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ORIGINAL
FILE COPY

August 13, 1990

Mr. Steve Tribble
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399

RE: DOCKET NO. 900004-EU

Dear Mr. Tribble:

Enclosed please find the original and fifteen (15) copies of Florida Power & Light Company's Motion For Clarification Of Order No. 23235 in the above referenced docket.

Respectfully submitted,

Matthew M. Childs, P.A.

MMC/eg

cc: All Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Planning Hearings on Load Forecasts, Generation Expansion Plans and Cogeneration Pricing for Peninsula Florida's Electric Utilities	DOCKET NO. 900004-EU FILED: AUGUST 13, 1990

MOTION FOR CLARIFICATION OF ORDER NO. 23235

Florida Power & Light Company ("FPL"), hereby files this its Motion For Clarification of Order No. 23235 with respect to the fourth and fifth issues addressed by Order No. 23235 or. In support of this Petition, FPL states:

1. Florida Power & Light Company is an electric utility subject to the jurisdiction of this Commission pursuant to Chapter 366, Florida Statutes.

2. The address of Florida Power & Light Company's general office is 9250 West Flagler Street, Miami, Fl. 33174.

3. FPL's substantial interests will be adversely affected by the decision on issues four and five as addressed by Order No. 23235 because:

a) Essential to the ability to adequately complete the generation expansion planning process and in fact have adequate generating capacity available when needed is the predictability of at least the procedures and criteria to be applied by this Commission in evaluating whether to approve

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contracts negotiated with qualifying facilities for the provision of firm energy and capacity.

b) Equally important is the presence of procedures and criteria as well as rules of this Commission which are applied in such a way as not to frustrate the ability to obtain viable qualifying facility generating capacity or to require electric utilities to purchase more generating capacity than required as a result of potentially vague, contradictory, and unnecessary statements of policy.

c) As will be addressed in greater detail below, the discussion by the Commission in Order No. 23235 with respect to issues numbers four and five reflect potentially vague and contradictory statements as to the procedures and evaluation criteria to be applied to negotiated and standard offer contracts between electric utilities and qualifying facilities. This will adversely affect FPL's substantial interests as detailed in this paragraph.

4. <u>The Potential Uncertainty Unnecessarily Created by Issue No. 4.</u>

The subject addressed by Issue No. 4 is important to defining both the obligation of electric utilities to purchase

firm energy and capacity from qualifying facilities and the standards that will be applied by this Commission in evaluating whether negotiated agreements for those firm purchases will be approved. FPL submits, respectfully, that there should be no cloud of uncertainty.

In view of the fact that the Commission previously ruled that both negotiated and standard offer contracts "counted toward" the subscription limit (Order No. 22061 dated October 17, 1989), it should follow that a subscription limit would not prohibit the negotiation and subsequent Commission approval of negotiated contracts; unfortunately, the discussion in Order No. 23235 addressing Issue No. 4 suggests, inconsistently with the scope of the issue posed, that certain negotiated contracts might not be "counted toward" the subscription limit and, that the criteria to be applied in approving such contracts will be different.

This discussion in Order No. 23235 creates potential uncertainty by using the vague term "negotiated against" as the standard to identify negotiated contracts that "count toward" the subscription limit and by stating that the current approval criteria for such negotiated contracts do not apply.

There are at least two potential arrangements that may, due to the vagueness of the term "negotiated against", lead to the contention that the subscription limit does not apply to a negotiated contract. The first is a price basis or structure

different than that associated with the current designated statewide avoided unit. The second is a contract for an in-service date for the QF generating unit earlier than the in-service date of the current statewide avoided unit. Neither of these arrangements should be the basis for contention that a negotiated contract was not "negotiated against" the current statewide avoided unit.

