

SCHRODER & MURRELL

ATTORNEYS AT LAW

5

GEORGIA

SUITE 4830, THE IBM TOWER
1201 WEST PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30309
TELEPHONE: (404) 881-8545
TELEFAX: (404) 881-0219

FLORIDA

SUITE 375, THE BARNETT CENTER
1001 THIRD AVENUE WEST
BRADENTON, FLORIDA 34205
TELEPHONE: (813) 747-2830
TELEFAX: (813) 747-4531

PLEASE REPLY TO:
Florida

January 8, 1991

**ORIGINAL
FILE COPY**

Mr. Steve C. Tribble
Director, Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 900796-EI

Dear Mr. Tribble:

Enclosed for filing are the original and fifteen (15) copies of the following:

1. Brief of the Coalition of Local Governments
2. Coalition of Local Governments' Post-Hearing Statements of Issues and Positions
3. Proposed Findings of Fact and Conclusions of Law of the Coalition of Local Governments

Thank you for your assistance in this matter.

Sincerely

Frederick J. Murrell
Frederick J. Murrell

Attorney for the
Coalition of Local Governments

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FPSC-BUREAU OF RECORDS

Brief
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Proposed Findings
DOCUMENT NUMBER-DATE

00269 JAN-9 1991

FPSC-RECORDS/REPORTING

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

**ORIGINAL
FILE COPY**

of Florida Power)
any For the Inclusion)
. 4 Purchase in Rate)
an Acquisition)
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)

Docket No. 900796-EI

Filed: January 9, 1991

**BRIEF OF THE
COALITION OF LOCAL GOVERNMENTS**

Frederick J. Murrell, Esquire
Schroder & Murrell
1001 3rd Avenue West Suite 375
Bradenton, Florida 34205
Florida Bar #: 0227447
(813) 747-2630

Attorneys for the
Coalition of Local Governments

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FPSC-RECORDS/REPORTING

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PRELIMINARY STATEMENT

Pursuant to Rule 25-22.0561(1), Florida Administrative Code, the Coalition of Local Governments files its post-hearing brief. As required by Rule 25-22.056(3)(a), Florida Administrative Code, the Coalition of Local Governments is simultaneously filing its Post-Hearing Statement of Issues and Positions, which contains a summary statement of the positions developed and supported in this brief. The brief consists of argument directed to the issues treated at the hearing, presented in the same order in which the issues appeared in the Prehearing Order.

The following abbreviations are used in this brief. The Coalition of Local Governments is referred to as CLG. The Office of Public Counsel is referred to as Public Counsel. Nassau Power Corporation is referred to as Nassau. The Florida Power & Light Company is referred to as FPL. The Florida Public Service Commission is referred to as the Commission. The transcript of the record is designated TR and hearing exhibits are designated EX.

ARGUMENT OVERVIEW

In this case FPL is requesting that the Commission determine that the proposed acquisition of a power generation unit outside of Florida. This docket is an extremely important case for the Commission. The case addresses for the first time in Florida the fundamental responsibilities and authority of the Commission regarding the acquisition of extra-territorial generating facilities by regulated Florida utilities. Because of this, this case deserves special attention and consideration from the Commission.

Unfortunately, this matter is being considered by the Commission after an abbreviated discovery period, and even prior to the Commission receiving any evidence on the actual parameters of the final deal that may by now have been essentially concluded between FPL and Georgia Power Company ("GPC"), the company which is attempting to sell Robert Scherer Unit 4 to FPL. Notwithstanding this hurried approach to this very important issue, several matters must be kept in mind by the commissioners deliberating on this very important issue, including:

1. **Burden of Proof.** The burden of proof is on the utility requesting the relief. If FPL does not carry this burden of demonstrating the efficacy of the proposed purchase, its petition should be denied.
2. **FPL's Data Is Unreliable.** FPL's underlying data intended to support the petition to the Commission regarding the proposed Scherer 4 purchase has been demonstrated to be unreliable. Mathematics errors demonstrated in the hearing and conceded to be present by FPL bring into question the entire basis of the FPL case.

3. FPL's Analysis Is Biased. Every witness who addressed the importance of the fuel and fuel transportation forecasts agreed that the accuracy and reliability of such forecasts is very important to the underlying economics on which FPL attempts to make its case. In this case, the fuel and fuel transportation forecasts have been demonstrated to be biased, calling into question the good faith and candor of FPL's evidence in the entire case, and undermining the company's request for relief.

4. A Ruling at this Time is Premature. FPL has admitted that it does not need the permission of the Commission to proceed. But more important even than that is the fact that proceeding at this time is unnecessarily premature. The exact terms and conditions under which Scherer 4 would be purchased, operated and maintained by FPL is unknown at this time, and can only be determined after detailed agreements have been drafted and executed. Only then can the Commission and the intervenors such as CLG fully appreciate and understand what rights, duties and risks are faced by the purchase of Scherer 4 near Macon, Georgia.

