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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of)
Need for an Electrical Power Plant) DOCKET NO. 991462-1-ED
in Okeechobee County by Okeechobee)
Generating Company, L.L.C.) FILED: February 4, 2000

RECORDS AND REPORTING

OKEECHOBEE GENERATING COMPANY'S MOTION TO COMPEL
FLORIDA POWER & LIGHT COMPANY TO
RESPOND TO DISCOVERY REQUESTS

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to Uniform Rule 28-106.206, Florida Administrative Code ("F.A.C.") and Rule 1.380, Florida Rules of Civil Procedure ("F.R.C.P.") hereby moves to compel Florida Power & Light Company ("FPL") to respond to OGC's First Request for Admissions and First Request for Production of Documents. As grounds for this Motion to Compel, OGC states as follows.

1. On November 5, 1999, OGC propounded its First Set of Requests for Admissions (Nos. 1-44) ("OGC's Requests for Admissions"), First Set of Interrogatories (Nos. 1-85), and First Request for Production of Documents (Nos. 1-26) ("OGC's Requests to Produce") to FPL (collectively referred to as "OGC's Discovery Requests"). On November 15, 1999, FPL filed general and specific objections to OGC's Discovery Requests. FPL's Objections to OGC's First Request for Production of Documents (Nos. 1-26), First Set of Interrogatories (1-85) and First Request for Admissions (1-44) at ("FPL's Discovery Objections"). On December 6, 1999, FPL selectively responded to OGC's Discovery Requests. FPL's general objection that the discovery is moot and irrelevant is contrary to

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law. FPL's specific objections fail on the merits. OGC's Discovery Requests are relevant to the subject matter of this action and FPL should be compelled to answer OGC's Requests for Admissions and Requests to Produce.

PRELIMINARY MATTERS AND GENERAL OBJECTIONS

Scope of Discovery.

2. The Florida Rules of Civil Procedure provide that a party may obtain discovery on any matter that is not privileged if the matter is relevant to the subject matter of the pending action, regardless whether it relates to the claim or defense of any party. The primary limiting factor on the scope of discovery is that the information sought must be reasonably calculated to lead to the discovery of admissible evidence. Rule 1.280(b), F.R.C.P.; Simons v. Jorg, 384 So.2d 1362 (Fla. 2d DCA 1980).

3. With respect to requests for admissions, the Florida Rules of Civil Procedure provide that a party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 1.280(b), F.R.C.P., that relate to statements or opinions of fact or the application of law to fact. A matter is deemed admitted unless the party to whom the request is directed serves a written answer or objection. Florida Bar v. Solomon, 589 So.2d 286 (Fla. 1991). The party who has requested the admissions may move to determine the sufficiency of the answers or objections. As a general rule, any matter admitted is conclusively

established for hearing. Rule 1.370(b), F.R.C.P.

4. The Florida Rules of Civil Procedure also provide that any party may request the production of documents that constitute matters within the scope of Rule 1.280(b), F.R.C.P., that are in the possession or control of the party to whom the request is directed. Rule 1.350(a), F.R.C.P. When producing documents, the producing party must either produce them as they are kept in the usual course of business or identify them to correspond with the categories in the request. Rule 1.350(b), F.R.C.P.

General Objections.

5. FPL generally objects to all of OGC's discovery alleging that it is moot and irrelevant. FPL states that OGC's Discovery Requests are irrelevant because the Discovery Requests "simply track the allegations in FPL's Petition to Intervene." FPL's Discovery Objections at 1. FPL avers that since it has been granted intervention, OGC's Discovery Requests based on FPL's Petition for Leave to Intervene ("FPL's Petition to Intervene") relate to matters no longer at issue in this proceeding.

