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January 13, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: In re: Petition for Determination of Need for an Electrical Power Plant in
Okeechobee County by Okeechobee Generating Company, L.L.C.
Docket No. 991462-EU

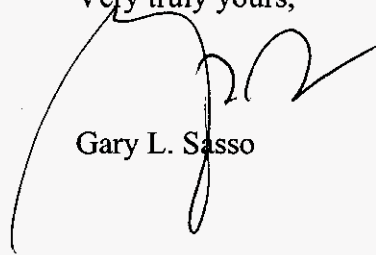
Dear Ms. Bayo:

Enclosed for filing in the above docket is the original and fifteen (15) copies of Florida Power Corporation's Motion to Compel Okeechobee Generating Company, L.L.C. to Respond to FPC's Second Request for Production of Documents.

We request you acknowledge receipt and filing of the above by stamping the additional copy of this letter and returning it to me in the self-addressed, stamped envelope provided.

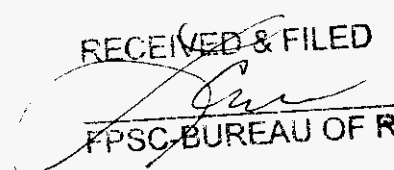
If you or your Staff have any questions regarding this filing, please contact me at (727) 821-7000.

Very truly yours,



Gary L. Sasso

AFM _____
APP _____
CAF _____ Enclosures
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CCH _____
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EAG Staff
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FPSC BUREAU OF RECORDS

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need for an Electrical Power)
Plant in Okeechobee County by)
Okeechobee Generating Company,)
L.L.C.)
_____)

DOCKET NO. 991462-EU

Submitted for filing: January 13, 2000

**FLORIDA POWER CORPORATION'S MOTION TO COMPEL
OKEECHOBEE GENERATING COMPANY, L.L.C.
TO RESPOND TO FPC'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.380, Florida Rules of Civil Procedure, Florida Power Corporation ("FPC") moves to compel Okeechobee Generating Company, L.L.C. ("OGC") to respond to FPC's Second Request for Production of Documents, Request #38, as follows:

Production Request #38

FPC moves to compel OGC to provide all non-privileged documents responsive to Production Request #38 over the objections set forth by OGC. Production Request #38 requests the production of the following:

All documents mentioning, reflecting, or relating to facts analyses, assumptions, projections or other considerations taken into account by OGC and/or PG&E in determining that the proposed Project would be financially viable and desirable.

OGC responded to FPC's request by objecting as follows:

OGC objects to this request on the ground that it seeks documents containing confidential, proprietary business information. OGC also objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or the work product document. Lastly, to the extent that the request seeks documents from PG&E Generation Company, L.L.C. and/or PG&E Corporation, OGC objects to the request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Neither PG&E Generating Company L.L.C., nor PG&E Corporation, are parties to this proceeding and OGC did not rely on any analyses, assumptions, projections, or other considerations of PG&E Generation Company, L.L.C. or PG&E Corporation in

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determining that the Project will be financially viable and desirable. OGC relied solely on analyses and projections carried out by its expert witness, Dr. Dale Nesbitt.

Upon receiving this objection, FPC was uncertain whether OGC actually had any responsive documents other than materials provided by OGC's witness, Dale Nesbitt, in this proceeding. By telephone conference, OGC's counsel confirmed that OGC is withholding an internal analysis of the OGC Project prepared by either PG&E Generating L.L.C. or PG&E Corporation (collectively "PG&E"), OGC's corporate parents. OGC is apparently withholding this responsive, internal analysis, on the basis that it contains confidential and proprietary business information and because it was prepared by PG&E. OGC's objections are inappropriate.

First, OGC may not properly withhold documents simply by claiming that they contain "confidential, proprietary business information." If OGC has a concern about confidential and proprietary documents, it should seek to have those documents treated confidentially in this proceeding in the manner set forth in the Order Establishing Procedure, PSC 99-2002-PCO-EU. Or OGC must move for a protective order that identifies specifically the documents being withheld and the reason(s) why those documents are entitled to protection. OGC may not simply refuse to produce the documents.

It is important to recognize that the documents that FPC seeks to obtain, and that OGC insists on withholding, go to the crux of OGC's case. OGC seeks to have its Project approved not on the basis of executed power purchase agreements with Florida retail utilities, but on the basis of an assertion that there is a viable market for OGC's proposed plant. OGC seeks to obtain approval of its Project based on the fact that "OGC expects to sell approximately 4.3 million MWH of electric energy from the Project to other utilities and power marketers in

Peninsular Florida per year from 2004 through 2013” (Petition, ¶ 3) (emphasis added).

OGC further represents that the “Project will operate, economically, at annual capacity factors of approximately 93 percent from 2004 through 2013.” (*Id.*, ¶ 28). OGC asserts that “[t]he presence of the Project, with its high efficiency, is expected to suppress wholesale power prices in Florida below what they would otherwise be.” (*Id.*). In addition, OGC states that “OGC projects that virtually all of the Project’s output over the 2003 through 2013 period is expected to be sold to other utilities and power marketers in Peninsular Florida (*i.e.*, within the FRCC region), on the basis of the relative economics of the Project and other Peninsular Florida generation facilities.” (*Id.*, ¶ 29) (emphasis added).

