

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

MEMORANDUM

February 27, 1992

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF ELECTRIC AND GAS (BALLINGER) *TB* *RT*  
DIVISION OF LEGAL SERVICES (BROWN) *MCB*

RE: DOCKET NO. 900383-EQ, COMPLAINT BY CFR BIO-GEN CORPORATION AGAINST FLORIDA POWER CORPORATION FOR ALLEGED VIOLATION OF STANDARD OFFER CONTRACT, AND REQUEST FOR DETERMINATION OF SUBSTANTIAL INTERESTS

AGENDA: MARCH 10, 1992, PAA, PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

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CASE BACKGROUND

Pursuant to Order No. 24729, issued July 1, 1991, the Commission granted CFR's request to amend its original complaint and set this matter for hearing "to effectively resolve this conflict once and for all." By stipulation dated September 26, 1991, the parties agreed to enter into good faith negotiations which culminated in the signing of a negotiated power sales agreement on November 19, 1991. On December 5, 1991, Florida Power Corporation and CFR filed a joint petition for approval of the negotiated contract and subsequent dismissal of the complaint.

DOCUMENT NUMBER-DATE

02065 FEB 27 1992

FPSC-RECORDS/REPORTING

Docket No. 900383-EQ  
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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant the joint petition of Florida Power Corporation and CFR Bio-gen for approval of a negotiated power sales agreement and dismissal of the complaint?

**RECOMMENDATION:** Yes. The negotiated contract is more cost-effective than the existing standard offer agreement between the parties, and the approval of the contract would resolve all the issues of the complaint.

**STAFF ANALYSIS:** CFR had signed two previous standard offer contracts with FPC in 1987 and 1988. For all practical purposes, the single negotiated contract presently before the Commission is a modification of those existing contracts. That being the case, the only relevant analysis is to compare the two payment streams of the contracts. Staff has reviewed the supplement that FPC filed to its petition, and it appears that the negotiated contract would yield a savings of approximately \$7 million over the life of the contract. Also, the negotiated contract contains a completion security of \$5/kw within 30 days of the contract approval and an additional \$5/kw security fee due 2.5 years before the in-service date of the facility, December 16, 1995. The contract also contains numerous milestones, allows FPC to economically dispatch the unit, and provides for several events which would constitute pre-operational events of default.

Section 15.1.1 of the negotiated contract states that one of the pre-operational events of default would be if the QF "becomes subject to bankruptcy or receivership proceedings...." CFR's major shareholders have filed a petition to initiate involuntary bankruptcy proceedings against CFR. It is likely that the petition will be withdrawn when this contract is approved. In spite of CFR's present financial instability, Staff would recommend that approval of this contract because contract approval is likely to contribute to the resolution of CFR's financial instability, and because the default provisions contained in the negotiated contract would adequately protect FPC's ratepayers if the bankruptcy proceedings continued.

Based on the above, Staff would recommend that the negotiated contract between FPC and CFR be approved for cost recovery purposes and that the complaint filed by CFR be dismissed.

EAG:CFRREC.TB