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November 23, 1999

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Blanca S. Bayó, Director  
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**By Hand Delivery**

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Re: Docket No. 991462-EU

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket No. 991462-EU are the original and fifteen (15) copies of Florida Power & Light Company's Motion to Compel Okeechobee Generating Company, L.L.C. to Respond to Discovery Requests.

If you or your staff have any questions regarding this filing, please contact me.

Very truly yours,

*Charles A. Guyton*  
Charles A. Guyton

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APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
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**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, )  
LLC )  
\_\_\_\_\_ )

DOCKET NO. 991462-EU

Filed: November 23, 1999

ORIGINAL

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

Florida Power Light Company (FPL), pursuant to Rule 28-106.206 of the Florida Administrative Code (F.A.C.) and Florida Rule of Civil Procedure 1.380, moves to compel Okeechobee Generating Company, LLC (OGC) to respond to FPL's Interrogatories and Requests for Production of Documents, and states:

1. On November 2, 1999, FPL propounded its First Set of Interrogatories (Nos. 1-61), Second Set of Interrogatories (Nos. 62-71), First Request for Production of Documents (Nos. 1-36) and Second Request for Production of Documents (Nos. 37-60) to OGC. On November 12, 1999, OGC filed separate responses to each of these discovery requests, broadly objecting to the vast majority of FPL's discovery efforts. (OGC's objections are attached as Composite Exhibit "A"). Most of OGC's objections are based on the assertion that the information requested is "confidential, proprietary business information." (This objection was employed originally to contest 33 of FPL's 71 interrogatories and 58 of FPL's 60 production requests.) OGC also objects to multiple interrogatories and production requests on the grounds of work-product and/or attorney-client privilege, and based on the assertion that FPL cannot question OGC about matters that are the subject of expert testimony.

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2. On November 16 and 17, 1999, OGC submitted its responses to the above referenced FPL interrogatories and production requests (excerpts attached as composite Exhibit “B”). Consistent with its earlier-filed objections, OGC refused to provide complete responses to most of FPL’s discovery requests.

### **Confidentiality Objections**

3. OGC objects to FPL Interrogatories Nos. 2, 3, 6, 7, 8, 9, 13, 14, 15, 18, 21, 23, 28, 29, 30, 34, 35, 36, 37, 40, 41, 42, 44, 45, 46, 47, 49, 50, 56, 58, 59, 60 and 61 and FPL Production Requests Nos. 1-33 and 36-60, by asserting that they call for disclosure of “confidential, proprietary business information” and OGC need only respond “to the extent possible” with non-confidential and non-proprietary information or documents. Of these, OGC indicates in its subsequent discovery responses that it withheld information or documents responsive to FPL Interrogatories Nos. 1, 2, 13, 14, 15, 35, 36, 40, 41, 42, 44, 45, 46, 50, 59, and 60 and Production Requests 1, 2, 3, 8, 19, 24, 26, 27, 36, 43, 52, and 53 based on confidentiality. It is unclear from OGC’s discovery responses whether OGC also withheld information or documents responsive to the remaining FPL discovery requests to which OGC objected. FPL therefore moves to compel responses to each and every interrogatory and production request for which OGC withheld any responsive information or documents on confidentiality grounds.

4. **It has not been argued by OGC that any of information requested is not directly relevant to the ultimate issues in this proceeding, and therefore needed by FPL.** OGC instead takes the position that relevant documents may be entirely withheld based on mere allegations of confidentiality. To the contrary, OGC cannot simply unilaterally refuse to disclose

allegedly proprietary and confidential information. It can limit disclosure of such information only in the manner set forth in the Commission's Rules and the Order Establishing Procedure in this docket (No. PSC-99-2002-PCO-EU), both of which provide that a party seeking to protect confidential business information must request a determination of confidential status from the Commission. Rule 25-22.006(6)(a), F.A.C. Commission Rule 25-22.006(6)(a) further provides that protection of confidential information will be provided in the manner established by Rule 1.280 of the Florida Rules of Civil Procedure, which also requires a party seeking to limit discovery of confidential information to file a motion for protective order and demonstrate good cause for its entry.<sup>1</sup> Fla. R. Civ. P. 1.280(c); *Eastern Cement Co. v. Department of Env'tl. Reg.*, 512 So. 2d 264 (Fla. 1st DCA 1987); *Goodyear Tire & Rubber v. Coeey*, 359 So. 2d 1200 (Fla. 1st DCA 1978). By refusing to comply with relevant discovery requests without seeking a protective order, OGC has improperly shifted the burden to FPL to come forward with this Motion to Compel.

5. Moreover, even assuming for purposes of discussion that OGC had properly filed a motion and demonstrated good cause for a protective order, the proper remedy would not be to forestall discovery and force FPL to proceed without access to much-needed information. To the contrary, so long as FPL has a "reasonable necessity for the information," disclosure will be

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<sup>1</sup> Both FPL and OGC agree that the Florida Rules of Civil Procedure governing discovery are applicable to this proceeding under Rule 28-106.206, F.A.C. See *OGC's Objections to FPL's Second Set of Interrogatories*, at 2. FPL also notes that the rules of privilege applicable in civil trial courts are applicable in proceedings before the Commission under Rule 28-106.213(4), F.A.C.

required notwithstanding OGC's confidentiality claims. *Scientific Games, Inc. v. Dittler Bros., Inc.*, 586 So. 2d 1128 (Fla. 1st DCA 1991); *Goodyear*, 359 So. 2d at 1202. And, as previously mentioned, **OGC has not raised any issue regarding the relevance of the allegedly confidential documents and information or their necessity to FPL.**<sup>2</sup> Of course, any discovery of confidential or proprietary information can be governed by an appropriate protective order to insure that the information is used only for the purposes of the litigation. *Becker Metals Corp. v. West Fla. Scrap Metals*, 407 So. 2d 380, 382 (Fla. 1st DCA 1981). FPL is certainly not averse to taking reasonable measures to protect OGC's confidential information from unnecessary disclosure, so long as FPL is allowed access to such information to the extent necessary for purposes of litigation. However, because OGC has not even suggested what reasonable protective measures would satisfy its need for confidentiality, FPL is not in a position to formulate the appropriate terms for a protective order.

6. OGC's confidentiality objections to FPL's production requests are also deficient in that they fail to identify and describe each document withheld, or otherwise provide FPL and the Commission with any basis to evaluate OGC's allegations of confidentiality. It is not sufficient to vaguely state that "confidential, proprietary" information has been withheld and OGC has "respond[ed] to the extent possible with non-confidential, non-proprietary documents." Each responsive document withheld must be specifically identified so that FPL may contest the

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<sup>2</sup> Nor could OGC have raised such an issue. The documents and information requested in FPL's First and Second Requests for Production and First and Second Sets of Interrogatories all relate rather obviously to the ultimate issues in this docket and the allegations in OGC's Petition.

need for confidential treatment or, alternatively, show that the document is needed and must therefore be disclosed notwithstanding its confidentiality. By failing to describe the documents it claims are confidential, OGC has deprived FPL of the ability to fully respond to its allegations of confidentiality.

7. By failing to follow applicable procedural requirements, OGC has impeded the discovery process and needlessly forced FPL to file this Motion. OGC's actions are particularly egregious given the short, expedited discovery schedule under which the parties were working and the fact that, regardless of whether any necessary information is confidential or not, FPL is entitled to discovery subject to reasonable protective measures. The Commission should therefore overrule OGC's objections and order OGC to respond to every interrogatory and production request to which it objects on the basis of confidentiality.<sup>3</sup>

#### **Altos Computer Models**

8. In its responses to FPL Production Requests Nos. 4 and 5, OGC identifies as responsive, but does not produce, two computer models (entitled the NARE and NARG models and collectively referred to as "the Altos Models") relied upon by OGC expert witness Dale Nesbitt and his company Altos Management Partners (Altos). OGC bases its refusal to produce the Altos Models on the assertion that they are not within its custody or control. The Altos

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<sup>3</sup> In its response to FPL's Production Requests Nos. 36 and 43, OGC indicates that certain "PG&E internal analyses" responsive to FPL's Requests were withheld on confidentiality grounds. The fact that certain documents may have been produced by or for a corporate affiliate of OGC would not limit their discovery by FPL in this proceeding. *See, Medivision of E. Broward County, Inc. v. Department of HRS*, 488 So.2d 886 (Fla. 1<sup>st</sup> DCA 1986). Accordingly, OGC's objections are construed by FPL to be based solely on the grounds of confidentiality.

Model runs produced for OGC by Altos are extensively relied upon by OGC, forming the basis for: (1) the testimony of OGC's principal witness, Dr. Nesbitt (Nesbitt p. 52); (2) key assertions in the testimony of OGC witnesses Sean Finnerty and Ronald Vaden (*See, OGC's Responses to FPL Requests for Production Nos. 45 and 46*); and (3) OGC's responses to FPL Interrogatories Nos. 3, 4, 5, 6, 11, 14, 15, 18, 19, 20, 21, 27, 32, 33, 35, 36, 40, 41, 56 and 61.

9. FPL cannot adequately prepare for cross-examination of OGC's experts or evaluate OGC's responses to the referenced discovery requests without access to the Altos Models:

Certainly where, as here, the expert reports are predicated on complex data, calculations and computer simulations 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.

*City of Cleveland v. Cleveland Elec. Illum. Co.*, 538 F.Supp. 1257, 1266 (N.D. Ohio 1980). As aptly noted by Florida Power Corporation (FPC) in its Motion to Compel Discovery, several cases have held that<sup>4</sup>:

When a party seeks to present a computer study, in order to defend against the conclusions that are said to flow from these efforts, the [adverse] 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

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<sup>4</sup> These cases were decided pursuant to the Federal Rules of Civil Procedure. Because the Florida rules were intended to be consistent with the federal rules, the Florida Supreme Court has stated that decisions interpreting the federal rules are highly persuasive to application of the Florida rules. *Gleneagle Ship Management Co. v. Leondakos*, 602 So.2d 1282, 1283 (Fla. 1992).

*Bartley v. Isuzu Motors*, 151 F.R.D. 659 (D. Col. 1993); *City of Cleveland*, 538 F.Supp. at 1266; see, also, *Fauteck v. Montgomery Ward & Co.*, 91 F.R.D. 393 (N.D. Ill. 1980); *Williams v. E.I. du Pont de Nemours & Co.*, 119 F.R.D. 648 (W.D. Ky.. 1987); *United States v. Russo*, 480 F.2d 1228, 1241-42 (6<sup>th</sup> Cir. 1973), *cert. denied*, 414 U.S. 1157 (1974). Production of such computer models is required even if they were produced by a party's "outside" experts, rather than the party itself. See, e.g., *Bartley*, 151 F.R.D. at 659 (party ordered to produce computer simulation developed by its outside expert); *City of Cleveland*, 538 F.Supp. at 1267 (same).

10. Consistent with these federal decisions, this Commission in *In re: Determination of the Cost of Basic Local Telecommunications Service, Pursuant to Section 364.025, Florida Statutes*, 98 FPSC 10:44 (October 6, 1998), ordered a party (AT&T) to produce the data underlying a computer model, the results of which were relied upon by AT&T in its testimony to the Commission. Like OGC, AT&T argued that the data requested could not be produced because it was not in AT&T's "custody, control or possession," but was rather in the possession of AT&T's outside consultants. Noting that "equity in this proceeding . . . dictates that AT&T should provide reasonable access to relevant information upon which it bases its [modeling]," this Commission held that the opposing parties must have "some reasonable access to review the information in question." Accordingly, AT&T was required to provide the other parties full access to the requested data at the premises of its outside consultants.

11. Counsel for OGC has indicated that OGC and Altos will only make the Altos Models available "on the same terms as in the *Duke New Smyrna* case [FPSC Docket No. 981042-EM]." (November 17, 1999, Letter from Robert Scheffel Wright to Charles Guyton,



attached as Exhibit “C”.) In that case, Altos and Duke refused to disclose the Altos Models to FPL; all that was disclosed were summaries of some of the models’ methodology and some of the inputs and outputs of some of the model runs conducted by Altos. (November 5, 1998, Letter from John LaVia to Charles Guyton, attached as Exhibit “D”.) The information provided to FPL in the Duke case and the terms under which it was provided (or not provided) were not sufficient to allow FPL a complete or even meaningful review of the Altos Models. Similar limited information has been submitted by OGC in response to FPL Production Requests Nos. 4 and 5, and OGC wants the same overly restrictive terms and conditions offered in the Duke case. OGC’s response is simply insufficient. To adequately prepare for cross examination of those OGC witnesses that rely on the Altos Model runs, FPL “not only must be given access to the computer’s work product, **but . . . must also see the data put into the computer [and] the programs used to manipulate the data and produce the conclusions. . .**”; *Bartley*, 151 F.R.D. at 660 (emphasis added); *City of Cleveland*, 538 F.Supp. 1266; 8 Wright & Miller, *Federal Practice and Procedure* § 2218. It is not enough that FPL merely be given selected modeling data that “conforms to [OGC’s] theory of the case.” *Bartley*, 151 F.R.D. at 660.

12. In *Duke New Smyrna*, Altos indicated that it would only disclose its model if FPL entered into a licensing agreement and paid a licensing fee. Similarly, in this docket counsel for OGC has indicated to both FPL and FPC that access to the Altos Models will be predicated on execution of a licensing agreement and payment of licensing fees totaling \$65,000. FPL should not be forced to bear this cost. OGC and Altos voluntarily relied upon the Altos Model runs and

must therefore disclose the underlying models to FPL. FPL has no desire to license the Altos Models for general use. It only seeks disclosure for purposes of this litigation, to investigate and counter allegations made by OGC. Contrary to OGC's and Altos' position, such discovery should not be made contingent upon the payment of exorbitant licensing fees by FPL.

13. Thus, OGC should be compelled to produce the Altos Models. FPL and the other parties should not be forced to proceed without access to materials "essential to the facilitation of effective and efficient examination of these experts. . . ."<sup>5</sup> *City of Cleveland*, 538 F.Supp. 1266-67. Nor should the Commission blindly rely on expert witnesses' conclusions that are based upon secret, and therefore untested, methodologies. If OGC cannot or will not produce the Altos Models, the Commission should strike all testimony based upon the results of the Altos Models, as well as the statements in OGC's petition which OGC indicates were based on Altos Model runs in its responses to FPL Interrogatories Nos. 4, 5, 6, 11, 14, 15, 18, 19, 20, 21, 27, 32, and 33.

