

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: February 4, 2000

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OKEECHOBEE GENERATING COMPANY'S
MOTION TO COMPEL FLORIDA POWER CORPORATION
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 Corporation ("FPC") to respond to OGC's First Set of Interrogatories and First Request for Production of Documents. As grounds for this Motion to Compel, OGC states as follows.

SUMMARY

1. On November 5, 1999, OGC propounded its First Set of Requests for Admissions (Nos. 1-44), First Set of Interrogatories (Nos. 1-37) ("OGC's Interrogatories") and First Request for Production of Documents (Nos. 1-29) ("OGC's Requests to Produce") to FPC (collectively referred to as "OGC's Discovery Requests"). On November 15, 1999, FPC filed general and specific objections to OGC's Discovery Requests. On December 6, 1999, FPC selectively responded to OGC's Discovery Requests. FPC's general objections regarding OGC's alleged intent not to rely on FPC's discovery and OGC's burden of proof are contrary to law. FPC's specific objections are wrong, fail on the merits, fail to provide the

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requisite substantive support and merely stonewall OGC's legitimate Discovery Requests. OGC's Discovery Requests are relevant to the subject matter of this action and FPC should be compelled to answer OGC's Interrogatories and OGC's 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 a 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. The Florida Rules of Civil Procedure authorize a party to propound interrogatories on another party. Interrogatories may relate to any matter that can be inquired into under Rule 1.280(b), F.R.C.P. Interrogatories are not objectionable merely because an answer involves an opinion, calls for a conclusion, or asks for information not within the personal knowledge of the party. A party must respond by giving such information that it has and stating the source of the information. Rule 1.340(b), F.R.C.P. Interrogatories may be served on any party. Each interrogatory must be answered separately and fully, in writing under oath,

unless the responding party timely objects. If an objection is made, the grounds for the objection must be stated. Rule 1.340(a), F.R.C.P.

4. The Florida Rules of Civil Procedure also provide that any party may request the production of documents that constitute or contain 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. FPC generally objects to OGC's Discovery Requests stating that since OGC did not join FPC as a party, OGC has thus admitted that OGC does not intend to rely on discovery from FPC. Florida Power Corporation's Objections to Okeechobee Generating Company's First Request for Production of Documents at 1 ("FPC's Production Objections"); Florida Power Corporation's Objections to Okeechobee Generating Company's First Set of Interrogatories at 1 ("FPC's Objections to Interrogatories"). This is utter nonsense. OGC has no affirmative duty to join an entity as a party as a condition precedent to propounding discovery on that entity. However, OGC does have the right to inquire through discovery once party status

has been granted. Rule 1.280, F.R.C.P. is unambiguous: "parties may obtain discovery." Rule 1.280(a) and (b), F.R.C.P.

6. FPC chose, of its own volition, to petition to intervene in this docket and the Florida Public Service Commission ("FPSC or Commission") granted FPC's Petition to Intervene. By its order dated November 4, 1999, the Commission determined that FPC had 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, FPC is subject to all applicable rules, including the rules of discovery set forth in the Florida Rules of Civil Procedure.¹ FPC cannot avail itself of the rights of a party (i.e. by propounding discovery on OGC) while at the same time selectively ignoring discovery requests on the erroneous basis that OGC did not join it as a party. If FPC does not want to comply with the obligations of a party, it should withdraw its Petition to Intervene. OGC will not object to such a withdrawal. The Commission should not tolerate FPC's unfounded efforts to evade its responsibilities and the rules.

7. In conjunction with its argument that OGC is not entitled to discovery because OGC has allegedly admitted that it does not

¹ The Florida Rules of Civil Procedure are specifically made applicable to this proceeding pursuant to Rule 28-106.206, F.A.C.

intend to rely on discovery from FPC, FPC states that OGC carries the affirmative burden in this proceeding and that FPC will not sponsor a witness from FPC. Apparently, under FPC's theory of the case, only OGC has a burden of proof in this proceeding.

