

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

Submitted for filing: November 12, 1999

**FLORIDA POWER CORPORATION'S MOTION TO COMPEL
OKEECHOBEE GENERATING COMPANY, L.L.C.
TO RESPOND TO CERTAIN DISCOVERY REQUESTS**

Florida Power Corporation ("FPC"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.380, Florida Rules of Civil Procedure, moves to compel Okeechobee Generating Company, L.L.C. ("OGC") to respond to certain Production Requests and Requests for Admission that OGC has objected to as follows:

Production Requests

FPC moves to compel OGC to provide *all* documents responsive to certain production requests over the objections set forth by OGC.

First, as a general matter, OGC objects to Requests 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 36 not as improper or irrelevant, *but* as seeking documents containing "*confidential, proprietary business information*" and then indicates that OGC will *only produce "to the extent possible" non-confidential and non-proprietary documents*. This is not a proper basis to withhold documents. If OGC has a concern about confidential and proprietary documents, it should seek to have those documents treated confidentially in the proceeding in the manner set forth in the Order Establishing Procedure, PSC 99-2002-PCO-EU in this docket. OGC cannot just refuse to produce documents on this basis.

DOCUMENT NUMBER-DATE

13898 NOV 12 99

FPSC-RECORDS/REPORTING

OGC is seeking a determination of need for a “merchant plant” not subject to regulation by this Commission. As such, this need hearing is the only opportunity for this Commission to test, examine, or evaluate the assumptions and data that underlie the representations that OGC is making to this Commission.

OGC has made a number of bold representations to this Commission including that (1) it has a “firm” natural gas fuel supply; (2) that it will be running 93% of the time; (3) that its power will be available to Florida utilities at time of peak; (4) that it can, megawatt for megawatt, improve Peninsular Florida reserve margins; and (5) that the plant creates no risk to ratepayers, etc. This proceeding affords the only occasion in which FPC and this Commission may scrutinize these representations.

OGC has the burden of proof in this proceeding. It must prove not only that there is specific need for generation, but that the plant it is proposing to build *can* and *will* meet that need. Considering this burden, OGC should be made to lay open its plans, its reported contracts, its communications with others, the assumptions underlying its evaluation of capital and operating costs, and its evaluation of the Florida market (*i.e.*, why it will likely be selling here instead of outside the state, etc.) as a prerequisite to the Commission’s consideration of its petition.

Each and every one of FPC’s production requests is directed to a specific statement, representation, inference, or fact alleged in OGC’s petition. If OGC is permitted to thwart discovery on these issues by hiding behind a claim that this information is confidential or proprietary, it will be impossible both for the intervenors to this proceeding – whose need OGC is allegedly attempting to meet – and this Commission to evaluate objectively and adequately the alleged need for this “merchant” power plant.

Accordingly, OGC should be compelled by the Commission to provide *all* documents responsive to these requests.

In connection with its response to FPC's First Request for Production of Documents, OGC has now provided a log (attached hereto as a part of Composite Ex. A) which identifies some confidential proprietary business information that has been withheld. Additional withheld confidential documents are identified in responses to specific requests (attached hereto as a part of Composite Ex. A). (Based upon a conversation between OGC's counsel and FPC's counsel, FPC has reason to believe that these lists together are still incomplete and OGC is additionally withholding other documents responsive to FPC's requests that are admittedly not included in this list.) FPC is willing to consider an agreed protective order restricting FPC's use of these specific documents to use in this proceeding. However, OGC has the burden here and must not be permitted to hide behind its broad, over-reaching objections made to almost each and every one of FPC's requests.

Thus, FPC requests that this Commission enter an order requiring OGC to produce all documents responsive to FPC's very reasonable requests, including such reasonable restrictions on use of those documents to this proceeding as the Commission deems just and necessary.

