

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-EU) FILED: JANUARY 31, 2000

RECEIVED - FPSC 00 JAN 31 PM 4:03 RECORDS AND REPORTING

OKEECHOBEE GENERATING COMPANY'S OBJECTIONS TO FLORIDA POWER CORPORATION'S SECOND SET OF INTERROGATORIES TO PETITIONER

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to the Order Establishing Procedure issued in this docket hereby respectfully submits its objections to Florida Power Corporation's ("FPC") Second Set of Interrogatories to Petitioner ("FPC's Second Set of Interrogatories"), which were served on OGC on January 21, 2000.

GENERAL OBJECTIONS

OGC objects to FPC's Second Set of Interrogatories on the grounds set forth in paragraphs A-E below. Each of OGC's responses will be subject to and qualified by these general objections.

A. OGC objects to the "Definitions" included in FPC's Second Set of Interrogatories to the extent that they purport to impose upon OGC obligations that OGC does not have under the law that FPC invokes. Specifically, OGC objects to the definition of "you" or "your" to include PG&E Generating Company, L.L.C., and/or PG&E Corporation, including any subsidiaries, affiliates, and divisions or departments of same. PG&E Generating Company, L.L.C., PG&E Corporation, and other subsidiaries and affiliates are not parties to this proceeding and are under no obligation to respond to FPC's First Set of Interrogatories.

AFA APP CAF CMU ETR EAG LEG MAS OPC RRR SEC VAW OTH

RECEIVED & FILED FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE 01311 JAN 31 8 FPSC-RECORDS/REPORTING

B. OGC objects to any interrogatory that calls for the creation of information as opposed to the reporting of presently existing information as an improper expansion of OGC's obligations under the law FPC invokes.

C. OGC objects to any interrogatory that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made to these interrogatories or is later determined to be applicable for any reason. OGC in no way intends to waive any such privilege or protection.

D. OGC objects to any interrogatory that calls for confidential, proprietary business information and/or the compilation of information that is considered confidential, proprietary business information.

E. As noted in OGC's specific objections stated below, OGC objects to any interrogatory propounded by FPC in its Second Set of Interrogatories that seeks information beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure ("F.R.C.P."). Rule 1.280(b)(4)(A), F.R.C.P., which is made specifically applicable to this proceeding by Uniform Rule 28-106.206, Florida Administrative Code, provides as follows:

- (4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable

under the provisions of subdivision (b) (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) By interrogatories a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 1.390 without motion or order of court.

(iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial:

1. The scope of employment in the pending case and the compensation for such service.
2. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants.
3. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial.
4. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as an expert witness; however, the expert shall not be required to disclose his or her earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to

subdivision (b)(4)(C) of this rule concerning fees and expenses as the court may deem appropriate.

FPC has not asked interrogatories that are permitted under Rule 1.280(b), F.R.C.P. Rather, FPC has propounded numerous interrogatories directed to Dale M. Nesbitt, Ph.D., one of OGC's testifying experts. These interrogatories are clearly beyond the scope of discovery by interrogatories permitted under the applicable rules. OGC will, of course, produce its testifying experts for deposition as provided for in Rule 1.280(b)(4)(A)(ii), F.R.C.P.

SPECIFIC OBJECTIONS

OGC makes the following specific objections to FPC's Second Set of Interrogatories. OGC's specific objections are numbered to correspond with the number of FPC's interrogatories.

8. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

9. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

10. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

11. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

12. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

13. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

14. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

15. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

16. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

17. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

18. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

19. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

20. OGC objects to this interrogatory in its entirety to the extent that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure. OGC will attempt to provide a response by non-expert witness personnel.

21. OGC objects to this interrogatory because it seeks confidential, proprietary business information. For the reasons set forth in OGC's Second Motion for Protective Order, OGC's revenue projections constitute highly sensitive trade secrets which OGC should not be required to disclose to a direct competitor. OGC will attempt to respond with non-confidential, non-proprietary information.

22. OGC objects to this interrogatory in its entirety on the

grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

23. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

24. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

25. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

26. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

27. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

28. OGC objects to this interrogatory in its entirety on the

grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

29. OGC objects to this interrogatory because it seeks confidential, proprietary business information. For the reasons set forth in OGC's Second Motion for Protective Order, OGC's projected production margin constitutes a highly sensitive trade secret which OGC should not be required to disclose to a direct competitor. OGC will attempt to respond with non-confidential, non-proprietary information.

30. OGC objects to this interrogatory because it seeks confidential, proprietary business information. For the reasons set forth in OGC's Second Motion for Protective Order, OGC's hurdle rate of return constitutes a highly sensitive trade secret which OGC should not be required to disclose to a direct competitor.

31. OGC objects to this interrogatory because it seeks confidential, proprietary business information. For the reasons set forth in OGC's Second Motion for Protective Order, OGC's internal rate of return constitutes a highly sensitive trade secret which OGC should not be required to disclose to a direct competitor.

32. OGC objects to this interrogatory because it seeks confidential, proprietary business information. For the reasons set forth in OGC's Second Motion for Protective Order, the period of time over which OGC projects recovery of its initial investment relates

directly to OGC's forward price curves, which constitute highly sensitive trade secrets which OGC should not be required to disclose to a direct competitor. OGC will attempt to respond with non-confidential, non-proprietary information.

33. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

34. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

35. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

36. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

37. OGC objects to this interrogatory in its entirety on the grounds that it seeks information beyond the scope of discovery permitted of a testifying expert witness by the Florida Rules of Civil Procedure.

Respectfully submitted this 31st day of January, 2000.



Jon C. Moyle, Jr.
Florida Bar No. 727016
Moyle Flanigan Katz Kolins
Raymond & Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, Florida
Telephone (850) 681-3828
Telecopier (850) 681-8788

and

Robert Scheffel Wright
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
LANDERS & PARSONS, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302
Telephone (850) 683-0311
Telecopier (850) 224-5595

Attorneys for Okeechobee Generating
Company, L.L.C.

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 transmission (**), or by United States Mail, postage prepaid, on the following individuals this 31st day of January, 2000.

William Cochran Keating, IV, Esq.*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gunter Building
Tallahassee, FL 32399

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

Matthew M. Childs, Esq.
Charles A. Guyton, Esq.
Steel Hector & Davis
215 South Monroe Street
Suite 601
Tallahassee, FL 32301

Mr. Paul Darst
Dept. of Community Affairs
Division of Local
Resource Planning
2740 Centerview Drive
Tallahassee, FL 32399-2100

William G. Walker, III
Vice President, Regulatory Affairs
Florida Power & Light Company
9250 West Flagler Street
Miami, FL 33174

Mr. Scott A. Goorland
Florida Dept. of
Environmental Protection
3900 Commonwealth Blvd.
MS 35
Tallahassee, FL 32399-2400

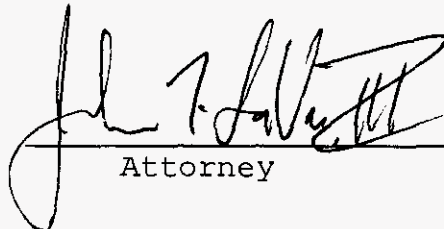
Gail Kamaras, Esq.
Debra Swim, Esq.
LEAF
1114 Thomasville Road
Suite E
Tallahassee, FL 32303-6290

Ms. Angela Llewellyn
Administrator
Regulatory Coordination
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601-2100

Gary L. Sasso, Esquire**
Carlton Fields
P.O. Box 2861
St. Petersburg, FL 33731

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

Harry W. Long, Jr.
Tampa Electric Company
P.O. Box 111
Tampa, FL 33601



Attorney