

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
	)	ORDER NO. 24165
	)	ISSUED: 2--26-91
	)	
	)	
	)	

The following Commissioners participated in the disposition of this matter:

CHAIRMAN, THOMAS M. BEARD  
 MICHAEL McK. WILSON  
 BETTY EASLEY  
 FRANK S. MESSERSMITH

Pursuant to notice, the Florida Public Service Commission held hearing in Tallahassee, Florida on December 12, 13, and 14, 1990.

## APPEARANCES:

MATTHEW M. CHILDS, ESQUIRE, JOHN T. BUTLER, ESQUIRE, and GREGORY N. ANDERSON, ESQUIRE, Steel, Hector and Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1804

On behalf of Florida Power & Light Company

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On behalf of Office of Public Counsel

JOSEPH A. McGLOTHLIN, ESQUIRE and VICKI GORDON KAUFMAN, ESQUIRE, Lawson, McWhirter, Grandoff and Reeves, 522 East Park Avenue, Suite 200, Tallahassee, Florida 32301

On behalf of Nassau Power Corporation

FREDERICK J. MURRELL, ESQUIRE, Schroder & Murrell, The Barnett Center, Suite 375, 1001 Third Avenue West, Bradenton, Florida 34205

On behalf of Coalition of Local Governments

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On behalf of Florida Municipal Power Agency

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On behalf of the Commission Staff

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Office of the General Counsel, 101 East Gaines Street,  
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Counsel to the Commissioners

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S  
PETITION TO INCLUDE THE SCHERER UNIT NO. 4  
PURCHASE IN RATE BASE, INCLUDING  
ACQUISITION ADJUSTMENT

BY THE COMMISSION:

BACKGROUND

This docket was initiated by Florida Power and Light Company (FPL) on September 28, 1990, when it filed a Petition of Florida Power & Light Company For Inclusion of the Scherer Unit No. 4 Purchase in Rate Base, Including an Acquisition Adjustment. FPL proposed to purchase 76.36% (646 MW) of Unit No. 4 of the Robert Scherer Generating Plant (Scherer), a coal-fired generating unit located in Monroe County, Georgia. The total purchase price, as reflected in a letter of intent, is estimated to be \$615,504,000, which exceeds the depreciated book cost for the portion of the unit to be purchased by FPL by an estimated \$111,362,307.

The purpose of FPL's petition is to obtain the Florida Public Service Commission's (the Commission) prior approval to phase in FPL's share of the actual purchase price of the unit in rate base as FPL makes four installment payments. The installment payments are scheduled for January 1, 1991; June 1, 1993; June 1, 1994; and June 1, 1995. FPL did not, however, petition the Commission for any change in rates or charges to its customers.

When the Petition was filed, FPL was in the process of negotiating the purchase, and thus, there was no final purchase contract with Georgia Power Corporation (GPC) and the Southern Companies (Southern). Contract negotiations continued during and after the hearing. There was, however, a non-binding letter of intent entered into by GPC, Southern, and FPL which provided an estimated purchase price. The letter of intent was relied upon by FPL throughout the proceedings in this docket.

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The following parties filed notices of intervention or petitions for leave to intervene: the Office of Public Counsel (OPC), Nassau Power Corporation (Nassau), Coalition of Local Governments (CLG), and the Florida Municipal Power Agency (FMPA). All parties were granted permission to intervene in this docket. OPC, Nassau, and CLG opposed the inclusion of Scherer in rate base for various reasons.

The hearing was held on December 12, 13 and 14, 1990. All the parties participated and some presented evidence. All the parties, excluding FMPA, filed briefs and post-hearing statements of issues and positions.

In order to dispose of this Petition, we find it necessary to address three primary issues. The three issues are as follows:

1. Has FPL demonstrated that there is a need for the additional generation capacity that will be provided by Scherer?
2. Is the purchase of Scherer a reasonable and prudent investment?
3. Should the Acquisition Adjustment be given rate base treatment.

This docket also involves sub-issues that are subsumed by the abovementioned primary issues. All other issues raised in this proceeding and not specifically addressed herein are deemed unnecessary for the resolution of this case or have been considered and been found to be without merit. The following provides an analysis of both the primary and sub-issues.

#### NEED

By necessity, the Commission must make a determination of need for the additional capacity that will be provided by Scherer before a determination of prudence is made. While this is not a traditional need determination proceeding under section 403.519, Florida Statutes, the same type of elements that are taken into account in the more traditional proceedings were considered in this docket. We have analyzed those elements and the evidence demonstrates that FPL, as an individual utility interconnected with the statewide grid, has shown a need for the additional capacity that will be provided by Scherer.

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Reliability and Integrity

FPL asserts that its objective in its planning process was to provide adequate resources to reliably meet its customers' future demand for electric power in a cost-effective manner. To deal with unforeseen changes in conditions that might affect these objectives, FPL uses diversity and flexibility in its planning process. FPL uses two reliability criteria commonly accepted in the utility industry to determine the quantity of resources to maintain system reliability: (1) summer peak reserve margin of 15%, and (2) a maximum loss-of-load probability (LOLP) of 0.1 days per year. FPL maintains that it needs approximately 5,400 MW of resources to satisfy these criteria and to meet its projected demand through 1997. The following table reveals how FPL plans to satisfy its projected demand:

Demand Side Management Programs	1,137 MW
Repower Lauderdale/Martin No. 3 and 4	1,342 MW
Southern Company UPS	911 MW
QF approved/to be signed	590 MW
QF additional projected	600 MW
IGCC Martin No. 5 and 6	768 MW
Total	5,286 MW

The Petition requests a phased in approval of the 646 MW Scherer purchase in the following manner:

<u>Phase in Date</u>	<u>MWs</u>	<u>Projected Reserve Margin</u>
6-1-91	150	16.3%
6-1-93	266	22.1%
6-1-94	140	23.0%
6-1-95	90	23.2%
Total	646 MWs	

The result of the Scherer purchase will be to defer the first Martin No. 5 IGCC unit (this, in effect, will remove the Martin IGCC Unit out of the 1991-97 time frame) and subsequent facilities. That would result in avoiding the construction of one 646 MW IGCC.

This generation expansion plan was initially introduced in Docket Nos. 890974-EI and 890973-EI. In Order No. 23080, the prehearing officer ruled that no factual findings would be made in the above referenced docket regarding Martin Units 5 and 6 until FPL's request for power supply proposals (RFP) process was completed.



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The RFP process began in June, 1989 and FPL received 34 proposals totalling 10,793 MWs. The RFP process was eventually completed with the selection of the Scherer UPS option. However, upon comparing the Scherer purchase option with the Scherer UPS purchase, the discounted and full standard offer contracts, and the Martin IGCC units, the analysis demonstrates that the Scherer purchase is the most cost-effective alternative when taking into account emission credits and other non-quantifiable benefits. According to FPL, the phased purchase of Scherer will give it access to additional capacity to meet the need created in 1991 by the outage at Turkey Point Nuclear Station, and allow for flexibility in responding to changes in load conditions and/or construction requirements resulting from changes in conservation and qualifying facility forecasts that have occurred since FPL presented its expansion plan in Docket Nos. 890973-EI and 890974-EI. In summary, the evidence shows that the purchase of Scherer will allow FPL to maintain adequate system reliability and integrity.

#### QF Capacity

FPL's generation expansion planning process used in evaluating the Scherer purchase considered three sources of supply-side resources: qualifying facilities, purchased power, and new generating units. After demand-side activities have been incorporated, FPL's base expansion plan included 538 MW of qualifying facilities (QFs) that have signed contracts with FPL and have received Commission approval or for which they anticipate Commission approval. FPL's forecast document projects an additional 590 MW of QF capacity by 1997, which reflects FPL's best estimate of the number and total capacity of QFs that will be able to provide cost-effective power to FPL. FPL did not, however, include Nassau's 435 MW standard-offer contract in its generation expansion planning, while including the Indiantown Cogeneration project. The approval of the proposed Scherer purchase to meet a portion of FPL's 1996 need may possibly not accommodate Nassau's project, and consequently, Nassau argues that its project should be included in FPL's identification of QF facilities which will be available in 1996. We find, however, that questions concerning whether Nassau's project should be included in FPL's identification of QF facilities for 1996 are more appropriately reserved for a specific determination of need proceeding.

