ORIGINAL

IN THE SUPREME COURT OF THE STATE OF FLORIDA

In Re: Petition for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Metropolitan Dade County, Order No. 24734, Together with Order Nos. PSC-97-1437-FOF-EQ, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics.

980283-EP

FLORIDA POWER CORPORATION,

Appellant,

vs. Case No. 94,664

FLORIDA PUBLIC SERVICE COMMISSION,

Agency/Appellee; and

MIAMI-DADE COUNTY and MONTENAY-DADE, LTD.,

Intervenors/Appellees.
_____/

MOTION TO SUPPLEMENT THE RECORD

Appellees/Intervenors, MIAMI-DADE COUNTY, FLORIDA ("DADE") and MONTENAY-DADE, LTD. ("MONTENAY"), respectfully move the court, pursuant to Rule 9.300, Florida Rules of Appellate Procedure, and by their undersigned counsel, to supplement the record of the above-styled appeal and similarly, to supplement the record for the Court's related Case No. 94,66[illegible] In Re: Petition for Declaratory Statement that Commission's Approval of

AFA
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SEC 1
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Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Lake Cogen Ltd., Order No. 24734, Together with Order Nos. PSC-97-1437-FOF-EQ, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics ("FPC v. FPSC & LAKE COGEN"). (Both Appellees DADE COUNTY and MONTENAY, and Appellee LAKE COGEN, have contemporaneously moved the Court for an order consolidating these two appeals.) In support of their motion, DADE and MONTENAY state as follows.

1. Appellees/Intervenors DADE and MONTENAY seek to supplement the records of the two above-named appeals, i.e., Case No. 94,664, FPC v. FPSC & DADE/MONTENAY, and Case No. 94,665, FPC v. FPSC & LAKE COGEN. Both of these appeals arise from the denial by the Florida Public Service Commission ("FPSC") of nearly identical petitions for declaratory statements filed by Florida Power Corporation ("FPC") in 1998.

2. The two cases on appeal have similar procedural histories, and the documents with which Appellees/Intervenors DADE and MONTENAY seek to supplement the record are all part of the procedural histories of the proceedings below.

3. Appellees/Intervenors move to supplement the records of the subject appeals by including the following materials therein.

Documents from FPSC Docket No. 940771-EQ, **In Re: Petition for Declaratory Statement Regarding Application of Rule 25-17.0832, F.A.C., to Certain Negotiated Contracts for Purchase of Firm Capacity and Energy by Florida Power Corporation**:

A. Petition for Declaratory Statement filed by Appellant Florida Power Corporation on July 21, 1994;

B. Amended Petition filed by Appellant FPC on October 31, 1994;

C. Memorandum in Opposition to Motions to Dismiss filed by Appellant FPC on December 9, 1994;

Documents from FPSC Docket No. 961477-EQ, **In Re: Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd., by Florida Power Corporation**:

D. Petition on Proposed Agency Action filed by Appellee LAKE COGEN on December 5, 1997;

E. Appellant FPC's Motion to Dismiss Lake Cogen, Ltd.'s Petition on Proposed Agency Action filed on December 15, 1997;

F. Appellee Lake Cogen, Ltd.'s Response to Appellant FPC's Motion to Dismiss, filed on January 8, 1998; and

G. FPSC Order No. PSC-98-0450-FOF-EQ, Order Dismissing Proceedings and Finding Order No. PSC-97-1437-FOF-EQ to be a Nullity, issued March 30, 1998.

4. Copies of the subject materials are attached to this motion.

5. The undersigned counsel for Appellees DADE and MONTENAY has conferred with counsel for Agency/Appellee FLORIDA PUBLIC SERVICE COMMISSION and with counsel for Intervenor/Appellee LAKE COGEN and is authorized to represent that neither of these parties objects to this motion. The undersigned has also conferred with counsel for Appellant FPC, who at this time were

unable to state definitively whether FPC would object to this motion.

WHEREFORE, Appellees/Intervenors MIAMI-DADE COUNTY, FLORIDA and MONTENAY-DADE, LTD. respectfully move the Court to supplement the records of the above-named appeals, Case No. 94,664 and Case No. 94,665, as prayed herein.

Respectfully submitted,

Robert Scheffel Wright FBN 0966721
John T. LaVia, III FBN 0853666
LANDERS & PARSONS, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32303
Telephone (850) 681-0311

and

Gail P. Fels FBN 092669
Office of the County Attorney
Dade County Aviation Division
Post Office Box 592075 AMF
Miami, Florida 33159
Telephone: (305) 876-7040

Attorneys for Miami-Dade County,
Florida, and Montenay-Dade, Ltd.,
Intervenors/Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Richard C. Bellak, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; John Beranek and Lee L. Willis, Ausley & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32301; Sylvia H. Walbolt, Chris C. Coutroulis, Robert L. Ciotti, and Joseph H. Lang, Jr., CARLTON FIELDS, 200 Central Avenue, Suite 2300, St. Petersburg, Florida 33701; John R. Marks III, Knowles, Marks & Randolph, P.A., 215 South Monroe Street, Suite 130, Tallahassee, Florida 32301; Rodney E. Gaddy and James A. McGee, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733; and Marylin E. Culp and Jodi L. Corrigan, Annis, Mitchell, Cockey, Edwards & Roehn, P.A., P.O. Box 3433, Tampa, Florida 33601, this 28th day of April, 1999.

Robert Scheffel Wright
Attorney

A

Florida
Power
CORPORATION

JAMES A. McGEE
SENIOR COUNSEL

July 20, 1994

940771-EQ

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0870

Re: Petition for Declaratory Statement

Dear Ms. Bayo:

Enclosed please find fifteen copies of the Petition of Florida Power Corporation for a Declaratory Statement regarding the application of Rule 25-17.0832, F.A.C., to certain negotiated contracts for the purchase of firm capacity and energy.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned.

Very truly yours,

James A. McGee

JAM/jb
Enclosures

cc: David Smith, Esquire

A TRUE COPY
ATTEST
Chief, Bureau of Records

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for a Declaratory Statement regarding the application of Rule 25-17.0832, F.A.C., to certain negotiated contracts for the purchase of firm capacity and energy.

Docket No. 940771-EQ

Submitted for filing:
July 21, 1994

PETITION FOR DECLARATORY STATEMENT

Florida Power Corporation (Florida Power or the Company) hereby submits this Petition for Declaratory Statement pursuant to Section 120.565, F.S., and Rule 25-22.020, F.A.C. Florida Power seeks a declaration that its reliance on the pricing mechanism specified in Section 9.1.2 of the negotiated contracts for the purchase of firm capacity and energy from certain Qualifying Facilities[1] (the Negotiated Contracts) to determine the periods when as-available energy payments are to be substituted for firm energy payments, complies with Rule 25-17.0832(4)(b), F.A.C., and the orders of this Commission approving the Negotiated Contracts.

[1] The Negotiated Contracts in question are between Florida Power Corporation and the following Qualifying Facilities: Seminole Fertilizer, Lake Cogen Limited, Pasco Cogen, Auburndale Power Partners, Orlando Cogen Limited, Ridge Generating Station, Dade County, Polk Power Partners - Mulberry, Polk Power Partners - Royster, EcoPeat Avon Park, and CFR BioGen.

Introduction

1. The name of Petitioner and its business address is:

Florida Power Corporation
3201 - 34th Street South
Post Office Box 14042
St. Petersburg, FL 33733-4042

2. All notices, pleadings and correspondence should be directed to:

James A. McGee
Senior Counsel
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

Rule and Orders On Which Declaratory Statement Is Sought

3. A declaratory statement is sought on Rule 25-17.0832, F.A.C., governing firm capacity and energy contracts and the following Commission orders approving the Negotiated Contracts: Order No. 24099, issued February 12, 1991 in Docket No. 900917-EQ, In re: Petition for Approval of cogeneration between Florida Power Corporation and Seminole Fertilizer Corporation; Order No. 24734, issued July 1, 1991 in Docket No. 910401-EQ, In re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy by Florida Power Corporation; Order No. 24923, issued August 19, 1991 in Docket No. 910549-EQ, In re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy between EcoPeat Avon Park and Florida Power Corporation; and Order No. PSC-92-0129-FOF-EQ, issued March 31, 1992 in Docket No. 900383-EQ, In re: Complaint of CFR-BioGen Corporation against Florida Power

Corporation for alleged violation of Standard Offer Contract and request for determination of substantial interests.

Discussion

4. At the end of 1993, Florida Power had on its system approximately 490 MWs of firm capacity provided by Qualifying Facilities (QFs). Over the next two years Florida Power expects that an additional 555 MWs of QF capacity will come on-line, for a total of approximately 1,045 MWs by the end of 1995. The 11 Negotiated Contracts in question provide approximately 735 MWs of this total QF capacity. The terms and conditions of the Negotiated Contracts are similar in most respects and, in particular, all utilize a contractually defined coal unit to provide the pricing mechanism for determining the periods during which firm or as-available energy payments should be made to the QFs. Section 9.1.2 in all but one of the Negotiated Contract provides as follows:

> Except as otherwise provided in Section 9.1.1 hereof, for each billing month beginning with the Contract In-Service Date, the QF will receive electric energy payments based on the Firm Energy Cost calculated on an hour-by-hour basis as follows: (i) the product of the average monthly inventory chargeout price of fuel burned at the Avoided Unit Fuel Reference Plant, the Fuel Multiplier, and the Avoided Unit Heat Rate, plus the Avoided Unit Variable O&M, if applicable, for each hour that the Company would have had a unit with these characteristics operating; and (ii) during all other hours, the energy cost shall be equal to the As-Available Energy Cost.[2] (Emphasis added.)

[2] The operating characteristics of the contractually defined unit specified in Section 9.1.2 of Florida Power's Negotiated Contract with CFR BioGen provides for a heat rate curve rather than a specific Avoided Unit Heat Rate. In all other respects, Section 9.1.2 of the CFR BioGen contract is the same as the other Negotiated Contracts, and the pricing mechanism applies in the same manner.

Accordingly, under this pricing mechanism, the operational status of the contractually defined unit (*i.e.*, whether that unit would be scheduled on-line or off-line) determines whether the QF is entitled to receive firm energy payments or as-available energy payments.

5. In light of the recent increase in the amount of QF capacity on the Florida Power system because of the Negotiated Contracts, the Company has examined the operational status of the contractually defined unit during minimum load conditions. During mild weather conditions, Florida Power's minimum daily load may drop to a low of 1,800 MWs, a level at which only the Company's most efficient base load generating units will remain on-line. To determine the operational status of the contractually defined unit under these conditions, Florida Power has conducted a computer analysis of its system utilizing only the unit operating characteristics specified in Section 9.1.2 of the Negotiated Contracts, *i.e.*, the Avoided Unit Fuel Reference Plant, the Fuel Multiplier, the Avoided Unit Heat Rate, and the Avoided Unit Variable O&M, if applicable.

6. In conducting this computer analysis, Florida Power implemented the contract pricing mechanism in a manner consistent with the established methodology for calculating avoided energy costs. The status of the contractually defined unit, as defined by the payment options elected in each of the Negotiated Contracts (Options A, B or C),[3] is determined by the Unit Commitment computer

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[3] Option A provides for standard energy payments based on operating characteristics specified in Section 9.1.2 (the Avoided Unit Fuel Reference Plant fuel price, times a 1.0 Fuel Multiplier, times the Avoided Unit Heat Rate, plus the Avoided Unit Variable O&M). Option B provides the same energy payment except that the Avoided Unit Variable O&M is removed and included in the capacity payment. Option C is provides the same energy payment except that the Avoided Unit Variable O&M and 20% of the Avoided Unit fuel price (*i.e.*, a Fuel (continued...)

program. Unit Commitment contains all economic, unit constraint, and system requirements data for the Florida Power system on an hourly basis. In addition, the program includes the contractually defined unit as a generation resource and an increase in the hourly system load equal to the actual energy block size received from applicable QFs. As determined by the execution of this program, in all hours that the contractually defined unit is operating, energy payments will be based on the Firm Energy Cost. In all hours that this unit is not operating, the energy cost paid to applicable qualifying facilities will be computed as an as-available energy cost in accordance with Florida Power's cogeneration tariffs and Rule 25-17.0825, F.A.C.

7. This computer analysis has determined that the contractually defined unit would, in fact, be scheduled off during certain minimum load hours of the day. Accordingly, on July 18, 1994, Florida Power notified the parties to the Negotiated Contracts that it will begin implementing, effective August 1, 1994, the pricing mechanism specified in the contract terms to establish the periods during which as-available energy payments will be made. (Copies of the notification letters sent to the Negotiated Contract parties are attached hereto as Exhibit A.) By this Petition, Florida Power seeks confirmation that its use of the pricing mechanism specified in the Negotiated Contracts to determine the periods that the contractually defined unit would not have been operated is the correct method to determine the applicability of as-available energy payments pursuant to Rule 25-17.0832(4)(b), F.A.C., and Section 9.1.2 of the Negotiated Contracts.

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[3](...continued)
Multiplier of 0.8) are removed and included in the capacity payment. Of the 11 Negotiated Contracts, six are Option A, one is Option B, and four are Option C.

Need For Declaratory Statement

8. Florida Power has a real and immediate need for the requested declaratory statement as it relates to its own particular circumstances only. The Commission's declaratory statement as to the correct application of Rule 25-17.0832, F.A.C., and its orders approving the Negotiated Contracts will ensure that Florida Power and its customers pay no more than avoided cost for energy purchased from the QFs in question. Florida Power believes that one of the parties to the Negotiated Contracts (and possible others) will dispute the use of the pricing mechanism specified in those contracts to determine the need to make as-available energy payments instead of firm energy payments. A timely resolution of this essential question will enable Florida Power to continue in an orderly manner with the implementation of the pricing mechanism provided by the contracts.

WHEREFORE, Florida Power Corporation requests that the Commission enter an order declaring that the utilization of the pricing mechanism specified in Section 9.1.2 of the Negotiated Contracts to determine the periods when as-available energy payments are to be substituted for firm energy payments, complies with Rule 25-17.0832(4)(b), F.A.C., and the orders of this Commission approving the Negotiated Contracts.

Respectfully submitted,

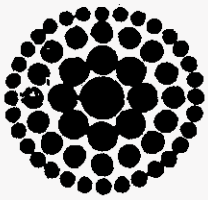
OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By _____

James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

EXHIBIT "A"

NOTIFICATION LETTERS TO NEGOTIATED CONTRACT PARTIES



Florida
Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Orange Cogen Limited
c/o Ark/CSW Development Partnership
23293 South Pointe Drive
Laguna Hills,CA 92653

Re: Dispatchable Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between CFR/Biogen and Florida Power Corporation dated November 19, 1991

ATTN: President

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC is implementing these provisions of the contract and tariffs. Likewise, the status of the "avoided unit" with the dispatchable characteristics specified in the Option "B" contract will be subject to being cycled off especially during daily minimum load conditions.

Presently, FPC doesn't have current avoided cost estimates for 1995, but we are presently updating this information. As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6505 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

cc: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

NationsBank of Florida, NA
600 Peachtree Street, N.E.
Atlanta, GA 30308

TIFD-C Inc.
c/o GECC
1600 Summer Street, 6th Floor
Stamford, Connecticut 06927
Attn: Manager Energy Portfolio Administration

GECC
1600 Summer Street
Stamford, Connecticut 06927

Lake Cogen, Ltd.
1551 N. Tusdin Avenue, Suite 900
Orange, CA 92668

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Lake Cogen Limited and Florida Power Corporation Dated March 13, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bhl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

18-Jul-94

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Flo..da
Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Mr. Macauley Whiting, Jr.
Ridge Generating Station
400 North New York Ave., Suite 101
Winter Park, Florida 32789

Wheelabrator Ridge Energy
3131 K-Ville Avenue
Auburndale, Florida 33823

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Ridge Generating Station Limited Partnership and Florida Power Corporation Dated March 8, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for

Calculating Avc Energy Costs on file with the FP' ..ll provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDN/bhl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

18-Jul-94

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Mr. Jerome L. Glazer
Auburndale Power Partners
12500 Fair Lakes Circle, Suite 420
Fairfax, Virginia 22033

Mr. Don Fields
Executive Director
Auburndale Power Partners
1501 Derby Avenue
Auburndale, Florida 33823

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between El Dorado Energy Company and Florida Power Corporation Dated March 18, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for

Calculating Avoid[illegible] nergy Costs on file with the FPSC provide for the payment of "as available energy c[illegible]", rather than "firm energy costs" wh[illegible] the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bbl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

18-Jul-94

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

Via: Overnight and Facsimile

Mr. Roger Fernandez
Cargill Fertilizer, Inc.
8813 Highway 41 South
Riverview, FL 33569

Re: Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Seminole Fertilizer Corporation and Florida Power Corporation dated October 30, 1990

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as

available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or scheduled off. Please be advised FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. Note that an "avoided unit" with the characteristics specified in the Option "C" contracts is not expected to be cycled off during August. However, the status of the "avoided unit" with the characteristics specified in the Option "C" contracts is potentially subject to being cycled off. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts and Administration

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

18-Jul-94

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option C)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option C)
1	$18.46	ON	$20.14	ON
2	17.39	ON	18.42	ON
3	17.27	ON	17.38	ON
4	17.11	ON	17.48	ON
5	17.15	ON	17.35	ON
6	17.34	ON	18.43	ON
7	20.76	ON	21.23	ON
8	21.15	ON	21.41	ON
9	22.00	ON	22.19	ON
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	ON	22.46	ON

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Flo..da Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Bankers Trust Company
Four Albany Street
New York, NY 10015
Attn: Corporate Trust & Agency Group

The Prudential Insurance Company of America
Four Gateway Center
Newark, NY 07102-4069
Attn: Project Management Team

The Prudential Insurance Company of America
Three Gateway Center
Newark, NJ 07102-4077
Attn: Asset Unit/IAU Management

Pasco Cogen, Ltd.
220 East Madison Street, Suite 526
Tampa, FL 33602
Attn: Elliot White

Dade Power Incorporated
1551 N. Tustin Avenue, Suite 300
Orange, CA 92668

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Pasco Cogen Limited and Florida Power Corporation Dated March 13, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load

problem. Accor' ly, we are in the process of dev' ing a curtailment procedure for implementation p uant to Rule 25-17.086 of the Florid ublic Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bhl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

18-Jul-94

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

Via: Overnight and Facsimile

Tiger Bay Limited Partners
2500 City West Boulevard
Houston, TX 77042

The Fuji Bank and Trust Company
Two World Trade Center
New York, NY 10048

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Ecopeat Avon Park and Florida Power Corporation Dated March 28, 1991.