Burden of Proof

The Commission must keep in mind that it is a principal of regulatory proceedings that a regulated utility seeking relief from a public service commission must carry the burden of proof of demonstrating that the relief sought ought to be granted. For more than fifty years it

has been the law in the United States, as set down by the United States Supreme Court, that the petitioning utility has the burden of providing convincing evidence that the relief sought, including expenses and expenditures, are reasonable and appropriate. Lindheimer v. Illinois Bell Telephone Company, 292 U.S. 151 (1934). See also, In re Tampa Electric Company, 9 PUR 4th 402 (1975). The corollary to this rule is that it is incumbent upon the utility - in this case FPL - to demonstrate that the relief sought is reasonable and appropriate. This rule that the burden of proof rests on the applicant is applied in Florida. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Citizens of State of Fla. v. Florida Public Service Commission, 440 So.2d 371 (Fla 1st DCA 1983). The burden does not rest on those opposing the relief to demonstrate that the pending action is unreasonable.

FPL's Data Is Unreliable

FPL has relied very heavily upon the analytical work performed and presented by Mr. Samuel Waters, one of the FPL employee-witnesses. In fact, the main portion of the case intended to support FPL's petition for the pending application before this Commission is found in Mr. Water's testimony, and exhibits. TR 451 - 488; EX 18. As late as Mr. Water's appearance to provide evidence on direct testimony at the hearing his data continued to show changes and adjustments, requiring Waters to provide an exhibit correcting the earlier data submitted. EX 22. At the best, says Waters, the more refined of the two models it uses is expected to be accurate within two percent, more or less. TR 501. When dealing with the very large numbers we are considering in this case, this two percent variation can be a very large dollar difference indeed and far in excess of the benefits that FPL initially calculated could be attributed to the purchase of Scherer Unit 4. Even this $\pm 2\%$ "accuracy" would only be present when the data upon which the models are run is demonstrated to be reliable. That is not the

case in this matter, where the data offered by FPL was repeatedly demonstrated at the hearing to be inaccurate and unreliable.

Public Counsel's Witness Bartels explained that the data presented by FPL's Waters contained inaccuracies. TR 882 - 883. Upon cross examination, Mr. Waters agreed that the inconsistencies were present. The net result of all of this is that the analysis offered by FPL to support its proposed purchase of Scherer Unit 4 was done incorrectly. The errors found on Waters' Exhibit 21, as outlined by Mr. Bartels, virtually eliminate the alleged system savings that FPL attributed to the Scherer purchase.

The adjustments offered by Mr. Bartels show that under the base data provided by FPL the UPS option is superior (more cost effective) than the Scherer purchase option. The UPS option is shown to be a better option by nearly \$20,000,000.

The FPL data has been demonstrated to be unreliable. The full extent of the errors and the extent of the inaccuracy of the studies performed by FPL is frankly not known at this time. What is known, however, is that the unreliability of the principal evidence offered by FPL clearly demonstrates that FPL has not carried its burden of proof of demonstrating that its petition should be granted. And, as we all know, the Commission must take its action upon competent and supporting evidence. The Commission's order in a matter such as this petition of FPL cannot be based upon speculation or supposition. Tamiami Trail Tours, Inc. v. Bevis, 299 So.2d 22 (Fla 1974).

FPL's Analysis Is Biased

The analysis provided by FPL in support of its petition is obviously a biased analysis. The extent of the overreaching by FPL and the nature of the prejudicial assumptions used to evaluate all options other than the Scherer purchase option, call into question whether any

portion of the FPL analysis is worthy of consideration by the Commission. Every effort was made by FPL to select analytical assumptions on such matters as escalation, depreciation, fuel costs, and fuel transportation to favor the Scherer purchase option analysis and undermine the analyses of the other options.

Virtually every witness questioned on the topic agreed that the fuel cost study and the escalation parameters used in that and other parts of the analysis are very important to any reasonable analysis on the options addressed by FPL in this docket. These witnesses included FPL's Mr. Woody [TR 104, 105], FPL's Mr. Waters [TR 603, 606, 612, 613], FPL's Mr. Silva [TR 1084], Public Counsel's Mr. Bartels [TR 893, 900], and CLG's Mr. Wells [TR 953 - 954]. Both Mr. Waters and Mr. Woody of FPL agreed that for the Commission to grant the FPL petition, the Commission must find that FPL did a reasonable job. TR 613, 104 - 105. Mr. Woody, who is ultimately responsible for planning at FPL, candidly testified that a fuel forecast is important in developing any comprehensive planning program. TR 104. The importance, then, of the integrity of the data offered by FPL cannot be doubted. To the extent the data is incorrect or misrepresented, the analyses offered by FPL obviously suffer.

The assumptions used to develop the data upon which FPL requests that the Commission rule in this matter demonstrate a total lack of candor on the part of FPL. Nearly every assumption utilized by FPL is obviously intended to bias the study in favor of the Scherer purchase option and against all other options. Included in these prejudicial and biased assumptions are:

1. The UPS option costs are overstated. Differences in fuel costs are not explained and are not reasonable. Inconsistencies in the analysis have prejudiced the UPS evaluation by FPL, according to Public Counsel Witness Mr. Bartels. TR 874.

