

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need for an Electrical Power)
Plant in Okeechobee County by)
Okeechobee Generating Company,)
L.L.C.)
_____)

DOCKET NO. 991462-EU
Submitted for filing: March 14, 2000

**FLORIDA POWER CORPORATION'S MEMORANDUM IN OPPOSITION
TO PETITIONER'S REQUEST FOR CONTINUANCE AND
REVISED PROCEDURAL SCHEDULE**

Florida Power Corporation (FPC) opposes the request made by Petitioner Okeechobee Generating Company, L.L.C. (OGC) for a continuance of the hearing scheduled to commence Monday of next week, to deal with "discrepancies" in its sworn testimony to the Commission. Those "discrepancies" are fundamental to OGC's case and provide ample basis for the Commission to deny the Petition outright.

The Intervenors have expended considerable time and resources scrutinizing and conclusively refuting the case that OGC has presented to the Commission, and Intervenors have built a discovery record establishing that the Petition must be denied. It would be unfair to the Intervenors and the Commission to allow OGC to yank away the case it has presented at the eleventh hour, now that its utter lack of merit has been exposed, only to force the parties to re-litigate key aspects of the Petitioner's case. The Commission should deny the Intervenor's request for a continuance and deny and dismiss the Petition based on OGC's own admission that it has failed to substantiate the central allegations of its Petition and supporting testimony.

BACKGROUND

OGC filed this Petition in September 1999, seeking a hearing within 90 days. OGC had months to develop its case and to prepare and file its testimony. Petitioner filed its case with

every evident intention of rushing it through to a speedy conclusion. In fact, when Intervenors asked the Commission to waive the 90-day rule to protect their due process rights in this proceeding, Petitioner vehemently opposed the waiver, insisting that the hearing be conducted forthwith.

As in the Duke case, the Petitioner here has relied on the testimony and economic modeling work of Dr. Dale Nesbitt for the very foundation of its case. Nesbitt's pre-filed direct testimony is 153 pages; he prepared and sponsored extensive exhibits supporting his assertions; and he filed extensive testimony purporting to rebut prefiled testimony filed by Intervenor Florida Power & Light (FPL).

Central to Nesbitt's testimony was his modeling of the FRCC region "with" and "without" the proposed OGC plant in order to demonstrate the ostensible benefits of, and need for, the proposed project. In his direct testimony, Dr. Nesbitt describes this modeling work in the following terms:

In evaluating the need for the Okeechobee Generating Project, my approach was to build a detailed nodal model of the FRCC region that represents physical flow possibilities from every generator to the grid, between every two points on the grid, and from every point on the grid to native load at that point on the grid, taking full account of the cost and capability constraints on the transmission system. By so doing, we are able to insert 550 MW at the Project site and calculate its effect nodally throughout the FRCC and contiguous systems, calculating the price reduction that it causes. By building a detailed nodal model of Florida, we are able to accurately assess not only the aggregate need in Florida for the Okeechobee Generating Project but its specific regional distribution and how that regional need proliferates through the FRCC region. This is particularly important for the Project because it is located in the southerly part of Florida where power is in greater demand. The nodal model we have developed tells us for example whether the Project displaces power flows that would otherwise have to flow into south Florida from more northerly parts of Florida or whether it is simply a net addition to south Florida generation and demand. It also tells us which MWh from which specific regional nodes are displaced out of the Florida system at which points in time by the entry of the Project at its node.

(Nesbitt Direct, pp. 64-65) (emphasis added). The balance of Nesbitt's testimony is predicated on his ostensible modeling of the impact of the insertion of the OGC proposed project into the FRCC region. This provides the sole support for his otherwise naked assertions about need.

This was made unmistakably clear in Nesbitt's rebuttal testimony to the direct pre-filed testimony of Dr. John H. Landon. There, Nesbitt states:

The Altos model explicitly and systematically compares every alternative against every other alternative individually and collectively and compares every alternative against every existing plant or other alternative as they affect the wholesale market in the FRCC. . . . The Altos model contains every existing power plant in Florida and prospective new entry in Florida that might be assumed in a given scenario. The model then simulates competition among all existing and prospective plants that comprise that scenario.

