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**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

July 9, 1999

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
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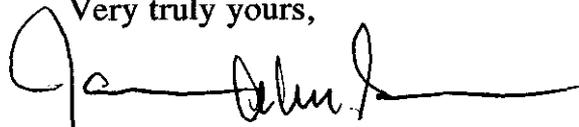
Re: Docket No. 981890-EU

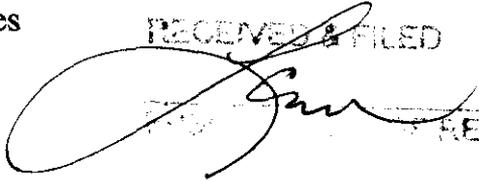
Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Florida Power Corporation's Motion for Reconsideration of Order No. PSC-99-1274-PCO-EU Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

- AFA 2
- APP _____
- CAF _____
- CMU _____
- CIR _____
- EAG Dybley
- LEG 2
- MAS 5
- OPC _____
- RRR _____ JAM/ams
- SEC 1 Enclosures
- WAW _____
- OTH _____

Very truly yours,

James A. McGee

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RECORDS

DOCUMENT NUMBER - DATE
981890-EU
PSC-RECORDS/REPORTING

GENERAL OFFICE

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**CERTIFICATE OF SERVICE
DOCKET NO. 981890-EU**

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Motion for Reconsideration of Order No. PSC-99-1274-PCO-EU Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues has been furnished by U.S. Mail on this 9th day of July, 1999 to the following:

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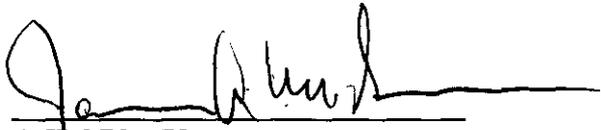
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ATTOENEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic Investigation into the
aggregate electric utility reserve
margins planned for Peninsular Florida.

Docket No. 981890-EU

Submitted for filing:
July 9, 1999

**FLORIDA POWER CORPORATION'S
MOTION FOR RECONSIDERATION
OF ORDER NO. PSC-99-1274-PCO-EU
CLARIFYING SCOPE OF PROCEEDING; DOCKET
PROCEDURES; AND ESTABLISHING ISSUES**

Florida Power Corporation (FPC), pursuant to Rule 25-22.0376, Fla. Admin. Code, hereby moves the full Commission to reconsider and overrule the Prehearing Officer's Order Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues, Order No. PSC-99-1274-PCO-EU, issued July 1, 1999. (Exh. 1 hereto).

As is discussed more fully below, the Commission directed Staff to open this docket for the limited purpose of considering the "methodology" for developing reserve margins in Florida. Further, it is undisputed that the Commission intended that this proceeding be an "investigation." Instead, this docket has veered off track to become a formal adjudication that may determine the substantial interests of the so-called "parties." This is especially problematic because *the Commission has not lawfully commenced a proceeding to determine the substantial interests of any parties*. That being the case, if the Commission continues to proceed on this track, it will violate the utilities' rights under the Florida Statutes, applicable administrative rules, and the United States and Florida Constitutions.

DOCUMENT NUMBER-DATE

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FLORIDA POWER CORPORATION

FPSC-RECORDS/REPORTING

Background

On December 15, 1998, the Commission "directed staff to open a docket to consider the *appropriate methodology for developing reserve margin.*" Internal Affairs Minutes (Dec. 15, 1998) (emphasis added) (Exh. 2 hereto). This was a very specific directive that everyone agrees called upon the staff to commence an "investigation."

Staff sent a memorandum the next day to the Commission's Division of Records and Reporting stating that "the Commissioners directed staff to open a Docket to *examine the planned reserve margins of the Peninsular Grid.*" (PSC Memorandum from Div. of Elec. and Gas (Ballinger) to Div. of Records and Reporting (Bayo) (Dec. 17, 1998)) (emphasis added). (Exh. 3 hereto). The staff memorandum significantly expanded the scope of the investigation that the Commission directed staff to initiate. Thereupon, this docket was opened and entitled "In re: Generic Investigation into the aggregate electric utility reserve margins planned for Peninsular Florida."

Significantly, there has been no petition filed at any time to commence a formal adjudicatory proceeding to determine the substantial interests of any party, nor has the Commission taken any action to initiate a formal proceeding that provides the essential information required of such a petition. As a result, neither FPC nor any other utility was advised that either the Commission or any party was alleging and then proposed to prove facts that would affect or impair the substantial interests of FPC or any other utility.

On March 10, 1999, Staff sent a memorandum to "All Parties" in this docket stating that in view of the Commission's approval of the Duke need petition, Staff

was proposing to address in this docket a variety of "merchant plant" topics. The memorandum stated, "Because merchant power plants may be a solution to Peninsular Florida's questionable planned reserve margin, staff plans to drop" various issues relating to reserve margins, and substitute in this docket a variety of issues relating to merchant plants. (Memorandum from Leslie J. Paugh and Robert V. Elias to All Parties) (Exh. 4 hereto). Staff conducted an "Issues Identification" conference to address these issues on March 18, 1999. *At that meeting, Staff physically tore up the existing schedule for this docket, stating that the docket would either be closed or redirected.*

Consistent with the discussion at the March 18, 1999 conference, on April 6, 1999, Staff issued a notice that Staff intended to conduct a workshop on May 3, 1999, "to explore issues relative to merchant power plants in Florida," and to discuss "[c]ontinuing closing, or deferring until 2000, Docket No. 981890-EU, Generic Investigation Into The Aggregate Electric Utility Reserve Margins Planned for Peninsular Florida." (Notice of Staff Workshop) (Exh. 5 hereto).

