

ORIGINAL

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 Filed: January 25, 2000

RECEIVED-FPSC 00 JAN 25 PM 3: 57 RECORDS AND REPORTING

FLORIDA POWER CORPORATION'S RESPONSE TO OKEECHOBEE GENERATING COMPANY'S SECOND MOTION FOR PROTECTIVE ORDER

Florida Power Corporation ("FPC"), pursuant to Rule 28-106.204 of the Florida Administrative Code, hereby responds to Okeechobee Generation Company's ("OGC") Second Motion for Protective Order by incorporating by this reference FPC's Motion to Compel OGC to Respond to FPC's Second Request for Production of Documents that seeks to compel production of the very documents OGC is attempting to protect here and further states as follows:

In its Second Motion for Protective Order, OGC asks this Commission to shield entirely from discovery the two documents that were the very impetus for OGC's proposed Project. These documents, as characterized by OGC, are: 1) the PG&E Generating Project Pro Forma for the Okeechobee Generating Project ("the Pro Forma"); and 2) a memorandum dated August 18, 1999, from Doug Egan to PG&E Generating's Department Heads ("the August 18th Memorandum"). (Motion p. 3).

At bottom, OGC's motion recites two reasons the Commission should not require OGC to disclose these critically relevant documents. First, OGC claims that these documents are confidential and proprietary, reflecting competitively sensitive information concerning OGC's and PG&E's confidential economic assumptions, cost and pricing information for the OGC Project, (and PG&E's other projects throughout the nation), and disclosure is not reasonably

AFA APP CAF CMU CTR (EAG) LEG MAS 5 OPC RRR SEC 1 WAW OTH

RECEIVED & FILED Max FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE 01074 JAN 25 8 FPSC-RECORDS/REPORTING

necessary to the determination of need. (Motion pp. 6-7). Second, OGC claims these documents should not be subject to discovery in the first instance Commission because they are documents produced and used by PG&E Generating Company (OGC's indirect parent, hereinafter "PG&E") not OGC. And, although OGC admits that both the Pro Forma and the August 18th Memorandum are responsive to FPC's discovery requests concerning OGC's business plan and the financial viability and desirability of the Project, OGC, nonetheless, claims that neither the parties nor this Commission need to know what OGC's developers actually think about the Project or its viability and financial desirability because the Project will not be rate based and thus, "will not put any Florida ratepayers at risk." (Motion p. 7)

OGC's asserted grounds for protection and conclusions in this regard are factually baseless and legally insufficient, and this Commission should not preclude FPC's proper discovery of the Pro Forma or August 18th Memorandum.

First, OGC's claim that neither the Pro Forma nor the August 18th Memorandum (reflecting the financial viability and desirability of the Project and its business plan) are relevant or reasonably necessary to a determination of *need* for the OGC Project defies logic and lacks any basis in fact. To the contrary, OGC's has placed the financial viability and desirability of its Project center stage by claiming that it will be selling all of its 550 MW output within Peninsular Florida for the next 10 years, and will correspondingly contribute to the reliability of electric service throughout the state. More specifically, OGC claims that it "expects to sell approximately 4.3 million MWH of electric energy from the Project to other utilities and power marketers in Peninsular Florida per year from 2004 – 2013 . . ." (Petition ¶ 3). OGC further claims that its "presence and availability" will improve the 2003 – 2004 winter reserve margin

“by 1.3%” and “provide similar reserve margin improvements in subsequent years.” (Petition ¶ 19). OGC cannot claim, on the one hand, that the Commission ought to grant its Petition because Florida can rely on the Project to enhance reliability for the next 10 years, and then turn around and claim that neither FPC or this Commission needs to concern themselves with whether the Project is financially viable.