2. The study provided by FPL to support its claim that the Scherer purchase option is the superior option is flawed. These flaws include the use of inconsistent methodologies to develop the escalation factors for fuel in the various options. The fuel escalation factor for the Martin IGCC option (at an average annual rate of 7.15%) is 43% greater than the factor used for the Scherer purchase option evaluation. EX 23, line 25. The fuel escalation factor for the standard offer options at 5.60% is over 12% greater than the figure used in the Scherer purchase option. Id. Depreciation factors used by FPL for the options other than Scherer are up to 34.5% greater when compared to the figure used for the Scherer purchase option. The O&M Fixed Expenses escalation factors used by FPL are 59% greater for the Martin and Standard Offer option evaluations. Id. at line 28. And, in Exhibit 23, FPL makes the incredible suggestion that it can purchase coal at Scherer Unit 4 for \$7.00 or more per ton cheaper than Southern Company Services and GPC. EX 23 at lines 23 and 24.

In short, nearly every assumption relating to escalation, depreciation and fuel made by FPL is intended to bias the FPL study against every option other than the Scherer purchase option.

The fuel costs sponsored by FPL received considerable discussion during the hearings. The escalation methodologies used by FPL to determine fuel costs throughout the lives of the optional projects were particularly criticized. Public Counsel's Witness Bartels said that the methodology used to evaluate coal prices in competing option evaluations should be similar in

order to be reasonable. TR 902 - 903. In fact, however, different methodologies were used to develop the fuel costs of the Martin IGCC option. FPL's Mr. Silva, the head of FPL's Fuel Department, testified that the methodology used to determine the cost of coal for the Martin option was markedly different from that used in the Scherer evaluations. TR 1059 - 1060, 1081 - 1082. CLG's expert, H.G. Wells, along with Public Counsel's Mr. Bartels, was quite critical of the use by FPL of the vastly different fuel escalation methodologies. TR 941 - 942.

Even the type of coal selected by FPL for the Martin option evaluation is designed to bias the results. FPL arbitrarily selected a scarce high sulfur, high Btu coal found only in northern West Virginia and Pennsylvania. TR 954 - 955 and EX 23 line 21 and 22. That coal type is extremely distant from Florida and is expensive to transport to Florida. TR 955. The use of that coal causes the transportation costs to be overstated by over \$2.50 per ton, compared to suitable coals located in Kentucky and Virginia. TR 1097. No explanation for the selection of that fuel was offered by FPL.

The mere selection of the coal used in the Martin option analysis was an obvious attempt to bias the analysis results in favor of the Scherer purchase.

The difference in methodologies resulted in a fuel escalation rate for the Martin project that is 43% greater than the escalation rate used for the Scherer purchase option (7.15% for Martin vs. 4.99% for Scherer purchase). Because of this obvious bias, at one point in time fuel at the Martin IGCC site is projected to be over \$100 per ton more expensive than the coal delivered to Scherer. TR 935 - 936; EX 18, Document 2, page 1. This is obviously ridiculous.

According to CLG's expert witness, H.G. Wells, this bias in the escalation rates used caused the Martin option to be overstated or inflated by approximately \$500,000,000. TR 943. That calculation did not take into consideration Mr. Well's opinion that the coal for the Martin option (if purchased reasonably by FPL) would likely escalate at a rate slower than the Scherer

coal, due to the fact that the Martin unit design does not require New Source Performance Standard coal and due to the fact that the Martin unit had more transportation options than does Plant Scherer. TR 949, 935. It is worth noting, by the way, that only Mr. Wells in this docket is shown in the record to have any actual coal procurement experience. TR 935, 945 - 946.

Finally, the claim by FPL's Mr. Silva that FPL would be able to purchase fuel at Scherer at a cost of over \$7.00 per ton below that obtainable by Southern Company Services is absolutely incredible. Mr. Silva claimed that he could purchase coal that much cheaper than GPC and Southern Company even if he was purchasing the coal contemporaneously with GPC for the same Scherer complex. TR 1090 - 1091. FPL, which is only peripherally involved in the St. Johns River Power Park near Jacksonville Electric, is not capable of buying coal at Scherer for such a large disparity in price. TR 943. This is especially true when one considers the testimony of FPL's Mr. Cepero who candidly admitted that Georgia Power would be serving as the procurement agent for FPL and that FPL would be procuring the coal under a joint procurement program with the other owners of Plant Scherer. TR 373, 374, 375, 377 - 378. Mr. Cepero also admitted that major procurement decisions would be made by a vote of all of the owners and that Oglethorpe Power Corporation has the most votes. TR 375. How does Oglethorpe Power see its role in the 1990's and beyond and what does it feel should be done in the way of fuel? We do not know. FPL has not even bothered to interview Oglethorpe Power about its expectations regarding the Scherer plant site. TR 369. Under all of these circumstances, Mr. Silva's boast that he can buy coal at \$7.00 per ton cheaper than GPC is not worthy of any consideration by the Commission.