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its

contracts, tariffs and the FPSC Rules effective August 1994. To aid you in assessing the potential impact of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. Note that an "avoided unit" with the characteristics specified in the Option "C" contracts is not expected to be cycled off during August. However, the status of the "avoided unit" with the characteristics specified in the Option "C" contracts is potentially subject to being cycled off. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan

Robert D. Dolan
Manager Cogeneration Contracts and Administration

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

18-Jul-94

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option C)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option C)
1	$18.46	ON	$20.14	ON
2	17.39	ON	18.42	ON
3	17.27	ON	17.38	ON
4	17.11	ON	17.48	ON
5	17.15	ON	17.35	ON
6	17.34	ON	18.43	ON
7	20.76	ON	21.23	ON
8	21.15	ON	21.41	ON
9	22.00	ON	22.19	ON
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	ON	22.46	ON

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Mr. Dennis Carter
Assistant County Manager
Metro-Dade Center
111 NW 1st. St., 29th Floor
Miami, FL 33128

Ms. Gail Fels
Assistant County Attorney
Metro-Dade Center
111 NW 1st. St., Suite 2800
Miami, FL 33128

Mr. Juan Portuando
President
Montenay International
3225 Aviation Ave., 4th Floor
Coconut Grove, FL 33133

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Dade County and Florida Power Corporation Dated March 15, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please advised that FPC has now determi that it would not be operating an "avoided unit" w .ne characteristics specified in Sectio. 1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bhl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

18-Jul-94

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

Via: Overnight and Facsimile

Polk Power Parner, L. P.
c/o Polk Power GP, Inc.
1027 South Rainbow Boulevard
Suite 360
Las Vegas, Nevada 89128

Attention: Program Manager

TIFD VIII-J, Inc.
c/o General Electric Capital Corporation
1600 Summer Street
Stanford, Connecticut 06927

Attention: Manager -Energy Project Operation

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Mulberry Energy Company and Florida Power and the Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility Between Royster Phosphates, Inc. and Florida Power Corporation

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for

the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. Note that an "avoided unit" with the characteristics specified in the Option "C" contracts is not expected to be cycled off during August. However, the status of the "avoided unit" with the characteristics specified in the Option "C" contracts is potentially subject to being cycled off. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan

Robert D. Dolan
Manager Cogeneration
Contracts and Administration

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

18-Jul-94

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option C)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option C)
1	$18.46	ON	$20.14	ON
2	17.39	ON	18.42	ON
3	17.27	ON	17.38	ON
4	17.11	ON	17.48	ON
5	17.15	ON	17.35	ON
6	17.34	ON	18.43	ON
7	20.76	ON	21.23	ON
8	21.15	ON	21.41	ON
9	22.00	ON	22.19	ON
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
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15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
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21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	ON	22.46	ON

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Mr. Wayne A. Hinman
President
Orlando Cogen Limited, L.P.
c/o Air Products and Chemicals
7201 Hamilton Blvd.
Allentown, PA 18195-1501

The Sumitomo Bank Limited, New York Branch
One World Trade Center, Suite 954G
New York, NY 10048

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Orlando Cogen Limited, L.P. and Florida Power Corporation Dated March 13, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts)

during minimum load conditions. As you know, 25-17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bhl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination that implementation of contractual pricing mechanism for energy payments to certain qualifying facilities complies with Rule 25-17.0832, F.A.C. by Florida Power Corporation.	Docket No. 940771-EQ Submitted for filing: October 31, 1994

AMENDED PETITION

Florida Power Corporation (Florida Power or the Company) hereby petitions the Florida Public Service Commission (the Commission) for a determination that its manner of implementing the pricing mechanism specified in Section 9.1.2 of the negotiated contracts for the purchase of firm capacity and energy from certain Qualifying Facilities[1] (the Negotiated Contracts) to determine the periods when as-available energy payments are to be substituted for firm energy payments, is lawful under Section 366.051, F.S., and complies with Rule 25-17.0832(4)(b), F.A.C., and the orders of this Commission approving the Negotiated Contracts.

[1] The negotiated contracts in question (and the Commission orders approving those contracts) are between Florida Power and the following Qualifying Facilities: Seminole Fertilizer (Order No. 24099, issued February 12, 1991 in Docket No. 900917-EQ), Lake Cogen Limited, Pasco Cogen, Auburndale Power Partners, Orlando Cogen Limited, Ridge Generating Station, Dade County, Polk Power Partners - Mulberry, Polk Power Partners - Royster (Order No. 24734, issued July 1, 1991 in Docket No. 910401-EQ), EcoPeat Avon Park (Order No. 24923, issued August 19, 1991 in Docket No. 910549-EQ), and CFR BioGen (Order No. PSC-92-0129-FOF-EQ, issued March 31, 1992 in Docket No. 900383-EQ).

Introduction

On July 21, 1994, Florida Power initiated this docket by filing a Petition for Declaratory Statement which sought a declaration from this Commission that the Company's reliance on the pricing mechanism specified in Section 9.1.2 of the Negotiated Contracts to determine the periods when as-available energy payments are to be substituted for firm energy payments complies with Rule 25-17.0832(4)(b), F.A.C., and the Commission's orders approving the Negotiated Contracts. Petitions to intervene were filed by seven interested persons,[2] in which various issues of fact were raised. Thereafter, on October 6, 1994, Staff submitted a recommendation to the Commission expressing its belief that the real controversy was not whether the contractual pricing mechanism relied on by Florida Power is consistent with Rule 25-17.0832(4)(b), but whether its *implementation* of the pricing mechanism is consistent with the rule. Staff indicated that this controversy would involve disputed issues of material fact which it believed were not well suited to a declaratory statement proceeding and, accordingly, recommended that the Commission decline to answer the Company's petition. Staff noted that this would not prevent "affected parties from seeking the appropriate relief before the Commission."

Commission action on Staff's recommendation was deferred after the Company advised Chairman Deason of its willingness to resolve the concerns expressed by Staff. By this amended petition, Florida Power seeks to convert this

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[2] Petitions to intervene have been filed by Pasco Cogen Ltd,, Orlando Cogen Ltd., Metropolitan Dade County, Lake Cogen Ltd., Florida Gas Transmission Co., Ridge Generating Station, L.P., and Auburndale Power Partners Ltd. To date, none of these petitions have been granted.

docket from a declaratory statement proceeding to an adjudicatory proceeding under §120.57 F.S., and to expand the proceeding's scope to include the method by which Florida Power has implemented Section 9.1.2 of the Negotiated Contracts.

Background

At the end of 1993, Florida Power had on its system approximately 490 MWs of firm capacity provided by Qualifying Facilities (QFs). Over the next two years Florida Power expects that an additional 555 MWs of QF capacity will come on-line, for a total of approximately 1,045 MWs by the end of 1995. The 11 Negotiated Contracts in question provide approximately 735 MWs of this total QF capacity. The terms and conditions of the Negotiated Contracts are similar in most respects and, in particular, all utilize a contractually defined coal unit to provide the pricing mechanism for determining the periods during which firm or as-available energy payments should be made to the QFs. Section 9.1.2 in all but one[3] of the Negotiated Contracts provides as follows:

> Except as otherwise provided in Section 9.1.1 hereof, for each billing month beginning with the Contract In-Service Date, the QF will receive electric energy payments based on the Firm Energy Cost calculated on an hour-by-hour basis as follows: (i) the product of the average monthly inventory chargeout price of fuel burned at the Avoided Unit Fuel Reference Plant, the Fuel Multiplier, and the Avoided Unit Heat Rate, plus the Avoided Unit Variable O&M, if applicable, for each hour that the Company would have had a unit <u>with these characteristics</u> operating; and (ii) during all other hours, the

[3] In Florida Power's Negotiated Contract with CFR BioGen, the operating characteristics of the contractually defined unit specified in Section 9.1.2 of provides for a heat rate <u>curve</u> rather than a specific Avoided Unit Heat Rate. In all other respects, Section 9.1.2 of the CFR BioGen contract is the same as the other Negotiated Contracts, and the pricing mechanism applies in the same manner.

energy cost shall be equal to the As-Available Energy Cost. (Emphasis added.)

Accordingly, under this pricing mechanism, the operational status of the contractually defined unit (*i.e.*, whether that unit would be scheduled on-line or off-line) determines whether the QF is entitled to receive firm energy payments or as-available energy payments.

In light of the recent increase in the amount of QF capacity on the Florida Power system because of the Negotiated Contracts, the Company has examined the operational status of the contractually defined unit during minimum load conditions. During mild weather conditions, Florida Power's minimum daily load may drop to a low of 1,800 MWs, a level at which only the Company's most efficient base load generating units will remain on-line. To determine the operational status of the contractually defined unit under these conditions, Florida Power has conducted a computer analysis of its system that included this unit as a generating resource.

This computer analysis determined that the contractually defined unit would, in fact, be scheduled off during certain minimum load hours of the day. Accordingly, on July 18, 1994, Florida Power notified the parties to the Negotiated Contracts that it would begin implementing, effective August 1, 1994, the pricing mechanism specified in the contract terms to establish the periods during which as-available energy payments will be made. (Copies of the notification letters sent to the Negotiated Contract parties are attached hereto as Exhibit A.)

Implementation Methodology

In conducting the computer analysis of its system, Florida Power implemented the contract pricing mechanism in a manner consistent with the established methodology for calculating avoided energy costs. The status of the contractually defined unit, as defined by the payment options elected in each of the Negotiated Contracts (Options A, B or C),[4] is determined by the Company's Unit Commitment computer program. Unit Commitment contains all economic, unit constraint, and system requirements data for the Florida Power system on an hourly basis. In addition, the program includes the contractually defined unit as a generation resource and an increase in the hourly system load equal to the actual energy block size received from applicable QFs. From the output of this program, energy payments are based on the Firm Energy Cost, as defined in Section 9.1.2, in all hours that the contractually defined unit is operating. In all hours that this unit is not operating, the energy payments to applicable QFs are based on an as-available energy cost computed in accordance with Florida Power's cogeneration tariffs and Rule 25-17.0825, F.A.C.

In modeling the contractually defined unit to determine its operational status, Florida Power has utilized only those unit characteristics specified in Section 9.1.2 of the Negotiated Contracts, *i.e.*, the Avoided Unit Fuel Reference Plant,

[4] Option A provides for standard energy payments based on operating characteristics specified in Section 9.1.2 (the Avoided Unit Fuel Reference Plant fuel price, times a 1.0 Fuel Multiplier, times the Avoided Unit Heat Rate, plus the Avoided Unit Variable O&M). Option B provides the same energy payment except that the Avoided Unit Variable O&M is removed and included in the capacity payment. Option C is provides the same energy payment except that the Avoided Unit Variable O&M and 20% of the Avoided Unit fuel price (*i.e.*, a Fuel Multiplier of 0.8) are removed and included in the capacity payment. Of the 11 Negotiated Contracts, six are Option A, one is Option B, and four are Option C.

the Fuel Multiplier, the Avoided Unit Heat Rate, and the Avoided Unit Variable O&M, if applicable. Florida Power maintains that this is the methodology contemplated by the express language of Section 9.1.2 of the Negotiated Contracts and that it is fully consistent with the intent of Rule 25-17.0832(4)(b) regarding energy payments to QFs. Certain parties to the Negotiated Contracts, however, have asserted that Florida Power must make firm energy payments for all hours that a "real" unit would have operated. In modeling this "real" unit, they contend that the Company should look beyond the express terms of Section 9.1.2 and take into account the myriad of operating characteristics and constraints associated with such a unit.

As described earlier, Section 9.1.2 identifies four specific unit operating characteristics and expressly states that "the QF will receive electric energy payments based on the Firm Energy Cost ... for each hour that the Company would have had a unit with these characteristics operating;" and as-available energy payments during all other hours. The interpretation urged by the QFs would replace the emphasized contract language with far broader and inconsistent language of their own choosing, the effect of which would be to make the existing language a nullity.

Moreover, the contention that Section 9.1.2 requires the use of a fully characterized avoided unit fails to recognize that the purpose of this section is only to provide a pricing mechanism for differentiating between firm and as-available energy payments. It is neither necessary nor desirable for this purpose to establish a methodology with the sophistication and complexity that would be required to actually dispatch the Company's system. For pricing purposes, all

that is needed is a mechanism which simply compares on an hourly basis the cost of the hypothetical unit serving as a proxy for QF generation with the system incremental cost. If the hypothetical unit's cost is lower than system incremental cost, the unit would have operated and the QF will receive a firm energy payment; if the unit's cost is higher, it would not have operated and the QF will receive an as-available energy payment. This is what Section 9.1.2 calls for and what the Company's methodology implements.

This very issue was addressed in detail during the hearings held in January, 1990 to consider revisions to the Commission's cogeneration rules, including the rule on energy payments to QFs, which led to the adoption of current Rule 25-17.0832(4)(b). (A copy of this portion of the hearing transcript is attached as Exhibit B.) Under the previous rule, energy payments to QFs were determined by a relatively simple pricing mechanism that was referred to as the "lesser of" method, *i.e.*, QF payments were based on the lesser of the firm energy cost under the contract or the utility's as-available energy cost. Staff proposed a revised pricing mechanism under which QFs would receive firm energy payments "to the extent the avoided unit would have been economically dispatched" and as-available energy payments "to the extent the avoided unit would not have been economically dispatched."

During the hearing, concern was expressed that the proposed rule might unnecessarily complicate the calculation of QF energy payments compared to the simplicity of the "lesser of" approach in the then-current rule. As one utility witness stated:

> [The proposed rule] seems to imply that in our dispatch of our system, we would have to do some additional calculations which would require

> dispatching a hypothetical avoided unit, and so our dispatchers, on an hourly basis, would have to actually put in the characteristics of an avoided unit in their dispatch and make many additional calculations in order to determine whether that avoided unit would have operated.

Tr. 445, lines 7-13. However, as discussion of how the proposed rule would actually work proceeded, it became increasingly clear that the proposal was more of a refinement to the "lesser of" cost comparison than a complicated operational dispatch exercise. For example, in responding to the perceived problem in properly dispatching a combined cycle avoided unit where the utility did not actually have such a unit on its system, a witness explained:

> [T]hat's really not a problem because it winds up being the combined cycle's cost, which is a function of its heat rate and fuel cost, which gets compared with your system incremental cost. So it's really a cost comparison.

Tr. 448, lines 18-21. With respect to the perceived problem of modeling multiple avoided units, the witness explained:

> And I think that start-up considerations on multiple avoided hypothetical units would make the dispatcher's life very complicated in terms of calculating recommitment schedules, on and on and on. I can see that would be a spot at which you would not want to take on.
>
> The decision, though, if you ignored that complexity, and said 'We'll just look at the incremental cost curves every hour and see whether the avoided unit has a cost that's lower than the incremental cost curve, which means it would have been dispatched, or if the avoided units' cost is higher than the incremental cost curve that exists for that particular hour, it would not have been dispatched.' And that's sort of a simple comparison that we can incorporate into our economic dispatch and pricing. And that's a little-- I think that meets with the intent of the proposed Staff rule.

Tr. 449, lines 7-21.

The testimony disclosed that the objective of the proposed revision to the QF energy payment rule was only to achieve an incremental improvement in the accuracy of the "lesser of" rule by allowing QFs sales to be priced partially at

firm energy costs and partially at as-available energy costs in a single hour based on a less than fully loaded avoided unit. When asked what was broken with the then-current rule, the Staff witness explained as follows:

> Basically what's broken is that we're getting more and more cogeneration there, and we're facing questions if the qualifying facility, or the avoided unit, would have been fully dispatched under the existing language, there is no problem. If the qualifying facility would not have been turned on under the existing language, there is no problem, he gets paid as-available. If the QF would have been partially turned on, then instead of getting paid, say, 50% based on his fuel that that avoided unit would have been turned on, and 50% based on as-available energy costs, he would be getting paid 100% as-available energy costs. So I think he would be getting paid a little bit lower price under the existing rules than if we reflect the dispatch of that avoided unit.

Tr. 453, lines 6-18.

As the testimony on this issue concluded, it became evident that the witnesses had reached a consensus that the revised rule, even with this incremental improvement, was expected to produce energy pricing results very similar to the "lesser of" provision in the old rule. The testimony in Exhibit B contains numerous statements by witnesses that the effect of the old and new language of the energy pricing rule was expected to be essentially the same, and, in addition, that the provisions of the new rule should be implemented in a simple, direct manner. (*See*, Tr. 448, lines 16-21; Tr. 449, lines 10-21; Tr. 462, lines 16-18; Tr. 463, lines 3-4 and 6-12.) This consensus was summarized by Commissioner Easley as follows:

> Well, it sure sounds to me like you don't need an awful lot of post-hearing comments other than to make sure in your own calculations that it is half a dozen of one and six of the other. My inclination would be to go with whatever is the easiest way of getting you to the same answer.

Tr. 463, lines 13-17.

In contrast to this clear direction regarding the implementation of energy pricing under the new rule, several QFs have construed the pricing language of Section 9.1.2 to mean that the narrowly defined unit described in this section must operate the same way that an actual "bricks and mortar" generating unit would operate. For example, one QF has asserted that "the negotiated contract requires FPC to model that unit's interaction with FPC's system utilizing the pertinent physical operating characteristics and idiosyncracies of an actual coal unit and FPC's actual dispatch criteria, just as it would have done had it constructed and operated the pulverized coal unit." (Orlando Cogen Limited's Motion To Dismiss, page 9.) This describes just the kind of complicated, difficult to administer procedure that was addressed and rejected as a viable approach to implementing the new version of the QF energy pricing rule.

Florida Power has implemented the pricing of QF energy in a manner consistent with the intent of the Commission's energy pricing rule, as well as the express language of the Negotiated Contracts. The energy payments to QFs resulting from this implementation closely approximates the payments that would have resulted under a "lesser of" calculation. While the Company has not calculated the energy payments QFs would receive under their more complicated dispatch approach due to the difficulty involved, it is clear that they would receive firm energy payments for many hours when the as-available price is substantially lower. Since the "lesser of" pricing approach has been recognized as a yardstick for measuring the appropriateness of energy payments under the new pricing rule, such a result would clearly be contrary to the new rule's intent.

WHEREFORE, Florida Power Corporation requests that the Commission enter an order determining that the manner in which the Company has implemented the pricing mechanism specified in Section 9.1.2 of the Negotiated Contracts to determine the periods when as-available energy payments are to be substituted for firm energy payments, is lawful under Section 366.051, F.S., and complies with Rule 25-17.0832(4)(b), F.A.C., and the orders of this Commission approving the Negotiated Contracts.

Respectfully submitted,

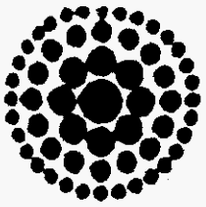
OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By _____

James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

EXHIBIT "A"

NOTIFICATION LETTERS TO NEGOTIATED CONTRACT PARTIES



Florida
Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Orange Cogen Limited
c/o Ark/CSW Development Partnership
23293 South Pointe Drive
Laguna Hills,CA 92653

Re: Dispatchable Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between CFR/Biogen and Florida Power Corporation dated November 19, 1991

ATTN: President

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC is implementing these provisions of the contract and tariffs. Likewise, the status of the "avoided unit" with the dispatchable characteristics specified in the Option "B" contract will be subject to being cycled off especially during daily minimum load conditions.

