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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Petition of Florida Power)
& Light Company for inclusion of the)
Scherer Unit No. 4 purchase in rate)
base, including an acquisition)
adjustment)
_____)

DOCKET NO. 900796-EI
FILED: January 9, 1991

STATEMENT OF ISSUES AND POSITIONS

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, submit the following statement of issues and positions:

STATEMENT OF BASIC POSITION:

In spite of the utility's statements to the contrary, the real purpose of this case has been to provide FPL with assurances that, if it were to purchase Scherer Unit No. 4 from Georgia Power Company, the Commission would allow a prudently incurred acquisition adjustment. FPL's attempt to bootstrap a request for explicit approval of the purchase itself has been shown to be both premature and unsuccessful. The letter of intent on which the case was based, as supplemented at hearing, lacks the detail and legal significance to quantify or justify a \$615 million commitment of capital.

There is no opposition to the purchase per se. The hearing was held on an expedited basis so FPL could explain how it decided the opportunity to buy Scherer Unit No. 4 was a good deal. But FPL

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constructed a house of cards. The need for an IGCC unit in 1996 was presumed, not proven. A 30-year UPS contract for Scherer Unit No. 4 was asserted to be superior to the IGCC without explaining how the UPS proposal was chosen as the best alternative under the RFP. The purchase was then portrayed as the best option because it was purportedly more cost-effective than a UPS contract. FPL's analyses were flawed, however. UPS was actually less expensive. Faced with this realization, FPL suddenly contended the UPS was actually saddled with an additional \$128 million of speculative costs for acid rain compliance.

The record shows the UPS option to be more cost-effective. However, since the RFP process was not concluded, results from negotiations for a final contract are unknown. Moreover, other supply-side options or demand-side alternatives might outshine both the UPS and the IGCC. The Commission simply does not know enough from the record of this case to reach an informed decision. The Commission should either deny FPL's petition or declare that it is premature at this time to approve a \$615 million purchase without seeing binding definitive agreements and considering all reasonable alternatives. A decision is not required until June, and the record reflects that delay reduces the costs to both FPL and its customers.

FACTUAL ISSUES:

Issue 1: Should the difference between FPL's purchase price and Georgia Power's net original cost of Scherer Unit 4 be given rate base treatment as an acquisition adjustment on a pro rata basis consistent with the phased purchase of the unit?

Public Counsel's Position: No. The difference between FPL's purchase price and Georgia Power's net original cost should not be recognized as an acquisition adjustment because FPL has been unable to establish that the purchase price is reasonable. A proper acquisition adjustment cannot be quantified because other options available to FPL, particularly the UPS response to the RFP with a starting date of 1996, appear to be less costly. But even the UPS costs reported by the utility appear excessive. If FPL purchases Scherer Unit No. 4, it should be allowed an acquisition adjustment equal to the difference between its lowest cost alternative and Georgia Power's net original cost consistent with the timing of that alternative.

Issue 2: Does FPL, as an individual utility interconnected with the statewide grid, exhibit a need for the additional capacity provided by Scherer Unit 4?

Public Counsel's Position: No. FPL has not demonstrated a need for additional base load generation in 1996. Alternatives to a 1996 IGCC unit, therefore, cannot be accepted as reasonable just because they are estimated to be less costly than that unit. Even if it is accepted that base load generation is needed in 1996, UPS out of Scherer Unit No. 4 appears to be less costly than the purchase option.

Issue 3: Is the capacity to be provided by the purchase of Scherer Unit 4 reasonably consistent with the needs of Peninsular Florida, taking into consideration timing, impacts on the reliability and integrity of the Peninsular Florida grid, cost, fuel diversity and other relevant factors?

Public Counsel's Position: No. FPL's own analyses demonstrate that additional capacity is not needed until 1996. FPL has argued that the purchase makes it possible to obtain short-term capacity and energy to offset revised projections of increased load growth in 1991 and the outage at Turkey Point Units Nos. 3 & 4. The revised projections of load growth, however, were based on expected reductions in electricity prices. With Iraq's invasion of Kuwait, prices have instead increased. Price elasticity should reduce consumption. FPL appears to be within reliability standards without the early purchase of Scherer Unit No. 4. Furthermore, the record does not establish that FPL could not obtain short-term capacity and energy from the Southern Company or others without agreeing to purchase Scherer Unit No. 4.