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### Demand Side Options

FPL has also demonstrated that a wide range of conservation or other demand-side alternatives, that would mitigate the need for the capacity represented by the purchase of Scherer, were adequately taken into consideration in its power supply plan. As part of FPL's capacity planning process, FPL includes cost-effective demand side programs. These programs are the first type of resources included in their capacity expansion plan and are considered well before any other type of resources are inserted into the plan.

Some of the intervenors expressed their concerns over FPL's treatment of demand side alternatives and their concerns were heightened by the passage of the 1990 Clean Air Act Amendments. However, prior to the opening of this docket, FPL prepared and submitted to the Commission an extensive demand side management plan comprising of 21 programs which were approved in Order Nos. 23560 and 23667, Docket No. 900091-EG. For example, in Appendix A, Order No. 23560, FPL reveals that it has implemented a Commercial/Industrial thermal storage program and are actively pursuing research and development projects for residential thermal storage systems and commercial or industrial stored water heating.

The impact of FPL's conservation programs, interruptible rates and residential load control has been forecasted at approximately 1317 MW through 1997. We find that this demonstrates that FPL's capacity expansion plan took into account conservation and other demand side alternatives.

### Fuel Diversity

The addition of 646 MW of coal fired power to FPL's capacity will also serve to enhance fuel diversity among its generation units, according to FPL. The purchase of the Scherer coal-fired unit will only constitute approximately 6% of FPL's total power mix but it will start reducing FPL's dependence on oil-fired units beginning in 1991.

### Cost Effective Alternatives

A comparison of the cumulative present values of different cost component for the different purchase options for Scherer power was presented by OPC during the hearing. Cost comparisons of Scherer purchase option and the standard offer options (with a 20% risk and without a risk) were also offered by FPL. [Note: In the

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discussion that follows, all numbers will be in thousands of dollars.] The comparisons revealed the following cumulative present value revenue requirements (CPVRR):

Scherer UPS (RFP) option: \$42,794,175  
Scherer purchase option: \$42,813,923  
Standard Offer option (with 20% risk): \$43,021,755  
Standard Offer option (without 20% risk): \$43,232,952

A comparison of these numbers reveals that the Scherer UPS option is the most cost-effective option in that it offers a savings of \$19,748 over the next best option: the Scherer purchase option.

The CPVRR comparison offered by OPC, however, was not complete in that it did not take into consideration Scherer's SO<sub>2</sub> emission allowances. As previously mentioned, under the 1990 Amendments to the Clean Air Act, FPL will be entitled to Unit 4's share of emission allowances that are designated to the entire Scherer facility. FPL asserts that under the Scherer purchase option, it will be responsible for \$18,213 in SO<sub>2</sub> emission allowance costs. Under the Scherer UPS option, it will be responsible for \$131,067 in SO<sub>2</sub> emission allowance costs. When these elements are considered in the cost comparison, the CPVRR for the Scherer purchase option is \$93,106 less than the CPVRR for the UPS option. Therefore, we find that the Scherer purchase is the most cost-effective alternative when taking into account SO<sub>2</sub> emission credits.

#### Strategic Concerns

Scherer's SO<sub>2</sub> emission allowances is just one of the strategic concerns that we were asked to consider when making this need determination. Other strategic concerns or benefits not specifically quantified in the record were also considered. Some of the additional benefits claimed by FPL were:

(1) that the joint participation by JEA in the purchase of Scherer Unit 4 paved the way for additional transmission interface capability from JEA. This is important since JEA owns the remaining transmission capacity currently available on the Southern/Florida interface.

(2) facilitation of the expansion of the Southern/Florida transmission interface.

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(3) assuming the unit life will extend beyond thirty years, FPL will not have to replace the capacity, as it would under the UPS arrangement.

While these elements may not be quantifiable, they appear to provide benefits to FPL, its ratepayers, and Florida's general body of ratepayers. Thus, they should be considered when determining whether there is a need for the Scherer Unit.

#### Associated Facilities

No additional transmission facilities or upgrades will be needed in order to receive energy and capacity subject to existing contracts or for the Scherer purchase. FPL asserts that there is sufficient interface capacity to transmit all Scherer power into Florida. OPC concurs with FPL's assertion.

Based on the foregoing analysis, we find that the capacity that will be provided by the purchase of Scherer is reasonably consistent with the needs of Peninsular Florida when taking into consideration timing, impacts on the reliability and integrity of the Peninsular Florida grid, cost, fuel diversity, and other relevant factors.

#### ACQUISITION ADJUSTMENT

FPL has requested that we approve as a part of the purchase price of \$615,387,000 an acquisition adjustment in the amount of \$111,362,000, which represents the difference between FPL's purchase price and the seller's net original cost of the unit. The Commission policy has been to deny such requests unless the utility could demonstrate extraordinary circumstances were present or prove the transaction results in a net benefit to the ratepayers. See, e.g., Re: Petition of Gulf Power Company for Approval of "Tax Savings" Refund for 1988, Docket No. 890324-EI, Order No. 23536 (FPSC, Sept. 27, 1990).

In general, the intervenors do not take issue with the inclusion of an acquisition adjustment in the purchase price but, object to the approval of the purchase. Our view is that the amount in question does not appear to be an ordinary acquisition adjustment. We find the amount in question should be evaluated based on whether the purchase of Scherer is necessary, reasonable, and the most cost-effective alternative. Because we have

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previously made those findings, we find the amount of \$111,362,000 should be included in rate base on a pro rata basis consistent with the phased purchase of the unit.

#### PRUDENCE

A principal issue in this proceeding is whether the purchase by FPL of Scherer is reasonable and prudent. Intervenors would have the Commission reject any finding of prudence. They do not believe the record supports such a finding. According to the intervenors, absent a final contract a finding of prudence is not warranted.

In resolving this issue, we note that in an earlier portion of this order we found that the purchase of the unit appears to be the most cost-effective alternative available to FPL to meet its forecasted 1996 system load requirements. Accordingly, based on this finding and FPL's representation that the final contract to purchase the unit will not differ significantly from the letter of intent and other evidence presented by FPL concerning this transaction, we find that the purchase by FPL of Scherer is a reasonable and prudent investment necessary to enable FPL to meet its forecasted 1996 system load requirements. Absent a showing that the final contract and letter of intent vary to a significant degree, we do not intend to relitigate this issue in any future proceeding. Thus, the new plant will be placed in FPL's rate base and deemed to be a prudent investment, with rates allowed to recover the investment in the next applicable proceeding. Issues we are leaving open for future proceedings involving the Scherer purchase and its costs other than a significant variance from the purchase price are O & M expenses, cost of capital and rate design.

#### Competent and Substantial Evidence

Having reviewed the record in this proceeding, we find that there is competent and substantial evidence to support our findings.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Petition For Inclusion of the Scherer Unit No. 4 Purchase in Rate Base, Including an Acquisition Adjustment is hereby approved.



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By ORDER of the Florida Public Service Commission, this  
26th day of FEBRUARY, 1991.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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#### APPENDIX A

#### Rulings on Proposed Findings of Facts

A. The following constitutes the Commission's specific rulings pursuant to section 120.59(2), Florida Statutes (1989), and Rule 25-22.059(1) & (3), Florida Administrative Code, on the Proposed Findings of Fact submitted by the Office of Public Counsel.

1. FPL's petition referred to Section 366.076(1), Florida Statutes, which is a procedural statute permitting limited proceedings, but did not identify any substantive statutory authority for the Commission to give prior approval for the purchase of Scherer Unit No. 4.

This statement is clearly not a finding of fact but rather a conclusion of law. Nevertheless, we will address it. We concur in part and disagree in part with this conclusion. Section 366.076(1), Florida Statutes, is not solely procedural in nature. Section 366.076(1) is also substantive in that it also authorizes the Commission to act. We agree with OPC that FPL did not identify any substantive statutory authority for the Commission to give

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prior approval for the purchase of Scherer Unit No. 4. Nevertheless, it is clear that the Commission has the authority pursuant to Section 366.06(1), Florida Statutes.

