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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for determination that its plan for curtailing purchases from Qualifying Facilities in minimum load conditions is consistent with Rule 25-17.086, F.A.C.

DOCKET NO. 941101-EQ FILED: December 21, 1994

OCL'S MOTION FOR CONTINUANCE OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE TESTIMONY

Orlando CoGen Limited (OCL), through its undersigned counsel, submits its Motion for a Continuance of the hearing scheduled in this docket and a rescheduling of the procedural deadlines associated with the existing case schedule, and in support states:

ACK 1. In the October 14, 1994 petition which initiated this proceeding, Florida Power Corporation (FPC) asserts that certain operating circumstances described within the petition constitute grounds for curtailing purchases from Qualifying Facilities (QFs) pursuant to Rule 25-17.086, Florida Administrative Code. F.C. requests the Commission to approve its proposed plan for administering curtailments, which encompasses determinations of the need for curtailment and priorities and procedures for reducing purchases from QFs.

2. To date, several QFs, including OCL, have intervened in this docket to protect their rights and interests. The Commission granted OCL's petition to intervene on December 8, 1994. Order No. PSC-94-1510-PCO-EQ.

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3. On December 12, 1994, the Commission issued Order No. PSC-94-1523-PCO-EQ, ("Order on Procedure"). That order directs FPC to submit prefiled testimony on January 18, 1995, and requires intervenors, including OCL, to file testimony on February 15, 1995. A prehearing conference is scheduled for April 20, 1995, and the evidentiary hearing is set for May 8 - 9, 1995.

4. By its petition, FPC seeks the Commission's approval of a plan under which FPC could impose a hiatus on its federally mandated obligation to purchase energy from QFs. The requirement that utilities purchase capacity and energy from QFs at avoided cost rates is one of the core provisions of PURPA. In reliance upon their ability to sell at Commission-approved rates, QFs such as OCL have borrowed millions of dollars, permitted and constructed expensive cogeneration facilities, and entered complex arrangements for the purchase of delivery of fuel. Approval of a plan that contemplates potential interruptions of the mandatory buy/sell relationship on which the viability of QFs depends would constitute the most fundamental possible impact on the affected QFs' rights and interests. Therefore, OCL and the other QFs must be allowed to participate fully in the Commission's consideration of the proposed plan. OCL respectfully submits that the hearing date in this case should be continued, and procedural dates governing the filing of testimony should be rescheduled, for the following reasons:

Need for extensive discovery.

5. Central to FPC's petition is the issue of whether, absent curtailment, purchases from QFs would impose higher operating costs

on FPC than it would incur if it generated the energy instead. This issue cannot be addressed in the abstract, but must be assessed in the context of an analysis of the detailed operating configuration of FPC's system - including information concerning load data, and modeling of the dynamic interplay of fuel costs, heat rates, unit constraints, and other system cost characteristics with and without QF purchases.

6. On October 19, 1994, FPC actually curtailed purchases from QFs. By agreement, Pasco Cogen's request for an investigation of that action has been rolled into this evidentiary proceeding. Because FPC has already implemented its proposed curtailment plan, an analysis of the factual basis underlying the October 19 decision will become critical to the evaluation of FPC's proposed plan.

7. OCL has retained an expert consultant to perform an analysis of these matters, and has already initiated discovery of FPC.<sup>1</sup> Naturally, it will be necessary to receive and analyze the results of pertinent discovery in order to make a fully developed, affirmative presentation to the Commission. However, OCL believes it will likely be necessary to engage in several "rounds" of discovery requests in order to analyze thoroughly FPC's claim that its proposed plan comports with Rule 25-17.086, Florida

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<sup>1</sup> By letter dated October 21, 1994, OCL requested FPC to provide certain information regarding the October curtailment decision. FPC refused to respond on the basis that OCL was not an intervenor in this docket at the time. FPC has also refused thus far to agree that any information relevant to the curtailment issues gained through discovery in the litigation between OCL and FPC pending in federal district court can be used in the proceeding on FPC's proposed curtailment plan.

Administrative Code, and the strictures of PURPA embodied therein. While the case schedule allows discovery through April 20, 1995, currently Intervenors' testimony must be filed by February 15, 1995. Assuming the best case, under which there are no objections or disputes and FPC answers discovery requests fully and timely, the existing schedule is adequate to accommodate little more than OCL's initial discovery requests before testimony is due. Given the importance of the issue and the technical nature of the subject, OCL needs additional time within which to discover and analyze information to adequately protect its interests.

Absence of prejudice.


8. Under the existing case schedule, the Commission would rule on FPC's petition on July 18, 1995. By that time, however, the seasonal operational circumstances which FPC claims may give rise to the need to implement its curtailment plan will have subsided - according to FPC's submission - until the fall of 1995.<sup>2</sup> Thus, FPC would not be harmed by the postponement of the evidentiary hearing. However, all parties to the proceeding, including the Commission, would benefit from the additional time in which to consider thoroughly the issues raised in FPC's petition. By rescheduling, the affected parties will have sufficient time to prepare their cases, and the Commission will still have ample time to adjudicate the matter prior to the time FPC predicts the operational circumstances will recur in the fall of 1995.

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<sup>2</sup> FPC proposed plan, p. 3.

WHEREFORE, OCL moves for an order continuing the hearing in this docket and rescheduling the procedural dates governing this docket.

Alternatively, in the event the Commission denies OCL's motion to continue the hearing, and based on the considerations discussed above, OCL moves for an order extending the deadline for the filing of intervenors' testimony by at least 30 days.

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Orlando CoGen Limited, L.P.'s Motion for Continuance or, in the Alternative, Motion for Extension of Time to File Testimony has been furnished by hand delivery\* or by U.S. Mail to the following parties of record, this 21st day of December, 1994.

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