Issue 4: How will the proposed purchase of Scherer Unit 4 affect the reliability and integrity of FPL's electric system?

Public Counsel's Position: The purchase of Scherer Unit No. 4 will reduce FPL's ability to make economy purchases until 1997 when the third 500 kv transmission line is projected to be in service.

Issue 5: How will the proposed purchase of Scherer Unit 4 affect the adequacy of the fuel diversity for FPL's system?

Public Counsel's Position: The purchase of Scherer Unit No. 4 will improve FPL's fuel diversity, just as UPS out of that unit or any other non-oil-fired alternative would.

Issue 6: Has FPL reasonably considered alternative supply side sources of capacity?

Public Counsel's Position: No. FPL's consideration of alternatives has not been reasonable for two reasons. First, FPL assumed the Commission would find a need for an IGCC unit in 1996 without developing any record support for the assumption. Secondly, FPL's comparison of the purchase versus Scherer Unit No. 4 in a UPS configuration was performed incorrectly. The UPS had a lower cumulative present value revenue requirement and offered the same non-cost-based benefits as the purchase. However, because the RFP process did not proceed to the negotiation stage, the final cost of the UPS option is not known. Moreover, other supply-side alternatives such as peaking units and standard combined-cycle units have not been considered at all.

Issue 7: Does FPL's power supply plan reasonably consider the ability of conservation or other demand side alternatives to mitigate the need for the capacity represented by the purchase of Scherer Unit 4?

Public Counsel's Position: No. FPL has not provided a record basis to give an affirmative answer. In particular, FPL has failed to account for the increased value of demand-side alternatives expected to follow from recent amendments to the Clean Air Act.

Issue 8: Is the purchase of Scherer Unit 4 the most cost-effective means of meeting FPL's capacity needs, taking into account risk factors that are part of the cost-effectiveness analysis?

Public Counsel's Position: No. UPS out of Scherer Unit No. 4 would be more cost effective and reduce FPL's risks by offering energy out of other units on the Southern System to meet a 90% availability factor. If FPL purchases the unit, risks can only be absorbed by the stockholders or ratepayers.

Issue 9: Will FPL be able to deliver electricity from Scherer Unit No. 4 to its load centers in the same time frames in which it is proposing to add investment to rate base?

Public Counsel's Position: Yes. FPL should be able to receive energy out of Scherer Unit No. 4 consistent with the proposed phase-in of the purchase.

Issue 10: If any additional transmission facilities and/or upgrades are required to accommodate the purchases of energy and capacity already under contract to FPL and the proposed Scherer purchase, what is the cost of such transmission facilities and/or upgrades and who will bear such cost?

Public Counsel's Position: It appears that neither additional facilities nor upgrades will be needed specifically to receive energy and capacity subject to existing contracts or for the purchase. However, FPL's petition suggests that additional transmission would be necessary, stating at page 5: "FPL's purchase of an ownership interest in Scherer is contingent upon obtaining definitive agreements for all aspects of transmission capability necessary to transmit FPL's share of the Unit output to FPL's service area." In Exhibit 15, page 2 of 10, expansion is listed under "conditions of sale." In Exhibit 5, FPL stated that the purchase would necessitate expansion of the Southern/Florida transmission interface. Although the physical capacity exists for existing contracts and the purchase, additional transmission capacity will be needed for reliability and economy interchange. Costs are not sufficiently quantified on the record of this proceeding.

Issue 11: Are the fuel supply and transportation costs presented in FPL's economic analysis for Scherer Unit 4 reasonable and prudent?

Public Counsel's Position: No. It is not reasonable to assume that FPL will be able to purchase coal at prices significantly below those obtainable by the Southern Companies. FPL's purported "strategy" has not been explained in detail or shown to be reasonable or feasible. In particular, FPL has not shown how it can implement its own strategy if the source of coal is subject to a majority vote with other co-owners and if FPL will only have "the right to go and request Georgia Power to incorporate [FPL's fuel supply] strategy into the bids they will seek for coal deliveries to Scherer 4." [Cepero, Tr. 373]

Issue 12: Does the schedule being followed by the Commission in this case afford all interested parties adequate opportunity to protect their interests?