As to the first arrangement, FPL would point out that at least on three recent occasions the Commission has directed utilities and qualifying facilities not to rely on the costing parameters associated with the current statewide avoided unit. For example, in Order No. 22341, entered in the Annual Planning Hearing Docket No. 890004-EU and cited with approval in Order Nos. 23079 and 23080, the Commission stated:

> By this finding, we overrule those previous decisions in which we held that in qualifying facility (QF) need determination cases as long as the negotiated contract price was less than that of the standard offer and fell within the current MW subscription limit both the need for and the cost-effectiveness of the QF power has already been proven. See: In re: Petition of AES Cedar Bay, Inc. and Seminole Kraft Corporation for determination of need for the Cedar Bay Cogeneration Project (AES), Order No. 21491, issued on June 30, 1989. In so doing we take the position that to the extent that a proposed electric power plant constructed as a QF is selling its capacity to an electric utility pursuant to a standard offer or negotiated contract, that capacity is meeting the needs of the purchasing

> utility. As such, that capacity must be evaluated from the purchasing utility's perspective in the need determination proceeding, i.e., a finding must be made that the proposed capacity is the most cost-effective means of meeting purchasing utility X's capacity needs in lieu of other demand and supply side alternatives.
>
> We recognize that QFs which are solid waste facilities may be in a different category than other QFs by virtue of Section 377.709, Florida Statutes. So that while it may be appropriate to "automatically" approve the need for a solid waste facility, it is not for other units which will burn oil or natural gas as their primary fuel. In reversing our position on the use of planning hearing decisions in QF need determination applications we have been persuaded by several arguments. First, that the current standard offer is based upon a statewide avoided unit, rather than individual utility avoided units, necessarily causing a mismatch between the prices paid to cogenerators and the price of the unit being avoided by the utility purchasing the power. So that even if one assumes that all cogenerated power is "needed", the finding that cogenerated power is the most cost-effective means of satisfying that need does not necessarily follow. This problem is not corrected by the designation of a utility planning the statewide avoided unit unless it is the designated utility which is purchasing the power.

The consequences of not applying the subscription limit to negotiated contracts using costing parameters different than those associated with the avoided unit would be bizarre. If different costing parameters (those associated with the utility's own needs and costs) were not used, then there could

be no "need determination" found for the facility. Thus, the facility would "count toward" the subscription limit but the facility could not be built.

As to the second arrangement, that is an in-service date for the QF generating unit earlier than the in-service date for the current designated statewide avoided unit, reference should be made to Rule 25-17.083(3)(a). That Rule does not prohibit a generating facility contracted for under a standard offer contract from having an in-service date before the in-service date for the avoided unit. What is prohibited is an in-service date later than that of the avoided unit.

FPL submits that the use of the term "negotiated against" should be eliminated from the discussion of which contracts with QFs are subject to the subscription limit and subject to the current approval criteria for negotiated contracts. This unintended potential uncertainty may be eliminated by answering the question posed by Issue No. 4 with the word "no" and a deletion of the sentence containing the words "negotiated against".

As to the last sentence of the discussion addressing Issue No. 4 in Order No. 23235, FPL would submit that it is simply wrong if it is intended to suggest that evaluation criteria and costs for the evaluation are different for contracts for units with an in-service date later than the designated statewide avoided unit. Order No. 22341 makes it

clear that all contracts should and will be evaluated using criteria and costs different than those associated with the statewide avoided unit.

5. <u>The Potential Uncertainty Created by Issue No. 5</u>

The discussion in Order No. 23235 addressing Issue No. 5 is similarly inappropriate because of vagueness. It says in part:

> ...[w]e find that the subscription limits ... and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be judged against each utility's own avoided costs.

The discussion addressing Issue No. 5 can only be consistent with Order Nos. 22341, 23079 and 23080 if the term "any contract" means negotiated and standard offer contracts and it is recognized that all contracts whether "outside these boundaries" or not will be so judged.

WHEREFORE, FPL hereby files this Motion for Clarification of Order No. 23235 to eliminate the potential uncertainty it may create.

Respectfully submitted,

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Attorneys for Florida Power
& Light Company

By:
Matthew M. Childs, P. A.

CERTIFICATE OF SERVICE
DOCKET NO. 900004-EU

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion For Clarification Of Order No. 23235 has been furnished to the following individuals by Hand Delivery or U. S. Mail on this 13th day of August, 1990.

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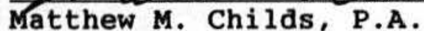

Matthew M. Childs, P.A.