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<sup>5</sup> FPL would, of course, agree to limit access to that needed for purposes of this proceeding and to have all persons to whom the models are disclosed sign reasonable confidentiality agreements. See, e.g., *Dynamic Microprocessor Assoc. v. EKD Computer Sales*, 919 F.Supp. 101 (E.D.N.Y. 1996); *Gohler v. Wood*, 162 F.R.D. 691 (D.Utah 199). FPL notes, however, that Altos and OGC are not entitled to preclude FPL from having the model independently reviewed by FPL's consultants. *Dynamic Microprocessor Assoc*, 919 F.Supp. 101 (proprietary computer source code ordered disclosed, subject to a protective order that limited access defendant's attorneys and consultants); *Gohler*, 162 F.R.D. 691. (accounting firm's proprietary auditing manual could be disclosed to a competing accounting firm hired to consult for purposes of litigation).

## Work-Product and Attorney-Client Privilege Objections

### A. Production Requests

14. OGC claims that FPL Requests Nos. 34-35 and 52-60 seek documents that are protected by the work-product privilege and OGC need only respond “to the extent possible” with non-privileged documents.<sup>6</sup> OGC similarly invokes the attorney-client privilege in its objections to Requests Nos. 52-60.<sup>7</sup> OGC once again fails to specifically identify the majority of the documents it claims are privileged or confidential. OGC’s objections should be overruled for the same reasons as its objections on confidentiality: it has (1) failed to identify those documents alleged to be privileged, (2) failed to allege any factual basis for its privilege claims, and (3) failed to file a motion for protective order as required by Fla. R. Civ. P. 1.280(c). OGC should be directed to identify all documents it claims are privileged and to either produce such documents or file a motion for protective order and demonstrate good cause for its entry.

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<sup>6</sup> OGC’s responses to FPL production Requests Nos. 34 and 35 refer FPL to OGC’s response to FPC Production Request No. 14. In that response, OGC indicates that it has withheld responsive documents reflecting communications by its parent company with Commissioners and Staff. Similarly, OGC’s responses to FPL production Requests 52-60 indicate that responsive documents have been withheld.

<sup>7</sup> Because OGC has not identified the documents it claims are privileged, FPL cannot adequately respond to the claim that some documents may contain attorney-client communications. However, FPL notes that the attorney-client privilege does not apply to any document that does not reflect a communication for the provision of legal advice. *See Southern Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377, 1383 (Fla. 1994); *Borase v. M/A Com, Inc.*, 171 F.R.D. 10, 14 (D. Mass. 1997). Moreover, a document that is not otherwise privileged does not become so simply because it is presently in the custody of a party’s attorney. *See, Greenberg Traurig Hoffman Lipoff Rosen & Quentel, P.A. v. Bolton*, 706 So. 2d 97, 98-99 (Fla. 3d DCA 1998).

15. Moreover, FPL Production Requests Nos. 52-60 do not, by their terms, seek discovery of work product or other privileged documents. Requests Nos. 52-60 ask for “all documents relied upon” by OGC’s various expert witnesses in “preparation of [their] direct testimony.” To the extent OGC claims that such documents are privileged work-product merely because they were produced or relied upon by its testifying experts, OGC misstates the applicable law of privilege. Under Florida law, materials produced by testifying experts are not protected by the work product privilege, and are therefore subject to discovery.<sup>8</sup> *Peck v. Messina*, 523 So. 2d 1154 (Fla. 2d DCA 1988); *Mims v. Casademont*, 464 So. 2d 643 (Fla. 3d DCA 1985) (disapproving prior federal decisions that “sought to bring expert information within the work product doctrine” and holding that such materials are discoverable “even if required or developed in anticipation of litigation or for trial.”). The only exception to this rule is where the materials relied upon by an expert contain attorneys’ mental impressions regarding the litigation. See *Mims*, 464 So. 2d at 644. To the extent any of the requested materials contain such attorney (as opposed to expert witness) mental impressions, those portions of the documents may be redacted from the materials produced to FPL.

16. Additionally, because FPL Requests Nos. 34 and 35 solely seek disclosure of information communicated by OGC to Commissioners and Commission staff, there can be no

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<sup>8</sup> Moreover, even if the materials at issue are deemed to be work product, they are nevertheless subject to discovery upon FPL’s showing of its need for the materials and inability to obtain the materials without undue hardship. *Southern Bell*, 632 So. 2d at 1384.

applicable work-product privilege.<sup>9</sup> First, the work-product privilege applies only to information developed in anticipation of litigation. *Eastern Air Lines, Inc. v. Gellert*, 431 So. 2d 329, 331 (Fla. 3d DCA 1983). And, to the extent that materials requested contain such work-product, any privilege was waived by OGC when it voluntarily disclosed the substance of the work-product to Commissioners and/or Commission staff. Like all privileges, the work-product privilege is extinguished when a holder of the privilege “voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy.” Fla. Stat § 90.507. Florida case law confirms that the work-product privilege is waived by voluntary disclosure of the substance of the work-product information. *See, e.g., Visual Scene, Inc. v. Pilkington Bros.*, 508 So. 2d 437 (Fla. 3d DCA 1987) (privilege waived upon voluntary disclosure to adverse party); *Hamilton v. Hamilton Steel Corp.*, 409 So. 2d 1111 (Fla. 4th DCA 1982) (privilege waived by counsel’s public disclosure of work-product information).

**B. Interrogatories**

17. OGC also improperly objects to FPL Interrogatories Nos. 59 and 60 based on the work-product privilege and to Interrogatory No. 60 based on the attorney-client privilege. OGC’s responses to Interrogatories Nos. 59 and 60 indicate that it has withheld responsive information, and FPL moves to compel responses to these questions.

18. Interrogatories Nos. 59 and 60 are both general questions relating to internal OGC business decisions, not its litigation materials or communications with counsel. *See, Eastern Air*

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<sup>9</sup> FPL does not seek disclosure of any mental impressions of OGC’s attorneys regarding such communications.

*Lines*, 431 So. 2d at 331. Interrogatory No. 59 simply asks OGC to identify all persons involved in the decision to go forward with its project (so that such persons may be deposed, if necessary) and Interrogatory No. 60 asks OGC to identify all documents relied upon in making that decision. FPL is at a loss to see how disclosure of such information calls for discovery of attorney work-product or attorney-client communications. Each answer will merely identify specific names or documents; the questions do not call for disclosure of the substance of privileged communications or litigation work-product.

**Objections to Interrogatories as “Beyond the Scope of  
Discovery Permitted of Testifying Experts”**

19. OGC objects to every question in FPL’s Second Set of Interrogatories (Nos. 62-71), as being “beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure,” despite the fact that each of these questions was directed at OGC, not its testifying experts. In reliance on this assertion, OGC has refused to respond to FPL Interrogatories Nos. 62-70, and FPL moves to compel responses to those questions.

20. No clarification is given as to why OGC could not itself answer FPL’s questions, other than the conclusory statement that these interrogatories “can only be answered by OGC’s testifying experts. . . .” *OGC’s Objections to FPL’s Second Set of Interrogatories (Nos. 62-71)*, at 4. The FPL interrogatories to which OGC objected on this basis were calculated to test the sufficiency of the allegations made by OGC in its petition and the exhibits attached thereto.<sup>10</sup> In

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<sup>10</sup> For example, the first of these interrogatories asks OGC for the inputs to the various Altos Model runs it conducted. This question is designed to test the veracity of OGC’s allegation that there is an “immediate” need for the project and that OGC expects to “sell approximately 4.3 MWH of electric energy . . . per year,” both of which were based on the Altos model analyses.

essence, when questioned as to the facts and factual assumptions underlying the very allegations it made to this Commission on the ultimate issues in this docket, OGC's response is "ask our experts," as such questions "can only be answered by [them]."

21. OGC should not be permitted to utilize its experts as a shield to discovery and OGC should therefore be compelled to answer FPL Interrogatories Nos. 62-70. If OGC cannot answer any of FPL's questions after a reasonable investigation, it can so state in its response. *See* Fla. R. Civ. P. 1.340(b) ("An interrogatory . . . is not objectionable merely because [it] . . . asks for information not within the personal knowledge of the party. A party shall respond to such an interrogatory by giving the information the party has and the source on which the information is based."). However, FPL notes that OGC was under a duty to independently investigate the factual basis for the allegations in its Petition, and should therefore be able to answer based on that investigation.<sup>11</sup>

22. OGC relies extensively in its objections on Fla. R. Civ. P. 1.280(b)(4)(A), which governs "discovery of facts known and opinions held by experts." However, OGC fails to recognize that none of the questions in FPL's Second Set of Interrogatories are directed to an

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*See, Petition for Determination of Need*, at 14, ¶ 14; *OGC's Response to FPL Requests for Production Nos. 4 and 5*).

<sup>11</sup> *See* Fla. Stat. § 120.569(2)(e) (requiring a party or its attorney to make a reasonable inquiry as to the allegations of a petition); *Procacci Commercial Realty, Inc. v. Department of HRS*, 690 So. 2d 603, (Fla. 1st DCA 1997) (section 120.569(2)(c), since renumbered as 120.569(2)(e), is modeled upon Federal Rule of Civil Procedure 11 and, like the federal rule, establishes a duty to make reasonable inquiry regarding the pertinent facts and applicable law alleged in an administrative petition); *Mercedes Lighting & Elec. Supply, Inc. v. State Dept. of Gen. Servs.*, 560 So. 2d 272 (Fla. 1st DCA 1990) (every administrative pleading must, upon reasonable inquiry, be believed to be "well grounded in fact and . . . warranted by existing law").

expert, nor do they inquire about “any person . . . expected to be called as an expert witness . . .” Rather, FPL’s interrogatories are directed to OGC and inquire into those facts and factual assumptions upon which OGC presumably bases the allegations in its Petition. With respect to Rule 1.280(b)(4)(A), all that can be said of FPL’s interrogatories is that the answers may **also** be known to OGC’s experts. This is not a basis for a party to refuse to answer an interrogatory directed to it. FPL has certainly not indicated that OGC must designate one of its outside experts to respond to the interrogatories. OGC is free to choose the respondent to FPL’s interrogatories, which may or may not be one of its outside experts; but, in any case, the answer will be that of OGC, the party to which the questions were posed.

23. The limitations on discovery requests propounded to experts in Rule 1.280(b)(4) do not apply to discovery requests directed at a party. *Allstate Ins. Co. v. Boecher*, 705 So. 2d 106, 108 (Fla. 4th DCA 1998), *approved*, 733 So.2d 993 (Fla. 1999). As a party, OGC is required to answer FPL’s interrogatories to the extent of its ability to answer after a reasonable investigation. Fla. R. Civ. P. 1.340(b). Accordingly, OGC should be compelled to answer FPL Interrogatories Nos. 62-70.

#### **Failure to Adequately Respond to Certain Production Requests**

24. In its responses to FPL Production Requests Nos. 40, 46, 47, and 59, OGC refers FPL to documents it in the public records of this Commission and/or the Florida Reliability Coordinating Council (FRCC). Each of these FPL production requests seeks the “data analyses, models, model runs and other documents” relied upon by an OGC expert witness in making certain statements. In each instance, OGC directs FPL to public records without otherwise



identifying the documents responsive to FPL's production requests. For example, in response to FPL's request for all "documents relied upon by Mr. Kordeki" in making a certain assertion, OGC vaguely refers FPL to unspecified "utility ten-year site plans [and] various publications of the Florida PSC and the Florida Reliability Coordinating Council." *OGC's Response to FPL's Request For Production No. 40*. While FPL does not seek to have OGC disclose documents which truly are publicly available, OGC does need to identify which public documents are responsive to FPL's Requests with enough specificity to allow FPL to retrieve those documents from the public records.

25. The rationale for not requiring a response to the extent documents are publicly available is that the burden to retrieve such documents is the same for either party. Clearly this is not the case when only OGC knows which specific public documents it relied upon. Thus, it is not sufficient for OGC to merely state that the answer to FPL's questions are somewhere within the thousands of documents in the custody of the Commission and FRCC, and leave it to FPL to search those records in a futile attempt to divine which of them may have been relied upon by OGC witnesses. Accordingly, OGC should be required to specifically identify the public documents responsive to FPL's production requests. Such a response should, at minimum, include the date, author, title and addressee, if any, of each document.

26. FPL has contacted the parties regarding this motion to compel. Not surprisingly, OGC objects to this motion. Neither the Legal Environmental Assistance Foundation, Florida Power Corporation nor Tampa Electric Company object to this motion to compel. Counsel for FPL has been unable to reach counsel for Staff regarding this motion.

## Conclusion

27. Throughout the course of this proceeding, OGC has, at every turn, employed dilatory tactics to impede FPL's discovery efforts and thereby hinder FPL's preparation for hearing. OGC first refused to agree to FPL's intervention, even though FPL had been allowed to intervene on substantially similar jurisdictional facts in another docket.<sup>12</sup> OGC then moved to strike FPL's Petition to Intervene and used the pendency of that motion as a basis to forestall discovery, even though OGC never raised any issue as to FPL's standing or its right to participate in this proceeding. *See, Order Granting Petitions to Intervene and Denying Motion to Strike*, Order No. PSC-99-2153-PCO-EU (November 4, 1999) ("In its motion, Okeechobee does not contest FPL's standing to intervene.") Now that FPL is a party, OGC has turned to other tactics: objecting to nearly every discovery request of FPL; failing to come forward with a motion for protective order despite a clear duty to do so, and thereby leaving it for FPL to move to compel discovery responses; failing to identify the documents and information withheld, and thereby limiting FPL's ability to formulate a response to OGC's objections; and, refusing outright to disclose allegedly "confidential" information that FPL has a right to discover. From the outset OGC has also carefully segregated key information in an obvious effort to thwart discovery, such as by relying on studies and conclusions of "outside" experts for the key allegations of its Petition and then arguing that it cannot be questioned on those allegations because such matters are within the exclusive province of its experts. All the while, OGC has continued to seek a

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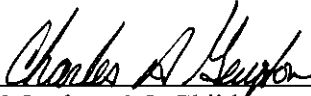
<sup>12</sup> *See, In re: Joint Petition for Determination of Need for an Electrical Power Plant in Volusia County by the Utilities Commission, City of New Smyrna Beach, Florida and Duke Energy New Smyrna Beach Power Co., Ltd.*, 99 FPSC 3:401.

quick disposition of this proceeding, knowing full well that FPL could not possibly be prepared since it has yet to be given access to critical information. OGC should be compelled to fulfill its duty to disclose information and comply with relevant discovery requests.

