

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. 99-1462-EE

FILED: JANUARY 25 2000

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OKEECHOBEE GENERATING COMPANY'S RESPONSE
TO FLORIDA POWER CORPORATION'S
SECOND MOTION TO COMPEL

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to Uniform Rule 28-106.204, Florida Administrative Code, and the Order Establishing Procedure, as revised, hereby respectfully submits this Response to Florida Power Corporation's ("FPC") Motion to Compel OGC to Respond to FPC's Second Request for Production of Documents ("FPC's Second Motion to Compel"), which was filed on January 13, 2000.¹ As explained herein, FPC's Second Motion to Compel should be denied. In support of this response, OGC says:

ARGUMENT

In its Second Motion to Compel, FPC asks the Commission to force OGC to disclose documents containing confidential, proprietary business information responsive to FPC's Request to Produce No. 38 that are in the custody or control of OGC's parent and/or affiliates. FPC argues that OGC should be forced "to lay open" to its direct competitors highly sensitive trade secrets. For the reasons set forth below and in OGC's Second Motion for Protective Order (filed on

¹FPC's Certificate of Service erroneously indicates that OGC was served a copy of FPC's Second Motion to Compel by hand delivery. In fact, FPC served OGC by U.S. Mail. Accordingly, under the Uniform Rules of Procedure, OGC's response is due on January 25, 2000.

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January 18, 2000), FPC is wrong.

As a preliminary matter, it should be noted that FPC failed to confer with OGC as required by Rule 28-106.204(3), F.A.C., prior to filing its Second Motion to Compel.² It also should be noted that FPC filed its Second Motion to Compel six days before OGC's response to Request to Produce No. 38 was due. As such, FPC's Second Motion to Compel should be denied as procedurally defective for failure to comply with the Uniform Rules of Procedure and for being filed prematurely.

**I. OGC SHOULD NOT BE REQUIRED TO DISCLOSE TO FPC ITS
CONFIDENTIAL, PROPRIETARY BUSINESS INFORMATION.**

In its objections to FPC's discovery requests, OGC objected to any discovery requests directed to OGC's parent and/or affiliates. In its Second Motion to Compel, FPC argues that OGC's parent and/or affiliates should be required to disclose responsive documents and information. However, OGC has not withheld any documents or information based on that objection. Rather, OGC has not disclosed the documents and information sought by FPC because they represent highly confidential, proprietary business information protected from disclosure to FPC by the Florida Evidence Code and by the Commission's rules. See Section 90.506, Florida Statutes ("F.S."); Rule 25-22.006(6)(a), F.A.C. OGC's basis for objecting to FPC's discovery

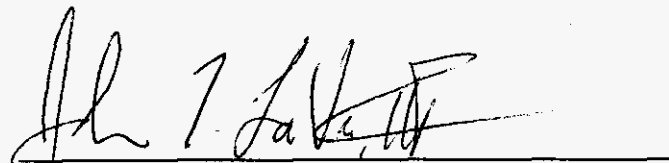
²This is not the first time in this proceeding that FPC has failed to comply with Rule 28-106.204(3), F.A.C. See FPC's Motion to Expedite Discovery (filed October 19, 1999).

requests is more fully developed in OGC's Second Motion for Protective Order, which OGC filed on January 18, 2000, and which is incorporated by reference herein.

To briefly summarize OGC's position, OGC has identified only one document that would be responsive to FPC's Request to Produce No. 38: the PG&E Generating Company, L.L.C. ("PG&E Generating") Project Pro Forma for the Okeechobee Generating Project ("PG&E Generating's Pro Forma"). PG&E Generating's Pro Forma is a composite document containing highly confidential, proprietary business information derived by PG&E Generating including, but not limited to, PG&E Generating's forward price curves for energy and capacity, costs of capital, rates of return, and net revenue projections. In addition, PG&E Generating's Pro Forma contains economic information and assumptions that go to the very core of how PG&E Generating makes business decisions concerning a wide array of issues, including, but not limited to, risk management and investment decision-making both inside and outside of Florida. PG&E Generating's Pro Forma for the Okeechobee Project contains critically sensitive information of and relating to PG&E Generating's costs and pricing strategies for each and every of PG&E Generating's power development projects throughout the country. Thus, requiring OGC to disclose PG&E Generating's Pro Forma to FPC would require OGC to reveal extremely confidential information regarding PG&E Generating's internal financial projections and development plans to its direct competitor, thereby causing

significant and irreparable harm to the economic interests of OGC and PG&E Generating. PG&E Generating's Pro Forma is not reasonably necessary to FPC and the Commission should deny FPC's Second Motion to Compel. See Eastern Cement Co. v. Dep't of Env'tl. Reg., 512 So.2d 264 (Fla. 1st DCA 1987).

Respectfully submitted this 25th day of January, 2000.



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CERTIFICATE OF SERVICE
DOCKET NO. 991462-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*), facsimile (**), or by United States Mail, postage prepaid, on the following individuals this 25th day of January, 2000.

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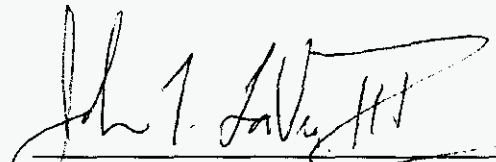
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