Presently, FPC doesn't have current avoided cost estimates for 1995, but we are presently updating this information. As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6505 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

cc: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

NationsBank of Florida, NA
600 Peachtree Street, N.E.
Atlanta, GA 30308

TIFD-C Inc.
c/o GECC
1600 Summer Street, 6th Floor
Stamford, Connecticut 06927
Attn: Manager Energy Portfolio Administration

GECC
1600 Summer Street
Stamford, Connecticut 06927

Lake Cogen, Ltd.
1551 N. Tusdin Avenue, Suite 900
Orange, CA 92668

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Lake Cogen Limited and Florida Power Corporation Dated March 13, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please advised that FPC has now determine hat it would not be operating an "avoided unit" with t haracteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bbl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Mr. Macauley Whiting, Jr.
Ridge Generating Station
400 North New York Ave., Suite 101
Winter Park, Florida 32789

Wheelabrator Ridge Energy
3131 K-Ville Avenue
Auburndale, Florida 33823

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Ridge Generating Station Limited Partnership and Florida Power Corporation Dated March 8, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for

Calculating Avoid Energy Costs on file with the FPSC ll provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDN/bbl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day		Typical Weekend Day	
	As Available Energy Price $/MWH	1991 Avoided Unit Status (Option A)	As Available Energy Price $/MWH	1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Mr. Jerome L. Glazer
Auburndale Power Partners
12500 Fair Lakes Circle, Suite 420
Fairfax, Virginia 22033

Mr. Don Fields
Executive Director
Auburndale Power Partners
1501 Derby Avenue
Auburndale, Florida 33823

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between El Dorado Energy Company and Florida Power Corporation Dated March 18, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for

Calculating Avoid Energy Costs on file with the FPSC I provide for the payment of its available energy co: , rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bbl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day		Typical Weekend Day	
	As Available Energy Price $/MWH	1991 Avoided Unit Status (Option A)	As Available Energy Price $/MWH	1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

Via: Overnight and Facsimile

Mr. Roger Fernandez
Cargill Fertilizer, Inc.
8813 Highway 41 South
Riverview, FL 33569

Re: Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Seminole Fertilizer Corporation and Florida Power Corporation dated October 30, 1990

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as

available energy cc ", rather than "firm energy costs" wh. he "avoided unit" would not have been operated or is heduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. Note that an "avoided unit" with the characteristics specified in the Option "C" contracts is not expected to be cycled off during August. However, the status of the "avoided unit" with the characteristics specified in the Option "C" contracts is potentially subject to being cycled off. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts and Administration

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option C)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option C)
1	$18.46	ON	$20.14	ON
2	17.39	ON	18.42	ON
3	17.27	ON	17.38	ON
4	17.11	ON	17.48	ON
5	17.15	ON	17.35	ON
6	17.34	ON	18.43	ON
7	20.76	ON	21.23	ON
8	21.15	ON	21.41	ON
9	22.00	ON	22.19	ON
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	ON	22.46	ON

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Bankers Trust Company
Four Albany Street
New York, NY 10015
Attn: Corporate Trust & Agency Group

The Prudential Insurance Company of America
Four Gateway Center
Newark, NY 07102-4069
Attn: Project Management Team

The Prudential Insurance Company of America
Three Gateway Center
Newark, NJ 07102-4077
Attn: Asset Unit/IAU Management

Pasco Cogen, Ltd.
220 East Madison Street, Suite 526
Tampa, FL 33602
Attn: Elliot White

Dade Power Incorporated
1551 N. Tustin Avenue, Suite 300
Orange, CA 92668

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Pasco Cogen Limited and Florida Power Corporation Dated March 13, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load

problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bhl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

Via: Overnight and Facsimile

Tiger Bay Limited Partners
2500 City West Boulevard
Houston, TX 77042

The Fuji Bank and Trust Company
Two World Trade Center
New York, NY 10048

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Ecopeat Avon Park and Florida Power Corporation Dated March 28, 1991.

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its

contracts, tariffs a he FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts or the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. Note that an "avoided unit" with the characteristics specified in the Option "C" contracts is not expected to be cycled off during August. However, the status of the "avoided unit" with the characteristics specified in the Option "C" contracts is potentially subject to being cycled off. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration Contracts and Administration

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option C)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option C)
1	$18.46	ON	$20.14	ON
2	17.39	ON	18.42	ON
3	17.27	ON	17.38	ON
4	17.11	ON	17.48	ON
5	17.15	ON	17.35	ON
6	17.34	ON	18.43	ON
7	20.76	ON	21.23	ON
8	21.15	ON	21.41	ON
9	22.00	ON	22.19	ON
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	ON	22.46	ON

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Mr. Dennis Carter
Assistant County Manager
Metro-Dade Center
111 NW 1st. St., 29th Floor
Miami, FL 33128

Ms. Gail Fels
Assistant County Attorney
Metro-Dade Center
111 NW 1st. St., Suite 2800
Miami, FL 33128

Mr. Juan Portuando
President
Montenay International
3225 Aviation Ave., 4th Floor
Coconut Grove, FL 33133

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Dade County and Florida Power Corporation Dated March 15, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please advised that FPC has now determine hat it would not be operating in "avoided unit" with characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bhl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

Via: Overnight and Facsimile

Polk Power Partner, L. P.
c/o Polk Power GP, Inc.
1027 South Rainbow Boulevard
Suite 360
Las Vegas, Nevada 89128

Attention: Program Manager

TIFD VIII-J, Inc.
c/o General Electric Capital Corporation
1600 Summer Street
Stanford, Connecticut 06927

Attention: Manager -Energy Project Operation

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Mulberry Energy Company and Florida Power and the Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility Between Royster Phosphates, Inc. and Florida Power Corporation

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for

the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts) during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. Note that an "avoided unit" with the characteristics specified in the Option "C" contracts is not expected to be cycled off during August. However, the status of the "avoided unit" with the characteristics specified in the Option "C" contracts is potentially subject to being cycled off. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan

Robert D. Dolan
Manager Cogeneration
Contracts and Administration

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option C)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option C)
1	$18.46	ON	$20.14	ON
2	17.39	ON	18.42	ON
3	17.27	ON	17.38	ON
4	17.11	ON	17.48	ON
5	17.15	ON	17.35	ON
6	17.34	ON	18.43	ON
7	20.76	ON	21.23	ON
8	21.15	ON	21.41	ON
9	22.00	ON	22.19	ON
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	ON	22.46	ON

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

Florida Power
CORPORATION

July 18, 1994

VIA: Overnight and Facsimile

Mr. Wayne A. Hinman
President
Orlando Cogen Limited, L.P.
c/o Air Products and Chemicals
7201 Hamilton Blvd.
Allentown, PA 18195-1501

The Sumitomo Bank Limited, New York Branch
One World Trade Center, Suite 954G
New York, NY 10048

Re: Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Orlando Cogen Limited, L.P. and Florida Power Corporation Dated March 13, 1991

Dear Ladies and Gentlemen:

As we believe you are aware, Florida Power Corporation (FPC) has become very concerned about the reliability and economics of its electric system during and following low load conditions. During mild weather conditions in the fall, winter and spring months, FPC's system load may range from 1,800 mw to 4,200 mw or higher on any given day, with load increases as great as 600 mw per hour. In order to meet our obligation to provide safe, reliable and economic electric service to all of our customers, it is essential for FPC to maintain effective control over all of its generation resources.

FPC has been taking steps to address its minimum load problem for over twelve (12) months. During this period, we have made significant progress in reducing the minimum operational load that our coal plants can maintain. In addition, we have held extensive discussions with the parties involved to identify workable, cooperative solutions. As a result, many of our qualifying facilities have agreed to reduce or curtail their output during minimum load conditions. However, those agreements have not provided an adequate resolution to our minimum load problem. Accordingly, we are in the process of developing a curtailment procedure for implementation pursuant to Rule 25-17.086 of the Florida Public Service Commission (FPSC). We anticipate filing this procedure with the FPSC as soon as it is complete.

In addition, please be advised that FPC has now determined that it would not be operating an "avoided unit" with the characteristics specified in Section 9.1.2 of our Negotiated Contracts for the Purchase of Firm Capacity and Energy from a Qualifying Facility (Negotiated Contracts)

during minimum load conditions. As you know, Rule 25--17.0832(4)(b) of the FPSC, Section 9.1.2 of our Negotiated Contracts and FPC's tariff governing the Methodology for Calculating Avoided Energy Costs on file with the FPSC all provide for the payment of "as available energy costs", rather than "firm energy costs" when the "avoided unit" would not have been operated or is scheduled off. Please be advised that FPC will be implementing these provisions of its contracts, tariffs and the FPSC Rules effective August 1, 1994. To aid you in assessing the potential impacts of the implementation of the indicated contract, tariff, and FPSC Rule provisions, we are attaching data reflecting the manner in which the System Planning Department and the Energy Control Center forecast that the "avoided unit" would be dispatched on FPC's generation system during a typical week day and typical weekend day during the month of August, 1994. The attached data also includes our forecasts of the prices we would pay for "as available energy" to qualifying facilities making sales based upon FPC's as available energy rate for a given hour.

As you know, our cogeneration costs are passed directly to our customers under the applicable FPSC Rules. Accordingly, we have a duty to comply with the provisions of our contracts, tariffs, and the FPSC Rules. At the same time, we would welcome the opportunity to discuss any adverse impacts that you perceive that the operation of these contract, tariff and rule provisions may have upon your business operations to determine whether or not we can agree upon a mechanism to minimize or avoid any such adverse impacts. Representatives of FPC are available to immediately to discuss these matters. Please contact Lee Schuster at (813) 824-6506 regarding any questions concerning the scheduling of the "avoided unit" and Allen Honey at (813) 866-4523 regarding questions about potential curtailments.

Sincerely,

Robert D. Dolan

Robert D. Dolan
Manager Cogeneration
Contracts & Administration

RDD/bbl

c: L. D. Brousseau
J. P. Fama
M. B. Foley, Jr.
A. J. Honey
L. G. Schuster

Florida Power Corporation
As-Available Energy Price Forecast
For the Month of August 1994

Hour	Typical Week Day: As Available Energy Price $/MWH	Typical Week Day: 1991 Avoided Unit Status (Option A)	Typical Weekend Day: As Available Energy Price $/MWH	Typical Weekend Day: 1991 Avoided Unit Status (Option A)
1	$18.46	OFF	$20.14	OFF
2	17.39	OFF	18.42	OFF
3	17.27	OFF	17.38	OFF
4	17.11	OFF	17.48	OFF
5	17.15	OFF	17.35	OFF
6	17.34	OFF	18.43	OFF
7	20.76	OFF	21.23	OFF
8	21.15	OFF	21.41	OFF
9	22.00	OFF	22.19	OFF
10	24.92	ON	24.72	ON
11	29.43	ON	29.08	ON
12	49.72	ON	48.19	ON
13	53.60	ON	50.15	ON
14	55.90	ON	54.21	ON
15	55.20	ON	54.33	ON
16	55.30	ON	48.63	ON
17	55.25	ON	49.54	ON
18	55.18	ON	49.52	ON
19	52.87	ON	56.51	ON
20	53.50	ON	51.55	ON
21	50.30	ON	47.86	ON
22	49.24	ON	30.15	ON
23	26.74	ON	27.67	ON
24	21.47	OFF	22.46	OFF

Note:

1) The hourly as-available energy prices shown above apply to qualifying facilities making sales based on FPC's as-available energy rate in that hour. In those hours when a qualifying facility is entitled to firm energy cost payments, those payments will be computed as specified by the qualifying facility's contract with FPC.

2) The energy block size used to compute the hourly avoided energy cost is as prescribed by FPSC Rule 25-17.0825. The projected energy block size is determined on an hourly basis based on the terms of FPC's contracts with qualifying facilities.

3) The status of the 1991 avoided unit is based on the unit characteristics defined in the contract for purchase of firm capacity and energy from the applicable qualifying facilities.

4) This forecast is provided for planning purposes only. Actual as-available energy payments made by FPC will be computed based on the actual energy block size and avoided energy cost for each hour as specified by FPC's cogeneration tariff.

EXHIBIT "B"

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of	Docket No. 891049-EU
Amendment of Rules 25-17.081, 25-17.082, 25-17.0825, 25-17.083, 25-17.0831, 25-17.0832, 25-17.0833, 25-17.0834, 25-17.087, 25-17.088, 25-17.0882, 25-17.0883, 25-17.089.	RULE HEARING THIRD - DAY VOLUME - IV Pages 441 through 578

FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0871

Thursday, January 11, 1990

Met pursuant to adjournment at 8:30 a.m.)

BEFORE: COMMISSIONER MICHAEL McK. WILSON, Chairman
COMMISSIONER GERALD L. GUNTER
COMMISSIONER JOHN T. HERNDON
COMMISSIONER THOMAS M. BEARD
COMMISSIONER BETTY EASLEY

APPEARANCES:

(As heretofore noted.)

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to those ideas and language when they file their posthearing comments.

MS. MILLER: And we'll slip that date a week, also. We'll slip the CSAR, basically, a week on the rest of the stuff.

CHAIRMAN WILSON: All right.

MS. HARVEY: We've got one final issue that I'd like to address in. Rule 25-17.0832, and that's avoided energy payments. That's on Page 29, starting on Line 17.

Staff has proposed that avoided --

COMMISSIONER GUNTER: What page are you on?

CHAIRMAN WILSON: 29.

MS. HARVEY: Page 29. Staff has proposed that during the times that the avoided unit would have been dispatched, that qualifying facilities be paid the energy cost of that avoided unit; and when it wouldn't have been dispatched, that QFs be paid as-available energy. That is my understanding of what the original Rule 25-17.083 was meant to do in pricing firm energy based on the lesser of the energy of the avoided unit and as-available energy costs.

We have had some questions and comments that the wording as it is now in the proposed rule is -- would be pretty difficult to actually implement, and I'd like to get some comments from the parties on whether they think they could implement this language. Various questions arise, such as, how do you determine whether the voided unit would have been

dispat ed in any given hour? What availability factor should be assumed for the avoided unit? Should seasonal maintenance be considered? There is a lot of questions that arise, and I'd like to hear comments from the parties on this issue.

MR. GILLETTE: Commissioners, speaking for Tampa Electric, we expressed some concerns to the Staff about the language in the rule because it seems to imply that in our dispatch of our system, we would have to do some additional calculations which would require dispatching a hypothetical avoided unit, and so our dispatchers, on a hourly basis, would have to actually put in the characteristics of an avoided unit in their dispatch and make many additional calculations in order to determine whether that avoided unit would have operated.

We're concerned that that complicates our dispatchers' hour-by-hour activities unnecessarily, and that we believe that the "lesser of" language, the language that was in the previous rule which said, "You will pay the cogenerators based on the lesser of the system avoided cost or the cost of the avoided unit," gets you to the same place as the new language with a lot less complication.

Some of the difficulty we have with the new language is that Tampa Electric already has cogenerators that are being paid on the statewide standard offer, or will be paid on the statewide standard offer, when those avoided units would have come into service. And we believe that those units, based on the language

in the new rule, there are at least two additional calculations that our dispatchers would have to do every hour, and to the extent that there would be another avoided unit that would come out of this hearing for Tampa Electric, there is yet another calculation that our dispatchers would have to do. So we feel like the specter of multiple avoided units for our utilities could really complicate our dispatcher's job. And as Ms. Harvey mentioned, we have a concern that we can run into some real questions on whether or not that avoided unit, that hypothetical unit that we have in our dispatch, really would have been dispatched every hour, and should we have hypothetical forced outages and hypothetical planned maintenance on this unit. So we believe that the "lesser of" language will work on a hourly basis and accomplish what we think the Staff is attempting to accomplish.

MR. SEXTON: Without hearing any additional comments from the other utilities on feasibility and stuff, our concern with this rule dealt with, to a large extent, the Commission Staff's proposal to consider combined cycle units as avoided units, and the Commission's decision to do so in the last planning hearing.

The essential problem with the way the rule is currently worded in that type of unit is that if the unit is avoided, there is no way to properly price the energy that would have come out of that unit, because there is no real proxy for it

on the system.

When you have a coal unit, you can do the lesser of because you have got coal units running, and you can identify when you would have expected the avoided unit to be running from a reasonable standpoint, and identify the lesser of because you've got when it's running and when it's not. The base load unit tends to run close to its availability, and with the combined cycle unit running on gas, the energy price is very important, because you are basically trading that off for the capital costs if you're going to be taking a contract for that. And the accuracy of pricing of the energy is important to cogenerators. If you stay with the lesser of, and you don't have a combined cycle unit on system to use as a proxy. You're basically paying as available because there isn't any combined cycle unit that you can say "that unit is on; the avoided unit would have been on. That's your price."

Our preference, frankly, just to reduce uncertainty, would just take the projected dispatch of the avoided unit that was used for planning purposes and just spread that across the year. And when that unit would have dispatched, according to the hypothetical, those hours is what you would pay the avoided unit price. The hours that it would not have been running, you'd pay the as-available price. That's a simpler model then actually having to do a hypothetical dispatch and do the additional computations.

As far as whether the unit really would dispatch or not, you're basing your prices for cogenerators on the assumption that it's going to dispatch just this model; that it's going to have the availabilities and forced outage rates, and the economic factors that are written down on paper. And I think if it was good enough for planning, it's good enough for putting an energy price in, at least for purposes of saying when you expect it would have run had it been built.

MR. SEELKE: Commissioners, I'd like to comment on Mr. Sexton's comments.

We're already looking, on our system at contracts with two avoided unit dates; the '92 avoided coal plant and a '95 avoided coal plant, both of which have slightly different heat rates to them. And we're already anticipating being able to handle multiple avoided units.

From the standpoint of not being able to properly represent a combined cycle if you don't have one on your system, that's really not a problem because it winds up being the combined cycle's cost, which is a function of its heat rate and fuel cost, which gets compared with your system incremental cost. So it's really a cost comparison. And you can do that whether you're burning gas or any other fuel, and if you don't have that on your system, it still can blend into the economics. It's just like we do broker quotes, whether we're buying something from another utility that we don't have on our system is irrelevant.

It's a cost issue.

So I don't think that's a real concern and we can do it hourly.

The economic dispatch, though, involves really two considerations on the unit. One is was the unit started up? And second, what level did it run if it was started?

And I think that start-up considerations on multiple avoided hypothetical units would make the dispatcher's life very complicated in terms of calculating recommitment schedules, on and on and on. I can see that would be a spot at which you would not want to take on.

The decision, though, if you ignored that complexity, and said "We'll just look at the incremental cost curves every hour and see whether the avoided unit has a cost that's lower than the incremental cost curve, which means it would have been dispatched, or if the avoided units cost is higher than the incremental cost curve that exists for that particular hour, it would not have been dispatched." And that's sort of a simple comparison that we can incorporate into our economic dispatch and pricing. And that's a little -- I think that meets with the intent of the proposed Staff rule.

I might -- I've got some suggested wording additions that are not in my comments on the proposed rule that I'd just like go ahead and introduce at this time. It's on 25-17.0832(4)(b). Page 29.

The language I would like to add starts with line 18, "To the extent that the avoided unit would not have been economically dispatched, the avoided energy cost shall be the as-available avoided energy cost of the purchasing utility." That's fine. What I'd like to add is this language: "During these periods, firm energy purchased from qualifying facilities shall be treated as as-available energy for purposes of determining the megawatt block size in 25-17.0825(2)(c)," which where the safely energy calculations are referenced. That gets us a block size that's variable for as-available energy calculations, and essentially when the unit would not have been dispatched, the price that's paid -- but the QF is generating -- the price that's paid at those hours is basically an as-available price for the energy that's being delivered. And that gives you a variable block size from the standpoint of calculating the as-available energy.

MS. HARVEY: We support that. I think that in terms of calculating the as-available energy block size, every qualifying facility who is being paid the as-available energy price should be part of that block size. So I support that language.

MR. SEELKE: And when the as-available price is above the voided unit's price, then the block size diminishes by that?

MS. HARVEY: Yes. When they are being paid their avoided unit energy cost they should not be part of the as-available energy block size.

MR. SEELKE: We are in the same thinking.

In terms of addressing availability, forced outage rates and maintenance, I hadn't really considered that until I saw some comments of some other parties here. And I'll have to think about how to do that. It may wind up being for forced outages we merely adjust the block size to an expected value block size. That's one thought on the top of my head. But I'd have to do some thinking, and I'd like to reserve the right to put some language in on our comments that I think I'd like to just go back after the hearing and think about.

MR. CORN: John, the only thing, when I think about, and maybe discuss here too, is some of the discussion seems to be centering around the whole block of the units is dispatched. What are we going to do, or how should we approach then if the unit is only partially dispatched?

MR. SEELKE: Dennis, that's a good point, and another refinement. If we had the avoided unit, if we specified not only the full load heat rate but incremental heat rates, we could reflect partial dispatch of the avoided unit, which would be -- would be another refinement. We could handle that.

