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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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Law*

In re: Petition for Determination)
of Need for an Electrical Power)
Plant in Okeechobee County by)
Okeechobee Generating Company,)
L.L.C.)
_____)

RECORDS AND
DOCKET NO. 991462-REG

Submitted for filing: March 14, 2000

**FLORIDA POWER CORPORATION'S POSITION
STATEMENT ON FINAL ISSUES 1-15 AND IDENTIFICATION
OF WITNESS CHARLES J. CICCETTI AND HIS SPONSORED
EXHIBITS FOR INCLUSION IN THE PRE-TRIAL ORDER**

Florida Power Corporation ("FPC") by and through its undersigned counsel hereby files its position statement as to each of the fifteen (15) final issues identified in the Staff's Memorandum of March 13, 2000, and identifies for inclusion in the pre-trial order Charles J. Cicchetti and those exhibits sponsored by Mr. Cicchetti as set forth below. FPC's position as to each of the fifteen (15) separately identified final issues is as follows:

Issue 1: Is there a need for the Okeechobee Generating Project taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

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).

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OTH _____

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, Florida Statutes?

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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)

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)

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 in 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)

Issue 5: Does the Commission have sufficient information to assess the need for the Okeechobee Generating Project under the criteria set forth in Section 403.519, Florida Statutes.

FPC: No. OGC gives itself the exclusive supply nod without even examining its cost-effectiveness when compared to a similar plant built by an IOU or other options such as conservation or the operation of fully depreciated assets. OGC also provides very little information regarding its natural gas supply, the adequacy

of its planned back-up fuel, or the risk of obsolescence of the Project, which will, in the future, cease to be the least-cost plant in the market. (Cicchetti)

Issue 6: Can the existing Peninsular Florida transmission system accommodate the power deliveries from the Okeechobee Generating Project to other utilities in Peninsular Florida.

FPC: OGC has failed to address this issue adequately.

Issue 7: Has Okeechobee Generating Company provided adequate assurances regarding available primary and secondary fuel to serve the proposed power plant on a long- and short-term basis?

FPC: No. OGC and Gulfstream plan to take advantage of FERC's relatively new regulatory option, which permits negotiated transportation tariffs, but OGC's sponsors fail to provide sufficient information as to how OGC will hedge natural gas price, quantity, and transportation risks with no alternative natural gas supplier. Also, OGC has failed to provide the Commission with sufficient details concerning the adequacy of its 24 hour back-up fuel supply. Greater than 24 hours back-up fuel storage is desirable, and under certain conditions limited storage may be problematic. (Cicchetti)

Issue 8: Is Okeechobee Generating Company's quantification of wholesale price suppression based on reasonable input assumptions?

FPC: No. OGC has overstated the likely average market clearing price in Florida and measured its claimed price suppression effects based upon a competitive market that does not exist in Florida, using market rules that OGC itself admittedly does not intend to follow. (Cicchetti) In addition, discovery has shown that OGC's analysis is predicated on fatally flawed input assumptions and attendant modeling work.

Issue 9: Is Okeechobee Generating Company's quantification of wholesale price suppression based on a reasonable methodology?

FPC: No. The methodology used by OGC to quantify wholesale price suppression is based on a competitive market that does not exist in Florida, using market rules that OGC itself admittedly does not intend to follow. (Cicchetti) In

addition, discovery has shown that OGC's quantification of wholesale price suppression is based on fatally defective modeling errors.

Issue 10: Will there be significant costs to retail electric customers in Florida from the loss of receipts of the gain from off-system sales resulting from displacement by the Okeechobee Generating Project?

FPC: Yes. Joint economy sales between Florida's retail load serving utilities result in lower prices for both sets of retail customers, resulting in a win-win situation for both utilities' ratepayers. Sales by OGC to Florida's retail load serving utilities will not result in such joint savings, since OGC will return its margin to its investors as profit, not to Florida retail customers. (Cicchetti)

Issue 11: Is the Okeechobee Generating Project economically viable?

FPC: OGC has overstated the likely average market clearing price in Florida and measured its own economic viability based on a competitive market that does not exist in Florida. An analysis of the actual likely market clearing price in Florida based upon the IOU's reported hourly marginal costs with sensitivities indicates that the actual average market clearing price in Florida is significantly lower than the estimate used by OGC. (Cicchetti).

Issue 12: Does the Petition for Determination of Need meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

FPC: No.

Issue 13: Would granting the determination of need for Okeechobee Generating project be consistent with the public interest and the best interest of electric customers in Florida?

FPC: No. 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. Moreover, the claimed benefits of OGC's plant are grossly exaggerated and so false that they should be dismissed out-of-hand by regulators. The best interests of Florida customers are presently being well-served by regulation in Florida and in the future will be best served by a comprehensive approach to deregulation that does not penalize incumbents or

permit new entrants to cream-skim or game the market to the detriment of Florida's electric customers. (Cicchetti)

Issue 14: Based on the resolution of the foregoing issues, should the petition of Okeechobee Generating Company for determination of need for the Okeechobee Project be granted?