The exact opposite is true. If OGC expects the Commission (and by extension Florida’s retail customers) to rely on OGC then it should be willing (given a reasonable protective order limiting use of these documents to this docket) to lay open its (or PG&E’s) actual plans for *this Project*.¹ Indeed, the Commission should require it. See Becker Metal Corp. v. West Fla. Scrap Metals, 407 So. 2d 380, 382 (Fla. 1st DCA 1981) (if documents containing trade secrets are found to be reasonably necessary to trial of the matter, discovery must be allowed, subject to reasonable protective measures).

OGC further claims that disclosure of these proprietary documents to FPC is not “reasonably necessary” because Dr. Nesbitt’s analysis and generally available industry information ought to be sufficient. They are not. To begin, the fact that OGC has offered for public consumption the projections and testimony of its retained expert, Dale Nesbitt, provides little comfort. For instance, based on his projections (which he openly admits are not based upon OGC’s proprietary numbers), Dr. Nesbitt asserts that OGC would sell all its output from the plant within Florida. But the Pro Forma or August 18th Memorandum may well show that in order to be financially viable OGC will have to chase price spikes outside the state.

¹ FPC has never requested that OGC produce any document not related to the OGC Project. And, to the extent the August 18th Memorandum separately reflects other Projects across the nation, as OGC’s Motion suggest, FPC is not seeking such information. OGC admits in its Motion that the Pro Forma is “for the Okeechobee Generating Project.” (Motion p. 3).

Even more important, Dr. Nesbitt, himself, recognizes that his modeling conclusions must be tested against PG&E's internal analyses. Indeed, in e-mail correspondence to Sean Finnerty, OGC's Project manager, concerning his modeling efforts, Dr. Nesbitt makes the following request:

Also, I could use an estimate in \$/kW installed for Okeechobee. I am using \$450/kW as a nominal estimate, but that might be a tad low. I could use your estimate so that my estimates of plant profitability and viability are consistent with your best estimate of capital cost for a 550 MW unit.

(attached hereto as Exhibit 1). Given this, FPC is certainly entitled to discover and the Commission is entitled to know whether PG&E's own internal analysis of the OGC Project (presumably using real Project numbers) would suggest different conclusions from those that OGC has presented through Dr. Nesbitt in this proceeding.

Likewise, the fact that FPC has access to generic industry information also provides no substitute for access to OGC's own plans showing how it expects to operate the Project to remain viable. Indeed, such industry information may show that Dr. Nesbitt is over-estimating Florida wholesale market clearing prices, and that if OGC intends to have a financially viable "merchant plant" it cannot, as Dr. Nesbitt suggests, simply sell all its output on the margin, but **must** withhold supply, enter into contracts for out-of-state sales, or take other steps at odds with what OGC has told this Commission. FPC should be entitled to discover, and, in turn, disclose to this Commission, whether OGC is saying one thing internally and something else again to the Commission about the basic economic and other assumptions that underlie its proposed Project. Indeed, if OGC were planning to operate strictly as Dr. Nesbitt projects, then what does OGC have to hide? What would be confidential and proprietary about OGC's plans. The fact is, OGC

must be protecting financial assumptions and plans from disclosure precisely because they may not discovered from Dr. Nesbitt's testimony or publically available data.

Finally, FPC is not, as OGC accuses, attempting to obtain the Pro Forma and August 18th Memorandum to gain some competitive advantage. FPC has always been willing to agree to a reasonable protective order which limits the use of documents OGC claims are proprietary and confidential to use in this proceeding. Commission Rule 25-22.006(6)(a), F.A.C., specifically contemplates the type of limited, reasonable, protection that FPC is, and has always been, willing to agree on, stating as follows:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. **The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.** (emphasis added).

Similarly, Rule 1.280(c)(7), Fla. Rules of Civ. Pro., also contemplates a protective order that requires disclosure of "confidential research, development, or commercial information" in "a designated way." Such conditional protection ordered by the Commission appropriately and fairly balances OGC and PG&E's competitive concerns and FPC's right in this proceeding to test OGC's Petition.

