

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

NOVEMBER 16, 1999

RE: DOCKET NO. 991462-EU - Petition for determination of need for an electrical power plant in Okeechobee County by Okeechobee Generating Company, L.L.C.

Issue 1: Should the Commission grant the petitions of Florida Power & Light Company and Florida Power Corporation to have this proceeding assigned to be heard and determined by the full Commission?

Recommendation: No. Granting the petitions to assign this proceeding to the full Commission would create the potential for a tie vote, because there are currently only four sitting Commissioners.

**DENIED**

*Chairman Garcia dissented*

COMMISSIONERS ASSIGNED: GR DS JC, CL (*pursuant to decision in Issue 1*)

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

*Susan Clark*  
*Joe Garcia*  
*J. Jerry Dease*

*Joe Garcia*

REMARKS/DISSENTING COMMENTS:

*Chairman Garcia dissented on Issues 1 and 6*

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Issue 2: Should the Commission grant Florida Power & Light Company's motion for leave to file a memorandum in reply to Okeechobee Generating Company, L.L.C.'s memorandum in opposition to Florida Power & Light Company's motion to dismiss?

Recommendation: No. The Uniform Rules of Procedure do not provide for the filing of a reply to a response, and Florida Power & Light Company has not shown good cause why it should be permitted to make such a filing.

**APPROVED**

Issue 3: Should the Commission grant Florida Power & Light Company's request for oral argument on its motion to dismiss the petition of Okeechobee Generating Company, L.L.C., for determination of need for an electrical power plant?

Recommendation: Yes. The Commission should permit oral argument on Florida Power & Light Company's motion to dismiss, limited to an amount of time to be set at the Commission's discretion.

**APPROVED**

Issue 4: Should the Commission grant Florida Power & Light Company's motion to dismiss the petition of Okeechobee Generating Company, L.L.C., for determination of need for an electrical power plant?

Recommendation: No. The petition of Okeechobee Generating Company, L.L.C., for determination of need for an electrical power plant states a cause of action upon which relief can be granted because it alleges all of the required elements.

**APPROVED**

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Issue 5: Should the Commission grant Florida Power Corporation's motion to dismiss the petition of Okeechobee Generating Company, L.L.C., for determination of need for an electrical power plant?

Recommendation: No. Florida Power Corporation's motion to dismiss is untimely. Even if the motion is viewed as timely, the petition of Okeechobee Generating Company, L.L.C., for determination of need for an electrical power plant states a cause of action upon which relief can be granted because it alleges all of the required elements.

**APPROVED**

*Approved with clarification that decision goes to denial of motion to dismiss, rather than issue of timeliness.*

Issue 6: Should the Commission grant Florida Power Corporation's emergency petition for waiver of Rule 25-22.080, Florida Administrative Code, and request for stay of this proceeding?

Recommendation: No. Florida Power Corporation has not satisfied the statutory or rule criteria for its requested waiver. FPC has alleged no separate legal grounds under which the Commission may grant a stay of this proceeding absent the requested rule waiver. Accordingly, FPC's request for stay should be denied.

**DENIED**

*with clarification that petition is granted because of concerns of due process rather than the 90-day time clock*

*Chairman Garcia dissented.*