

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of )  
 Need for an Electrical Power Plant in ) DOCKET NO. 99-1462-EU  
 Okeechobee County by Okeechobee )  
 Generating Company, L.L.C. ) FILED: FEBRUARY 25, 2000  
 \_\_\_\_\_ )

OKEECHOBEE GENERATING COMPANY'S RESPONSE  
TO FLORIDA POWER & LIGHT COMPANY'S MOTION FOR  
RECONSIDERATION OF PORTIONS OF ORDER NO. PSC-00-0291-PCO-EU

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to Rules 28-106.204, and 25-22.0376, Florida Administrative Code ("F.A.C.") hereby respectfully submits its response to Florida Power & Light Company's ("FPL") Motion for Reconsideration of Portions of Order No. PSC-00-0291-PCO-EU ("FPL's Motion for Reconsideration").<sup>1</sup> As explained more fully herein, FPL's Motion for Reconsideration is nothing more than re-argument of matters specifically considered and rejected by the Prehearing Officer. Accordingly, FPL's Motion for Reconsideration fails to satisfy the Florida Public Service Commission's ("Commission") well-established standard for reconsideration and should be denied on that basis. If the Commission decides to reconsider the Order on Intervenors' Motions to Compel, Petitioner's Motions for Protective Order and Motion for Leave to File Additional Interrogatories, PSC Order No. PSC-00-0291-PCO-EU (the "Discovery Order"), the Commission should uphold the

AFA  
 APP  
 CAF  
 CMU  
 CTR  
 EAG  
 LEG  
 MAS  
 OPC  
 RRR  
 SEC  
 WAW  
 OTH

<sup>1</sup>On February 21, 2000, Florida Power Corporation ("FPC") filed a brief joinder in FPL's Motion for Reconsideration. FPC raised no new grounds for reconsideration in its joinder. Accordingly, OGC hereby responds to both FPL's Motion for Reconsideration and FPC's joinder in FPL's Motion for Reconsideration.

RECEIVED & FILED

*WAW*

DOCUMENT NUMBER-DATE

~~02508~~ FEB 25 8

FPSC-RECORDS/REPORTING

Discovery Order in its entirety. Lastly, since neither FPL (nor FPC in its joinder) has requested an opportunity for oral argument on this matter, the Commission should resolve this matter based on the pleadings, without oral argument. In support of its response, OGC says:

Background

1. FPL and FPC have filed requests to produce asking OGC to produce a wide array of documents containing highly sensitive confidential, proprietary business information that constitute OGC's and its affiliates' trade secrets and trade secrets of third parties.<sup>2</sup> OGC timely objected to FPL's and FPC's discovery requests. FPL and FPC filed motions to compel OGC to produce the Confidential Documents and OGC timely responded. Thereafter, OGC filed a motion for protective order concerning the Confidential Documents and FPL and FPC timely responded. On February 7, 2000, Commissioner Jacobs, the Prehearing Officer for this docket, heard extensive oral argument on FPL's and FPC's motions to compel and on OGC's motion for protective order.

---

<sup>2</sup>As set forth in the Discovery Order, the confidential documents at issue are (1) the PG&E Generating Project Pro Forma for the Okeechobee Generating Project and a memorandum from Doug Egan to PG&E Generating's department heads dated August 18, 1999; (2) portions of OGC's Precedent Agreement with Gulfstream Natural Gas System; (3) an ABB Bid Summary for gas turbines dated June 8, 1999 and related adjustment sheet; and (4) certain project cost data, including cost of capital, development costs and detailed project construction costs (collectively referred to as the "Confidential Documents").

2. On February 11, 2000, Prehearing Officer Jacobs issued the Discovery Order finding, inter alia, that the Confidential Documents constitute proprietary, confidential business information, that FPL and FPC do not have a reasonable necessity for use of the Confidential Documents, and that OGC could suffer potential economic damage by disclosure of the Confidential Documents to FPL and FPC. Discovery Order at 9, 11. On February 21, 2000, FPL filed its Motion for Reconsideration and FPC filed its joinder in FPL's Motion for Reconsideration.<sup>3</sup>

FPL's Motion for Reconsideration Constitutes an  
Improper Attempt to Re-argue Issues Considered by  
the Prehearing Officer and Should be Denied.