Based on the foregoing, there is no question that FPC has met its legal burden to demonstrate a "reasonable necessity" for discovery of these documents regardless of whether the Commission would deem them confidential or proprietary. See Eastern Cement Co. v. Department of Environmental. Reg., 512 So. 2d. 264, 266 (Fla. 1st DCA 1987) (only after the

moving party has established that the material at issue is a trade secret, must the opposing party establish a reasonable necessity for the information). FPC is even willing to forego the legal requirement that OGC prove, as a prerequisite for protection, that the Pro Forma and August 18th Memorandum are proprietary in nature and will simply agree to reasonable terms restricting use of the documents to this proceeding.

However, OGC must not be permitted to completely thwart discovery of the very documents that served as the impetus for the Project. FPC is entitled to this discovery and this Commission is entitled to know how the Project's developers think the plant will act and how "cost-effective" and "reliable" this merchant plant really is for Florida. Otherwise, it will be impossible both for the intervenors in this proceeding – whose need OGC is allegedly attempting to meet – and this Commission to evaluate objectively and adequately the viability and alleged need for OGC's proposed "merchant plant."

Next, OGC continues to claim that discovery of the Pro Forma and the August 18th Memorandum should not be permitted because they were developed by PG&E, not OGC. This claim is both factually and legally baseless. OGC was created by PG&E solely for the purpose of building this project in Florida. And, OGC repeatedly relies on both the development expertise and financial wherewithal of PG&E in its attempt to demonstrate to this Commission its ability to develop the proposed "merchant plant."

Indeed, the Commission, itself, recently recognized the functionally joint identity of PG&E and OGC when it made a part of the record in this proceeding PG&E's ex-parte letter to the Commission attached hereto as Exhibit 2. That letter, in paragraph 2, specifically addresses PG&E's development of the OGC Project stating:

PG&E Generating, which was formerly known as U.S. Generating or US Gen, is the power generation unit of PG&E Corporation, a national energy services holding company. PG&E Gen has two electric generation plants operating in Florida, and a capital investment of more than \$ 1 billion in the state. PG&E Generating has a strong interest in helping Florida meet its demand for new electricity and in ensuring the reliability of its electric system. **For this reason, the PG&E Generating project development team has embarked on a new power project in Okeechobee County that you will be hearing more about in the months ahead.**

There is no ambiguity in PG&E's direct reference to the Okeechobee County Project as its Project.

Likewise, OGC's admits in its own petition, at page 16, that **"PG&E Generating is developing the Project . . ."** And, e-mails between OGC Project manager Sean Finnerty and Dr. Nesbitt, each contain the following footnote:

PG&E Generating, PG&E Energy Trading and any other company referenced herein that uses the PG&E name or logo are not the same company as Pacific Gas and Electric Company, the regulated California utility.

(See Exhibit 1). Given all this, there is no question that PG&E is both developing the Project and controlling the efforts underlying OGC's need petition.

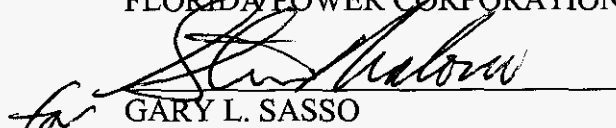
OGC should not be able to have it both ways: first touting its close affinity with PG&E to suggest to the Commission that PG&E is standing behind the Project and then disavow this connection for purposes of discovery. Based on the foregoing facts and the law as set forth at page 5 of FPC's Second Motion to Compel, previously incorporated herein, OGC should be made to produce both the Pro Forma and the August 18th Memorandum regardless of whether they are technically "PG&E's documents" or not.

For the foregoing reasons, OGC's Second Motion for Protective Order should be denied, and the withheld Pro Forma and August 18th Memorandum should be produced in accordance

with the reasonable offer of FPC to agree to entry of an Order limiting the use of the documents to be limited to this proceeding and any other access restrictions the Commission deems just and reasonable under the circumstances.

