M E M O R A N D U M

May 30, 1991

TO : **DIVISION OF RECORDS AND REPORTING (TRIBBLE)**

FROM : **DIVISION OF LEGAL SERVICES (CHRISTY)**
DIVISION OF ELECTRIC AND GAS (FLOYD, SHINE, TAYLOR)

RE : **DOCKET NO. 900796-EI - PETITION OF FLORIDA POWER & LIGHT COMPANY FOR INCLUSION OF THE SCHERER UNIT NO. 4 PURCHASE IN RATE BASE, INCLUDING AN ACQUISITION ADJUSTMENT - CITIZENS AND NASSAU'S MOTIONS FOR RECONSIDERATION.**

AGENDA: **06/11/91**

CRITICAL DATES: **JUNE 14, 1991**

ISSUE 1: Should the Commission correct a procedural oversight in Order No. 24165?

RECOMMENDATION: Yes.

DISCUSSION

On May 14, 1991 this Commission issued Order No. 24527 (copy attached) denying petitions for reconsideration filed by Office of Public Counsel and Nassau Power Corporation of Order No. 24165. Order No. 24527 reflects a vote by Commissioners Easley, Gunter and Wilson. Subsection 350.01(5), Florida Statutes dictates that "[a] petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding." It has come to staff's attention that Commissioner Gunter should have been advised to refrain from voting on the petitions because he had not voted on the final order (Order No. 24165) in that proceeding.

In order to correct this procedural oversight it is recommended that this matter be brought back before a panel consisting of Chairman Beard and Commissioners Easley and Wilson and that panel should vote on staff's recommendation of April 18, 1991. Thereafter the Commission should issue an order reflecting the new panel's vote.

MRC:bmi
900796b.bmi
Attachment

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 18, 1991

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF ELECTRIC AND GAS (FLOYD, SHINE, TAYLOR)
DIVISION OF LEGAL SERVICES (CHRIST)

RE: DOCKET NO. 900796-EI - PETITION OF FLORIDA POWER & LIGHT COMPANY FOR INCLUSION OF THE SCHERER UNIT NO. 4 PURCHASE IN RATE BASE, INCLUDING AN ACQUISITION ADJUSTMENT - CITIZENS & NASSAU'S MOTIONS FOR RECONSIDERATION

AGENDA: APRIL 30, 1991

CRITICAL DATES: NONE

BACKGROUND

On January 26, 1991 this Commission issued Order No. 24165 in Docket no. 900796-EI which approved a request by Florida Power & Light Company (FPC) to include the Scherer Unit No. 4 purchase in rate base. As part of that proceeding, the Commission determined that (a) a need existed for the additional capacity provided by Scherer, (b) the purchase was reasonable and prudent, and (c) an acquisition adjustment should be allowed in the purchase price. Motions for reconsideration of Order No. 24165 have been filed on behalf of the Office of Public Counsel (OPC) and Nassau Power Corporation (Nassau) both intervenors in this docket. A response to the motions has been filed by FPL. For the reasons cited hereinafter, the Staff recommends that the motions be denied.

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PETITION FOR RECONSIDERATION

Initially it should be noted that "[t]he purpose of a petition [motion] for rehearing [reconsideration] is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. Maule Industries, Inc. v. Seminole Rock and Sand Company, 91 So.2d 307 (Fla. 1956). It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order." Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). The points raised by movants in their motions are carefully crafted rearguments of their positions and requests to reweigh evidence.

ISSUES RAISED BY OFFICE OF PUBLIC COUNSEL'S MOTION

ISSUE 1: Did the Commission as a matter of law, correctly conclude that the purchase agreement paved the way for JEA's granting transmission access to FPL, if the finding is based on "hearsay" evidence?

RECOMMENDATION: It is recommended that the Commission reject OPC's argument on this point.

STAFF ANALYSIS: In its first ground, OPC contends that the Commission based a finding of fact in Order No. 24165 on hearsay testimony, in contravention of Subsection 120.58(1)(a), Florida Statutes (1989). That statute provides generally that hearsay evidence may be used for the purpose of supplementing or explaining other competent evidence, but it cannot be used to make findings of fact unless it would be admissible over object in civil actions. The finding in question found on page 7 of the Order and states that "the joint participation by JEA in the purchase of Scherer Unit 4 paved the way of additional transmission interface capability from JEA". OPC suggests that because this finding is based on statements made by JEA officials to FPL representatives, who repeated those statements at the hearing, the JEA statements are hearsay and thus cannot be used to support the finding on page 7.

