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REPORTING  
Matthew M. Childs, P.A.

July 12, 1999

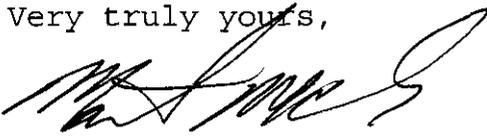
Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
4750 Esplanade Way, Room 110  
Tallahassee, FL 32399

RE: DOCKET NO. 981890-EU

Dear Ms. Bayó:

Enclosed for filing please find the original and seven (7) copies of Florida Power & Light Company's Motion for Reconsideration of Order Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues and Request for Oral Argument in the above-referenced docket.

Also enclosed is a formatted high density 3.5 inch diskette containing FPL's Motion for Reconsideration and Request for Oral Argument.

Very truly yours,  
  
Matthew M. Childs, P.A.

- MFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAP \_\_\_\_\_
- CHN \_\_\_\_\_
- CCR \_\_\_\_\_
- EAG** \_\_\_\_\_
- LEG \_\_\_\_\_
- LAG \_\_\_\_\_
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_
- SEC \_\_\_\_\_
- WRY \_\_\_\_\_
- OTH \_\_\_\_\_

MMC:ml  
Enclosure  
cc: All Parties of Record

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

08252 JUL 12 99

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Generic Investigation ) DOCKET NO. 981890-EI  
Into the Aggregate Electric ) DATE: JULY 12, 1999  
Utility Reserve Margins Planned )  
for Peninsular Florida )

MOTION FOR RECONSIDERATION OF ORDER  
CLARIFYING SCOPE OF PROCEEDING;  
DOCKET PROCEDURES; AND ESTABLISHING ISSUES

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.0376, Florida Administrative Code, and the procedures presented by the Prehearing Officer at the Status Conference and Preliminary Prehearing Conference held on June 30, 1999 hereby files this its Motion for Reconsideration of Order PSC-99-1274-PCO-EU, in support of this Motion for Reconsideration FPL states as follows:

I. Background Of This Docket

This generic investigation docket was initiated pursuant to the directions given by this Commission at its Internal Affairs meeting held on December 15, 1998. There, the Commission directed the Staff to open a docket to consider the "appropriate methodology for developing reserve margin." The style of this docket, Docket No. 981890-EU is:

"In Re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida."

On December 17, 1998, the Commission Staff submitted a form "Request to Establish Docket" with the suggested docket title being:

"Generic Investigation Into The Aggregate Electric Utility Reserve Margins Planned For Peninsular Florida."

Subsequent to the initiation of this docket, the Staff solicited issues addressing reserve margins from participants including not only public utilities in the state of Florida supplying electric service but also from developers of merchant plant facilities. Later, at a meeting initiated by the Staff on March 18, 1999, the Staff by memo communicated the following to all participants in the docket:

"Because merchant power plants may be a solution to Peninsular Florida's questionable planned reserve margin, Staff plans to drop Issues 1-25 which were published in its issue list dated March 1, 1999. We will retain issue 26 (renumbered below as issue 10) and add the following issues relating to merchant power plants. Please be prepared to discuss these issues and any other merchant plant issues at the issue identification meeting on March 18, 1999. Former issue 27 has been revised." (Emphasis added)

Thus, at this stage, the Staff's direction, was to eliminate issues previously circulated addressing the reserve margin methodology and, specific questions on reserve margin calculations. Notably, the "new" issue 1 proposed by the Staff and an apparent substitution for the original concern about reserve margin methodology was the following:

"Should a 10% merchant plant reserve margin be added to the FRCC's 15% reserve margin criterion?"

Nearly a month later, an Order Establishing Procedure (Order No. PSC-99-0760-PCO-EU) was entered on April 20, 1999. A copy of this Order is attached to FPL's Motion for Reconsideration. The Order Establishing Procedure did a number of things which reflected an intent to conduct the proceeding in this docket not as a Generic Investigation but as one determining or affecting the substantial interests of public utilities in Florida. This Order also stated that reliance was placed upon Rule 28-106.211, Fla. Admin. Code for authority for the actions therein taken. This rule is a part of the recently effective "Uniform Rules of Procedure" (adopted by the Administration Commission pursuant to the 1996 revisions to the Administrative Procedure Act). Notably, Rule 28-106.211, on which reliance was placed, appears in Part II entitled "Hearings Involving Disputed Issues of Material Fact" of Chapter 28-106 entitled "Decisions Determining Substantial Interests."