8. FPC is wrong. OGC's is not the only burden of proof in this proceeding. To have standing to intervene under Chapter 120, Florida Statutes ("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 substantiated 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 contained in the petition to intervene are then 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, FPC's Petition to Intervene contains allegations that FPC's substantial interests will be determined by

this proceeding.² In the interest of administrative efficiency, OGC chose not to file a motion to dismiss challenging the legal bases of FPC's allegations. However, just as OGC must prove up the factual allegations in its Petition for Determination of Need,³ FPC must also prove the factual allegations in its Petition to Intervene. Sufficient allegations of standing permit FPC to participate in this proceeding as a party. Those allegations do not relieve FPC 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).⁴

²For example, FPC has alleged that its long term planning will be adversely affected and its ability to meet its obligation to its retail customers will be impaired. FPC's Petition to Intervene para. 2.

³Applying FPC'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.

⁴See 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 granted subject to 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 petition for intervention but failing to prove up allegation at hearing is not sufficient).

9. In its Petition to Intervene, FPC alleges numerous, unsubstantiated, adverse impacts resulting from the Okeechobee Generating Project ("Project"). As such, FPC has brought those issues within the scope of 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 the 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 FPC in its Petition to Intervene are the proper subject of discovery by OGC. OGC must be given an opportunity to test FPC's allegations.

10. In sum, contrary to its assertions, FPC 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 FPC to respond to all of OGC's Discovery Requests as set forth herein over FPC's general objections.

SPECIFIC OBJECTIONS AND INSUFFICIENT RESPONSES

Interrogatories.

11. FPC specifically objects to OGC's Interrogatories numbers 10-25 and 29-37 on the basis that they are "irrelevant, immaterial, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence relating to an alleged need for OGC's plant." FPC's Objections to Interrogatories at 2. Contrary to FPC's assertions, OGC's Interrogatories are highly relevant to the issues involved in this proceeding because the vast majority⁵ of the questions track the allegations contained in FPC's Petition to Intervene. For example, FPC alleges:

If the Commission were to accept OGC's position, therefore, FPC's obligations under long-standing Commission policy would change, and FPC's long-term planning will be detrimentally affected.

FPC's Petition to Intervene para. 10. In response to this allegation, OGC's Interrogatories numbers 10-13 ask a series of questions directly related to FPC's generation and transmission

⁵Only Interrogatories 26-28 arguably are not directly or indirectly based on FPC's Petition to Intervene. Interrogatories 26-28 relate to expert and non-expert witnesses and documents FPC intends to introduce at the hearing in this matter.

planning:

10. Does FPC plan its transmission system taking into consideration the existing and planned transmission facilities of other utilities, cogenerators and independent power producers? If not, why not? If yes, why?

11. Does FPC plan its generation system taking into consideration the existing and planned generation facilities of other utilities, cogenerators and independent power producers? If not, why not? If yes, why?

12. How does FPC account for, plan or integrate the transmission facilities of other retail utilities, cogenerators and independent power producers into its planning processes if none of the transmission capacity or resources of those entities is directly committed to FPC?

13. How does FPC account for, plan or integrate the generation facilities of other retail utilities, cogenerators and independent power producers into its planning process if none of the generation resources of those entities is directly committed to FPC?

In a similar vein, FPC alleges:

Granting OGC's petition would fundamentally alter the role of public utilities under the pre-existing regulatory scheme and would thus impair FPC's substantial legal interests as a regulated retail utility.

FPC's Petition to Intervene para. 8. OGC's Interrogatories numbers 14, 15 and 19 relate to the role of public utilities under the pre-existing regulatory scheme and FPC's legal interests as a regulated utility:

14. Are other Florida utilities with generation facilities obligated to sell power to FPC? If the answer is yes, under what

conditions are those utilities obligated to sell power to FPC?

15. Under what conditions is FPC required to sell power into the Florida grid? Under what conditions is FPC not required to sell power into the Florida grid?

19. Does FPC have an economic incentive to maximize returns when it makes wholesale sales?

In its Petition to Intervene, FPC proposes 23 Disputed Issues of Material Fact. Petition to Intervene at 14-17. The first two Disputed Issues of Material Fact address wholesale power sales outside the State and assurances as to terms of wholesale power sales. The first two Disputed Issues of Material Fact ask:

a. Whether and to what extent the power produced by OGC's proposed "merchant plant" would be sold in Florida or outside the State.

b. Whether and to what extent retail utilities in the State would have any assurance of how, when, where, and on what terms OGC will market power in this State.