Documents and Computer Models underlying Dr. Nesbitt's Testimony-Requests 33 and 36

OGC's central need witness in this case is Dr. Dale M. Nesbitt, a consultant and Chief Executive Officer and President of Altos Management Partners, Inc., ("Altos") and MarketPoint, Inc., ("MarketPoint"). OGC relies upon the testimony of Dr. Nesbitt to support its assertions that there is a "need" for additional capacity in Peninsular Florida and that OGC's "merchant plant" can meet that "need." OGC also relies on Dr. Nesbitt's testimony to support its claims that

OGC's plant will dispatch during an average of 93% of the hours in a year, that OGC's plant will suppress wholesale prices in Peninsular Florida, that OGC's plant will save Florida ratepayers millions, and that OGC will be selling to utilities in Florida at times of peak and can be counted towards reserves, etc. Dr. Nesbitt's admits in his testimony that most, if not all, of his conclusions are based on modeling that he has performed using two models: North American Regional Electricity ("NARE") Model and the North American Regional Gas ("NARG") Model. (Nesbitt p. 52).

Nonetheless, OGC in response to FPC's production requests and in subsequent discussions between counsel has refused to produce these models claiming that they are proprietary and confidential -- unless, of course, FPC pays Fifty Thousand Dollars (\$50,000) for the NARG and NARE models, Ten Thousand Dollars (\$10,000) for the database for NARE and Five Thousand Dollars (\$5,000) for the database for NARG. Likewise, OGC has refused to produce documents relating to the models unless FPC enters into a stringent, one-sided, confidentiality agreement that is so restrictive (i.e., does not permit FPC to use outside consultants to assist it in evaluating the documents and contains a liquidated damages provision, etc. . .) that it amounts to a refusal to produce the documents. (See attached letter from OGC's counsel to counsel for FPC, with draft confidentiality agreement attached hereto as Exhibit B.)

OGC must not be permitted to withhold the very documents and models it relies on to demonstrate to this Commission that there is "need" for OGC's plant pursuant to the statutory criteria. FPC, this Commission, and any other parties to this proceeding are entitled to test and evaluate not only Dr. Nesbitt's conclusions, but his underlying assumptions, considerations, and logic.

The Court in *City of Cleveland v. Cleveland Elec. Illum. Co.*, 538 F. Supp. 1257, 1266 (N.D. Ohio 1980) recognized this exact point. In *Cleveland Elec.*, the plaintiff intended to sponsor expert testimony based, in part, on a computer simulation developed by its expert. The plaintiff disclosed the results of the simulation in the expert's report, but refused to produce the computer simulation program itself. In moving to compel, the defendant argued that production of the model was necessary because "the program used and the various inputs and outputs cannot be confidently deduced from the data presented" and thus, it was "impossible to adequately prepare for cross examination." The Court agreed stating that:

Certainly where, as here, the expert reports are predicated on complex data, calculations and computer simulation which are neither discernable nor deducible from the reports themselves, disclosure thereof is essential to the facilitation of 'effective and efficient examination of these experts at trial.'

538 F. Supp. 1267.

Likewise here, if Dr. Nesbitt is going to rely on these models – as he clearly has – then OGC must produce them. FPC is sensitive to the fact that Dr. Nesbitt, Altos, and MarketPoint may want to protect these products, which they are clearly willing to license at the "right" price. However, OGC is not excused from producing the models simply because it is owned by its consultant. OGC waived that argument when it decided to rely upon and offer Dr. Nesbitt and his models in support of its petition. *See e.g., Bartley v. Isuzu Motors*, 151 F.R.D. 659, 660 (D. Col. 1993) (where the plaintiff sought to introduce expert testimony based on a computer simulation the Court held that "the discovering party not only must be given access to the computer's work product, but he must also see the data put into the computer, the programs used to manipulate the data and produce the conclusions, and the theory or logic of those who planned and executed the experiment); *Williams v. E.I. du Pont de Nemours & Co.*, 119 F.R.D. 648

(W.D. Ky., 1987) (same; also requiring production of codebooks and users' manual used in creating the database); *see also*, *United States v. Russo*, 480 F.2d 1228, 1241-42 (6th Cir. 1973), *cert. denied*, 414 U.S. 1157 (litigant that will rely on a computer model must disclose the program and the underlying data and inputs used).

