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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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

FILED: December 13, 1993

RECORDS AND REPORTING

OKEECHOBEE GENERATING COMPANY'S RESPONSE
TO FLORIDA POWER AND LIGHT COMPANY'S
MOTION FOR PROTECTIVE ORDER

Okeechobee Generating Company, L.L.C., ("OGC") pursuant to Uniform Rule 28-106.204, Florida Administrative Code, and the Order Establishing Procedure, hereby respectfully submits this response to Florida Power & Light Company's ("FPL") Motion for Protective Order. OGC does not object to the requested information being treated as confidential pursuant to the Commission's rules. However, FPL's request to withhold publicly announced information should be denied. In support of this response, OGC says:

FPL's Motion for Protective Order concerns OGC's Interrogatory No. 54.¹ Interrogatory No. 54 states:

Do any of FPL's affiliate or parent corporations, including but not limited to FPL Energy, Inc., have plans to develop, own, or operate Merchant Power Plants outside the state of Florida? If the answer is yes, please list the name of the merchant power plants, the size and configuration of the Merchant Power Plants, the location of the Merchant Power Plants, and the owners of the Merchant Power Plants.

¹FPL states that it responded to all of OGC's other interrogatories fully. OGC respectfully disagrees. FPL did not provide substantive responses to Interrogatories to 32, 49, 64 and 65. Rather, FPL objected to those interrogatories.

- MFA _____
- APP _____
- CAF _____
- CMJ _____
- CTR _____
- EAG 11/2/93
- LEG 3
- MAS _____
- OPC _____
- RRR _____
- SEC 1
- WAW _____
- OTH _____

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FPSC-RECORDS/REPORTING

FPL responded to this interrogatory by answering "yes" and filing the subject Motion for Protective Order. In the Motion for Protective Order, FPL argues: (i) that any response by FPL to Interrogatory No. 54 will require FPL to reveal confidential information regarding its parent's or affiliates' future business plans to a competitor, thereby causing significant harm to the economic interests of FPL's parent or affiliates; and (ii) the information sought has no bearing on this proceeding and is not reasonably necessary to OGC.

With regard to FPL's first point, OGC states for the record that it has no desire to force FPL to divulge its confidential, proprietary business information, or the confidential, proprietary business information of its parent or affiliates. OGC recognizes the importance of maintaining the confidentiality of business plans and internal market research in a wholesale competitive market, and thus never intended for FPL to be required to divulge such information. Rather, Interrogatory No. 54 was intended to have FPL, its parent and affiliates identify only their publicly announced² plans to develop, own or operate merchant plants. This is information that is in FPL's possession and information that would be difficult and expensive for OGC to compile on its own.

²The term publicly announced includes, but is not limited to, all information released to the public including information released to the press, contained in annual reports, or referenced in speeches or other non-confidential, non-privileged communications.

Accordingly, OGC does not object to that portion of FPL's Motion for Protective order that seeks to protect confidential, proprietary business information, with the caveat that FPL should provide all responsive information that has been publicly announced and thus is no longer confidential or proprietary.

With regard to FPL's second point,³ it is well-established that discovery is proper if the information sought is relevant to the subject matter of the case and reasonably calculated to lead to admissible evidence. See Allstate Ins. Co. v. Langston, 655 So. 2d 91 (1995). The publicly announced merchant development plans of FPL's parent and affiliates are directly relevant to the issues in this proceeding. For example, FPL has argued in its papers filed in this case that merchant plants will adversely affect FPL's ratepayers. The information requested in Interrogatory No. 54 is reasonably calculated to lead to the discovery of information regarding merchant plant activities in other states including information concerning the benefits and adverse effects (if any) of those merchant plants on the ratepayers of other states. Moreover, the information is reasonably necessary to OGC's ability to rebut FPL's allegations concerning adverse effects to ratepayers. As such, Interrogatory No. 54 is authorized by the Florida Rules of Civil Procedure and FPL should be required to provide all non-

³FPL did not raise a relevancy objection to this interrogatory in its Objections filed with the Commission on November 15, 1999.

confidential, non-proprietary information responsive to the interrogatory.

In conclusion, the Commission should not grant FPL's Motion for Protective Order with regard to the publicly announced merchant plant development activities of FPL's parent and affiliates. Such information is directly relevant to the subject matter of the proceeding and should be disclosed. Moreover, FPL's motion with respect to business plans and confidential plans regarding unannounced merchant projects is moot because OGC never intended to request such information, which OGC agrees is appropriately held in confidence and not disclosed through discovery.

Respectfully submitted this 13th day of December, 1999.



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CERTIFICATE OF SERVICE
DOCKET NO. 991462-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*) or by United States Mail, postage prepaid, on the following individuals this 13th day of December, 1999.

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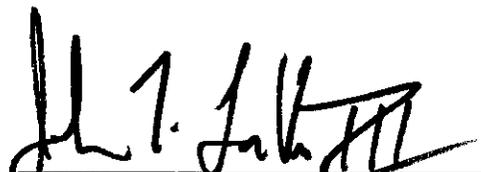
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