The net result is that FPL's studies are shown to be so biased and unreliable as to be completely rejected by the Commission. The Commission deserved a candid and intellectually honest presentation on reliable, reasonable projected costs for the various options presented by

FPL. That type of presentation has not been made. Taken together with the acknowledged errors found in the FPL data presented by Mr. Waters, as discussed above, it is obvious that FPL has not carried the burden of proof to demonstrate that its petition should be granted.

A Ruling at this Time is Premature

By FPL's own admission (by Mr. Woody), it does not require the approval of the Commission in this docket in order to proceed. TR 81. The requirement of Commission approval was proposed by FPL, not GPC, and can be waived by FPL. TR 81. FPL also does not suggest that Commission approval constitutes any legal requirement. TR 82. Finally, FPL has until the end of June, 1991 within which to decide to buy or walk away from the purchase of Scherer 4. TR 95. Accordingly, rushing this matter to decision in the face of so many discrepancies in the FPL case, including the mistakes present in the analyses and the biased studies performed by FPL, is ill advised.

Furthermore, to decide this matter on the record as it is currently constituted would be to have the Commission make its decision on speculation and supposition. FPL's Mr. Cepero candidly admitted that many of the details of the agreement had not been determined at the time of the hearings or were in the process of being drafted in the "documents" that would constitute the actual agreement. TR 362 - 363. Included in these matters by way of example are the following: (1) The "designated peer group" under which operation of the unit is to be compared. TR 363. (2) The "certain reopeners" that were to be incorporated into the agreement for the protection of FPL have not been decided upon or are found only in the drafts of the final documents and had not been sponsored by FPL in this proceeding. TR 363 - 364. (3) The "appropriate limits" to certain liability of GPC discussed in one of the supplements to

the Letter of Intent have not been decided upon or are in the documents being drafted. TR 364.

(4) The "base cost" of operating Scherer 4 has not been identified or finally determined as of the date of the hearing, or is found only in draft agreements that were not sponsored in the proceeding. TR 364.

Included among the uncertainties at Scherer is exactly what rights FPL will have to decide how the unit would be fueled. By Mr. Cepero's admission, the fuel decisions would be joint decisions made by all owners. TR 375. FPL would not have a majority of the vote, and would not have the largest percentage of the vote, which would be held by Oglethorpe Power Corporation. TR 375. A decision to switch fuel feed stock from eastern bituminous coal to western subbituminous coal could be reached over the objection of FPL. TR 375. Despite the fact that Oglethorpe Power would have the most votes on such matters as fuel procurement, fuel selection and the like, FPL has not even bothered to interview Oglethorpe Power about its views on how it intends to vote on issues affecting the running of the project, including fuel issues. TR 369.

To make an unnecessary decision now without all of the details about how the unit is to be operated, how the performance of the contract operators is to be determined, how the fuel acquisition program is really going to work and other extremely important matters left undecided and subject to change, would be tantamount to reaching an important conclusion on supposition and speculation. This would be unwise and would not protect the interests of the FPL rate payer.

In short, the petition should be denied at this time.

ARGUMENT

ISSUE 1

**SHOULD THE DIFFERENCE BETWEEN FPL'S
PURCHASE PRICE AND GEORGIA POWER'S
NET ORIGINAL COST OF SCHERER UNIT 4 BE
GIVEN RATE BASE TREATMENT AS AN
ACQUISITION ADJUSTMENT ON A PRO RATA
BASIS CONSISTENT WITH THE PHASED
PURCHASE OF THE UNIT?**

No. However, the position taken by CLG in this issue has nothing to do with the concept of acquisition adjustments, and whether they should be given rate base treatment. Rather, CLG believes that this issue should not even be reached by the Commission when reviewing this matter for a very simple reason. The facts in this docket reveal that FPL has not presented any credible evidence to support the position it has taken that its acquisition of Scherer Unit 4 should be granted any support by the Commission. The data used by FPL to support its position is unreliable and untrustworthy. FPL has not carried the burden of demonstrating that the proposed acquisition of Scherer is reasonable and prudent. Therefore, this issue should be left undecided as not ripe for decision by this Commission.

ISSUE 2

**DOES FPL, AS AN INDIVIDUAL UTILITY
INTERCONNECTED WITH THE STATEWIDE
GRID, EXHIBIT A NEED FOR THE ADDITIONAL
CAPACITY PROVIDED BY SCHERER UNIT 4?**

No position.

ISSUE 3

IS THE CAPACITY TO BE PROVIDED BY THE PURCHASE OF SCHERER UNIT 4 REASONABLY CONSISTENT WITH THE NEEDS OF PENINSULAR FLORIDA, TAKING INTO CONSIDERATION TIMING, IMPACTS ON THE RELIABILITY AND INTEGRITY OF THE PENINSULAR FLORIDA GRID, COST, FUEL DIVERSITY AND OTHER RELEVANT FACTORS?