WHEREFORE, FPL requests that the Commission enter an Order compelling OGC to respond to each of FPL's discovery requests.

Respectfully submitted,

STEEL HECTOR & DAVIS, LLP

  
By: \_\_\_\_\_  
Matthew M. Childs  
Charles A. Guyton  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion to Compel Okeechobee Generating Company, L.L.C. to Respond to Discovery Requests in Docket No. 991462-EU was served by Hand Delivery (when indicated with an \*) or mailed this 23rd day of November, 1999 to the following:

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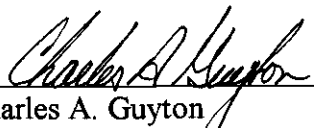
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\_\_\_\_\_  
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MIA\_1998/544367-1

**COMPOSITE EXHIBIT "A"**

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. 99-1462-  
FILED: November 12, 1999

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NOV 12 1999

HAND DELIVERY

STEEL HECTOR & DAVIS

OKEECHOBEE GENERATING COMPANY'S OBJECTIONS  
TO FLORIDA POWER & LIGHT COMPANY'S FIRST SET OF  
INTERROGATORIES (NOS. 1-61)

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to the Commission's Order Establishing Procedure, as revised, and the Order Establishing Expedited Discovery Schedule, hereby respectfully submits its objections to Florida Power & Light Company's ("FPL") First Set of Interrogatories (Nos. 1-61), which were served on OGC on November 2, 1999: OGC notes for the record that FPL's First Set of Interrogatories do not include Interrogatories Nos. 38 and 39.

GENERAL OBJECTIONS

OGC objects to FPL's First Set of Interrogatories on the grounds set forth in paragraphs A-D below. Each of OGC's responses will be subject to and qualified by these general objections.

A. OGC objects to FPL's request that the answers to these interrogatories be provided on or before November 12, 1999.

Pursuant to the Order Establishing Expedited Discovery Schedule, issued on November 8, 1999, OGC's responses to FPL's First Set of Interrogatories are due on November 16, 1999.

B. OGC objects to any interrogatory that calls for the creation of information as opposed to the reporting of presently existing information as an improper expansion of OGC's obligations

under the law FPL invokes.

C. OGC objects to any interrogatory that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made to these interrogatories or is later determined to be applicable for any reason. OGC in no way intends to waive any such privilege or protection.

D. OGC objects to any interrogatory that calls for confidential, proprietary business information and/or the compilation of information that is considered confidential, proprietary business information.

#### SPECIFIC OBJECTIONS

OGC makes the following specific objections to FPL's First Set of Interrogatories. OGC's specific objections are numbered to correspond with the number of FPL's interrogatories.

2. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

3. OGC objects to this interrogatory in its entirety on the grounds that it seeks confidential, proprietary business information.

6. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

7. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

8. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

9. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

13. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

14. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.



15. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

18. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

21. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

23. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

28. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

29. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information. In addition, OGC

objects to this interrogatory on the grounds that Gulfstream National Gas Systems is not a party to this proceeding.

30. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

34. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

35. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

36. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

37. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

38. There is no interrogatory numbered 38.

39. There is no interrogatory numbered 39.

40. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

41. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

42. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

44. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

45. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

46. OGC objects to this interrogatory in its entirety on the grounds that it seeks confidential, proprietary business information.

47. OGC objects to this interrogatory on the grounds that it

seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

49. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

50. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

53. OGC objects to this interrogatory on the grounds that it is irrelevant and outside of scope of allowable discovery.

54. OGC objects to the interrogatory to the extent that it requests OGC to "provide" analysis. OGC will identify such analysis, but is under no obligation to provide copies of the analyses in response to an interrogatory.

56. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

58. OGC objects to this interrogatory in its entirety on the grounds that it seeks confidential, proprietary business information. OGC also objects to the interrogatory because it calls

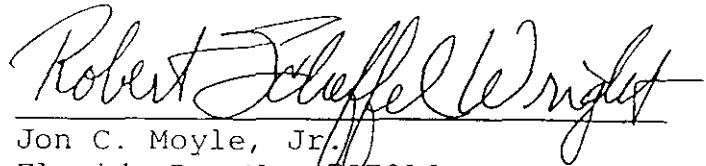
for information protected by the work product doctrine.

59. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC also objects to the interrogatory because it calls for information protected by the work product doctrine. OGC will attempt to respond to this interrogatory to the extent possible with non-confidential, non-proprietary, non-privileged information.

60. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC also objects to this interrogatory because it calls for information protected by the attorney-client privilege and the work product doctrine. Lastly, OGC objects to this interrogatory because it is overbroad. OGC will attempt to respond to this interrogatory to the extent possible with non-confidential, non-proprietary, non-privileged information.

61. OGC objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. OGC will attempt to respond to the interrogatory to the extent possible with non-confidential, non-proprietary information.

Respectfully submitted this 12th day of November, 1999.



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

CERTIFICATE OF SERVICE  
DOCKET NO. 991462-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (\*), facsimile transmission (\*\*), or by United States Mail, postage prepaid, on the following individuals this 12th day of November, 1999.

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\_\_\_\_\_  
Attorney

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. )

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OKEECHOBEE GENERATING COMPANY'S OBJECTIONS  
TO FLORIDA POWER & LIGHT COMPANY'S SECOND SET OF  
INTERROGATORIES (NOS. 62-71)

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to the Commission's Order Establishing Procedure, as revised, and the Order Establishing Expedited Discovery Schedule, hereby respectfully submits its objections to Florida Power & Light Company's ("FPL") Second Set of Interrogatories (Nos. 62-71), which were served on OGC on November 2, 1999.

GENERAL OBJECTIONS

OGC objects to FPL's Second Set of Interrogatories on the grounds set forth in paragraphs A-E below. Each of OGC's responses will be subject to and qualified by these general objections.

A. OGC objects to FPL's request that the answers to these interrogatories be provided on or before November 12, 1999. Pursuant to the Commission's Order Establishing Expedited Discovery, issued November 8, 1999, OGC's responses to FPL's Second Set of Interrogatories are due on November 16, 1999.

B. OGC objects to any interrogatory that calls for the creation of information as opposed to the reporting of presently existing information as an improper expansion of OGC's obligations under the law FPL invokes.



C. OGC objects to any interrogatory that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made to these interrogatories or is later determined to be applicable for any reason. OGC in no way intends to waive any such privilege or protection.

D. OGC objects to any interrogatory that calls for confidential proprietary business information and/or the compilation of information that is considered confidential proprietary business information.

E. As noted in OGC's specific objections stated below, OGC objects to each interrogatory propounded by FPL in its Second Set of Interrogatories on the grounds that those interrogatories are beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure ("F.C.R.P."). Rule 1.280(b)(4)(A), F.R.C.P., which is made specifically applicable to this proceeding by Uniform Rule 28-106.206, Florida Administrative Code, provides as follows:

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b) (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) By interrogatories a party may require any other party to identify each person whom the other

party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 1.390 without motion or order of court.

(iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial:

1. The scope of employment in the pending case and the compensation for such service.
2. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants.
3. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial.
4. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as an expert witness; however, the expert shall not be required to disclose his or her earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to subdivision (b) (4) (C) of this rule concerning fees and expenses as the court may deem appropriate.

FPL has not asked interrogatories that are permitted under Rule

1.280(b), F.R.C.P. Rather, FPL has propounded numerous interrogatories that can only be answered by OGC's testifying experts and as such are clearly beyond the scope of discovery by interrogatories permitted under the applicable rules. OGC will, of course, produce its testifying experts for deposition as provided for in Rule 1.280(b)(4)(A)(ii), F.R.C.P.

#### SPECIFIC OBJECTIONS

OGC makes the following specific objections to FPL's Second Set of Interrogatories. OGC's specific objections are numbered to correspond with the number of FPL's interrogatories.

62. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

63. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

64. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

65. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

66. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by

the Florida Rules of Civil Procedure.

67. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

68. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

69. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

70. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

71. OGC objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure. Without waiving its objections, OGC will attempt to respond to this interrogatory.

Respectfully submitted this 12th day of November, 1999.



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

CERTIFICATE OF SERVICE  
DOCKET NO. 991462-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing .  
has been served by hand delivery (\*), facsimile transmission (\*\*),  
or by United States Mail, postage prepaid, on the following  
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Attorney

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. )

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STEEL HECTOR & DAVIS

OKEECHOBEE GENERATING COMPANY'S OBJECTIONS  
TO FLORIDA POWER & LIGHT COMPANY'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS (NOS. 1-36)

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to the Order Establishing Procedure, as revised, and the Order Establishing Expedited Discovery Schedule, hereby respectfully submits its objections to Florida Power & Light Company's ("FPL") First Request for Production of Documents (Nos. 1-36) which were served on OGC on November 2, 1999.

GENERAL OBJECTIONS

OGC objects to FPL's First Request for Production of Documents on the grounds set forth in paragraphs A-D below. Each of OGC's responses will be subject to and qualified by these general objections.

A. OGC objects to the time frames for production of documents set forth in FPL's requests. Pursuant to the Order Establishing Expedited Discovery Schedule issued on November 8, 1999, OGC's responses to FPL's First Request for Production of Documents are due on November 16, 1999.

B. OGC objects to any request for production of documents that calls for documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade

secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made to these requests to produce or is later determined to be applicable for any reason. OGC in no way intends to waive any such privilege or protection.

C. OGC objects to any request that seeks the production of documents containing confidential, proprietary business information and/or the compilation of information that is considered confidential, proprietary business information.

D. OGC objects to any request that requires the production of "all" or "each" document as it cannot give assurances, even after a good faith and reasonably diligent attempt, that "all" or "each" responsive document will be found. Indeed, it may well be impossible to assure compliance with the exercise of reasonable diligence.

#### SPECIFIC OBJECTIONS

OGC makes the following specific objections to FPL's First Request for Production of Documents. OGC's specific objections are numbered to correspond with the number of FPL's requests.

1. OGC objects to this request on the grounds that it seeks documents containing confidential, proprietary business information. OGC will attempt to respond to the extent possible with non-confidential, non-proprietary documents.

2. OGC objects to this request on the grounds that it seeks



confidential, proprietary business information. OGC will attempt to respond to the extent possible with non-confidential, non-proprietary documents.

3. OGC objects to this request on the grounds that it seeks documents containing confidential, proprietary business information. OGC will attempt to respond to the request to the extent possible with non-confidential, non-proprietary documents.

4. OGC objects to this request on the grounds that it seeks documents containing confidential, proprietary business information. OGC will attempt to respond to the request to the extent possible with non-confidential, non-proprietary documents.

5. OGC objects to this request on the grounds that it seeks documents containing confidential, proprietary business information. OGC will attempt to respond to the request to the extent possible with non-confidential, non-proprietary documents.

6. OGC objects to this request on the grounds that it seeks documents containing confidential, proprietary business information. OGC will attempt to respond to the request to the extent possible with non-confidential, non-proprietary documents.

7. OGC objects to this request on the grounds that it seeks documents containing confidential, proprietary business information. OGC will attempt to respond to the request to the extent possible with non-confidential, non-proprietary documents.

8. OGC objects to this request on the grounds that it seeks

documents containing confidential, proprietary business information. OGC will attempt to respond to the request to the extent possible with non-confidential, non-proprietary documents.

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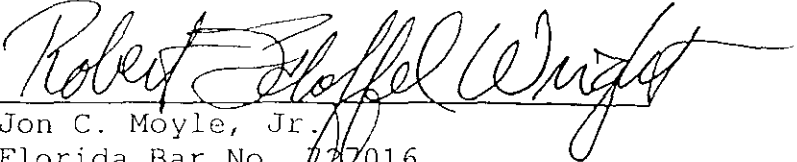
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34. OGC objects to this request on the basis that it seeks documents containing attorney work product. OGC will attempt to respond to this request to the extent possible with documents that do not contain attorney work product.

35. OGC objects to this request on the basis that it seeks documents containing attorney work product. OGC will attempt to respond to this request to the extent possible with documents that do not contain attorney work product.

36. OGC objects to this request on the grounds that it seeks documents containing confidential, proprietary business information. OGC will attempt to respond to the request to the extent possible with non-confidential, non-proprietary documents.

Respectfully submitted this 12th day of November, 1999.



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

CERTIFICATE OF SERVICE  
DOCKET NO. 991462-EU

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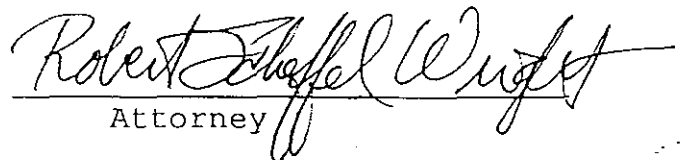
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Attorney



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. )

RECEIVED  
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FILED: November 12, 1999  
STEEL HECTOR & DAVIS

OKEECHOBEE GENERATING COMPANY'S OBJECTIONS  
TO FLORIDA POWER & LIGHT COMPANY'S SECOND REQUEST  
FOR PRODUCTION OF DOCUMENTS (NOS. 37-60)

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to the Order Establishing Procedure, as revised, and the Order Establishing Expedited Discovery Schedule, hereby respectfully submits its objections to Florida Power & Light Company's ("FPL") Second Request for Production of Documents (Nos. 37-60) which were served on OGC on November 2, 1999.

GENERAL OBJECTIONS

OGC objects to FPL's Second Request for Production of Documents on the grounds set forth in paragraphs A-D below. Each of OGC's responses will be subject to and qualified by these general objections.

A. OGC objects to the time frames for production of documents set forth in FPL's requests. Pursuant to the Order Establishing Expedited Discovery Schedule issued on November 8, 1999, OGC's responses to FPL's First Request for Production of Documents are due on November 16, 1999.

B. OGC objects to any request for production of documents that calls for documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade

secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made to these requests to produce or is later determined to be applicable for any reason. OGC in no way intends to waive any such privilege or protection.

