

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for
determination of need for an
electrical power plant in
Okeechobee County by Okeechobee
Generating Company, L.L.C.

DOCKET NO. 991462-EU
ORDER NO. PSC-00-0561-PHO-EU
ISSUED: March 17, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 3, 2000, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, Jr., as Prehearing Officer.

APPEARANCES:

ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA, ESQUIRE, Landers Law Firm, 310 West College Avenue, Tallahassee, Florida 32301; and JON C. MOYLE, JR., ESQUIRE, Moyle Flanigan Law Firm, The Perkins House, 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of Okeechobee Generating Company, L.L.C. (OGC).

HARRY W. LONG, JR., ESQUIRE, TECO Energy, Inc., P. O. Box 111, Tampa, Florida 33601; and JAMES BEASLEY, ESQUIRE, and LEE WILLIS, ESQUIRE, Ausley Law Firm, P. O. Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO).

GARY L. SASSO, ESQUIRE, and JILL H. BOWMAN, ESQUIRE, Carlton, Fields Law Firm, P. O. Box 2861, St. Petersburg, Florida 33731; and JAMES A. MCGEE, ESQUIRE, P. O. Box 14042, St. Petersburg, Florida 33733
On behalf of Florida Power Corporation (FPC).

MATTHEW CHILDS, ESQUIRE, and CHARLES GUYTON, ESQUIRE, Steel Hector & Davis, 215 S. Monroe Street, #601, Tallahassee, Florida 32301
On behalf of Florida Power & Light Company (FPL).

WM. COCHRAN KEATING IV, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff (Staff).

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On September 24, 1999, Okeechobee Generating Company, L.L.C. (OGC), filed a Petition for Determination of Need for an Electrical Power Plant. OGC proposes to construct a 550 megawatt (MW) natural gas-fired, combined cycle electrical power plant in Okeechobee County, Florida, to commence commercial operation in April 2003. An administrative hearing on OGC's petition is set for March 20-22, 2000.

By Order No. PSC-99-2153-PCO-EU, issued November 4, 1999, Florida Power & Light Company (FPL), Florida Power Corporation (FPC), Tampa Electric Company (TECO), and the Legal Environmental Assistance Foundation, Inc. (LEAF) were granted leave to intervene in this docket.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section

366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. If a party who wishes to use such information does not become aware of the existence of such information until less than seven days prior to hearing, that party shall notify the Prehearing Officer and all parties of record as soon as that information is discovered and considered for potential use at hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 75 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been or will be prefiled in accordance with all procedural orders issued in this docket. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all

parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Sean J. Finnerty	OGC	General Description of the Project and the Applicant
William F. Sullivan, Jr. P.E.	OGC	Project Engineering
George A. Lehner	OGC	Project Engineering
Ronald L. Vaden	OGC	Need
Dale M. Nesbitt, Ph.D.	OGC	Project Economics and Need
Gerard J. Kordecki	OGC	Need and Benefits to Ratepayers
Roger E. Clayton, P.E.	OGC	Project Transmission Issues
Bevin Hong	OGC	Project Fuel Supply
Frederick M. Sellars	OGC	Environmental Matters
Charles J. Cicchetti	FPC	1-5, 7-11, 13, 14 (All non-legal issues)

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Samuel S. Waters	FPL	1-5, 7-10, 12, 13
John H. Landon	FPL	1-5, 8-13
David W. Sosa	FPL	2, 3, 5, 8, 9, 11- 13

Rebuttal

Dale M. Nesbitt, Ph.D.	OGC
Gerard J. Kordecki	OGC

VII. BASIC POSITIONS

OGC: The Commission should issue its order granting the determination of need sought by Okeechobee Generating Company, L.L.C. for the Okeechobee Generating Project ("Project"). The Project is a state-of-the-art, natural gas-fired, combined cycle power plant, with No. 2 fuel oil on-site as backup fuel, that will contribute meaningfully to the needs of OGC and electric customers in Peninsular Florida for system reliability and integrity and for adequate electricity at a reasonable cost. The Project is the most cost-effective alternative available for OGC and for Florida electric customers, because such customers will only pay for power purchased from the Project by their retail-serving utilities and because those retail-serving utilities will only make such purchases when they are cost-effective as compared to other power supply options. Moreover, no retail-serving utilities are required to buy power from the Project, and no Florida electric customers are subject to being required to pay for the Project's capital or operating costs. OGC is assuming all business and operating risk associated with the Project, thereby providing this cost-effective power supply resource to retail-serving utilities in Peninsular Florida, for resale to their customers, at no risk either to those utilities or to their customers. Delaying the construction and operation of the Project would adversely affect the reliability of the Peninsular Florida bulk power supply system, would adversely affect the

availability of adequate electricity at a reasonable cost in Peninsular Florida, and would adversely affect the environment of Florida.

