

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power)
and Light Company for Inclusion)
of the Scherer Unit No. 4 Purchase)
in Rate Base, Including an)
Acquisition Adjustment.)
_____)

DOCKET NO. 900796-ET
Filed: January 9, 1991

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**NASSAU POWER CORPORATION'S POST-HEARING
STATEMENT OF ISSUES AND POSITIONS**

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DOCUMENT NUMBER-DATE

00291 JAN -9 1991

FPSC-RECORDS/REPORTING

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**NASSAU POWER CORPORATION'S POST-HEARING
STATEMENT OF ISSUES AND POSITIONS**

Pursuant to rule 25-22.056(3)(a), Florida Administrative Code, Nassau Power Corporation ("Nassau") files its Post-Hearing Statement of Issues and Positions. In addition to this Post-Hearing Statement, Nassau is contemporaneously filing a post-hearing brief, in which the positions set forth herein are developed and supported more fully.

Summary of Nassau's Position

In this docket, FPL has requested that the Commission approve its purchase of Scherer Unit 4 prior to consummation of the transaction and without a review of the definitive contracts that will constitute the purchase. However, this case involves more than FPL's attempt to eliminate a business risk. Through its premature petition, FPL is attempting to preempt this Commission's explicit cogeneration policy which enables QFs to meet the state's capacity needs by subscribing the statewide avoided unit. In measuring its 1996 capacity needs, FPL has disregarded Nassau's standard offer contract to provide 435 MW

of capacity to FPL despite the fact that the Commission has determined that Nassau's project counts toward the first 435 MW of the 500 MW Commission-designated statewide avoided unit. FPL should not be permitted to preempt Nassau's project via its premature request for approval of the proposed Scherer purchase.

Nassau believes that no action is warranted. In any event, if the Commission takes regulatory action, it should preserve its policy and afford Nassau a reasonable opportunity to effectuate that policy by indicating that Nassau's project belongs in FPL's generation expansion plan or by approving no more than the first increment of Scherer 4 capacity until Nassau has had an opportunity to implement the subscription policy.

FPL bases its request for inclusion of the Scherer purchase in rate base on economic comparisons of the Scherer purchase with other alternatives. These comparisons are flawed and unreliable due to the biased assumptions which they incorporate. They do not support the extraordinary action FPL requests.

Statement of Issues and Positions

Issue 1: Should the difference between FPL's purchase price and Georgia Power's net original cost of Scherer Unit 4 be given rate base treatment as an acquisition adjustment on a pro rata basis consistent with the phased purchase of the unit?

Nassau Position: This issue is contingent upon the threshold rate base issue. The Commission should take no action on any portion of FPL's petition--including the request for

approval of an acquisition adjustment--until after any transaction has been consummated and all the pertinent facts can be reviewed. One aspect of the review would be FPL's failure to take into account Nassau's standard offer contract and the Commission's policies regarding subscription of the designated statewide avoided unit.

Issue 2: Does FPL, as an individual utility interconnected with the statewide grid, exhibit a need for the additional capacity provided by Scherer Unit 4?

Nassau Position: Nassau has not independently measured FPL's 1996 capacity need. However, it is Nassau's position that FPL must include in its generation expansion plan the 435 MW of power which Nassau will supply to FPL pursuant to its standard offer contract and the Commission's determination that this project subscribes the statewide avoided unit before including the Scherer purchase. FPL's failure to do so is an attempt to thwart the Commission's cogeneration policy and rules which establish subscription of the statewide avoided unit as a legitimate way to meet FPL's capacity needs.

FPL attempted to raise an issue as to Nassau's plans for interconnection with FPL at its Yulee substation. FPL implied that Nassau must interconnect with Florida Public Utilities. This contention has no legal basis. PURPA makes it clear that a QF has right to sell to (and therefore interconnect with) any utility. PURPA further makes it clear that the utility must purchase QF power delivered to it. Additionally, FPL's own

standard offer contract and tariff require it to purchase from any QF, regardless of location.

Further, a long line of FERC cases, beginning with Clarion Power Company, 39 FERC ¶61,317 (1987), establish that transmission lines which are an integral part of and necessary to the project are a part of the QF. Therefore, a portion of the Nassau QF will be within Nassau's service territory.