## II. FPL's Position In This Docket

FPL is presenting in good faith its concerns as to the direction that this docket might be taking. FPL's position was that the Commission opened a "Generic investigation docket." As such, it was FPL's understanding and belief that the docket was to be conducted as an investigation and not as a proceeding to affect

or determine FPL's substantial interests. Therefore, FPL did not advocate or believe that it was advocating a position that would "hinder the Public Service Commission's ability to make a well reasoned decision" in this docket or elsewhere which the Order Clarifying Scope of Proceeding has concluded.

To the contrary, FPL wished to point out, and wished to protect its interests in doing so, that the Commission had initiated a generic investigation and that, in FPL's belief, to convert the docket from an investigation to a determination of FPL's substantial interests would be a violation of the Administrative Procedure Act, and the Uniform Rules of Procedure. Not only would this action have implications on the due process rights of Florida Power & Light, but would also have implications should there be judicial review as called for by Section 120.68, Florida Statutes.

### III. Specific Reconsideration Requested

The Order Clarifying Scope of Proceeding states:

"(1) Rule [28-106.101(2)] does not supersede our statutory jurisdiction and responsibility to assure the provision of adequate electricity at reasonable cost; and, that paragraph(2) Rule 25-22.036(3), Fla. Admin. Code, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties."

The Order states the following in support of the decision that "...this docket shall proceed as a formal evidentiary hearing

investigating the electric utility reserve margins."

FPL specifically seeks reconsideration of this decision and the quoted conclusions presented in support thereof.

It was not argued by FPL that 28-106.101(2) "exempts "investigations" from formal evidentiary proceedings." Instead, FPL pointed out that, as previously set out above, Rule 28-106.211, on which the April 20, 1999 Order Establishing Procedure specifically relied for authority, is applicable to and only to Decisions Determining Substantial Interests and then, only where there are to be Hearings Involving Disputed Issues of Material Fact.

This Rule is not applicable to agency investigations. FPL wanted to point out to the Commission in its prior argument that the rule upon which specific reliance for authority was placed could not be relied upon as authority in an investigation because, Rule 28-106.101, states specifically:

"This chapter [chapter 28-106] applies to all proceedings under chapter 120 except as follows: ... (2) agency investigations or determination of probable cause preliminary to agency action; and" (Emphasis added)

In addition, FPL wished to point out that Section 120.57(5), Florida Statutes states:

"This Section [Section 120.57, Fla. Stats.] does not apply to agency investigations preliminary to agency action." (Emphasis added).

Thus, the Order Establishing Procedure in an investigation docket specifically relied upon a rule which by its express terms, does not apply to agency investigations.

In its argument on the direction of this proceeding, FPL did not argue or assert that Rule 25-22.036(3) did not provide authority for the Commission to initiate an investigation. FPL's position was that an investigation had been initiated and it should be conducted as such.

Instead, after FPL's oral argument, the Staff maintained that Rule 25-22.036(3) provided the requisite authority to the Commission to initiate a proceeding on its own motion, to determine FPL's substantial interests. FPL's position was that the Commission had not initiated that kind of proceeding in any event but had it sought to do so, Rule 25-22.036(3), did not provide the necessary authority. FPL pointed out that Rule 25-22.036(3) did not and could not apply to proceedings determining or affecting the substantial interests of a party. Quite simply, this rule, was displaced by the Uniform Rules and the Commission's request for an exception was denied by the Administration Commission. It can no longer apply to proceedings affecting substantial interests or be the basis for initiation of such proceedings.

FPL submits and asks that the Commission reconsider the basis for the conclusion as to how this proceeding will be conducted including the conclusion as to the application of the Florida

Administrative Procedure Act establishing Uniform Rules of Procedure, the applicable Uniform Rules of Procedure adopted by the Administration Commission, the denial of the Public Service Commission's request for an exception to the Uniform Rules of Procedure for its Rule 25-22.036(3), and the confirming representation by the Commission and Commission Staff that Rule 25-22.036(3) [was 25-22.036(6)] only applied to matters preliminary to or independent of the determining of the substantial interests of a party or final action affecting the interest of a party.

#### IV. Scope of Docket

FPL further respectfully requests reconsideration of the conclusion that the scope of this docket will be:

"...the manner in which the reserve margins are calculated; (2) the level of reserve margins considered adequate for Peninsular Florida utilities and (3) the remedial action, if any, which must be taken to assure adequate reserve margins."