Moreover, FPC's only interest in these models is in connection with this docket. FPC has absolutely no interest in licensing these models for its own use to the tune of Sixty-Five Thousand Dollars (\$ 65,000), and is certainly willing to enter into a reasonable confidentiality arrangement limiting its use of the models, data, and other documents (or use by an appropriate consultant to FPC) strictly to this docket and requiring the return of all copies thereof at the conclusion of the docket. The courts have repeatedly found that safeguards, like those that FPC is willing to agree to here, are both appropriate and sufficient to protect the interests of the producing party (or its expert). *See*, *Gohler v. Wood*, 162 F.R.D. 691 (D.Utah 1995) (accounting firm's proprietary auditing manual ordered disclosed, subject to order limiting access to the court, and the parties, their attorneys, and consulting experts, requiring all persons to whom the manual was disclosed to execute a confidentiality agreement, and limiting the manual's use to "purposes necessary for the litigation of claims. . . among the parties."); *Upjohn Co. v. Hygenia Bio. Labs.*, 151 F.R.D. 355 (E.D.Cal. 1993) (applying California statute similar to section 90.056, F.S., and requiring disclosure of confidential veterinary medical research materials subject to protective order limiting access to trial counsel and consulting experts and limiting its use to the litigation).

Neither FPC, this Commission, nor any other party to this docket should be forced to pay ransom for documents and models that are critical to any possible analysis or evaluation of Dr. Nesbitt's testimony. Indeed, this makes bad policy. Many parties in PSC procedures would be

deprived of discovery altogether if faced with such onerous costs. This is no more palatable because the costs are being imposed on regulated utilities. Nor should OGC be permitted on the one hand to offer Dr. Nesbitt's testimony in support of its need petition, and on the other hand refuse to give FPC (and others) access to the very data and models that Nesbitt relied on in reaching his conclusions. OGC chose to rely on Nesbitt (his models and databases), and thus FPC is entitled to test his conclusions, or alternatively, OGC can withdraw Dr. Nesbitt's testimony and the allegations arising therefrom in their entirety.

Remaining specific objections

As for the remaining objections by OGC to specific requests, FPC moves to compel responses to those requests over those specific objections as follows:

Request # 2 – All documents reflecting, mentioning, constituting, or relating to your plans for selling power from the project.

OGC objects to this request's use of the term "plans" as vague. The term "plans" has a very plain meaning and when used in connection with the phrase "plans for selling power from the project" that OGC is seeking to build, it is not ambiguous. Indeed, if OGC does not have a "plan for selling power from the project," it cannot credibly claim that the power from the plant will be sold in such a way as to meet the alleged need OGC is seeking to satisfy.

OGC should be compelled to respond to this request in accordance with its plain meaning.

Request # 9 – All documents reflecting, mentioning, constituting, or relating to your calculations or determination that the Project would be needed in Peninsular Florida.

and

Request # 10 – All documents reflecting, mentioning, constituting, or relating to any possibility that the Project may not be needed in Peninsular Florida.

and

Request # 23 – All documents on which you rely for your assertion in ¶ 14 of the Petition that reserve margins in Peninsular Florida are “constrained.”

OGC objects to these requests as overbroad and unduly burdensome, claiming that they arguably include all documents in In Re: Generic Investigation Into the Aggregate Electric Utility Reserve Margins Planned for Peninsular Florida, (Docket No. 981890-EU) (hereinafter “**Reserve Margin Docket**”). FPC will agree that OGC does not have to produce any documents responsive to these request that are a part of the record in the Reserve Margin Docket.

Apart from these public records, however, OGC must be compelled to provide any other documents responsive to these requests, which go to the very core of this proceeding. Whether OGC’s plant *is* or *is not* needed in Peninsular Florida is the issue before this Commission. For example, OGC directly alleges that its plant will meet a need created by “constrained reserves,” and Request 23 is specifically designed to gather information OGC relies on in support of that factual allegation. Discovery directly aimed at factual allegations underlying the specific issues before the Commission can hardly be overbroad, and given FPC’s agreement that OGC need not reproduce publicly filed documents, any remaining burden associated with the production is simply OGC’s to bear as part of its affirmative attempt to obtain a favorable need determination.

