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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of the Lee County, )  
Miami-Dade County, and Montenay-Dade, ) DOCKET NO. 02D166 -EQ  
Ltd., to Initiate Rulemaking )  
Regarding Firm Capacity and Energy )  
Payments to Qualifying Facilities )  
\_\_\_\_\_ )

In Re: Proposed Amendments to ) DOCKET NO. 001574-EQ  
Rule 25-17.0832, F.A.C., Firm )  
Capacity and Energy Contracts ) FILED: FEBRUARY 27, 2002  
\_\_\_\_\_ )

MOTION TO CONSOLIDATE RULEMAKING PROCEEDINGS

Lee County, Miami-Dade County, and Montenay-Dade, Ltd., collectively referred to herein as the "Petitioners," pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), and consistent with Rule 1.270(a) of the Florida Rules of Civil Procedure, respectfully move the Florida Public Service Commission (the "Commission") to consolidate current Commission Docket No. 001574-EQ with the docket addressing Petitioners' Petition to Initiate Rulemaking filed on the date indicated above. Each of the Petitioners is already identified as an interested person in Docket No. 001574-EQ, and each has submitted comments and otherwise participated in that docket. All relevant information concerning the Petitioners has been provided in their

Petition to Initiate Rulemaking. In summary, consolidation of these proceedings is appropriate because the proceedings are of the same nature, involve similar issues, and depend largely on

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- SEC 1
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the same evidence, and because consolidation will not prejudice any party's rights in either proceeding.

The existing docket, Docket No. 001574-EQ, addresses certain proposed amendments to the Commission's rules affecting capacity payments to qualifying facilities ("QFs") who supply power to public utilities pursuant to standard offer contracts. The Petitioners' Petition to Initiate Rulemaking addresses similar issues -- the term of standard offer contracts and capacity payment options -- plus the related issue of how the public utility's avoided unit should be determined for purposes of setting capacity payment rates. Following comments made by Commissioner Palecki at an agenda conference discussion regarding Docket No. 001574-EQ, the Petition to Initiate Rulemaking also suggests amendments to provide for certain pricing options that would protect public utilities' ratepayers against unanticipated upswings or "spikes" in fuel prices. The Petitioners identified these issues in the course of preparing their testimony and comments to be submitted in Docket No. 001574-EQ.

Consolidation will promote the efficient administration and prosecution of justice in these proceedings. Under the Florida Rules of Civil Procedure, a court may order consolidation for hearing or trial of actions involving a common question of law or fact. Fla.R.Civ.P. 1.270(a). A court may order several cases pending before it to be tried together where they are of the same nature, involve the same or like issues, or depend largely or

substantially on the same evidence, and where a joint trial will not give one party an undue advantage or prejudice the substantial rights of another party. 1 Fla. Jur. 2d § 54 (1985 & Supp. 1994) (citing Kight v. American Eagle Fire Ins. Co., 125 Fla. 608, 170 So. 664 (1936)). The existing Docket No. 001574-EQ and the Petition to Initiate Rulemaking are of the same nature (rulemaking proceedings regarding the Commission's cogeneration rules), involve the same or like issues (capacity and energy payments under cogeneration power sales contracts), and depend largely and substantially on the same evidence. Addressing all issues raised in Docket No. 001574-EQ and in the Petition to Initiate Rulemaking in a consolidated hearing would not give any party an undue advantage or prejudice any party's rights. Accordingly, consolidation is appropriate within the intent of the Florida Rules of Civil Procedure and should be granted here. The Petitioners would suggest that the Commission, through the Prehearing Officer assigned to Docket No. 001574-EQ, consider convening a procedural conference to determine whether it would be appropriate to revise the procedural schedule applicable to the consolidated proceedings.

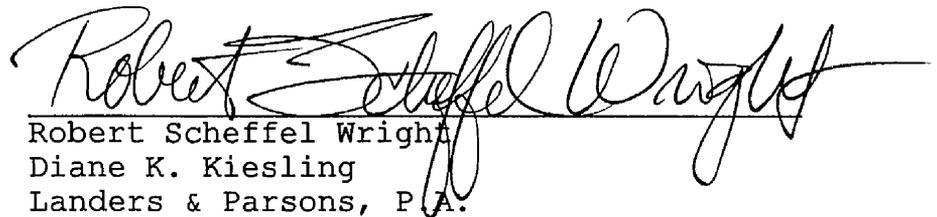
As this is a rulemaking proceeding without parties of record, and since the interested persons in Docket No. 001574-EQ will first see the Petition to Initiate Rulemaking simultaneously with this Motion to Consolidate, the undersigned has not conferred with counsel for the other interested persons and

parties in Docket No. 001574-EQ, but has, as indicated on the attached certificate of service, served all such interested persons and parties with copies of this motion, as well as with copies of the Petition to Initiate Rulemaking.

**RELIEF REQUESTED**

WHEREFORE, for the reasons set forth above, Petitioners, Lee County, Miami-Dade County, and Montenay-Dade, Ltd., respectfully request the Florida Public Service Commission to GRANT this motion to consolidate existing Commission Docket No. 001574-EQ with the docket to be opened to address the Petitioners' Petition to Initiate Rulemaking also filed on this 27th day of February, 2002.

Respectfully submitted this 27th day of February, 2002.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (\*), or U.S. Mail, on this 27<sup>th</sup> day of February, 2002, to the following:

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