MR. CORN: Yeah, I see it would be, and if -- that most likely it could be handled -- I just wondered if the price that you would end up paying would be that much different than the price you would get to on the "lesser of" comparison.

MR. SEELKE: I don't think it would be that much

different because there would be those hours where the incremental heat rate of the unit -- Commissioners, what Mr. Corn is referring to is those hours where it's -- you're in a twilight zone between the unit is off or the unit is fully running, and you've got the -- the avoided unit would have been partially running and partially loaded, and to reflect that refinement requires that we -- instead of having just a flat out operating cost, we reflect the operating cost over the range of possible outputs from the avoided unit

MR. CORN: Rather than just having a heat rate set point then you have to have the whole incremental heat rate.

MR. SEELKE: You have to have the whole incremental heat rate. And that's how we dispatch our own facilities. I don't think it would be a problem to put it in there. I don't think it would change the pricing that much, because I feel you would be refining the calculation within a band of hours that you were neither fully loaded nor shutdown.

MR. CORN: Yeah.

MR. SEELKE: I don't mind doing it in order to get a little more accuracy. The computer doesn't mind doing it either, so.

MR. BEASLEY: Commissioners, we would suggest to you that the existing language of the rule produces dollar for dollar the same level of compensation that all of these various recalculations and permutations would require. And Mr. Gillette

is prepared to explain to you how that would --

COMMISSIONER BEARD: Before you do that let me ask Staff, because the first question that pops in my mind is what are we fixing here other than the opportunity for a nuclear engineer to be employed in these calculations? What's broken?

MS. HARVEY: Basically what's broken is that we're getting more and more cogeneration there, and we're facing questions if the qualifying facility, or the avoided unit, would have been fully dispatched under the existing language, there is no problem. If the qualifying facility would not have been turned on under the existing language, there is no problem, he gets paid as-available. If the QF would have been partially turned on, then instead of getting paid, say, 50% based on his fuel that that avoided unit would have been turn on, and 50% based on as-available energy costs, he would be getting paid 100% as-available energy costs. So I think he would be getting paid a little bit lower price under the existing rules than if we reflect the dispatch of that avoided unit.

COMMISSIONER BEARD: Well, for example, on Christmas Eve what would the cogenerator have been getting paid? Significantly less than they --

MS. HARVEY: Yes. On Christmas Eve the incremental --

COMMISSIONER BEARD: How would you use that as an example? In other words, we know on Christmas Eve they --

MS. HARVEY: They would have been paid the energy cost of their own unit, because the incremental energy cost of the utility was much higher than that of the avoided unit; therefore, he would be paid as if he were fully dispatched based on his own energy cost. Basically it's --

COMMISSIONER BEARD: That's right. They get paid the lesser of.

MS. HARVEY: And the lesser of is meant to mimic the dispatch of the unit.

COMMISSIONER BEARD: That raises the question. There has been comments about cogenerators getting paid -- I guess that's just on as-available they get paid system average period?

MS. HARVEY: They get incremental energy cost for as-available. If they are an as-available energy customer they get the incremental cost; what it would cost to generate the next block of power.

COMMISSIONER BEARD: Not system average.

MS. HARVEY: No.

COMMISSIONER EASLEY: How far down do you take these refinements before they are cost effective? I mean, you know, is this one of these things where it levels itself out without all of the refinements, or -- I mean we have been trying to eliminate all the peaks valleys and various and sundry things. With the refinments are we creating peaks and valleys, or will it finally straight line itself?

MS. HARVEY: That's basically why I'm asking this question. I think that the language that we've proposed has a potential of much more -- of more accurately paying the qualifying facilities what they should be paid. And the question is refining it to that extent going to cost so much that it's not worth it; that we're already close, very close to being accurate, and that this refinement isn't worth it. And the question is, is it worth it?

COMMISSIONER EASLEY: Because I'm hearing about all the refinements but I'm not hearing about whether it's worth it. In fact, one company said it really isn't going to make that much difference.

MR. GIACALONE: Commissioners, may I make a proposal or suggestion? Perhaps the easiest way to do it to make it less complex is, you take all the fixed costs and you put it in the fixed portion of the payment, and take the energy cost, take the average -- I think most of us would be willing to live with the average -- that would sort of make it easy for the utilities to calculate. It would certainly make it easier for us to figure out what we're getting paid, and it would make it a hell of a lot less complex.

MR. NIXON: Be glad to. (Laughter)

MR. SEIDMAN: Oh, please, no. We wouldn't live with that.

MR. GIACALONE: The other suggestion, which would make

it just as easy, is flow through the actual cost; The actual field cost, let it flow right through.

MR. SEELKE: I think that's what we're trying to figure out how to determine is the actual fuel cost, which is a function of how the unit would have been dispatched.

MR. GIACALONE: I'm saying the actual fuel cost on the unit that you've got. As consumed.

MR. SEELKE: We're talking about a hypothetical unit that would have been built --

MR. GUYTON: I'm talking about the unit that I built.

MR. SEELKE: Your unit or my unit?

MR. GIACALONE: My unit.

MR. SEELKE: I'm not going to pay your actual fuel cost.

MR. GIACALONE: Why not?

MR. SEELKE: You're going to have to compete under an umbrella of total avoided cost. If your fuel costs are out of line, the heck with you.

MR. GIACALONE: Suppose there was a mechanism where we could get together --

MR. SEELKE: You want to fuel adjustment mechanism for your project and I'm not giving it to you. No way, pal. You want to be a utility; file an application and earn 13% return.

CHAIRMAN WILSON: I wish you wouldn't beat around the bush. (Laughter)

MR. FREY: I've got some Citrus people who wish there were some more utilities at home.

MR. DEAN: Could I ask Mr. Seelke a question about his proposal?

Does your proposal account for the fact that there is a lot more blocks of QF -- if hypothetical units are put in your dispatch, your system incremental heat rate never really changes, except for the purposes of paying the lesser of calculation. How do you account for the fact that you add 200, 400, 600, 800 maybe 1,000 megawatts of power on different units with different heat rates over the next six to eight years. Then in 1998, when you're doing this calculation, those units have never really been put into your heat rate curve; so you never have really added that last unit.

MR. NIXON: Jim, even though those units are not built, that power is being automatically put into our system and all of those firm contracts are being telemetered from the generator for output into our system so we know what they are doing. The units that we have on line are being dispatched to serve the rest of the load that's needed.

So, therefore, it's our incremental price of our units that are left that's being compared. So we are not dispatching those units, they are automatically flowing in kilowatt hours into our system, in energy. And now we have a fixed price that's calculated based on a heat rate at cents per million BTUs of fuel

cost. So that creates a number that's there. Although it changes monthly but it's consistent every hour. So then it's just a simple comparison with each unit's individual cost compared to your incremental hourly cost.

So you could have ten dozen different units with different heat rates and different fuel costs, and all of them could be compared to your incremental system cost hourly, and figure out under the proposed language or the existing language, with just a modification of the block size, to account for that. So it's a comparison that we are talking about, and the utility is going to continually dispatch its system based on its units, and the load that it sees that it needs to supplement.

MR. DEAN: But my point is that that is a static analysis; in fact, if you had added that first block of cogeneration, your own system heat rate would have been altered, and with the next block would have been altered again. So what we are doing is fixing it.

MR. NIXON: It's already altered.

MR. SEELKE: It's already altered by the fact that the units -- if we are serving, and let's suppose that we have 2000 megawatts of QF purchases on an hour and we have a load of 6000 megawatts, so we had 4000, our incremental heat rate of our generation exceeds 4000 megawatts. It's already altered by the fact that there is 2000 megawatts of purchases coming in. And as we -- I mean, if all those 2000, and suppose they are not

telemetered in just assumption, our dispatcher would think he is serving 4000 megawatts of load with his system.

MR. NIXON: And the point, to get back to what I think you were saying, if we put them into our dispatch, we would put them in at that average fuel price that we were paying, all right, which is that heat rate times that price of fuel. And let's say that we did that. What happens when the incremental cost goes below that price and we want to call that cogenerator and say, "How about move your unit down?"

Well, we won't be able to do that so we will end up paying him. He will stay on the line; we will moderate our units, and, therefore, our incremental costs, incremental hourly costs, at that point should go below the cost of that unit. And that's when we pay him the as-available price.

When the incremental cost of our units goes above that, that's when we pay him that lesser of that fuel cost of that unit. So it doesn't need to be in the dispatch to make it work. It will always be a static, even if you included it, it would still be a static comparison because I don't have the control to have him swing his unit.

MR. BEASLEY: Commissioner, if I could hand out this chart, it might help to see graphically what we are talking about.

CHAIRMAN WILSON: Paul, I wasn't clear from your comments whether you are supporting the Staff proposal or the

existing language in the rule, or whether you are in a position to do either one.

MR. GILLETTE: Commissioners, while Mr. Beasley is handing those out, I'll go ahead and get started. What this example is designed to do is to demonstrate that, in the case that we show here, that the hourly incremental costs would be the same whether you use the new language, which is the avoided unit operated method, or the lesser of method. And what we are showing here is a little example on the Tampa Electric System where we show that over on the left-hand side the avoided unit operated method, if we assume for a second that our avoided unit is a combined cycle unit, we would dispatch Big Bend first, then Gannon Station, and then the hypothetical combined cycle before our CTs, based on the incremental costs that we show there on the left-hand side of $15 per megawatt hour for Big Bend; 20 for Gannon; 40 for the combined cycle; and $60 per megawatt hour for the CT.

The third bar there is the load level, and you can see that what our dispatchers would do would be to make one run, one dispatch calculation with the cogeneration in, and one calculation with it out. And the net result is shown on the bottom of the page there. The avoided cost would be one-half at Gannon Station's cost of $20 per hour; one-half at the combined cycle unit's cost at $40 per megawatt hour; and the net effect under the Staff's proposed language would be $30 per megawatt

hour.

Over on the right-hand side we show the old language the lesser-of language, and you can see that the combined cycle unit is not shown in the dispatch in this case. In that situation the avoided cost calculation would show one-half Gannon Station's cost and one-half ACT's cost. But since the CT has a greater cost, $60 per megawatt hour, then the avoided unit, which is $40 per megawatt hour, we would cost that portion of the energy at the combined cycle unit's cost. And the net effect, then, would be the same. We would pay the cogenerators $30 per megawatt hour.

So we believe that the lesser-of language gives the cogenerator, dollar for dollar, the same amount as the new language, while simplifying the calculations significantly.

COMMISSIONER EASLEY: Does anybody have any disagreement with that?

MR. CORN: I don't necessarily have a different opinion; in fact, I would pretty much support those two calculations. But you should end up with fairly close the same value, as far as an hourly incremental basis.

The language that Staff has proposed, and that I think John has modified to incorporate more of this unit being included in the dispatch, is something you always see as part of individual negotiations, particularly if the utility ended up having dispatch control over the unit. What the utility would

have to do is come up with a calculation. But as far as doing it on a standard offer basis, the lesser-of comparison, I think, gets you to the same point.

MS. HARVEY: I don't know if everyone is finished, but I think that this is probably a good issue to deal with in post-hearing comments. It's one that I think some people would like to have a little more time to think about. It's pretty complicated, and I would suggest that people, if they have opinions on which language they like and why, that they address that in their post-hearing comments.

CHAIRMAN WILSON: Paul, are you all in a position to respond today to Staff?

MR. SEXTON: I think our initial response is perhaps that Florida Power Corporation's proposal sounds workable, and would achieve the result that we are looking for.

MR. BEASLEY: Would that proposal include doing all this unnecessary dispatching? That's our concern.

MR. NIXON: No.

MR. SEELKE: We can deal with the lesser-of method. I think that both the proposed rule and the existing rule hit the same spot but is just stated differently. And I think the --

COMMISSIONER GUNTER: I think one of them requires a little more effort.

MR. SEELKE: No, to do the lesser of we would have to figure out whether the unit would have been. We would have to

have the heat rate, and whatnot. And I think, in terms of whether it would have been economically dispatched in the language in the proposed rule, I wouldn't propose that we actually dispatch the unit as a cost -- it's a comparison of cost.

So I would interpret them to come to the same point as well. It's just a matter of semantics as to whether we are actually going -- and I think, Gordon, maybe you were looking at it as if we actually had to dispatch it, and I was never going to do that, conceptually, I was just going to look at the cost and get to the same point. So it's six of one and half a dozen of the other.

COMMISSIONER EASLEY: Well, it sure sounds to me like you don't need an awful lot of post-hearing comments other than to make sure in your own calculations that it is half a dozen of one and six of the other. My incliniation would be to go with whatever is the easiest way of getting you to the same answer.

MR. SEELKE: I agree.

Commissioner, I think the only addition I would -- I think the variable block size for as-available needs to be incorporated in either the existing language or the proposed language, because I think that's a refinement.

COMMISSIONER EASLEY: Well, what I am hearing is that the lesser of, or whatever is the easiest language with the block, gets you to the same thing, and that nobody has any big

objection to that.

MR. SEELKE: Right, exactly.

MR. CORN: Right, and we would support also that you need to change the variable block size as well.

CHAIRMAN WILSON: Okay. Next?

MS. HARVEY: That's all I have on that rule. I don't know if anyone else has any other issues.

CHAIRMAN WILSON: Are there any more comments on this rule?

MR. HAWK: Yes, Commissioners, I have one comment.

In our prepared comments here we talked about an issue that has been discussed before in dealing with remarketing of excess QF capacity and energy. And we think that this particular rule is the one that should address that, or at least try to address this particular issue.

CHAIRMAN WILSON: Now, that's the case that came before us on agenda and we decided that we would postpone the decision until we could get through this rule proceeding?

MR. HAWK: That's correct. There is an existing rule that talks about this particular situation, allowing if the utility has excess QF capacity and energy to now market it at original cost. And in our AES Cedar Bay situation, a contract that the Commission reviewed, we have brought that before the Commission, particularly for a negotiated contract, we would like to have an opportunity where we have taken a lot of time in

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DOCKET NO. 940771-EQ

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Amended Petition has been sent this 1st day of November, 1994 by regular U.S. Mail to:

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James. A. McGee, Esquire

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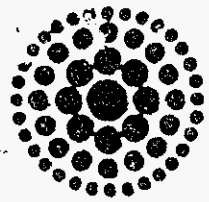

Florida
Power
CORPORATION

JAMES A. McGEE
SENIOR COUNSEL

December 9, 1994

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0870

Re: Docket No. 940771-EQ

Dear Ms. Bayó:

Enclosed for filing in the subject docket are fifteen copies of Florida Power Corporation's Memorandum in Opposition to Motions to Dismiss..

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in Word Perfect format.

Very truly yours,

James A. McGee

JAM/jb
Enclosure

cc: Parties of record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination that implementation of contractual pricing mechanism for energy payments to certain qualifying facilities complies with Rule 25-17.0832, F.A.C. by Florida Power Corporation.	Docket No. 940771-EQ Submitted for filing: December 12, 1994

MEMORANDUM IN OPPOSITION TO MOTIONS TO DISMISS FLORIDA POWER CORPORATION'S AMENDED PETITION

Pursuant to Rule 25-22.037 of the Florida Administrative Code, Florida Power Corporation ("FPC") submits this memorandum in opposition to the motions to dismiss filed herein by Orlando Cogen Limited, Pasco Cogen Ltd., Lake Cogen Ltd., Metropolitan Dade County and Montenay-Dade Ltd., and Auburndale Power Partners, Limited Partnership.

INTRODUCTION

FPC initiated this proceeding to obtain a Declaratory Statement confirming that the manner in which FPC determines when to pay certain Qualifying Facilities ("QFs") "as-available" energy payments instead of "firm" payments complies with Rule 25-17.0832 of the Florida Administrative Code and with the orders of the Commission approving FPC's contracts with those QFs.[1] Various

[1] Those orders are: Order No. 24099, issued February 12, 1991 in Docket No. 900917-EQ, In re: Petition for Approval of co-generation between Florida Power Corporation and Seminole Fertilizer Corporation; Order No. 24734, issued July 1, 1991 in Docket No. 910401-EQ, In re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy by Florida Power Corporation; Order No. 24923, issued August 19, 1991 in Docket No. 910549-EQ, In re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy between Ecopeat Avon Park and Florida Power Corporation; and Order No. PSC-92-0129-FOF-EQ, issued March

(continued...)

QFs intervened in this proceeding and moved to dismiss FPC's Petition on jurisdictional grounds or, at a minimum, suggested that an evidentiary hearing pursuant to Section 120.57, Florida Statutes, should be held. (Staff Recommendation, Docket No. 940771-EQ, October 6, 1994, p. 4 [hereafter "Staff Rec."]).

On October 6, 1994, the Commission's Staff issued a recommendation to the Commission that, in its belief, the real issue was whether FPC's implementation of the pricing mechanism in Section 9.1.2 was consistent with the Commission's rules and orders approving the Negotiated Contracts. (*Id.*, p. 5). That issue, according to the Staff, involved disputed issues of material fact and, as a result, the controversy was not well suited to a declaratory statement proceeding. For this reason, the Staff recommended that the Commission decline to answer FPC's petition but noted that its recommendation was not intended to prevent "affected parties from seeking the appropriate relief before the Commission."(*Id.*, p. 7).

FPC responded to the Staff's concerns by filing an Amended Petition requesting an adjudicatory proceeding under Section 120.57, Florida Statutes, and expanding the scope of the proceeding to include the method by which FPC has implemented Section 9.1.2. By Order dated November 21, 1994, the Commission converted the docket to an evidentiary proceeding effective October 31, 1994, the date FPC filed its Amended Petition.

That Order further granted the QF's petitions to intervene and transferred the QFs' motions to dismiss to the evidentiary proceeding. FPC was provided an

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[1](...continued)
31, 1992 in Docket No. 900383-EQ, In re: Complaint of CFR-BioGen Corporation against Florida Power Corporation for alleged violation of Standard Offer Contract and request for determination of substantial interests.

opportunity to respond to the motions and any amended motions to dismiss that might be filed. The QFs elected to amend their motions to dismiss, challenging the Commission's jurisdiction over FPC's Amended Petition. We will demonstrate herein that the QFs' challenge to the Commission's jurisdiction is meritless.

BACKGROUND

In 1991 and 1992, FPC entered into negotiated contracts with certain QFs for the purchase of energy. The Commission reviewed and approved each of these contracts. Among other things, these contracts specify the method by which FPC will calculate the amount of firm payments that FPC will make to QFs for energy that FPC purchases from those QFs. The contracts also specify the method by which FPC will determine when to pay QFs firm payments and when to pay QFs as-available payments for energy received by FPC from the QFs. Specifically, Section 9.1.2 of these contracts provides:

> Except as otherwise provided in Section 9.1.1 hereof, for each billing month beginning with the Contract In-Service Date, the QF will receive electric energy payments based on the Firm Energy Cost calculated on an hour-by-hour basis as follows: (i) the product of the average monthly inventory charge out price of fuel burned at the Avoided Unit Fuel Reference Plant, the Fuel Multiplier, and the Avoided Unit Heat Rate, plus the Avoided Unit Variable O & M, if applicable, for each hour that the Company would have had a unit with these characteristics operating; and (ii) during all other hours, the energy cost shall be equal to the As-Available Energy Cost.[2] (Emphasis added).

[2] The operating characteristics of the contractually defined unit specified in Section 9.1.2 of Florida Power's negotiated contract with CFR BioGen provides for a heat rate curve rather than a specific avoided unit heat rate. In all other respects, Section 9.1.2 of the CFR BioGen contract is the same as the other negotiated contracts, and the pricing mechanism applies in the same manner.