Request # 13 – All documents reflecting, mentioning, constituting, or relating to your communications with the PSC or PSC Staff concerning the proposed Project.

and

Request # 14 – All documents reflecting, mentioning, constituting, or relating to your communications with the PSC or PSC Staff concerning the need for more electric generating capacity in Florida.

OGC objects to these very simple requests as overbroad and unduly burdensome and as seeking attorney-client privileged communications. To begin, FPC, of course, has no intent to invade the privilege between OGC and its counsel concerning any issue. However, OGC and/or its affiliates' communications with the PSC or PSC Staff by definition cannot be subject to the attorney-client privilege, and it is highly unlikely that all documents reflecting, mentioning, or relating to these communications would also be privileged. Indeed, OGC's suggestion that these precise requests are overbroad and unduly burdensome admits or, in the very least, suggests that there are numerous non-privileged and responsive documents in existence.

As to OGC's objection to overbreadth and burdensomeness, FPC again indicates that there is no need for OGC to produce documents that are already a part of the public record. However, FPC is certainly entitled to discover and learn about any other documents relating to communications by OGC or its affiliates with the PSC or PSC staff pertaining to the two highly relevant topics identified in its requests (*i.e.*, OGC's proposed "project" and any perceived "need" for electric generating capacity in Florida).

OGC should be compelled to provide all non-privileged documents responsive to these requests.

Request # 22 – All documents reflecting, mentioning, constituting, or relating to your consideration of environmental issues associated with the Project, including but not limited to documents supporting or arguably inconsistent with your assertions in ¶ 13 of your Petition.

OGC objects to this request as vague as to the meaning of "arguably inconsistent." The term is of course used by FPC in the context of a request for documents "supporting or arguably

inconsistent with” OGC’s assertions in Paragraph Thirteen of OGC’s petition. In this context, the term is not ambiguous and in any event, the phrase is not absolutely necessary to the request, but rather is intended to provide OGC with additional guidance in responding to this highly relevant request relating to the environmental issues associated with the Project. OGC has made representations in its petition and filed testimony about the environmental benefits of its proposed power plant. FPC is entitled to test these representations and examine the support for this testimony.

WHEREFORE, as to each of the above identified Production Requests, FPC requests that this Commission enter an order compelling OGC to produce all responsive documents including those documents which OGC claims are proprietary or confidential or to seek special protection of those documents.

Requests for Admission

FPC moves to compel OGC to respond to Requests for Admission Numbers 29, 30, 41-44, and 55 as follows:

OGC objected to responding to Requests # 29 and # 30, wherein, FPC asks OGC to admit that:

Florida retail utilities are planning to add capacity of similar technology and design as what will be used for the proposed project; and

From 1999 through 2008, existing Peninsular Florida utilities are projecting the additional of nearly 7,000 MW of gas-fired combined cycle capacity consistent with the advanced technology, natural gas-fired combined cycle design of the Project.

FPC is dumbfounded that OGC has objected to these two requests that are essentially excerpts from OGC’s need petition. OGC’s petition at page 14 states that gas-fired combined cycle capacity is the best choice and that “[t]his is borne out by the fact that other Florida utilities are

planning to add capacity of similar technology and design.” Additionally, OGC’s petition at page 20 states, “[m]ost new capacity proposed by other Florida utilities is similar gas-fired combined cycle capacity. . . . The direct construction cost and heat rate of the Okeechobee Generating project compare favorably to those of other proposed similar in Peninsular Florida.”

In addition, OGC cites to Table 9 of its exhibits, titled “Comparison of Peninsular Florida Planned and Proposed Generating Units.” This table shows proposed plants by Florida Utilities through 2008. OGC cannot rely on this information in support of its petition and then turn around and refuse to admit that it is true and accurate. OGC should be compelled to either admit or deny the above statements.

OGC also objected to Request for Admissions Numbers 41 through 44 pertaining to PG&E (*i.e.*, PG&E Generating Company, L.L.C., and/or PG&E Corporation) stating that the requests are outside the scope of permissible discovery because PG&E is not a party to this proceeding and not required to respond to discovery. As is clear from FPC’s requests, FPC is simply asking OGC, the Petitioner, to respond to certain statements about its corporate affiliates. OGC is wholly owned by PG&E Generating Company, L.L.C., the competitive power generation affiliate of PG&E Corporation. (Pet. Exh. p. 2). OGC repeatedly relies on the experience and corporate backing of its PG&E affiliates as it relates to development of other power plants around the Country in an effort to demonstrate the viability of its project to this Commission. See Pet. Exh. pages 9-14 (attached hereto).