In its response to the motion, with which Staff agrees, FPL has cited several reasons why the OPC's argument is without merit. First, there is other competent evidence of record to support the finding in question besides the JEA statements. Indeed, FPL's

response makes reference to a number of other evidentiary underpinnings for this findings. Secondly the FPL witnesses who testified concerning the FPL-JEA negotiations were tendered as experts and thus could formulate an opinion based on data that was otherwise inadmissible. Section 90.704, Florida Statutes (1989). Thus, under the cited statute, the FPL experts could properly express an opinion on the transmission access issues even if such opinions were based on facts and data that would otherwise be inadmissible at the hearing. Finally, the statements of the JEA officials were not offered for the truth of the matters asserted, i.e. that such statements were in fact true, but were offered only to show that such statements were made to illustrate FPL's state of mind in responding to this negotiating posture. Therefore, the Staff recommends that the first ground be denied.

ISSUE 2: Point II of Public Counsel's motion indicates that the Commission's acceptance of FPL's calculation of emission allowance credits associated with the UPS option is factually incorrect because FPL added assumed costs to a base already inflated to recognize the effects of acid rain legislation.

RECOMMENDATION: Staff does not agree with this point.

STAFF ANALYSIS: There is a discussion between Commissioner Gunter and witness Denis [Transcript, pp. 247-248] regarding the impact of acid rain legislation on the cost of alternate and supplemental energy. Commissioner Gunter specifically questioned the witness concerning the likelihood of lower cost energy from other units on the Southern system. Witness Denis responded:

> We did not give, just for your information, when we evaluated the UPS proposal and the Company to rank it against the other 34 proposals, 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 these effects that you're talking about potentially would come about. So we did not want to have false economics in that evaluation.

So, this statement was simply a recognition that compliance with acid rain legislation would increase the cost of energy from other units on the system. Later, the actual quantification of the cost for SO_2 emissions allowances was assumed to be $700 per ton for both the UPS and the outright purchase scenario. [See Exhibit 35]. On the last day of the hearing, Mr. Howe asked Chairman Wilson to allow Mr. Bartels, Public Counsel witness, to speak:

> to the Commission on whether it is appropriate to add $128 million in evaluating whether UPS purchase is preferable to the -- the purchase option that the Company is maintaining is preferable.

Tr. 1017. Later, at Tr. 1019, Chairman Wilson denied Mr. Howe's request. Mr. Howe then asked for the opportunity to:

> proffer for the purposes of the record what Mr. Bartels would have to say on this subject. I think this is extremely prejudicial. Tr.1019

This was granted. Tr. 1025. Although Mr. Bartels proffered that the cost of allowances assumed by FPL was extremely speculative [Tr. 1027, line 23], he nowhere suggested that it represented double-counting. This claim of double-counting is surmise by Public Counsel and has no basis in the record.

ISSUE 3: Point III of Public Counsel's motion states that since the Commission knows that FPL's calculation of present value revenue requirements for UPS is in error but does not know the full magnitude of the error, the Commission lacks competent evidence to support the impact of acid rain legislation on the UPS option.

RECOMMENDATION: Staff does not agree with this point.

STAFF ANALYSIS: Public Counsel implies that because there were errors in Mr. Waters' Exhibit 21 for the years 1991, 1992, and 1993, that there may have been an increasing error that "propagated" after 1993. This implication is at best speculation. Mr. Bartels sponsored Exhibit 30 which purported to correct Mr. Waters' Exhibit 21. Staff, in its previous analysis of Issue 8, concurred with Mr. Bartels' correction and made the appropriate adjustment in the CPVRR for the UPS option. [Staff Recommendation,

page 21, paragraph 2]. We agree with FPL that there is no basis in the record to conclude that any additional adjustments should be made. [Page 8, FPL's Response to Public Counsel's and Nassau's Motions for Reconsideration].

ISSUES RAISED BY NASSAU'S MOTION

ISSUE 4: Is it true that there is no support for the differential in fuel costs utilitized by FPL in its comparison?

RECOMMENDATION: No. The record supports FPL's differential in fuel costs.

STAFF ANALYSIS: Nassau's position is contrary to the record. FPL's witness Silva stated:

> No, I'd like to again restate it. We think that we can buy at that $7 per ton better than the number that has been stated in the Southern Company UPS bid. Tr. 1088.

As Staff pointed out in our analysis to Issue 11, the Scherer UPS option purchase price per ton was $65.89 while the purchase price per ton for Scherer purchase option was $56.16. Mr. Silva also contended that the current market was in a flux. Tr. 1066, lines 12-18; Tr. 1079, lines 1-25.