TECO: Okeechobee Generating Company, L.L.C. ("OGC") does not qualify as an applicant under the Florida Power Plant Siting Act ("Siting Act"), Section 403.501 - 403.518 and Section 403.519, Florida Statutes. Specifically, OGC does not qualify as an "Electric Utility" within the meaning of Section 403.503(13) of the Florida Statutes. Only "Electric Utilities" qualify as Applicants under the Siting Act. The relief sought in this case would injure Tampa Electric's ability to plan, certify, build and operate transmission generation facilities necessary to meet its service obligation and the needs of its customers. OGC has no public utility obligation to provide service to the public and, therefore, has no need for power that is cognizable under the Siting Act. Instead, OGC is improperly relying upon the need of the fifty-nine (59) Florida utilities comprising "Peninsular Florida" to attempt to demonstrate the need for its project but would have no obligation to use the capacity of the project for the citizens of Florida if its request were granted.

The relief sought in this case would also introduce tremendous uncertainty in the planning process for Tampa Electric and other Florida utilities, adversely affecting their ability to plan their generation and transmission facilities to reliably meet the future demand for electric service by the residents of this state. The proposed project has not been shown to be needed to ensure either electric system reliability and integrity or adequate amounts of electricity at a reasonable cost.

The proposed project has not been shown to be the most cost-effective alternative available. It has not been shown that there are no conservation measures reasonably available that might obviate the project. Based upon the foregoing, the petition in this proceeding should either be dismissed or denied.

FPC: In order to preserve its legal position on the issues raised in the Duke case and reasserted herein, FPC submits that a determination of need may not be obtained

under Section 403.519, Florida Statutes, for a plant proposed by any independent power producer unless the plant has committed its capacity to a retail utility under a binding power purchase agreement or unless the plant falls within the statutory exemption for plants that need not be sited under Section 403.519 and the Florida Electric Power Plant Siting Act (PPSA). Petitioner Okeechobee Generating Company, L.L.C. (OGC) is proposing to build a plant that is neither dedicated by contract to serve the identified needs of particular retail utilities in Florida nor falling within an exemption to the PPSA. Accordingly, as a matter of law the Petition must be dismissed or denied.

Further, OGC has failed to comply with the Commission's rule requiring that any investor owned utility either (1) issue a request for proposals to solicit supply-side alternatives to its proposed power plant or (2) seek a waiver from the application of that requirement. Rule 25-22.082, Fla. Admin. Code. For this reason, too, OGC's Petition should be dismissed or denied.

Putting these issues aside, OGC has not shown and will not show that its proposed project will satisfy the statutory need criteria. Section 403.519 requires the Commission to determine whether there is a need for the proposed power plant, not for additional capacity somewhere in the State. It goes without saying that Florida utilities plan to add capacity to their systems during the next five years. The main questions here are: Is there a need for even more capacity in Florida, and, if there is, who should build it?

OGC has not met its burden of showing that there is a need for additional capacity in Florida, and it certainly has not met its burden of showing that, if there is such a need, the proposed power plant will provide superior reliability and cost-effectiveness to power plants built by or dedicated by contract to Florida retail utilities.

The fact is, OGC's "proof" that the proposed plant is needed is built on faulty analysis and flawed assumptions, as will become evident at the final hearing in this matter. Further, assuming for the sake of argument that additional capacity is "needed," the

proposed project will cost Florida ratepayers more and provide less reliability than a comparable plant built by a regulated retail utility or dedicated by contract to such a utility. A merchant developer can and will charge the most the market will bear and thus seek to recover a return of its investment and on its investment in an amount that substantially exceeds what a cost-based Florida utility will receive, and over a shorter number of years. In the case of the proposed OGC project, consumers in Florida will not benefit from the project; to the contrary, OGC will benefit, and ratepayers will be made worse off than if Florida retail utilities provided any needed supply-side resources under cost-base regulation.