2. FPL's petition and testimony asserted that the Commission could approve the purchase of Scherer Unit No. 4 based on a letter of intent dated July 30, 1990. [Waters, Tr. 978]

Accepted

3. The original letter of intent was used by FPL to evaluate the economic and strategic value of the purchase and to file FPL's case for Commission approval of the purchase. [Cepero, Tr. 309]

Accepted

4. The letter of intent on which FPL's case is based expired on December 31, 1990. [Exhibit 13] Definitive agreements will supersede the terms of the letter of intent. The definitive agreements have not been introduced into evidence or subject to review in this proceeding. The Commission's vote on February 5, 1991, will be based on a record compiled with reference to a letter of intent, with supplements, that has since expired.

Accepted

5. The original letter of intent was supplemented by a letter dated September 13, 1990. FPL did not identify this supplement or include it in its original filing even though the utility's petition was not filed until September 28, 1990. [Woody, Tr. 37-39; Cepero, Tr. 322; Exhibit 3]

Accepted

6. The original letter of intent was also supplemented by a letter dated December 10, 1990, which had the effect of increasing the costs to FPL of purchasing Scherer Unit No. 4 and reducing the differential between the purchase and the UPS response to the capacity RFP. [Cepero, Tr. 322; Exhibits 2 and 22]

Accepted

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7. The December 10, 1990, supplement to the letter of intent requires FPL to compensate the Southern Company for its costs of construction for the third 500 kv transmission line, but those costs will not be known until the definitive agreements are negotiated and executed. [Woody, Tr. 60, 146-47, 150; Exhibit 2, page 4]

Accepted

8. The original letter of intent contemplated a separate fuel supply agreement but the parties have decided instead to incorporate that agreement within the purchase and operating agreements. [Woody, Tr. 134; Cepero, Tr. 327, 368]

Accepted

9. The December 10, 1990, supplement to the letter of intent provided for the Southern Companies to use best reasonable efforts to meet a 90% availability factor with supplemental energy and provide alternate energy during the transition period before FPL and JEA assume complete ownership.

Accepted

10. The letter of intent, as supplemented, does not lay out all the terms and conditions that FPL will be subject to or the costs FPL will actually incur if it purchases Scherer Unit No. 4.

Accepted

11. FPL has calculated that a 1% improvement in availability is worth approximately \$20 million or \$22 per kw but the penalty to Georgia Power pursuant to the December 10, 1990, supplement to the letter of intent will only be \$150,000 for each 1% reduction ( to be applicable after the second closing date). [Cepero, Tr. 380-81; Exhibit 2, page 2, paragraph 3]

Accepted

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12. Pursuant to paragraph 21 of the original letter of intent, the letter of intent may not be construed as being legally binding on the parties. [Woody, Tr. 145; Exhibit 2; Exhibit 13]

Accepted

13. The requirement in the letter of intent that the Commission must approve the transaction was imposed by FPL and can be waived by the utility. It is not considered by FPL to be a "no-deal" requirement. [Woody, Tr. 81-82]

Accepted

14. Although FPL seeks expedited consideration in this case, the record indicates that the costs to FPL and its customers are less the longer a decision is delayed. This is true at least until the June 30, 1991, deadline for the first closing. [Waters, Tr. 575-78; Exhibit 27]

We concur with this finding while pointing out that FPL made some gross assumptions that none of the other terms of the agreement would change. FPL assumed that they could substitute UPS power for a Scherer capacity payment after June 1991, and that the transmission arrangement with JEA is in place, and all other arrangements would remain.

15. FPL does not require additional capacity until 1996. [Woody, Tr. 23] The purchase of Scherer Unit No. 4 is intended to address a 1996 need. [Waters, Tr. 573, 1042]

We disagree with this first finding. Based on LOLP analysis in which only the contracted and approved resources were included, FPL needs approximately 200 MW of additional capacity by 1995. [Tr. 468] We concur with the second finding.

16. The Commission has never determined the need for additional base load generation generally or an IGCC unit specifically on FPL's system for an in-service date of 1996. [Wright, Tr. 735; Bartels, Tr. 849, 860]

Accepted

17. FPL included the 1996 IGCC unit in its generation expansion plans solely for the purpose of establishing an "avoided cost"

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10. The letter of intent, as supplemented, does not lay out all the terms and conditions that FPL will be subject to or the costs FPL will actually incur if it purchases Scherer Unit No. 4.

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11. FPL has calculated that a 1% improvement in availability is worth approximately \$20 million or \$22 per kw but the penalty to Georgia Power pursuant to the December 10, 1990, supplement to the letter of intent will only be \$150,000 for each 1% reduction ( to be applicable after the second closing date). [Cepero, Tr. 380-81; Exhibit 2, page 2, paragraph 3]

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basis against which other alternatives could be evaluated. The IGCC simply served as a future option required to balance the demand/supply mix in FPL's studies. [Waters, Tr. 461; Bartels, Tr. 860]

We disagree with this finding of fact. FPL's first step in the planning process is to identify the amount of resources needed to maintain power supply system reliability. An expansion plan consisting entirely of FPL constructed generating units is then identified which form the basis for establishing an "avoided cost" against which all other alternatives can be evaluated. Demand side programs are introduced into the plan first, followed by qualifying facilities, then purchased power. Each of these resources is added to the plan to the extent it is available and cost-effective. Remaining needs are met through the addition of new generation capacity i.e. the 1996 IGCC unit. [Tr. 461-2, 466] The 1996 IGCC appeared in both the base plan and the final plan which includes a mix of supply and demand side alternatives.

18. The Electric Power Research Institute (EPRI) classifies the IGCC Technology Development Rating as "Demonstration" and its Design Cost Estimate Rating as "Preliminary." [Bartels, Tr. 849]

We agree with this finding of fact while pointing out that a number of IGCC units are in operation which are not as large as the 768 MW unit which FPL has identified.

19. FPL's petition and evidence assumed that the purchase of Scherer Unit No. 4 was economical because it was more cost effective than the Scherer Unit No. 4 UPS response to the RFP, which, in turn, was more cost effective than the 1996 IGCC unit. Such an analysis is meaningful only if FPL first demonstrated the need for the IGCC unit (in the absence of such alternatives), which was not done in this case. [Bartels, Tr. 858]

We agree with the first sentence of this finding of fact, but disagrees with the conclusion concerning whether FPL demonstrated a need for the IGCC unit. OPC's transcript reference does not support the above statements concerning FPL's demonstration of need for the 1996 IGCC unit.

20. FPL did not include Nassau Power Corporation's contract for 435 megawatts in its generation expansion plans. [Cepero, Tr. 316]

Accepted

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12. Pursuant to paragraph 21 of the original letter of intent, the letter of intent may not be construed as being legally binding on the parties. [Woody, Tr. 145; Exhibit 2; Exhibit 13]

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13. The requirement in the letter of intent that the Commission must approve the transaction was imposed by FPL and can be waived by the utility. It is not considered by FPL to be a "no-deal" requirement. [Woody, Tr. 81-82]

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14. Although FPL seeks expedited consideration in this case, the record indicates that the costs to FPL and its customers are less the longer a decision is delayed. This is true at least until the June 30, 1991, deadline for the first closing. [Waters, Tr. 575-78; Exhibit 27]

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We disagree with this first finding. Based on LOLP analysis in which only the contracted and approved resources were included, FPL needs approximately 200 MW of additional capacity by 1995. [Tr. 468] We concur with the second finding.