OGC's Interrogatories numbers 20-22 seek information regarding the manner in which power is currently marketed inside and outside the State to allow OGC to respond to the FPC's proposed Disputed Issues of Material Fact. Interrogatories 20-22 ask:

20. What percentage of FPC's wholesale sales for the years 1995 through 1999 were made to utilities in Florida?

21. What percentage of FPC's wholesale sales for the years 1995 through 1999 were made to power marketers?

22. What percentage of FPC's wholesale sales

for the years 1995 through 1999 were made to utilities outside Florida?

Clearly, OGC's Interrogatories 20-22 are directly relevant to issues raised by FPC in its Petition to Intervene. FPC also expresses concerns regarding its and Peninsular Florida's transmission facilities in its Disputed Issues of Material Fact: FPC asks:

r. Whether FPC's transmission facilities or the transmission grid in Peninsular Florida would ultimately be adversely affected by the project.

OGC's Interrogatories 29-37 all relate to FPC's transmission facilities. A copy of OGC's First Set of Interrogatories to FPC is attached hereto as Exhibit "A." Even a cursory examination of the discovery confirms that OGC's Interrogatories are relevant, are not unduly burdensome and are reasonably calculated to lead to the discovery of admissible evidence. As such FPC's specific objections should be rejected and FPC compelled to respond to Interrogatories 10-25 and 29-37.

12. FPC provides no substantive support for its objections and its conclusory objections should be summarily rejected. FPC has the burden of affirmatively demonstrating the validity of its objections. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assoc., Inc. 545 So.2d 502, 503 (Fla. 1st DCA 1989); Carson v. Fort Lauderdale, 173 So.2d 743, 744 (Fla. 2d DCA 1965) (burden of proving the validity of objections to

discovery is upon objecting party). Broad assertions of terms of art, without substantive support, are meaningless. First City Developments, 545 So.2d at 503. Accordingly, FPC's unsubstantiated objections should be rejected and FPC should be compelled to respond to OGC's Interrogatories numbers 10-25 and 29-37.

Requests to Produce.

13. Like its specific interrogatories objections, FPC asserts five wholly unsubstantiated, boilerplate objections to OGC's Requests to Produce numbers 4-9, 14, 21-23, 25 and 26. The objections are that the requests are irrelevant, immaterial, argumentative, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. FPC's Production Objections at 1. Like OGC's Interrogatories, OGC's Requests to Produce were derived from FPC's Petition to Intervene and all of the Requests to Produce are relevant in this proceeding. For example, FPC expresses its concern about regulatory uncertainty created by merchant plants:

In this climate, FPC is uncertain of both how and if regulated retail load-serving utilities are supposed to co-exist with "merchant plants" in the existing regulatory environment.

FPC's Petition to Intervene para. 17 (emphasis in original). OGC's Requests to Produce numbers 4-7, 21, 23, 25 and 26 all relate to wholesale power sales, the "existing regulatory environment" and the co-existence of merchant plants with retail load-serving

utilities. The following examples are representative of the types of relevant information OGC's Requests to Produce seek from FPC:

5. All documents which relate to, mention or otherwise reflect on FPC contracting for energy 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 the recovery of generation costs when FPC purchases power.

23. All documents which relate to, mention or otherwise reflect on FPC's power marketing arrangements or contracts that vary from the terms of filed tariffs.

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

26. All documents which relate to, mention or otherwise reflect on FPC's development, ownership or operation of Merchant Power Plants in the United States.

Clearly, Requests to Produce numbers 4-7, 21, 23, 25 and 26 are relevant to FPC's allegations regarding the regulatory environment and merchant plants. However, OGC concedes that the ten year period required by Requests to Produce numbers 4-7 may be overly broad and agrees to reduce the time frame to the period 1995-1999 for those Requests to Produce.