Respectfully submitted,

FLORIDA POWER CORPORATION

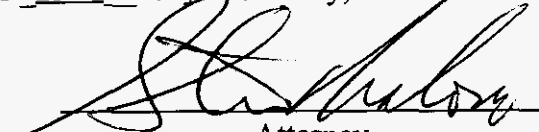
to 

JAMES A. McGEE
Senior Counsel
FLORIDA POWER CORPORATION
P.O. Box 14042
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

GARY L. SASSO
Florida Bar No. 622575
JILL H. BOWMAN
Florida Bar No. 057304
Carlton, Fields, Ward,
Emmanuel, Smith & Cutler, P.A.
Post Office Box 2861
St. Petersburg, FL 33731
Telephone: (727) 821-7000
Telecopier: (727) 822-3768

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA POWER CORPORATION'S RESPONSE TO OKEECHOBEE GENERATING COMPANY'S SECOND MOTION FOR PROTECTIVE ORDER has been furnished by facsimile and U.S. Mail to Robert Scheffel Wright and John Moyle as counsel for Okeechobee Generating Company and via U.S. Mail to all other following counsel of record this 25TH day of January, 2000.


Attorney

COUNSEL OF RECORD:

Robert Scheffel Wright
John T. LaVia
Landers & Parsons, P.A.
310 West College Avenue
Tallahassee, FL 32301
Phone: (850) 681-0311
Fax: (850) 224-5595
Attorneys for Okeechobee Generating
Company, L.L.C.

John Moyle
Moyle Flanigan, Katz, et al.
210 S. Monroe Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Attorneys for Okeechobee Generating
Company, L.L.C.

Sanford L. Hartman
Okeechobee Generating Company, L.L.C.
PG&E Generating Company
7500 Old Georgetown Road
Bethesda, MD 20814
Phone: (301) 280-6800
Fax:

Matthew M. Childs
Charles A. Guyton
Steel Hector
215 South Monroe Street, Ste. 601
Tallahassee, FL 32301-1804
Telephone: (850) 222-2300
Fax: (850) 222-7150
Attorneys for Florida Power & Light Company

Sean J. Finnerty
PG&E Generating Company
One Bowdoin Squaren Road
Boston, MA 02114-2910

Regional Planning Council #07
Douglas Leonard
P.O. Drawer 2089
Bartow, FL 33830
Phone: (941) 534-7130
Fax: (941) 534-7138

Michelle Hershel
Post Office Box 590
Tallahassee, FL 32302
Phone: (850) 877-6166
Fax: (850) 656-5485
Attorney for Florida Electric Cooperative
Assoc.

Department of Environmental Protection
Scott Goorland
2600 Blairstone Road
Tallahassee, FL 32399-2400
Phone: (850) 487-0472

Kenneth Hoffman/John Ellis
Rutledge Law Firm
Post Office Box 551
Tallahassee, FL 32302-0551
Phone: (850) 681-6788
Fax: (850) 681-6515
Attorneys for City of Tallahassee

Florida Industrial Cogeneration Association
c/o Richard Zambo, Esq.
598 Sw Hidden River Avenue
Palm City, FL 34990
Phone: (561) 220-9163
Fax: (561) 220-9402

Legal Environmental Assistance
Foundation, Inc.
Gail Kamaras/Debra Swin
1114 Thomasville Road, Ste. E
Tallahassee, FL 32303
Phone: (850) 681-2591
Fax: (850) 224-1275

Paul Darst
Department of Community Affairs
Division of Local Resource Planning
2740 Centerview Drive
Tallahassee, FL 32399-2100
Phone: (850) 488-8466
Fax: (850) 921-0781

Myron Rollins
Black & Veatch
Post Office Box 8405
Kansas City, MO 64114
Phone: (913) 458-7432
Fax: (913) 339-2934