16. The Commission has never determined the need for additional base load generation generally or an IGCC unit specifically on FPL's system for an in-service date of 1996. [Wright, Tr. 735; Bartels, Tr. 849, 860]

Accepted

17. FPL included the 1996 IGCC unit in its generation expansion plans solely for the purpose of establishing an "avoided cost"

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21. Because of the cost of coal and overcapacity on the Southern System, Scherer Unit No. 4 operated at a 17% capacity factor in 1989. The low capacity factor was because Scherer Unit No. 4 under economic dispatch was not the economical source of energy to deliver to FPL under UPS commitments much of the time. [Woody, Tr. 53-54; Exhibit 4; Waters, Tr. 536-37]

Accepted

22. Approximately 50 megawatts of Scherer Unit No. 4 is in Georgia Power's retail jurisdictional rate base. [Woody, Tr. 93-94]

We concur with this finding while pointing out that Mr. Woody stated that: "It is my understanding that very little of Scherer Unit 4 had been allowed in the rate base, and I'm saying perhaps 50 MW". [Tr. 93-94]

23. FPL has not disclosed exactly how it concluded the UPS response was the best option under the RFP. [Wright, Tr. 726, 732-33, 754; Bartels, Tr. 865]

Accepted

24. FPL has not provided comparisons against other supply-side alternatives such as combustion turbines or standard combined-cycle generation. [Bartels, Tr. 859-60]

We disagree with this finding while pointing out that FPL previously performed this comparison in the Lauderdale Repowering and Martin Unit Nos. 3 and 4 need determination. The review of the results of FPL's planning process and the comparison of the economics of alternative means of meeting capacity needs is included in the testimony of FPL's witness Waters. [Tr. 461-471]

25. FPL has not provided the dollar impact or system reliability impact of the reduced ability to make other firm and economy purchases after the purchase of Scherer Unit No. 4 takes place.

We disagree with this finding as it is not supported by a transcript reference, and is not identified in the record.

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26. The proposed schedule to phase in the Scherer Unit No. 4 purchase does not correspond to specific capacity needs in specific years. [Waters, Tr. 618]

Accepted

27. The '90-'91 summer peak reserve margin of 17% calculated without the Turkey Point units is within FPL's reliability criteria which calls for a minimum summer peak reserve margin of 15%. [Waters, Tr. 464, 618-19] FPL's reliability standards, even with projections of increased short-term load growth and delayed QF capacity, are not violated before 1995-96. [Waters, Tr. 470]

We agree with the first finding of fact while pointing out that the winter reserve margin of 13% and the summer reserve margin of 17% includes the 800 MW of countermeasures of purchased power and other options to meet the need for the 1990-1991 period. [Tr. 618-19] We also agree with the second finding of fact.

28. JEA, as a municipal utility, receives benefits from early ownership of Scherer Unit No. 4 in the form of lower capital costs and freedom from income taxes that are not applicable to FPL as an investor-owned utility. [Cepero, Tr. 360]

Accepted

29. FPL has agreed to pay approximately \$953 per kw for Scherer Unit No. 4. FPL calculated a "break-even" amount of \$935 per kw in June 1990. [Cepero, Tr. 350; Exhibit 15]

We agree with this finding of fact while pointing out that this calculation is based on a series of assumptions, such as a modeled availability of 83% versus an expected availability of 85%, and assuming considerably higher O&M in the purchase option. [Exhibit 15]

30. FPL asserted that the purchase option was "the lowest cost," "economically superior," "most economically beneficial," and "the least cost alternative for that capacity need in '96 '97." [Woody, Tr. 19, 23, 158]

Accepted



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31. FPL's analyses that purported to show that the purchase of Scherer Unit No. 4 was less expensive on a present value basis than the UPS response to the RFP were done incorrectly. [Waters, Tr. 471; Exhibit 18 (Document 10)] The total system CPVRR for each of the four scenarios shown on Exhibit 21 should have been the same for the first four years, 1990-1993. [Waters, Tr. 570-72, 990; Bartels, Tr. 877, 882-83; Exhibit 30] The Scherer UPS case, however, was approximately \$3 million higher than the other three in 1991, \$11 million higher in 1992, and \$27 million higher in 1993. [Waters, Tr. 568-74; Exhibit 21, page 2, column 15; also Exhibit 19, page 4 of 6, column 12, and Exhibit 20, page 2, column 12]

We agree with this finding of fact, while pointing out that FPL identified additional benefits affecting their decision to purchase Scherer Unit No. 4. [Tr. 472]

32. The extent to which the error for earlier years in Exhibit 21 propagated through later years is unknown, but the system savings of \$15 million attributed to the purchase has to have been overstated by at least \$27 million, making UPS a better deal by no less than \$12 million. When the December 10, 1990, supplement to the Letter of Intent (which reduced the \$15 million by \$8.3 million) is considered, UPS is better by approximately \$20 million. [Bartels, Tr. 883; Exhibit 30]

We concur with this finding, while pointing out that the UPS savings of approximately \$20 million represents five one-hundredths of one percent of the total system CPVRR. [Exhibit 30]

33. Analyses provided by FPL show that it is less costly to the utility to delay acquiring additional capacity until 1996. [Waters, Tr. 573; Exhibit 21] If receipt of UPS is delayed until 1996, the UPS response to the RFP would provide savings of approximately \$79 million over the purchase of Scherer Unit No. 4 proposed by FPL. [Bartels, Tr. 874, 877, 883; Exhibit 30].

We concur with the first finding of fact, while pointing out that FPL's witness Waters indicated that it was not an option to purchase the Scherer unit and not take the early years prior to 1996. Mr. Waters also indicated that there is certain value in the earlier years which address the coverage of the Turkey Point unit dual outage and result in favorable long term economics. [Tr. 574] We also concur with the second finding of fact, while pointing out that OPC's witness Mr. Bartels discussed the various intangibles associated with purchasing the Unit, ultimately effecting the

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conclusions which will be reached concerning the long term economics. [Tr. 877-83] The \$79 million savings represents eighteen one-hundredths of one percent of the total system CPVRR. [Exhibit 30]

34. FPL's purchase of Scherer Unit No. 4 will require the utility to expend capital for capacity in years prior to the 1996 need for that capacity. [Woody, Tr. 29]

Accepted

35. FPL assumed in its analyses that it would be able to dispatch Scherer Unit No. 4 in 1991, even though Southern Companies reserved the right to dispatch the unit until 1995. [Waters, Tr. 592; Exhibit 2, page 3, paragraph 5]

We concur with this finding, while pointing out that FPL assumed for modeling purposes that the Company could dispatch the unit. This is a result of committing the unit and scheduling the energy in a manner very similar to dispatching the unit. [Tr. 592-93]

36. In its UPS response to the RFP, Georgia Power stated that alternate energy would be available from units on the Southern System under terms consistent with the 1988 UPS agreement. [Denis, Tr. 229-40] In its comparison of the purchase of Scherer Unit No. 4 versus UPS, however, FPL assumed unit fuel costs for UPS based on energy prices in the RFP response even though it was stated explicitly in Exhibit 10 (at Form 8, Exhibit 8.2.1, Page 7 of 14), that "Energy price is composed of fuel and losses. (Excludes Variable O&M) Actual energy costs should be lower due to the proposal to make Alternate energy available." [Waters, Tr. 517, 534, 552, 585] Recognizing the availability of alternate energy in the UPS response (which would not be available after the transition period for the purchase), would increase the savings of the UPS option over the purchase option above the \$79 million identified in Exhibit 30. [Bartels, Tr. 875]

We disagree with this finding and the conclusion reached concerning increased savings, as the record does not support or reference the statements identified as Mr. Bartels.

37. The fact that the UPS option is the best of the alternatives considered by FPL does not mean it is the best option overall, only that it is the best of the ones presented. [Bartels, Tr. 883] It

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is not known whether corrections comparable to those made to UPS should also be made to the standard offer evaluation. [Bartels, Tr. 884]

We disagree with this finding of fact, as OPC's witness Bartels is expressing his personal opinion based upon a belief that FPL had failed to consider demand-side management or conservation options. Mr. Bartels, under cross examination admitted that he was not aware with or had he reviewed FPL's demand-side management plan for the 1990's. [Tr. 886] OPC cannot propose a finding of fact based on the following statement: "it is not known whether corrections comparable to those made to UPS should also be made to the standard offer evaluation", when this statement is based upon a conclusion of a witness.

