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February 25, 2000

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: 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

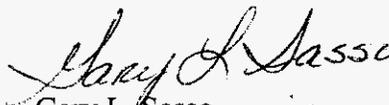
Dear Ms. Bayo:

Enclosed for filing in the above docket is the original and fifteen (15) copies of Florida Power Corporation's Notice of Filing and Service the fully executed Prehearing Statement of Florida Power Corporation.

We request you acknowledge receipt and filing of the above by stamping the additional copy of this letter and returning it to me in the self-addressed, stamped envelope provided.

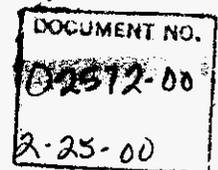
If you or your Staff have any questions regarding this filing, please contact me at (727) 821-7000.

Very truly yours,

  
Gary L. Sasso *jc*

Enclosures

*Replacement Copy*



CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P.A.

TAMPA

ORLANDO

PENSACOLA

TALLAHASSEE

WEST PALM BEACH

ST. PETERSBURG

MIAMI

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. )  
\_\_\_\_\_ )

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DOCKET NO. 991462-EU

Submitted for filing: February 18, 2000

**FLORIDA POWER CORPORATION'S  
NOTICE OF FILING AND SERVICE**

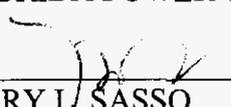
Florida Power Corporation, by and through its undersigned attorneys, hereby gives notice of filing and service of an executed Prehearing Statement of Florida Power Corporation. No changes were made to the Prehearing Statement of Florida Power Corporation filed on February 25, 2000. The document was inadvertently filed and served without signature of the attorney of record through a clerical error.

I hereby certify that a true and correct copy of this document and an executed Prehearing Statement of Florida Power Corporation has been served via facsimile (indicated by \*\*) and U.S. Mail to all counsel and parties of record as listed on the attached page this 25<sup>th</sup> day of February, 2000.

Respectfully submitted,

FLORIDA POWER CORPORATION

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint 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: February 25, 2000

**PREHEARING STATEMENT OF  
FLORIDA POWER CORPORATION**

Florida Power Corporation (FPC) pursuant to Rule 25-22.038, Florida Administrative  
Code, hereby submits its Prehearing Statement in this matter, and states as follows:

**A. APPEARANCES**

James A. McGee, Esq., Florida Power Corporation  
Post Office Box 14042, St. Petersburg, FL 33733

Gary L. Sasso, Esq.  
Jill H. Bowman, Esq.  
Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A.  
Post Office Box 2861,  
St. Petersburg, Florida 33731

On behalf of Florida Power Corporation

**B. WITNESSES**

<u>Witness</u>	<u>Subject Matter</u>	<u>Issue</u>
Charles J. Cicchetti	Lack of need for and cost-effectiveness of proposed plant	All non-legal issues

**C. EXHIBITS**

<u>Exhibit Number</u>	<u>Witness</u>	<u>Description</u>
To be determined		

FPC reserves the right to call such other witnesses and to use such other exhibits as may  
be identified in the course of discovery and preparation for the final hearing in this  
matter.

#### D. STATEMENT OF BASIC POSITION

In order to preserve its legal position on the issues raised in the Duke case and re-asserted herein, FPC submits that a determination of need may not be obtained under Section 403.519, Florida Statutes, for a plant proposed by any independent power producer unless the plant has committed its capacity to a retail utility under a binding power purchase agreement or unless the plant falls within the statutory exemption for plants that need not be sited under Section 403.519 and the Florida Electric Power Plant Siting Act (PPSA). Petitioner Okeechobee Generating Company, L.L.C. (OGC) is proposing to build a plant that is neither dedicated by contract to serve the identified needs of particular retail utilities in Florida nor falling within an exemption to the PPSA. Accordingly, as a matter of law the Petition must be dismissed or denied.

Further, OGC has failed to comply with the Commission's rule requiring that any investor owned utility either (1) issue a request for proposals to solicit supply-side alternatives to its proposed power plant or (2) seek a waiver from the application of that requirement. Rule 25-22.082, Fla. Admin. Code. For this reason, too, OGC's Petition should be dismissed or denied.

Putting these issues aside, OGC has not shown and will not show that its proposed project will satisfy the statutory need criteria. Section 403.519 requires the Commission to determine whether there is a need for the proposed power plant, not for additional capacity somewhere in the State. It goes without saying that Florida utilities plan to add capacity to their systems during the next five years. The main questions here are: Is there a need for even more capacity in Florida, and, if there is, who should build it?

OGC has not met its burden of showing that there is a need for additional capacity in Florida, and it certainly has not met its burden of showing that, if there is such a need, the proposed power plant will provide superior reliability and cost-effectiveness to power plants built or dedicated by contract to Florida retail utilities.

The fact is, OGC's "proof" that the proposed plant is needed is built on faulty analysis and flawed assumptions, as will become evident at the final hearing in this matter. Further, assuming for the sake of argument that additional capacity is "needed," the proposed project will cost Florida ratepayers more and provide less reliability than a comparable plant built by a regulated retail utility or dedicated by contract to such a utility. A merchant developer can and will charge the most the market will bear and thus seek to recover a return of its investment and on its investment in an amount that substantially exceeds what a cost-based Florida utility will receive, and over a shorter number of years. In the case of the proposed OGC project, consumers in Florida will not benefit from the project; to the contrary, OGC will benefit, and ratepayers will be made worse off than if Florida retail utilities provided any needed supply-side resources under cost-base regulation.

While merchants tout the virtues of free-market competition, that market does not exist in Florida. Currently, the Florida electric power industry is predominantly a regulated market, and to inject an essentially unregulated merchant like the OGC plant into that market, without pre-existing contractual commitments, is tantamount to sending a fox into a henhouse. Florida will get the benefits of neither regulation nor competition, but will get the worst of both worlds.