On April 20, 1999 + between the date of that notice and the date of the staff workshop + Commissioner Johnson, acting as the Prehearing Officer in this docket, issued an Order Establishing Procedure, which purported to establish the procedure for handling the docket that Staff announced that it intended to seek to close or divert. The April 20 procedural order gave no notice that the Commission proposed to determine the substantial interests of FPC or any party.

Subsequently, on May 3, 1999, Staff conducted its workshop on merchant plant issues. Thereafter, on May 13, 1999, the full Commission conducted a workshop on merchant plant issues.

On May 17, 1999, Staff gave notice of a second issues identification conference in this docket to be held on May 26, 1999, and attached a list of proposed reserve margin issues. At that conference, the utilities raised questions about the scope and direction of this proceeding. These questions were not resolved to the satisfaction of FPC, Florida Power & Light (FPL), or Tampa Electric Company (TECO).

Accordingly, on June 8 and 10, 1999, respectively, FPL, FPC, and TECO filed requests for a status conference, seeking to clarify whether the Commission proposed to conduct an investigation, as originally noticed, or a formal adjudicative proceeding to determine the substantial interests of any parties. These utilities pointed out that, although there were some indications that the Commission intended to follow procedures in this docket applicable to formal adjudicative hearings conducted under Sections 120.569 and 120.57, Fla. Stats., the Commission had not lawfully commenced a formal proceeding to determine the substantial interests of any parties under those provisions. That being the case, the utilities urged Commissioner Johnson, sitting as the Prehearing Officer, to clarify that the Commission was in fact conducting an investigation, *not* a proceeding to determine substantial interests, and that the Commission would follow procedures suited to such an investigation. Representatives of FPC, FPL, TECO, Duke New Smyrna and Duke Energy, and LEAF fairly reached a consensus that the Commission could pursue its investigation into these matters by using informal procedures rather than formal adjudicatory proceedings.

FPC learned for the first time in the course of the status conference, however, that Staff intended full well to use this proceeding to explore a host of issues that range well beyond the narrow mandate given by the Commission in December 1998,

when it instructed Staff to open this docket. Staff intended to do so based, in significant part, on undisclosed and excerpted comments *contained in tape recordings* of the Internal Affairs conference where the Commission determined to open this docket. (Tr. 61-64). Further, FPC learned for the first time that Staff proposed to advise the Commission to make *unspecified findings adverse to unspecified individual utilities on unspecified matters* where Staff might come to believe that there is evidence in the record to support such a finding. (Tr. 67-68).

Upon the recommendation of the Commission's legal staff, Commissioner Johnson rejected the utilities' plea to assure that the Commission would *not* make factual findings or take other action adverse to any party in this proceeding, but would conduct, instead, an information-gathering investigation that would necessarily precede notice of any proposed agency action or notice of the development of rulemaking in later proceedings, where potentially affected parties would have a full and fair opportunity to litigate or address particular issues, properly noticed. Instead, suffering under a clear mistake of law, Commissioner Johnson stated that the Commission would proceed with this docket as a formal adjudication and would make findings of fact supported by the evidence at the conclusion of the hearing. *See Order Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues, Order No. PSC-99-1274-PCO-EU. (Exh. 1 hereto).*

By way of explanation, Commissioner Johnson stated that "Rule 25-22.036(3), Florida Administrative Code, provides for the Commission to initiate proceedings on its own motion" and that the Commission intended to use this proceeding to make "a full record . . . upon which to *make a decision regarding the adequacy of reserve margins planned for Peninsular Florida.*" (Order, p. 1) (emphasis added).

Further, the Prehearing Officer interpreted the directive of the full Commission to open a docket to consider the “methodology” for determining reserve margins to encompass “the *level* of reserve margins” and, even more remarkably, “*the remedial action, if any, which must be taken to assure adequate reserve margins.*” (Order, p. 2) (emphasis added).

Argument

Under the United States Constitution, the Florida Constitution, the Florida Statutes, and the new Uniform Rules, the Commission is forbidden to initiate and prosecute proceedings that may determine the substantial interests of any party without providing legally sufficient notice in advance of the proceeding. U.S. Const. amend. XIV; FL Const. Art. I, § 9; Fla. Stat. §§ 120.54, 120.569, and 120.57; and Fla. Admin Code Ann. r. 28-106.101 and 28-106.201.

The Florida Legislature has acted to implement the constitutional guarantees of due process through the Florida Administrative Procedures Act by providing, *inter alia*, that in all cases “which affect substantial interests,” “a petition or request for hearing *shall* include those items required by the uniform rules adopted [by the Administration Commission] pursuant to § 120.54(5)(b)4.” §120.569(2)(c), Fla. Stats. (emphasis added). The Uniform Rules provide that the “initiation of proceedings [that affect substantial interests] *shall be made by written petition,*” which “*shall contain,*” *inter alia*, “[a] *statement of all disputed issues of material fact,*” “[a] *concise statement of the ultimate facts alleged,* as well as the rules and statutes which entitle the petitioner to relief,” and “[a] *demand for relief.*” Rule 28-106.201, Fla. Admin. Code (emphasis added).

In this case, neither the Commission nor any party has filed a petition to initiate this docket that gives FPC or any other utility legally sufficient notice of *any* alleged violation of any rule or law or of *any* particular facts that Staff or any party seeks to prove. Instead, without notice of *any* charges against FPC, it has been thrust into a wide-ranging "investigation," which may or may not result in a sufficient "record," which may or may not lead the Commission to make particular "findings," which may or may not determine FPC's substantial interests presumably regarding FPC's compliance with regulatory obligations that neither the Commission nor any party has alleged that FPC has breached. *This is patently illegal and improper under the laws of this State and this Nation.*

What is the justification for this extraordinary procedure? As Staff argued at the status conference, the Prehearing Officer's Order asserts that Rule 25-22.036(3), Fla. Admin. Code, "provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties." Order, p. 1. We are to believe, therefore, that the Commission has unbridled discretion to put a utility on trial any time it chooses without legally sufficient notice of the charges - maybe without any charges in mind - and then enter an order after the hearing making findings adverse to the utility's substantial interests.

