there was uncertainty about the future of this docket, Commission Staff stated at that conference that the existing Order Establishing Procedure for this docket would be set aside. Staff further assured that, in the event this docket were continued, a reasonable schedule would be substituted instead.

5. After an informal "merchant plant" workshop, the Commission decided to continue this docket. Thereafter, a Revised Order Establishing Procedure was issued in this docket providing short notice for an issues identification conference and further proceedings.

6. Due to the short notice and scheduling conflicts, Florida Power's in-house counsel and outside counsel most familiar with this matter were unable to attend the issues identification conference. Based on the discussion that ensued and the issues that were generated, it has become apparent that the Commission is undertaking to examine many issues that may fundamentally affect the Company's interests in this docket, without either a clear mission, a clear and lawful procedure, or adequate time for the parties to participate.

7. Although the Commission is treating this docket like a formal Section 120.57 proceeding, no petition to initiate proceedings has been filed, no charges have been identified, little basis has been provided for any party or would-be intervenor to assess how, if at all, its substantial interests may be affected, and no notice has been given as to what kind, if any, order

may be issued or how it may impair or affect the interests of the Company or any other party. Yet Florida Power and others are expected to present formal testimony on what amounts, as a practical matter, to a "fast-track," with little notice of even what the issues are that the docket may address. The absence of a formal petition to initiate proceedings logically means that there is no petitioner to present its case to the Commission. Florida Power and other utilities, however, are expected to proceed first, ostensibly giving other parties the right to respond, without any clear idea of what the Company is expected to prove or disprove. Clearly, it would be untenable to require a party to present evidence with no notice of a petition to initiate proceedings, made pursuant to the formalities of Rule 28-106.201 of the Florida Administrative Code, no notice of the proposed agency action (if any) and no notice of the ultimate facts pertinent to such an proceeding.


8. Moreover, the issues that the Staff and the parties have compiled include many matters having potentially broad policy ramifications for the State. Despite this, the Commission has not duly noticed that it is commencing a rulemaking proceeding, and it is unclear whether that is the Commission's purpose or whether, instead, the Commission may be entertaining the prospect of developing policy in an impermissible manner outside the rulemaking process. Therefore, the parties have had no opportunity to participate in the rulemaking process, as contemplated by Section 120.54, Florida Statutes, or petition the Commission for the initiation of rulemaking pursuant to Section 120.54(7), Florida Statutes. See Fla. Stat. §120.54 (Supp. 1998). Likewise, the Commission has not fulfilled the statutory prerequisites to enacting a rule pursuant to the requirements of Chapter 120, Florida Statutes, such as a Statement of Estimated Regulatory Costs. See Fla. Stat. §120.54(3)(b)(Supp. 1998).

9. Although the Commission has indicated that this may be an investigation into matters in which the Commission has expressed an interest, the issues identified appear to range beyond what the Commission itself has ever identified. Further, no basis has been shown why an investigation should be conducted formally under Section 120.57 rather than informally, without testimony, hearing, and some kind of order potentially affecting the parties' substantial interests. The Commission has directed Staff to conduct a "generic investigation," not to implement a formal adjudication or rulemaking. That being the case, informal procedures carried out on a workable timetable would be much better suited to carrying out the Commission's directive.

10. In view of the foregoing, Florida Power respectfully requests that the Commission conduct a status conference where the Commission can address the authority, character, procedure, and schedule for this docket, in order to ensure that the docket proceeds in a lawful manner, consistent with the parties' due process rights and rights under applicable statutes and regulations, and to ensure that the docket proceeds in a productive fashion that is fair and practicable to all participants.

Respectfully submitted,

FLORIDA POWER CORPORATION



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Power Corporation's Request For Status Conference has been furnished by U.S. Mail to the following counsel of record this 21 day of June, 1999.



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