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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need for an Electrical Power)
Plant in Okeechobee County by)
Okeechobee Generating Company,)
L.L.C.)
_____)

DOCKET NO. 991462-EU

Submitted for filing:
October 25, 1999

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**INTERVENOR FLORIDA POWER CORPORATION'S
PETITION THAT PROCEEDING BE HEARD AND
DETERMINED BY THE FULL COMMISSION**

Intervenor Florida Power Corporation ("FPC"), pursuant to Florida Statutes Section 350.01(6), requests that the full Florida Public Service Commission (the "PSC" or "Commission") hear and determine this proceeding. Okeechobee Generating Company, L.L.C. ("OGC") has petitioned for authority to build a wholly unsubscribed "merchant plant" in Okeechobee County. The determination of this petition will not only substantially impact FPC and other regulated utilities, but raises a host of significant issues of regulatory policy, in which the full Commission has expressed great interest in various docketed and undocketed

proceedings, including the Duke case, the Reserve Margin docket, and the undocketed Merchant Plant workshop. Because of the importance of the issues raised here and their interrelation with issues in these other proceedings, it is particularly important that any determination of OGC's petition rendered in this

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proceeding be made with the participation of the full Commission. As grounds for this motion, FPC further states:

1. In this proceeding, Petitioner OGC seeks authority to build a wholly unsubscribed “merchant plant” supposedly to meet a need for generating capacity in Peninsular Florida arising from “constrained reserve margins.” (Petition p. 17) At present, this proceeding has been assigned to a three-member panel.

2. Under Florida Statutes Section 350.01(6), any regulated utility, like FPC, substantially affected by a proceeding may request that the proceeding be assigned to the full Commission. The full Commission shall act on the request by majority vote, taking into account the “overall general public interest and impact of the pending proceeding.” Section 350.01(6), Fla. Stat.

3. As set forth more fully below, this proceeding should be heard and determined by the full Commission due to the public importance of the issues raised herein, the potential impact of this proceeding on regulated utilities in the state of Florida, the potential impact on long-standing regulatory policy, and the fact that related issues have been and are being considered by the full Commission in other dockets.

4. In the first place, the question whether or to what extent the Commission has the statutory authority to grant a need determination for a

“merchant plant” as requested in OGC’s petition raises difficult and important policy issues. This is amply demonstrated by the fact that the petition of Duke Energy New Smyrna Beach Power Company for a determination of need, where the issue was also presented, was heard by the Commission and determined (by a divided Commission) only after several days of legal argument and several days of evidentiary presentations on factual and policy issues. The Commission’s decision in that case is currently pending before the Florida Supreme Court.

5. The Duke case also attracted the intervention of numerous parties, further attesting to the public importance of these “merchant plant” issues; in the same vein, the Commission’s Merchant Plant workshop drew extensive participation by various interested organizations and persons.

6. In addition to the overall public interest and importance of merchant plant issues in general, OGC’s petition in particular raises important issues of regulatory policy. Under the law prior to the Duke case, an IPP like OGC would have to enter into a contract with a utility like FPC in order to prove what it alleges, namely, that some retail utility actually has a need for additional capacity. This case differs from Duke in that OGC does not allege the existence of even a nominal firm contract with a Florida retail utility. Whether or not the Duke case was correctly decided, this case presents the occasion for a further extension of the

Duke decision. At least one Commissioner (Commissioner Jacobs) indicated in his separate opinion in the Duke case that he would view a case like this one – where the merchant developer failed to allege the existence of any power purchase agreement with a Florida retail utility – differently from the way he regarded the Duke filing. Accordingly, the full Commission should be given the opportunity to consider and rule upon OGC’s petition, just as the full Commission participated in the consideration and decision of the Duke case.

7. The petition also calls upon the Commission to pre-judge issues currently before the Commission in the Reserve Margin docket, such as whether uncommitted (merchant) capacity should be counted toward reserve margins in the State, whether utilities may rely upon merchant plants for reliability purposes, whether reserve margins in Peninsular Florida are “constrained,” and whether the Commission should adopt a 20% reserve margin planning criterion for Peninsular Florida. State-regulated utilities like FPC are mandatory participants in that docket. The Commission has adopted no position on these issues, and the Commission’s advisory Staff has made no recommendation concerning methodology, let alone concerning the adequacy of the reserves presently planned for Peninsular Florida.

8. Over the past decade, the Commission has repeatedly confirmed FPC's fundamental belief that uncommitted capacity cannot be considered in the calculation of an individual utility's or Peninsular Florida's planned reserve margins. If the Commission were to accept OGC's position, FPC's obligations under long-standing Commission policy would change, and FPC's long-term planning would be detrimentally affected.

9. The full Commission will participate in the Reserve Margin docket and should not be denied the opportunity to participate in this docket as well. OGC should not be permitted to obtain a decision from a three-member panel of the Commission on issues that the full Commission has only begun to investigate in the Reserve Margin docket.

10. FPC will also be raising a number of procedural issues in this proceeding, including, but not limited to, requesting a stay of this proceeding because of the pendency of the Duke appeal and the Reserve Margin docket, in which the full Commission has participated and is participating. The full Commission should be given the opportunity to evaluate the cross-impacts of these dockets and to consider related procedural issues. It would be unfair to the parties and to the Commission to exclude from this proceeding any member of the


Commission who has contributed and who is contributing to the development of important policy in these various dockets and may even lead to inconsistent results.

11. To be sure, depending upon the date of the final hearing (which may depend upon whether a stay is ordered), it is possible that a full complement of five commissioners may not be available to sit on this case, and that only four will be available to serve. Theoretically, this might result in a tie vote. As a practical matter, however, the Commission could work to break a tie by striving to reach a consensus on this important matter (or by entertaining alternative motions). As a matter of policy, this would be preferable to having major policy issues determined by what would amount to a minority (two members) of the full Commission.

WHEREFORE, FPC requests that the Commission grant its petition and assign this proceeding to the full Commission for hearing and determination.

Respectfully submitted,

FLORIDA POWER
CORPORATION

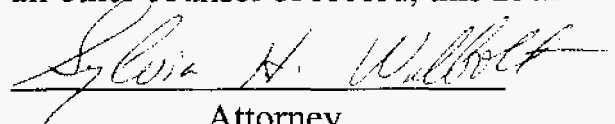

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA POWER CORPORATION'S PETITION THAT PROCEEDING BE HEARD AND DETERMINED BY FULL COMMISSION has been furnished by facsimile and U.S. Mail to Robert Scheffel Wright, Landers & Parsons, P.A., 310 West College Tallahassee, FL 32301 and John Moyle, Moyle Flanigan, Katz, et al., 210 S. Monroe Street, Tallahassee, FL 32301, and by U. S. Mail to all other counsel of record, this 25th day of October, 1999.



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