If that was *once* the law, it certainly is not now. The Florida Legislature has acted repeatedly and consistently to curb such discretion on the part of agencies in this State through a series of amendments to the Florida Administrative Procedures Act, including, notably, the 1996 Amendments directing all agencies to abide by the Administration Commission's Uniform Rules, unless specially excepted. See Section 120.54(5)(a), Fla. Stats. Significantly, this Commission petitioned the

Administration Commission for an exception to the Uniform Rules for the very rule on which Staff and the Prehearing Officer rely in this case, namely, Rule 25-22.036(3), Fla. Admin. Code (then numbered as Rule 25-22.036(6)). (Exh. 6 hereto). The Commission's Petition expressly acknowledged that "*[u]nder the Uniform Rule, only petitions can initiate an agency proceeding*"; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action." (P. 13) (emphasis added).

The Administration Commission *denied* this Commission's request for an exception on the ground that this Commission's rule fell outside the scope of the Uniform Rules *because it did not and could not apply to proceedings that determined a party's substantial interests*. Thus, the Administration Commission held in its final order, "The request for an exception for Rule 25-22.036(1-7) and (9-10) (initiation of proceedings) is denied. Sections (3), (5), (6), (7)(b), (7)(c), and (7)(e) of Rule 25-22.036 *apply to applications, complaints, orders, or notices which do not involve, or which precede, proposed or final agency action determining substantial interests.*" (P. 3) (emphasis added). (Exh. 7 hereto).

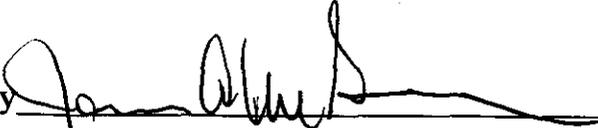
The Uniform Rules, by contrast, quite plainly *include within their scope* specific procedural rules concerning the initiation and prosecution of proceedings that may determine a party's substantial interests. Thus, Rule 28.106.101, Fla. Admin. Code states that "This chapter *shall apply in all proceedings in which the substantial interests of a party are determined by the agency*" These specifically *exclude* "[a]gency *investigations* or determinations of probable cause preliminary to agency action," which therefore *cannot determine a party's substantial interests*. Rule 28-106.101(2), Fla. Admin. Code (emphasis added).

Accordingly, the Hearing Officer has mistakenly relied on Commission Rule 22.036(3), Fla. Admin. Code, as a basis to initiate a formal adjudicatory proceeding that may well culminate in findings that are binding and adverse to the substantial interests of utility participants. This flagrantly violates the directives the Legislature has set forth in the Administrative Procedures Act, the directive of the Administration Commission in *denying* an exception for this Commission from the Uniform Rules' requirements for commencing a formal adjudicatory proceedings, and the directives of the United States and Florida Constitutions, which assure due process of law, including specific and timely notice of charges that may culminate in any impairment of a party's substantial interests.

WHEREFORE, FPC requests that the full Commission reconsider the Prehearing Officer's Order and overrule it by instructing that this investigation proceed strictly in accordance with the scope of the Commission's directive of December 15, 1998, and without any contemplation or prospect that the Commission will make any findings of fact or conclusions of law, or take any other agency action, that may prejudice the substantial interests of FPC. By the same token, the Commission should confirm that rules applicable to formal adjudications under Sections 120.569 and 120.57 do not apply to this investigation.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation)
into the aggregate electric)
utility reserve margins planned)
for Peninsular Florida.)

DOCKET NO. 981890-ECU

Submitted for filing: July 9, 1999

**FLORIDA POWER CORPORATION'S
MOTION FOR RECONSIDERATION OF
ORDER NO. PSC-99-1274-PCO-EU
CLARIFYING SCOPE OF PROCEEDING; DOCKET
PROCEDURES; AND ESTABLISHING ISSUES
APPENDIX**

Respectfully submitted,

FLORIDA POWER CORPORATION

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1. **Order Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues**
PSC Order No. PSC-99-1274-PCO-EU, July 1, 1999
Docket No. 981890-EU
2. **Excerpt: Internal Affairs Minutes, December 15, 1998 (Page 2)**
3. **Public Service Commission Memorandum, Division of Records and Reporting, Request by Commissioners to Open Docket, December 17, 1998**
4. **Memorandum from Leslie S. Paugh and Robert V. Elias to All Parties re: Revised List of Issues as identified in Issue Identification Conference May 26, 1999**
5. **Notice of Staff Workshop to All Electric Utilities and All Interested Persons in Re: Merchant Plant Study issued April 6, 1999**
6. **Florida Public Service Commission's Petition for Exceptions to Uniform Rules filed April 15, 1998**
7. **Final Order of the Administration Commission disposing of Commission's Petition for Exceptions to the Uniform Rules filed July 2, 1998**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida.	DOCKET NO. 981890-EU ORDER NO. PSC-99-1274-PCO-EU ISSUED: July 1, 1999
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ORDER CLARIFYING SCOPE OF PROCEEDING;
DOCKET PROCEDURES; AND ESTABLISHING ISSUES

Pursuant to Order No. PSC-99-1229-PCO-EU, issued June 22, 1999, a Status Conference and Preliminary Prehearing Conference was held on June 30, 1999. During the Conference, several of the parties raised issues challenging the nature of this docket as an investigation being conducted as a formal evidentiary hearing, defining the scope of the inquiry of the docket as being limited to methodology for determining a Peninsular Florida aggregate electricity reserve margin, and challenging the interventions granted in this proceeding. I have considered the arguments of the parties and the recommendations of our staff. My findings are set forth below.