38. The majority of energy FPL receives today from its 1982 UPS agreement, which includes Scherer Unit No. 4 in the generation mix, is Schedule R. [Cepero, Tr. 346]

Accepted

39. In its comparison of the Scherer purchase versus UPS, FPL used both a higher fuel cost which assumed all energy would be provided by Unit No. 4 and a higher transmission cost which recognized that energy would, in fact, originate from various units on the Southern System because of the alternate and supplemental energy provisions of the UPS response to the RFP. [Denis, Tr. 238-42; Cepero, Tr. 355; Waters, Tr. 588-89; Bartels, Tr. 875]

We agree with this finding except for the assumption that the higher fuel cost would be assumed to come from only Scherer Unit No. 4. We believe that the higher fuel cost is a result of the 90% capacity factor for the UPS sale. UPS power from Scherer No. 4 would have to be augmented from more expensive units lower in the dispatch hierarchy to achieve a 90% capacity factor.

40. FPL's use of energy prices from the UPS response to the capacity RFP, which were expressed "in dollars per megawatt hour delivered to the border," and the transmission charges listed in the RFP response, which assumed energy being delivered from various units on the Southern system, makes it unclear whether there was a double-counting of some transmission charges associated with the UPS proposal when FPL compared the purchase of Scherer Unit No. 4 versus UPS out of that unit. [Waters, Tr. 517]

We reject this finding.

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41. Both the fuel costs and transmission costs could have been subject to negotiations had FPL continued with the RFP process and attempted to reach a final agreement on the UPS response to the RFP. [Waters, 1005-06]

Accepted

42. In its UPS response to the RFP, Georgia Power offered energy from other units to afford a 90% availability factor. [Waters, Tr. 510; Exhibit 10]

Accepted

43. Based on the 90% availability under the UPS response to the RFP, system fuel costs should be less than for the purchase option, but FPL portrays them as being higher. [Bartels, Tr. 876; Exhibit 23]

We do not concur with this finding as it would not necessarily be true. In order to get 90% availability, power would have to come from more than one unit which will probably be lower in the hierarchy of dispatch.

44. There is no explanation in the record why, during the years 2005 through 2010, FPL has the UPS option with its higher availability being dispatched at a lower level than the Scherer 4 purchase with its lower availability. [Bartels, Tr. 876; Exhibit 24]

Accepted

45. FPL assumed an availability of 85% for the purchase option and the model used gave a capacity factor of 85%, which assumes "the unit is running full blast every minute of every hour that the unit is available for service." In 1988, coal units of similar size experienced an equivalent availability factor of 85.4% on average but a net capacity factor of 62.6%. [Waters, Tr. 505-07, 538, 556; Exhibit 26] In the UPS response to the capacity RFP, the Scherer Plant was projected "to operate between 46% and 56% of capacity." [Exhibit 10 (at Form 7, Exhibit 7.1.1, page 2 of 9)]

Accepted

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46. There is no evidence that Georgia Power withdrew its UPS response to the RFP. The fact that FPL concluded in May or June of 1990 that the UPS response to the RFP was the winner but held off notifying Georgia Power until it could negotiate terms of the purchase indicates that FPL believed it could enter a UPS contract for up to 848 MW beginning in either 1994 or 1996. [Denis, 252-53; Exhibit 11]

Accepted

47. It is not known what the final terms of a UPS contract for Scherer Unit 4 would have been because the final step of the RFP process, i.e. negotiation of a final agreement, was never taken. [Denis, Tr. 217, 239, 251]

Accepted

48. The purchase option would allow FPL to earn a return on \$615 million whereas the UPS option would require FPL to pay a return on approximately \$500 million.

We do not concur with this finding. The UPS option would not require FPL to pay a return on approximately \$500 million. The return FPL would pay is built into the \$500 million.

49. In its RFP response, Georgia Power stated it was flexible on the starting date and offered to make UPS sales beginning as early as 1990 at prices lower than those reflected in the RFP response for years preceding 1994. [Woody, Tr. 63-65; Denis, Tr. 236; Exhibit 10 ( at Form 8, Exhibit 8.3.1, page 11 of 14)] Earlier, at a November 30, 1989, meeting, Southern Company representatives indicated they would be willing "to consider just about any kind of sale" in the near-term before the dates contemplated in the RFP. [Woody, Tr. 63-66, 86; Denis, Tr. 196-97, 220; Exhibit 7, page 1] Therefore, both the purchase and UPS offered the opportunity to reduce FPL's dependence on oil at an earlier date. [Woody, Tr. 66]

Accepted

50. There is no evidence establishing that the cost to FPL of reducing its reliance on oil in the near-term by purchasing Scherer Unit No. 4 is cost-effective. [Woody, Tr. 30]



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We do not concur with this finding. Mr. Woody stated on Line 11, page 30 - "We will have a later witness that will cover the economic evaluation".

51. Both the purchase and the UPS out of Scherer Unit No. 4 would reduce FPL's total investment while locking in the price of the unit.

We concur that FPL's investment would be reduced relative to the construction of its own IGCC unit.

52. Both the purchase and the UPS could provide capacity in 1991 to meet projections of increased load growth and allow for the upgrade of the Turkey Point nuclear station. The projection of increased load growth, however, is likely in error because FPL assumed reduced prices would stimulate usage and the opposite has occurred because of rising oil prices. [Waters, Tr. 594, 620]

We concur in part with this finding. However, it should be noted that Mr. Waters agreed to that statement only for 1991 and not beyond.

53. Both the purchase and the UPS would provide capacity and energy from an existing unit with known performance and costs.

Accepted

54. In its RFP response, Georgia Power offered FPL up to 848 MW for a period of 30 years or for the life of the unit. [Exhibit 10, page 2] Therefore, both the purchase and the UPS offered the potential for a unit life beyond 30 years. Moreover, even if the UPS were for only 30 years, it would not terminate until the year 2026. This is only 3 years before the unit's 40-year life would expire in the year 2029. Thus, there is no significant benefit to the purchase even when compared to a 30-year UPS agreement. [Wright, Tr. 738-39]

We concur with this finding except for the last sentence. We think a more accurate statement from the record is "... the real benefit of the potential extended life of Scherer 4 is questionable. In the first place, this benefit is speculative, and

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in the second, even if the unit should attain its estimated life of 40 years, the incremental benefit may not be nearly as great as FPL's witnesses' testimony might lead one to think." [Wright, Tr. 738]

55. FPL and Florida Power Corporation began discussing a third 500 kv transmission line as early as March 27, 1990. [Woody, Tr. 54-58; Exhibit 5] In the letter of intent between FPL and FPC, FPL's participation in construction of the third line is not conditioned upon its purchase of Scherer Unit No. 4 or upon Commission approval of that transaction. [Woody, Tr. 115; Exhibit 6]

Accepted

56. If FPL had proceeded under the UPS response to the RFP, it would still have been interested in construction of a third 500 kv line. [Denis, Tr. 261; Wright, Tr. 737]

Accepted

57. Major Florida utilities were negotiating the transfer limit allocation into Florida across the Southern/ Florida transmission interface as early as December 11, 1989. [Denis, Tr. 200; Exhibit 9]

Accepted

58. It is reasonable to assume that, for purposes of system reliability or for purposes of firm sale transactions, that an enhancement to the Southern/Florida transmission interface would occur without either the purchase of Scherer Unit No. 4 or UPS sales in response to the RFP. [Waters, Tr. 531-32]

We concur with this finding except that it is not clear as to the timing of the enhancement. Mr. Waters' response to Mr. McGlothlin's question that "it's reasonable" was in reference to the time period between "now and 2018" of Mr. McGlothlin's question. [McGlothlin, Tr. 531, line 25]

59. Portions of the Kathleen to Orange River 500 kv line segment would be built in any event for reasons other than transfer capability increase (e.g. load serving needs). [Denis, Tr. 263; Exhibit 12, page 2]

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We concur with this finding except that it is not clear as to the timing of the construction. Mr. Denis seems to imply that it would be constructed after the year 2000. [Denis, Tr. 263, line 17]