C. OGC objects to any request that seeks the production of documents containing confidential, proprietary business information and/or the compilation of information that is considered confidential, proprietary business information.

D. OGC objects to any request that requires the production of "all" or "each" document as it cannot give assurances, even after a good faith and reasonably diligent attempt, that "all" or "each" responsive document will be found. Indeed, it may well be impossible to assure compliance with the exercise of reasonable diligence.

#### SPECIFIC OBJECTIONS

OGC makes the following specific objections to FPL's First Request for Production of Documents. OGC's specific objections are numbered to correspond with the number of FPL's requests.

37. OGC objects to this request on the grounds that it seeks documents containing confidential, proprietary business information. OGC will attempt to respond to the extent possible with non-confidential, non-proprietary documents.

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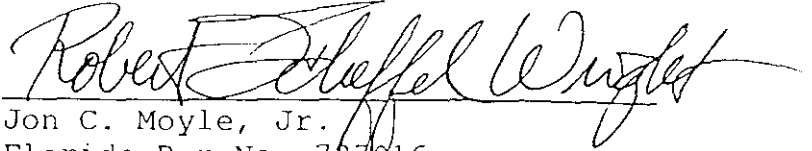
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Respectfully submitted this 12th day of November, 1999.



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



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DOCKET NO. 991462-EU

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P.O. Box 14042  
St. Petersburg, FL 33733

  
Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of ) DOCKET NO. 991462-EU  
Need for an Electrical Power Plant in) )  
Okeechobee County by Okeechobee ) SERVED: November 16, 1999  
Generating Company, L.L.C. ) )  
\_\_\_\_\_)

OKEECHOBEE GENERATING COMPANY, L.L.C.  
RESPONSES TO FLORIDA POWER & LIGHT COMPANY'S  
FIRST INTERROGATORIES (NOS. 1-61)

Okeechobee Generating Company, L.L.C., ("OGC") pursuant to Uniform Rule 28-106.206, Florida Administrative Code, hereby responds to Florida Power & Light Company's First Interrogatories (Nos. 1-61).

Affidavits from the individuals who assisted in the preparation of these responses will be provided to Florida Power & Light Company under separate cover.

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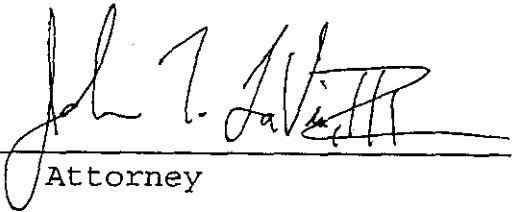
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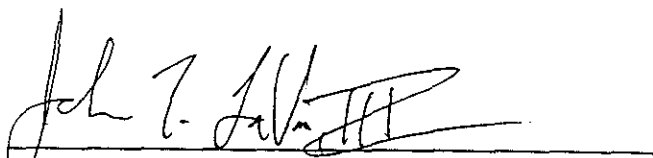
CERTIFICATE OF SERVICE  
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery on the following individual this 16th day of November, 1999.

Charles A. Guyton, Esq.  
Steel Hector & Davis  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301  
(Florida Power & Light)

  
\_\_\_\_\_  
Attorney

Respectfully submitted this 16th day of November, 1999.



Jon C. Moyle, Jr.  
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Attorneys for Okeechobee Generating  
Company, L.L.C.

1. Provide a detailed breakdown of the \$190 million direct construction cost estimate of the Project, including major equipment component costs, the cost of associated facilities and an explanation of who prepared the cost estimate and how it was made.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

The direct construction cost estimate of \$190 million is based on recent bids received by the developer of OGC for similar projects. These bids are confidential and proprietary. Adjustments have been made to reflect project specific differences as well as construction only costs. Moreover, this figure is in line with the Florida market for such construction costs, as reflected by testimony and exhibits submitted in the Duke New Smyrna case, FPSC Docket No. 981042-EM, in which the direct construction cost for a 514 MW facility was approximately \$160 million (approximately \$168 million including transmission and substation facilities).

A Preliminary Cost Estimate for the interconnection facilities, which are the only associated facilities that will be constructed by OGC, is included with OGC's response to FPL's Interrogatory No. 43.

(Finnerty, Sullivan)

2. Describe all financing arrangements being contemplated to construct and bring into commercial service the Project.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

OGC will procure the appropriate debt and equity required to construct and bring the Project into the commercial service. Debt will likely be obtained through non-recourse financing in the commercial markets while equity will most likely be provided by PG&E Corporation. OGC may also enter into an arrangement with respect to the Project whereby ownership of the Project will be held by one or more institutional investors or trusts, in which case, Okeechobee Generating Company will lease or sublease the Project directly or indirectly from such owners and will, as lessee or sublessee, have care, dominion and control over the Project.

(Finnerty)

3. Please identify the model or models used to develop the load forecast which OGC maintains shows a need for the Project and explain what analyses OGC performed to assess the validity of the load forecast and its underlying models.

The models used to develop the load forecasts that OGC believes demonstrate a need for the Project were the Altos North American Regional Electric Model and the Altos North American Regional Gas Model.

OGC did not perform these analyses; Altos Management performed the analyses on behalf of OGC. The load forecast was based on data furnished by the Peninsular Florida utilities in their NERC Energy Supply and Demand reports for 1998. The underlying models are the current generation of models that were originally developed as the GEMS Model, which is described in the prefiled direct testimony of Dale M. Nesbitt, Ph.D. As also described in Dr. Nesbitt's testimony, these models were validated by an extensive peer review process funded by the Energy Information Administration of the U.S. Department of Energy.

(Nesbitt, Blaha)

4. Please explain the basis for the following statement in the Petition: "OGC expects to sell approximately 4.3 million MWH of electric energy from the Project to other utilities and power marketers in Peninsular Florida per year from 2004 through 2013, reflecting an average (or typical) annual load factor of approximately 93 percent." In your explanation, specifically: (a) identify each analysis relied upon or which supports this statement, (b) identify the persons who performed the supporting analysis, (c) state when the supporting analyses were performed, (d) identify the specific utilities to whom OGC anticipates selling electric energy, (e) identify the power marketers OGC anticipates selling electric energy, (f) define "load factor" and (g) state whether OGC anticipates entering into contracts for firm sales of capacity.

(a) The Altos NARE and NARG model runs that project the sales from the avoided unit, copies of the inputs and outputs of which are being furnished to FPL in response to its Request for Production of Documents No. 5. The output of these models runs was adjusted for the projected availability factor of the avoided unit, which is an engineering statistic and which, for the Project, is expected to be 93 percent on an annual average basis over the Project's life.

(b) Michael C. Blaha and Dale M. Nesbitt, Ph.D.

(c) August and September, 1999.

(d) OGC anticipates selling electric energy to any and all utilities in Peninsular Florida when it is economic for those utilities to purchase electric energy from the Project. OGC anticipates that over the long run, most if not all of the retail utilities in Peninsular Florida, plus Seminole Electric Cooperative and the Florida Municipal Power Agency, will purchase power economically from the Project.

(e) OGC anticipates selling electric energy to any and all power marketers in Peninsular Florida when it is economic for those power marketers to purchase electric energy from the Project. OGC anticipates that over the long run, most if not all of the power marketers that are active in Peninsular Florida will purchase power economically from the Project.

(f) In this context, "load factor" refers to the ratio of total energy produced (in MWH) over a given period of time (e.g., one year) divided by the average capacity (in MW) of the power plant for the same period of time times the number of hours in the period of time (e.g., 8,760 hours in a non-leap year).

(g) OGC anticipates entering into contracts for firm sales of energy as well as all other types of contracts necessary to meet the needs of the market.



(Finnerty, Nesbitt, Blaha)

5. Identify all projections and analyses upon which the following statement in the Petition is based or which support the following statement: "OGC projects that virtually all of its wholesale sales will be made to other utilities and power marketers for use in Peninsular Florida."

Simply looking at the average wholesale prices in the FRCC as compared to other NERC regions, in particular SERC, it is obvious that the market price in FRCC is greater than in other regions. (Refer to the tables reproduced from Public Utilities Fortnightly and included in OGC's response to FPC's Production Request No. 9). Considering the low wholesale prices outside Peninsular Florida, the high cost of generation in Peninsular Florida, and the superior efficiencies of the Project relative to the existing generating plants in Peninsular Florida, it is logical to project that virtually all of the wholesale sales made from the Project will be made to other utilities and power marketers for use in Peninsular Florida.

Outputs of the Altos NARE Model with expanded subregional analysis of Peninsular Florida.

(Finnerty, Nesbitt, Blaha)

6. Identify all projections and analyses upon which the following statement in the Petition is based or which support the following statement: "OGC projects that virtually all of its wholesale sales will be made to other utilities and power marketers for use in Peninsular Florida."

Analyses prepared using the Altos NARE and NARG models with subregional representation of Peninsular Florida. All such analyses are included on the ZIP disk that is being furnished to FPL in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

7. In regard to the following statement in the Petition, "OGC anticipates that it will successfully obtain all required permits for the Project in a timely manner," (a) list all required permits for the Project, (b) list the agencies which will grant each required permit, and (c) provide the anticipated time for applying for and receiving each permit.

Key environmental permits and approvals required for the Project, along with identification of the agencies which will grant each permit are identified in the table below. The anticipated time for applying for and receiving each permit was provided in Figure 14 of the Petition.

Jurisdiction	Permit Description
Federal	FAA - Stack Height Approval
Federal	US ACOE - Section 10 Permit (joint permit with Florida ERP)
Federal	US ACOE - Section 404 Permit (joint permit with Florida ERP)
Federal	US FWS - Endangered Species Act review
Federal	U.S. EPA - Facility Response Plan (SPCC, emergency response plan)
State	Florida Siting Board - Certification Under the Electrical Power Plant Siting Act
State	Florida DEP - Air Permit (PSD/Title V)
State	Florida Water Use Permit (state permit delegated to SFWMD)
State	Florida Well Construction Permit (state permit delegated to SFWMD)
State	Florida DEP - NPDES - Industrial Wastewater Discharge Permit
State	Florida DEP - NPDES - Stormwater Associated with Industrial Activity <sup>1</sup>
State	Florida Environmental Resource Permit (ERP) also known as State Stormwater Permit (for new land development)
State	Bulk Product Facility (aboveground storage)
State	Florida Fish and Wildlife Conservation Commission (FWCC) Review
State	Department of State, Bureau of Historic Preservation Review
Local	Zoning, Building Permit, and Water and Sewer Connections

<sup>1</sup>FDEP will handle NPDES permitting for stormwater associated with industrial activity if the facility in question is also required to have a NPDES wastewater permit.

(Sellers)

8. Identify the "optimized combination of short-term contract purchases, long-term contract purchases, and spot market purchases" for the Project's natural gas supply. If such an optimization has not yet been performed, explain when and how it will be performed and what analyses will be undertaken and models used in the optimization.

The optimization process for determining the necessary combination of short term contracts, long term contracts and spot market purchases is a function of the term of the electric sales contracts demanded by the market place. The Project will sell electricity to the marketplace beginning when the Project is on-line and extending for the life of the plant.

A merchant electric generation facility will sell electricity on a daily, short-term and long-term basis. If and when the generation facility makes short-term or long-term electric sales arrangements gas supply arrangements will be made to satisfy the Projects electric sales obligations.

For the quantity of electric output not sold on a particular day or for the full plant output unsold for a particular period of time the plant will sell spot electricity at spot electric prices. The project will purchase spot gas to support the spot electric generation. Under all three scenarios; short term, long term, or spot fuel supply purchases, the price and reliability/quality of the electric sales will only be contracted for if the underlying fuel supply arrangements support the necessary service reliability and price of the electric sale arrangement.

No model is necessary to determine the mix of contracts to support electric sales. It is a function of the electric market demand while at the same time being active on a daily basis in the fuel supply markets.

(Karloff)

9. Identify all "local suppliers" who will be used to refill the on-site oil storage facility and document their capacity to provide refill services.

The following is a list of some of the available local brokers and traders of fuel oil in Florida. As the Project moves closer to construction, arrangements will be made with one or more of these brokers, and possibly others, to fill and refill the on-site oil storage facility.

Brokers & Traders:

Central Oil Co. Tampa, FL  
Coastal Fuel Mktg. Miami, FL  
Exxon Coral Gables, FL  
Florida Fuels Miami, FL.  
Global Brokers Ft. Lauderdale, FL  
Key Energy Enterprises Tampa, FL  
ENRON Capital and Trade/ Citrus Marketing Houston, TX  
Oxbow Petroleum West Palm Beach, FL  
George Warren Corp Vero Beach, FL  
Western Fuels Tampa, FL

In addition, the following list describes the local petroleum storage facilities and their respective terminal capacity. These facilities provide the capacity to assist in the original filling and refilling of the on-site oil storage facility.

Petroleum Storage Facilities

<u>Company</u>	<u>Terminal Capacity</u>
Coastal Fuels	
Miami	664,190 BBL
Port Everglades	2,427,821 BBL
Fina Oil	
Ft. Lauderdale	59,287 BBL
Tampa	56,000 BBL

Marathon Petroleum	
Ft. Lauderdale	N/A
Tampa	N/A
Texaco	
Port Everglades	492,308 BBL
Tampa	347,423 BBL
Warren Petroleum	
Port Everglades	N/A
BP Oil Company	
Port Tampa	555,000 BBL
Central Oil Company	
Tampa	80,000 BBL
GATX	
Tampa	969,786 BBL
Intercontinental Terminals	
Tampa	204,000 BBL
Murphy Oil	
Tampa	325,000 BBL
Western Fuels	
Tampa	620,000 BBL

(Karloff)

10. Provide a detailed explanation and documentation of how the "apparent marginal exceedences" described at page 12 of the Petition "can be remedied," including an assessment of costs and the parties with responsibility for incurring the remedial costs.

The apparent marginal exceedences described at page 12 of the Petition are described in more detail in the prefiled direct testimony and exhibits of Roger Clayton, P.E. Such marginal exceedences, if real and significant, can be remedied by a variety of measures, including, but not limited to, the following:

- application of operating nomograms;
- application of post-contingency special protection systems;
- re-rating of limiting elements in the steady state and/or dynamically;
- application of emergency operating limits;
- identification and upgrade of the limiting branch element, e.g., switch, circuit breaker, bus-work, wave trap, transformer, conductor;
- voltage upgrade, e.g., 138 kV to 230 kV; or
- build new circuits.