James Beasley/Lee Willis
Ausley Law Firm
Post Office Box 391
Tallahassee, FL 32302
Phone: (850) 224-9115
Fax: (850) 222-7560
Attorneys for Tampa Electric Company

Florida Power & Light Company (Miami)
William G. Walker, III
9250 W. Flagler Street
Miami, FL 33174
Phone: (305) 552-4327
Fax: (305) 552-3660

Ms. Angela Llewellyn
Tampa Electric Company
Regulatory and Business Strategy
Post Office Box 111
Tampa, FL 33601-0111
Phone: (813) 228-1752
Fax: (813) 228-1770

Finnerty, Sean

From: Dale Nesbitt [dale.nesbitt@altosmgmt.com]
 Sent: Friday, September 03, 1999 3:20 AM
 To: Finnerty, Sean
 Subject: Re: Draft Testimony

Sean:

Thanks for the updates on the project size and the connection points and voltages. I will make sure they are correctly articulated in the testimony and the model. Also, I could use an estimate in \$/KW installed for Okeechobee. I am using \$450/KW as a nominal estimate, but that might be a tad low. I could use your estimate so that my estimates of plant profitability and viability are consistent with your best estimate of capital cost for a 550 MW unit. See you on the 13th.

I sent Schef and you the entire draft. Redlines as soon as you and your guys can would be great. Thanks.

Dale

"Finnerty, Sean" wrote:

> Dale,

>

> I have just started to review your draft. Two fundamental items that I want
 > to alert you to so we don't have to go back and re-run some model results:
 > Okeechobee is going to be 550 MW nominal and tied to a 230 kV line between
 > Sherman and Martin substations.

>

> Your testimony reflects only 500 MW and a tie to the 500 kV line.

>

> -----Original Message-----

> From: Dale Nesbitt (mailto:dale.nesbitt@altosmgmt.com)
 > Sent: Thursday, September 02, 1999 2:12 AM
 > To: Wright, Schef; sean.finnerty@gen.pge.com; mike.blaaha@altosmgmt.com;
 > chaim.braun@altosmgmt.com
 > Subject: Draft Testimony

>

> Schef/Sean:

>

> Attached is the draft of the body of my testimony. I am comfortable
 > with it. I will pull the figures together tomorrow, and Mike, Chaim,
 > and I will turn to writing up and finalizing the detailed numerical
 > model results in Q and A form. The body attached is ready for you to
 > review it and send redline comments back to us. Thanks.

>

> Dale

>

> PG&E Generating, PG&E Energy Trading and any other
 > company referenced herein that uses the PG&E name or
 > logo are not the same company as Pacific Gas and
 > Electric Company, the regulated California utility. Neither
 > PG&E Gen, PG&E Energy Trading nor these other
 > referenced companies are regulated by the California Public
 > Utilities Commission. Customers of Pacific Gas and Electric Company
 > do not have to buy products from these companies in order

EXHIBIT 1

SENT BY:

1-25- 0 ; 2:50PM ;

CARLTON FIELDS-

904 222 0398;# 3/ 7

> to continue to receive quality regulated services from the utility.



7500 Old Georgetown Road
Bethesda, MD 20814-6161

301.280.6900
Fax: 301.280.6900
www.gen.pge.com

December 21, 1999

The Honorable Joe Garcia
Chairman
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Chairman Garcia:

I am writing to introduce you to our company, PG&E Generating, and to provide some information to you about the current situation in Florida regarding electric power generation.

PG&E Generating, which was formerly known as U.S. Generating or USGen, is the power generation unit of PG&E Corporation, a national energy services holding company. PG&E Gen has two electric generation plants operating in Florida, and a capital investment of more than \$1 billion in the state. PG&E Generating has a strong interest in helping Florida meet its demand for new electricity and in ensuring the reliability of its electric system. For this reason, the PG&E Generating project development team has embarked on a new power project in Okeechobee County that you will be hearing more about in the months ahead.