**E. STATEMENT OF ISSUES AND POSITIONS**

**1. FACTUAL ISSUES**

1. **FPC FACTUAL ISSUE 1:** Is there a need for the proposed power plant, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519?

**FPC:** No. The proposed plant will not be dedicated to meeting the need of any Florida utility; rather OGC will be free to chase price spikes anywhere inside or outside the State or to withhold supply when that will serve its economic interests. No retail utility will be able to count on the plant's being available when that utility needs power. The utilities in Florida have plans in place to meet their actual capacity needs over the ten-year planning horizon, and the three investor-owned utilities in Florida have recently agreed to increase their reserve margins to 20%, effective in 2004. (Cicchetti)

2. **FPC FACTUAL ISSUE 2:** Is there a need for the proposed power plant, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519?

**FPC:** No. There is no "economic" need for the plant. The utilities in Florida have maintained over the years a reasonable equilibrium between long-term capital costs and short-term fuel costs, taking into account a diversity of fuel sources, adding capacity when it is economic to do so. The proposed plant will not achieve the economic benefits claimed. To the contrary, the proposed plant will garner profits for OGC over and above returns that would be obtained by a retail utility-built plant, and this windfall will be subsidized by the ratepayers. (Cicchetti)

3. **FPC FACTUAL ISSUE 3:** Is the proposed power plant the most cost-effective alternative available, as this criterion is used in Section 403.519?

**FPC:** No. To the contrary, OGC will charge more for its capacity and energy over the life of the plant than a regulated cost-of-service utility like FPC precisely because the Commission will not regulate or limit the price that OGC can charge. If the Commission determined that Florida utilities needed more capacity, the most cost-effective solution would be to require the utilities to build that capacity or place it under firm contract. (Cicchetti)

4. **FPC FACTUAL ISSUE 4:** Are there any conservation measures taken by or reasonably available to the Okeechobee Generating Company which might mitigate the need for the proposed power plant?

**FPC:** No, but only because, as a wholesale non-utility generator, OGC will not be subject to the conservation requirements of the Florida Electric Energy Conservation Act (FEECA), of which Section 403.519 is a part. OGC has no incentive, and is no position, to employ conservation measures to avoid the necessity of building the proposed plant. Under the statutory scheme in Florida, any need determination must be focused on the needs of particular retail utilities in Florida partly because only such utilities have the responsibility and opportunity to explore conservation measures that may obviate the need for additional supply-side resources. (Cicchetti)

5. **FPC FACTUAL ISSUE 5:** Based on the resolution of the foregoing issues, should the petition of the Okeechobee Generating Company for determination of need for the Okeechobee Generating Project be granted?

**FPC:** No. (Cicchetti)

## 2. LEGAL ISSUES

1. **FPC LEGAL ISSUE 1:** Does the Florida Public Service Commission (“PSC”) have the statutory authority to render a determination of need under Section 403.519, Florida Statutes, for a merchant plant that does not have an agreement in place for the sale of firm capacity and energy to a state-regulated utility with a statutory obligation to serve retail customers in this State?

**FPC:** No.

2. **FPC LEGAL ISSUE 2:** Must OGC comply with the “bid rule,” Rule 25-22.082, Fla. Admin. Code?

**FPC:** Yes.

## 3. POLICY ISSUES

1. **FPC POLICY ISSUE 1:** Would adding another merchant plant to the Florida wholesale market at this time, without a prior showing of contractual commitments to meet some identified need of particular Florida retail utilities in a cost-effective manner, serve or disserve the public interest?

**FPC:** Adding more uncommitted, merchant capacity at this time would disserve the public interest. The claimed benefits of merchant capacity are illusory. While merchants claim to be “manna from heaven” or a “free lunch,” the fact is, merchant developers will reap a windfall if permitted to exploit what is predominantly a regulated market, and ratepayers will pay more for less reliability in the long run. Assuming for the sake of

argument that the Commission's authority to approve merchants were sustained by the Florida Supreme Court, the Commission should deny the current petition and pause to consider more comprehensively the plethora of policy issues unleashed by the Duke decision. (Cicchetti)

**F. STIPULATED ISSUES**

None at this time.

**G. PENDING MOTIONS**

FPC seeks action on the following pending motions:

FPC's Motion to Strike Portions of Prefiled Testimony of Gerard J. Kordecki and Sean J. Finnerty

Florida Power & Light Company's Motion for Reconsideration of Portions of Order No. PSC-00-0291-PCO-EU

FPC's Notice of Joinder in Florida Power & Light Company's Motion for Reconsideration of Portions of Order No. PSC-00-0291-PCO-EU

**H. REQUIREMENTS OF PREHEARING ORDER THAT CANNOT BE MET**

Crucial discovery in this matter is still taking place, and the date for submission of intervenor testimony relating to key issues is still outstanding. Accordingly, it is not possible at this time to make final decisions about witnesses and exhibits that may be needed at the final hearing, and FPC must reserve the right to use witnesses and exhibits other than or different from those identified hereinabove, in order to respond to ongoing developments.

Respectfully submitted,

FLORIDA POWER CORPORATION

  
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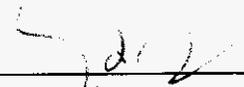
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PREHEARING STATEMENT OF FLORIDA POWER CORPORATION has been furnished by facsimile and U.S. Mail to Robert Scheffel Wright and John Moyle as counsel for Okeechobee Generating Company, LLC and to all other counsel and parties of record via U.S. Mail this 25<sup>th</sup> of February, 2000.

  
\_\_\_\_\_  
Attorney

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