Identification of possible remedies, the costs of such remedies, and allocation of cost responsibility for such remedies have not been examined at this time because they are relatively minor and may be simulation artifacts.

(Clayton)



11. Identify all analyses relied upon or which support the following statement in the Petition: "Operation of the Project is likely to result in measurable reductions in emissions of SO<sub>2</sub>, CO<sub>2</sub> NO<sub>x</sub> and other air pollutants in Peninsular Florida, due to the Project's displacement of generation from less efficient units and units that burn fuels that produce more pollution than is produced by the natural gas fuel used in the Project."

Analyses prepared using the Altos NARE and NARG models with subregional representation of Peninsular Florida. All such analyses are included on the ZIP disk that is being furnished to FPL in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

12. Explain how the reliability need for the Project "is evidenced by the State's current constrained reserve margins" given that the Project's in-service date is not until 2003.

Peninsular Florida needs additional generating capacity to maintain reliable electric service. Every addition to the Peninsular Florida generating "fleet" will enhance reliability. Current reserve margins are, and projected reserve margins are projected to be, made up in significant proportion by non-firm resources, indicating that significant amounts of customer load will have to be disconnected, as they have been in both 1998 and 1999, in order to maintain firm service. For example, as shown on Table 7 of the Exhibits, without the Project, the winter peak reserve margins without exercising load management and interruptible resources are projected to range between 6.69 percent and 9.23 percent from the winter of 2003-2004 through 2008-2009, even assuming that all other projected resources are brought into service as planned. Peninsular Florida's current constrained reserve margins and periodic close calls at being able to maintain firm service are symptomatic of an underlying need for additional capacity, which the Project will provide.

(Finnerty)

14. Identify all analyses performed by or on behalf of OGC or OGC's affiliates which demonstrated the "long-term economic viability" of the Project.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

Altos Management Partners, Inc., has performed analyses which demonstrate the "long-term economic viability" of the Project. Altos Management's analysis was performed using the North American Regional Electric Model. The inputs and outputs for these analyses are included on the ZIP disk provided contemporaneously in response to FPL's Production Request No. 5.

(Finnerty, Nesbitt, Blaha)

13. Please identify all contracts or letters of intent committing the output of the project by purchasing entity, terms, and whether for firm capacity or energy.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

OGC has no such commitments at this time.

(Finnerty)

15. Identify all analyses performed by or on behalf of OGC or OGC's affiliates which demonstrate that "the Project is the most cost-effective alternative available to Peninsular Florida for meeting the future power supply needs of Peninsular Florida utilities and their retail electric customers.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

Altos Management, Inc. performed analyses which demonstrate that "the Project is the most cost-effective alternative available to Peninsular Florida for meeting the future power needs of Peninsular Florida utilities and their retail electric customers." Altos Management, Inc. used the North American Regional Electric Model in performing this analysis. The inputs and outputs for these analyses are included on the ZIP disk provided contemporaneously in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

16. Identify the specific Peninsular Florida utilities to which OGC or its agents will sell the output of the Project.

OGC anticipates selling the output of the Project to any and all utilities in Peninsular Florida when it is economic for those utilities to purchase electric energy from the Project. OGC anticipates that over the long run, most if not all of the retail utilities in Peninsular Florida, plus Seminole Electric Cooperative and the Florida Municipal Power Agency, will purchase power from the Project because such purchases will be economic for those utilities and their customers.

(Finnerty)

17. If the output of the Project is sold to Peninsular Florida utilities, who will ultimately pay for the output of the Project - the purchasing utilities or the customers of the purchasing utilities?

OGC expects that, under all reasonably foreseeable circumstances, the Project's output will be sold to Peninsular Florida retail utilities when purchasing the Project's output is the most cost-effective power supply option for the purchasing utility or utilities. Since these purchases will thus generally, if not always, be the most cost-effective option for the purchasing utility, OGC expects that when the output of the Project is sold to Peninsular Florida retail utilities and subsequently resold to those utilities' retail customers, those utilities will receive the Florida PSC's authorization to recover the cost of the power purchased from their retail customers. However, OGC anticipates that its arrangements to sell capacity and energy will be with Florida retail utilities or power marketers, and OGC will look to those entities for payment.

(Finnerty)

18. Identify all projections (and underlying models) performed by or on behalf of OGC or its affiliates which "show that the Project will operate, economically, at annual capacity factors of approximately 93 percent from 2004 through 2013."

Analyses prepared using the Altos NARE and NARG models with subregional representation of Peninsular Florida. All such analyses are included on the ZIP disk that is being furnished to FPL in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)



19. Identify all projections, analyses and estimates performed by or on behalf of OGC or its affiliates showing the "the Project, with its high efficiency, is expected to suppress wholesale power prices in Florida below what they would otherwise be."

Analyses prepared using the Altos NARE and NARG models with subregional representation of Peninsular Florida. All such analyses are included on the ZIP disk that is being furnished to FPL in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

20. Identify all projections and analyses performed by or on behalf of OGC and its affiliates that project "that virtually all of the Project's output over the 2003 through 2013 period is expected to be sold to utilities and power marketers in Peninsular Florida . . . , on the basis of the relative economics of the Project and other Peninsular Florida generation facilities."

From simply looking at the average wholesale prices in the FRCC as compared to other NERC regions, in particular SERC, it is obvious that the market price in FRCC is greater than in other regions. (Refer to the tables reproduced from Public Utilities Fortnightly and included in OGC's response to FPC's Production Request No. 9). Considering the low wholesale prices outside Peninsular Florida, the high cost of generation in Peninsular Florida, and the superior efficiencies of the Project relative to the existing generating plants in Peninsular Florida, it is logical to project that virtually all of the wholesale sales made from the Project will be made to other utilities and power marketers for use in Peninsular Florida.

Altos Management Partners, Inc. also performed analyses for OGC that project that virtually all of the Project's output over the 2003 through 2013 period is expected to be sold to utilities and power marketers in Peninsular Florida. Altos Management Partners, Inc. used the North American Regional Electric Model to perform this analysis. All such analyses are included on the ZIP disk that is being furnished to FPL in response to FPL's Production Request No. 5.

(Finnerty, Nesbitt, Blaha)

21. Identify all documents in the possession of OGC and OGC's agents and consultants which support the statement that "generation costs are generally lower in Georgia than in Florida."

Please refer to the tables provided in OGC's response to FPC's Production Request No. 9 and to the input and output data from the runs of the Altos NARE Model that are being provided contemporaneously in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

22. State what the "transmission export capability at the Georgia/Florida interface" is and explain how it is limited.

The transmission export capability at the Georgia/Florida transmission interface is approximately 2,500 MW. This export capability is limited by first contingency (non-simultaneous) in Georgia.

(Blaha)

23. Explain how OGC anticipates marketing and selling the power from its proposed Project. In your explanation identify:
- a. the specific Peninsular Florida utilities to which OGC or its agent, marketer or broker will sell the output of the Project, the years in which the power will be sold to each Peninsular Florida utility and the amounts of power in MW and MWH that will be sold to each Peninsular Florida utility.
  - b. the types of sales from the Project to peninsular Florida utilities contemplated and intended (whether firm, as-available, short-term, long-term),
  - c. whether OGC has any intention not to enter into long-term, firm capacity and energy sales to Peninsular Florida utilities,
  - d. whether OGC has any intention or anticipation of selling any of its output from its Project to utilities or power marketers for deliveries out of the State of Florida,
  - e. the circumstances in which OGC contemplates selling the output of its Project outside of Florida.

#### RESPONSE

- a. OGC anticipates marketing and selling power from the Project to any and all Peninsular Florida utilities when it is economic for those utilities to purchase power from the Project. OGC is unable to predict at this time which utilities will purchase what amounts of power in which years. This will depend on a host of factors, including the availability of Peninsular Florida utilities' generation resources, planned and forced outages, weather, and numerous other factors. OGC does anticipate that, over the long run, most if not all of the retail utilities in Peninsular Florida, plus Seminole Electric Cooperative and the Florida Municipal Power Agency, will purchase power economically from the Project.
- b. OGC anticipates entering into a variety of types of contracts to meet the needs of its customers. These may include firm, as-available, short-term, and long-term contracts.
- c. As stated above, OGC anticipates entering into a variety of types of contracts to meet the needs of its customers. OGC

does not have an intention of not entering into any certain type of contract.

- d. OGC does not anticipate selling any of its output from the Project to utilities or power marketers for deliveries out of the State of Florida.
- e. OGC does not contemplate selling the output of the Project outside Florida. Hypothetically, under certain relatively unusual circumstances, e.g., very high demand in Georgia or other areas within SERC coupled with relatively low demand in Peninsular Florida, OGC might seek to make sales outside Peninsular Florida if transmission capacity were available to make such a sale. OGC expects any such transactions to be rare.

(Finnerty, Nesbitt, Blaha)

24. Identify by year the specific Peninsular Florida utilities to which it would be cost-effective for them to purchase the output of the Project and explain how the identification of the utilities was made.

See response to Interrogatory No. 23(a).

(Finnerty, Nesbitt, Blaha)

25. Does OGC anticipate that Peninsular Florida ratepayers will bear the Project's costs in their utility rates? If not, explain how Florida ratepayers will not bear the costs of the Project in their rates if the power from the plant is sold to Peninsular Florida utilities and the costs of those sales are passed through utilities adjustment clauses as contemplated by the need determination petition.

First, OGC notes that this interrogatory assumes that when utilities purchase power from the Project, they will use it to serve their retail load, and responds based on this assumption.

OGC does not anticipate that Peninsular Florida ratepayers will bear the Project's costs in their utility rates. OGC expects that Peninsular Florida utilities will receive the Florida PSC's authorization to recover the cost of power purchased from the Project when such purchases represent the most cost-effective power supply alternative for the purchasing utility or utilities (which OGC expects will always be the case). OGC further expects that the cost of power purchased from the Project will be sufficient to cover the incremental production costs of any particular purchase, but this is not the same as "the Project's costs" (i.e., all of the Project's operating costs plus all of its capital costs, including a normal rate of return on investment) being borne by Florida customers.

(Finnerty)

26. Are there conservation measures reasonable available in Peninsular Florida that would mitigate the purported Peninsular Florida need for the Project. If not, please explain the analyses performed to make this determination.

OGC undertook no separate analyses of end-use conservation measures that might be available to mitigate the need for the Project. Because of the Project's significant energy efficiency and direct fuel conservation benefits, OGC believes that there are not any end-use conservation measures available in Peninsular Florida that would mitigate the need for the Okeechobee Generating Project. Indeed, the Project will result in significant conservation of primary fuels (fuel, oil, and coal) that would otherwise be used, in existing power plants that are significantly less efficient than the Project, to generate electricity in Florida. The results of OGC's analyses of potential primary fuel savings are shown in Table 8 of the Exhibits.

OGC further understands that, as a general proposition, the Florida PSC has approved conservation goals for retail-serving utilities that include the implementation of all, or nearly all,



cost-effective end-use conservation measures. Because purchases from the Project can only be cost-effective to such retail utilities' ratepayers, it must be cost-effective as compared to any of such utilities' supply-side or demand-side options.

(Finnerty, Nesbitt)

27. Explain the basis for the assertion in the Petition that, "future cost-effective measures would likely displace other supply-side alternatives, rather than displace the capacity and energy available from the Project," and identify all analyses performed that support this assertion.

Generally, the basis for this statement is the Project's significant efficiency advantage over most of the existing Peninsular Florida generation supply stack and the fact that purchases from the Project can only be cost-effective to any purchasing utility and its ratepayers (or else, of course, the purchasing utility would not buy power from the Project).

Analyses that support this conclusion include the Altos analyses demonstrating that the Project operates cost-effectively within the Peninsular Florida supply stack. All such analyses have been furnished to FPL on the ZIP disk provided in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

28. Explain in detail the assurances that OGC and its affiliates have been given by the Gulfstream Natural Gas System and its affiliates that its system will be certificated, built and operational in time to provide gas transportation service to the Project prior to the Project's scheduled in-service date and identify all documents containing such assurances.

The document providing such assurances is the Precedent Agreement ("P.A") dated July 1, 1999 between OGC and the Gulfstream Natural Gas System ("GNGS"). See p.1, p. 2 sect. 2, p. 3, p. 5 section 4(a) & 4 (b), p. 6 sect. 4(c), p. 7, p. 8 sect. 5 (b) and p. 12 sect. 8 (a) of the P.A. for the actual description of the GNGS assurances of certification, construction and timely operation of the pipeline prior to the projects' scheduled in-service date. The assurances provided by GNGS to OGC are comparable to those provided for new or incremental transportation service in the interstate natural gas transportation industry as regulated by the FERC. In addition, FPL is directed to the October 15, 1999 application filed by Gulfstream with the FERC, copies of the non-confidential portions of which are publicly available to FPL.

(Karloff)

29. What permits and authorizations must the Gulfstream Natural Gas System secure to build and operate the proposed pipeline and facilities necessary to serve the Project and what are the anticipated time lines for securing each of the necessary permits and authorizations?

This question would more properly be directed to Gulfstream Natural Gas System, the entity that is in the process of obtaining the subject permits and authorizations. FPL is directed to the October 15, 1999 application filed by Gulfstream with the FERC, copies of the non-confidential portions of which are publicly available to FPL. OGC has received assurances that the Gulfstream Natural Gas System will obtain the necessary permits and authorizations in a timely fashion to permit the Project to begin operations as planned.

(Karloff)

30. Is Gulfstream's construction of its proposed pipeline in any way contingent upon the proposed Project? If so, please explain how construction or operation of the proposed Gulfstream pipeline is contingent upon OGC's proposed Project.

No, Gulfstream's construction of its pipeline system is not wholly contingent upon the Okeechobee Generating Project.

(Karloff)

31. State what the probability of brownouts and blackouts in Peninsular Florida would be with and without the proposed Project and state what the probability of brownouts and blackouts in Florida should be.

The probability of brownouts and blackouts in Peninsular Florida will clearly be less with the Project in operation than without it. The reason is simple. With the Project, there are more centers of generation than without it, and there are more aggregate MW of generation with the Project than without it. Demand is constant with and without the Project, but supply is both more spatially diverse and more abundant. This necessarily means higher reliability, i.e., lower probability of brownouts or blackouts, both at times of peak and during off-peak periods.