Given our strong interest in helping Florida achieve these two goals, and the difficulties facing any competitive generator who wants to invest in Florida, we have enclosed for your review and information a recent article that appeared on the Dow Jones/Wall Street Journal Interactive Newswire. The article discusses the status of electric power generation in Florida. This subject is currently one of the key public policy issues in Florida—and in many states across the country—and one that has major implications for all energy consumers in the state.

The article points out that competition among power plant developers for the privilege of siting and building new generation facilities is rapidly becoming the principal way new demand for electricity is being satisfied across the country. Throughout the United States, companies like PG&E Generating are building highly efficient, clean "merchant" electric generating plants to help meet the growing demand for electricity.

As you may be aware, merchant generating plants are not part of a utility's regulated ratebase and do not have captive retail customers. Rather, they are designed to compete in the wholesale market and to help maintain and enhance the reliability of the regional electric

PG&E Generating (PG&E Gen) and any other company referenced herein that uses the PG&E name or logo are not the same company as Pacific Gas and Electric Company, the regulated California utility. Neither PG&E Gen nor these other referenced companies are regulated by the California Public Utilities Commission. Customers of Pacific Gas and Electric Company do not have to buy products from these companies in order to continue to receive quality regulated services from the utility.

EXHIBIT 2

The Honorable Joe Garcia
December 21, 1999
Page 2 of 2

system – all of this without the need for traditional utility customers to pay for the construction and operating costs. Merchant generating facilities bear all of the investment and other risks associated with building and operating these plants – an added consumer benefit. Merchant power plants have become the dominant source of new power generation throughout most of the United States. However, as the article notes, Florida is conspicuously absent from this trend.

Peninsular Florida needs upwards of 10,000 megawatts of new generating capacity—representing a multi-billion dollar new investment—in order to keep up with demand for electricity and to have the necessary reserves in place. This amount of electricity accounts for more than a quarter of the state's current capacity. Unfortunately, Florida, whose reserves have been declining, is missing out on the benefits that wholesale competition and the competitive power generation business are providing.

Merchant generators are eager to invest in Florida to satisfy this demand. Yet, some of Florida's larger utilities are vigorously opposing this investment. In their view, only regulated public utilities should be permitted to build new generation, and this dispute is now the subject of a case before the Florida Supreme Court. They have adopted this position in Florida even though at least one of them is busy developing and building merchant plants for itself in other regions of the country—and even though the Federal Energy Regulatory Commission adopted wholesale competition as a national policy, following the passage of the Energy Policy Act in 1992.

I hope you find this information useful. Please feel free to contact me at 301-280-6805 or through e-mail at jack.hawks@gen.pge.com, if you have any questions or would like to meet to discuss these important public policy issues. Best wishes for the holidays.

Sincerely,



John K. Hawks
Vice President, Public Affairs
& Government Relations

/encl.

Reprinted from DOW JONES NEWS SERVICE

TUESDAY, NOVEMBER 9, 1999

© 1999 Dow Jones & Company, Inc. All Rights Reserved.

Florida Utilities Wage War On Would-Be Competitors

By EILEEN O'GRADY

HOUSTON — (Dow Jones) — In the spring of 1999, a group of Florida utilities moved to block an out-of-state company from building a power plant in the state.

At the same time, one of the utilities, FPL Group Inc. (FPL), was buying power plants in Maine and building others in Texas.

The strategy is clear: Guard the home turf while expanding elsewhere.

Energy companies around the U.S. have used the strategy as utility deregulation opens new markets. But nowhere have outsiders been rebuffed with more determination than in Florida, say energy companies, regulators and others.

"You see opposition, but not to this extent," said Sean Finnerty, manager of project development for a unit of PG&E Corp. (PGE), a San Francisco energy company that wants to build a natural gas-fired plant in southern Florida. "Florida is clearly lagging behind the rest of the states in moving to (electric) competition — wholesale or retail — even though existing utilities, like FPL Group, are active elsewhere."