First, the argument was made that Rule 28-106.101(2), Florida Administrative Code, exempts 'investigations' from formal evidentiary proceedings. As such, the parties opined, this docket can only proceed as an informal investigation and that therefore discovery is inappropriate and there would be no intervenors or parties in this docket. Upon consideration, I find that the Rule does not supersede our statutory jurisdiction and responsibility to assure the provision of adequate electricity at a reasonable cost. Sections 366.05(1), 366.04(5), 366.05(7) and 366.05(8), Florida Statutes, invest the Commission with jurisdiction over the planning, development and maintenance of a coordinated electric power grid to assure an adequate and reliable source of energy for the state. In the exercise of its jurisdiction, the Commission has the power to, among other things, require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the public welfare and secure adequate service of facilities. In addition, Rule 25-22.036(3), Florida Administrative Code, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties. The purpose of this proceeding is to afford the Commission a full record with sufficient information upon which to make a decision regarding the adequacy of the reserve margins planned for Peninsular Florida. The position advocated by the utilities and the Florida Reliability Coordinating Council would hinder the Public Service Commission's ability to make a well-reasoned decision. As such, this docket shall proceed as a formal evidentiary hearing investigating the electric utility reserve margins.

Section 120.57(1)(b) Florida Statutes, provides that all parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence as well as file appropriate post-hearing pleadings. The current procedure established for this docket affords these rights to all persons whose substantial interests may be affected by the decisions to be made in this proceeding. Moreover, I am sensitive to the due process arguments of the parties regarding decisions affecting substantial interests in the absence of the full panoply of Section 120.57, Florida Statutes rights. In that regard, if an issue has not been fully litigated, there will be an opportunity for further proceedings pursuant to applicable law.

Second, the parties argued that the scope of the investigation is limited to a determination of a methodology for calculating a reserve margin. In support of their argument, the parties cite the minutes of the December 15, 1998, Internal Affairs proceeding relative to the utilities' Ten Year Site Plans. Item 6 of the minutes states: "The Commissioners directed staff to open a docket to consider the appropriate methodology for developing reserve margin." To identify the scope of this docket, the relevant inquiry is the meaning of the word 'methodology'. To determine a reserve margin methodology, the Commission must investigate: (1) the manner in which reserve margins are calculated; (2) the level of reserve margins considered adequate for Peninsular Florida utilities; and (3) the remedial action, if any, which must be taken to assure adequate reserve margins. These fundamental inquiries define the scope of the docket. Given the stated scope of this proceeding, the issues I believe are appropriate are as set forth in the attached List Of Issues. Former issues 1, 2, 10, and 22 (as stated in Staff's May 28, 1999, memorandum to the parties) have been removed from consideration as being outside the scope of the docket. Former issue 18 is subsumed by former issues 16 and 17 and the analysis of minimum and maximum ranges for a reserve margin will be made in those issues, now numbered as issues 14 and 15. Former issue 21 is subsumed by former issue 16 (now numbered issue 14). Because of the complexity of the issues in this docket, and to assure all parties are afforded due process, additional issues will not be added absent a demonstration of good cause.

Additional matters addressed at the Conference were the filing dates of utility and intervenor testimony and the length of time for filing objections to discovery. I find that it is appropriate for utility and intervenor testimony to be filed on the same date. As such, the Order Granting Motion For Extension Of Time, Continuing Hearing, and Revising Revised Order Establishing Procedure, Order No. PSC-99-1215-PCO-EU, issued June 18, 1999, is revised to require utility and intervenor testimony to be filed on

ORDER NO. PSC-99-1274-PCO-EU
DOCKET NO. 931890-EU
PAGE 3

August 16, 1999. Staff testimony and rebuttal testimony shall be filed on August 31, 1999, and September 13, 1999, respectively as set forth in Order No. PSC-99-1215-PCO-EU. In addition, on June 23, 1999, Commission Staff propounded discovery on the parties in this docket. It is recognized that the discovery request is extensive. Therefore, the parties will be permitted a period of 30 days in which to object to or seek clarification of the discovery request instead of the ten days required by the Order Establishing Procedure, Order No. PSC-99-0760-PCO-EU, issued April 20, 1999. This enlargement of time relates only to the June 23, 1999, staff discovery request.

On June 10, 1999, Tampa Electric Company filed a Motion For Extension Of Time To File Testimony. The Motion is rendered moot by Order No. PSC-99-1215-PCO-EU, as revised by this order.

Based on the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this docket shall proceed as a formal evidentiary proceeding. It is further

ORDERED that the scope of the investigation shall be as set forth in the body of this order. It is further

ORDERED that the issues to be addressed in this docket, unless modified upon a showing of good cause, are as set forth in the List Of Issues attached to this order and by reference made a part hereof. It is further

ORDERED that the filing date for utility and intervenor testimony shall be August 16, 1999. It is further

ORDERED that the period of time in which to object to or seek clarification of the discovery request propounded upon the parties by Commission staff on June 23, 1999, shall be 30 days from the date of service. It is further

ORDERED that Tampa Electric Company's Motion For Extension Of Time To File Testimony is moot.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 1st day of July, 1999.