Public Counsel's Position: No. FPL did not provide detailed supporting documentation with its petition and testimony. Intervenors had to elicit even rudimentary background information through discovery, but testimony had to be filed before discovery responses were received. The Commission allowed expert witnesses to address all issues raised in the company's direct case, but those witnesses and the Commission itself were forced to react at hearing to extensive spreadsheets and data compilations that should have been subject to scrutiny before the hearing. The absence of definitive agreements prevented thoughtful analysis of critical aspects of the transaction. The requirement for expedited consideration was imposed by FPL and could have been waived by it. Since the critical date under the letter of intent is June 30, 1991, six months after the definitive agreements were to be signed, there was no apparent need to proceed to hearing on letters of intent that would be superseded before the Commission would take a final vote.

Issue 13: What effect, if any, does the Scherer Unit 4 purchase have on the Southern/Florida interface?

Public Counsel's Position: The purchase will prevent FPL from receiving additional economy and reliability interchange until 1997 when the proposed third 500 kv line is scheduled to be in service. All indications are that the third line would have been built whether or not FPL agreed to purchase Scherer Unit No. 4.

Issue 14: Under what circumstances should the portion of the purchase price of assets in excess of book value (the "acquisition adjustment") be given "rate base treatment," such that amortization

may be included in operating expenses and the unamortized acquisition adjustment may be included in rate base?

Public Counsel's Position: Traditional concerns about acquisition adjustments are not present in this case. This is not a situation in which customers served by an asset will find rates increasing simply because the asset has been sold to someone else. As such, an acquisition adjustment would not be objectionable in this case if FPL had been able to establish that its purchase of Scherer Unit No. 4 was in fact prudent and the most cost-effective alternative available.

LEGAL ISSUES:

Issue 15: Should the Commission address in this docket transmission access disputes that may arise from the Scherer Unit 4 purchase?

Public Counsel's Position: No position is taken on this issue.

Issue 16: Is the purchase of an undivided ownership interest in Scherer Unit No. 4 a reasonable and prudent investment necessary to enable FPL to meet its forecast 1996 system load requirements?

Public Counsel's Position: No. On the record of this proceeding, FPL's purchase of Scherer Unit No. 4 beginning in 1991 has not been shown to be the most cost-effective alternative available to the utility to meet its forecast 1996 system load requirements.

Issue 17: Should FPL be authorized to include the purchase price of its undivided share of Scherer Unit 4, including the acquisition adjustment, in rate base?

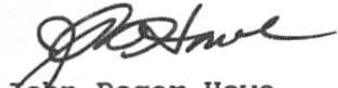
Public Counsel's Position: No. The Commission does not have an adequate evidentiary basis to conclude that the purchase of Scherer Unit No. 4 beginning in 1991 is prudent and in the best interest of FPL's customers. In particular, the expired letter of intent, as supplemented, does not provide an adequate legal basis for the Commission to meet its obligation under Section 366.06(1), Florida Statutes (1989), to investigate and determine the actual legitimate costs of the purchase to FPL. As such, it would be premature to allow FPL to include costs in rate base without knowing what those costs are and without knowing whether all reasonable alternatives have been properly evaluated.

Issue 18: In the event FPL's petition is approved, should the Commission impose guarantee requirements on the electrical output of the unit and delivery to FPL and limit the amount of total investment, operation and maintenance expenses and fuel costs that will be allowed for recovery through rates?

Public Counsel's Position: Yes. If the Commission should go so far as to allow the purchase in rate base with an acquisition adjustment at this time, FPL should be allowed to recover no more than it would have recovered for the most cost-effective alternative. At this time, that appears to be Scherer Unit No. 4 under the UPS response to the RFP beginning in 1996. However, even the cost of this proposal should be adjusted downward to recognize that the negotiation stage of the RFP process was never conducted and to adjust fuel costs downward to recognize that alternate energy and Schedule R energy would have been available under UPS.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 900796-EI

I HEREBY CERTIFY that a true and correct copy of the Citizens' STATEMENT OF ISSUES AND POSITIONS, has been furnished by U.S. Mail or by *hand-delivery to the following on this 9th day of January, 1991.

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