14. Requests to Produce numbers 8 and 9 directly relate to FPC's allegation that granting OGC's Petition for Determination of Need would "impair FPC's substantial legal interests as a regulated retail utility." FPC's Petition to Intervene para. 8. For

example, Request to Produce number 9 asks for:

9. All documents which relate to, mention or otherwise reflect on FPC's legal obligation to make adequate investment in generating capacity and provide adequate and reliable electric service.

The Requests to Produce quoted herein exemplify the fact that all of OGC's Requests to Produce are relevant to the subject matter of this proceeding because they address issues raised by FPC in its Petition to Intervene. A copy of OGC's Requests to Produce is attached hereto as Exhibit "B." A cursory examination of the Requests to Produce, confirms that all of OGC's Requests to Produce are relevant and are reasonably calculated to lead to discovery of admissible evidence. As such, on their face, FPC's specific objections should be rejected and FPC should be compelled to respond to Requests to Produce numbers 4-9, 14, 21-23, 25 and 26.

15. In addition to its error regarding the relevance of the Requests to Produce, FPC has again failed to meet its burden of affirmatively demonstrating the validity of its objections. First City Developments, 545 So.2d at 503 (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); Carson, 173 So.2d at 744. As such, FPC should be compelled to respond to OGC's Requests to Produce numbers 4-9, 14, 21-23, 25 and 26.

16. Just as FPC's specific objections fail on the merits,

FPC's responses to OGC's Requests to Produce numbers 1-3, 10-12, 17-20, 24, 27 and 28 fail on the substance of the answers. FPC merely directs OGC to numerous documents in the public record. FPC states: "Please see FPC's hearing testimony, deposition testimony and exhibits in the Duke need case, the entire record of the Reserve Margin docket, the transcript (if available) of the Merchant Plant workshop, and the entire record on appeal in the Duke case" Florida Power Corporation's Responses to Okeechobee Generating Company's First Request for Production of Documents at 1-2. In addition to the foregoing general response, FPC objects to OGC's Request to Produce number 27 on the grounds that it is "equally available to the Petitioner at the Commission." FPC's Production Objections at 3. FPC should be compelled to respond specifically to OGC's Requests to Produce numbers 1-3, 10-12, 17-20, 24, 27 and 28. OGC does not seek to require FPC to produce any information in the public domain. However, if specific public documents responsive to OGC's Discovery Requests exist, FPC should be directed to identify such documents with enough detail to allow OGC to retrieve the documents from the public record. The rationale set forth in Rule 1.340(c), F.R.C.P., for allowing a party to respond to interrogatories by producing records is instructive with respect to the identification of public records. The burden of ascertaining the answer must be substantially the same for both parties. At present, only FPC knows which portions

of the public records support its responses to OGC's Discovery Requests. Accordingly, FPC should be compelled to specifically identify the public documents by date, author or source, title and page number which are responsive to OGC's Requests to Produce numbers 1-3, 10-12, 17-20, 24, 27 and 28.

CONCLUSION

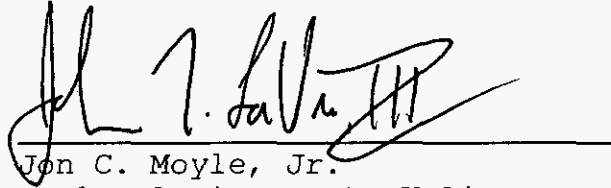
17. If FPC wishes to continue to participate as a party in this proceeding, it must respond to OGC's legitimate Discovery Requests. FPC's general objection for refusing to respond to OGC's Discovery Requests is contrary to law and should be rejected. FPC's specific objections fail on the merits and fail to provide the requisite substantive support and should also be summarily rejected. In addition, FPC has failed to provide the requisite specificity in its answers to OGC's Requests to Produce to enable OGC to identify the responsive material.

18. OGC has conferred with counsel for the parties to this proceeding and is authorized to represent that FPC and TECO object to this motion, LEAF has no objection to this motion, and FPL and counsel for Commission Staff take no position on this motion.