/s/ Julia L. Johnson
JULIA L. JOHNSON
Commissioner and Prehearing Officer

ORDER NO. PSC-99-1274-PCO-EU
DOCKET NO. 981890-EU
PAGE 4

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

LJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

LIST OF ISSUES

- Issue 1 What is the appropriate methodology, for planning purposes, for calculating reserve margins for individual utilities and for Peninsular Florida?
- Issue 2 What is the appropriate methodology, for planning purposes, for evaluating reserve margins for individual utilities and for Peninsular Florida?
- Issue 3 How should the individual components of an individual or peninsular Florida percent reserve margin planning criterion be defined:
- A. Capacity available at time of peak (Ex. QF capacity, firm and non-firm purchases and non-committed capacity). Should equipment delays be taken into account?
 - B. Seasonal firm peak demand. Over what period (hourly, 30 min., 15 min.) should the seasonal firm peak demand be determined? What is the proper method of accounting for the diversity of the individual utilities' seasonal firm peak demands and load uncertainty? Is sufficient load uncertainty data available and being used? How are interruptible, curtailable, load management and wholesale loads treated at the end of their tariff or contract termination period? How should demand and/or energy use reduction options be evaluated and included in planning and setting reserve margins?
 - C. Should a percent reserve margin planning criterion be determined on an annual, seasonal, monthly, daily, or hourly basis?
- Issue 4 How should generating units be rated (MW) for inclusion in a percent reserve margin planning criterion calculation?
- Issue 5 How should individual utility's reserve margins be integrated into the aggregated reserve margin for Peninsular Florida?
- Issue 6 Should there be a limit on the ratio of non-firm load to MW reserves? If so, what should that ratio be?

- Issue 7 Should there be a minimum of supply-side resources when determining reserve margins? If so, what is the appropriate minimum level?
- Issue 8 What, if any, planning criteria should be used to assess the generation adequacy of individual utilities?
- Issue 9 Should the import capability of Peninsular Florida be accounted for in measuring and evaluating reserve margins and other reliability criteria, both for individual utilities and for Peninsular Florida?
- Issue 10 Do the following utilities appropriately account for historical winter and summer temperatures when forecasting seasonal peak loads for purposes of establishing a percent reserve margin planning criterion?
- A. City of Homestead
 - B. City of Lake Worth Utilities
 - C. City of Lakeland
 - D. City of Tallahassee
 - E. Florida Power and Light Company
 - F. Florida Power Corporation
 - G. Florida Municipal Power Agency
 - H. Gainesville Regional Utilities
 - I. Jacksonville Electric Authority
 - J. Kissimmee Utility Authority
 - K. Orlando Utilities Commission
 - L. Reedy Creek Improvement District
 - M. Seminole Electric Cooperative
 - N. Tampa Electric Company
 - O. Utilities Commission of New Smyrna Beach
- Issue 11 Has the Florida Reliability Coordinating Council's 15 percent reserve margin planning criterion, or any other proposed reserve margin criterion, been adequately tested to warrant using it as a planning criterion for the review of generation adequacy on a Peninsula Florida basis? If the answer is no, what planning criterion should be used?
- Issue 12 What percent reserve margin is currently planned for each of the following utilities and is it sufficient to provide an adequate and reliable source of energy for operational and emergency purposes in Florida?
- A. City of Homestead
 - B. City of Lake Worth Utilities
 - C. City of Lakeland

- D. City of Tallahassee
- E. Florida Power and Light Company
- F. Florida Power Corporation
- G. Florida Municipal Power Agency
- H. Gainesville Regional Utilities
- I. Jacksonville Electric Authority
- J. Kissimmee Utility Authority
- K. Orlando Utilities Commission
- L. Reedy Creek Improvement District
- M. Seminole Electric Cooperative
- N. Tampa Electric Company
- O. Utilities Commission of New Smyrna Beach

- Issue 13 How does the reliability criteria adopted by the FRCC compare to the reliability criteria adopted by other reliability councils?
- Issue 14 Should the Commission adopt a reserve margin standard for individual utilities in Florida? If so, what should be the appropriate reserve margin criteria for individual utilities in Florida? Should there be a transition period for utilities to meet that standard?
- Issue 15 Should the Commission adopt a reserve margin standard for Peninsular Florida? If so, what should be the appropriate reserve margin criteria for Peninsular Florida?
- Issue 16 Should the Commission adopt a maximum reserve margin criterion or other reliability criterion for planning purposes; e.g., the level of reserves necessary to avoid interrupting firm load during weather conditions like those experienced on the following dates: 01/08/70, 01/17/77, 01/13/81, 01/18/81, 12/19/81, 12/25/83, 01/21/85, 01/21/86 and 12/23/89?
- Issue 17 What percent reserve margin is currently planned for Peninsula Florida and is it sufficient to provide an adequate and reliable source of energy for operational and emergency purposes in Peninsula Florida?
- Issue 18 Can out-of-Peninsular Florida power sales interfere with the availability of Peninsular Florida reserve capacity to serve Peninsular Florida consumers during a capacity shortage? If so, how should such sales be accounted for in establishing a reserve margin standard?

ORDER NO. PSC-99-1274-PCO-EU
DOCKET NO. 981890-EU
PAGE 8

ATTACHMENT

Issue 19 Based on the resolution of Issues 1 through 18, what follow-up action, if any, should the Commission pursue?

ITEM NO. 3: Approve Staff's Revised Draft Statement of Agency Organization and Operation as Required by the Uniform Rule (Chapter 28-101, Florida Administrative Code)

The Commissioners approved the Statement of Agency Organization and Operation.

Commissioners participating: Johnson, Deason, Clark, Garcia, Jacobs

ITEM NO. 4: Approve Draft of FPSC Response to Representative Sandra L. Murman Regarding a Proposed Study on Undergrounding Existing Utility Facilities on Davis Island

This item was deferred to a later Internal Affairs meeting.

Commissioners participating: Deason, Clark, Garcia, Jacobs

ITEM NO. 5: Approve Revised Draft of FPSC Annual Report to the Department of Community Affairs on Energy Conservation Activities

The Commissioners approved the annual report.