Accordingly, no credible argument can be made that OGC cannot or should not be required to respond to requests for admission about PG&E. OGC should be compelled to respond to FPC’s Requests for Admission Numbers 41 through 44.

Finally, OGC objected to Request for Admission # 55, wherein, FPC asks OGC to admit that:

Absent a statutory or contractual commitment to sell its power to a particular retail utility in the State of Florida, OGC would be free to enter into short-term contracts to sell its power any time it chooses to any utility or power marketer it chooses either inside or outside the State, making that power unavailable to other utilities in Florida that may need the power resources during the period of those short-term contracts.

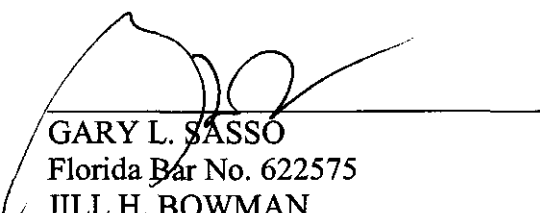
OGC's objects to this Request claiming it is vague, argumentative and compound. To the contrary, this Request simply asks whether under certain very specific circumstances the power from OGC's proposed project would be unavailable in Florida. OGC should be compelled to respond to it.

Counsel for FPC has consulted counsel for the other parties in this matter and is authorized to state that FP&L and TECO have no objection to the motion, LEAF has no position, and OGC objects.

WHEREFORE, FPC requests that this Commission enter and order compelling OGC to respond to Requests for Admission Numbers 29, 30, 40 through 44, and 55.

Respectfully submitted,
FLORIDA POWER CORPORATION

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA POWER CORPORATION'S MOTION TO COMPEL OKEECHOBEE GENERATING COMPANY, L.L.C. TO RESPOND TO CERTAIN DISCOVERY REQUESTS has been furnished by facsimile to Robert Scheffel Wright and John Moyle as counsel for Okeechobee Generating Company, L.L.C. and by U.S. Mail to all other counsel of record this 11th day of November, 1999.



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In Re: Petition for Determination of Need for an Electrical Power Plant in Okeechobee County by Okeechobee Generating Company, L.L.C., FPSC Docket No. 991462-EU

Log of Documents Not Produced In Response to FPC's First Request for Production

<u>Document No.</u>	<u>Brief Description</u>	<u>Reason Not Produced</u>
FPC1-0003	Memo from Doug Egan to PG&E Gen Dept. Heads, 8/18/99	Confidential, proprietary business information
FPC1-0005 to 0017	Correspondence from and materials regarding GulfStream gas pipeline, 2/23/99 and other undated materials	Confidential, proprietary business information; subject to confidentiality agreement between PG&E Gen and GulfStream
FPC1-0019 to 0091	Correspondence from and materials regarding GulfStream gas pipeline, various dates	Confidential, proprietary business information; subject to confidentiality agreement between PG&E Gen and GulfStream
FPC1-0114	Letter from John Long to Norman Karloff re: gas transportation to future PG&E Gen power plant, 1/21/99	Confidential, proprietary business information
FPC1-0175 to 0179	Correspondence from and materials regarding GulfStream gas pipeline, 10/5/99	Confidential, proprietary business information; subject to confidentiality agreement between PG&E Gen and GulfStream
FPC1-0728 to 0734	Correspondence and materials from ABB, 6/8/99 and internal notes, undated	Confidential, proprietary business information
FPC1-0780	E-mail memo from Dale Nesbitt to Schef Wright, Esq., 8/24/99	Attorney work product