No. The purchase of Scherer Unit 4 has not been demonstrated to be the most cost effective means of providing capacity to FPL rate payers. While additional capacity appears to be warranted, the method by which the capacity should be acquired remains unanswered. The purchase of Scherer Unit 4 is not shown to be the best method for meeting this capacity requirement, which might be more effectively met by in-state facilities such as Nassau's plant near Jacksonville, the Martin IGCC unit or the purchase of power under a UPS with Southern Company Services. Unfortunately, the very flawed analysis by FPL has not demonstrated which of the alternatives should be selected. However, the analysis performed by Public Counselor's Mr. Bartels indicates that the purchase of Scherer 4 is not the most cost effective method based on the incomplete information available to the Commission today. TR 882 - 883.

Additionally, the reliability of the unit and other similar factors cannot be evaluated at this time in light of the fact that the final agreements regarding unit operation, operator incentives and other detailed information is not available. These matters, at the time of the hearing, appeared to be still within the negotiations of the parties. TR 363 - 364. At best they were in draft form. Neither the intervenors nor the Commission staff could do more than speculate on what those parameters might do to affect such issues as availability. We also feel that the fact that FPL is proposing that it be a majority owner of unit at a four unit complex with several other owners adds complexity to the issue of reliability. What happens if there is an

emission violation out of the common stack that Scherer 4 shares with Scherer 3? What happens is FPL is saddled with a bad fuel decision that is forced upon it because it is a minority interest holder in the entire Scherer complex. Mr. Cepero testified that fuel decisions were to be joint, that other companies have more votes than does FPL and that the level at which the plant is run, at least for the first few years would be Georgia Power's - not FPL's. TR 375, 364. There is no evidence that these very real risks have not been evaluated by FPL. The impact upon the FPL rate payer is unknown, causing a decision about the Scherer acquisition to be speculative and based upon supposition.

ISSUE 4

HOW WILL THE PROPOSED PURCHASE OF SCHERER UNIT 4 AFFECT THE RELIABILITY AND INTEGRITY OF FPL'S ELECTRIC SYSTEM?

When a company purchases large quantities of power from a neighboring system, the purchase decreases the amount of power that might otherwise be available during times of emergency in the future. The proposed purchase of Scherer 4 has not been shown by competent evidence to improve the reliability and integrity of FPL's electric system. FPL presented only hearsay evidence to support its contention that it could not negotiate with Jacksonville Electric Authority for additional transmission capacity. In fact, the FPL employee who was the person who was engaged in negotiations with JEA - a Mr. Lock - was not even a witness for FPL in these proceedings. TR 114. Therefore, the only evidence supporting FPL in this contention is in the form of what used to be called "double hearsay" - the testimony of someone who had heard something from someone else. As the Commission is well aware, while hearsay is not, per se, inadmissible in an administrative hearing, it cannot form the sole basis upon which the Commission can reach a decision. Fla. Stats. §120.58(1)(a). Furthermore, the evidence from

FPL's Mr. Woody revealed that the west Florida 500 kV project with Florida Power Corporation is not contingent upon the purchase of Scherer Unit 4. TR 115.

Additionally, Scherer Unit 4 is not modern technology. The units were designed and construction begun in 1974. EX 4. FPL's Mr. Cepero candidly admitted that Scherer 4 is not materially different from the other Scherer units in terms of basic equipment and heat rate. TR 367 - 368. One of FPL's problems over the past years is that it has failed to adopt an effective power generation program that incorporated coal as a principal fuel. Now, however, FPL is considering the purchase of 1974 technology, 425 or more miles from its load center. FPL concedes that the load losses from Scherer 4 to its territory will approach 9%. The Commission may wish to encourage FPL to revisit whether it should consider the dated technology represented by Scherer 4.

ISSUE 5

HOW WILL THE PROPOSED PURCHASE OF SCHERER UNIT 4 AFFECT THE ADEQUACY OF THE FUEL DIVERSITY FOR FPL'S SYSTEM?

The proposed purchase of Scherer Unit 4 will provide no better fuel diversity for FPL than would the Scherer UPS option or any other option fueled by coal. Therefore, there would be no improvement realized by this proposed acquisition. Several of the alternatives reviewed by FPL included the use of coal as a fuel in the projects, most especially including the Scherer UPS option. This option takes power from the Southern Company System that is fundamentally a coal-fired electric utility system. Despite the fact that FPL lists such "coal by wire" power purchases in its generation mix data under the heading of "purchased power", this does not alter the fact that such a purchase would constitute coal fired generation and therefore provides an improvement to the fuel diversity of FPL equal to that of the purchase of Scherer Unit 4.

ISSUE 6

HAS FPL REASONABLY CONSIDERED ALTERNATIVE SUPPLY SIDE SOURCES OF CAPACITY?

No. The proposed purchase is not the best cost alternative for meeting the generation requirements of FPL. The studies performed by the company to determine the best cost alternative are flawed. When corrected for error, the studies demonstrate that the purchase of Scherer Unit 4 is not the best cost supply side option. Taking into account the tremendous bias found in the studies of the alternative sources for power, it is simply not clear at this time what is the best option for FPL. Only after carefully correcting the type of study performed by FPL for such obvious biasing assumptions as the fuel escalation, the depreciation, O & M escalation and basic fuel costs could this Commission be presented with sufficient facts to come to a conclusion as to which of the options available to FPL is the most cost effective. However, because of the bias found in the analysis presented by FPL, the Commission should consider calling in alternative analysts, such as an independent consulting firm selected by the Commission, to perform an unbiased and reasonable analysis of the options available to FPL.