FPL also implied that the "form" interconnection agreement is a part of the standard offer contract and that FPL's "standard form" interconnection agreement (without modification) is the only permissible interconnection vehicle. These arguments are also meritless. That the interconnection agreement is not part of the standard offer contract is clear from the standard offer contract's treatment of the interconnection agreement as a separate document contained in an appendix as well as the cogeneration rules' separate treatment of the standard offer contract and the interconnection agreement. The argument that only FPL's "form" interconnection agreement will suffice is refuted by the standard offer contract, which refers to an interconnection agreement, and by FPL's COG-2 tariff which clearly contemplates modifications to the "standard" interconnection agreement.

FPL also contended that Nassau may not purchase start-up power from FPL. FPL has not demonstrated in any way that such sales are prohibited by Florida law. More importantly, service from FPL is not essential to Nassau's contract or project.

Nassau has other options for the provision of start-up power.

FPL has failed to justify its exclusion of the Commission's policy and of Nassau's contract from its planning considerations.

Issue 3: Is the capacity to be provided by the purchase of Scherer Unit 4 reasonably consistent with the needs of Peninsular Florida, taking into consideration timing, impacts on the reliability and integrity of the Peninsular Florida grid, cost, fuel diversity and other relevant factors?

Nassau Position: As to timing, FPL's request to add Scherer Unit 4 to rate base violates the basic economic principle that capital expenditures for capacity additions should be deferred as long as possible. FPL proposes to add Scherer Unit 4 to rate base long before its 1996 capacity need. The result of this premature addition is that on a present value basis the fixed costs of acquiring Scherer Unit 4 capacity far exceed the present value of the corresponding capacity costs associated with the discounted 1996 standard offer. Nassau incorporates by reference its positions on the other identified issues, which also treat reliability and cost.

Issue 4: How will the proposed purchase of Scherer Unit 4 affect the reliability and integrity of FPL's electric system?

Nassau Position: The proposal to acquire Scherer 4 is but one alternative for supplying reliable capacity. FPL has not shown the proposed Scherer purchase to be advantageous

relative to the discounted standard offer contract which FPL hopes to preempt by disregarding Nassau's contract, by the timing of its petition, and by its claim that it needs no more 1996 capacity than the Scherer transaction would provide.

Issue 5: How will the proposed purchase of Scherer Unit 4 affect the adequacy of the fuel diversity for FPL's system?

Nassau Position: Nassau takes no position on this issue.

Issue 6: Has FPL reasonably considered alternative supply side sources of capacity?

Nassau Position: No. FPL has ignored the Commission's cogeneration policy by which QFs provide capacity through subscription to the designated statewide avoided unit. By refusing to include Nassau's standard offer contract in its committed 1996 resources, FPL has failed to incorporate a source of capacity provided as a direct result of the Commission's cogeneration policy. Neither FPL's misplaced legal challenges nor its flawed economic comparisons warrant that refusal.

Issue 7: Does FPL's power supply plan reasonably consider the ability of conservation or other demand side alternatives to mitigate the need for the capacity represented by the purchase of Scherer Unit 4?

Nassau Position: Nassau takes no position on this issue.

Issue 8: Is the purchase of Scherer Unit 4 the most cost-effective means of meeting FPL's capacity needs, taking into account risk factors that are part of the cost-effectiveness analysis?

Nassau Position: No. FPL has failed to carry its burden to show that the Scherer Unit 4 purchase is the most cost-effective means of meeting FPL's capacity needs. When a "value of deferral" analysis, similar to the methodology used by FPL to support the Indiantown project, is used to evaluate the economics of the Scherer purchase and other capacity alternatives, it is clear that the present value of the total of unit specific costs (capacity, O&M, and unit fuel costs) of the discounted standard offer is less by \$304 million than the Scherer purchase (even after the removal of transmission improvement costs and even though 646 MW of standard offer capacity was used in the comparison). This large difference is significant in light of the fact that the total of such costs for the Scherer scenario is \$1.9 billion.

FPL bases its claim of Scherer's economic superiority on the faulty premise that the unit's impact on system fuel costs over 30 years will offset the cost of purchasing Scherer Unit 4 well before it is needed and the cost of burning more expensive fuel in Scherer than the statewide avoided unit's fuel. The claim fails under scrutiny.