WHEREFORE, OGC respectfully requests that the Commission issue an order compelling FPC to respond to OGC's Interrogatories numbers 10-25 and 29-37 and OGC's Requests to Produce numbers 4-9, 14, 21-23, 25 and 26. OGC further requests that the Commission issue an order requiring FPC to specifically identify the documents

responsive to OGC's Requests to Produce numbers 1-3, 10-12, 17-20,
24, 27 and 28.

Respectfully submitted this 4th day of February, 2000.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (*) or facsimile (**) or U.S. Mail, on this 4th day of February, 2000, to the following:

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EXHIBIT "A"
OGC's First Set of Interrogatories to FPC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

OKEECHOBEE GENERATING COMPANY'S
FIRST SET OF INTERROGATORIES (1-37)
TO FLORIDA POWER CORPORATION

Pursuant to Rule 1.340, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, Okeechobee Generating Company hereby serves its First Set of Interrogatories (Nos. 1-37) on Florida Power Corporation.

DEFINITIONS

For the purpose of these interrogatories, the following definitions apply:

A. "And" and "or" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each request all documents which might otherwise be construed to be outside its scope.

B. "You" or "your" means Florida Power Corporation and any of its agents, employees, representatives, or other person acting or purporting to act on behalf of Florida Power Corporation including any subsidiaries, affiliates, and divisions or departments of same.

C. "Merchant Power Plant" or "Merchant Plant" means a power

plant with no rate base and no captive retail customers.

D. "OGC" means the Petitioner, Okeechobee Generating Company, L.L.C.

E. "Project" means the Okeechobee Generating Project on which OGC based its Petition for a Determination of Need for an Electrical Power Plant filed with the Florida Public Service Commission in Docket No. 991462-EU.

F. "PSC" or "Commission" means the Florida Public Service Commission.

G. "Petition to Intervene" means Florida Power Corporation's Petition to Intervene in this proceeding filed on October 11, 1999.

H. "OGC's Petition" means Okeechobee Generating Company, L.L.C.'s Petition for Determination of Need for an Electrical Power Plant filed with the Commission on September 24, 1999.

J. "FPC" means Florida Power Corporation and any of its agents, employees, representatives, or other person acting or purporting to act on behalf of Florida Power Corporation including any subsidiaries, affiliates, and divisions or departments of same.

I. "FRCC" means the Florida Reliability Coordinating Council.

INSTRUCTIONS

A. If any interrogatory calls for a document or unwritten communication which you claim to be privileged, state the grounds

upon which the claim of privilege is made and identify each document or unwritten communication. In identifying such document or communication, you may substitute for a summary of its contents, principal terms or provisions, a statement of the subject matter to which it relates. The fact that an interrogatory calls in part for documents or unwritten communications which you claim to be privileged is not a basis for you to fail to identify fully all documents or unwritten communications called for by such interrogatory as to which no privilege is claimed.

B. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information to do so, please so state and answer the interrogatory to the extent possible. Specify the portion of such interrogatory you claim you are unable to fully and completely answer, and further specify the facts on which you rely to support your contention that you are unable to answer the interrogatory fully and completely.

C. Please use the space provided for your answer, if adequate; if not, attach additional sheets with the required information.

D. You are required to respond to these Interrogatories in the time frames provided by the Florida Rules of Civil Procedure or in such other time frame as may be prescribed by the Prehearing Officer assigned to this case.

INTERROGATORIES

1. Please describe in detail the detrimental impacts that FPC believes the Project will have on FPC's shareholders.

2. Please describe in detail the detrimental impacts that FPC believes the Project will have on FPC's ratepayers.

3. Please describe in detail the detrimental impacts that FPC believes the Project will have on FPC's short-term and long-term planning processes.

4. Please describe in detail the detrimental impacts that FPC believes the Project will have on FPC's transmission system.

5. Please describe in detail the detrimental impacts that FPC believes the Project will have on FPC's ability to construct combined-cycle technology similar to that being utilized for the Project.

6. Please explain the basis for the allegation in paragraph 28 of FPC's Petition to Intervene that the Project will not meet any retail utility's need for firm resources.

7. Would your answer to Interrogatory Number 6 change if FPC entered into a contract for long-term power purchase with OGC? If the answer is yes, please explain.