While merchants tout the virtues of free-market competition, that market does not exist in Florida. Currently, the Florida electric power industry is predominantly a regulated market, and to inject an essentially unregulated merchant like the OGC plant into that market, without pre-existing contractual commitments, is tantamount to sending a fox into a henhouse. Florida will get the benefits of neither regulation nor competition, but will get the worst of both worlds.

FPL: The need determination petition of Okeechobee Generating Company, L.L.C. ("OGC") should be denied. OGC's Petition and case are factually and legally deficient. OGC's case is largely smoke and mirrors. OGC fails to offer standard proof of need and instead relies upon seriously flawed analyses of markets that do not exist in Florida.

OGC fails to meet its burden of proof as to each of the criteria of Section 403.519. OGC makes no attempt to demonstrate there is a utility specific need for its proposed plant. Instead, OGC argues, but fails to prove, that there is a Peninsular Florida need for its plant. There is no Peninsular Florida reliability need for the OGC plant; its capacity is not properly counted in the Peninsular Florida reserve margin; and the plant is not necessary for Peninsular Florida to meet a reliability criterion. OGC fails to demonstrate that there is an economic need for the OGC plant; OGC's supposed price suppression benefits are wildly overstated, and when

other impacts are considered, utility customers would be worse off with the OGC plant than they would be without it. OGC completely fails to offer a comparative cost-effectiveness analysis; therefore, it has failed to demonstrate that its plant is the most cost effective alternative available. Finally, even though OGC postulates that there is a Peninsular Florida need for the OGC project, OGC makes no effort to demonstrate whether there is conservation available in Peninsular Florida that would mitigate the need for the plant.

The underlying theory of the petitioner's case, that the market rather than the Commission should determine need, is inconsistent with Section 403.519, Florida Statutes. OGC is not a proper applicant for a determination of need. The need criteria of Section 403.519 are utility specific, and OGC's attempt to premise its need upon Peninsular Florida need offends this Commission's and the Supreme Court's prior construction of the statute. OGC's attempt to have the Commission presume need and cost-effectiveness would result in the Commission's abrogation of its statutory responsibilities. OGC has failed to comply with Rule 25-22.081, Florida Administrative Code. The proposed plant would result in an uneconomic duplication of facilities.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Is there a need for the Okeechobee Generating Project taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

POSITIONS

OGC: Yes. The proposed Project will contribute to the reliability of Florida customers' electric service without requiring them to assume responsibility for the investment risk of the Project. (Finnerty, Lehner, Vaden, Nesbitt, Kordecki)

TECO: No.

FPC: No. The proposed plant will not be dedicated to meeting the need of any Florida utility; rather OGC will be free to chase price spikes anywhere inside or outside the State or to withhold supply when that will serve its economic interests. No retail utility will be able to count on the plant's being available when that utility needs power. The utilities in Florida have plans in place to meet their actual capacity needs over the ten-year planning horizon, and the three investor-owned utilities in Florida have recently agreed to increase their reserve margins to 20%, effective in 2004. (Cicchetti)

FPL: No. The OGC Project has not been shown to be needed for either individual utility or Peninsular Florida reliability and integrity. OGC has not proposed reliability criteria to gauge either individual utility or Peninsular Florida reliability and has not shown that the unit is necessary for either an individual utility or Peninsular Florida to achieve a reliability criterion. OGC's case shows that Peninsular Florida will achieve its approved reserve margin criterion without the OGC unit. OGC has failed to demonstrate that absent a firm contract for its capacity the OGC unit should be recognized in any reserve margin calculation. (Waters, Landon)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 2: **Is there a need for the Okeechobee Generating Project taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?**

POSITIONS

OGC: Yes. The Okeechobee Generating Project will help meet the need for adequate electricity at a reasonable cost without requiring any utility or utility customer to bear the risk of the Project. As a result, customers can only benefit as a result of the Commission's granting the determination of need. (Finnerty, Lehner, Vaden, Nesbitt)

TECO: No.

FPC: No. There is no "economic" need for the plant. The utilities in Florida have maintained over the years a reasonable equilibrium between long-term capital costs and short-term fuel costs, taking into account a diversity of fuel sources, adding capacity when it is economic to do so. The proposed plant will not achieve the economic benefits claimed. To the contrary, the proposed plant will garner profits for OGC over and above returns that would be obtained by a retail utility-built plant, and this windfall will be subsidized by the ratepayers. (Cicchetti)

FPL: No. The statutory need criterion in Section 403.519 requiring the Commission to consider "the need for adequate electricity at a reasonable cost" is a utility specific criterion. OGC has made no attempt to prove that a specific utility needs the OGC Project to meet its need for "adequate electricity at a reasonable cost."