FPL did not calibrate its production costing program for accuracy and did not rigorously analyze the last 10 years of the 30 year comparison. FPL incorporated unsupportably low fuel

costs in the Scherer acquisition scenario; converted a "location penalty" into an economic advantage with unsupportable assumptions; and overstated the cost of the UPS alternative by ignoring alternate energy. Even with the assumptions favoring the purchase of Scherer 4, the differential between that alternative and the discounted standard offer is only 0.5% - hardly a basis for the extraordinary action requested by FPL.

Issue 9: Will FPL be able to deliver electricity from Scherer Unit No. 4 to its load centers in the same time frames in which it is proposing to add investment to rate base?

Nassau Position: Nassau has no position on this issue.

Issue 10: If any transmission facilities and/or upgrades are required to accommodate the purchases of energy and capacity already under contract to FPL and the proposed Scherer purchase, what is the cost of such transmission facilities and/or upgrades and who will bear such cost?

Nassau Position: Nassau's standard offer contract was executed on June 13, 1990 (before the letter of intent and before any definitive Scherer contracts). Therefore FPL must ensure that there is sufficient transmission capacity available for the Nassau project.

Issue 11: Are the fuel supply and transportation costs presented in FPL's economic analysis for Scherer Unit 4 reasonable and prudent?

Nassau Position: No, for the reasons set forth in Nassau's position on Issue 8 which Nassau incorporates herein by reference.

Issue 12: Does the schedule being followed by the Commission in this case afford all interested parties adequate opportunity to protect their interests?

Nassau Position: No. FPL filed its petition to include the purchase price of Scherer Unit 4 in rate base in late September. Along with its petition, FPL filed threadbare direct testimony which included little back-up data for the conclusory statements contained therein. No support was provided for the economic conclusions contained in the petition and testimony claiming Scherer Unit 4 to be the most cost-effective alternative.

FPL combined a scant filing with a request for an expedited schedule, resulting in a hearing held ten weeks after FPL's initial filing. This schedule was based on an approval deadline self-imposed by FPL which FPL may waive and still consummate the transaction.

At hearing, even the Commissioners complained of their inability to locate data in the record supporting FPL's conclusions.

Given the facts that FPL's self-imposed deadline of January 1, 1991 will not be met even under the present schedule; that the next critical date is June 30, 1991; that FPL did not provide supporting calculations until during the hearing; and

that FPL is requesting to include \$616 million in rate base, it is clear that the procedures followed in this have been inadequate to allow Intervenors to protect their interests or to allow the Commission to assess FPL's request.

Issue 13: What effect, if any, does the Scherer Unit 4 purchase have on the Southern/Florida interface?

Nassau Position: Nassau has no position on this issue.

Issue 14: Under what circumstances should the portion of the purchase price of assets in excess of book value (the "acquisition adjustment") be given "rate base treatment," such that amortization may be included in operating expenses and the unamortized acquisition adjustment may be included in rate base?

Nassau Position: Nassau has no position on this issue.

Issue 15: Should the Commission address in this docket transmission access disputes that may arise from the Scherer Unit 4 purchase?

Nassau Position: The Commission should address the effect of the proposed Scherer Unit 4 purchase on Nassau's standard offer contract to sell 435 MW to FPL. Nassau's contract was executed prior to any arrangements for the proposed Scherer purchase. Therefore the Commission must ensure that FPL provides sufficient transmission capacity for Nassau's project.

Issue 16: Is the purchase of an undivided ownership interest in Scherer Unit No. 4 a reasonable and prudent investment necessary to enable FPL to meet its forecast 1996 system load requirements?

Nassau Position: The discussion of the preceding issues demonstrates that the proposed Scherer Unit 4 purchase is not a reasonable and prudent investment, especially in light of the fact that the Commission does not even have before it for analysis the definitive contracts memorializing the transaction. However, even if the Commission decides otherwise, it must take into account the 435 MW which Nassau will provide to FPL pursuant to its June 13 contract.

Issue 17: Should FPL be authorized to include the purchase price of its undivided share of Scherer Unit No. 4, including the acquisition adjustment, in rate base?

Nassau Position: No. See Issue 16.

Issue 18: In the event FPL's petition is approved, should the Commission impose guarantee requirements on the electrical output of the unit and delivery to FPL and limit the amount of total investment, operation and maintenance expenses and fuel costs that will be allowed for recovery through rates?

Nassau Position: Nassau has no position on this issue.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Nassau Power Corporation's Post-Hearing Statement of Issues and Positions has been furnished by hand delivery* or by U.S. Mail to the following parties of record this 9th day of January, 1991:

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