6. FPL's general relevance argument is wholly without merit. In its Petition to Intervene, FPL alleges numerous, unsubstantiated, adverse impacts resulting from the Okeechobee Generating Project ("Project"). As such, FPL has brought those issues within the fair inquiry of this proceeding. In Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co, 629 So. 2d 852

(Fla. 1st DCA 1994), disapproved on other grounds, Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995), the court found that discovery properly relates to all pleadings and was not limited to issues raised in an amended complaint. The Court stated:

Thus, the answer, affirmative defenses, and counter-claims brought numerous additional issues into litigation.

At the outset, we reject Krypton's argument that the court must limit its consideration to the issues raised in the amended complaint in determining the propriety of MGM's discovery requests. It is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings.

Id. at 854 (emphasis supplied) (citing Becker Metals Corp. v. West Florida Scrap Metals, 407 So.2d 380, 381 (Fla. 1st DCA 1981)). Thus, all matters raised by FPL in its Petition to Intervene are the proper subject of discovery by OGC.

7. In conjunction with its argument that OGC's discovery is moot and irrelevant, FPL argues that the only issues before the Commission are those related to whether the Project meets the criteria of Section 403.519, Florida Statutes ("F.S."). According to FPL, discovery should be limited to issues that "focus, not on FPL's operations, but rather on OGC's proposed operations." FPL's Discovery Objections at 2. According to FPL's theory of the case, since its intervention has been granted and the allegations in FPL's Petition to Intervene purportedly are no longer at issue, FPL should not be "forced to reveal intimate details about its business

operations as the 'price of admission' to test the legitimacy of OGC's need petition." FPL's Discovery Objections at 2.

8. FPL is wrong. OGC's is not the only burden of proof in this proceeding. To have standing under Chapter 120, F.S., a putative party must comply with a two step process. First, the putative party must include in its pleadings sufficient allegations demonstrating that it will be substantially affected by the proposed agency action. See Friends of Matanzas v. Department of Environmental Protection, 729 So.2d 437, 439 (Fla. 5th DCA 1999) (to be entitled to an administrative hearing a party must "allege and establish" that its substantial interests will be affected); see also Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). The allegations of substantial injury are subject to a motion to dismiss challenging whether, as a matter of law, (and assuming all facts to be well pled) the party has alleged a valid basis for standing. If the putative party survives this first hurdle, the analysis is not over. Just as with any factual allegation, the party then must "prove up" its allegations of standing at the final hearing. In this case, FPL's Petition to Intervene contains allegations that FPL's substantial interests will be determined by this proceeding.¹ In the interest

¹For example, FPL has alleged that its ability to plan, build and operate its generation and transmission systems is subject to determination in this proceeding. FPL's Petition to Intervene para. 15.

of administrative efficiency, OGC chose not to file a motion to dismiss challenging the legal bases of FPL's allegations. However, just as OGC must prove up the factual allegations in its Petition for Determination of Need, FPL must also prove up its allegations in its Petition to Intervene.² Sufficient allegations of standing permit FPL to participate in this proceeding as a party. Those allegations do not relieve FPL of the proofs necessary to maintain its standing. "Having pled sufficient facts to legally justify . . . intervention . . . in an on-going case, a party must then establish at hearing an adequate record foundation to prove up its allegations (and standing) under the relevant statute." Florida Audubon Society v. Department of Environmental Regulation, 1986 WL 32870, at *22 (Fla. Dep't Env'tl. Reg. 1986).³

9. FPL chose, of its own volition, to petition to intervene in this docket and the Florida Public Service Commission ("FPSC or Commission") granted FPL's Petition to Intervene. By its order dated November 4, 1999, the Commission determined that FPL had

²Applying FPL's argument to OGC's Petition for Determination of Need leads to the absurd result that all the factual allegations contained in OGC's Petition for Determination of Need are proven merely because they are alleged.