60. In his Document 10 (Exhibit 18), Mr. Waters assumed the Southern/Florida transmission interface would be expanded only in conjunction with the Scherer Unit No. 4 purchase and UPS options. [Waters, Tr. 529-30]

Accepted

61. In his Document 10 (Exhibit 18), Mr. Waters assumed that no enhancement of the Southern/Florida transmission interface would occur for the next thirty years for the IGCC and standard offer scenarios. [Waters, 530]

Accepted

62. The purchase of Scherer Unit No. 4 would leave FPL with no capability to assist during a unit outage or make additional economy purchases that provide a reliability benefit and economic benefit to FPL's customers until 1997 when the third 500 kv line is scheduled to be in service. [Woody, Tr. 97-98; Cepero, Tr. 343; Waters, Tr. 591-92, 975]

We concur with this finding in part. We believe that the combination of UPS purchases and the phased purchase of Scherer Unit 4 would have this effect. [Woody, Tr. 97-98]

63. Without the third 500 kv line and the additional 450 megawatts FPL could import over it, FPL would have to build more capacity in the South Florida area. [Woody, Tr. 99]

Accepted

64. FPL imposes a "location penalty" to the calculated cost per KW in its evaluation of QF's remote to the utility's load centers. It would be approximately 25% for a QF located in Central Georgia. FPL did not apply a location penalty to its claimed \$953 per KW for Scherer Unit No. 4. [Cepero, Tr. 335-36]

Accepted

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65. Instead of a location penalty, FPL included the expected transmission cost for expansion of the Southern/Florida transmission interface as a cost associated with the purchase of Scherer Unit No. 4 as well as UPS. [Waters, Tr. 495] By including the transmission costs and picking up associated economy purchases, the total cost with transmission is less than the total cost without transmission. [Waters, Tr. 985] This method of recognizing the "penalty" actually reduces the cost of purchasing and UPS by reducing total system fuel cost in Mr. Waters' Document 10. [Exhibits 18 and 36]

Accepted

66. FPL has assumed a cost of \$180 million for enhancements to add an additional 500 MW to FPL's import capability over the Southern/Florida interface. [Waters, Tr. 474] Since FPL will actually receive only 450 MW of additional import capability, the \$180 million equates to an additional \$400 per KW on the purchase. [Woody, Tr. 98; Wright, Tr. 738]

We reject this finding.

67. FPL was engaged in negotiations to allocate its joint transmission interface with JEA even before purchase negotiations began. [Cepero, Tr. 358]

Accepted

68. The transfer limit allocation for the Southern/Florida interface was consummated on May 14, 1990. [Denis, Tr. 200] FPL and JEA, as the Joint Operating Partners (JOP), received 2784 megawatts pursuant to that allocation, of which FPL is entitled to 1492 megawatts. [Denis, Tr. 203-204]

Accepted

69. Although the decision to purchase Scherer Unit No. 4 provided motivation for JEA to enter a letter of intent to give FPL sufficient transmission service to receive additional capacity and energy from the Southern System to offset the outage at Turkey Point, FPL could have reached an agreement for allocation of the 2784 megawatts if the purchase was not under consideration. [Denis, Tr. 209]

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We finds that Mr. Denis used the phrase "... we may have ultimately reached an agreement ..." when he was asked the question by Mr. Howe. This is somewhat more tentative than the conclusion stated in this finding. [Denis, Tr. 209]

70. At the time FPL decided Scherer Unit No. 4 in a UPS configuration won the RFP, FPL did not have sufficient transmission capacity allocated to it to receive the energy through the jointly owned transmission facilities with JEA in 1994. The absence of such an agreement did not deter FPL from finding the UPS response was most favorable. [Denis, Tr. 259-60]

Accepted

71. FPL felt it could work out more favorable transmission arrangements with JEA under the purchase agreement than it could under the UPS response to the capacity RFP. [Cepero, Tr. 357]

Accepted

72. All the RFP responses were evaluated against FPL's own fuel cost projections and FPL deemed most, if not all, to be reasonable. [Denis, Tr. 179]

Accepted

73. Under the purchase agreement, FPL (and JEA) will be allocated 25% of the existing long-term contracts for coal at Plant Scherer without regard to the availability or capacity factor out of Unit No. 4. [Cepero, Tr. 338]

Accepted

74. FPL believes its obligations under existing long-term fuel supply contracts will be offset by its opportunity to participate in the competitive bids and volume transportation benefits which are available to the Southern Companies. [Cepero, Tr. 352]

Accepted



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75. FPL will 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]

Accepted

76. Where FPL goes for coal supplies will be a joint decision of all owners of Plant Scherer. [Cepero, Tr. 375]

Accepted

77. FPL used a 7.15% escalation factor for Martin fuel and a 4.99% escalation for coal under the purchase option. [Waters, Tr. 602; Silva, Tr. 1082; Exhibit 23]

Accepted

78. Poorer quality coals should escalate at a lesser rate than higher quality coals. [Wells, Tr. 943, 949-54]

Rejected. This was a position taken by the witness.

79. FPL doesn't know why a heating value of 12,000 Btu's per pound was used in the Scherer purchase case in Exhibit 23, page 1, line 22 while 12,479 Btu's per pound were used for UPS. [Waters, Tr. 607]

We do not concur with this finding. Mr. Waters said he didn't know and deferred to Witness Silva.

80. FPL cannot reasonably be expected to be able to purchase coal at a delivered price significantly below what the Southern Companies can obtain coal for. [Wells, Tr. 943, 956]

Rejected. This was a position taken by the witness.

81. FPL has specified, without explanation, a high-sulfur-content coal and high-Btu coal for its Martin IGCC unit that is only

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available in Pennsylvania and perhaps northern West Virginia when other high-sulfur coals can be obtained much closer to Florida. [Wells, Tr. 954-55]

Accepted

82. Plant Scherer is served only by the Norfolk Southern Railroad. [Silva, Tr. 1062]

We concur in part with this finding. Mr. Silva also said a spur could be built to the CSX 35 miles away.

83. When comparing the UPS versus the purchase option, Mr. Waters used the projected energy prices from Exhibit 10 (Form 8, Exhibit 8.2.1, page 7 of 14) as the UPS fuel costs. It is not known where Mr. Silva extracted the \$65.89 per ton cost used in Exhibit 23, page 1, line 24, column 4. [Waters, Tr. 517, 534, 552, 585; Silva, Tr. 1078]

We do not concur with this finding. Witness Silva, at Tr. 1078, said that Col. 4 "came as part of the capacity RFP bid that we received from Georgia Power".

84. If the actual fuel cost to Georgia Power was less than projected in the UPS response to the capacity RFP, that benefit would have been passed through to FPL. [Silva, Tr. 1089]

Accepted

85. FPL used the B&O Fairmont District to develop transportation costs for the Martin site. FPL could have selected a rate district from which the cost of transportation was \$2.50 per ton less than that from the Fairmont District. [Silva, Tr. 1094-97]

We do not concur with this finding. Mr. Silva did not say this. Mr. Murrell, counsel for CLG, offered this in his questioning of Mr. Silva.

86. FPL escalated the Martin option without removing the fuel component from the GNP implicit price deflator and adding an

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additional fuel element to 40%. This methodology was not used to evaluate the Scherer Unit No. 4 purchase option. [Silva, Tr. 1099]

Accepted

87. FPL implicitly considered the cost of emission allowances under the UPS response to the RFP by employing the energy prices given in the RFP response for Scherer Unit No. 4 and not recognizing the fact that alternate energy would be available from other units. [Denis, Tr. 244-48]

We do not concur with this finding. Witness Denis, at Tr. 248, said "...we discounted any credits of alternate and supplemental energy with regards to having a price impact -- not with regards to availability, but with regards to price impact -- because of a belief that some of the effects that you're talking about potentiality would come about. So we did not want to have false economics in that evaluation."