FPC1-0784	E-mail memo from Jack Hawks to Jon Moyle, Jr., Esq., 12/11/98	Attorney-client privilege
FPC1-0785 to 0786	E-mail memo from Alan Slepian, Esq. to Sean Finnerty, 6/1/99	Attorney-client privilege
FPC1-0788	E-mail memo from Sanford Hartman, Esq. to Sean Finnerty, 7/10/99	Attorney-client privilege
FPC1-0789 to 0792	E-mail memo from Stephen Greene to Sanford Hartman, Esq., et al., 5/26/99	Attorney-client privilege
FPC1-0809	E-mail memo from Dale Nesbitt to Schef Wright, Esq., et al., 10/18/99	Attorney work product
FPC1-0818	E-mail memo from Dale Nesbitt to Sean Finnerty, 6/23/99	Confidential, proprietary business information

Note: Additional documents not being produced, and the reasons therefor, are indicated on the responses to the respective production requests.

3. All documents reflecting, mentioning, constituting, or relating to your communications with Gulfstream concerning the construction of a natural gas pipeline to which the Project will be connected.

A. See the attached document(s):

- Letter of Intent between U.S. Generating Company and ANR Pipelines dated February 23, 1999 (CONFIDENTIAL).
- Maps of the Gulfstream system (CONFIDENTIAL);
- Gulfstream Preliminary Schedule (CONFIDENTIAL)
- Organizational chart of Gulfstream Environmental Team; (CONFIDENTIAL);
- Project Update letter from Stanley Babiuk dated October 21, 1999 (CONFIDENTIAL);
- Presentation by Gulfstream to U.S. Generating dated February 4, 1999 (CONFIDENTIAL);
- Gulfstream presentation to Florida PSC staff, dated September 30, 1999 (CONFIDENTIAL);
- Letter to Norm Karloff from Todd Pursells, dated May 20, 1999 (CONFIDENTIAL);
- Letter of Intent dated February 23, 1999, (duplicate copy) (CONFIDENTIAL)
- Letter to Sean Finnerty from Stanley Babiuk, dated April 22, 1999 (CONFIDENTIAL);
- October 14, 1999 Gulfstream press release re: filing its FERC application; and
- Precedent Agreement between OGC and Gulfstream; (redacted version provided in Karloff testimony).

7. All documents reflecting, mentioning, or relating to the possible development by Coastal Corp., Williams Cos., or Florida Gas Transmission of a new gas pipeline or gas pipeline extension to serve customers in Florida.

A. Refer to the following document(s):

- Buccaneer open season letter, March 5, 1999, with attachments;
- FGT letter to Karloff dated January 21, 1999, with attachments;
- Gulfstream presentation, February 4, 1999 (included in Answer to #3) (CONFIDENTIAL);
- FGT - About our Phase IV Expansion Project;
- FGT - Phase IV update brochure;
- FGT - Market Area (Florida) Deliveries;
- FGT - Presentation for PG&E Gen. 9/2/99;
- FGT - Potential route to Okeechobee; and
- FGT - FGT Marketing materials.
- FGT - Letter from Jack Boatman to Sean Finnerty, dated September 22, 1999. Please note that the number on this document, FPC1-0883, is out of sequence because it was received by counsel on November 8, 1999, after the other documents had been numbered.

9. All documents reflecting, mentioning, constituting, or relating to your calculations or determination that the Project would be needed in Peninsular Florida.

A. See the attached documents.

The first document is a listing of documents that relate to the inputs and output of the Altos North American Regional Electric Model. These documents exist only in electronic format and are, accordingly, provided on a ZIP disk that is being provided to FPC.

In addition, documents responsive to this request include documentation (in paper or hard copy) of the Altos models which will be provided to FPC subject to FPC's execution of a confidentiality agreement acceptable to Altos. A form of such agreement will be furnished to FPC under separate cover by November 10, 1999. Additionally, documents responsive to this request include the electronic versions of the Altos models; these models constitute the confidential, proprietary, intellectual property of Altos and will be furnished to FPC subject to FPC's executing a licensing agreement and paying the applicable licensing fees for such models.

Finally, documents responsive to this Request No. 9 include the prefiled direct testimony and exhibits of Dale M. Nesbitt and Frederick M. Sellars in the OGC need determination proceeding, and the testimony and exhibits of Dale M. Nesbitt, Ph.D., and Jeffrey L. Meling, P.E. in FPSC Docket No. 981042-EM, all of which were furnished to FPC in that proceeding.