3. The applicable standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that was overlooked or not considered in the subject order. See Diamond Cab Co. v. King, 146 So.2d 889, 891 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). The mere fact that a party disagrees with the subject order is not a valid basis for reconsideration. Diamond Cab, 146 So.2d at 891. Moreover, reweighing of the evidence is not a sufficient basis for

---

<sup>3</sup>Neither FPL nor FPC contacted OGC prior to filing their motions. Rule 28-106.204(3), F.A.C., requires that a moving party confer with all other parties of record prior to filing a motion. This is at least the third time in this proceeding that both FPL and FPC have failed to comply with this mandatory procedural requirement. Accordingly, OGC suggests that the Commission has the discretion to determine that FPL's and FPC's motions are procedurally flawed and to reject them on that basis.

reconsideration. State v. Green, 104 So.2d 817 (Fla. 1st DCA 1958); see also In Re: Adoption of Proposed Rule 25-22.0376, Reconsideration of Prehearing Officer Orders, 95 FPSC 7:58 (Notice of Rulemaking) (stating that the standard of review under Rule 25-22.0376, F.A.C., the procedural rule relied on by FPL in this case, is not "de novo").

4. In In re: Proposal to Extend Plan for Recording of Certain Expenses for Years 1998 to 1999 for Florida Power & Light Company, 97 FPSC 10:373 (Order No. PSC-97-1267-PCO-EI) (hereinafter "FPL's Proposal to Extend Expenses") the Commission denied a motion for consideration under remarkably similar procedural circumstances. In FPL's Proposal to Extend Expenses, the Prehearing Officer issued a procedural order with which, Ameristeel, a party to that docket, did not agree. Ameristeel filed a motion for reconsideration requesting that the full Commission reconsider the Prehearing Officer's procedural order. In its response, FPL asserted, inter alia, that Ameristeel's motion for reconsideration should be denied because it re-argued issues already considered by the Commission. Id. at 97 FPSC 10:375. In denying Ameristeel's motion for reconsideration, the Commission adopted FPL's argument and stated:

We find that Ameristeel has failed to demonstrate any point of fact or law that the prehearing officer overlooked or failed to consider in rendering the Order Establishing Procedure.

Id.; see also In Re: Fuel and Purchased Power Cost Recovery Clause

and Generating Performance Incentive Factor, 97 FPSC 5:578 (Order No. PSC-97-0608-FOF-EI) (adopting FPC's argument that Public Counsel's motion for reconsideration should be denied because it attempted to re-argue issues previously considered).

5. The rationale and the holding of FPL's Proposal to Extend Expenses is equally applicable to the instant case. Here, in its Motion for Reconsideration, FPL makes absolutely no attempt to demonstrate any point of fact or law that Prehearing Officer Jacobs overlooked or failed to consider in rendering the Discovery Order. Rather, FPL simplistically and incorrectly asserts that Prehearing Officer Jacobs "erred" in making the finding that FPL failed to demonstrate a reasonable necessity to use the Confidential Documents. FPL's Motion for Reconsideration at 2, 3. FPL's claim of error represents nothing more than FPL's disagreement with the Discovery Order and is not a valid basis for reconsideration. See Diamond Cab, 146 So.2d at 891.

6. A close reading of FPL's Motion for Reconsideration provides further evidence that FPL is improperly attempting to reargue matters already considered by Prehearing Officer Jacobs. The only two cases cited by FPL in its Motion for Reconsideration were both previously cited in FPL's motions to compel and/or its response to OGC's motion for protective order.<sup>4</sup> FPL cites no new

---

<sup>4</sup>The two cases cited by FPL in its Motion for Reconsideration that it previously cited are Becker Materials Corp. v. West Florida Scrap Metals, 407 So.2d 380 (Fla. 1st DCA

case authority in its Motion for Reconsideration because it is relying on authority and argument it has previously made.

7. In summary, it is clear that FPL has not identified any point of law or fact that Prehearing Officer Jacobs failed to consider in the Discovery Order. It is also clear that FPL is dissatisfied with the findings of the Discovery Order. The Commission should reject FPL's erroneous claims that Prehearing Officer Jacobs either "erred" or did not give "serious consideration" to FPL's arguments. In determining that FPL does not have a "reasonable necessity" to be provided access to OGC's Confidential Documents, Prehearing Officer Jacobs specifically considered and rejected the arguments that FPL rehashes in its Motion for Reconsideration. Accordingly, the Commission should deny FPL's Motion for Reconsideration as an improper attempt to re-argue issues addressed in the Discovery Order.