8. Please explain the basis for the allegation in paragraph 29 of your Petition to Intervene that the Project will not provide the most cost-effective means for any retail utility to meet its obligation to serve.

9. Does FPC have a written or unwritten corporate policy against purchasing power from Merchant Plants like the Project, even if those Merchant Plants are cost-effective and demonstrably reliable alternatives to self generation? If the answer to the foregoing is yes, please state that corporate policy.

10. Does FPC plan its transmission system taking into consideration the existing and planned transmission facilities of other utilities, cogenerators and independent power producers? If not, why not? If yes, why?

11. Does FPC plan its generation system taking into consideration the existing and planned generation facilities of other utilities, cogenerators and independent power producers? If not, why not? If yes, why?

12. How does FPC account for, plan or integrate the transmission facilities of other retail utilities, cogenerators and independent power producers into its planning processes if none of the transmission capacity or resources of those entities is directly committed to FPC?

13. How does FPC account for, plan or integrate the generation facilities of other retail utilities, cogenerators and independent power producers into its planning process if none of the generation resources of those entities is directly committed to FPC?

14. Are other Florida utilities with generation facilities obligated to sell power to FPC? If the answer is yes, under what conditions are those utilities obligated to sell power to FPC?

15. Under what conditions is FPC required to sell power into the Florida grid? Under what conditions is FPC not required to sell power into the Florida grid?

16. Is FPC a net buyer or net seller of off-system opportunity sales?

17. Is FPC a net buyer or net seller of long-term (greater than one year), separated wholesale power sales?

18. In the last ten years, has FPC ever experienced transmission line exceedences? If the answer is yes, please list all such exceedence events, the magnitude of the exceedences and actions, if any, taken by FPC to remedy the exceedences.

19. Does FPC have an economic incentive to maximize returns when it makes wholesale sales?

20. What percentage of FPC's wholesale sales for the years 1995 through 1999 were made to utilities in Florida?

21. What percentage of FPC's wholesale sales for the years 1995 through 1999 were made to power marketers?

22. What percentage of FPC's wholesale sales for the years 1995 through 1999 were made to utilities outside Florida?

23. Do any of FPC's affiliate or parent corporations, including, without limitation, Progress Energy Corp., have plans to develop, own, have an ownership interest in, or operate Merchant Power Plants outside the state of Florida? If the answer is yes, please list the name of the Merchant Power Plants, the size and configuration of the Merchant Power Plants, the location of the Merchant Power Plants, and the owners of the Merchant Power Plants.

24. Do any of FPC's affiliate or parent corporations, including, without limitation, Progress Energy Corp., already own, have an ownership interest in, or operate, or own and operate Merchant Power Plants outside the state of Florida? If the answer is yes, please list the name of the Merchant Power Plants, the size and configuration of the Merchant Power Plants, the location of the Merchant Power Plants, and the owners of the Merchant Power Plants.

25. Identify each person that prepared or assisted in the preparation of the answers to these interrogatories and state which specific answers(s) each person prepared or assisted in preparing.

26. Please identify each person expected to be called by FPC to testify as an expert witness at the final hearing in this docket and, with regard to each expert witness, provide the following information:

- a) The subject matter on which the expert witness is expected to testify.
- b) The substance of the facts and opinions on which the expert witness is expected to testify.
- c) A summary of the grounds for each opinion that the expert witness will express at the final hearing.

27. Please identify each person expected to be called by FPC to testify as a non-expert witness at the final hearing in this case and, with regard to each witness, describe the substance of the facts and conclusions about which the witness is expected to testify.

28. Please identify all documents on which FPC will rely or introduce as exhibits at the final hearing in this case.

29. Please define FPC's criteria governing the application of special protection systems like post-contingency generator runback and post-contingency line switching, and please identify all FPC applications of such systems at 138 kV and above.

30. Please define FPC's voltage collapse or voltage instability "P-V" criterion and the method by which FPC applies the test transfer.

31. Please define FPC's inter-control area and intra-control area interfaces and their associated limits or operating nomograms.