(Nesbitt Rebuttal to Landon, pp. 1-2) (emphasis added). Nesbitt concludes his rebuttal by insisting that "the petition and exhibits, as well as my direct testimony, present a complete, proper, and correct comparative analysis – of Peninsular Florida with the Okeechobee Generating Project vs. Peninsular Florida without the Project." (Id., p. 31) (emphasis added).

Only after fighting doggedly to gain access to the contents of Nesbitt's "black box" (his closely guarded proprietary model), were the Intervenor's able to determine that Nesbitt's expert modeling was nothing but a house of cards. Although Petitioner suggests in its Motion that Altos personnel "discovered" in the course of preparing for the hearing in this matter "several discrepancies" in the "input data upon which their analyses were based" (Motion, p. 3), in fact what happened was FPL's expert consultants discovered that Nesbitt and his colleague, Michael Blaha, had fundamentally misrepresented the modeling work that they performed in this case and brought this to light in prefiled testimony served during the pendency of Nesbitt's deposition. Petitioner now has been forced to make the remarkable admission that "the Okeechobee Generating Project itself" was omitted from the modeling runs that ostensibly compared the

FRCC market “with” the OGC project against the same market “without” the OGC project, and that Nesbitt failed to reflect accurately numerous other aspects of planned and actual capacity in the FRCC region. There is every reason to believe that these fundamental flaws would never have been identified without the active participation of the Intervenors in this litigation.

ARGUMENT

This is not a case where Petitioner or any other party has not had sufficient time to prepare its case for trial. Rather, this is a situation where discovery has exposed that Petitioner has no case and seeks a continuance to go out and find one. Petitioner unequivocally alleged that it had conducted certain basic analyses leading to very specific and extravagant conclusions. These allegations have now been admittedly exposed as false. Treating this as a mere distraction, Petitioner proposes that the Commission suspend this docket so that Petitioner’s experts can conduct modeling runs that differ fundamentally from the worthless runs conducted to date, proceeding from the foregone conclusion that these results will inevitably support the conclusions already reached. Put another way, having arrived at ostensibly unbiased, expert opinions about the viability of the proposed project on the basis of admittedly defective modeling work, Nesbitt now will set out to support those pre-conceived conclusions with new and assertedly even more impressive and unbiased modeling work. Merely to state this proposition is to expose its absurdity.

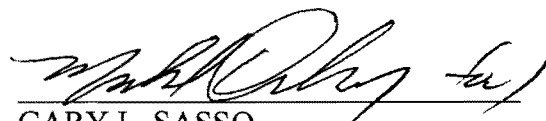
The process has worked the way it should. By permitting the Intervenors to participate in this docket, the Commission has forced the true facts out into the open, and the Commission now has the ability to dispose of the Petition on its merits. The Commission should not reward the Petitioner’s failure of proof with an invitation to back fill to create a case where none now exists.

In support of its motion, Petitioner relies upon Edwards v. Pratt, 335 So. 2d 597 (Fla. 3rd DCA 1976) and In Re: Adoption of Numeric Conservation Goals, Dockets Nos. 971004-EG, 971005-EG, 971006-EG, and 971007-EG, Order No. PSC-99-0511-PCO-EG (March 11, 1999). Petitioner's reliance on these decisions is misplaced. In Edwards, the Third District held that the trial court had acted within its discretion in denying a continuance, despite the fact that the moving party had only recently retained new legal counsel, and in the Conservation Goals docket, the Prehearing Officer granted LEAF's motion to extend the discovery schedule so that LEAF would have adequate time to review and respond to filings made by utilities. In the instant case, the moving party is the Petitioner itself, and Petitioner does not seek or need time to respond to filings made by other parties. To the contrary, Petitioner seeks a continuance to develop support for its own defective filings, which is grounds to deny the petition, not to continue proceedings that Petitioner should not have initiated in the first place.

WHEREFORE, FPC respectfully requests that the Commission deny Petitioner's motion and dismiss and deny the Petition on its merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA POWER CORPORATION'S MEMORANDUM IN OPPOSITION TO PETITIONER'S REQUEST FOR A CONTINUANCE has been furnished via facsimile and U.S. Mail to the counsel of record indicated by ** and via U.S. Mail to all other counsel of record this 14th day of March, 2000.



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