³See also Florida Power Corp. v. Dep't of Env'tl. Protection, 1999 WL 166086 at *1 (Fla. Dep't Env'tl. Protection 1999) (petitions to intervene were granted subject to the intervenors providing proof of standing at the final hearing); Jacksonville Shipyards, Inc. v. Florida Dep't of Env'tl. Reg., 1987 WL 62036 at *21 (Fla. Dep't Env'tl. Reg. 1987) (merely alleging an interest in the petition for intervention but failing to prove up the allegation at hearing is not sufficient).

alleged sufficient facts to establish its standing to participate as a full party in this proceeding. In re: Petition for Determination of Need for an Electrical Power Plant in Okeechobee County by Okeechobee Generating Company, L.L.C., 99 F.P.S.C. 11:18, 11:19 (1999). As a party in this docket, FPL is subject to all applicable rules, including the rules of discovery set forth in the Florida Rules of Civil Procedure.⁴

10. In sum, contrary to FPL's assertions, it does have the burden of going forward with evidence in support of allegations contained in its Petition to Intervene. OGC's discovery is designed to test the truths of those assertions. Accordingly, OGC moves to compel FPL to respond to all of OGC's Discovery Requests as set forth herein over the general objections of FPL.

REQUESTS FOR ADMISSIONS

11. FPL specifically objects to OGC's Requests for Admissions numbers 8-11, 24, 26 and 27 on the grounds that they assert general conclusions of law. Contrary to FPL's assertion, the admissions properly seek the application of law to fact--questions which are expressly permitted under Rule 1.370, F.R.C.P.

A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact

⁴The Florida Rules of Civil Procedure are specifically made applicable to this proceeding pursuant to Rule 28-106.206, F.A.C.

Rule 1.370(a), F.R.C.P. For example, Request for Admission number 11 asks:

11. With respect to FPL's separated wholesale sales, the Commission does not have jurisdiction over FPL to require electric power conservation by FPL.

This Request for Admission clearly seeks FPL's position regarding the application of law (the question of whether the Commission has jurisdiction) to fact (electric power conservation and separated wholesale sales). Requests for Admissions 8-10 pursue inquiries similar to that of Request for Admission number 11. In addition, Request for Admission number 24 asks:

24. Merchant power plants not subject to the Florida Electrical Power Plant Siting Act (e.g. combustion turbines) are legal under current Florida law.

Again, the Request for Admission seeks FPL's position regarding the application of law (the Florida Electrical Power Plant Siting Act) to fact (combustion turbine merchant plants). Requests for Admissions 26 and 27 relate to general policy and the regulatory compact--the exchange of an exclusive franchised service territory for the obligation to serve. The Requests for Admission ask:

26. FPL has an obligation to retain earnings or pay dividends to its shareholders.

27. OGC is not guaranteed a fair rate of return or an exclusive franchised service territory.

These Requests for Admissions do not seek a legal opinion. Rather, they attempt to create a fair comparison between retail-serving

utilities and wholesale, merchant facilities. If FPL properly responds, the answers to Requests for Admissions 8-11, 24, 26 and 27 will serve to eliminate unnecessary proofs at hearing. The Requests for Admissions properly seek the truth of matters within the scope of Rule 1.280(b), F.R.C.P. The purpose of all of OGC's Requests for Admissions is to eliminate issues raised by FPL advocating denial of OGC's Petition for Determination of Need and to achieve a balanced search for the truth. Elkins v. Syken, 672 So.2d 517 (Fla. 1996) In so doing, OGC hopes to construct a level and focused playing field for analysis of OGC's Petition for Determination of Need by this Commission. In the interest of brevity, OGC has provided a representative cross section of the Requests for Admissions propounded on FPL in order to demonstrate the propriety of all of the Requests for Admissions. The examples should not be considered to limit OGC's Motion to Compel. A copy of OGC's First Request for Admissions (Nos. 1-44) to FPL is attached hereto as Exhibit "A." FPL has failed to establish an adequate or sufficient reason for its objections to OGC's Requests for Admissions. Accordingly, OGC moves the Commission to compel FPL to admit or deny Requests for Admissions numbers 8-11, 24, 26 and 27 within ten days of the decision denying FPL's objections.