The probability of brownouts and blackouts should be as low as possible provided that ratepayers are not forced to bear excessive capacity or energy costs. Merchant power plants, such as the Okeechobee Generating Project, provide additional capacity that lowers the probability of brownouts and blackouts without exposing ratepayers to being compelled to pay for any of the capital or operating costs of the capacity and energy available from the Project. Merchant power plants also increase the supply of electrical energy, thereby reducing the cost of energy available to retail-serving utilities.

(Finnerty, Nesbitt, Blaha)

32. Please identify all analyses performed by or on behalf of OGC that support the assertions in paragraph 41 of the need determination Petition and identify for each analyses the person or persons who performed the analysis.

Analyses that support the assertions in paragraph 41 of the Petition include the Altos analyses demonstrating that the Project operates cost-effectively within the Peninsular Florida supply stack due to its substantial efficiency advantage. All such analyses have been furnished to FPL on the .ZIP disk provided in response to FPL's Production Request No. 5. These analyses were performed by Dale M. Nesbitt, Ph.D., and Michael C. Blaha.

(Nesbitt, Blaha)

33. Please identify all analyses of the projected environmental benefits of the Project, including but not limited to, the projected reductions in air pollutant emissions that are projected to result from the Project and for each such analysis, identify the person or persons who prepared the analysis.

Analyses prepared using the Altos NARE and NARG models with subregional representation of Peninsular Florida. All such analyses are included on the ZIP disk that is being furnished to FPL in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)



34. Identify the suppliers (natural gas marketing companies and producers and any other type of supplier) who will provide natural gas to the Gulfstream Natural Gas System receipt points for delivery to the Project.

The great majority of all the natural gas suppliers and marketing companies in North America have access and do business in Mobile Bay Alabama, and Pascagoula, Mississippi. The same suppliers and marketers have access to Gulf coast supplies which can be transported to the Gulfstream Pipeline System via various intra and interstate Pipeline Systems. Most of these suppliers are able to provide fuel supply to the Gulfstream pipeline system receipt points. In addition these companies trade between each other on a daily basis utilizing, amongst other things, physical transportation assets/pipeline capacity or via contractual arrangements.

A list of Gulfstream Supply area producers is attached. Many other producers that are not located in the supply area, if economical, may also move gas supplies to the Gulfstream system via interstate pipeline transportation systems.

(Karloff)

35. What is the projected delivered cost of natural gas for the Project? Please provide this information by month for the projected life of the Project and separately identify the transportation cost from the gas commodity cost.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

Please refer to the input data furnished to FPL on the ZIP disk contemporaneously with this interrogatory response in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

36. What are the forecasted prices of fuel oil for the Project. Please provide that information by month over the life of the Project.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

Please refer to the input data furnished to FPL contemporaneously with this interrogatory response, in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

37. Please identify all natural gas supply contracts or commitments OGC or its affiliates have for the Project.

Supply contracts will be made to match the terms and conditions of future electric sales contracts.

Natural gas will be available on a daily, short term, and long term basis for delivery into the Gulfstream Pipeline System. As a result of the high level of liquidity in the Mobile Bay, Pascagoula and the Gulf Coast region, gas supply will be available at market prices into the Gulfstream Pipeline System to meet the needs of the Okeechobee electric generation facility.

No natural gas supply contracts are in place at this time. Arrangements to manage and provide both the natural gas fuel supply and the fuel oil supply will ultimately be arranged by PG&E Energy Trading Company, an affiliate of PG&E Generating.

(Karloff)

38. There is no Interrogatory No. 38.

39. There is no Interrogatory No. 39.

40. Please state the projected fixed O&M for the Project stated in \$/kW per year for each year of the Project's projected 30 year life.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

Please refer to the input data furnished to FPL contemporaneously with this interrogatory response, in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

41. Please state the projected variable O&M for the Project stated in (\$.MWH) for each year of the Project's projected 30 year life.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

Please refer to the input data furnished to FPL contemporaneously with this interrogatory response, in response to FPL's Production Request No. 5.

(Nesbitt, Blaha)

42. Please identify all documents supporting Table 1 of the Exhibits.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

OGC application for EWG status and market-based rates, and FERC orders granting those applications approval of such;

GE System Impact Study (Clayton testimony and exhibits)

Enclosed is "Figure 4" (Site Plan) as included in the September 24, 1999 Okeechobee Generating Company, L.L.C. "Petition for Determination of Need for the Okeechobee Generating Project, Exhibits." This exhibit displays the 30" diameter Gulfstream Pipeline at the site passing within 200' of the proposed plant footprint.

ABB GT24 Gas Turbine Generator Set Reference Guide. This is confidential, proprietary business information to ABB and accordingly, is not being disclosed. OGC is pursuing obtaining ABB's permission to release this information subject to appropriate confidentiality protection agreements.

(Finnerty, Karloff)



43. Please provide a detailed cost breakdown of the interconnection facilities that will need to be constructed to interconnect the Project to the Peninsular Florida transmission system and state the entity or entities that will be responsible for the payment of the interconnection costs.

Please refer to the attached Preliminary Cost Estimate for the subject interconnection facilities.

OGC expects that it will be responsible for the payment of the interconnection costs.

(Sullivan, Finnerty)

44. Please identify all documents supporting Table 2 in the Exhibits.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

Please refer to the attached climatological data.

ABB GT24 Gas Turbine Generator Set Reference Guide. This is confidential, proprietary business information to ABB and accordingly, is not being disclosed. OGC is pursuing obtaining ABB's permission to release this information subject to appropriate confidentiality protection agreements.

(Sullivan)

45. Please explain what the phrase, "for planning purposes" means as used at page 33 of the Exhibits and identify and explain what specific analyses were performed that used a combination of 50% debt and 50% equity financing of the Project.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

The phrase "for planning purposes" as used at page 33 of the Exhibits, refers to general assumptions made in the planning stages of a development project as to the level of debt and equity that is likely to be used in the financing of the Project. This capital structure was used in the internal analysis of the Project by OGC. That analysis is confidential, proprietary business information.

(Finnerty)

46. Please state the cost rates for debt and equity used in the analyses that were conducted for planning purposes that assumed a 50/50 debt/equity ratio.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information.

47. What assurances have OGC and its affiliates received regarding the heat rate, forced outage rate and planned outage rate for the combined cycle generating unit? Please describe the assurances given, the means by which OGC or its affiliates will have to enforce these assurances and identify all the documents in which the assurances have been given.

The values presented in OGC's Petition and Exhibits are based on engineering estimates from ABB's GT24 Gas Turbine Generator Set Reference Guide. This is confidential, proprietary business information to ABB and accordingly, is not being disclosed. OGC is pursuing obtaining ABB's permission to release this information subject to appropriate confidentiality protection agreements. ABB does not give assurances of this type until a firm agreement for the purchase and sale of the turbines is entered into.

(Sullivan)

48. Please define the following terms as they are used at Page 36 of the Exhibits: "conceptual engineering," "preliminary engineering," and "detailed design and engineering."

Conceptual engineering is the definition of the project concept in terms of the size and location of the power plant, technology utilized, general requirements for utilities, fuel supply, and delivery of electricity into the transmission system.

Preliminary engineering is the engineering work conducted in advance of the full release to proceed on a project. This engineering work typically amounts to the first 25% to 33% of the total engineering work for a project and typically consists of plant layout finalization and optimization, civil site plans finalization, and plant mechanical systems definition and initial design.

Detailed design and engineering is the production of project technical documents required to construct, commission, and operate the facility.

(Sullivan)

50. What are the items on the critical path for the Project and when do they need to be started and completed?

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

Need Determination Proceeding: Started September 1999, Completed March 2000;

Site Certification: Filed June 2000, Completed October 2001;

Project Engineering: From an engineering standpoint, typically the specification, procurement, and delivery of one or more pieces of major equipment (e.g., the combustion turbines, heat recovery steam generators, and steam turbine generators) are on the critical path of the EPC (Engineering, Procurement, and Construction) portion of the overall project schedule.

(Finnerty, Sullivan)

53. Please explain why the entity or entities owning the Cedar Bay facility and the Indiantown facility shown on page 13 of the Exhibits have not filed ten year site plans with the Florida Public Service Commission.

OGC has objected to this interrogatory on the ground that it seeks information from entities that are not parties to this case. It is OGC's belief that the capacity and energy from these facilities is included in FPL's annual ten-year site plans because it is committed to FPL pursuant to long-term power purchase agreements.

(Finnerty)



55. Please provide all analyses prepared by, for or on behalf of OGC and its affiliates that support the following statement made at page 54 of the Exhibits: "In Georgia, Alabama and Mississippi, the wholesale market clearing price for electricity is typically lower than in Florida and the cost of fuel transportation to these states is less than in Florida."

See answers to FPL Interrogatory numbers 20 and 21.

Please refer to the attached representative copy of Gas Daily, which shows that the delivered costs of gas in Florida are greater than the comparable delivered costs in Georgia, Alabama, and Mississippi.

(Finnerty, Nesbitt, Blaha, Karloff)

56. Please provide by month by year for each year of the Project the projected or estimated "wholesale market clearing price for electricity" for Florida with and without the proposed Project.

Please refer to the output spreadsheets contained on the ZIP disk provided in response to FPL's Production Request No. 5. The Altos NARE Model does not calculate the "wholesale market clearing price" for electricity in Florida, only for the FRCC. The Model calculates nodal prices at the various nodes within FRCC because it is designed to calculate a spatial equilibrium. The prices reported are monthly nodal prices.

(Nesbitt, Blaha)

58. When was the decision to build the Project made?

The decision to build the Project has not yet been made. Realistically, a decision to build the Project cannot be made until OGC has received the necessary permits, licenses, and regulatory approvals to do so, including the Commission's determination of need in this proceeding.

(Finnerty)

59. Please describe in detail the process for making the decision to build the Project. Identify who made the decisions to build the Project. If the decision maker was an individual or a series of individuals in a chain of authority, identify each person in the chain by name and business address. If the ultimate decision was made by a body of individuals, identify the body and individuals comprising the body.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

No such decision has been made and no such process has been undertaken. OGC's internal decision processes are confidential, proprietary business information.

(Finnerty)

60. Identify all information relied upon in making the decision to proceed with the project, including all documents, all analyses and studies performed, oral, written, overhead or computer generated presentation and for each such document, analysis, study or presentation, identify the author and presenters.

OGC has objected to this interrogatory on the ground that it seeks confidential, proprietary business information. OGC will not disclose this information unless ordered to do so. Without waiving its objection, and in keeping with its commitment to answer with non-confidential information where possible, OGC responds as follows:

OGC relied on the analyses of the Project's operations prepared by Altos Management Partners, the inputs and outputs of which are provided on the ZIP disk furnished in response to FPL's Production Request No. 5. OGC also relied on generally available industry information, including Public Utilities Fortnightly articles demonstrating that power production costs in Peninsular Florida are greater than power production costs in the rest of the U.S. OGC also relied on various Florida Public Service Commission and Florida Reliability Coordinating Council documents, and other documents, including the FPSC's reviews of utility ten-year site plans, FRCC reliability analyses and load and resource planning documents, utility ten-year site plans, testimony and pleadings submitted in FPSC Docket No. 981890-EU (commonly known as the Reserve Margin Docket), and testimony and exhibits submitted in FPSC Docket No. 991042-EM, showing the need for significant amounts of additional generating capacity in Peninsular Florida.

(Finnerty)

61. In making the decision to proceed with the project, was an analysis of the Project using Altos Management Partners models relied upon? If so, identify the analysis relied upon and the models used.

Yes, analyses of the Project prepared using the Altos North American Regional Electric Model and the Altos North American Regional Gas Model were relied upon in making the decision to proceed with filing the need determination petition for the Project.

(Finnerty)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of )  
Need for an Electrical Power Plant in ) DOCKET NO. 99-1462-EU  
Okeechobee County by Okeechobee )  
Generating Company, L.L.C. ) FILED: November 17, 1999  
\_\_\_\_\_)

OKEECHOBEE GENERATING COMPANY, L.L.C.'S  
RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S  
SECOND SET OF INTERROGATORIES (NOS. 62-71)

Okeechobee Generating Company, L.L.C., ("OGC") pursuant to Uniform Rule 28-106.206, Florida Administrative Code, hereby responds to Florida Power & Light Company's Second Set of Interrogatories (Nos. 62-71).

Responses

62. OGC has objected to this interrogatory in its entirety.
63. OGC has objected to this interrogatory in its entirety.
64. OGC has objected to this interrogatory in its entirety.
65. OGC has objected to this interrogatory in its entirety.
66. OGC has objected to this interrogatory in its entirety.
67. OGC has objected to this interrogatory in its entirety.
68. OGC has objected to this interrogatory in its entirety.
69. OGC has objected to this interrogatory in its entirety.
70. OGC has objected to this interrogatory in its entirety.
71. OGC has objected to this interrogatory. Without waiving its objection, OGC responds to this interrogatory as follows:

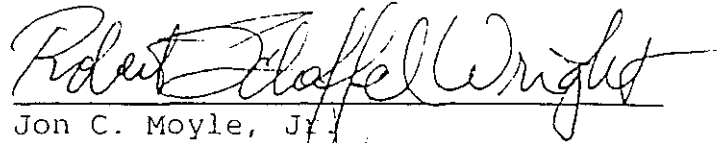
The error involved an Excel spreadsheet calculation that used the output from runs of the Altos NARE model. It did not involve an error in the NARE model itself. The spreadsheet used to process the NARE

market clearing outputs was improperly configured, and the error was identified one day before it was communicated by OGC's counsel to all parties. There was only a single run of the NARE model involved. Altos has not identified any errors in the NARE model since the original filing was made.

A second run of the NARE model was made since the original filing--a run in which all transmission constraints in the FRCC were lifted immediately and permanently. This run was made completely independently of the original run, and it was made to gain understanding into what portion of the projected \$0.85/MWh price depression is attributable to transmission constraints and bottlenecks in the FRCC market and what portion is attributable to the entry of the Project at its position substantially to the left in the FRCC supply stack. The results of that second run were used to respond to FPC's Interrogatory No. 6, OGC's response to which was served on FPL on November 8, 1999.