FPC: No. (Cicchetti)

Issue 15: Should this docket be closed?

FPC: Yes, after the Petition is dismissed or denied.

Witness and Exhibit Identification

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Charles J. Cicchetti	FPC	CJC-1	Resume of Charles J. Cicchetti
		CJC-2	Merchant capital cost collection contrasted with utility's collection of same capital costs
		CJC-3	Analysis and Description of OGC's expected profits based on Dr. Nesbitt's analysis
		CJC-4	Copy of the FRCC's Y2K plan
		CJC-5	Copy of Reliant Energy's initial refusal to operate plants in response to FRCC's request for compliance with Y2K plan
		CJC-6	Sources of electricity in the State of Florida

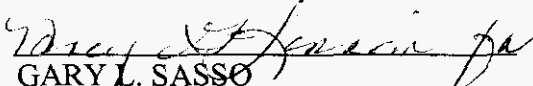
CJC-7 Purchase power expense for
the three investor owned
utilities (IOU's) in Florida

CJC-8 Estimated Energy Costs in
Florida

Respectfully submitted,

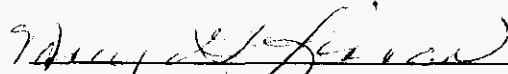
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA POWER CORPORATION'S POSITION STATEMENT ON FINAL ISSUES 1-15 AND IDENTIFICATION OF WITNESS CHARLES J. CICHETTI AND HIS SPONSORED EXHIBITS FOR INCLUSION IN THE PRE-TRIAL ORDER has been furnished via facsimile and U.S. Mail to the counsel of record as indicated by ** and via U.S. Mail to all other counsel of record this 14th day of March, 2000.


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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

00 MAR 14 PM 5:00

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 RECORDS AND REPORTING Submitted for filing: March 14, 2000

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FLORIDA POWER CORPORATION'S MEMORANDUM IN OPPOSITION TO PETITIONER'S REQUEST FOR CONTINUANCE AND REVISED PROCEDURAL SCHEDULE

Florida Power Corporation (FPC) opposes the request made by Petitioner Okeechobee Generating Company, L.L.C. (OGC) for a continuance of the hearing scheduled to commence Monday of next week, to deal with "discrepancies" in its sworn testimony to the Commission. Those "discrepancies" are fundamental to OGC's case and provide ample basis for the Commission to deny the Petition outright.

The Intervenors have expended considerable time and resources scrutinizing and conclusively refuting the case that OGC has presented to the Commission, and Intervenors have built a discovery record establishing that the Petition must be denied. It would be unfair to the Intervenors and the Commission to allow OGC to yank away the case it has presented at the eleventh hour, now that its utter lack of merit has been exposed, only to force the parties to re-litigate key aspects of the Petitioner's case. The Commission should deny the Intervenor's request for a continuance and deny and dismiss the Petition based on OGC's own admission that it has failed to substantiate the central allegations of its Petition and supporting testimony.

BACKGROUND

OGC filed this Petition in September 1999, seeking a hearing within 90 days. OGC had months to develop its case and to prepare and file its testimony. Petitioner filed its case with

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every evident intention of rushing it through to a speedy conclusion. In fact, when Intervenors asked the Commission to waive the 90-day rule to protect their due process rights in this proceeding, Petitioner vehemently opposed the waiver, insisting that the hearing be conducted forthwith.

As in the Duke case, the Petitioner here has relied on the testimony and economic modeling work of Dr. Dale Nesbitt for the very foundation of its case. Nesbitt's pre-filed direct testimony is 153 pages; he prepared and sponsored extensive exhibits supporting his assertions; and he filed extensive testimony purporting to rebut prefiled testimony filed by Intervenor Florida Power & Light (FPL).

Central to Nesbitt's testimony was his modeling of the FRCC region "with" and "without" the proposed OGC plant in order to demonstrate the ostensible benefits of, and need for, the proposed project. In his direct testimony, Dr. Nesbitt describes this modeling work in the following terms:

In evaluating the need for the Okeechobee Generating Project, my approach was to build a detailed nodal model of the FRCC region that represents physical flow possibilities from every generator to the grid, between every two points on the grid, and from every point on the grid to native load at that point on the grid, taking full account of the cost and capability constraints on the transmission system. By so doing, we are able to insert 550 MW at the Project site and calculate its effect nodally throughout the FRCC and contiguous systems, calculating the price reduction that it causes. By building a detailed nodal model of Florida, we are able to accurately assess not only the aggregate need in Florida for the Okeechobee Generating Project but its specific regional distribution and how that regional need proliferates through the FRCC region. This is particularly important for the Project because it is located in the southerly part of Florida where power is in greater demand. The nodal model we have developed tells us for example whether the Project displaces power flows that would otherwise have to flow into south Florida from more northerly parts of Florida or whether it is simply a net addition to south Florida generation and demand. It also tells us which MWh from which specific regional nodes are displaced out of the Florida system at which points in time by the entry of the Project at its node.