REQUESTS TO PRODUCE

12. FPL objects to OGC's Requests to Produce numbers 4-7 and 21 on the basis that they are overbroad, unduly burdensome,

harassing and unlikely to lead to the discovery of admissible evidence. With respect to the admissibility of the evidence, OGC submits that Requests to Produce numbers 4-7 and 21 relate to FPL's wholesale sales, both separated and non-separated. FPL has made its wholesale sales relevant in this proceeding by alleging direct injury to FPL if its wholesale sales are displaced by the Project.

Krypton, 629 So.2d at 854. For example, FPL asserts:

The Project is alleged to displace oil-fired and gas-fired generation. (Petition at 32, 33). FPL uses such generation to make off-system opportunity sales. If these off-system opportunity sales are displaced by OGC's generation, then the proceeds or profits from such sales (in excess of \$90,000,000 in 1999) will no longer flow through FPL's adjustment clauses to benefit retail customers, and the generation by OGC will result in increases in the rates charged FPL's retail customers. The prospect of the Project raising FPL's retail rates is a direct injury FPL faces as a result of the Project.

FPL's Petition to Intervene para. 29. In addition to the increased rates alleged in paragraph 29, FPL alleges adverse impacts from the Project in the form of a shift of cost of service responsibility from the wholesale to the retail jurisdiction. Petition to Intervene para. 28. Thus, FPL has brought a broad spectrum of issues related to its wholesale sales into focus in this proceeding. OGC's Discovery Requests are designed to test the validity of FPL's assertions. OGC's Requests to Produce numbers 4-7 and 21 ask FPL to produce:

4. All documents which relate to, mention or otherwise reflect on FPL contracting for energy in the wholesale market on an hourly basis during the last ten years.

5. All documents which relate to, mention or otherwise reflect on FPL contracting for energy in the wholesale market for more than one hour and less than one year during the last ten years.

6. All documents which relate to, mention or otherwise reflect on FPL contracting for capacity in the wholesale market on an hourly basis during the last ten years.

7. All documents which relate to, mention or otherwise reflect on FPL contracting for capacity in the wholesale market for more than one hour and less than one year during the last ten years.

21. All documents which relate to, mention or otherwise reflect on FPL's wholesale sales in Florida or any of its affiliates.

These Requests to Produce properly seek information directly relevant to FPL's alleged adverse impacts and cannot, therefore, be harassment. To defend against the opposition raised by FPL in its Petition to Intervene, OGC must have access to the information upon which FPL is basing its allegations. The subject Requests to Produce are designed to enable OGC to evaluate pertinent information upon which FPL bases its claims. In response to FPL's overbreadth argument and in an effort to expedite the discovery process, OGC agrees to limit the time period for Requests to Produce numbers 4-7 and 21 to the period 1995 through 1999. Subject to this modification, OGC moves the Commission to reject FPL's specific objections and compel FPL to respond to Requests to Produce numbers 4-7 and 21.

13. FPL objects to Requests to Produce numbers 14, 17 and 23 as overbroad and unduly burdensome. Requests to Produce numbers 14,

17 and 23 seek:

14. All documents which relate to, mention or otherwise reflect on whether uncommitted capacity may be included in the calculation of reserve margins for individual utilities, such as FPL.

17. All documents which relate to, mention or otherwise reflect on the recovery of generation costs when FPL purchases power.

23. All documents which relate to, mention or otherwise reflect on the degree to which, if at all, the benefit of revenues from any wholesale sales made by FPL are credited to or "flowed back" to FPL's retail electric customers.

FPL does not argue that the documents requested by OGC are not relevant in this proceeding. Rather, FPL argues that OGC's failure to limit the scope of the requests demonstrates OGC's harassment of FPL. There are several flaws to FPL's objection. First, the requests do not constitute harassment.⁵ OGC is merely seeking documents that it requires to formulate its case-in-chief in this proceeding. If FPL is not willing to allocate the resources necessary to respond to legitimate and relevant discovery requests, it should withdraw its Petition to Intervene in this proceeding. Second, FPL has failed to identify the amount, type or content of the information it alleges would be burdensome to produce. The burden is placed squarely on FPL to quantify for this Commission, the substantive support for its objections. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assoc., 545

⁵FPL's claim of harassment should be put in the proper context. To date, FPL has propounded on OGC nearly 300 interrogatories, including subparts, (nearly 100 of which were unauthorized) and 67 requests to produce.