Commissioners participating: Deason, Clark, Garcia, Jacobs

ITEM NO. 6: Approve Revised Draft of FPSC Report on Review of Florida Electric Utilities' 1998 Ten-Year Site Plans and Long-Range Forecasts of Energy Use

The Commissioners approved the report, with the suggested revisions. Staff was directed to explain why FPC's plan was suitable for planning purposes, given that in winter 2000-2001 the reserve margins are expected to be less than the 15% criteria established by the FRCC. The Commissioners directed staff to open a docket to consider the appropriate methodology for developing reserve margin.

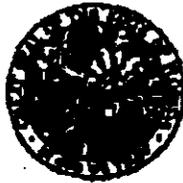
Commissioners participating: Johnson, Deason, Clark, Garcia, Jacobs

ITEM NO. 7: Approve FPSC Staff's Recommendation to File as an Amicus Curiae in the Circuit Court in and for Palm Beach County Supporting the Referral of Certain Pending Standard Offer Contract Interpretation Issues to the FPSC (Florida Power & Light Company vs. Okeelanta Power, L.P., et al)

After some discussion the Commissioners deferred this item to the January 4, 1999 Internal Affairs meeting.

Commissioners participating: Johnson, Deason, Clark, Garcia, Jacobs

State of Florida



981890
Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: December 17, 1998

TO: Division of Records and Reporting (Bayo)

FROM: Division of Electric and Gas (Ballinger) *JB 22*

RE: Request by Commissioners to Open Docket *JDJ*

At the December 15, 1998 Internal Affairs, the Commissioners directed staff to open a Docket to examine the planned reserve margins of the Peninsular Grid. Attached is the request to establish said Docket. If you have any questions, please contact me at 3-6880. Thank you.

TB:kb

- cc: Mary Bane
- Joe Jenkins
- Bob Trapp
- Roland Floyd

DOCUMENT NUMBER - DATE

981890 DEC 17 98

REQUEST TO ESTABLISH DOCKET
(PLEASE TYPE)

Date 12/17/98

Docket No. 981890-EU

- 1. Division Name/Staff Name Division of Electric & Gas / Tom Ballinger
- 2. OPR Floyd, Ballinger
- 3. OCR Kummer, Bass
- 4. Suggested Docket Title Generic Investigation Into the Aggregate Electric Utility Reserve Margins Planned for Peninsular Florida

5. Suggested Docket Mailing List (attach separate sheet if necessary)

- A. Provide NAMES ONLY for regulated companies or ACRONYMS ONLY regulated industries, as shown in Rule 25-22.104, F.A.C.
- B. Provide COMPLETE name and address for all others. (Match representatives to clients.)

1. Parties and their representatives (if any)

All Electric Utilities

2. Interested Persons and their representatives (if any)

FIPLUG (Florida Industrial Power Users Group)

LEAF (Legal Environmental Assistance Foundation)

Public Counsel

FRCC (Florida Reliability Coordinating Council)

6. Check one:
- Documentation is attached.
- Documentation will be provided with the recommendation.

ATTACHMENT 1

MINUTES OF INTERNAL AFFAIRS

January 4, 1999

9:30 a.m. - 10:30 a.m. - Open Mike

10:30 a.m. - 4:00 p.m. - Internal Affairs Meeting

CONFERENCE ROOM 140 and 148

COMMISSIONERS PRESENT: Chairman Johnson (via telephone)
Commissioner Deason
Commissioner Clark
Commissioner Garcia
Commissioner Jacobs

STAFF PARTICIPATING: Talbott, Bane, R. Vandiver, Smith, Ward, N. Davis, Jenkins, Cunningham, DeMello, Rasberry, D'Haeseleer, Devlin, Tudor, Trapp, Elias, Hoppe, Jaber, Brown, Lowe, R. Moses, Bass, Bedell, McKinny, Cutting, Daniel, S. Moses, Purvis

OTHERS PARTICIPATING:

Mr. Charles Rewhinkel - Sprint
Mr. John Brewerton and Mr. Bert Long - Building Owners and Managers Association of Florida (BOMA)
Ms. Frankie Callen - Commercial Real Estate Society
Mr. Richard Spears - Legislative Chairman of CAI
Ms. Jodi Chase - Florida Apartment Association
Mr. David Duretsky - Telegent, L.L.C.
Mr. Gunter Haley - WinStar Communications, Inc.
Mr. Ken Hoffman - Teleport
Mr. Floyd Self - Optel (Florida) Telecom, Inc.
Mr. Patrick Wiggins - Valley Yellow Pages

ITEM NO. 1: Approve December 15, 1998 Internal Affairs Meeting Minutes

The minutes were approved.

Commissioners participating: Johnson, Deason, Clark, Garcia, Jacobs

State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: May 28, 1999
TO: All Parties and Interested Persons
FROM: Robert V. Elias, Chief of Electric & Gas, Division of
Legal Services
Leslie J. Paugh, Senior Attorney, Division Of Legal
Services
RE: Docket No. 981890-EI - Generic investigation into the
aggregate electric utility reserve margins planned for
Peninsular Florida.

The following is a list of issues revised as a result of the
issue identification conference held on May 26, 1999:

- Issue 1* What is the purpose of the generic investigation? FPL
is not clear as to the purpose of this investigation.
If the purpose is to consider whether the Commission
should adopt reserve margin criteria, it does not
appear that pricing issues, such as issue 22, are
appropriate or relevant to such consideration. The
Commission has the authority under Docket No. 940345-
EU, Order No. PSC-94-1256-FOF-EU to set reserve margin
standards for planning purposes.
- Issue 2 Should the Commission affirmatively determine that the
benefits of any proposed planning change outweigh its
costs as a pre-condition for adopting the change?
- Issue 3 What is the appropriate methodology, for planning
purposes, for calculating reserve margins for
individual utilities and for Peninsular Florida?
- Issue 4 What is the appropriate methodology, for planing
purposes, for evaluating reserve margins for individual
utilities and for Peninsular Florida?
- Issue 5 How should the individual components of an individual
or peninsular Florida percent reserve margin planning
criterion be defined:
- A. Capacity available at time of peak (Ex. QF
capacity, firm and non-firm purchases and non-
committed capacity). Should equipment delays be
taken into account?