88. Emission allowances for Scherer Unit No. 4 are to be calculated at a 65% capacity factor which FPL estimates will permit operation of the unit at a 72% capacity factor. [Denis, Tr. 269; Waters, Tr. 511-12]

We concur in part with this finding if the present coal being burned, at 1.08 lbs. of SO<sub>2</sub> per million Btu's, is used.

89. FPL will have to purchase or otherwise acquire sufficient emission allowances to permit operation of Scherer Unit No. 4 at an 85% capacity factor if it purchases the unit. [Waters, Tr. 512]

We concur with this finding if Waters' position of needing to get allowances for an IGCC unit is also included.

90. If FPL tries to meet an 85% capacity factor with only 20,746 tons of emission allowances, it will have to achieve approximately a 30% reduction in the delivered price of coal to Scherer Unit No. 4 for the economics to work out. [Denis, Tr. 275]

We concur in part with this finding. Mr. Denis replied to this statement from Commissioner Gunter saying that it was one part of the equation.

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91. An EPA administrator will have some latitude to modify the emission allowances FPL might receive. [Cepero, Tr. 328]

Accepted

92. FPL assumes there will be some costs of compliance with the Clean Air Act amendments with respect to its existing UPS contracts but terms have not been negotiated, so the amount is unknown. [Cepero, Tr. 393] There is no evidence, however, that the FERC will permit emission allowance charges to be added to wholesale UPS contracts. [Bartels, Tr. 1027]

Accepted

93. FPL first attempted to quantify and ask the Commission to consider how emission allowances would purportedly increase the UPS offer through the rebuttal testimony of Mr. Waters on the afternoon of the last day of hearings. [Waters, 987] The additional \$128 million FPL ascribed to the UPS response to the RFP was not in Mr. Waters' (or any other FPL witness's) prefiled direct or rebuttal testimony or exhibits.

Accepted

94. FPL took the UPS response filed by Georgia Power without modification for all purposes except to add \$128 million for emission allowances. [Waters, Tr. 997]

We concur in part and disagrees in part. When answering a question concerning the dollar quantification of SO<sub>2</sub> allowances, Mr. Waters stated, "In that bid I don't believe that there are any". (Line 4 of Tr. 997)

95. The economic analyses of the various RFP responses was performed by persons reporting to Mr. Waters, and did not include any quantification of costs associated with emission allowances. [Waters, Tr. 998-999]

Accepted

96. Georgia Power's UPS response to the RFP did not include any costs associated with emission allowances. FPL has not been quoted

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any price Georgia Power might assign to the allowances, nor has FPL been told by Georgia Power that it would have to pay for allowances under the UPS proposal. [Waters, Tr. 999, 1005]

Accepted

97. FPL has never been informed that Georgia Power's UPS response to the RFP would have to be increased in cost to account for emission allowances. [Waters, Tr. 999-1000]

Accepted

98. Georgia Power, as owner of Scherer Unit No. 4, will receive emission allowances for the unit at no cost to Georgia Power. [Waters, Tr. 1004]

Accepted

99. If Georgia Power was to meet its commitment to FPL under the UPS proposal, it would necessarily have to use credits given for Scherer Unit No. 4 to provide the energy out of that unit. [Waters, Tr. 1005-06]

Accepted

100. The escalated \$700 per ton figure used by FPL in Exhibit 36 to quantify emission allowances for the UPS response to the RFP was provided by Georgia Power during the negotiations on the purchase before FPL informed Georgia Power, on July 31, 1990, that the UPS was the winner under the RFP. The possibility that there might be emission allowance costs associated with the UPS proposal did not enter into FPL's decision that the UPS offer was the best response to the RFP. [Waters, Tr. 1013] Effectively, FPL is claiming it ignored an identified cost at the time it found the UPS proposal the best response to the RFP.

We do not concur with this finding. Witness Waters stated at Lines 22 through 24 of Tr. 1012 "That's correct. The figure was brought out subsequent to the RFP as part of their negotiation process".



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101. Some value for the emission allowances is included in the acquisition adjustment. [Woody, Tr. 164]

Accepted

102. FPL sought prior approval for the acquisition adjustment "because of the uncertainty of the regulatory treatment of the Acquisition Adjustment associated with the purchase of Scherer Unit No. 4." [Petition, at 1] FPL is seeking Commission approval for the purchase transaction at this time so the utility will be able to move the acquisition adjustment above the line. [Cepero, Tr. 323-24; Gower, Tr. 689]

Accepted

103. FPL filed its petition and the direct testimony of five witnesses on September 28, 1990. Neither the petition nor testimony disclosed the genesis of the proposed purchase of Scherer Unit No. 4 or the relationship of the purchase to the RFP process. There was no underlying support provided for the comparisons that FPL contended showed the purchase to be the most cost effective option available to it.

We concur with all but the last sentence in this finding. There was some underlying support provided for the comparisons. We agree that discovery was required to get a complete picture of the genesis of the proposed purchase of Scherer Unit No. 4 and the relationship of the purchase to the RFP process.

104. Intervenors were given approximately eight weeks to retain expert witnesses and prefile testimony. Most discovery was received by intervenors after testimony was filed.

We concur in part and disagrees in part with this finding. Intervenors were given from September 28, 1990 to November 21, 1990 to retain expert witnesses and prefile testimony. We recognize that some discovery was received by intervenors after testimony was filed but there is nothing in the record stating exactly when intervenors received their discovery and how much of the discovery was received after testimony was filed.

105. All of the detailed supporting schedules for the Company's case were introduced for the first time at hearing and were unavailable to intervenors' witnesses in the preparation of their

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prefiled testimony. A September 13, 1990, supplement to the letter of intent was introduced by intervenors. [Exhibit 3] Company testimony and exhibits were revised at the hearing based on a December 10, 1990, supplement to the letter of intent. [Exhibits 2 and 22] FPL, on rebuttal, asserted for the first time that the UPS option should be evaluated in light of an additional \$128 million of acid rain expense attributable to that option. [Waters, Tr. 987; Exhibit 36]

We concurs that FPL's rebuttal testimony asserted for the first time that the UPS option should be evaluated in light of an additional \$128 million of acid rain expense attributable to that option. [Tr. 987-88. Ex. 35,36] We cannot determine, however, what constitutes "all of the detailed supporting schedules" as referenced in this proposed finding of fact. Thus, we disagree with this portion of the proposed finding of fact.

106. Since the Commission will not vote until February 5, 1991, and the letter of intent expired on December 31, 1990, with definitive agreements to be executed by that date, the first closing date could not be met. The absolute deadline was not until June 30, 1991. A delay in the hearing would have given experts an opportunity to evaluate discovery and allowed the Commission to consider evidence on all the terms of the actual purchase transaction. Moreover, the longer the delay in reaching a final decision (until June 30), the lower the cost to FPL and its customers if the purchase is ultimately approved. [Waters, Tr. 575-78; Exhibit 27]

We concur in part and disagree in part with this finding. We agree that the Commission will not vote until February 5, 1991, and since the letter of intent expired on December 31, 1990, the first closing date could not be met. We also agree that the absolute deadline is June 30, 1991. However, there is nothing in the record reflecting OPC's assertion that a delay in the hearing would have given experts an opportunity to evaluate discovery and allowed the Commission to consider evidence on all the terms of the actual purchase transaction. We also concur with OPC's finding stating that the longer the delay in reaching a final decision (until June 30), the lower the cost to FPL and its customers if the purchase is ultimately approved. It should also be noted that witness Waters also added to his assertion "to be responsive to this particular request, we've made gross assumptions. And that is that none of the other terms of the agreement would change." [Waters, Tr. 578]

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B. The following constitutes the Commission's specific rulings pursuant to section 120.59(2), Florida Statutes (1989), and Rule 25-22.059(1) & (3), Florida Administrative Code, on the Proposed Findings of Fact submitted by the Coalition of Local Governments.

1. Georgia Power Company ("GPC") indicated in its RFP response that alternate energy would be available to Florida Power & Light Company ("FPL") from units of the Southern Company Services system under terms consistent with the 1988 UPS. [Denis, TR 229-240.]