So.2d 502, 503 (Fla. 1st DCA 1989) (party objecting to discovery as overbroad or burdensome is required to show that the volume of documents, number of man hours required in their production, or some other quantitative factor made it so). FPL falls far short of the level of specificity required to sustain its objection. With respect to FPL's overbreadth argument, in the interest of administrative efficiency, OGC agrees to limit the time period for documents responsive to Requests to Produce numbers 17 and 23 to the years 1995-1999. FPL should be compelled to respond to Requests to Produce numbers 14, 17 and 23.

CONCLUSION

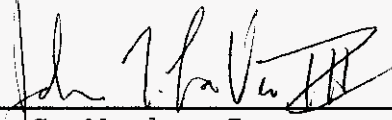
14. If FPL wishes to continue to participate as a party in this proceeding, it must respond to OGC's legitimate Discovery Requests. FPL's general objection for refusing to respond to OGC's Discovery Requests is contrary to law and should be rejected. FPL's specific objections fail on the merits and fail to provide the requisite substantive support and should also be rejected.

15. OGC has conferred with counsel for the parties to this proceeding and is authorized to represent that TECO and FPC object to this Motion, LEAF has no objection to this Motion, and counsel for Commission Staff takes no position on this Motion. OGC was unable to determine FPL's position.

WHEREFORE, OGC respectfully requests that the Commission issue an order compelling responses to OGC's Requests for Admissions numbers 8-11, 24, 26 and 27, and compelling responses to OGC's Requests to Produce numbers 4-7, 17, 21 and 23 as modified and

compelling FPL to respond to OGC's Request to Produce number 14, as propounded.

Respectfully submitted this 4th day of February, 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) 681-0311
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 (*) or by United States Mail, postage prepaid, on the following individuals this 4th day of February, 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
Dpt. 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

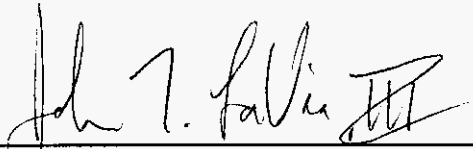
Gail Kamaras, Esq.
Debra Swim, Esq.
LEAF
1114 Thomasville Road
Suite E
Tallahassee, FL 32303-6290

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

EXHIBIT "A"

OGC's First Request for Admissions (Nos. 1-44) to FPL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need for an Electrical Power Plant) DOCKET No. 991462-EU
in Okeechobee County by Okeechobee)
Generating Company, L.L.C.) FILED: November 5, 1999
_____)

OKEECHOBEE GENERATING COMPANY'S
FIRST REQUEST FOR ADMISSIONS
(NOS. 1-44) TO FLORIDA POWER & LIGHT COMPANY

Pursuant to Rule 1.370(a), Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, Okeechobee Generating Company, L.L.C. hereby requests that Florida Power & Light Company respond to the following requests for admissions:

DEFINITIONS

- A. "OGC" means the Petitioner, Okeechobee Generating Company, L.L.C.
- B. "Project" means the Okeechobee Generating Project on which OGC based its petition for determination of need to the Florida Public Service Commission in Docket No. 991462-EU.
- C. "FPL" means Florida Power & Light Company.
- D. "Commission" or "PSC" means the Florida Public Service Commission.
- E. "Non-separated wholesale sales" means wholesale sales of electric capacity or energy, or of both electrical capacity and energy, that are either non-firm or of less than one year in duration.
- F. "Separated wholesale sales" means long-term, firm

wholesale sales of electric capacity or energy, or of both electric capacity and energy, that are of more than one year duration and that commit FPL's production capacity to wholesale customers.