B. Seasonal firm peak demand. Over what period (hourly, 30 min., 15 min.) should the seasonal firm peak demand be determined? What is the proper method of accounting for the diversity of the individual utilities' seasonal firm peak demands and load uncertainty? Is sufficient load uncertainty data available and being used? How are interruptible, curtailable, load management and wholesale loads treated at the end of their tariff or contract termination period? How should demand and/or energy use reduction options be evaluated and included in planning and setting reserve margins?

C. Should a percent reserve margin planning criterion be determined on an annual, seasonal, monthly, daily, or hourly basis?

Issue 6 How should generating units be rated (MW) for inclusion in a percent reserve margin planning criterion calculation?

Issue 7 How should individual utility's reserve margins be integrated into the aggregated reserve margin for Peninsular Florida?

Issue 8 Should there be a limit on the ratio of non-firm load to MW reserves? If so, what should that ratio be?

Issue 9 Should there be a minimum of supply-side resources when determining reserve margins? If so, what is the appropriate minimum level?

Issue 10* Is the planning criteria presently used by individual utilities suitable to assess generation adequacy?

Issue 11 What, if any, planning criteria should be used to assess the generation adequacy of individual utilities?

Issue 12 Is the import capability of Peninsular Florida properly accounted for in measuring and evaluating reserve margins and other reliability criteria, both for individual utilities and for Peninsular Florida?

Issue 13 Do the following utilities appropriately account for historical winter and summer temperatures when forecasting seasonal peak loads for purposes of establishing a percent reserve margin planning criterion?

- A. City of Homestead
- B. City of Lake Worth Utilities
- C. City of Lakeland
- D. City of Tallahassee
- E. Florida Power and Light Company

- F. Florida Power Corporation
- G. Florida Municipal Power Agency
- H. Gainesville Regional Utilities
- I. Jacksonville Electric Authority
- J. Kissimmee Utility Authority
- K. Orlando Utilities Commission
- L. Reedy Creek Improvement District
- M. Seminole Electric Cooperative
- N. Tampa Electric Company
- O. Utilities Commission of New Smyrna Beach

Issue 14 Has the Florida Reliability Coordinating Council's 15 percent reserve margin planning criterion, or any other proposed reserve margin criterion, been adequately tested to warrant using it as a planning criterion for the review of generation adequacy on a Peninsula Florida basis?

Issue 15* What, if any, relationship is there between (a) the reliability criteria adopted by the FRCC and (b) the similar reliability measures adopted by other reliability councils?

Issue 16 Should the Commission adopt a reserve margin standard for individual utilities in Florida? If so, what should be the appropriate reserve margin criteria for individual utilities in Florida? Should there be a transition period for utilities to meet that standard?

Issue 17 Should the Commission adopt a reserve margin standard for Peninsular Florida? If so, what should be the appropriate reserve margin criteria for Peninsular Florida?

Issue 18 Should the Commission adopt a maximum reserve margin criterion or other reliability criterion for planning purposes; e.g., the level of reserves necessary to avoid interrupting firm load during weather conditions like those experienced on the following dates: 01/08/70, 01/17/77, 01/13/81, 01/18/81, 12/19/81, 12/25/83, 01/21/85, 01/21/86 and 12/23/89?

Issue 19 What percent reserve margin is currently planned for each of the following utilities and is it sufficient to provide an adequate and reliable source of energy for

operational and emergency purposes in Florida?

- A. City of Homestead
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- K. Orlando Utilities Commission
- L. Reedy Creek Improvement District
- M. Seminole Electric Cooperative
- N. Tampa Electric Company
- O. Utilities Commission of New Smyrna Beach

- Issue 20 What percent reserve margin is currently planned for Peninsula Florida and is it sufficient to provide an adequate and reliable source of energy for operational and emergency purposes in Peninsula Florida? With reserves at this level, what percent of firm load would be unserved assuming temperatures such as those that occurred on the following dates: 01/08/70, 01/17/77, 01/13/81, 01/18/81, 12/19/81, 12/25/83, 01/21/85, 01/21/86 and 12/23/89?
- Issue 21 Should any utility be allowed to upgrade/change their minimum required planning reserve if such changes can be demonstrated to maintain or improve the reliability of the utility/Florida system?
- Issue 22* Should the Commission consider establishing pricing thresholds for purposes of limiting cost recovery at which a utility may interrupt firm or non-firm load to avoid a power purchase or make a power sale?
- Issue 23 Can out-of-Peninsular Florida power sales interfere with the availability of Peninsular Florida reserve capacity to serve Peninsular Florida consumers during a capacity shortage? If so, how should such sales be accounted for in establishing a reserve margin standard?

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF STAFF WORKSHOP

TO

ALL ELECTRIC UTILITIES

AND

ALL INTERESTED PERSONS

UNDOCKETED

IN RE: MERCHANT PLANT STUDY

ISSUED: April 6, 1999

NOTICE is hereby given pursuant to Rule 25-22.001, Florida Administrative Code, that the Staff of the Florida Public Service Commission will conduct a workshop in the above-referenced undocketed matter at the following time and place:

10:00 a.m., Monday, May 3, 1999
Room 152, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

PURPOSE

The purpose of this workshop is to explore issues relative to merchant power plants in Florida. Attached is a list of issues proposed by Commission Staff for discussion at the workshop. Interested persons are encouraged to submit issues they wish to have addressed. Please file issue statements on or before April 23, 1999.

