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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of early termination amendment to negotiated qualifying facility contract with Orlando Cogen Limited, Ltd. by Florida Power Corporation.

DOCKET NO. 96F104-EQ  
FILED: SEPTEMBER 2, 1997

**STAFF'S OBJECTION TO FLORIDA POWER CORPORATION'S FIRST SET OF INTERROGATORIES PROPOUNDED TO STAFF AND REQUEST FOR PROTECTIVE ORDER**

The Staff of the Florida Public Service Commission, pursuant to Rule 25-22.034, Florida Administrative Code, and Rules 1.280(c) and 1.340(a), Florida Rules of Civil Procedure, by and through its undersigned attorney, hereby objects to Florida Power Corporation's First Set of Interrogatories Propounded to Staff and requests that the Prehearing Officer issue a protective order relieving staff from the responsibility of responding to the interrogatories. As grounds therefore, Staff states:

1. On October 1, 1996, Florida Power Corporation (FPC) filed a petition for approval of an early termination amendment to its Negotiated Contract with Orlando Cogen Limited, Ltd. (OCL), a qualifying facility. By Proposed Agency Action Order No. PSC-97-0086-FOF-EQ, issued January 27, 1997, the Commission denied FPC's petition. On February 17, 1997, FPC filed its timely Petition on Proposed Agency Action. Pursuant to this petition, this matter has been set for hearing before the Florida Public Service Commission.

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2. On August 20, 1997, FPC filed its First Set of Interrogatories Propounded to Staff, purporting to seek information related to the issues in this matter.

3. Pursuant to Rule 25-22.034, Florida Administrative Code, parties may obtain discovery through the means and in the manner provided in the Florida Rules of Civil Procedure. Rule 1.280(a), Fla.R.Civ.P., provides that parties may obtain discovery regarding any relevant matter, as long as the information sought appears to be "reasonably calculated to lead to the discovery of admissible evidence." However, Rule 1.280(c), Fla.R.Civ.P., allows persons from whom discovery is sought to move for a protective order to protect them "from annoyance, embarrassment, oppression, or undue burden or expense . . . ."

4. FPC's Interrogatories 1-9 essentially ask for Staff's strategies, workpapers, mental impressions, and conclusions concerning the case at bar, the underlying PAA proceeding, and prior Commission dockets, while in the course of this hearing process.

5. Staff objects to FPC's interrogatories on the grounds that they cause an undue burden on Staff by impinging upon Staff's role as an advisor to the Commission, improperly seek analysis and conclusions from Staff on a pending matter, and seek information irrelevant to this proceeding.

6. Pursuant to Rule 25-22.026(3), Staff's duty is to "represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for its consideration." However, Staff is not a real party in interest in any proceeding before the Commission. South Florida Natural Gas Co. v. Public Service Commission, 534 So. 2d 695 (Fla. 1988). One of Staff's primary functions is to provide legal and technical advice on matters pending before the Commission. The Commission uses its staff to "test the validity, credibility, and competence of the evidence presented." South Florida Natural Gas, at 698.

7. Rule 25-22.033(5), Florida Administrative Code, prohibits a staff member who testifies in a case from discussing the merits of that case with any Commissioner during the pendency of that case. This prohibition extends to participating in the preparation of recommendations and at the agenda conference. Further, Section 120.66(1), Florida Statutes, permits only advisory staff members who do not testify on behalf of the Commission in a formal proceeding to communicate with the Commissioners.

8. FPC Interrogatories 1-9 are aimed to require Staff to explain and justify the analysis and conclusions in the alternate recommendation that was approved by the Commission in the underlying PAA proceeding. If Staff is required to respond to these interrogatories and Staff's responses are introduced at hearing, those Staff members responding could not perform their

advisory function because they would be excluded from further participation in analysis of the case and preparation of Staff's recommendation.

9. FPC's Interrogatories 1-9 seek information irrelevant to this proceeding. As previously stated, when an agency has issued an order, the order represents the decision of the agency; the impressions and analysis that led to Staff's recommendation in a certain docket are irrelevant to subsequent dockets. Further, FPC's protest in this docket rendered the Commission's PAA Order a nullity and established a *de novo* proceeding. The analysis and impressions that led to Staff's recommendations in the prior PAA proceeding are not relevant to this formal *de novo* proceeding. Consistent with its advisory role in this formal proceeding, Staff has not reached any conclusions on this matter.

10. Staff has not filed testimony in this proceeding. If the parties' prefiled testimony does not provide an adequate record basis for comprehensive consideration of the matters at issue, Staff will file appropriate testimony to assure an adequate record. In the event Staff files testimony in this proceeding, discovery requests may be properly served upon those individuals who file testimony.

11. Staff is unaware of any Commission orders or statements specifically concerning interrogatories propounded on Staff. However, the Commission has recognized the concerns raised in this

pleading by Staff in past orders protecting non-testifying members of Staff from other forms of discovery, i.e., depositions and requests for admissions. See Order No. PSC-94-1562-PCO-WS, issued December 14, 1994, in Docket NO. 930945-WS; Order No. PSC-95-0137-PCO-SU, issued January 27, 1995, in Docket No. 940963-SU; Order No. PSC-94-0425-PCO-WS, issued April 11, 1994, in Docket No. 930880-WS; and Order No. 17910, issued July 27, 1987, in Docket No. 860960-WS.

WHEREFORE, the Staff of the Florida Public Service Commission requests that the Prehearing Officer issue a protective order relieving Staff from the undue burden and annoyance of responding to Florida Power Corporations' First Set of Interrogatories Propounded on Staff.

Respectfully submitted this 2nd  
day of September 1997.

  
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WM. COCHRAN KEATING IV  
Staff Counsel

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of early termination amendment to negotiated qualifying facility contract with Orlando Cogen Limited, Ltd. by Florida Power Corporation.

DOCKET NO. 961184-EQ

FILED: SEPTEMBER 2, 1997

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that one true and correct copy of Staff's Objection to Florida Power Corporation's First Set of Interrogatories Propounded to Staff and Request for Protective Order has been furnished by U.S. Mail this 2nd day of September, 1997, to the following:

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Suite 610  
Tallahassee, FL 32301

**Certificate of Service**  
**Docket No. 961184-EQ**  
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*Wm. Cochran Kenting IV*  
\_\_\_\_\_  
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