Dr. Nesbitt's testimony fails to demonstrate that OGC will provide adequate electricity at a reasonable cost. Dr. Nesbitt models a Florida electricity market that does not exist. The cost of electricity in the market modeled by Dr. Nesbitt is higher than the cost of electricity that will be paid in Florida's regulated electricity market. (Waters, Landon, Sosa)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 3: Is the Okeechobee Generating Project the most cost-effective alternative available, as this criterion is used in Section 403.519, Florida Statutes?

POSITIONS

OGC: Yes. (Finnerty, Sullivan, Lehner, Nesbitt, Kordecki)

TECO: No.

FPC: No. To the contrary, OGC will charge more for its capacity and energy over the life of the plant than a regulated cost-of-service utility like FPC precisely because the Commission will not regulate or limit the price that OGC can charge. If the Commission determined that Florida utilities needed more capacity, the most cost-effective solution would be to require the utilities to build that capacity or place it under firm contract. (Cicchetti)

FPL: No. OGC has failed to present a comparative cost-effectiveness analysis comparing alternatives to the OGC Project. Therefore, OGC has not demonstrated that the Project is the most cost-effective alternative. Dr. Nesbitt's analysis of financial viability is not a comparative cost-effectiveness analysis. Dr. Nesbitt's wildly exaggerated wholesale price suppression quantification is not a comparative cost-effectiveness analysis. OGC asks the Commission to presume cost-effectiveness, and making such a presumption would be an abrogation of the Commission's statutory responsibility. (Waters, Landon, Sosa)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 4: Are there any conservation measures taken by or reasonably available to the petitioner which might mitigate the need for the proposed power plant?

POSITIONS

OGC: No. There are no additional conservation measures reasonably available to OGC that would mitigate the need for the proposed power plant. (Finnerty)

TECO: No, for the reasons stated by FPC.

FPC: No, but only because, as a wholesale non-utility generator, OGC will not be subject to the conservation requirements of the Florida Electric Energy Conservation Act (FEECA), of which Section 403.519 is a part. OGC has no incentive, and is in no position, to employ conservation measures to avoid the necessity of building the proposed plant. Under the statutory scheme in Florida, any need determination must be focused on the needs of particular retail utilities in Florida partly because only such utilities have the responsibility and opportunity to explore conservation measures that may obviate the need for additional supply-side resources. (Cicchetti)

FPL: OGC attempts to justify the need for the OGC Project on the basis of a Peninsular Florida need. However, OGC makes no attempt to prove that there is not sufficient conservation available in Peninsular Florida to mitigate the need for all or part of the OGC Project. (Waters, Landon)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 5: Does the Commission have sufficient information to assess the need for the proposed power plant under the criteria set forth in Section 403.519, Florida Statutes?

POSITIONS

OGC: Yes, although, as explained in OGC's pending motion for continuance, OGC believes that the Commission would be best served by granting the requested continuance so that OGC can furnish the Commission with updated, corrected information that will enhance the record upon which the Commission will render its determination of need for the Project. (Finnerty, Sullivan, Lehner, Vaden, Nesbitt, Kordecki, Clayton, Hong, Sellars)

TECO: No.

FPC: No. OGC gives itself the exclusive supply nod without even examining its cost-effectiveness when compared to a similar plant built by an IOU or other options such as conservation or the operation of fully depreciated assets. OGC also provides very little information regarding its natural gas supply, the adequacy of its planned back-up fuel, or the risk of obsolescence of the Project, which will, in the future, cease to be the least-cost plant in the market. (Cicchetti)

FPL: No. The Petition and supporting exhibits filed by OGC failed to meet the requirements of Rule 25-22.081, Florida Administrative Code, and OGC's testimony does not provide the missing information. Moreover, OGC has failed to present sufficient Project specific data to allow the Commission to assess the feasibility, viability and reliability of the Project. Instead of providing Project specific data, OGC relies instead on generic data presented by Dr. Nesbitt, which he readily admits are based upon his own estimates and not OGC data. (Waters, Landon, Sosa)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 6: Can the existing Peninsular Florida transmission system accommodate power deliveries from the Okeechobee Generating Project to other utilities in Peninsular Florida?