ISSUE 7

DOES FPL'S POWER SUPPLY PLAN REASONABLY CONSIDER THE ABILITY OF CONSERVATION OR OTHER DEMAND SIDE ALTERNATIVES TO MITIGATE THE NEED FOR THE CAPACITY REPRESENTED BY THE PURCHASE OF SCHERER UNIT 4?

No. FPL has not yet initiated sufficient incentives or demand side management toward shaping its load curves, both from a demand and energy perspective. Such incentives could include off-peak load incentives, such as off-peak thermal storage and other similar measures

that would reduce FPL's peak load. The record in this case does not demonstrate adequate efforts on the part of FPL in this area.

ISSUE 8

IS THE PURCHASE OF SCHERER UNIT 4 THE MOST COST-EFFECTIVE MEANS OF MEETING FPL'S CAPACITY NEEDS, TAKING INTO ACCOUNT RISK FACTORS THAT ARE PART OF THE COST-EFFECTIVENESS ANALYSIS?

No. FPL has not yet initiated sufficient incentives or demand side management toward shaping its load curves, both from a demand and energy perspective. Additionally, the proposed purchase is not the best cost alternative for meeting the generation requirements of FPL, which has not apparently carefully considered additional peaking generation. The proposed acquisition does not improve the transmission risks currently attendant to the current purchase of "coal by wire".

It is not entirely clear from the record before the Commission just what is the best alternative for FPL to meet its capacity needs. However, the record before the Commission in this matter does clearly indicate that the best alternative is not the purchase of Scherer Unit 4. After correcting for errors in the studies provided by FPL, the best known alternative at this time is the Scherer UPS option by nearly \$20,000,000. TR 883. This should not imply that this is the only alternative better than the Scherer purchase option, however. The data provided to date by FPL is so flawed, particularly in the areas of escalation and fuel costs, that a valid analysis of the other options is not available at this time. TR 882 - 883.

ISSUE 9

WILL FPL BE ABLE TO DELIVER ELECTRICITY FROM SCHERER UNIT NO. 4 TO ITS LOAD CENTERS IN THE SAME TIME FRAMES IN WHICH IT IS PROPOSING TO ADD INVESTMENT TO RATE BASE?

No position.

ISSUE 10

IF ANY TRANSMISSION FACILITIES AND/OR UPGRADES ARE REQUIRED TO ACCOMMODATE THE PURCHASES OF ENERGY AND CAPACITY ALREADY UNDER CONTRACT TO FPL AND THE PROPOSED SCHERER PURCHASE, WHAT IS THE COST OF SUCH TRANSMISSION FACILITIES AND/OR UPGRADES AND WHO WILL BEAR SUCH COST?

No position.

ISSUE 11

ARE THE FUEL SUPPLY AND TRANSPORTATION COSTS PRESENTED IN FPL'S ECONOMIC ANALYSIS FOR SCHERER UNIT 4 REASONABLE AND PRUDENT?

The study provided by FPL to support its claim that the Scherer purchase option is the superior option contains numerous flaws. These flaws include the use of inconsistent methodologies to develop the escalation factors for fuel in the various options. The fuel escalation factor for the Martin IGCC option (at an average annual rate of 7.15%) is 43% greater than the factor used for the Scherer purchase option evaluation. EX 23, line 25. The fuel escalation factor for the standard offer options at 5.60% is over 12% greater than the figure used in the Scherer purchase option. Id.

FPL's Mr. Silva also suggests that FPL can purchase coal at Scherer Unit 4, for \$7.00 or more per ton cheaper than Southern Company Services, "one of the largest coal buyers anywhere" [TR 943] and a company that purchases over 40,000,000 tons of coal each year. TR 946. See EX 23 at lines 23 and 24. FPL makes this ridiculous claim in the face of the fact that FPL will use Georgia Power (Southern Company) as its procurement agents, will use the Georgia Power rail contract to carry the coal, and will take the coal to the same unit that Georgia Power would otherwise be the procuring agent. TR 374, 373, 375, 377 - 378. The result of this assumption that FPL can purchase coal at Scherer so much more cheaply than Georgia Power and Southern Company has caused FPL to build in a fuel cost for the Scherer purchase evaluation that is 13% higher than that used for the Scherer purchase option evaluation. In light of the tremendous importance of fuel in the overall cost of producing power [TR 434.], the implications of this decision by FPL is obvious. This is the type of prejudicial and obviously intentional misrepresentations on the part of FPL that caused Public Counsel's Mr. Bartels to testify that the costs used in the UPS evaluation were overstated and that the inconsistencies found in the FPL assumptions have prejudiced the evaluation. TR 874, 875.

In short, nearly every assumption relating to fuel and transportation made by FPL is clearly intended to bias the FPL study against every option other than the Scherer purchase option.