Responsive documents also include utility ten-year site plans, FPSC reports regarding ten-year site plans, and OGC's various filings in this docket, including its petition, exhibits, testimony, and pleadings, all of which are publicly available to FPC.

16. All documents reflecting, mentioning, constituting, or relating to your assertion that the direct construction cost of the Project would be \$190 million.

A. Documents responsive to this Request No. 16 include the following:

June 8, 1999 ABB bid summary; and

Adjustment sheet for OGC relative to June 8, 1999 ABB bid.

Both of these documents are CONFIDENTIAL and are, accordingly, not being produced.

Additionally, documents in OGC's possession, custody, or control responsive to this Request No. 16 include various documents relating to the direct construction cost of the New Smyrna Beach Power Project, all of which are in the public record and which were furnished to FPC in FPSC Docket No. 981042-EM.

18. All documents reflecting, mentioning, constituting, or relating to financing for the Project.
 - A. All documents responsive to this Request No. 18, other than those parts of OGC's Petition and Exhibits filed on September 24, 1999, and those parts of the prefiled testimony and exhibits of OGC's witnesses that mention the financing of the Project, are confidential, proprietary business information and accordingly are not being produced.

24. All documents reflecting, mentioning, constituting, or relating to OGC's business plan.
 - A. All documents responsive to this Request No. 24 are confidential, proprietary business information and accordingly are not being produced.

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November 8, 1999

BY TELECOPIER & ELECTRONIC MAIL

Jill H. Bowman, Esquire
Carlton Fields
Post Office Box 2861
St. Petersburg, Florida 33731-2861

Re: In Re: Petition for Determination of Need for an Electrical Power Plant in Okeechobee County by Okeechobee Generating Company, L.L.C., FPSC Docket No. 991462-EU

Dear Jill:

As we discussed on Friday, we will be responding to FPC's first round of discovery today, i.e., Monday, November 8, 1999. I want to clarify two points regarding such discovery. First, you and I had agreed that we would furnish copies of the loose (i.e., unbound) documents that we are producing in response to FPC's First Request for Production via Federal Express service for Tuesday delivery, together with a log of documents that we are not producing and the reasons therefor. You will pay for the copying, and we will bear the FedEx charges. I would like to confirm that FPC will reciprocate in like manner when it responds to Okeechobee Generating Company's document production requests; that is, I would like for us to discuss the volume of FPC's production, and if the volume of documents is reasonable, we would like the option of obtaining copies directly without having to come to St. Pete to review them and then send them out for copying. If this is not acceptable to FPC, please advise me immediately, as my agreement to provide copies directly to you was predicated on my assumption that, given our cooperative working relationship in other litigation, such action on our part would be reciprocated by FPC.

EXHIBIT B

Jill H. Bowman, Esquire
Re: Discovery in Okeechobee Need Determination
November 8, 1999
Page 2

Since I've mentioned them, the bound documents, which comprise 10 volumes and approximately 1,200 to 1,500 pages of documents relating to the Altos models, will be made available for inspection and copying subject to FPC's executing a confidentiality agreement acceptable to Altos and MarketPoint, Inc. I have attached (with the fax copy of this memo) a copy of the agreement that FPL executed in the Duke New Smyrna case; if this is acceptable to FPC and you wish to request a copy of the modeling documents, please advise me at your earliest convenience and we will start the process of having them copied (at FPC's expense) so that FPC can have them as soon as possible. Okeechobee Generating Company will expect reciprocity with respect to any models, analytical procedures, or calculations used by FPC in support of its testimony in this proceeding -- i.e., that FPC will provide the modeling documentation and inputs and outputs subject to a similar confidentiality agreement.

As regards the electronic versions of the Altos electric and gas models, MarketPoint, Inc. is willing to license MarketPoint, including both the executable code and the user's guide, to FPC subject to FPC's executing MarketPoint's standard licensing agreement and paying the standard licensing fees. At present, those fees are \$50,000 each per year for the Altos North American Regional Electric Model and the Altos North American Regional Gas Model, plus \$10,000 per year for the database for the Electric Model and \$5,000 per year for the database for the NARG Model. Again, OGC would expect reciprocity in this regard as well -- i.e., that FPC or its contractors would make the electronic versions of such models available to OGC subject to OGC's executing applicable licensing agreements and paying applicable licensing fees.