"Florida is a difficult market," agreed Julie Simon, director of policy for the Electric Power Supply Association, a Washington, D.C.-based trade group that represents competitive generators, power marketers and other suppliers.

"The numbers speak for themselves," said Simon, noting that, according to EPSCA's tally of announced new generation projects, 5,224 megawatts of non-utility owned generation is planned in the Florida Reliability Coordinating Council, a group of interconnected utilities that covers all but eight western panhandle counties.

"Florida is low on generation, but they are not going out of their way to encourage new generation. There's a lot more going on in other markets with a lot less need," she said.

More than 122,000 MW of new generation is planned nationwide, according to EPSCA.

PG&E and others are fighting to get into Florida, and watching to see just how far the state's utilities will go to keep them out.

In particular, they're closely following

a case involving Duke Energy Services of North Carolina, a unit of Duke Energy Corp. (DUK). Duke has been blocked in its effort to build a \$160 million, 500-MW power plant near New Smyrna Beach.

In March, the state Public Service Commission gave Duke the green light to move ahead with the plant.

It was to be a merchant plant, selling most of its electricity into competitive markets, with the exception of 30 MW it would supply to the municipal utility of New Smyrna Beach. Duke wanted to start operating the plant in 2001. The start date is now uncertain.

The state's utilities appealed the PSC decision, and that appeal is now being considered by the Florida Supreme Court. A hearing on the case has been set for early January.

While half of U.S. states have moved to open their consumer electric markets to competition, Florida lawmakers have yet to study the issue seriously.

U.S. regulators opened all U.S. wholesale electricity markets to competition in 1996 when they ordered utilities to let others buy and sell electricity competitively over their electric transmission lines. In wholesale markets, energy companies buy and sell large volumes of electricity for resale.

Despite the 1996 law, Florida's wholesale power market isn't truly competitive.

"I don't believe in retail competition, but in a viable wholesale market and that's what we're moving toward," said Joe A. Garcia, chairman of the state's public service commission.

The state's major utilities — FPL Group, Florida Power Corp. (FPC), and Tampa Electric, a unit of TECO Energy Inc. (TECO) — say the PSC overstepped its authority in approving Duke's New Smyrna Beach plant. They argued that Duke would be violating a 1973 law known as the Florida Power Plant Siting Act by building the plant.

The law says power plants with steam boilers that produce more than 75-MW of electricity must be built by an electric utility or operate under a long-term contract to sell the power to a Florida utility.

"Under current law, it's clearly the regulated utilities (that should build new

generation) because we have the obligation to serve (customers)," said Paul Evanson, president of FPL Group's utility subsidiary, Florida Power & Light.

Evanson said he believes the Duke proposal is an effort to undermine Florida's regulated electric system "that is working extremely well."

The siting act was passed to help the state balance the need to meet growing electricity demand with the need to control the environmental impact of plants in the state, he said.

But PSC hearings showed the New Smyrna Beach plant is needed to supply Florida's growing appetite for electricity, said PSC Chairman Garcia. He said the plant wouldn't hurt existing Florida rate payers.

"Everything is up in the air until Duke is finalized," said PG&E spokesman Jack Hawka.

Despite the unfriendly welcome, Florida's fast-growing economy and its expanding need for electricity are so attractive that other power plant developers are lining up to enter the fray.

Among them are Reliant Energy Wholesale Group, a unit of Reliant Energy Inc. (REI); Constellation Power, a unit of Baltimore Gas and Electric Co. (BGE), and Panda Energy International, a private Dallas-based developer of power plants. Atlanta utility giant Southern Co. (SO) is also said to be interested in moving into the state.

Interest in the Florida market "is not surprising when you look at the demand. The whole Southeast is growing and Florida is one of the biggest markets," said Rick Rhodes of Duke Energy Services.