FPL does not believe that these areas are necessarily or by implication within the meaning of the word "a methodology". FPL does not question in this docket the Commission's authority to investigate reserve margins either narrowly or broadly. FPL does maintain however that, as previously stated, this docket is an investigation, an investigation of reserve margin methodology. Although the Commission may choose to expand the scope of the docket, FPL respectfully submits that it has not yet done so, and, that it certainly has not taken action to initiate a proceeding to

affect the substantial interests of public utilities including Florida Power & Light Company as has been stated. If the Commission wishes to pursue this as a generic investigation then the matter would be conducted in an informal way. This permits the Commission to pursue the questions it has and, as it has in other instances, obtain necessary data through Commission data requests. On the other hand, as an informal proceeding, there are no parties, intervenors or formal discovery. FPL believes that this investigation mode is the most appropriate way to proceed at this time and before possible rulemaking or Proposed Agency Action.

WHEREFORE, FPL respectfully requests that this Commission reconsider the Order Clarifying Scope of Proceeding, et seq. [Order No. PSC-99-1274-PCO-EU] as provided by Rule 25-22.0376, Florida Administrative Code (a provision of the Commission's rules of procedure for which an exception or exemption was granted by the Administration Commission) and as discussed at the Status and Preliminary Prehearing Conference held on June 30, 1999.

Respectfully submitted,

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

By:   
Matthew M. Childs, P.A.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic Investigation into the aggregate electric utility reserve margins planned for Peninsular Florida.	DOCKET NO. 981890-EU ORDER NO. PSC-99-0760-PCO-EU ISSUED: April 20, 1999
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ORDER ESTABLISHING PROCEDURE

The purpose of this docket is to investigate planned, aggregate electric utility reserve margins in peninsular Florida. This matter is currently set for administrative hearing on September 28 and 29, 1999. Given the purpose of this docket, all electric utilities, as defined by Section 366.02(2), Florida Statutes, with generating assets are appropriate parties in this proceeding.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for September 28 and 29, 1999. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by September 14, 1999. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless

ORDER NO. PSC-99-0760-PCO-EU  
DOCKET NO. 981890-EU  
PAGE 2

subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 100.

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 339.07(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 made a part of the evidentiary record 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 period set forth in Section 366.093, Florida Statutes.

#### Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

#### Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail

ORDER NO. PSC-99-0760-PCO-EU  
DOCKET NO. 981890-EU  
PAGE 3

or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;

ORDER NO. PSC-99-0760-PCO-EU  
DOCKET NO. 981890-EU  
PAGE 4

- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on September 8, 1999, at the Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

ORDER NO. PSC-99-0760-PCO-EU  
DOCKET NO. 981890-EU  
PAGE 5

To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL  
J. Doe Exhibit No. \_\_\_\_\_  
Cost Studies for Minutes of Use by Time of Day

#### Controlling Dates

The following dates have been established to govern the key activities of this case.

- |  |                         |
|--|-------------------------|
| 1) Utility's direct testimony and exhibits       | June 14, 1999           |
| 2) Intervenors' direct testimony and exhibits    | July 6, 1999            |
| 3) Staff's direct testimony and exhibits, if any | July 19, 1999           |
| 4) Rebuttal testimony and exhibits               | August 2, 1999          |
| 5) Prehearing Statements                         | August 13, 1999         |
| 6) Prehearing Conference                         | September 8, 1999       |
| 7) Hearing                                       | September 28 - 29, 1999 |
| 8) Briefs  | October 20, 1999        |

#### Use of Confidential Information At Hearing

It is the policy of this 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. 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

ORDER NO. PSC-99-0760-PCO-EU  
DOCKET NO. 981890-EU  
PAGE 6

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. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

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. 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. 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.

#### Post-Hearing Procedure

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 in conformance with the rule, 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.

Based upon the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

ORDER NO. PSC-99-0760-PCO-EU  
DOCKET NO. 981890-EU  
PAGE 7

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 20th day of April, 1999.

/s/ Julia L. Johnson  
JULIA L. JOHNSON  
Commissioner and Prehearing Officer

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

( S E A L )

LJP/RVE

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 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

ORDER NO. PSC-99-0760-PCO-EU  
DOCKET NO. 981890-EU  
PAGE 8

review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.