G. "Merchant plant" or "merchant power plant" means a power plant with no rate base and no captive customers.

H. "Florida Energy Brokers" or "Broker" means the Energy Broker Network, Inc., a Florida not-for-profit corporation that took over the Energy Broker function from the Florida Electric Power Coordinating Group, Inc., on October 5, 1995, and which was formed for the purpose of promoting the interchange of hour-long blocks of electric energy between and among its members.

REQUESTS FOR ADMISSIONS

Please admit or deny the truth of the following statements in the manner required by the Florida Rules of Civil Procedure:

1. Under existing regulatory policy in Florida, FPL's wholesale power sales are distinguished and as "separated" and "non-separated" wholesale sales.

2. Non-separated wholesale sales are non-firm or less than one year in duration.

3. With respect to non-separated sales, FPL's retail ratepayers support all of the investment that is used to make the sales.

4. FPL's retail ratepayers receive all of the revenues, both fuel and non-fuel, that non-separated sales generate through a

credit in FPL's fuel and purchased power cost recovery charges.

5. Separated wholesale sales are long-term, firm wholesale sales greater than one year that commit FPL's production capacity to wholesale customers.

6. Wholesale sales are separated to remove the production plant costs and operating and maintenance expenses associated with the wholesale sales from the retail ratepayer's cost responsibility.

7. FPL's shareholders keep all of the non-fuel revenues received from separated sales.

8. With respect to its separated wholesale sales, FPL retains the right to sell power outside the State of Florida any time it is in the economic interest of FPL to do so.

9. With respect to FPL's separated wholesale sales, the Commission does not have jurisdiction over FPL to prescribe uniform systems and classifications of accounts.

10. With respect to FPL's separated wholesale sales, the Commission does not have jurisdiction over FPL to prescribe a rate structure.

11. With respect to FPL's separated wholesale sales, the Commission does not have jurisdiction over FPL to require electric power conservation by FPL.

12. With respect to its separated wholesale sales, FPL does not engage in end-use conservation programs pursuant to section

366.82(2), Florida Statutes.

13. With respect to its separated wholesale sales, FPL has not and does not propose to develop conservation goals pursuant to section 366.82(2), Florida Statutes.

14. With respect to its separated wholesale sales, FPL has an incentive to price each unit of energy it produces at the highest possible price that will still enable FPL to make a sale of that unit of energy so long as the price is greater than the incremental cost of producing and delivering that unit of energy.

15. With respect to its separated wholesale sales, FPL will seek to recover a return on equity through the revenue from the energy it sells.

16. With respect to its separated wholesale sales, FPL's shareholders retain the proceeds of the sales in the same manner that investors of merchant plants retain the proceeds of their sales.

17. Other than sales made through the Florida Energy Broker, when FPL makes non-separated wholesale sales, the benefit of the proceeds in excess of costs associated with those sales flow back to its ratepayers because the ratepayers bear the cost responsibility of the investment used to make those sales.

18. FPL utilizes generating capacity for the purpose of creating profits for its shareholders.

19. When FPL makes "Broker" sales, only 80% of the proceeds

in excess of costs associated with those sales flow back to the ratepayers notwithstanding the fact that the ratepayers support all of the investment used to make those sales.

20. When FPL makes Broker sales, 20% of the proceeds in excess of costs associated with those sales flow directly to FPL's shareholders notwithstanding the fact that the ratepayers support all of the investment used to make those sales.

21. If FPL, in its sole discretion, determines that the Project is a cost-effective and reliable supply resource and if mutually agreeable terms and conditions for the purchase and sale of electric capacity and energy are reached by FPL and OGC, there is no impediment to FPL's contracting to purchase capacity and energy from the Project on a firm, long-term basis.

22. If FPL entered into a long-term, firm contractual commitment for the purchase of power from the Project, FPL can include the amount of the purchased power in its projected reserve margins.