Under the explicit terms of this provision, FPC is obligated to pay QFs firm energy payments for the hours that FPC would operate a hypothetical "unit" having the characteristics specified in this provision. These contractually specified characteristics -- namely, the average monthly inventory charge out price of fuel burned at the Avoided Unit Fuel Reference Plant; the Fuel Multiplier; and the Avoided Unit Heat Rate; plus the Avoided Unit Variable O & M, if applicable -- provide the necessary and sufficient information that FPC needs to calculate a firm energy cost, which, in turn, is taken into account by FPC in determining whether FPC would dispatch that "unit" on or off to meet FPC's energy needs "on an hour-by-hour basis."

The QFs have put FPC on notice that they dispute FPC's method of determining when to pay QFs firm payments as distinguished from as-available payments. The QFs insist that FPC is directed by Rule 25-17.0832, F.A.C., to look beyond the express terms of Section 9.1.2 of the negotiated contract in order to determine when firm payments must be made. According to the QFs, FPC must make firm payments during all hours when a "real" unit would operate, taking into account the myriad operating characteristics that such a "real" unit might possess. According to the QFs, a "real" unit would not cycle on and off on an "hour-by-hour" basis like the "unit" specified in the negotiated contract, but would operate more continuously.

Of course, the QFs favor their interpretation of this Commission's rules and the negotiated contracts because the QFs believe that they will receive substantially greater energy payments if payments are calculated on that basis. The QFs would reap the benefit of their interpretation at FPC's ratepayers' expense.

In due course, FPC will seek to recover from its ratepayers the cost of the payments that FPC is making to QFs pursuant to the negotiated contracts that this Commission has approved. In order to put to rest any question about the propriety of the method that FPC is following in calculating the energy payments that it is making to QFs, FPC initiated this action to have the Commission determine that the procedure for calculating those payments set forth explicitly in Section 9.1.2 of the negotiated contracts which FPC has implemented is lawful under Section 366.051, Florida Statutes, and complies with Rule 25-17.0832(4)(b) and the orders of the Commission approving the negotiated contracts.

ARGUMENT

The Commission plainly has jurisdiction to resolve FPC's Amended Petition. At the outset, it is important to recognize that Section 366.051, Florida Statutes, authorizes this Commission to regulate the purchase of power by an electric utility from a cogenerator. That section provides that "[t]he electric utility in whose service area a cogenerator . . . is located shall purchase, in accordance with applicable law, all electricity offered for sale by such cogenerator . . .; or the cogenerator. . . may sell such electricity to any other electric utility in the state." The statute further provides that "[t]he commission shall establish guidelines relating to the purchase of power or energy by public utilities from cogenerators . . . and may set rates at which a public utility must purchase power or energy from a cogenerator . . . ." Section 366.051 thus confers upon the Commission the broad and exclusive authority to regulate precisely the subject matter of this proceeding, namely, the rates at which FPC is purchasing power from the QFs. *See*, §§ 366.051, and 366.04, 366.06, Florida Statutes.

In order to carry out this statutory authority, this Commission has promulgated extensive rules regulating the relationship between public utilities, such as FPC, and cogenerators, like the intervenors in this proceeding. *See*, Rules 25-17.080 - 25-17.091, F.A.C. These rules authorize and govern the negotiation of contracts between utilities and cogenerators for the purchase of energy from the cogenerators. Among other things, the rules specify the determination of capacity and energy payments to QFs. *See*, Rules 25-17.082, .0825, .0832, F.A.C. Further, these rules specifically provide for Commission review of contracts negotiated between utilities and cogenerators and for a determination by the Commission whether those contracts are "prudent." Rule 25-17.0832(2). In this regard, the Commission's rules provide that "[f]irm energy and capacity payments made to a qualifying facility pursuant to a separately negotiated contract shall be recoverable by a utility through the Commission's periodic review of fuel and purchased power costs if the contract is found to be prudent . . . ." Rule 25-17.0832(8)(a), F.A.C.

Thus, as the Commission's Staff concluded in a parallel proceeding involving one of the negotiated contracts at issue here, "[p]ursuant to Section 366.051, Florida Statutes, this Commission has jurisdiction over power purchases[,] and [it] properly exercised that authority by approving the contract[s] which [are] the basis of this dispute." (Staff Recommendation, Docket No. 940357-EQ, Aug. 25, 1994, p. 3 [hereafter "Staff Rec. in OCL Dkt."]). It is equally apparent that "[i]n approving the contract and the provision for cost-recovery, the Commission did not simply review the capacity payments that FPC was to make, but it also considered whether the contract was 'prudent' and how the contract would affect the electric grid." (*Id.* at 3).

In this connection, the Commission has specifically held that the Commission's approval of a negotiated contract between a utility and a cogenerator includes approval of "the terms and conditions" of that contract and, particularly, approval of "the firm capacity and energy prices stated therein." (In re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Docket No. 910603-EQ, Order No. 25668, Feb. 3, 1992, p. 10). Moreover, this Commission has held that approval of these contract terms "constitutes a determination that any payments made to a QF under the contract constitute a reasonable and prudent expenditure by the utility under Section 366.06, Florida Statutes, based on information submitted to the Commission at the time of approval." (*Id.* at 10) (emphasis added).

Section 366.06 broadly authorizes the Commission to "determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service." To this end, the Commission is charged with the responsibility under Section 366.06 to investigate and determine, inter alia, whether costs incurred by public utilities are "prudent." Because public utilities are authorized to recover from their ratepayers the cost of payments made to QFs pursuant to contracts approved by the Commission, the Commission is necessarily concerned to ensure that the costs thus passed through to ratepayers are fair and prudent. (*See*, Florida Public Service Commission's Amicus Curiae Memorandum of Law, TEC Cogeneration, Inc. v. Florida Power and Light Co., U.S. Dist. Ct., S.D. Fla., No. 88-2145, p. 4) (the Commission has authority to promulgate rules requiring that electric utilities buy and sell electricity to and from QFs at rates that are just, reasonable, and non-discriminatory).

It is manifest, therefore, that a negotiated contract between a public utility and a cogenerator is much more than a private accord falling outside the Commission's regulatory concern. Quite to the contrary, a negotiated "cogeneration contract is a creature of regulation in a field that is uniquely within the Commission's regulatory expertise and authority." (Staff Rec. in OCL Dkt. at 3) (emphasis added). Indeed, "the practical effect of [Commission] approval" of a contract, such as this, that must be approved by the Commission "is to make the approved contract an order of the Commission, binding as such upon the parties." City Gas Co. v. Peoples Gas System, Inc., 182 So. 2d 429, 436 (Fla. 1965). This proposition has been endorsed repeatedly by the Florida Supreme Court. *See, e.g.*, PSC v. Fuller, 551 So. 2d 1210, 1212 (Fla. 1989); City of Homestead v. Beard, 600 So. 2d 450, 452 (Fla. 1992).

Plainly, the Commission has jurisdiction to interpret its own orders and to clarify the obligations of a regulated utility, such as FPC, thereunder. FPC's Amended Petition calls upon this Commission to do so.

Moreover, whether or not a contract is part of a Commission order, "the Commission has jurisdiction to interpret contracts when dealing with an area over which the Commission has jurisdiction." (Staff Rec. in OCL Dkt. at 3). And, as noted, this Commission has express jurisdiction over FPC's power purchase payments to QFs. In this connection, the Commission has exercised jurisdiction in the past repeatedly to review and interpret provisions of cogeneration contracts.[3]

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[3] See, e.g., In re: Petition for Approval of Contract for the Purchase of Firm Capacity and Energy Between General Peat Resources, L.P., and Florida Power and Light Company, Docket No. 920977-EQ; In re: CFR Bio-Gen's Petition For Declaratory Statement Regarding the (continued...)

Indeed, even constitutional claims of contractual interference have been universally rejected by the courts in the face of the Commission's exercise of its statutory authority to regulate utility services. Thus, "[e]ven when an existing contract is voided by the Commission's actions, there is no unconstitutional impairment of contract under the Florida or United States Constitution." (*Id.* at 4; *see* cases cited therein).

It follows that the Commission has jurisdiction over FPC's Amended Petition in this case. By its Amended Petition, FPC seeks a determination by the Commission that its implementation of the pricing mechanism specified in Section 9.1.2 of its negotiated contracts with the QFs complies with the Commission's rules and orders approving the contracts. Having been reviewed and approved by the Commission, the contracts have thus become merged into orders of this Commission. More significantly, FPC's Amended Petition goes to the core

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[3](...continued)
Methodology to be used in its Standard Offer Cogeneration Contracts with Florida Power Corporation,Order No. 24338, issued April 9, 1991, Docket No. 900877-EI; In re: Complaint by CFR Bio-Gen against Florida Power Corporation for alleged violation of standard offer contract, and request for determination of substantial interest, Order No. 24729, issued July 1, 1991, Docket No. 900383-EQ; In re: Petition of Timber Energy Resources, Inc. for a declaratory statement regarding upward modification of committed capacity amount by cogenerators, Order No. 21585, issued July 19, 1989, Docket No. 8890453-EQ; In re: Petition for Declaratory Statement by Wheelabrator North Broward, Inc., Order No. 23110, issued June 25, 1990, Docket No. 900277-EQ.

The QFs attempt to distinguish these orders because they involved PSC interpretations of the provisions of standard offer contracts. Such contracts, according to the QFs, are different from negotiated contracts because they are included in the utility's tariffs, over which, in fact, the QFs' concede the Commission has jurisdiction. (See, e.g., Pasco Motion, p. 11, n. 9). Yet, the Commission has explicitly held that "negotiated contracts should be treated in the same manner as standard offer contracts for cost recovery purposes." In re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Docket No. 910603-EQ, Order No. 25668, Feb. 3, 1992, p. 25. That holding only comports with common sense. As the Commission correctly recognized, it has the same interest in ensuring that the utility's ratepayers receive the energy contracted for at the lowest possible cost under the contract regardless of whether the contract involved is a standard offer contract or a negotiated contract. That, of course, is the very issue raised by FPC's implementation of the pricing mechanism specified in § 9.1.2. Hence, these orders are apposite.

concern of this Commission: namely, the magnitude of the rates that FPC must pay the QFs for purchased power and, in turn, the magnitude of the costs that FPC will, in due course, seek to recover from its ratepayers through the fuel adjustment clause.

As explained more fully below, FPC must return to the Commission in fuel adjustment hearings on a semiannual basis to obtain the Commission's approval to pass along to FPC's customers the energy payments it has made to QFs under its contracts. The Commission has every interest and every right to inquire and determine whether FPC is properly implementing the Commission's cogeneration rules and Commission-approved contracts with respect to the amount of the payments that FPC is making to the QFs.

In fact, the negotiated contracts that have been approved by this Commission contain a "reg out" clause that provides that FPC's payment obligations to the QFs are conditioned expressly upon the Commission's authorization of the recovery of those payments from FPC's ratepayers. (Section 20.1, Negotiated Contracts). The inclusion of this clause confirms that the Commission's scrutiny of the payments made by FPC to the QFs will be ongoing. It serves no one's legitimate interest to perpetuate controversy or uncertainty about the magnitude of those payments, or the method for calculating them, until after substantial overpayments have been made that FPC must eventually recoup from the QFs.

By its Amended Petition, FPC seeks to resolve the controversy or uncertainty on this issue by having the Commission determine if FPC's implementation of the pricing mechanism specified in Section 9.1.2 is correct under both this Commission's rule regulating the determination of when firm energy payments must be made to QFs and under this Commission's orders

approving the negotiated contracts.[4] It is difficult to imagine an issue that falls more squarely within the ambit of this Commission's concern and responsibilities in regulating power purchases by utilities from QFs.

This case is much like PSC v. Fuller, supra, in which the Florida Supreme Court determined that the Commission had jurisdiction -- indeed, exclusive jurisdiction -- to resolve a controversy over a contract that the Commission had approved. In Fuller, the City of Homestead and Florida Power and Light ("FP&L") had entered into an agreement that the Commission had approved, making it an order of the Commission. The parties subsequently disagreed regarding whether the contract provisions permitted unilateral termination. The City of Homestead brought suit in state court, seeking a declaration of its rights to terminate. FP&L filed a petition for a declaratory statement with the Commission.

The Florida Supreme Court held that the Commission had "exclusive jurisdiction over the instant Commission order, with which the [approved] agreement has merged," and that the state court was "without jurisdiction to conduct further proceedings." 551 So. 2d at 1213. Likewise, in this case, the Commission has clear authority to adjudicate FPC's Amended Petition.

Nonetheless, the QFs argue that this Commission lacks jurisdiction over FPC's Amended Petition for three reasons: (1) QFs fall outside the regulatory jurisdiction of the Commission, (2) the Commission's jurisdiction over contracts

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[4] The QFs challenge FPC's request for a declaration under the Commission's Rules, arguing that Rule 25-17.0832(4)(b) does not apply to negotiated contracts and, even if it did, that it supports the QFs' position, not FPC's. This argument addresses the merits, not whether the Commission has jurisdiction in the first place. As a result, the argument demonstrates that the Commission in fact has a job to do in this case: it must determine the scope of its rule which is clearly within its exclusive jurisdiction to do.

between electric utilities and QFs is limited to approval for "cost recovery" purposes only, and (3) with respect only to Orlando Cogen Limited, that FPC has not demonstrated its substantial interests in an adjudicatory proceeding under Section 120.57, Florida Statutes, in this case and thus, an evidentiary proceeding is inappropriate. As we now show, each of these contentions is meritless.

1. The QFs contend that, unlike public utilities that sell power to retail customers, QFs sell power at the wholesale level only, and thus fall outside the general regulatory authority of the Commission. The QFs acknowledge, however, that the Commission has been given some regulatory authority over the affairs of QFs under both federal and state law. As we have demonstrated, that authority is ample to provide the Commission with jurisdiction over FPC's Amended Petition.

At the threshold, it is important to note that, even if the Commission possessed no regulatory authority whatsoever directly over QFs, the Commission would still have sufficient jurisdiction over FPC's Amended Petition. That is so by virtue of the Commission's jurisdiction over FPC. As we have discussed, the Commission has direct and extensive statutory authority over the rates that FPC must pay to QFs and, equally significant, over costs that FPC may recover from its ratepayers. That authority is quite sufficient to empower the Commission to take jurisdiction over FPC's Amended Petition to determine if FPC's implementation of the pricing mechanism specified in Section 9.1.2 complies with the Commission's rules and orders with respect to making payments to QFs and, ultimately, in recovering those payments from FPC's customers.

In any event, federal and state law subjects the QFs themselves to the jurisdiction of the Commission with respect to all matters that the Commission

may review in purchase power contracts. The Commission conducted two lengthy proceedings concerning the implementation of its cogeneration rules in which many of the QFs participated. *See*, Order No. 24989, Docket No. 910004-EU and Order No. 25668, Docket No. 910603-EQ. In these proceedings, many QFs addressed the Commission's broad authority to approve payments made under QF contracts. For example, Air Products and Chemicals, Inc., the general partner of Orlando Cogen, Ltd., acknowledged that "approval of long-term capacity contracts and rate based acquisitions [are] based on findings that the purchases are reasonable and prudent [and] are routinely made by this body." Docket No. 910004-EU, Brief of Air Products and Chemicals, Inc., at p. 57. Air Products also acknowledged that, because of the important impact QF production has on the State's overall electric grid and the implications for whether "ratepayers receive reliable service at the least cost," ongoing Commission supervision of such contracts is required. Brief, at p. 52.

Thus, as Air Products plainly recognized on that occasion, the Commission has extensive and continuing jurisdiction over QFs and their contractual relationships with regulated utilities to ensure "ratepayers receive reliable service at the least cost." FPC's Amended Petition in this case implicates precisely these concerns.

The QFs' assertion that their status as a Qualifying Facility insulates them from the Commission's continuing supervision of their contracts with FPC is equally unavailing. The Florida Supreme Court rejected a similar claim in City of Homestead v Beard, 600 So. 2d 450, 452 (Fla. 1992). There, the Court reviewed a territorial agreement entered into by a regulated utility and a municipal utility and concluded that Commission approval of that contact converted the

contract into a Commission order, such that the "agreement ... has no existence apart from the [Commission] order approving it and that the territorial agreement merged with and became a part of the [Commission] order." *Id.* quoting Fuller, 551 So. 2d at 1212. It so held in spite of its recognition that "when the agreement was executed, municipally owned electric utilities were exempt from State agency supervision." *Id.*

As the Court explained, "by accepting the additional franchise granted under the [Commission] order approving the agreement, the City submitted itself to the [Commission's] regulatory authority with respect to the subject matter of the order." *Id.* The Court rejected the City's position "that because it was not subject to the [Commission's] jurisdiction when the agreement was executed, the territorial agreement should be construed pursuant to the law of contracts, rather than the law governing [Commission] orders." *Id.* at 452-53.

This case is indistinguishable from City of Homestead. The QFs, like the municipality there, were "able to enter into the instant agreement only by obtaining [Commission] approval." *Id.* at 453. Having accepted the benefits of a contract that only the Commission could approve, and that by its own terms required Commission approval and incorporated the Commission's Rules, the QFs have become subject to the Commission's regulatory authority with respect to the resulting order. This is true even if the QFs might otherwise be "exempt from state agency supervision." The QFs simply "may not accept the benefits flowing from . . . obtaining [Commission] approval and then claim the agreement is not subject to the laws governing [Commission] orders." *Id.* at 453.[5]

[5] It did not matter for purposes of the Court's holding that the issue involved a territorial (continued...)

Equally instructive is the Florida Supreme Court's decision in H. Miller and Sons, Inc. v. Hawkins, 373 So. 2d 913 (Fla. 1979). In that case, a utility and a private customer agreed by contract that certain charges would be assessed for services rendered by the utility. The Commission subsequently put in place a new tariff regarding those services. When the utility assessed the customer at the rates ordered by the Commission, rather than at the lower contract rates, the customer objected. Despite the fact that the Commission had no express authority over the customer, the Florida Supreme Court concluded that the Commission's order superseded the terms of the private contract. It was simply irrelevant to the Court that only one of the two parties to the contract was a regulated utility.

The QFs' efforts to evade the import of these decisions is without merit. Their contentions that these cases are distinguishable because the Commission had express statutory authority over the matter that was the subject of the contract ignores the fact that the Commission likewise has the express statutory authority to approve both the rates charged by QFs and the rates collected by utilities for QF generated power. Consequently, the Commission has express authority over QF contracts and has, in fact, approved the contracts by express Commission order.

2. Next, the QFs contend that the Commission's jurisdiction to review and approve negotiated contracts between utilities and cogenerators is limited to "cost recovery" issues. In this regard, the QFs argue that the Commission's concern is limited to ensuring at the time the contract is approved that the cost of FPC's cogeneration contracts is recoverable from FPC's ratepayers. According to the

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[5](...continued)
dispute. Similarly, that distinction here is unimportant. The fundamental principle giving rise to the Court's holding applies equally in this case.

QFs, FPC is not required to return to the Commission to have the Commission determine that the contract is still prudent because the prudency of its payments to the QFs under the negotiated contracts have been "pre-approved." (*See*, e.g., Pasco Motion, pp. 8-10, 19-20). The Commission's "pre-approval" of the negotiated contracts, the QFs argue, terminates the Commission's authority over the negotiated contracts. (*Id.*).

This argument misses the point, however, that at such time as FPC seeks to recover from its ratepayers the payments that FPC has made to QFs, FPC will be required to demonstrate that the amounts it has paid have been made "pursuant to" its negotiated contracts. Rule 25-17.0832(8)(a) (emphasis added). Clearly, in order to discharge its responsibility to determine whether the payments made to QFs are the payments contemplated by the Commission-approved contracts, the Commission must have jurisdiction to consider and determine what those contracts require. Otherwise, the Commission will be left in the untenable position of rubber-stamping FPC's request for recovery of those payments. And if the Commission has jurisdiction to make this determination at the time that it will be reviewing FPC's request to recover costs, the Commission must have jurisdiction to determine at this time what FPC's rights and obligations are in this regard, to avoid having to rectify potentially excessive payments after the fact.