Respectfully submitted this 17th day of November, 1999.



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

CERTIFICATE OF SERVICE  
DOCKET NO. 991462-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (\*), facsimile transmission (\*\*), or by United States Mail, postage prepaid, on the following individuals this 17th day of November, 1999.

William Cochran Keating, IV, Esq.\*  
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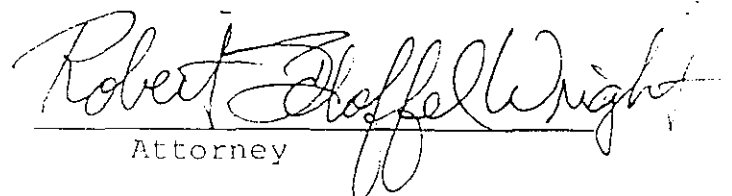
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\_\_\_\_\_  
Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of ) DOCKET NO. 991462-EU  
Need for an Electrical Power Plant in) )  
Okeechobee County by Okeechobee ) SERVED: NOVEMBER 16, 1999  
Generating Company, L.L.C. ) )  
\_\_\_\_\_ )

OKEECHOBEE GENERATING COMPANY, L.L.C.  
RESPONSES TO FLORIDA POWER & LIGHT COMPANY'S  
FIRST REQUEST FOR PRODUCTION  
\_\_\_\_\_ OF DOCUMENTS (NOS. 1-36) \_\_\_\_\_

Okeechobee Generating Company, L.L.C., by and through its undersigned counsel, pursuant to Uniform Rule 28-106.206, Florida Administrative Code, hereby responds to Florida Power & Light Company's First Request For Production of Documents (Nos. 1-36).

Respectfully submitted this 16th th day of November, 1999.



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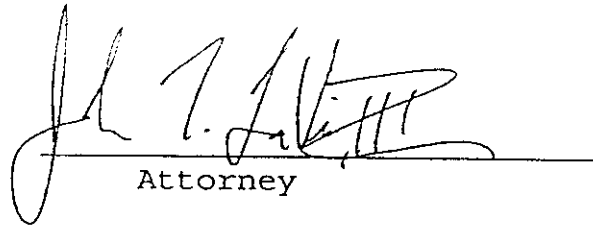
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Attorneys for Okeechobee Generating  
Company, L.L.C.

CERTIFICATE OF SERVICE  
DOCKET NO. 991462-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery on the following individual this 16th day of November, 1999.

Charles A. Guyton, Esq.  
Steel Hector & Davis  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301  
(Florida Power & Light)

  
\_\_\_\_\_  
Attorney

1. Please provide all documents supporting Table 1 in the Exhibits.

The following documents are responsive to this request:

Table 2 of the Exhibits

Figure 4 - Site Plan

Figure 7 - Water Balance

Figure 13 - Engineering Schedule

Figure 14 - Environmental Schedule

1.1 Option Agreement for Site (confidential cost/option information redacted)

Appendix A - EWG/Market based rate documents (See OGC's response to FPC's Production Request No. 21.)

Testimony and exhibits of Dale M. Nesbitt, Ph.D.

Testimony and exhibits of Roger Clayton, P.E., including GE System Impact Study

Direct Construction Cost (PROPRIETARY & CONFIDENTIAL)

All of the above documents except the proprietary and confidential direct construction cost information has already been furnished to FPL.

2. Please provide all documents supporting Table 2 in the Exhibits.

The following documents are responsive to this request.

2.1 - Weather Information

Response to FPC's Production Request No. 22, Site Evaluation Data - - See GIS maps.

Documentation of a reference gas-fired combined cycle power plant using ABB GT24 combustion turbines in two-on-two configuration. This information is confidential, proprietary business information of ABB. OGC is in the process of attempting to obtain permission from ABB to release this information subject to appropriate confidentiality protection agreements.

3. Please provide all documents supporting the \$190 million direct construction cost estimate for the Project.

Please refer to OGC's response to FPC's Production Request No. 16 and OGC's answer to FPL Interrogatory No. 2. (A complete copy of the documents produced to FPC in response to FPC's First Request for Production of Documents to OGC is being furnished to FPL contemporaneously with this response.)



4. Regarding the load forecast upon which you rely, please provide the model or models upon which the load forecast is based.

OGC is not in possession, custody, or control of the Altos NARE model. The Altos NARE model uses the load forecasts shown in the Florida retail utilities' NERC Energy Supply and Demand reports for 1998.

FPL1-  
~~FPG1~~ 000022

5. Please provide all analyses, including underlying models, upon which you rely in stating at page 6 of the Petition, "OGC expects to sell approximately 4.3 million MWH of electric energy from the project to other utilities and power marketers in Peninsular Florida per year from 2004 through 2013, reflecting an average (or typical) annual load factor of approximately 93 percent."

The enclosed ZIP disk contains all inputs and outputs of the analyses referred to in this request. OGC is not in possession, custody, or control of the Altos NARE and NARG models.

6. Please provide all documents evidencing "negotiated arrangements entered into pursuant to OGC's Rate Schedule No. 1" as that phrase is used at page 6 of the Petition.

No such documents exist.

7. Please provide all documents supporting the following statement made at page 7 of the Petition: "OGC project that virtually all of its wholesale sales will be made to other utilities and power marketers for use in Peninsular Florida."

Please refer to OGC's response to FPL's Production Request No. 5 and to the input and output data from the NARE Model provided on the enclosed ZIP disk.

FPL1-

~~EPC1-0000025~~

8. Please provide the "Precedent Agreement" between OGC and Gulfstream referred to on page 10 of the Petition as well as any other contracts, agreements, letters of intent or other writings evidencing a commitment of Gulfstream to provide gas transportation to the Project.

The Precedent Agreement was previously furnished to FPL, in redacted format to protect confidential, proprietary business information. With regard to other responsive documents, please refer to OGC's responses to FPC's Productions Requests Nos. 3 and 4.

FPL1-

~~FPC1~~-000002

9. Please provide all agreements, contracts, options, letters of intent or other documents pursuant to which natural gas fuel will be provided to the Project or to Gulfstream for the Project.

No such documents exist.

FPL1-

~~FPC1~~-0027

10. Please provide all agreements, contracts, options, letters of intent or other documents pursuant to local suppliers will provide refilling of the on-site oil storage facility.

No such documents exist.

FPC1-0028  
FPL1-

11. Please provide all transmission system impact studies prepared for or by OGC related to the Project.

The transmission system impact studies prepared for OGC related to the Project have been provided to FPL as exhibits to the prefiled direct testimony of Roger Clayton, P.E.



12. Please provide analyses and studies supporting the assertion at Page 13 of the Petition that "Operation of the project is likely to result in measurable reductions in emissions of SO<sub>2</sub>, CO<sub>2</sub>, NO<sub>x</sub> and other air pollutants in Peninsular Florida, due to the project's displacement of generation from less efficient units and units that burn fuels that produce more pollution than is produced by the natural gas fuel used in the Project."

5. Please refer to OGC's response to FPL's Production Request No.

13. Please provide all examinations and evaluations of the available generating alternatives that were undertaken to arrive at the decision that a gas-fired combined cycle unit was the best choice for OGC, including all documents and analyses supporting Tables 11 and 12 of the Exhibits.

Please refer to OGC's response to FPL's Production Request No.

5.

14. Please provide all documents, analyses and evaluations of the Project's "long-term economic viability."

5. Please refer to OGC's response to FPL's Production Request No.

~~FPC1-~~ 0032  
FPL1-

15. Please provide all analyses performed by or on behalf of OGC that show that, "the Project is demonstrably cost-effective relative to virtually all other gas-fired combined cycle power plants proposed for Florida over the next ten years."

Please refer to OGC's response to FPL's Production Request No. 5 and to Table 9 of the Exhibits.

16. Please provide all analyses supporting and underlying the following assertion at page 24 of the Petition: "projections of the Project's operations prepared for CGC show that the Project will operate, economically, at annual capacity factors of approximately 93 percent from 2004 through 2013."

5. Please refer to OGC's response to FPL's Production Request No.

17. Please provide all analyses supporting and underlying the following assertion at page 24 of the Petition: "The presence of the Project, with its high efficiency, is expected to suppress wholesale power prices in Florida below what they would otherwise be."

5. Please refer to OGC's response to FPL's Production Request No.

18. Please provide all analyses supporting and underlying the following assertion at page 25 of the Petition: "OGC projects that virtually all of the project's output over the 2003 through 2013 period is expected to be sold to other utilities and power marketers in Peninsular Florida (i.e., within the FRCC region), on the basis of the relative economics of the project and other Peninsular Florida generation facilities."

Please refer to OGC's responses to FPL's Production Request No. 5 and to FPC's Production Request No. 9.

FPL1-

~~FPC1~~ 0030

19. Please provide all documents in the possession of OGC and relied upon by OGC describing Gulfstream's mainline facility that will directly serve the Project.

Please refer to the attached cover materials for Gulfstream's FERC application. The non-confidential portions of this application are publicly available to FPL from the FERC.

Please also refer to the Project Site Plan, Figure 4 in the Exhibits.



20. Please provide every document and analyses in which OGC or its agents or consultants have calculated or estimated the probability of brownouts and blackouts in Peninsular Florida with and without the Project in operation.

No such documents exist. OGC and its consultants have calculated reserve margins for Peninsular Florida with and without the Project, and the price suppression effects of the Project's presence and operation, from which it can be directly inferred that Peninsular Florida reliability is improved.

FPL1-  
~~FPC10042~~

21. Please provide all documents and analyses that prove, support or were relied upon in making the following assertion at page 32 of the petition, "According to projections prepared for OGC, the Project is expected to displace approximately 4.3 million MWH per year of power produced by less efficient heavy oil-fired and gas-fired generation units (i.e. steam generators fired by heavy oil, natural gas, or both, with heat rates generally between 10,000 and 11,000 Btu per kWh) in each year from 2004 through 2013 (the last year of the analysis period)."

5. Please refer to OGC's response to FPL's Production Request No.

22. Please provide the contract evidencing that "Earth Tech, Incorporated has been retained by OGC to provide environmental licensing and permitting services for the Project."

Please refer to the attached contract between EarthTech and U.S. Generating Company, which has since been renamed PG&E Generating.

FPL1-  
~~FPG1~~0041

23. Please provide all documents showing the constructed cost for the electrical switchyard and interconnection for the project.

Please refer to the attached documents.

24. Please provide all documents supporting the Project's expected Equivalent Availability Factor of 93 percent, a Forced Outage Rate of 2 percent, a Planned Outage Rate of 5 percent and Capacity Factors of approximately 93 percent.

Please refer to the prefiled direct testimony and exhibits of George A. Lehner regarding the projected maintenance schedule for the ABB GT24-based combined cycle unit.

Additional responsive documents include ABB GT24 Gas Turbine Generator Set Reference Guide. This information is confidential, proprietary business information of ABB. OGC is in the process of attempting to obtain permission from ABB to release this information subject to appropriate confidentiality protection agreements.

25. Please provide all documents evidencing that OGC or its developer can secure the long-lead-time components of the Project (the combustion turbines, heat recovery steam generators, and steam turbine generators) in time to meet the projected in-service dates.

OGC is not in possession, custody, or control of documents responsive to this request.

FPL1-

~~FPC1-0057~~

26. Please provide all documents that explain the maintenance cycle for the ABB turbines summarized on page 41 of the Exhibits.

Please refer to the prefiled direct testimony and exhibits of George A. Lehner regarding the projected maintenance schedule for the ABB GT24-based combined cycle unit.

Additional responsive documents include ABB GT24 Gas Turbine Generator Set Reference Guide. This information is confidential, proprietary business information of ABB. OGC is in the process of attempting to obtain permission from ABB to release this information subject to appropriate confidentiality protection agreements.

FPL1-

~~FPL1~~

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Please refer to the prefiled direct testimony and exhibits of George A. Lehner regarding the projected maintenance schedule for the ABB GT24-based combined cycle unit.

Additional responsive documents include ABB GT24 Gas Turbine Generator Set Reference Guide. This information is confidential, proprietary business information of ABB. OGC is in the process of attempting to obtain permission from ABB to release this information subject to appropriate confidentiality protection agreements.

FPL1-

~~FPC1-~~ 0050



27. Please provide all documents and analyses supporting and underlying the following statement at page 54 of the Exhibits: "In Georgia, Alabama and Mississippi, the wholesale market clearing price for electricity is typically lower than in Florida and the cost of fuel transportation to these states is less than in Florida."

9. Please refer to OGC's response to FPC's Production Request No

28. Please provide all documents and analyses supporting and underlying the following statement at page 54 of the Exhibits "It is unlikely that power produced from the Project will be consumed outside Florida."

5. Please refer to OGC's response to FPL's Production Request No.

~~FPC1-~~ 0061  
FPI 1-

29. Please provide all analyses, including computer runs and underlying models, used to develop Table 8 in the Exhibits.

5. Please refer to OGC's response to FPL's Production Request No.

FPL1-  
FPC1- 0062

30. Please provide all of the studies of the Project's operations prepared for OGC using the Altos North American Regional Electricity Model, the Altos North American Regional Gas Model, and any other models developed by or used by Altos Management Partners, Inc., including the model that assess the Project's generating performance and economic viability, all model inputs and all model outputs.

Please refer to OGC's responses to FPL's Production Request No. 5 and FPC's Production Request No. 9. All inputs and outputs of such studies are included on the enclosed ZIP disk. OGC is not in possession, custody, or control of the Altos NARE Model or the Altos NARG Model.

FPL1-  
FPC1-

0063

31. In regards to the Altos Management Partners model used to prepare studies of the project's operations, please provide all the models and the related model operating manuals and other documents explaining the models.

Please refer to OGC's responses to FPL's Production Request No. 30 and to FPC's Production Request No. 9.

~~FPL~~  
FPC-0064

32. Please provide all documents, including underlying models and data inputs, comprising the "analyses performed by Altos Management Partners for OGC [that] indicate that the Project is expected to suppress wholesale prices by about \$0.27 to \$0.30 per MWH, yielding total estimated power supply cost reductions of approximately \$280 million (NPV) over the first ten years of the project's operation," as discussed on page 64 of the Exhibits.

Please refer to OGC's responses to FPL's Production Request No. 5 and to FPC's Production Request No. 33.