32. Please define FPC's stuck breaker criterion.

33. Using the FRCC's definition of contingency, please define FPC's probable, credible-less probable, and severe contingency lists for all transmission line and transformer outages at 138 kV and above.

34. Please identify other power producers that have requested transmission service from FPC and all of FPC's resource additions/retirements through winter 2003.

35. Please identify all of FPC's transmission line and transformer additions/retirements 138 kV and above, through winter 2003.

36. Please identify any additions or changes to FPC's Proposed Transmission Lines, 1999-2008 as outlined in the FRCC 1999 Regional Load & Resource Plan, dated July 1999.

37. Please specify the summer and winter continuous and time limited emergency ratings for the Brookridge 500/230 kV transformer. In addition, please identify the limiting element in this branch.

I HEREBY CERTIFY that I am authorized to answer these interrogatories on behalf of Florida Power Corporation, and that the answers to these interrogatories are true and correct.

By: _____

As Its: _____

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME THE UNDERSIGNED AUTHORITY, personally appeared _____, who is personally known to me or produced a _____ license, and being first duly sworn, deposes and says that he/she has read the foregoing answers and that they are true.

SWORN AND SUBSCRIBED BEFORE ME THIS _____ day of _____, 1999.

Notary Public
(Affix Seal)

Printed Name

Commission Expiration Date

EXHIBIT "B"
OGC's First Request for
Production of Documents to FPC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

OKEECHOBEE GENERATING COMPANY'S
FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS (NOS. 1-29) TO FLORIDA POWER CORPORATION

Pursuant to Rule 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, Okeechobee Generating Company hereby serves its First Request for Production of Documents (Nos. 1-29) upon Florida Power Corporation ("FPC").

INSTRUCTIONS

A. You are requested to produce the documents designated herein at Landers & Parsons, P.A., 310 West College Avenue, Tallahassee, Florida 32301, during normal business hours (between 8:00 a.m. and 5:00 p.m., Monday through Friday), on or before the time required for production of the documents under the Florida Rules of Civil Procedure, or within such other time for production as may be prescribed by the Prehearing Officer, or at such other place and time as to which the parties may mutually agree.

B. If the documents otherwise required to be produced by this request are withheld, please identify the document by stating its date, author, recipients and your reasons for withholding the document.

C. If any request is objected to, set forth all reasons for the objections. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document requested and state the grounds for the assertion of the privilege in sufficient detail to permit the Commission to adjudicate the validity of the claims. Identify the document withheld by date, author, sender, recipient, (including all persons who were shown, had access to, or received a copy) format, title, present location, and give a general description of the subject matter of the document. If you object in part to any request, produce all documents included in the remainder of the request.

D. Documents should be produced separately for each paragraph of this request, or, alternatively, should be identified as produced with respect to the particular paragraph or paragraphs to which they are responsive.

DEFINITIONS

A. "You" or "your" means Florida Power Corporation and any of its agents, employees, representatives, or other person acting or purporting to act of behalf of Florida Power Corporation including any subsidiaries, affiliates, and divisions or departments of same.

B. "OGC" means the Petitioner, Okeechobee Generating Company, L.L.C.

C. "Project" means the Okeechobee Generating Project on which OGC based its petition for a determination of need to the Florida Public Service Commission in Docket No. 991462-EU.

D. "PSC" or "Commission" means the Florida Public Service Commission.

E. "Document" or "Documents" means any written, graphic, electronic, magnetic, or other means of preserving thought, expression, or information and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies whether by reason of any notation made on such copy or otherwise, whether produced internally or received from some other source within the possession, custody or control of FPC, or its agents, including, but not limited to, computer printouts and other computer materials (including, but not limited to "e-mail" or similar correspondence or stored information), graphic or aural records or representations of any kind, including without limitation, photographs, charts, graphs, plans, microfiche, microfilm, videotape recordings, motion pictures, and electronic, mechanical or electric recordings or representations of any kind (including without limitation, tapes, cassettes, disks and recordings), including all drafts, attachments, and enclosures associated with any of the foregoing.

F. "Relate to" means constituting, containing, embodying, reflecting, identifying, stating, referring to, dealing with,

tending to prove or disprove, or in any way pertaining to.