The QFs cite no authority that requires a different result. Those cases holding that the judiciary has the authority to interpret contracts involved requests that an agency interpret contracts between private parties entered into without agency approval and concerning issues outside the agency's regulatory power. *See, e.g.*, Peck Plaza Condominium v. Division of Florida Land Sales, 371 So.

2d 152, 153-54 (Fla. 4th DCA 1979).[6] That is not this case. The issue here requires the Commission to determine what the Commission-approved contracts between a regulated utility and various QFs, entities whose very existence is the result of federal and state regulation, require. Moreover, the issue goes to the very heart of the Commission's authority; it involves the Commission's power to set the rates which utilities must pay, and the rates which they can recover from their ratepayers for power produced by QFs. The very issue to be resolved in this proceeding, then, is within the Commission's jurisdiction.

3. Finally, one QF, Orlando Cogen Limited, contends that FPC has not demonstrated its substantial interests in this adjudicatory proceeding and, for this reason, an evidentiary proceeding is inappropriate. This argument is wholly devoid of merit.

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[6] The QFs' reliance on United Telephone Co. of Florida v. Public Service Commission, 496 So. 2d 116, 117 (Fla. 1986) is also misplaced. While the Court held that the Commission was without authority to alter the telephone companies' contract by allowing one company to withdraw specific expenses from a fund set up by the contract, it did not hold that the Commission lacked any authority over the contract. In fact, the Court agreed that had a dispute existed regarding the manner of distribution under the contract the Commission would have had the authority to resolve that dispute. *Id.* at 118. The Commission similarly has jurisdiction in this case to determine what the Commission-approved contracts require under its broad authority to approve both the rates charged by QFs and the rates collected by utilities for cogenerated power.

Nor does the PSC decision in In re: Petition of Tampa Electric Company For Declaratory Statement Regarding Conserv Cogeneration Agreement, Order No. 14207, Docket No. 840438-EI alter this result. As the QFs aptly note, this decision pre-dated the enactment of Section 366.051, Florida Statutes which expressly provided the Commission the power to establish guidelines for the purchase of cogenerated power and authorized the Commission to set rates at which utilities must purchase that power. That authority, as described above, is ample to provide the Commission jurisdiction over this dispute. As a result, the Conserve Order certainly is not controlling authority in this case, as the PSC's Staff has already concluded. On the contrary, the PSC Staff has declared that a negotiated "cogeneration contract is a creature of regulation in a field that is uniquely within the Commission's regulatory expertise and authority." *Id.*. For that very reason the decision under New York law in Erie Energy Associates - Petition For A Declaratory Ruling That Its Power Purchase Contract With New York State Electric & Gas Corporation Remains In Effect, Case 92-E-0032, 1992 N.Y. PUC LEXIS, *4 (1992), is also inapposite.

To begin with, this QF blithely ignores the Commission's order dated November 21, 1994, converting the declaratory statement proceeding to an adjudicatory proceeding under Section 120.57, Florida Statutes, and establishing a hearing schedule. In doing so, the Commission obviously concluded FPC's Amended Petition was sufficient to require such a hearing under its rules and Section 120.57, Florida Statutes. Moreover, providing for an evidentiary hearing in this proceeding is exactly what the QFs wanted, (See, e.g., Petition of Pasco Cogen, Ltd. for Leave to Intervene and for Evidentiary Hearing), as even the Commission's Staff recognized. (Staff Rec., p. 4). The QFs should not be heard to complain now that they have received an evidentiary hearing.

In essence, the QF asserts that FPC has not demonstrated its standing to petition for an adjudicatory proceeding in this case. It should be understood that this argument is premised on the QF's erroneous assumption that the Commission lacks jurisdiction to determine if FPC has correctly implemented the pricing mechanism in Section 9.1.2 in accordance with the Commission's rule and orders approving the contracts because the QF concedes the parties' standing in a court of law to resolve this same issue. (See, Orlando Cogen Limited Motion, pp. 25-26). For all the reasons discussed in detail above, the Commission has jurisdiction to decide the issue in this proceeding.

In any event, as the Commission plainly recognized, FPC has standing in this case to petition for an adjudicatory proceeding. First, a party has standing if it is given a right to participate by statute or an agency regulation. § 120.57(12)(b), Fla. Stat. (Supp. 1994). *See also*, Gregory v. Indian River County, 610 So. 2d 547, 553-4 (Fla. 1st DCA 1992). Pursuant to Section 25-22.036(4)(a), the Commission has determined that a petition for an evidentiary

hearing is "appropriate" when "a person subject to Commission jurisdiction seeks authority to change its rates or service, or seeks some other Commission action not otherwise specified in these rules." Rule 25-22.036(4)(a), F.A.C. Under this rule FPC clearly has standing to petition for an adjudicatory proceeding.

Second, even were FPC required to establish both injury in fact and that the nature of the injury is one which the proceeding is designed to protect, which is not the case, FPC has done so. The QF's assertion that FPC cannot claim injury because it has implemented the pricing mechanism specified in Section 9.1.2 is nonsensical. The fact that the QFs dispute FPC's implementation of Section 9.1.2 is evidence of both parties' standing to resolve that dispute. In addition, FPC needs an immediate resolution of the issue, as FPC must conform its actions to whatever instruction the Commission provides.

As the Gregory court explained, in applying the standing test in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), one must not lose sight of the purpose for requiring standing in the first place. That purpose is to "ensure that a party has a 'sufficient interest in the outcome'" of the case which warrants entertaining the case. Gregory, 610 So. 2d at 554, quoting General Dev. Corp. v. Kirk, 251 So. 2d 284, 286 (Fla. 2nd DCA 1971). That purpose is met by FPC in this case. As explained above, FPC has an interest in immediate resolution of this dispute not only to resolve the claims made by the QFs but also to ensure that FPC is complying with the rules and orders of the Commission. Hence, FPC has standing to petition for this adjudicatory proceeding.

The QF does not contend that the adjudicatory proceeding now ordered by the Commission will not resolve the issue raised in FPC's petition. Instead, the

QF asserts that the Commission lacks jurisdiction because, according to the QF, neither Chapter 366 generally nor Section 366.051 specifically was intended to apply to this proceeding. (*See*, Orlando Cogen Limited Motion, p. 26). This is, as demonstrated above, plainly wrong. The Commission certainly has jurisdiction over the contracts, having been merged into orders of this Commission by this Commission's review and approval of them, and, more significantly, over this dispute which addresses the core concern of the Commission: the magnitude of the rates paid and charged for cogenerated power.

It is equally apparent that this adjudicatory proceeding before the Commission is designed to redress the injury attendant to FPC's position as a regulated utility which must comply with the intent of this Commission's orders. To begin with, the negotiated "cogeneration contract[s] [at issue] [are] a creature of regulation in a field that [are] uniquely within the Commission's regulatory expertise and authority." (Staff Rec. in OCL Dkt. at 3) (emphasis added). Indeed, as we have shown, these contracts have become merged into the Commission's orders approving them. Accordingly, the Commission is uniquely well situated to interpret its own orders and to provide the relief that FPC seeks.

For that matter, if a determination of FPC's rights and obligations under the negotiated contracts is relegated to the federal and state courts, FPC will face the peril that this Commission will construe FPC's obligations differently at such time as FPC seeks to recover from its ratepayers the cost of the payments that FPC has made to the QFs. Only this Commission can authoritatively advise FPC on what its payment obligations are under the Commission-approved contracts.

Moreover, there are eleven QFs with negotiated contracts at issue here. Each QF could seek to have the correctness of FPC's implementation of Section

9.1.2 determined in a different judicial forum -- state or federal. This could well lead to different holdings and subject FPC to several inconsistent adjudications. On the other hand, if the Commission were to resolve this matter, conflicting results would not ensue. Hence, it is clear that this proceeding is appropriate to resolve this issue and provide redress to FPC.

The QF also takes issue with the Amended Petition itself, contending that it fails to comply with the rules by failing to specify the exact substantial interests of FPC in the proceeding. As explained above, the Petition was deemed "appropriate" under Rule 25-22.036(4)(a), which the Commission clearly recognized in ordering that an adjudicatory proceeding will take place. And, in any event, FPC's substantial interest as a regulated utility in the Commission's determination that FPC is correctly implementing Section 9.1.2 is evident in the Petition -- a point which some QFs acknowledged in requesting an evidentiary hearing and the Commission has plainly acknowledged in granting the requested hearing.[7]

Finally, the QF continues to assert that FPC is not entitled to a declaratory statement from the Commission. Given this Commission's order providing for an adjudicatory proceeding pursuant to Section 120.57, Florida Statutes, this argument is moot.

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[7] Moreover, it is clear that the rule itself, which provides only that the pleading "should" contain an explanation of how the petitioner's substantial interests will be affected, is not mandatory but is discretionary with the Commission. See Iazzo v. Department of Professional Regulation, 638 So. 2d 583, 586 (Fla. 1st DCA 1994) (failure to list disputed allegations despite rule that all disputed issues "should" be listed did not justify denial of request for formal hearing when party clearly entitled to one). Here, that discretion has been exercised in favor of granting the evidentiary hearing.

CONCLUSION

FPC's Amended Petition requests the Commission to determine if, under the Commission's rules and orders approving the negotiated contracts between FPC and the QFs, FPC is correctly implementing the pricing mechanism specified in Section 9.1.2 of the Commission-approved contracts. That determination goes to the very heart of this Commission's jurisdiction: it requires the Commission to exercise its broad and exclusive authority to determine the magnitude of the rates that FPC must pay and, in turn, the magnitude of the rates that FPC may collect from its ratepayers for power produced by the QFs.

For this fundamental reason, as more fully explained above, this Commission should deny the QFs' Motions to Dismiss FPC's Amended Petition.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

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CERTIFICATE OF SERVICE
DOCKET NO. 940771-EQ

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Memorandum in Opposition to Motions to Dismiss has been sent this 9th day of December, 1994 by regular U.S. Mail to:

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Florida Public Service Commission
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd. by Florida Power Corporation	)	Docket No. 961477-EQ
	)	Filed: December 5, 1997

NCP LAKE POWER, INC.'S AND LAKE COGEN, LTD.'S
PETITION ON PROPOSED AGENCY ACTION

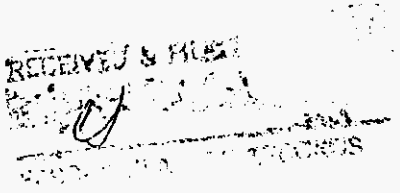
LAKE COGEN, LTD., by and through its general partner, NCP LAKE POWER, INC. (hereinafter collectively "Lake" or "Lake Cogen"), pursuant to Commission Rules 25-22.029(4) and 25-22.036(7), Florida Administrative Code, respectfully files this Petition on Proposed Agency Action protesting the proposed action of the Florida Public Service Commission ("Commission") set forth in PAA Order No. PSC-97-1437-FOF-EQ ("the Order"), issued on November 14, 1997. Pursuant to page 21 of that PAA order, it would become final if no petition for a formal proceeding, pursuant to Rules 25-22.029(4) and 25-22.036(7), is filed by the close of business on December 5, 1997, i.e., today.

In support of its Petition, Lake Cogen states as follows.

PROCEDURAL BACKGROUND AND INFORMATION

1. The name and address of the Petitioners are:

Lake Cogen, Ltd.
c/o GPU International, Inc.
One Upper Pond Road
Parsippany, New Jersey 07054 .



2. All pleadings, motions, orders, and other documents directed to Petitioners are to be served on the following.

Robert Scheffel Wright
LANDERS & PARSONS, P.A.
310 West College Avenue
Post Office box 271
Tallahassee, Florida 32302

Chip Thomson, Esquire
Corporate Counsel
GPU International, Inc.
One Upper Pond Road
Parsippany, NJ 07054

David N. Hicks, Business Manager
Lake Cogen, Ltd.
c/o GPU International, Inc.
One Upper Pond Road
Parsippany, NJ 07054

For deliveries by hand and by courier service, the Zip Code for 310 West College Avenue is 32301.

3. Lake Cogen received notice of the protested order by obtaining a copy from the Commission on or about November 14, 1997.

4. The other party whose direct substantial interests will be affected by these proceedings is Florida Power Corporation ("FPC"). Florida Power Corporation's address is as follows:

Florida Power Corporation
3201 34th Street South
Post Office Box 14042
St. Petersburg, Florida 33733-4042
(813) 866-5151.

5. On December 6, 1996, Florida Power Corporation and Lake Cogen, through its managing general partner, NCP Lake, entered into that certain Settlement Agreement and Amendment To Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Lake Cogen, Ltd. and Florida Power Corporation (the "Settlement Agreement"). NCP Lake is a wholly-owned subsidiary of GPU International, Inc. ("GPUI"). The purpose of the Settlement Agreement is to settle all disputes between Lake

Cogen and FPC that are the subject of currently pending, though stayed, litigation in the case styled NCP Lake Power, Incorporated, a Delaware corporation, as General Partner of Lake Cogen Ltd., a Florida limited partnership v. Florida Power Corporation, a Florida corporation, Case No. 94-2354-CA01, in the Circuit Court of the Fifth Judicial Circuit in and for Lake County. Pursuant to the Commission's rules and orders, and pursuant to the terms of the Settlement Agreement itself, on December 12, 1996, FPC initiated this docket by filing the instant petition for approval of the Settlement Agreement for cost recovery purposes.

6. NCP Lake Power, Inc. filed its petition to intervene in this docket on March 6, 1997, and Lake Cogen Ltd. filed its petition to intervene in this docket on March 11, 1997. Intervention was granted to Lake Cogen Ltd. by Commission Order No. PSC-97-0645-PCO-EQ and to NCP Lake Power, Inc. by Commission Order No. PSC-97-0644-PCO-EQ, both issued on June 5, 1997.

7. Lake Cogen's substantial interests will be affected by the Commission's actions in this proceeding because it involves the proposed modification of Lake's power sales contract with FPC, as well as the resolution of the above-described litigation disputes with FPC.

8. As described more fully below, Lake disputes numerous factual statements set forth in the body of the Order. Because, by the filing of this petition on proposed agency action, the Order is rendered a legal nullity, Lake believes that all issues are subject to further consideration and argument; accordingly, Lake also

believes that several disputed issues of law and policy must be addressed.

9. Lake Cogen hereby requests a formal proceeding, as provided by the Commission's rules, to protect its substantial interests. As part of its duty of candor, Lake Cogen directs the Commission's attention to the fact that the Settlement Agreement that is the subject of this docket has, as of October 31, 1997, expired by its own terms. During the intervening period, i.e., from October 31 to the present date, Lake Cogen and FPC have attempted to negotiate a further extension of the terms of the Settlement Agreement and, in the spirit of those negotiations, neither side has invoked the termination of the Settlement Agreement. Now, however, due to lack of progress in those negotiations, Lake regretfully advises the Commission that any further extension of the Settlement Agreement appears unlikely and, accordingly, suggests to the Commission that (a) dismissal of the underlying petition as moot -- because there is no longer a viable settlement agreement upon which a hearing can be held -- and (b) closure of this docket may be appropriate.[1]

[1] For the record, as stated below, Lake Cogen remains convinced that the Settlement Agreement is in the public interest as well as in the best interests of FPC and its customers, and accordingly, Lake Cogen continues to believe that the Commission should have voted to approve the Settlement Agreement. Further, Lake Cogen remains willing, for its part, to continue to negotiate with FPC toward another fair settlement agreement that might be acceptable to FPC and to the Commission.

FACTUAL BACKGROUND

10. This case involves a settlement agreement negotiated by and between Lake Cogen and FPC for the purpose of resolving all disputes that are the subject of the pending lawsuit styled NCP Lake Power, Incorporated, a Delaware corporation, as General Partner of Lake Cogen Ltd., a Florida limited partnership v. Florida Power Corporation, a Florida corporation, Case No. 94-2354-CA01, in the Circuit Court of the Fifth Judicial Circuit in and for Lake County. The petition that initiated this docket asked the Commission to approve the Settlement Agreement, for cost recovery purposes, pursuant to the Commission's rules. The Commission has issued its Proposed Agency Action Order No. PSC-97-1437-FOF-EQ by which it proposes to reject the Settlement Agreement for cost recovery purposes. The factual background of the underlying transaction and the dispute to be settled by the Settlement Agreement, is as follows.

11. Lake Cogen Ltd. owns and operates a 112 MW gas-fired cogeneration facility in Umatilla, Lake County, Florida (the "Facility"), and sells firm capacity and energy from the Facility to FPC pursuant to that certain Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility Between Lake Cogen And Florida Power Corporation dated March 13, 1991 (the "Contract"). The Contract provides for Lake Cogen to produce and deliver to FPC, and for FPC to purchase, approximately 112 megawatts (MW) of firm electric capacity and energy at a minimum committed on-peak capacity factor of 90 percent from the

Facility. Thermal energy produced by Lake Cogen's Facility (in the form of steam) is sold to Golden Gem Growers, Inc. for use in its citrus processing plant. Lake Cogen is a qualifying cogeneration facility or "QF" as contemplated by the applicable rules of the Commission and the Federal Energy Regulatory Commission ("FERC").

12. In accord with Commission Rule 25-17.0832(2), the Contract was approved for cost recovery by Commission Order No. 24734, issued on July 1, 1991 in Docket No. 910401-EQ. In Re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy by Florida Power Corporation, 91 FPSC 7:60 (July 1, 1991). By the same order, the Commission approved seven other negotiated contracts for the purchase by FPC of firm capacity and energy from other QFs. These eight negotiated contracts, together with three others approved in separate proceedings, are referred to collectively herein as "the Negotiated Contracts."

13. In reliance on the Contract and the Commission's approval thereof, Lake Cogen constructed the Facility, at a cost in excess of $102 million, and has operated it in accord with the Contract since July 1, 1993.

14. Florida Power Corporation, initially in its own name and later through an affiliate, was intimately involved in the evaluation of the Lake Cogen project as to feasibility and profitability, and in the development of the Lake Cogen project, and in the preparation and submission of the Lake Cogen project proposal that led to the formation of the Contract. In mid-1990, representatives of Peoples Cogeneration Company ("PCC") and Florida

Power Corporation began meeting together for the purpose of jointly developing cogeneration facilities in Florida. PCC and FPC intended that any such facilities ultimately developed by the two companies would be owned equally by the two companies, or by respective affiliates of each, and entered into written agreements reflecting that intent.

15. In developing the Lake Cogen and Pasco Cogen proposals submitted to FPC, PCC relied on the advice and counsel of FPC, and subsequently on the advice and counsel of Power Cogen, Inc., with respect to projections and evaluation of the various operating parameters of FPC's avoided unit. FPC and Power Cogen knew that PCC would rely on these projections, and FPC and Power Cogen knew that these projections would affect the projects' profitability as well as the joint venture's ability to obtain financing for the projects.

16. On March 13, 1991, PCC and FPC executed two contracts for the purchase of firm capacity and energy by FPC from QFs, the Contract with Lake Cogen and another with Pasco Cogen. In compliance with Commission Rules 25-17.0832(1)&(2), both contracts were submitted to the Commission and were approved for cost recovery by Commission Order No. 24734, issued on July 1, 1991. 91 FPSC 7:60. The Commission's order found that Lake Cogen's Contract is expected to provide savings to FPC's ratepayers of more than $3 million (Net Present Value). 91 FPSC 7:71.