POSITIONS

OGC: Yes. (Clayton)

TECO: No position at this time.

FPC: OGC has failed to address this issue adequately.

FPL: OGC has failed to answer this issue.

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 7: Has Okeechobee Generating Company provided adequate assurances regarding available primary and secondary fuel to serve the proposed power plant on a long-term and short-term basis?

POSITIONS

OGC: Yes. (Finnerty, Hong)

TECO: No.

FPC: No. OGC and Gulfstream plan to take advantage of FERC's relatively new regulatory option, which permits negotiated transportation tariffs, but OGC's sponsors fail to provide sufficient information as to how OGC will hedge natural gas price, quantity, and transportation risks with no alternative natural gas supplier. Also, OGC has failed to provide the Commission with sufficient details concerning the adequacy of its 24-hour back-up fuel supply. Greater than 24 hours back-up fuel storage is desirable, and under certain conditions limited storage may be problematic. (Cicchetti)

FPL: No. (Waters)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 8: Is Okeechobee Generating Company's quantification of wholesale price suppression based on reasonable input assumptions?

POSITIONS

OGC: Yes. Although, as noted in OGC's motion for continuance, there were errors in certain of the input data, overall, the input data and assumptions are reasonable. (Nesbitt)

TECO: No.

FPC: No. OGC has overstated the likely average market clearing price in Florida and measured its claimed price suppression effects based upon a competitive market that

does not exist in Florida, using market rules that OGC itself admittedly does not intend to follow. (Cicchetti) In addition, discovery has shown that OGC's analysis is predicated on fatally flawed input assumptions and attendant modeling work.

FPL: No. (Waters, Landon, Sosa)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 9: Is Okeechobee Generating Company's quantification of wholesale price suppression based on a reasonable methodology?

POSITIONS

OGC: Yes. (Nesbitt)

TECO: No.

FPC: No. The methodology used by OGC to quantify wholesale price suppression is based on a competitive market that does not exist in Florida, using market rules that OGC itself admittedly does not intend to follow. (Cicchetti) In addition, discovery has shown that OGC's quantification of wholesale price suppression is based on fatally defective modeling errors.

FPL: No. (Waters, Landon, Sosa)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 10: Will there be significant costs to retail electric customers in Florida from the loss of receipt of the gain from off-system sales resulting from displacement by the Okeechobee Generating Project?

POSITIONS

OGC: No. (Kordecki)

TECO: Yes.

FPC: Yes. Joint economy sales between Florida's retail load serving utilities result in lower prices for both sets of retail customers, resulting in a win-win situation for both utilities' ratepayers. Sales by OGC to Florida's retail load serving utilities will not result in such joint savings, since OGC will return its margin to its investors as profit, not to Florida retail customers. (Cicchetti)

FPL: There is a significant cost to Florida utility customers that has been ignored by the OGC analysis. (Waters, Landon)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 11: Is the Okeechobee Generating Project economically viable?

POSITIONS

OGC: Yes. (Nesbitt)

TECO: No.

FPC: OGC has overstated the likely average market clearing price in Florida and measured its own economic viability based on a competitive market that does not exist in Florida. An analysis of the actual likely market clearing price in Florida based upon the IOU's reported hourly marginal costs with sensitivities indicates that the actual average market clearing price in Florida is significantly lower than the estimate used by OGC. (Cicchetti)

FPL: No, but we are awaiting further analysis from OGC. (Landon, Sosa)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 12: Does the Petition for Determination of Need meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

POSITIONS

OGC: Yes. (Finnerty, Sullivan, Lehner, Vaden, Nesbitt, Kordecki, Clayton, Hong, Sellars)

TECO: No.

FPC: No.

FPL: No. (Waters, Landon, Sosa)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 13: Would granting the determination of need for the Okeechobee Generating Project be consistent with the public interest and the best interests of electric customers in Florida?

POSITIONS

OGC: Yes. The Project will enhance electric system reliability, provide adequate electricity at a reasonable cost without economic risk to ratepayers, and improve the overall environmental profile of electricity generation in Florida. (Finnerty, Vaden, Nesbitt, Kordecki, Sellars)

TECO: No.