Based on the above, as well as Staff analysis to Issue 11, Staff finds no reason to grant reconsideration.

ISSUE 5: Is the credit for increased economy sales used in the Scherer purchase scenario appropriate?

RECOMMENDATION: Yes.

STAFF ANALYSIS: FPL included both costs and benefits of the third 500 KV line. However, it does not really matter whether the analysis is done with or without the credit for increased economy sales allowed by the addition of a third 500 KV line. If the credit for economy sales were eliminated, along with the cost of the line, the comparison between the UPS scenario and the outright purchase scenario gives the same result since the costs and benefits of the line were the same for both scenarios. In the

comparison between the outright purchase and the standard offer, the effect of removing the credit for economy sales and the cost of the third 500 KV line reduces the advantage of the outright purchase from $210,507,000 to $124,806,000. These comparisons are shown in the following table:

Scenario	CPVRR (000's) With 3rd 500 KV Line	CPVRR (000's) Without 3rd 500 KV Line
Scherer Purchase	$42,813,923[1]	$42,897,000[2]
Standard Offer	$43,024,430[3]	$43,021,806[3]
Difference	$ 210,507	$ 124,806

1. Order No. 24165, p. 7. This number does not include effect of SO_2 emissions credits.

2. This is $42,813,923 adjusted upward by $83,077. The amount of $83,077 is obtained from Exhibit 36 by taking the difference between the CPVRR for the Scherer purchase case with and without 500 MW of additional transmission.

3. From Exhibit 36.

The staff therefore cannot recommend reconsideration on this point.

ISSUE 6: Did FPL's analysis artificially increase the cost of the UPS alternative by assuming that FPL's energy price will be that of energy from Scherer 4?

RECOMMENDATION: No.

STAFF ANALYSIS: Witness Denis testified that the reference point for determining the relative prices of energy between Scherer 4 and other units on the Southern system could change based on the capacity factor of Scherer 4 and effects of acid rain legislation. Tr. 230-231; Tr. 240-241. In a discussion with Commissioner Gunter, Mr. Denis also testified:

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> We did not give, just for your information, when we evaluated the UPS proposal and the Company to rank it against the other 34 proposals, 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 these effects that you're talking about potentially would come about. So we did not want to have false economics in that evaluation. Tr. 247-248.

So, the use of the price of energy for Scherer 4 supplied by Southern Company does not constitute an "artificial" increase in cost. Rather, it was a recognition that the unit would probably not operate at its historical capacity factor of 17% and that there were unknown effects of the acid rain legislation on the energy prices of units on the Southern system.

Considering the foregoing, staff again cannot recommend reconsideration.

ISSUE 7: The Commission found that under the UPS alternative FPL would have been responsible for SO_2 emission allowance costs. Is this finding supported by the record?

RECOMMENDATION: Yes.

STAFF ANALYSIS: On redirect examination of witness Cepero was question:

> Q. And what would be the effect on the cost of energy under a UPS agreement by virtue of the fact that Southern Company does treat anticipated emission allowance credits as a system asset?

And he replied:

> A. Well, the logic there is that they would reflect the costs of compliance associated with energy deliveries to us and the price of

> those energy deliveries. We have not negotiated explicit terms with them and how that would work in the '88 UPS. But basically, we do expect that there will be some compliance costs and we have some estimates or we have done some analysis, and we anticipate that they will include those numbers in the energy costs. Tr. 393-394.

At Tr. 1006, Chairman Wilson asked witness Waters:

> If Georgia Power or Southern Company, whoever, stuck with the price that they had quoted you in the RFP and used the allowances that were associated with Scherer 4 in order to run the plant so that they would sell that power to you under a UPS arrangement, they would be virtually giving you the benefit of those emission credits.

To which Mr. Waters responded:

> If they just held that price they would be giving them to us in effect.

Later, at Tr. 1009, Mr. Howe questioned witness Waters again on this matter:

> Q. (By Mr. Howe) Mr. Waters, if the Southern Company has already included the cost or the value of those credits, could that explain the difference in the energy costs under the RFP and the purchase scenario?

To which Mr. Waters responded:

> A. No, sir, I don't think so, because the prices are different before the Year 2000. This is a Phase II unit so I would expect to see a sudden jump or a large differential from that point forward if they had used that methodology. So I don't think that's what's included.

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Thus, it is clear that Nassau is simply rearguing points discussed fully in the record. There is ample testimony in the record that acid rain emissions costs were not included by Southern in the UPS proposal.

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