Second, how do you want to treat attorney-client communications in the document production process? In the Duke New Smyrna case, we simply did not produce attorney-client communications, nor a log thereof, and that seemed to work well for everyone. We would be willing to agree to treat such communications in this reciprocal way in this case, if that is acceptable to FPC. Alternately, of course, we can furnish a log with at least *limited information* about such documents' origins. Please advise me how FPC would like to handle this matter.

Thanks for your attention to these issues. I look forward to speaking with you later today.

Cordially yours,



Robert Scheffel Wright

Attachment

99
53PM

06:18PM STEEL HECTOR DAVIS TO 2228410

P002/003

P.2

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November 5, 1998

Charles A. Guyton, Esquire
Steel Hector & Davis, LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804

RE: Confidentiality Agreement for Altos' Modeling Documents

Dear Charlie:

As we discussed yesterday during your review of the documents Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. ("Duke New Smyrna") and the Utilities Commission, City of New Smyrna Beach, Florida ("UCNSB" or the "Utilities Commission") produced in response to Florida Power & Light Company's ("FPL") requests to produce Altos Management Partners ("Altos") has agreed to make available to FPL certain of its proprietary models, namely, the Altos North American Electric Model and Altos North American Regional Gas Model, and the documentation for these models (hereinafter collectively referred to as the "Modeling Documents") as part of discovery in this proceeding and subject to a confidentiality agreement between Duke New Smyrna, FPL, and Altos. (Of course, FPL is free to enter into a licensing arrangement with Altos, under the terms set forth in Altos' standard licensing agreement contained in the GEMSLIC.DOC file in the diskettes included in the Modeling Documents.) The purpose of this letter is to set forth the terms of the confidentiality agreement.

FPL may have access to the Modeling Documents subject to the following terms:

1. Duke New Smyrna will provide FPL with one copy of the Modeling Documents and FPL shall make no additional copies of any of the Modeling Documents. (FPL may make one hard-copy printout of any information contained on diskettes included in the Modeling Documents.)

98
11:50PM

06:10PM STE HECTOR DAVIS

TO 2228410

P003/003

P.3

2. Within 7 days of closure of FPSC Docket No. 981042-EM, FPL shall return all Modeling Documents including but not limited to any hard-copy printouts made pursuant to paragraph 1 herein, to Landers & Parsons, P.A., unless FPL has executed a licensing agreement with Altos.

3. FPL shall limit disclosure of the Modeling Documents and any information contained therein to its own employees solely on a need-to-know basis in the context of FPSC Docket No. 981042-EM. As of the date of this letter agreement, FPL will disclose the Modeling Documents only to Charles Guyton, Richard Hevia, Steve Sim, Starr Adams, Tony Cuba and Sam Waters. FPL shall not disclose the Modeling Documents to any employee or agent of Steel Hector & Davis or of FPL without first obtaining the written consent of Duke New Smyrna and Altos. (Duke New Smyrna and Altos reserve the right to object to any additional employees, and FPL agrees to respect such objections, pending any potential relief requested of the Commission.)

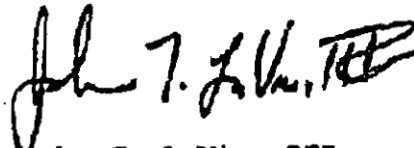
4. FPL shall not disclose the Modeling Documents to any outside consultants or any other person or entity of any type or nature whatsoever, without first obtaining the written consent of Duke New Smyrna and Altos.

5. If FPL breaches this agreement, FPL shall be immediately liable to Altos for the full licensing fee as set forth in Altos' standard licensing agreement plus any attorney's fees and costs incurred in enforcing this agreement.

If the above-stated terms are acceptable to FPL, please execute this letter agreement in the space indicated below.


Should you have any questions, please give me a call.

Sincerely:



John T. LaVia, III

JTLIII:rjd



Charles Guyton
(on behalf of Florida Power & Light
Company)