33. Please provide all documents and workpapers supporting Table 10 of the Exhibits.

5. Please refer to OGC's response to FPL's Production Request No.

FPL 1-  
FPC1- 0086

34. Please provide all documents, including notes of telephone conversations, evidencing or constituting communications between OGC or its agents and affiliates to the Staff of the Florida Public Service Commission regarding the proposed Project or merchant plants in general.

14. Please refer to OGC's response to FPC's Production Request No.



35. Please provide all documents, including notes of telephone conversations, evidencing or constituting communications between OGC or its agents and affiliates to Florida Public Service Commissioners regarding the proposed Project or merchant plants in general.

14. Please refer to OGC's response to FPC's Production Request No.

36. Please provide all of the analyses and studies of the Project's dispatch, operating or viability prepared by, for or on behalf of OGC or its affiliates, including the models used, the models input, the models output, and the operating manuals for the models. This request is intended to address all such analyses using the Altos Management Partners models.

Please refer to OGC's responses to FPL's Production Request No. 5 and to FPC's Production Request No. 9. Internal PG&E analyses are confidential, proprietary business information and are accordingly not being produced.

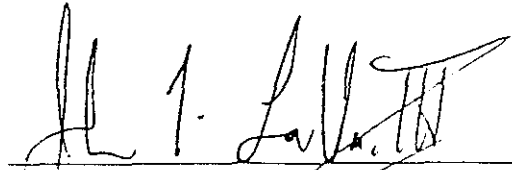
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of )  
Need for an Electrical Power Plant in ) DOCKET NO. 99-1462-EU  
Okeechobee County by Okeechobee )  
Generating Company, L.L.C. ) SERVED: November 17, 1999  
\_\_\_\_\_)

OKEECHOBEE GENERATING COMPANY'S RESPONSES  
TO FLORIDA POWER & LIGHT COMPANY'S SECOND REQUEST  
FOR PRODUCTION OF DOCUMENTS (NOS. 37-60)

Okeechobee Generating Company, L.L.C. ("OGC"), by and through its undersigned counsel and pursuant to Uniform Rule 28-106.206, Florida Administrative Code, and the Commission's Order Establishing Expedited Discovery Schedule, hereby responds to Florida Power & Light Company's ("FPL") Second Request for Production of Documents (Nos. 37-60).

Respectfully submitted this 17<sup>th</sup> day of November, 1999.



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

CERTIFICATE OF SERVICE  
DOCKET NO. 991462-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (\*), or by United States Mail, postage prepaid, on the following individuals this 17th day of November, 1999.

William Cochran Keating, IV, Esq.\*  
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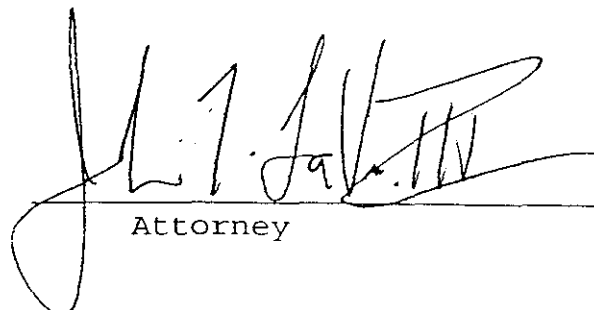
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\_\_\_\_\_  
Attorney

37. Please provide all analyses, computations, computer runs, computer models and other documents supporting Dr. Nesbitt's prefiled direct testimony supporting where Dr. Nesbitt asserts (page 75) that there is an "economic need for the immediate addition of 5,400 MW of new natural gas-fired combined cycle capacity" in addition to regulated Florida utilities' planned capacity additions and the New Smyrna Project.

5. Please refer to OGC's response to FPL's Production Request No.

38. Please provide all data, analyses, computations, computer models and other documents supporting Dr. Nesbitt's assertions at page 87 of his direct testimony that "there is a declining incentive to transmit on-peak power during the summer (because) peak power usually costs about the same everywhere...."

This is not an accurate quote from Dr. Nesbitt's testimony.

5. Please refer to OGC's response to FPL's Production Request No.

39. Please provide all data, analyses, computations, computer models, regulatory decisions, and other documents supporting Dr. Nesbitt's assertions at page 89 of his direct testimony that, regulated incumbents are "directly incentivized to build higher costs plants than they really have to."

Please refer to the attached documents. OGC also identifies the following book, which is available to FPL for inspection:

The Theory of Public Utility Pricing, by Stephen J. Brown & David S. Sibley, Cambridge University Press, 1986.



40. Please provide all data, analyses, computations, computer models and other documents relied upon by Mr. Kordecki in making his assertion at page 1 of his direct testimony that, if the Okeechobee Generating Project is not built, "the consequences will almost certainly be higher costs for Florida ratepayers."

Responsive documents include utility ten-year site plans, various publications of the Florida PSC and the Florida Reliability Coordinating Council regarding ten-year site plans and reliability issues, and the testimony of Dale M. Nesbitt, Ph.D. filed in this proceeding. All such documents are publicly available to FPL.

41. Please provide all data, analyses, computations, computer runs, computer models and other documents supporting Dr. Nesbitt's testimony that the Okeechobee Generating Project is the most cost-effective generating alternative that can be built in Florida.

5. Please refer to OGC's response to FPL's Production Request No.

42. Please provide all data, analyses, computations, computer runs, computer models and other documents supporting Mr. Kordecki's testimony that the Okeechobee Generating Project is the most cost-effective generating alternative that can be built in Florida.

There are no specific documents responsive to this request. Mr. Kordecki's conclusion is based on his experience in the Florida utility industry and on the fact that there is no ratepayer burden being imposed by the Okeechobee Generating Project.

43. Please provide all technical and financial analyses related to the construction of an electric generation plant in Florida, that were performed by or on behalf of the OGC or its affiliates prior to the decision to petition the Florida Public Service Commission to issue a determination of need for the Okeechobee Generating Project.

Please refer to OGC's response to FPL's Production Request No. 5.

Responsive documents also include PG&E internal analyses of the Florida power market. These documents constitute confidential, proprietary business information and are, accordingly, not being produced.

44. Please provide all the analyses performed by or on behalf of OGC or its affiliates that address and/or quantify the impact the Okeechobee Generating project will have in the long term on the cost of generation, transmission and ancillary services in Florida.

Please refer to OGC's response to FPL's Production Request No. 5 and to OGC's response to FPC's Interrogatory No. 6.

See also the prefiled direct testimony and exhibits of Roger Clayton, P.E.

45. Please provide all data, analyses, models, model runs and other documents relied upon by Mr. Finnerty in reaching his conclusion that it is unlikely that OGC or merchant plants constructed in Florida will export power outside of Florida.

Please refer to OGC's responses to FPC's Production Request No. 9 and to FPL's Production Request No. 5.

46. Please provide all data, analyses, models, model runs and other documents relied upon by Mr. Vaden in reaching his conclusion that it is unlikely that OGC or merchant plants constructed in Florida will export power outside of Florida.

Please refer to the testimony and exhibits of Dale M. Nesbitt, Ph.D. in FPSC Docket No. 981042-EM.

Mr. Vaden's conclusion is also based on generation cost data reported in Public Utilities Fortnightly and provided in response to FPC's Production Request No. 9, as well as on various publications of the Florida Public Service Commission and Florida Reliability Coordinating Council, all of which are publicly available to FPL.

47. Please provide all data, analyses, models, model runs and other documents relied upon by Mr. Kordecki in reaching his conclusion that it is unlikely that OGC or merchant plants constructed in Florida will export power outside of Florida.

In reaching this conclusion, Mr. Kordecki relied on his general knowledge of the Florida transmission and generation systems and his extensive experience working in the Florida electric utility industry. Documents with which Mr. Kordecki is familiar that support this conclusion include: utility ten-year site plans, Public Utilities Fortnightly generation cost data, and publications of the Florida Public Service Commission and the Florida Reliability Coordinating Council.



48. Please provide all data, analyses, models, model runs and other documents relied upon by Dr. Nesbitt in reaching his conclusion that it is unlikely that OGC or merchant plants constructed in Florida will export power outside of Florida.

5. Please refer to OGC's response to FPL's Production Request No.

49. Please provide all data, analyses, models, model runs and other documents relied upon by Mr. Vaden to reach his conclusion that the UCNSB will need 69 to 74 MW of generating capacity to serve customer's need over 2000 to 2002 period.

Please refer to the attached document.

50. Please provide all analyses, data, generation expansion plans, load forecasts and other documents that show that the UCNSB has a capacity need that may be met by purchases from the OGC project.

49. Please refer to OGC's answer to FPL's Production Request No.

51. Please provide all analyses, data, generation expansion plans, load forecasts and other documents that show that the UCNSB has an energy need that may be met by purchases from the OGC project.

There are no documents specifically responsive to this request. FPL is referred to Mr. Vaden's testimony from FPSC Docket No. 981042-EM.

52. Provide all documents relied upon Mr. Finnerty in the preparation of his direct testimony.

Please refer to OGC's responses to FPL's Production Request No. 27 and FPC's Production Request No. 29.

In addition, the following documents, which FPL either already has or which are not being produced in accord with OGC's objections, are responsive to this request.

Figure #13 to the Exhibits, Engineering Schedule.

Figure #14 to the Exhibits, Environmental Schedule.

Clayton Testimony and GE Transmission System Impact Study.

OGC's responses to FPC's Production Request No. 3, Gulfstream materials, and No. 15, Correspondence with FPL's Hector Sanchez.

ABB June 1999 bid information. This information is confidential, proprietary business information and accordingly, is not being produced.

Appendix A to the Exhibits, EWG/Market Based Rate Documents.

Internal Project Performance. This information is confidential, proprietary business information and accordingly, is not being produced.

53. Provide all documents relied upon Mr. Lehner in the preparation of his direct testimony.

ABB GT24 Gas Turbine Generator Set Reference Guide and KA24-1 Reference Plant documentation. This is confidential, proprietary business information to ABB and accordingly, is not being disclosed. OGC is pursuing obtaining ABB's permission to release this information subject to appropriate confidentiality protection agreements.

54. Provide all documents relied upon Mr. Clayton in the preparation of his direct testimony.

Please see OGC's response to FPC's Production Request No. 15.

55. Provide all documents relied upon Mr. Sellars in the preparation of his direct testimony.

22. Please refer to OGC's response to FPC's Production Request No.



56. Provide all documents relied upon Mr. Karloff in the preparation of his direct testimony.

Please refer to OGC's responses to FPC's Production Requests No. 3, Gulfstream materials, No. 9, and FPC's Production Request No. 7, as well as the attached letter.

57. Provide all documents relied upon by Mr. Kordecki in the preparation of his direct testimony.

Please refer to OGC's response to FPL's Production Requests Nos. 40 and 47. In addition, Mr. Kordecki also relied on the testimony and exhibits of Dale M. Nesbitt, Ph.D. in FPSC Docket No. 981042-EM and on OGC's Petition and Exhibits filed in this case.

58. Provide all documents relied upon Mr. Sullivan in the preparation of his direct testimony.

\*Performance and Emission data from ABB for Badger Generating Project (spreadsheet dated Aug. 06, 1999 - KWGV-S4, A. Pourheidari). [ABB Confidential data]

\*Cost data from ABB proposal for Badger, Covert and Otay Mesa Generating Projects [ABB Confidential data]

\*P&ID for Water/Steam Cycle from Reference Plant Design [ABB Confidential Data]

\*Process Flow Schematic (Figure 8 on page 27 of the Exhibits)

\*Area Climatological Data (provided in response to Interrogatory #44)

\*Preliminary Water Balance (Peak Summer) (Figure 7 on page 22 in Exhibits)

\*Site Plan (Figure 4 on page 18 of the Exhibits)

\*Gulfstream Natural Gas System - Pipeline Route Map (Figure 12 on page 32 of Exhibits)

\*Okeechobee Interconnection Studies (Figure 10 on page 29 of Exhibits)

\*Single Line Diagram from ABB KA24-1 Reference Plant Design [ABB Confidential Data]

\*Aerial Survey Control Report, Sept. 1999 (checking on confidentiality status - will produce if non-confidential)

59. Provide all documents relied upon Mr. Vaden in the preparation of his direct testimony.

Mr. Vaden relied on the documents identified in response to FPL's Production Request No. 46.

60. Provide all documents relied upon Dr. Nesbitt in the preparation of his direct testimony.

Please refer to OGC's responses to FPL's Production Requests Nos. 5 and 39 and FPC's Production Request No. 9.

**EXHIBIT "C"**

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November 17, 1999

VIA HAND DELIVERY

Mr. Charlie Guyton  
Steel Hector & Davis  
215 S. Monroe Street, Ste. 601  
Tallahassee, FL 32301-1804

Re: 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

Dear Charlie;

OGC responses to FPL's Second Set of Interrogatories and Second Request for Production Documents are enclosed. I want to call your attention to a couple of things.

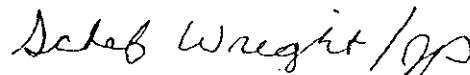
First, you will note that in response to production request no. 53, OGC has identified a second ABB document describing the referenced power plant. This document should also have been identified in response to FPL interrogatory numbers 42, 44, and 47. I inadvertently omitted it because I thought it was the second volume of the document identified earlier.

Next, as indicated in OGC's response to FPC's First Request for Production, Dr. Nesbitt will make the same modeling documents relating to his models available to FPL on the same terms as in the Duke New Smyrna case.

Finally, in preparing OGC's responses to FPL's first production request, we inadvertently stamped the documents produced with the prefix "FPC-1." Obviously, they should have been stamped with the "FPL-1" prefix; we will furnish a corrected set promptly.

If you have any questions, please feel free to contact me.

Sincerely,



Robert Scheffel Wright  
(Signed in Mr. Wright's absence to  
expedite delivery)

Enclosures

NOV 17 1999

**EXHIBIT "D"**



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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.)

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.)

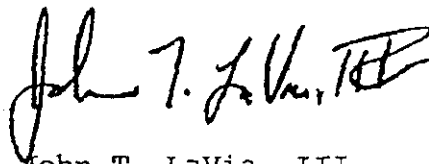
4. FPL shall not disclose the Modeling Documents to any outside consultants or any other person or entity of any type or nature whatsoever, without first obtaining the written consent of Duke New Smyrna and Altos.

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)