17. When the Facility became commercially operational, FPC commenced making firm capacity and energy payments to Lake Cogen in

accordance with the Contract. All of FPC's payments for energy delivered by Lake Cogen to FPC since the Facility began commercial operation in July 1993, through the payment made in August 1994 for energy delivered in July 1994, were calculated using the formula set forth in section 9.1.2(i) of the Contract, i.e., the formula for calculating the "firm energy price" under the Contract.

18. In a letter to Lake Cogen dated July 18, 1994, FPC claimed to have determined that it (FPC) "would not be operating" "an avoided unit" with certain limited characteristics during certain hours, and further declared that, as a result of this determination, FPC would pay for energy delivered in those hours at a rate based on FPC's as-available energy costs, which are less than the firm energy prices that FPC would otherwise be obligated to pay to Lake Cogen. FPC claimed that these actions were being taken pursuant to the provisions of Section 9.1.2 of the Contract. FPC sent similar letters, announcing similar claims and intentions, to the other QFs that are parties to the Negotiated Contracts. FPC's July 18, 1994 letters to Lake Cogen and the other QFs represented the first occasion on which FPC ever indicated to Lake Cogen or any of the other QFs that FPC considered the avoided unit contemplated by the Negotiated Contracts to be anything other than a fully characterized pulverized coal unit operated as FPC would have operated such a unit on its system, had that unit been installed.

19. FPC filed a petition for a declaratory statement in Docket No. 940771-EQ on July 21, 1994, seeking the Commission's

declaration that its new interpretation of the disputed Section 9.1.2 of the Contract complies with the Commission's rules and with the Commission's orders approving the Contract and the other Negotiated Contracts. Lake Cogen and other QFs moved to dismiss FPC's July 21 petition. Lake Cogen filed suit against FPC in the Circuit Court of the Fifth Judicial Circuit, in and for Lake County, Florida, on October 7, 1994.[2] After the Commission Staff issued a recommendation stating the Staff's position that FPC's petition for declaratory statement was legally inappropriate, FPC filed a second petition, styled "Amended Petition," on October 31, 1994. Lake Cogen and other QFs moved the Commission to dismiss FPC's Amended Petition, and, following oral argument, the Commission granted the QFs' motions to dismiss by its Order No. PSC-95-0210-FOF-EQ. FPC did not appeal the Commission's dismissal of its petition.

STATEMENT OF ULTIMATE FACTS ALLEGED AND DISPUTED ISSUES OF MATERIAL FACT

20. Pursuant to Rule 25-22.036(7)(a)3&4, Lake Cogen submits the following as its statement of ultimate facts alleged and disputed issues of material fact. (Lake believes that most of these issues of fact may be disputed either by FPC or by the Commission Staff, and rather than burden this pleading with a redundant listing of these facts, Lake submits them as its statement of both ultimate facts alleged and as its statement of

[2] Lake's Circuit Court action is currently pending, but it being held in abeyance pursuant to agreement by Lake and FPC.

disputed issues of material fact pursuant to the Rules.) As a preliminary matter, Lake alleges, as disputed issues of material fact, all facts stated in paragraphs 1 through 19 above that are disputed by either FPC or the Commission Staff.

21. When the 1991 Pulverized Coal Unit contemplated by the Contract would have been in operation, Lake Cogen is entitled to energy payments based upon the Firm Energy Cost, as defined in Section 9.1.2(i) of the Contract. When the avoided unit would not have been in operation, Lake Cogen is to receive payments based upon FPC's As-Available Energy Cost. Based on Lake's and FPC's mutual understanding that the avoided unit contemplated by the Contract was a fully characterized pulverized coal unit, with scrubbers, designed for baseload operation, as well as on FPC's established practice of avoiding cycling its baseload coal units off-line, from the commercial in-service date of Lake's cogeneration facility through August 8, 1994, FPC paid Lake the firm energy price for all energy delivered from the Lake facility.

22. The only appropriate method of determining energy payments under the Contract is with reference to the operational status of the real, operable 1991 Pulverized Coal Unit specified in the Contract, as FPC would have operated that unit had it been installed on FPC's system in 1991. Accordingly, any settlement of this dispute must be evaluated with respect to the payments that would be made with reference to such real, operable 1991 Pulverized Coal Unit.

23. In 1991, when FPC entered into the Contract with Lake

Cogen, FPC's forecasts indicated that there would be, over the relevant forecast period, at least some periods of time during which FPC's as-available energy prices would be less than the projected firm energy prices that would be due and payable under the Contract.

24. At the time that the Contract was entered into, the parties' intention with respect to the disputed Section 9.1.2 of the Contract was that energy payments thereunder would be determined with respect to the operational status of a fully characterized pulverized coal fired generating unit, with flue gas desulfurization scrubbers, constructed in 1991, as that unit would have been operated on FPC's system, had that unit been installed. This unit is referred to in the Contract as the "Avoided 1991 Pulverized Coal Unit."

25. The Circuit Court of the Fifth Judicial Circuit has confirmed that this is the intent of the Contract in its order granting partial summary judgment on the issue of liability in favor of Lake Cogen and against FPC. The Court specifically held that:

> Section 9.1.2 of the Agreement, together with the other pertinent sections of the Agreement, requires the Defendant FPC to make electric energy payments to the Plaintiff with reference to modeling the operation of a real, operable 1991 Pulverized Coal Unit, having the characteristics required by law to be installed on such a unit as well as all other characteristics associated with such a unit, as selected by the Plaintiff in Section 8.2.1 of the Agreement and described in Appendix "C", Schedules 3 and 4 of the Agreement.

26. In its submissions to the Commission, FPC indicated that

the avoided unit, i.e., the generating facility that FPC would have built, but for its contracts with Lake Cogen and the other QFs, was a pulverized coal fired generating unit or units referenced in FPC's generation expansion plan filed with the Commission in Docket No. 910004-EU.

27. On August 9, 1994, FPC changed the methodology by which it made energy payments to Lake Cogen and other qualifying facilities ("QFs") with negotiated power sales contracts (the "Negotiated Contracts") having the same energy pricing language as that in the disputed Section 9.1.2 of the Contract. FPC's new methodology reflected a characterization of the avoided unit contemplated by the Contract that was radically different from the characterization of the avoided unit contemplated by the parties when the Contract was entered into, as well as radically different from the characterization of the avoided unit with reference to which FPC had consistently made energy payments to Lake Cogen and the other QFs under the Negotiated Contracts from their respective commercial in-service dates until August 9, 1994. FPC's newly fabricated avoided unit, which it refers to as "the 4-parameter unit," has limited characteristics that are not reflective of the avoided unit contemplated under the Contract. It was on the basis of this new, limited, artificial, fraudulent characterization that FPC's modeling of the avoided unit indicated that the avoided unit would be cycled off in FPC's dispatch.

28. FPC operates, and has consistently operated, its system in such a manner as to avoid, to the maximum extent practicable, if

not to the maximum extent possible, cycling any of its large pulverized coal units -- i.e., Crystal River Units Nos. 1, 2, 4, and 5 -- off-line for any reason.

29. Based upon the financial projections and other information submitted by FPC, the Commission approved the Contract between FPC and Lake Cogen on July 1, 1991, by Order No. 24734. The Commission's approval of the Contract, and the other Negotiated Contracts, was predicated on its findings that:

a. The capacity and energy generated by the facilities is needed by FPC and Florida's utilities;

b. The contracts appear to be cost effective to FPC's ratepayers;

c. FPC's ratepayers are reasonably protected from defaults by the QFs; and

d. The contracts meet all the requirements and rules governing qualifying facilities.

30. FPC fabricated its new energy payment methodology long after the Contract was entered into and approved, for cost recovery purposes, by the Commission. Until FPC announced its newly fabricated interpretation and unilaterally implemented it in the summer of 1994, there was no evidence that any such interpretation was ever understood, contemplated, or intended by any of the QFs or, indeed, by FPC.

31. While it is true that the Contract, as modified by the Settlement Agreement, would require the payment of a firm energy price for all energy delivered to FPC, that payment methodology

represents an administrative convenience for the purpose of computing payments consistent with the Settlement Agreement's intent to compromise on the allocation of the amounts in dispute. The firm energy price to be paid under the modified Contract is not the firm energy payment rate associated with the avoided unit contemplated under the Contract, but is in fact much less than that rate, reflecting the compromise inherent in the Settlement Agreement.

32. FPC's new energy payment methodology does not more closely approximate the avoided costs associated with the avoided unit contemplated by the Contract, which avoided costs formed the basis for the Contract and for the Commission's approval thereof in 1991.

33. The Settlement Agreement is substantially identical, in all material respects, to the settlement agreement between Pasco Cogen Ltd. and FPC recently approved by the Commission in Docket No. 961407-EQ. Lake disputes whether any meaningful or substantive factual distinctions exist between the Settlement Agreement and the FPC-Pasco Cogen settlement agreement.

34. The curtailment benefits provided by the Settlement Agreement are significant, beneficial to FPC and its ratepayers, and not overstated by FPC.

35. FPC's modeling of its fabricated, hypothetical avoided unit does not result in payments that are closer to the avoided costs of the avoided unit contemplated by the Contract. Moreover, FPC's modeling of its fabricated, hypothetical avoided unit is

patently inconsistent with the Commission's Order No. 24734 approving the Contract.

36. The "buyout" provision of the Contract, pursuant to which FPC would make certain payments to Lake Cogen from 1996 through 2008 in return for being relieved of its obligation to purchase the Facility's output from January 1, 2010 through July 31, 2013, is cost-effective to, and in the best interests of, FPC and its ratepayers. Accordingly, the Commission should approve the Settlement Agreement, including the "buyout" provision thereof.

37. The Settlement Agreement will provide significant benefits to FPC and its ratepayers and would resolve contentious litigation between FPC and Lake Cogen. Accordingly, it is in the public interest, as well as in the best interests of FPC and its customers. Accordingly, it should be approved.

DISPUTED ISSUES OF LAW AND POLICY

38. Lake Cogen herein sets forth several disputed issues of law, some of which also have policy implications or ramifications. Lake does not invite the Commission to try the case on the merits; rather, Lake sets forth these issues because they are addressed in the Order, and accordingly, Lake believes that it must address those issues to protect its substantial interests. Lake believes that the Order is much broader and far-reaching than necessary to resolve the issues in this proceeding, i.e., whether the Settlement Agreement should be approved for cost recovery purposes. More specifically, Lake believes that the following statements pose issues of law (and, in some cases, policy) that are in dispute in

this proceeding.

39. This case presents, at its core, a case where the purchasing utility has attempted to alter contract payments to a QF due to changed circumstances. FPC understood -- and probably still understands -- that the avoided unit contemplated by the Contract was -- and is -- a fully characterized pulverized coal unit that, like all other pulverized coal units on FPC's system, would be operating all, or very nearly all, of the time that it was available.

40. The Settlement Agreement provides for payments that are less than the avoided costs calculated at the time the Contract was entered into and approved for cost recovery by the Commission, as well as less than the payments that are due and owing under the Contract.

41. It would be arbitrary and capricious for the Commission to refuse to approve, for cost recovery purposes, the Settlement Agreement that is the subject of this docket, where it recently approved another settlement agreement (between FPC and Pasco Cogen, Ltd.) that is in all material respects identical to the Settlement Agreement between FPC and Lake Cogen in this case.

42. The curtailment benefits provided by the Settlement Agreement are significant, beneficial to FPC and its ratepayers, and not overstated by FPC. Neither the Commission's nor the FERC's rules governing QF curtailments permit a utility to curtail purchases merely for economic reasons; rather, curtailments are only permitted where continuing to receive QF power "will impair

the utility's ability to give adequate service to the rest of its customers or, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases or otherwise place an undue burden on the utility."

43. The Commission cannot disallow cost recovery by FPC for payments made to Lake Cogen (or any other QF) pursuant to a court order requiring such payments as a matter of contract law.

44. Rejection of the Settlement Agreement by the Commission would be contrary to established principles of administrative finality and further contrary to the Commission's prior pronouncements with respect to the effect of its approval, for cost recovery purposes, of contracts between QFs and utilities.

45. Lastly, Lake disputes the legal conclusions stated in the Order regarding the jurisdiction of the Commission to take this action, and whether or not denial of the Settlement Agreement violates Lake Cogen's rights under the equal protection clauses of the Florida and United States Constitutions.

RELIEF REQUESTED

46. Lake Cogen is entitled to a formal proceeding and hearing pursuant to Chapter 120, Florida Statutes, and to have the Commission fully consider the issues raised herein as to why the Commission should approve the Settlement Agreement, for cost recovery purposes, pursuant to Rule 25-17.0836, Florida Administrative Code.

WHEREFORE, based upon the foregoing, Lake Cogen, Ltd. and its general partner, NCP Lake Power, Inc., respectfully request that, if the Commission does not, on its own motion, dismiss the petition herein as moot, the Commission set this matter for hearing and a formal proceeding pursuant to Section 120.57(1), Florida Statutes.

Respectfully submitted this 5th day of December, 1997.

Robert Scheffel Wright
Florida Bar No. 966721
LANDERS & PARSONS, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302
Telephone (904) 681-0311
Telecopier (904) 224-5595

Attorneys for NCP Lake Power, Inc.
and Lake Cogen, Ltd.

CERTIFICATE OF SERVICE
DOCKET NO. 961477-EQ

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*) or by United States Mail, postage prepaid, on the following individuals this 5th day of December, 1997:

Robert V. Elias, Esquire*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370, Gunter Building
Tallahassee, Florida 32399-0850

James A. McGee, Esquire
Florida Power Corporation
P.O. Box 14042
St. Petersburg, Fla 33733-4042

D. Bruce May, Esquire
Karen D. Walker, Esquire
Holland & Knight LLP
P. O. Drawer 810
Tallahassee, Florida 32302

Robert Scheffel Wright
Attorney

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd. by Florida Power Corporation.	Docket No. 961477-EQ Submitted for filing: December 15, 1997

FLORIDA POWER CORPORATION'S MOTION TO DISMISS LAKE COGEN, LTD.'S PETITION ON PROPOSED AGENCY ACTION

Florida Power Corporation (Florida Power), hereby moves this Commission to dismiss the Petition on Proposed Agency Action filed by Lake Cogen, Ltd. (Lake) on December 5, 1997, which seeks to protest the Commission's Proposed Agency Action Order No. PSC-97-1437-FOF-EQ (the PAA Order). As grounds for dismissal Florida Power asserts that further proceedings in this docket to obtain Commission approval of the Settlement Agreement between Florida Power and Lake, including the hearing requested by Lake's Petition, have been rendered moot by the expiration of the Settlement Agreement in accordance with its own terms. In support of its motion to dismiss, Florida Power states as follows:

Background

1. On December 12, 1996, Florida Power filed a petition initiating this docket and requesting the Commission to approve a Settlement Agreement between Florida Power and Lake Cogen, Ltd. (Lake), which was intended to terminate pending litigation between the parties over the price of energy payments made pursuant to Section 9.1.2 of a Commission-approved Negotiated Contract between Florida Power and Lake. The Settlement Agreement was made expressly contingent

upon its approval by the Commission and provided in Section 2.a. that the Agreement would terminate if Commission approval was not obtained by July 1, 1997. Because of unanticipated delays in the progress of this proceeding beyond the control of Florida Power or Lake, the parties extended the Settlement Agreement's termination date to October 31, 1997. (*See,* letter agreement between Florida Power and Lake dated August 13,1997, attached hereto as Exhibit A.)

2. Thereafter, at its September 23, 1997 Agenda Conference, the Commission voted to deny Florida Power's petition for approval of the Settlement Agreement. The Commission's decision was reflected in its PAA Order issued November 14, 1997. On December 5, 1997, the last day of the protest period and five weeks after the Settlement Agreement had terminated, Lake filed its Petition on Proposed Agency Action (the Petition) claiming as its "Relief Requested" that "Lake Cogen is entitled to a formal proceeding and hearing pursuant to Chapter 120, Florida Statutes, and to have the Commission fully consider the issues raised herein as to why the Commission should approve the Settlement Agreement ... ." (Petition, at page 17.)

Discussion

3. Florida Power submits that Lake's Petition is rendered moot by the termination of the Settlement Agreement. By requesting a formal proceeding to approve a settlement that no longer exists, Lake has asked the Commission to embark upon an exercise in futility. For this reason, Lake's Petition fails to state a claim for which relief can be granted and must therefore be dismissed.

4. In its Petition, Lake acknowledges that "there is no longer a viable settlement agreement upon which a hearing can be held ..." but suggests that

somehow it is Florida Power's initial petition that is moot, and by unstated but obvious implication, that the resulting PAA Order is moot as well.[1] (Petition, at page 4.) This suggestion is clearly wrong. In sharp contrast to the situation with Lake's Petition, the Settlement Agreement was viable and effective (subject to Commission approval) on December 12, 1996 when Florida Power filed its initial petition, as it was on September 23, 1997 when the Commission reached its decision to deny approval. It was not until October 31, 1997 that the Settlement Agreement expired by its own terms, thus rendering moot any <u>further</u> proceedings seeking its approval, including the formal proceeding requested by Lake.

5. Florida Power submits that Lake's Petition in general, and in particular, its unfounded suggestion that Florida Power's initial petition (and thus the entire proceeding to date) is moot, is nothing more than a desperate attempt to avoid the effect of language in the PAA Order that Lake considers to be detrimental to its interests. By the mere filing its request for a formal hearing on a non-existent settlement, Lake has improperly prevented, albeit temporarily, the PAA Order from becoming final pursuant to Rule 25-22.029(6), F.A.C. Moreover, by attempting to twist the acknowledged mootness of its own Petition[2] into a claim that Florida Power's initial petition is now moot, Lake seeks a result tantamount to a voluntary

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[1] In its prayer for relief, Lake asks the Commission to conduct a formal proceeding "if the Commission does not, on its own motion, dismiss the petition herein as moot ... ." (Petition, at page 18.) Presumably, the "petition herein" is intended to refer to Florida Power's initial petition (although the phrase would be more properly construed as referring to Lake's Petition). Clearly, Lake recognizes that if Florida Power's initial petition were to be dismissed as moot, then this entire proceeding to date, including the PAA Order that Lake is unhappy with, would also be moot and of no effect.

[2] As noted above, Lake's request for a formal Section 120.57(1) hearing admits "there is no longer a viable settlement agreement upon which a hearing can be held ... ." (Petition, at page 4.)

dismissal of that petition,[3] *i.e.*, the vacation the PAA Order *Nunc Pro Tunc*. This procedural ploy should not be countenanced by the Commission.

WHEREFORE, Florida Power Corporation respectfully requests that the Commission issue an order (1) dismissing Lake's Petition on Proposed Agency Action, (2) finding the PAA Order to be final, and (3) closing this docket.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By _____

James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

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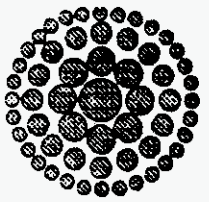
[3] Needless to say, only Florida Power, as the petitioner in this proceeding, has the right to voluntarily dismiss its petition – a right Florida Power has chosen not to exercise. Lake's suggestion that Florida Power's petition can be dismissed for mootness is simply an attempt to do indirectly what it has no right to do directly.

EXHIBIT A



Florida
Power
CORPORATION

JAMES P. FAMA
DEPUTY GENERAL COUNSEL

August 13, 1997

Lake Cogen, Ltd.
c/o NCP Lake Power, Inc.,
General Partner
One Upper Pond Road
Parsippany, NJ 07054

Re: December 6, 1996 Florida Power - Lake Cogen
Settlement Agreement

Ladies and Gentlemen:

I acknowledge receipt of your letter of July 22, 1997 proposing to modify section 2.a of the subject Settlement Agreement by extending the date by which FPSC Approval must be obtained from July 1, 1997 to ~~September 30, 1997~~ October 31, 1997.