One or more of the Commissioners of the Florida Public Service Commission may attend and participate in the workshop. Minutes of this workshop will be taken in accordance with Section 286.011(2), Florida Statutes.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850) 413-6770 at least 48 hours prior to the workshop. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at 1-800-955-8771 (TDD).

JURISDICTION

NOTICE OF STAFF WORKSHOP
UNDOCKETED - MERCHANT PLANT STUDY
PAGE 2

Jurisdiction is vested in this Commission pursuant to Chapter 366, Florida Statutes.

By DIRECTION of the Florida Public Service Commission, this 6th day of April, 1999.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the notice may be obtained by calling 1-850-413-6770.

(S E A L)

LJP

Proposed Staff Issues For Discussion

1. Whether merchant capacity should be considered to supplement the FRCC's 15% reserve margin. If so, what amount of supplementary reserve margin is considered reasonable and prudent for reliability purposes?
2. The number of merchant plants which should be permitted in Florida and the maximum amount of supplementary reserve margin considered reasonable and prudent for reliability purposes.
3. Criteria for choosing among proposed merchant plants.
 - a. Consideration of a selection criterion for subscription under a merchant power plant MW cap based on number of proposed megawatts of solar photovoltaic capacity.
 - b. Consideration of selection criterion based on efficiency ratings of plants.
4. The impact, if any, of merchant plants on investment in, and operation of, existing plants in utilities' rate base.
 - a. Whether merchant plants selling in the wholesale market at market prices cause stranded costs to any retail-serving electric utility.
5. Impact, if any, of merchant plants on economic development in Florida.
 - a. Job creation/enhancement.
 - b. Increase in state and local tax base.
6. Establishment of a wholesale, market price, merchant cost-effectiveness standard. Reporting requirements for wholesale market prices for the purpose of determining the optimum level of merchant power plants.
7. Impact, if any, of merchant plants on the environment.
 - a. Use of allowable ambient air pollution increments by merchant power plants.
 - b. Use of available power plant sites and other finite resources.
8. Impact, if any, of merchant plants on conservation goals and plans.

NOTICE OF STAFF WORKSHOP
UNDOCKETED - MERCHANT PLANT STUDY
PAGE 4

9. Minimum reporting requirements for entities owning merchant transmission, generation or distribution. (For example, size, type and location.)
10. Pricing thresholds for purposes of limiting cost recovery at which a utility may interrupt firm or non-firm load to avoid a power purchase or make a power sale.
11. Appropriate Peninsular Florida minimum percent planning reserve margin. Percent of firm load unserved when another Christmas 1989 occurs.
12. Diversity of ownership with respect to market power issues.
13. Fuel diversity - what is it and is it needed?
14. Florida retail-serving electric utilities being allowed to build merchant plants in Florida and being allowed to charge market prices.
15. Continuing, closing, or deferring until 2000, Docket No. 931890-EU, Generic Investigation Into The Aggregate Electric Utility Reserve Margins Planned For Peninsular Florida.

A G E N D A

FLORIDA PUBLIC SERVICE COMMISSION STAFF WORKSHOP
UNDOCKETED - MERCHANT PLANT STUDY

Monday, May 3, 1999
Room 152, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida
10:00 a.m. - 5:00 p.m.

The purpose of this Staff Workshop is to explore topics of concern raised by Commissioners regarding merchant plant activity in Florida. Topics raised by Commission staff and other interested persons will also be discussed.

- 10:00 a.m. Introductory Remarks by Staff (Jenkins)
- 10:30 a.m. Discussion of Topics (see attached list)
- 12:00 p.m. Lunch
- 1:00 p.m. Continuation of Discussion of Topics
- 5:00 p.m. Adjourn

This meeting is open to the public.

RECEIVED

MEMORANDUM

APR 16 1998

APR 15, 1998

ORIGINAL

TO : BLANCO, PSC Records/Reports, DIVISION OF RECORDS AND REPORTING

FROM : MARY ANNE HELTON, ASSOCIATE GENERAL COUNSEL *naht*

RE : DOCKET NO. 950500-PU

980500-PU

Attached is the Florida Public Service Commission's Petition for Exceptions to Uniform Rules that was filed with the Administration Commission on April 15, 1998. This petition should be included in the above-referenced docket file, which is the docket in which the PSC will be repealing and amending its rules based on the Administration Commission's disposition of the petition.

Handwritten: 980500-PU

APR 21 1998

- ACK _____
- VFA _____
- PP _____
- AF _____
- MU _____
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- AG _____
- EG _____
- IN _____
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- AS _____
- TH _____

64023 APR 1998

2:162, 164 (1997) (Protest period shortened to 14 days because of limited time to resolve protests).

Finally, the PSC Rule ties the waiver of hearing rights to "the expiration of the time within which to request a hearing." Rule 25-22.029(6), F.A.C. This provision recognizes that there may be different time periods for requesting a hearing depending on the notice given. The Uniform Rule, on the other hand, states that waiver of hearing rights occurs if a hearing is not requested within 21 days of receipt of the notice.

An exception for the PSC Rule is necessary for the efficient operation of the agency.

Uniform Rule: 28-106.201, Initiation of Proceedings.

Agency Alternative: 25-22.036(1)-(7) and (9)-(10), Initiation of Formal Proceedings.

Reasons for Exception: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings.

Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action.

The PSC Rule defines the different types of pleadings listed in the rule, states what each pleading must contain, lists any special service requirements, and states what action the PSC will initially take depending on how the proceeding was initiated. The