The fuel costs sponsored by FPL received considerable discussion during the hearings. The escalation methodologies used to determine fuel costs throughout the lives of the optional projects was particularly criticized. Public Counsel's Witness Bartels said that the methodology to evaluate coal prices in competing option evaluations should be similar. TR 902 - 903. In fact, however, different methodologies were used to develop the fuel costs of the Martin option. FPL's Mr. Silva, the head of FPL's Fuel Department, testified that the methodology used to

determine the project life cost of coal for the Martin option was markedly different from that used in the Scherer evaluations. TR 1081 - 1082.

The difference in methodologies resulted in a fuel escalation rate for the Martin project that was 43% greater than the escalation rate used for the Scherer purchase option (7.15% for Martin vs. 4.99% for Scherer purchase). According to CLG's expert witness, H.G. Wells, this bias in the escalation rates used caused the Martin option to be overstated or inflated by approximately \$500,000,000. TR 943. Mr. Well's opinion did not take into consideration Mr. his opinion that the Martin coal would likely escalate at a rate slower than the Scherer coal due to the fact that the Martin unit did not require New Source Performance Standard coal and due to the fact that the Martin unit had more transportation options than does Plant Scherer. TR 949, 935.

The full extent of the errors that result from this obvious bias can only be estimated. What is known is that the errors have apparently resulted in a misrepresentation of the total cost of some of these projects in the hundreds of millions of dollars. TR 943. In the face of these errors and the errors found in Mr. Waters materials that have been discussed above, the materials provided by FPL are seen to be entirely untrustworthy, to the extent that reliance upon the FPL data would amount to speculation and supposition by the Commission.

ISSUE 12

DOES THE SCHEDULE BEING FOLLOWED BY THE COMMISSION IN THIS CASE AFFORD ALL INTERESTED PARTIES ADEQUATE OPPORTUNITY TO PROTECT THEIR INTERESTS?

No. The schedule has not a afforded reasonable period of time to review the material provided by FPL in response to the data inquiries of the parties in this extremely important

potential acquisition. Several of the intervenors only received the information from their initial rounds of discovery during the week that the hearings were to begin on December 11, 1990, and were unable to fully assimilate that and other data made available by the time testimony was offered in this docket.

Florida Power & Light Company had a distinct advantage over all intervenors and over staff to review carefully how it would analyze this opportunity to purchase Scherer 4. FPL had also had a far superior opportunity to evaluate the data that is available. On the other hand, parties such as CLG have had an unreasonably short time to evaluate the data from discovery of other parties, and have had no opportunity to follow up on its initial discovery requests with supplemental requests for information that has come to light during recent depositions and review of discovery documents made available to other parties in this docket.

In essence this matter was initiated by petition of FPL on September 28, 1990, only 65 days before hearings were later scheduled to begin. As an example of the time burden that this truncated schedule provided, CLG petitioned to intervene on October 12, 1990, within a few days of learning that the petition had been filed, and within about two weeks of its filing. Thereafter, CLG was granted leave to intervene on October 24, 1990, only 48 days before the hearing was later scheduled to begin. Initial discovery was initiated in early November in the form of interrogatories, which were responded to only days before the hearings began. Two depositions were taken, one of which was delayed until the Friday before the hearings began. CLG had virtually no opportunity to review the documents requested by other intervenors. To call this a reasonable schedule would be inaccurate. This was tantamount to trying a multi-billion dollar law suit on forty-five days notice.

If the intent of the Commission is to develop a reasonable record upon which a fair and unbiased decision could be reached and affording all parties reasonable opportunity to develop

and defend its positions, the schedule set and held by this Commission in this docket did not serve those interests. The parties other than FPL were clearly disadvantaged by the short schedule, as was shown in the testimony of several witnesses. See, e.g., TR 898 - 902.

ISSUE 13

WHAT EFFECT, IF ANY, DOES THE SCHERER UNIT 4 PURCHASE HAVE ON THE SOUTHERN/ FLORIDA INTERFACE?

The proposed purchase of Scherer 4 has not been shown by competent evidence to improve the reliability and integrity of FPL's electric system. FPL presented only hearsay evidence to support its contention that it could not negotiate with Jacksonville Electric Authority for additional transmission capacity. In fact, the FPL employee - a Mr. Lock - who was the person who was engaged in negotiations with JEA was not even a witness for FPL. TR 114. As the Commission is well aware, while hearsay is not, per se, inadmissible in an administrative hearing, it cannot form the sole basis upon which the Commission can reach a decision. Fla. Stats. §120.58(1)(a). FPL's Mr. Woody testified that the west Florida 500 kV line on which FPL is working with Florida Power Corporation is not contingent upon the Scherer 4 purchase. TR 115. Accordingly, the Scherer Unit 4 purchase is not shown by competent evidence to provide any improvement to the Southern/Florida interface other than that which would result with or without the purchase of the unit.

ISSUE 14

UNDER WHAT CIRCUMSTANCES SHOULD THE PORTION OF THE PURCHASE PRICE OF ASSETS IN EXCESS OF BOOK VALUE (THE "ACQUISITION ADJUSTMENT") BE GIVEN "RATE BASE TREATMENT," SUCH THAT AMORTIZATION MAY BE INCLUDED IN OPERATING EXPENSES AND THE UNAMORTIZED ACQUISITION ADJUSTMENT MAY BE INCLUDED IN RATE BASE?