FPL Does Not Have a Reasonable Necessity to be  
Granted Access to the Confidential Documents

8. As noted above, FPL has offered no valid basis for reconsideration of the Discovery Order and the Commission should deny FPL's Motion for Reconsideration on that basis. However, if the Commission elects to reconsider the issues resolved by the Discovery Order, the Commission should uphold Prehearing Officer Jacob's finding that FPL does not have a reasonable necessity to be

---

1981) and Goodyear Tire and Rubber Co. v. Cooley, 359 So.2d 1200 (Fla. 1st DCA 1978).

granted access to the Confidential Documents. Rather than adopting FPL's tactic of rearguing those issues herein, OGC hereby incorporates by reference its Response to FPC's First Motion to Compel (filed on November 22, 1999); its Response to FPC's Second Motion to Compel (filed on January 25, 2000); its Response to FPL's First Motion to Compel (filed November 30, 1999); and its Second Motion for Protective Order (filed January 18, 2000).

Neither FPL Nor FPC have Requested Oral Argument  
on this Matter and No Oral Argument is Necessary

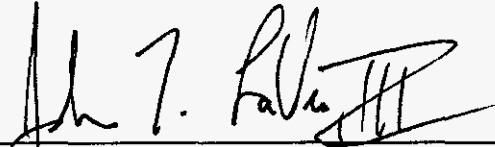
9. Rule 25-22.058, F.A.C., provides in pertinent part:

The Commission may grant oral argument upon request of any party to a section 120.57, F.S., formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.

(Emphasis supplied.) Neither FPL nor FPC requested oral argument on this matter, and neither has demonstrated that oral argument is necessary. Accordingly, FPL and FPC have waived their right to oral argument. Moreover, OGC believes that the matters at issue here are clearly delineated in the various motions and responses filed by the parties, and, thus, oral argument is unnecessary. See FPL's Proposal to Extend Expenses, 97 FPSC 10:374 (denying oral argument on Ameristeel's motion for reconsideration).

WHEREFORE, OGC respectfully requests that the Commission deny FPL's Motion for Reconsideration (and FPC's joinder in FPL's Motion for Reconsideration) without oral argument.

Respectfully submitted this 25th day of February, 2000.



---

John C. Moyle, Jr.  
Florida Bar No. 727016  
Moyle Flanigan Katz Kolins  
Raymond & Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, Florida  
Telephone (850) 681-3828  
Telecopier (850) 681-8788

and

Robert Scheffel Wright  
Florida Bar No. 966721  
John T. LaVia, III  
Florida Bar No. 853666  
LANDERS & PARSONS, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
Telephone (850) 683-0311  
Telecopier (850) 224-5595

Attorneys for Okeechobee Generating  
Company, L.L.C.



**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 (\*), facsimile transmission (\*\*), or by United States Mail, postage prepaid, on the following individuals this 25th day of February, 2000

William Cochran Keating, IV, Esq.\*  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Gunter Building  
Tallahassee, FL 32399

Lee L. Willis, Esq.\*  
James D. Beasley, Esq.  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302

Matthew M. Childs, Esq.\*  
Charles A. Guyton, Esq.  
Steel Hector & Davis  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301

Mr. Paul Darst  
Dept. of Community Affairs  
Division of Local  
Resource Planning  
2740 Centerview Drive  
Tallahassee, FL 32399-2100

William G. Walker, III  
Vice President, Regulatory Affairs  
Florida Power & Light Company  
9250 West Flagler Street  
Miami, FL 33174

Mr. Scott Goorland  
Department of Environmental  
Protection  
3900 Commonwealth Boulevard  
Tallahassee, FL 32399-3900

Gail Kamaras, Esq.  
Debra Swim, Esq.  
LEAF  
1114 Thomasville Road  
Suite E  
Tallahassee, FL 32303-6290

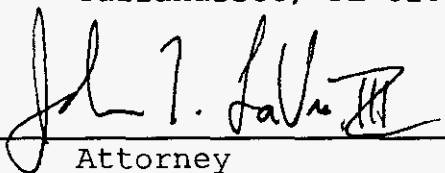
Ms. Angela Llewellyn  
Administrator  
Regulatory Coordination  
Tampa Electric Company  
Post Office Box 111  
Tampa, FL 33601-2100

Gary L. Sasso, Esquire\*\*  
Carlton Fields  
P.O. Box 2861  
St. Petersburg, FL 33731

James A. McGee, Esq.  
Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, FL 33733

Harry W. Long, Jr.  
Tampa Electric Company  
P.O. Box 111  
Tampa, FL 33601

D. Bruce May, Esquire  
Holland & Knight LLP  
P.O. Drawer 810  
Tallahassee, FL 32302-0810

  
\_\_\_\_\_  
Attorney