The state's utilities and regulators agree Florida will need 8,000 MW to 10,000 MW of new generation over the next decade to meet its growing demand for electricity.

According to FP&L, companies based outside Florida want to build as much as 9,700 MW of new generation in the state, almost 25% of the state's 38,000 MW of installed capacity.

Because of its peninsular shape, Florida must rely on its own power plants because it has a limited ability to move power in and out of the state along the high-voltage electric transmission grid.

(over please)

THE PUBLISHER'S SALE OF THIS REPRINT DOES NOT CONSTITUTE OR IMPLY ANY ENDORSEMENT OR SPONSORSHIP OF ANY PRODUCT, SERVICE, COMPANY OR ORGANIZATION. JOURNAL REPRINTS (609) 226-4226 P.O. Box 200 Princeton, N.J. 08540-0200. DO NOT EDIT OR ALTER REPRINTS. REPRODUCTIONS NOT PERMITTED

DOW JONES

The state's incumbent utilities can meet Florida's power needs, said FP&L's Evanson. They are rushing to fill the gap by accelerating plans to build new plants or by converting older oil-fired generating units to burn natural gas.

Evanson said Florida utilities aren't afraid of competition, but see Duke's proposal and others as an end-run on the state's existing regulated framework that has kept electric rates below the U.S. average.

"If there's a merchant plant and they're willing to sell power cheaper than we can produce power, we'll buy from that company; no question about that," said Evanson.

Companies such as Duke, PG&E and Reliant have an ally in the form of the state's municipal utilities. They have good reasons to want a more competitive wholesale power market.

"Municipal utilities tend to be buyers in the wholesale market," said Barry Moline, executive director of the Florida Municipal Electric Association, a trade group representing 32 public power communities serving about 25% of the population. "We think there's a better opportunity to save money for all customers with better competition in the wholesale market."

Like Duke, Reliant Energy has teamed up with a public power group to try to ease its way into Florida's market.

Reliant said it plans to build a 460-MW, natural gas-fired power plant in Ocala County near Holopaw, Fla. Like Constellation's Oleander plant, the plant would supply power only during times of peak power use.

Reliant would sell about two-thirds of the plant's output to Seminole Electric Cooperative through a five-year contract. Seminole supplies power to 10 distribution co-ops that serve 600,000 customers in 45 Florida counties.

Reliant has also bought the 619-MW

Indian River Power Plant in Brevard County for \$205 million from the Orlando Utilities Commission.

"Indian River gives us an early entry into Florida's high-growth market," said Joe Bob Perkins, president of Reliant's wholesale energy group.

Opposition from powerful utilities isn't the only obstacle facing new entrants in Florida. Other hurdles include a lack of available natural gas to power the proposed new generating stations and a tight market for new electric turbines, said Matt Schatzman, executive vice president for energy marketing for Dynegy Inc. (DYN), a Houston company that has a power marketing alliance with Florida Power Corp., a unit of Florida Progress Corp. (FPC).

The state now gets its natural gas from Florida Gas Transmission, a joint venture of Enron Corp. (ENE) and Southern Natural Gas Co. (SNT). The company wants to expand its pipeline system to increase the capacity to 2.0 billion cubic feet per day of natural gas, up from the current capacity of 1.5 Bcf/day.

Three other pipeline companies have proposed building new pipelines into Florida to increase its supply of natural gas to be sold to utilities and other power generators.

Despite the additional difficulties in Florida, developers remain optimistic.

"Florida is a great market," said Dynegy's Schatzman. "We believe the market will dictate what is built. The dust will clear and plants will be built."

Despite the ongoing delay with the New Smyrna Beach plant, Duke spokesman Rhodes predicted his company will pursue additional power projects in Florida.

Meanwhile, the state's utilities will continue to fight outsiders, a development that isn't lost on the FSC's Garcia.

"It's fascinating that they believe in competition in other places, but not in Florida," Garcia said.