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

DOCUMENT REQUESTS

Please produce all of the following documents which are in your possession, custody, or control, including all such documents in the possession, custody or control of your partners, employees, agents, attorneys, accountants, and others acting on your behalf.

1. All documents which relate to, mention or otherwise reflect on FPC's long-term planning being adversely affected by the existence of capacity and energy from Merchant Plants in the Florida grid.

2. All documents which relate to, mention or otherwise reflect on FPC's long-term planning being adversely affected by the Project.

3. All documents which relate to, mention or otherwise reflect on FPC's ability to serve its retail customers being impaired by capacity from Merchant Plants being available for purchase by FPC or by other retail-serving utilities in Peninsular Florida.

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

8. All documents which relate to, mention or otherwise reflect on FPC seeking a waiver of Rule 25.6.035(2), Florida Administrative Code.

9. All documents which relate to, mention or otherwise reflect on FPC's legal obligation to make adequate investment in generating capacity and provide adequate and reliable electric service.

10. All documents which relate to, mention or otherwise reflect on whether the sale of power from Merchant Plants would or would not be advantageous to ultimate consumers in Florida, in relation to regulated sales by utilities like FPC.

11. All documents which relate to, mention or otherwise reflect on whether the detrimental impacts of the OGC Project would outweigh the benefits of the OGC Project.

12. All documents which relate to, mention or otherwise reflect on whether the Project will absorb or divert natural gas from other power producers in the State, who are committed to serve customers in the State on a long-term basis.

13. All documents which relate to, mention or otherwise reflect on whether the construction of a second, major trans-Florida natural gas pipeline would be a detriment to the State.

14. All documents which relate to, mention or otherwise reflect on whether FPC is considering or planning to obtain natural gas transportation service from a second, major trans-Florida natural gas pipeline.

15. All documents which relate to, mention or otherwise reflect on whether the Project will meet its projected in-service date.

16. All documents which relate to, mention or otherwise reflect on the adverse impacts to FPC if the Project does not meet its projected in-service date.

17. 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 FPC.

18. All documents which relate to, mention or otherwise reflect on whether the Project's in-service date coincides with any need in the State for generation which is already planned by

Peninsular Florida's retail load-serving utilities.

19. All documents which relate to, mention or otherwise reflect on whether FPC will be adversely affected by the OGC Project.

20. All documents which relate to, mention or otherwise reflect on FPC's allegation that the Project does not constitute the most cost-effective means for any retail utility to meet its need for firm power resources.

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

22. All documents which relate to, mention or otherwise reflect on FPC's transmission lines or distribution lines that violate voltage standards.

23. All documents which relate to, mention or otherwise reflect on FPC's power marketing arrangements or contracts that vary from the terms of filed tariffs.

24. All documents on which FPC intends to rely at the final hearing in this proceeding.

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

26. All documents which relate to, mention or otherwise reflect on FPC's development, ownership or operation of Merchant

Power Plants in the United States.

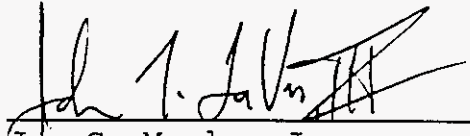
27. All documents which relate to, mention or otherwise reflect on the degree to which, if at all, the benefit of revenues from any wholesale sales made by FPC are credited to or "flowed back" to FPC's retail electric customers.

28. Any and all documents that directly or indirectly indicate that the Commission should not grant OGC's petition for determination of need.

29. For each expert witness identified in FPC's Answers to OGC's First Set of Interrogatories, please produce:

- (a) A resume or curriculum vitae for the expert witness;
- (b) A list of all publications by the expert witness;
- (c) Copies of any and all documents that the expert witness has prepared concerning any of the issues involved in this case;
- (d) Copies of any and all documents that the expert may use to support his or her testimony in this case; and
- (e) Copies of any and all documents used or relied upon by the expert witness to evaluate this case.

Respectfully submitted this 5th day of November, 1999.


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Attorneys for Okeechobee Generating
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CERTIFICATE OF SERVICE

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

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