Accepted

2. In its response to the RFP, GPC stated that it offered to make UPS sales to FPL beginning as early as 1990 at prices lower than those reflected in the RFP responses for the years preceding 1994. [Denis, TR 236.]

Accepted

3. Under both the Scherer 4 purchase option and the Scherer UPS option, FPL could reduce its dependence upon oil at an equally early date. [Woody, TR 66.]

Accepted

4. Under the conditions existing as reflected in the foregoing two findings of fact, both the Scherer 4 purchase and the Scherer UPS could provide capacity in 1991 to allow for the upgrade of the Turkey Point nuclear station.

Accepted

5. The FPL employee who was allegedly the employee who is said to have heard from Jacksonville Electric Authority ("JEA") that it would not grant additional transmission capacity to FPL unless the purchase of Scherer 4 was consummated FPL and JEA did not appear as a witness in this case. [Woody, TR 114.]

Accepted

6. No JEA employee or agent appeared as a witness in this matter to address the alleged position presented by FPL that it would

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refuse to grant FPL additional transmission capacity unless the Scherer 4 purchase is consummated FPL and JEA. [Transcript 1-end.]

Accepted

7. Joint efforts with Florida Power Corporation to secure permits for and build a west coast Florida 500 Kv transmission line connecting with Southern Company Services are not contingent upon the purchase by FPL of Scherer 4. [Woody, TR 115.]

Accepted

8. FPL began discussions with Florida Power Corporation for the west coast 500 KV line as early as March 27, 1990, prior to executing the original Letter of Intent regarding the potential purchase of Scherer 4. [Woody, TR 54-58; Exhibit 5.]

Accepted

9. The UPS cost analysis by FPL has been overstated for such factors as fuel and escalation. Fuel cost differences used by FPL show an unreasonable and unexplained disparity and the use of the different fuel costs have not been adequately explained by FPL. [Bartels, TR 874.]

We disagree with this finding. Mr. Silva fully explained their reasoning for the different fuel forecasts. (Tr. 1080 - Tr. 1085) See also Staff analyses of ISSUE 11.

10. Errors have been found in FPL's analyses of the capacity options, including specifically the errors shown to be present in Exhibit 21. When the analyses are corrected for these errors, the result is that the apparent best option for FPL for increasing capacity is shown to be the Scherer UPS option. [Bartels, TR 883.]

We disagree with this finding. Witness Bartels said, at Lines 18 through 21 Tr. 883, "This does not say that the UPS is the best option. It just says that out of the options that are presented here it's the -- shows it's the cheapest option."

11. The methodology used to develop escalation factors for coal used in the different options should be similar in order to be reasonably accurate. [Bartels, TR 903.]

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We disagree with this finding. It is not a statement of fact, but a position of the party.

12. The methodology used to determine the fuel escalation for fuel in the Martin IGCC evaluation was significantly different from the methodology used in the evaluation of fuel in the Scherer purchase. [Silva, TR 1081; Wells, TR 953; Waters, TR 606.]

Accepted

13. The materials provided by FPL do not justify the use of the different escalation factors used in the various option evaluations by FPL. The use of the different escalation factors has materially influenced the result of the option evaluations. [Bartels, TR 888.]

We disagree with this finding. Mr. Silva in his testimony at Tr. 1080 through 1085 clearly demonstrates why he used different escalation factors for known and unknown factors.

14. In order for the Commission to accept the result of the FPL cost studies, the Commission must find that the cost studies and forecasts are reasonable and that FPL did a reasonable job on developing the cost studies and fuel forecasts. [Waters, TR 603, 613.]

We do not concur with this finding. It is a mixed question of fact and law.

15. The FPL planning models are, under the best of circumstances, capable of providing forecasts that benchmark system production costs within approximately 2%. [Waters, TR 501.] The estimated difference in benefits determined by FPL comparing the Scherer purchase option and the Scherer UPS option are less than 2%.

We do not agree with this finding. Witness Waters testified that there is a 2% error when comparing PROSCREEN to PROMOD and that PROMOD actual results are within 1% [Waters, Tr. 503].

16. Fuel costs constitute a large percentage of total power production costs for a coal fired unit, such as Scherer 4. [Thomas, TR 434.]



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We concur in part and disagree in part with this finding. Witness Thomas did not specifically mention Scherer 4.

17. FPL intends to use Georgia Power Corporation as its fuel procurement agent. [Cepero, TR 377-378.]

We disagree with this finding. Mr. Cepero said that Georgia Power would be FPL's representative in visiting the mine sites, making sure the contracts are complied with and receiving the coal.

18. In the event FPL purchases Scherer 4, it intends to participate in joint procurement with the other co-owners of units at the Scherer plant site, including Georgia Power Company, Oglethorpe Power Corporation, MEAG and Jacksonville Electric Authority. [Cepero, TR 372.]

We concur in part and disagree in part with this finding. Witness Cepero did not specifically name the co-owners.

19. FPL intends to use GPC as its procurement agent to execute FPL's procurement strategy. [Cepero, TR 372-373.]

We concur in part and disagree in part with this finding. Witness Cepero said that Georgia Power would be FPL's "agent" not "procurement agent".

20. Fuel procurement for the Plant Scherer (all units) will be from joint decisions made by all owners of the units at the Plant Scherer site. [Cepero, TR 375.]

Accepted

21. FPL will not have a majority of the votes to be cast in determining the fuel procurement policy at Plant Scherer. [Cepero, TR 375.]

Accepted

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22. Oglethorpe Power Corporation will have the largest number of votes to cast on the procurement policy decisions at Plant Scherer. [Cepero, TR 375.]

Accepted

23. One decision that could be made by the group decision at Plant Scherer is to change procurement strategy from using eastern bituminous coal to western subbituminous coal. [Cepero, TR 375.]

Accepted

24. FPL has not interviewed Oglethorpe Power Corporation or any other joint owner other than Georgia Power to determine what changes the other owners suggest in procurement strategy at Plant Scherer. [Cepero, TR 369.]

We concur in part and disagree in part with this finding. Witness Cepero did say that he had reviewed the co-owner agreements.

25. Scherer Unit 4 is substantially similar to the other three units at Plant Scherer from the standpoint of heat rate and basic equipment. [Cepero, TR 367-368.]

Accepted

26. FPL has until the end of June, 1991 during which to decide to purchase Scherer Unit 4. [Woody, TR 95.]

Accepted

27. It is unlikely that FPL could purchase coal for the same generating unit at a cost of more than \$7.00 per ton cheaper than GPC and SCS. [Wells, TR 943.]

We concur in part and disagree in part with this finding. Witness Wells made this statement. Witness Silva said that he could purchase coal for less than the UPS offer. [Tr. 1088]

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28. Using a similar fuel escalation factor for the Martin IGCC option as that used for the Scherer purchase option decreases the expected cost of fuel for the Martin option by approximately \$500,000,000. [Wells, TR 943.]

We reject this finding.

29. The likely fuel escalation for lower quality coal usable in the Martin option would be less than the escalation factor used for the higher quality coal required to be used in Scherer 4.

We disagree with this finding. This is a position of the party.

30. The record contains competent expert opinion to the effect that the fuel escalation factors used by FPL to compare the costs of the capacity options were incorrect and unreliable. [Wells, TR 948.]

We disagree with this finding. Witness Silva at Tr. 1080 through 1085 fully explained his fuel forecasts.

31. Under the expected purchase arrangement with GPC, in the event FPL purchases Scherer 4, FPL will be required to assume a ratable proportion of the existing fuel contracts at Scherer. [Wells, TR 962-963; Silva, TR 1087.]

Accepted

32. The coal selected by FPL as the proposed feedstock for the Martin IGCC option is relatively rare coal located so far from the plant site in Florida that it suffers a freight disadvantage of approximately \$2.50 per ton. [Wells, TR 954-955; Silva, TR 1094-1097.]

We disagree with this finding. This is a position of the party.

33. FPL determined that the Georgia Power UPS was the winning bid under the RFP process, despite the alleged concern on the part of FPL regarding its ability to reach an agreement with JEA for transmission capacity into the FPL territory.

Rejected