FPL has not demonstrated that the purchase of Scherer 4 will provide power into Florida less expensively than the alternatives. Under the circumstances, it is not demonstrated that any amount of money is appropriate for rate base treatment, and the petition should be denied.

LEGAL ISSUES

ISSUE 15

SHOULD THE COMMISSION ADDRESS IN THIS DOCKET TRANSMISSION ACCESS DISPUTES THAT MAY ARISE FROM THE SCHERER UNIT 4 PURCHASE?

No position.

ULTIMATE ISSUES

ISSUE 16

IS THE PURCHASE OF AN UNDIVIDED OWNERSHIP INTEREST IN SCHERER UNIT NO. 4 A REASONABLE AND PRUDENT INVESTMENT NECESSARY TO ENABLE FPL TO MEET ITS FORECAST 1996 SYSTEM LOAD REQUIREMENTS?

No. As has been demonstrated in the preceding issue discussions, FPL has not provided sufficient credible evidence to support its contention that the petition should be granted. The studies which FPL would have the Commission rely upon have been demonstrated to contain both errors and intentional bias, causing the studies and all resulting analyses to be without credibility. Additionally, there is no reason for the Commission to proceed in this matter before seeing the final documents agreed to by and between FPL and GPC. The Commission is aware of the several changes that were required to the documents originally sponsored by FPL's Mr. Waters as a result of the changes in the pending deal which resulted during the negotiations that have been on-going between FPL and GPC. The Commission would be required to enter its order on supposition and speculation, and this should be avoided. Tamiami Trail Tours, Inc. v. Bevis, 299 So.2d 22 (Fla 1974).

ISSUE 17

SHOULD FPL BE AUTHORIZED TO INCLUDE THE PURCHASE OF PRICE OF ITS UNDIVIDED SHARE OF SCHERER UNIT 4, INCLUDING THE ACQUISITION ADJUSTMENT, IN RATE BASE?

FPL should not be encouraged in any manner to purchase Scherer Unit 4. It stands to reason, therefore, that the Commission should not reach this issue, and should instead find that

FPL failed to provide sufficient credible evidence to support the petition of FPL, which should be denied.

ISSUE 18

IN THE EVENT FPL'S PETITION IS APPROVED, SHOULD THE COMMISSION IMPOSE GUARANTEE REQUIREMENTS ON THE ELECTRICAL OUTPUT OF THE UNIT AND DELIVERY TO FPL AND LIMIT THE AMOUNT OF TOTAL INVESTMENT, OPERATION AND MAINTENANCE EXPENSES AND FUEL COSTS THAT WILL BE ALLOWED FOR RECOVERY THROUGH RATES?


Yes. CLG adopts by reference the argument of Public Counsel on this issue.

CONCLUSION

FPL has not carried the burden of proof to demonstrate that the proposed acquisition is in the best interests of its rate payers. The data submitted by FPL contains so many biased assumptions and errors as to render it unworthy of supporting any decision by this Commission other than the denial of the petition of FPL for the relief requested. If the Commission was to rule on the petition at this time by doing other than delaying or denying the petition, such action would be tantamount to reaching a decision upon supposition and speculation, in light of the tremendous amount of factors that are virtual unknowns. The factors are unknown because at the time of the hearings there was no definitive agreement between FPL and the sellers of Scherer Unit 4 which set forth the rights and responsibilities of the parties to that proposed transaction.

The petition of FPL in this matter ought to be denied.

Respectfully submitted on behalf of Coalition of Local Governments.



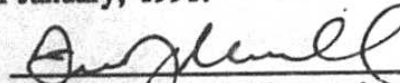
Frederick J. Murrell, Esquire
Schroder & Murrell
1001 3rd Avenue West Suite 375
Bradenton, Florida 34205
Florida Bar #: 0227447
(813) 747-2630

Attorneys for the
Coalition of Local Governments

CERTIFICATE OF SERVICE

I Frederick J. Murrell, hereby certify that I have this day served the foregoing Post-Hearing Brief of the Coalition of Local Governments by hand delivery or mailing it first-class, postage prepaid to parties on the service list shown below.

Dated at Bradenton, Florida this 8th day of January, 1991.


Frederick J. Murrell, Esquire

Service List

Edward A. Tellechea, Esquire
Staff Counsel
Florida Public Service Commission
101 East Gaines Street
Fletcher Building - Room 226
Tallahassee, Florida 32399

Matthew M. Childs, Esquire
Steel, Hector, & Davis
215 S. Monroe Street
Tallahassee, Florida 32301

John Roger Howe, Esquire
Office of the Public Counsel
111 West Madison Street
Suite 801
Tallahassee, Florida 32399-1400

Frederick M. Bryant, Esquire
Moore, Williams, Bryant, Peebles
& Gautier, P.A.
Post Office Box 1169
Tallahassee, Florida 32302

Robert C. Williams
Director of Engineering
7201 Lake Ellenor Drive
Orlando, Florida 32809