FPC: No. To the contrary, the proposed plant will garner profits for OGC over and above returns that would be obtained by a retail-utility built plant, and this windfall will be subsidized by the ratepayers. Moreover, the claimed benefits of OGC's plant are grossly exaggerated and so false that they should be dismissed out-of-hand by regulators. The best interests of Florida customers are presently being well-served by regulation in Florida and on the future will be best served by a comprehensive approach to deregulation that does not

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penalize incumbents or permit new entrants to cream-skim or game the market to the detriment of Florida's electric customers. (Cicchetti)

FPL: No. (Waters, Landon, Sosa)

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 14: Based on the resolution of the foregoing issues, should the petition of Okeechobee Generating Company for determination of need for the Okeechobee Generating Project be granted?

POSITIONS

OGC: Yes. (Finnerty, Sullivan, Lehner, Vaden, Nesbitt, Kordecki, Clayton, Hong, Sellars)

TECO: No.

FPC: No. (Cicchetti)

FPL: No.

STAFF: No position pending further discovery and evidence adduced at hearing.

ISSUE 15: Should this docket be closed?

POSITIONS

OGC: Yes, after the Commission's order granting the requested determination of need passes beyond further appellate review.

TECO: Yes, once the petition is dismissed or denied.

FPC: Yes, after the Petition is dismissed or denied.

FPL: Yes. The matter should be dismissed and the docket closed.

STAFF: No position pending further discovery and evidence adduced at hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Sean J. Finnerty	OGC	_____	Employment and education history
		(SJF-1)	
		_____	Portfolio of P G & E Generating facilities
		(SJF-2)	
		_____	OGC's market based rate tariff issued by FERC.
(SJF-3)			
_____		O r d e r confirming OGC's EWG status issued by FERC.	
(SJF-4)			
_____		Excerpt from PSC documents depicting declining trends in Peninsular Florida's reserve margins.	
(SJF-5)			
William F. Sullivan, Jr.	OGC	_____	William F. Sullivan's resume' and work experience summary.
		(WFS-1)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(WFS-2)</u>	Okeechobee Generating Project Site Plan.
		<u>(WFS-3)</u>	Okeechobee Generating Project Plot Plan.
		<u>(WFS-4)</u>	P l a n t Performance Table.
		<u>(WFS-5)</u>	Design Basis.
		<u>(WFS-6)</u>	Process Flow Schematic
		<u>(WSF-7)</u>	Preliminary Water Balance.
		<u>(WSF-8)</u>	O n e - l i n e Electrical Diagram.
		<u>(WSF-9)</u>	P r o j e c t Engineering, Procurement a n d Construction Schedule.
		<u>(WSF-10)</u>	Okeechobee Generating Project Site L o c a t i o n Relative to L o c a l Landmarks and Z o n i n g Designations.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
George A. Lehner	OGC	<u>(GAL-1)</u>	Resume' of George A. Lehner.
Dale M. Nesbitt	OGC	<u>(DMN-1)</u>	Altos North American Electric Model.
		<u>(DMN-2)</u>	Altos North American Electric Model with Expanded FRCC Representation
		<u>(DMN-3)</u>	Regional Structure of the Altos FRCC Model.
		<u>(DMN-4)</u>	North American Regional Gas Model (NARG).
		<u>(DMN-5)</u>	FRCC 2003 Supply Stack (Incl. Demand Range).
		<u>(DMN-6)</u>	FRCC Load Duration Curves.
		<u>(DMN-7)</u>	Disaggregate Each Month into Ten Load Tranches.
		<u>(DMN-8)</u>	Discretized Load Duration Curve Gives Ten Market Clearing Prices.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(DMN-9)</u>	P r i c e Depression in FPLE Caused by Entry of Okeechobee.
		<u>(DMN-10)</u>	P r i c e Reduction and E c o n o m i c Benefits of Okeechobee Project.
		<u>(DMN-11)</u>	2003 Regional Prices Around the FRCC Projected by NARE.
		<u>(DMN-12)</u>	FRCC 2003 P r i c e Reductions Due to the Okeechobee Project.
		<u>(DMN-13)</u>	Comparative Prices Around FRCC in August 2003.
		<u>(DMN-14)</u>	Comparative Prices Around FRCC in January 2003.
		<u>(DMN-15)</u>	Sources and Dispositions of Energy in August 2003 in FPLE.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		(DMN-16)	Sources and Disposition of Energy in January 2003 in FPLE.
		(DMN-17)	Sources and Dispositions in FPLS in August 2003.
		(DMN-18)	Sources and Uses in FPLS in January 2003.
		(DMN-19)	Sources and Dispositions in FPLW in August 2003.
		(DMN-20)	Sources and Destinations in FPLW in January 2003.
		(DMN-21)	The Marginal Plant is Actually a Spectrum of Plants.
		(DMN-22)	E n e r g y Displaced by Okeechobee.
		(DMN-23)	GWH of Energy Displaced by Okeechobee.
Roger E. Clayton, P.E.	OGC	(REC-1)	Resume' of Roger E. Clayton, P.E.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		(REC-2)	P G & E Generating Co. Okeechobee System Impact Study.
		(REC-3)	Okeechobee Generating Project Interconnecti on Studies.
		(REC-4)	Okeechobee Generating Project - Regional Transmission Map.
		(REC-5)	P G & E Generating Data and Information Request to Florida Power & Light Co.
		(REC-6)	F P & L ' s Response to PG&E's Data Request.
Bevin Hong, Jr.	OGC	(BH-1)	Resume' of Bevin Hong, Jr.
		(BH-2)	Precedent Agreement.
		(BH-3)	Gulfstream report on status of permitting.
		(BH-4)	Gulfstream Pipeline Maps.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Frederick M. Sellars	OGC	(FMS-1)	Resume' of Frederick M. Sellars.
		(FMS-2)	Environmental Licensing Schedule.
Charles J. Cicchetti	FPC	(CJC-1)	Resume of Charles J. Cicchetti
		(CJC-2)	Merchant capital cost collection contrasted with utility's collection of same capital costs
		(CJC-3)	Analysis and Description of OGC's expected profits based on Dr. Nesbitt's analysis
		(CJC-4)	Copy of the FRCC's Y2K plan
		(CJC-5)	Copy of Reliant Energy's initial refusal to operate plants in response to FRCC's request for compliance with Y2K plan