By its Petition, therefore, OGC has placed squarely into issue OGC’s expectations of when and how often the proposed plant will run, at what price it will sell, to whom it will sell, in what region(s) it will sell, and whether in view of the foregoing the plant will be economically viable. It naturally follows that internal analyses prepared by OGC (or by its corporate parent, PG&E) indicating what OGC (and/or PG&E) relied upon “in determining that the proposed Project would be financially viable and desirable” go to the heart of OGC’s Petition. FPC should be entitled to discover, and, in turn, to disclose to this Commission, whether OGC is saying one thing internally and something else again to the Commission about the basic economic and other assumptions that underlie its proposed Project.

The fact that OGC has offered for public consumption the projections and testimony of its retained expert, Dale Nesbitt, provides little comfort. For instance, based on his projections, Dr. Nesbitt asserts that OGC would sell all the output from the plant in Florida. But PG&E’s internal analysis may well show that in order to be financially viable OGC will have to chase price spikes outside the state. Similarly, OGC claims, again based on Dr. Nesbitt’s analysis, that

it will be operating (and thus contributing to reliability) during an average of 93% of the hours a year at its full capacity. Dr. Nesbitt admits, however, that he is modeling OGC as a hypothetical plant, not using real “proprietary” numbers. The Commission is entitled to know if PG&E’s own internal analysis (presumably using real Project numbers) would suggest the same conclusions.

In sum, OGC should be made to lay open its (or PG&E’s) evaluation of the financial viability and desirability of this Project so that the Commission can see how the Project’s owner and developer thinks the merchant plant will act and how “cost-effective” this merchant plant really is for Florida. If OGC is permitted to thwart discovery on such a critical issue by hiding behind a claim that this information is confidential or proprietary, it will be impossible both for the intervenors in this proceeding – whose need OGC is allegedly attempting to meet – and this Commission to evaluate objectively and adequately the viability and alleged economic need for OGC’s proposed “merchant” power plant.

Second, OGC’s objection to producing its internal analysis of the financial viability and desirability of the Project because it was developed by PG&E, its corporate parent, is equally inappropriate and legally baseless. OGC was created by PG&E solely for the purpose of building the proposed Project in Florida. And OGC repeatedly relies on both the development expertise and financial wherewithal of PG&E in its attempt to demonstrate to this Commission its ability to develop the proposed “merchant plant.” OGC should not be able to have it both ways: touting its close affinity with PG&E to suggest to the Commission that PG&E is standing behind the Project and then disavow this connection for purposes of discovery. PG&E is plainly in possession of evidence directly relevant to OGC’s Project, and OGC should not be able to shield relevant evidence from review by the parties and this Commission by the simple

expediency of keeping it at PG&E's offices instead of OGC's (even assuming that they are different).

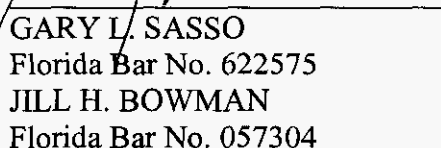
In *Medivision of E. Broward County, Inc. v. Department of Health & Rehabilitative Services*, 488 So. 2d 886 (Fla. 1st DCA 1986), the First District Court of Appeals, in circumstances very similar to these, upheld a hearing officer's decision compelling an applicant for a Certificate of Need, who relied on the expertise and financial backing of its parent corporation in its application, to produce documents held by its parent. OGC was incorporated solely for the purpose of building the proposed Project, and like the subsidiary in *Medivision*, has directly relied upon PG&E's activities in support of its Petition. (Petition, pp. 16-17; Exhibit to Petition pp. 9-14). Indeed, at page 16 of its petition, OGC states "PG&E Generating is developing the Project consistent with the policies of the FERC to develop and promote a robust, competitive wholesale market." (Empasis added). Accordingly, like the need applicant in *Medivision*, OGC must not be permitted to thwart proper discovery by relying upon a corporate status conferred upon it by PG&E for the sole purpose of implementing PG&E's plans to develop the Project.

For the foregoing reasons, OGC should be compelled by the Commission to produce to FPC all non-privileged documents responsive to FPC's production request #38.

Wherefore, FPC requests that this Commission enter an Order requiring OGC to produce all non-privileged documents responsive to Production Request #38, including documents within the custody and/or control of PG&E Generating Company, L.L.C., and/or PG&E Corporation.

Respectfully submitted,
FLORIDA POWER CORPORATION

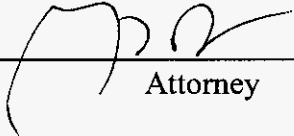
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA POWER CORPORATION'S MOTION TO COMPEL OKEECHOBEE GENERATING COMPANY, L.L.C. TO RESPOND TO FPC'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS has been furnished by facsimile to Robert Scheffel Wright and John Moyle as counsel for Okeechobee Generating Company, L.L.C. and by U.S. Mail to all other counsel of record this 13th day of January, 2000.



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