23. Merchant power plants are currently operating in the State of Florida.

24. Merchant power plants not subject to the Florida Electrical Power Plant Siting Act (e.g., combustion turbines) are legal under current Florida law.

25. FPL's shareholders have the opportunity to earn a fair rate of return from all sales of electricity made to FPL's retail

ratepayers.

26. FPL has an obligation to retain earnings or pay dividends to its shareholders.

27. OGC is not guaranteed a fair rate of return or an exclusive franchised service territory.

28. The Project will provide the most cost-effective, reliable means for FPL to meet its obligation to serve its retail customers or else FPL will not purchase power from the Project.

29. FPL is not entitled to assurances as to how, when, where and on what terms any merchant power plant currently selling wholesale power in the State of Florida will be marketed.

30. When FPL constructs a power plant, FPL's ratepayers bear the risk of plant obsolescence.

31. OGC bears the risk of plant obsolescence of the Project.

32. When FPL makes separated wholesale sales, there is no assurance that the terms of sale of that power will be advantageous to the ultimate consumers of the power.

33. A second, major trans-Florida gas pipeline will benefit the State of Florida by enhancing Florida's gas supply reliability.

34. FPL's reserve margin calculations in its ten-year site plan filings include the contribution of non-firm resources.

35. FPL opposes the construction and operation of merchant plants in Florida.

36. FPL supports a robust, competitive wholesale power market

in Florida.

37. Merchant plants sell uncommitted capacity and energy into the wholesale market.

38. FPL has previously relied on unspecified capacity and energy purchases as an element of its reserve margin in its ten-year site plan filings.

39. FPL has previously purchased power generated by a merchant power plant.

40. FPL participates in the wholesale power market both as a buyer and as a seller of wholesale power.

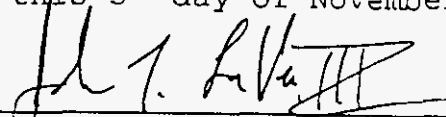
41. FPL has sold wholesale power outside the State of Florida within the last five years.

42. Merchant plants increase the supply of generation resources within any given wholesale power market.

43. The greater the supply of generation resources in any wholesale power market, the more robust the competition in that market will be.

44. The operation of the various power plants owned by other retail-serving utilities in Peninsular Florida, or of the various power plants the output of which is contractually committed to retail-serving utilities in Peninsular Florida, does not, under normal conditions, adversely affect the manner in which FPL operates its existing generating units.

Respectfully submitted this 5th day of November, 1999.



John C. Moyle, Jr.
Moyle Flanigan Katz Kolins
Raymond & Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301
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 College Avenue (32301)
Post Office Box 271
Tallahassee, Florida 32302
Telephone: (850) 681-0311
Telecopier: (850) 224-5595

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (*) or U.S. Mail, on this 5th day of November, 1999, to the following:

W. Cochran Keating, Esq.*
Division of Legal Services
Florida Public Service Comm.
2540 Shumard Oak Boulevard
Gunter Building
Tallahassee, FL 32399-0850

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

Matthew M. Childs, Esquire*
Charles A. Guyton*
Steel Hector & Davis, LLP
215 South Monroe Street
Suite 601
Tallahassee, FL 32301
(Florida Power & Light Co.)

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

Gary L. Sasso, Esq.
Carlton Fields
P.O. Box 2861
St. Petersburg, FL 33731
(Florida Power Corporation)

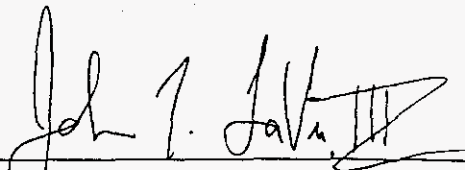
James A. McGee, Esq.
Florida Power Corporation
P.O. Box 14042
St. Petersburg, FL 33733

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

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

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

Mr. Scott Goorland, Esq.
Department of Environmental
Protection
2600 Blairstone Road
Tallahassee, FL 32399-2400



Attorney