(Nesbitt Direct, pp. 64-65) (emphasis added). The balance of Nesbitt's testimony is predicated on his ostensible modeling of the impact of the insertion of the OGC proposed project into the FRCC region. This provides the sole support for his otherwise naked assertions about need.

This was made unmistakably clear in Nesbitt's rebuttal testimony to the direct pre-filed testimony of Dr. John H. Landon. There, Nesbitt states:

The Altos model explicitly and systematically compares every alternative against every other alternative individually and collectively and compares every alternative against every existing plant or other alternative as they affect the wholesale market in the FRCC. . . . The Altos model contains every existing power plant in Florida and prospective new entry in Florida that might be assumed in a given scenario. The model then simulates competition among all existing and prospective plants that comprise that scenario.

(Nesbitt Rebuttal to Landon, pp. 1-2) (emphasis added). Nesbitt concludes his rebuttal by insisting that "the petition and exhibits, as well as my direct testimony, present a complete, proper, and correct comparative analysis – of Peninsular Florida with the Okeechobee Generating Project vs. Peninsular Florida without the Project." (*Id.*, p. 31) (emphasis added).

Only after fighting doggedly to gain access to the contents of Nesbitt's "black box" (his closely guarded proprietary model), were the Intervenor's able to determine that Nesbitt's expert modeling was nothing but a house of cards. Although Petitioner suggests in its Motion that Altos personnel "discovered" in the course of preparing for the hearing in this matter "several discrepancies" in the "input data upon which their analyses were based" (Motion, p. 3), in fact what happened was FPL's expert consultants discovered that Nesbitt and his colleague, Michael Blaha, had fundamentally misrepresented the modeling work that they performed in this case and brought this to light in prefiled testimony served during the pendency of Nesbitt's deposition. Petitioner now has been forced to make the remarkable admission that "the Okeechobee Generating Project itself" was omitted from the modeling runs that ostensibly compared the

FRCC market “with” the OGC project against the same market “without” the OGC project, and that Nesbitt failed to reflect accurately numerous other aspects of planned and actual capacity in the FRCC region. There is every reason to believe that these fundamental flaws would never have been identified without the active participation of the Intervenors in this litigation.

ARGUMENT

This is not a case where Petitioner or any other party has not had sufficient time to prepare its case for trial. Rather, this is a situation where discovery has exposed that Petitioner has no case and seeks a continuance to go out and find one. Petitioner unequivocally alleged that it had conducted certain basic analyses leading to very specific and extravagant conclusions. These allegations have now been admittedly exposed as false. Treating this as a mere distraction, Petitioner proposes that the Commission suspend this docket so that Petitioner’s experts can conduct modeling runs that differ fundamentally from the worthless runs conducted to date, proceeding from the foregone conclusion that these results will inevitably support the conclusions already reached. Put another way, having arrived at ostensibly unbiased, expert opinions about the viability of the proposed project on the basis of admittedly defective modeling work, Nesbitt now will set out to support those pre-conceived conclusions with new and assertedly even more impressive and unbiased modeling work. Merely to state this proposition is to expose its absurdity.

The process has worked the way it should. By permitting the Intervenors to participate in this docket, the Commission has forced the true facts out into the open, and the Commission now has the ability to dispose of the Petition on its merits. The Commission should not reward the Petitioner’s failure of proof with an invitation to back fill to create a case where none now exists.

In support of its motion, Petitioner relies upon Edwards v. Pratt, 335 So. 2d 597 (Fla. 3rd DCA 1976) and In Re: Adoption of Numeric Conservation Goals, Dockets Nos. 971004-EG, 971005-EG, 971006-EG, and 971007-EG, Order No. PSC-99-0511-PCO-EG (March 11, 1999). Petitioner's reliance on these decisions is misplaced. In Edwards, the Third District held that the trial court had acted within its discretion in denying a continuance, despite the fact that the moving party had only recently retained new legal counsel, and in the Conservation Goals docket, the Prehearing Officer granted LEAF's motion to extend the discovery schedule so that LEAF would have adequate time to review and respond to filings made by utilities. In the instant case, the moving party is the Petitioner itself, and Petitioner does not seek or need time to respond to filings made by other parties. To the contrary, Petitioner seeks a continuance to develop support for its own defective filings, which is grounds to deny the petition, not to continue proceedings that Petitioner should not have initiated in the first place.

WHEREFORE, FPC respectfully requests that the Commission deny Petitioner's motion and dismiss and deny the Petition on its merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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