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(CJC-6)</u>	Sources of electricity in the State of Florida
		<u>(CJC-7)</u>	Purchase power expense for the three investor owned utilities (IOU's) in Florida
		<u>(CJC-8)</u>	Estimated Energy Costs in Florida
John H. Landon	FPL	<u>(JHL-1)</u>	Resume'
David W. Sosa	FPL	<u>(DWS-1)</u>	Resume'
<u>Rebuttal</u>			
Gerard J. Kordecki	OGC	<u>(GJK-R-1)</u>	I O U Testimonies in Incentives Docket

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

OGC's Motion for Continuance and Revised Procedural Schedule, filed March 13, 2000, is pending.

FPC's Motion to Strike Portions of the Prefiled Testimony of Gerard J. Kordecki and Sean J. Finnerty, filed February 23, 2000, is pending.

FPL's Motion to Strike Certain Statements in the Testimony of Sean Finnerty and Certain Statements in the Exhibits to Okeechobee Generating Company's Petition, filed March 10, 2000, is pending.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. RULINGS

FPL's Motion for Protective Order Regarding OGC's Interrogatory No. 54 has been withdrawn.

FPL's Unopposed Motion for Revised Procedural Schedule is granted. Accordingly, the filing deadline for Intervenor testimony related to the direct testimony of OGC witness Nesbitt shall be extended from March 7, 2000, to March 9, 2000. Further, the filing deadline for rebuttal testimony responsive to the March 9, 2000, Intervenor testimony shall be extended from March 15, 2000, to March 16, 2000.

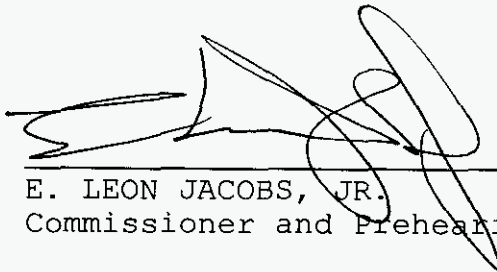
The parties may address, under Issue 13, the following question: Are any unique harms caused by the Okeechobee Generating Project not having a contract to provide power to any retail load-serving utility? The parties may address, under Issue 3, any implications of OGC not seeking bids under Rule 25-22.082, Florida Administrative Code.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 17th Day of March, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

WCK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for

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reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.