

STEEL
HECTOR
DAVIS

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
850.222.2300
850.222.8410 Fax
www.steelhector.com

ORIGINAL

Charles A. Guyton
850.222.3423

October 22, 1999

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
99 OCT 22 PM 4: 58
RECORDS AND REPORTING
By Hand Delivery

Re: DOCKET NO. 991462-EU

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket No. 991462-EU are the original and fifteen (15) copies of Motion to Expedite Discovery.

If you or your staff have any questions regarding this filing, please contact me.

Very truly yours,

Charles A. Guyton
Charles A. Guyton

Enclosure
cc: Parties of Record

- _____ AEA
- _____ AMP
- _____ CAP
- _____ DMJ
- _____ SEN
- _____ *Hgt*
- _____ LEG
- _____ MAS 3
- _____ OPC
- _____ PAI
- _____ SEC 1
- _____ NAWI
- _____ OTH

TAL_1998/32522-1

RECEIVED & FILED
Mess
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
13032 OCT 22 99

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for an) DOCKET NO. 991462-EU
electrical power plant in Okeechobee County)
by Okeechobee Generating company, L.L.C.) DATE: October 22, 1999

**FLORIDA POWER & LIGHT COMPANY'S
MOTION TO EXPEDITE DISCOVERY**

Pursuant to Florida Administrative Code Rule 28-106.205, Florida Power & Light Company ("FPL") moves the Commission to expedite discovery to the petitioners in Docket No. 991462-EU such that the petitioners' responses are due no later than ten (10) days from service and that service to intervenor either be personal or by courier. As grounds for its motion, FPL states:

1. The schedule for this case is extremely accelerated and abbreviated. The hearing scheduled for December 6-8, 1999 falls only 10 weeks after the filing of the petition and only 6 weeks after the filing of the petitioner's direct testimony. The discovery cut off date scheduled by the Prehearing Officer is only five weeks and two days after the filing of direct testimony.

2. FPL asked the petitioner to agree to FPL's intervention, but the petitioner declined. FPL petitioned to intervene on October 7, 1999, 13 days after the filing of the petition, and two weeks later, no ruling on intervention has been made, although FPL's petition to intervene and the petitioner's response are modestly enhanced versions of the petition to intervene and responses which resulted in FPL's intervention in the Duke determination of need. The absence of a ruling on intervention forecloses FPL from beginning discovery. Thus, FPL finds itself 6 weeks from trial without an opportunity to begin discovery.

3. The petitioners opted to file their determination of need before filing their Siting Application. Therefore, there has not been a Siting Application and its detailed information or a sufficiency determination regarding the Siting Application and any supplemental information which such a determination may have developed.

4. Due to the conduct of the petitioner, specifically its decision to file a need petition prior to filing for site certification and its choice not to file supporting testimony with its petition, FPL has little detailed information regarding the Project and has a need to conduct extensive discovery. However, given that it has been foreclosed from conducting discovery by no ruling on intervention and given the accelerated schedule of the proceeding, with a hearing a mere ten weeks after filing of the petition and 6 weeks after filing of testimony, there is a compelling need for expedited discovery.

5. Discovery in the form of document requests, interrogatories and, admissions and witness depositions with document requests all have a 30 day period for responses. If intervention were granted today and FPL served discovery today, without an order expediting discovery FPL would not receive responses before the date for filing its testimony. Similarly, assuming the petitioner files direct testimony as scheduled on October 25th and FPL takes a week to review it and compose discovery requests (an ambitious schedule), unless discovery is expedited, FPL would not receive discovery responses until three working days before trial. FPL would be completely denied any opportunity for follow up discovery or to address discovery responses that were not responsive.

6. The petitioner relies upon complex and detailed computer models which have not been subject to more than a cursory review by any regulatory body. Although the models were used by Duke in its determination of need petition, the Commission Staff conducted practically no

discovery regarding the models, and Duke offered virtually no projected output data from the models into the record (only unit capacity factors). It cannot be reasonably maintained that the Commission has meaningfully reviewed these complex models. Expedited discovery is needed to explore the petitioner's models and projections.

7. While FPL has previously addressed why a stay of the procedural schedule and a waiver of the rule providing for no more than a 90 day period from petition to hearing are appropriate and should be granted, if they are not granted and discovery is not expedited, then FPL will be denied a meaningful opportunity to prepare for trial.

8. For the foregoing reasons, FPL requests that the Prehearing Officer enter a procedural order expediting discovery by requiring the petitioner to respond by personal or courier service to all discovery requests within ten (10) days of service.

9. OGC should not be prejudiced by the relief FPL seeks. The proposed discovery addresses core issues in the proceeding and primarily addresses the issues and factual assertions OGC has made in its petition and exhibits. Moreover, OGC chose the time for filing the petition, chose not to file supporting testimony with its petition, and chose to file for a need determination without filing the detailed information required in a site certification application. OGC was under no time requirement to file in this fashion, given that it does not anticipate initiating its site certification process for another 8 months. Consequently, the circumstances in which FPL finds itself so constrained by time were much the choosing of the petitioner, and relief should be granted to afford FPL a meaningful opportunity to prepare for trial.

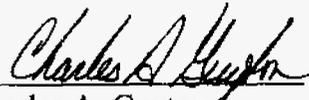
10. Counsel for FPL has conferred with counsel for all other parties in this proceeding other than counsel for FPC who could not be reached, and none of them object to the expedited response time for the petitioner other than petitioner's counsel. Petitioner's counsel stated he opposed a 10 day response period but was "inclined to agree" to a 20 day response period.

WHEREFORE, FPL respectfully requests that the Prehearing Officer enter an order requiring OGC to respond by personal service or delivery by courier within ten (10) days of service of any discovery requests by the intervenors.

Respectfully submitted,

Steel Hector & Davis L.L.P.
Suite 601, 215 S. Monroe St.
Tallahassee, Florida 32301

Attorneys for Florida Power &
Light Company

By: 
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 1999 a copy of Florida Power & Light Company's Motion to Expedite Discovery in Docket No. 991462-EU was served by either hand delivery (*) or U.S. Mail upon the following persons:

W. Cochran Keating, Esq.*
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Lee L. Willis, Esq.
James D. Beasley, Esq.
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302

James A. McGee, Esq.
Florida Power Corp.
P.O. Box 14042
St. Petersburg, FL 33733

Robert Scheffel Wright, Esq.*
John T. LaVia, III, Esq.
Landers & Parsons, P.A.
310 West College Avenue
Tallahassee, FL 32301

Gary L. Sasso, Esq
Carlton Fields, et al.
P.O. Box 2861
St. Petersburg, FL 33733

Jon Moyle, Esq.*
Moyle, Flanigan, Katz, Kollins,
Raymond & Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

Gail Kamaras, Esq.
Debra Swim, Esq.
LEAF
1114 Thomasville Road, Suite E
Tallahassee, FL 32303

PG&E Generating Co.
Sean J. Finnerty
One Bowdoin Squaren Road
Boston, MA 02114-2910

Okeechobee Generating Company, L.L.C.
Sanford L. Hartman
7500 Old Georgetown Road
Bethesda, MD 20814


Charles A. Guyton

TAL_1998/32503-1