Florida Power is agreeable to such an extension, with the understanding that FPSC Approval, as the term is used in the Settlement Agreement, requires the issuance of a Proposed Agency Action Order approving the settlement that becomes effective, in accordance with Rule 25-22.029(6), F.A.C. In other words, the condition of the Settlement Agreement requiring FPSC Approval will not be deemed satisfied if (i) the FPSC votes against approval of the Settlement Agreement at an agenda conference, or (ii) the FPSC votes in favor of approval, but the Proposed Agency Action Order issued as a result of that vote becomes a nullity by the filing of a timely request for a section 120.57 hearing pursuant to Rule 25-22.029.

In all other respects, the Settlement Agreement shall remain unchanged.

If the foregoing accurately reflect the agreement of Lake Cogen and Florida Power concerning the above subject matter, please so indicate by signing both counterparts of this letter in the space provided below and return one signed counterpart to me.

Very truly yours,

FLORIDA POWER CORPORATION

By _____
James P. Fama

Confirmed and Agreed to:

LAKE COGEN, LTD.

By: NCP Lake Power, Inc.

By _____

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd. by Florida Power Corporation	Docket No.961477-EQ Submitted for filing: December 15, 1997

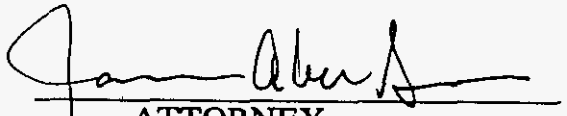
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of Florida Power Corporation's Motion to Dismiss Lake Cogen, Ltd.'s Petition on Proposed Agency Action has been furnished to the following individuals by regular U.S. Mail this 12th day of December, 1997:

Robert Scheffel Wright
Landers & Parsons, P.A.
310 West College Avenue
P.O. Box 271
Tallahassee, FL 32302

Wendy Greengrove, Esq.
Director-Legal & Corporate Affairs
GPU International, Inc.
One Upper Pond Road
Parsippany, NJ 07054

Wm. Cochran Keating IV, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



ATTORNEY

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COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd. by Florida Power Corporation	)))))	Docket No. 961477-EQ January 8, 1998

LAKE COGEN, LTD.'S RESPONSE TO FLORIDA POWER CORPORATION'S MOTION TO DISMISS

LAKE COGEN, LTD., by and through its general partner, NCP LAKE POWER, INC. (hereinafter collectively "Lake" or "Lake Cogen") and pursuant to Rule 25-22.037, Florida Administrative Code ("F.A.C."), hereby files this response to Florida Power Corporation's ("FPC's") Motion to Dismiss Lake's Petition on Proposed Agency Action (the "Motion to Dismiss") and in support thereof states:

BACKGROUND

1. On December 6, 1996, FPC and Lake Cogen entered into that certain Settlement Agreement and Amendment To Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Lake Cogen, Ltd. and Florida Power Corporation (the "Settlement Agreement"). NCP Lake is a wholly-owned subsidiary of GPU International, Inc. The purpose of the Settlement Agreement was to settle all disputes between Lake Cogen and FPC that are the subject of pending litigation in the case styled NCP Lake Power, Incorporated, a Delaware corporation, as General Partner of Lake Cogen, Ltd., a Florida limited partnership v. Florida Power Corporation, a Florida corporation, Case No. 94-2354-CA01, in the Circuit Court of the Fifth Judicial Circuit in and for Lake County. Pursuant to the Commission's rules and orders, and pursuant to the terms of the Settlement Agreement itself, on December 12, 1996, FPC initiated this docket by filing a petition for

approval of the Settlement Agreement for cost recovery purposes ("FPC's Petition").

2. NCP Lake Power, Inc. filed its petition to intervene in this docket on March 6, 1997, and Lake Cogen Ltd. filed its petition to intervene in this docket on March 11, 1997. Intervention was granted to Lake Cogen Ltd. by Commission Order No. PSC-97-0645-PCO-EQ and to NCP Lake Power, Inc. by Commission Order No. PSC-97-0644-PCO-EQ, both issued on June 5, 1997.

3. On November 14, 1997, the Florida Public Service Commission ("Commission") issued proposed agency action Order No. PSC-97-1437-FOF-EQ (the "PAA Order") in which the Commission gave notice of its intent to deny FPC's petition for approval of the Settlement Agreement for cost recovery purposes.

4. On December 5, 1997, Lake Cogen timely filed a Petition on Proposed Agency Action ("Lake's Petition") challenging both the factual underpinnings and the legal conclusions of the PAA Order.

5. On December 15, 1997, FPC filed a Motion to Dismiss Lake's Petition. Pursuant to Order No. PSC-97-1586-PCO-EQ, the Commission granted Lake Cogen until January 9, 1998 to file a response to the Motion to Dismiss. For the reasons set forth below, FPC's Motion to Dismiss is without merit and should be denied.

DISCUSSION

6. In the Motion to Dismiss, FPC concedes, and Lake Cogen would agree, that the Settlement Agreement "expired by its own terms" on October 31, 1997. (Motion to Dismiss at 3). However, FPC asserts that because the Settlement Agreement did not expire until after September 23, 1997, the date of the agenda conference during which the Commission

considered FPC's Petition, the resulting PAA Order is valid. FPC further asserts that because the Settlement Agreement is now terminated, any further proceedings in this docket, including Lake's Petition challenging the PAA Order, are moot. (Motion to Dismiss at 3).[1]

7. The calculated -- but absurd -- implication of FPC's assertions is that the factual statements and conclusions contained in the PAA Order cannot be challenged. In other words, FPC is asking the Commission to allow the proposed factual findings of the PAA Order to become the equivalent of final agency action without providing for an administrative hearing pursuant to Chapter 120, Florida Statutes. Specifically, in its request for relief, FPC asks that the Commission issue an order "finding the PAA Order to be final." Motion to Dismiss at 4. FPC's request flies in the face of Chapter 120, the Commission's rules, the plain language of the PAA Order itself, and well-established Florida case law and must be denied. FPC has no right to, and the Commission may not grant, a final order containing factual findings where no hearing has been held and where such an order would adversely affect another entity (Lake Cogen).

8. Rule 25-22.029, F.A.C., is the Commission's rule concerning proposed agency action proceedings. Rule 25-22.029, F.A.C., provides in pertinent part:

> (1) At any time subsequent to the initiation of a proceeding before the Commission, the Commission may give notice of proposed agency action. Proposed agency action shall be

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[1]Lake Cogen does not disagree with the general proposition that the expiration of the Settlement Agreement affected this proceeding. In fact, as stated in its Petition, Lake Cogen believes that the expiration of the Settlement Agreement has rendered this entire proceeding moot. (Lake's Petition at 4). Accordingly, contemporaneous with the filing of this response, Lake Cogen is filing with the Commission a motion to dismiss this entire proceeding as moot.

made upon a vote of the Commission, and may be reflected in the form of an order or a notice of intended action.

(2) After agenda conference, the Division of Records and Reporting shall issue written notice of the proposed agency action, advising all parties of record that they have 21 days after issuance of the notice in which to file a request for a § 120.57 hearing.

* * *

(4) One whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a § 120.57 hearing, in the form provided by Rule 25-22.036.

* * *

(6) In the absence of a timely request for a § 120.57 hearing, and unless otherwise provided by a Commission order, the proposed action shall become effective upon the expiration of the time within which to request a hearing.

(Emphasis supplied). Thus, Rule 25-22.029, F.A.C., clearly provides that a PAA Order becomes effective or final without an evidentiary hearing only if no such hearing is timely requested.

9. The PAA Order itself cites Rule 25-22.029, F.A.C., in clearly providing that:

> The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code.

PAA Order at 21 (emphasis supplied). Thus, FPC's Motion to Dismiss improperly asks the Commission to ignore both Rule 25-22.029, F.A.C., and the clear language of the PAA

Order, and allow the "preliminary" action proposed in the PAA Order to become final without first convening an evidentiary hearing pursuant to Chapter 120, Florida Statutes.

10. Moreover, FPC's assertion that any attempt by Lake Cogen to challenge the PAA Order is moot effectively ignores nearly twenty years of Florida administrative case law.[2] In Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778, 786-87 (Fla. 1st DCA 1981), the First District Court of Appeal considered the status of "proposed agency action" taken by the Florida Department of Environmental Regulation ("DER") in the form of a notice of intent to issue a permit, which, pursuant to applicable DER rules, would become "final agency action" only if no hearing was timely requested by an appropriate party.[3] The Court in J.W.C. stated that:

> Clearly, there was no final agency action by DER in this proceeding prior to [the filing of a] request for hearing. [The filing of a] request for a hearing commenced a de novo proceeding, which, as previously indicated is intended "to formulate final agency action taken earlier and preliminarily."

Id. (quoting McDonald v. Department of Banking and Finance, 346 So. 2d 569, 584 (Fla. 1st DCA 1977). In In re: Petition For Approval of Contract for the Purchase of Firm Capacity and Energy Between General Peat Resources, L.P. and Florida Power and Light Company, 94 FPSC 3:507, 510 (Fla. Pub. Serv. Comm'n 1994), the Commission relied on J.W.C. in

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[2]Not surprisingly, FPC cites no cases or other precedent in support of its Motion to Dismiss.

[3]DER's "notice of intent" closely parallels the Commission's PAA Order. Both are preliminary agency actions which cannot become final or effective if a valid petition is filed within the prescribed time period.

concluding that a "PAA order no longer has any effect when a de novo proceeding is required."

11. Just as the petitioners in J.W.C. were, Lake Cogen is entitled to a de novo evidentiary hearing to attempt to change the Commission's mind with regard to the disputed factual statements and conclusions contained in the PAA Order. See Couch Construction Co., Inc. v. Department of Transportation, 361 So. 2d 172, 176 (Fla. 1st DCA 1978) (stating that the Chapter 120, Florida Statutes, hearing requirements "are designed to give affected parties an opportunity to change the agency's mind.") In stark contrast, once Lake Cogen timely requested an evidentiary hearing pursuant to Chapter 120, Florida Statutes, FPC was not entitled to and otherwise has no cognizable legal right to have the wholly preliminary factual findings of the PAA Order become final. Accordingly, unless this entire proceeding is dismissed as moot, Lake Cogen must be granted an opportunity to challenge the PAA Order.

WHEREFORE, Lake Cogen, Ltd. respectfully requests that the Commission issue an order denying Florida Power Corporation's Motion to Dismiss Lake Cogen, Ltd.'s Petition on Proposed Agency Action.

Respectfully submitted this 8th day of January, 1998.

ROBERT SCHEFFEL WRIGHT
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LANDERS & PARSONS, P.A.
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Post Office Box 271
Tallahassee, Florida 32302
Telephone: (850) 681-0311
Telecopier: (850) 224-5595

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail or hand-delivery (*) on this 8th day of January, 1998 to the following:

James A. McGee, Esq.
Office of the General Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733-4042

Wm. Cochran Keating IV, Esq.*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Robert Scheffel Wright

G

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited approval of settlement agreement with Lake Cogen, Ltd., by Florida Power Corporation.	DOCKET NO. 961477-EQ ORDER NO. PSC-98-0450-FOF-EQ ISSUED: March 30, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DISMISSING PROCEEDINGS AND FINDING ORDER NO. PSC-97-1437-FOF-EQ TO BE A NULLITY

BY THE COMMISSION:

I. CASE BACKGROUND

On December 12, 1996, Florida Power Corporation ("FPC") filed a petition for approval of a settlement agreement between it and NCP Lake Power, Inc. for cost recovery purposes. NCP Lake Power, Inc. and Lake Cogen Ltd. (collectively, "Lake") were granted intervenor status on June 5, 1997. As amended by subsequent agreement of the parties, the settlement agreement would expire on October 31, 1997, absent the necessary regulatory approvals. At our September 23, 1997 Agenda Conference, we voted to deny FPC's petition. Our decision was memorialized in proposed agency action Order No. PSC-97-1437-FOF-EQ, issued November 14, 1997 ("PAA Order"). On December 5, 1997, Lake timely filed a Petition on Proposed Agency Action protesting the PAA Order.

On December 15, 1997, FPC timely filed a motion to dismiss Lake's petition. After receiving our approval for an extension of time to file a response, Lake filed a response to FPC's motion to dismiss on January 8, 1998. On the same day, Lake filed its Motion to Dismiss Proceeding and Close Docket. FPC timely filed a response to Lake's motion to dismiss on January 20, 1998.

II. ARGUMENTS OF THE PARTIES

On page 4 of its Petition on Proposed Agency Action, Lake notes that the settlement agreement has expired and that negotiations to further extend it have been unsuccessful. Lake suggests that it may be appropriate for us to dismiss the underlying petition, i.e. FPC's original petition, as moot and close the docket. Lake requests that we set the matter for a

formal hearing if we do not, on our own motion, dismiss FPC's petition as moot.

In FPC's motion to dismiss Lake's Petition on Proposed Agency Action, FPC contends that Lake's petition should be dismissed because it fails to state a claim for which relief may be granted. FPC asserts that a formal proceeding on a non-existent settlement agreement would be futile. In addition, FPC argues that Lake's suggestion - that FPC's initial petition is now moot - is wrong, as is the implication that the PAA Order is also moot. FPC notes that the settlement agreement was viable when FPC filed its initial petition and when we reached our decision. On page 3 of its motion to dismiss, FPC asserts that the settlement agreement's expiration on October 31, 1997, rendered moot "any further proceedings seeking its approval, including the formal proceeding requested by Lake." (Emphasis supplied by FPC). FPC requests that we (1) dismiss Lake's petition, (2) find the PAA Order to be final, and (3) close this docket.

In Lake's response to FPC's motion to dismiss, Lake contends that a proposed agency action order becomes effective or final without an evidentiary hearing only if a Section 120.57, Florida Statutes, hearing is not timely requested. Lake refers to the PAA Order, which states, "The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code ("F.A.C."). Lake notes that Rule 25-22.029(6), F.A.C., provides that "[i]n the absence of a timely request for a §120.57 hearing, and unless otherwise provided by a Commission order, the proposed action shall become effective upon the expiration of the time within which to request a hearing."

Further, Lake cites Florida Department of Transportation v. J.W.C. Co., Inc., 396 So.2d 778, 786-87 (Fla. 1st DCA 1981), which states:

> Clearly, there was no final agency action by DER in this proceeding prior to [the petitioners'] request for hearing. [The petitioners'] request for a hearing commenced a de novo proceeding, which, as previously indicated is intended "to formulate final agency action taken earlier and preliminarily."

Id. (quoting McDonald v. Department of Banking and Finance, 346 So. 2d 569, 584 (Fla. 1st DCA 1977)). Lake also cites Commission Order No. PSC-94-0310-FOF-EQ, issued March 17, 1994, for the proposition that a proposed agency action order is no longer effective when a de novo proceeding is required. Lake concludes that once it timely filed its petition on proposed agency action, FPC was not entitled

to have the preliminary factual findings of the PAA Order become final. Unless the entire proceeding is dismissed as moot, according to Lake, it must be granted an opportunity to challenge the PAA Order.

In Lake's motion to dismiss this entire proceeding, Lake argues that the entire proceeding, including FPC's petition, should be dismissed as moot because there is no longer a viable settlement agreement upon which a hearing may be held. Lake cites Godwin v. State, 593 So. 2d 211, 212 (Fla. 1992), which states that "[a] case is 'moot' when it presents no actual controversy or when the issues have ceased to exist." Lake asserts that the issues in this case ceased to exist when the settlement agreement expired, thus rendering the entire proceeding and FPC's petition moot. Lake points out that FPC offers no case law to support the assertion that only proceedings initiated after expiration of the settlement agreement are rendered moot. Lake asserts that the timely filing of its petition prevented the PAA Order from becoming final, leaving it subject to review in a de novo proceeding. However, Lake contends, the expiration of the settlement agreement obviates the need for such a proceeding and renders the entire proceeding moot. Lake requests that we (1) dismiss FPC's petition on the grounds that the entire proceeding is moot, (2) declare the PAA Order null and void, and (3) close the docket.

In FPC's response to Lake's motion to dismiss, FPC contends that Lake's argument is entirely dependent on the validity of its petition because without a valid protest the PAA Order becomes final in accordance with Rule 25-22.029(6), Florida Administrative Code. FPC argues that Lakes' petition is invalid because it fails to state a claim for which relief can be granted. FPC further contends that because the PAA Order memorializes a decision made when the settlement agreement was in effect, Lake's claim that the entire proceeding is moot is untenable. FPC notes that in Godwin, supra, Ms. Godwin appealed the trial court's order to involuntarily commit her to a state hospital but was discharged before her appeal was decided; the State moved to dismiss her appeal on grounds that her discharge rendered her appeal moot. FPC feels it is constructive to note that no issue was made of the trial court order's validity.

III. ANALYSIS AND FINDINGS

Because the issues are so intertwined among the pleadings summarized above, we believe it is appropriate for us to decide the underlying issues before ruling separately on the motions to dismiss. We note that both parties recognize the futility of conducting a formal proceeding on a settlement agreement that has expired by its own terms. We agree that we should not conduct a

formal hearing on this matter. Thus, the ultimate question for our consideration is whether our PAA Order should become final or is a nullity.

FPC and Lake present a novel issue: whether to make a proposed agency action order final, or render it a nullity, when a person whose substantial interests are affected timely files a protest but the underlying subject matter of the proposed action no longer exists, thereby rendering any formal proceedings on the matter futile.

By its own terms, Section 120.569, Florida Statutes, applies to all proceedings in which the substantial interests of a party are determined by an agency. Lake, as a party to the settlement agreement, is clearly a party whose substantial interests were determined by our PAA Order. Section 120.569(2)(b), Florida Statutes, provides that all parties shall be afforded an opportunity for a hearing. In other words, "APA hearing requirements are designed to give affected parties an opportunity to change the agency's mind." Couch Construction Co., Inc. v. Department of Transportation, 361 So. 2d 172, 176 (Fla. 1st DCA 1978).

FPC argues that Lake's petition is invalid because the expiration of the settlement agreement made it moot. Following FPC's reasoning, however, no one may challenge our PAA Order, because any challenge would be made moot by the expiration of the settlement agreement. Under this approach, no party would be afforded an opportunity for hearing to change this agency's mind, but the PAA Order would become final nonetheless. We believe that this result is completely at odds with the plain language and intent of Section 120.569, Florida Statutes. See, Winter v. Playa del Sol, Inc., 353 So. 2d 598 (Fla. 4th DCA 1977) (stating that a statute with clear and unambiguous language must be given its plain and obvious meaning and must not be constructed in a manner that leads to an absurd result).

In addition, we note Rule 25-22.036(9)(b), Florida Administrative Code, which provides:

> (b) Where a petition on proposed agency action has been filed the Commission may:
>
> 1. Deny the petition if it does not adequately state a substantial interest in the Commission determination or if it is untimely.
> 2. Grant the petition and determine if a 120.57(1) hearing or a 120.57(2) hearing is required.

FPC does not argue that Lake's petition was untimely or fails to adequately state a substantial interest. In fact, Lake's petition was timely and, we believe, adequately states a substantial interest in our PAA Order.

For the preceding reasons, we find that Lake's petition is valid. Thus, pursuant to Rule 25-22.029(6), Florida Administrative Code, we find that the timely filing of Lake's petition prevented the PAA Order from becoming final and effective. Because no final agency action had been taken, Lake's petition commenced a de novo proceeding on the issues disputed in the petition. See Florida Department of Transportation v. J.W.C. Co., Inc., supra, and Section 120.80(13)(b), Florida Statutes.

We find that FPC cannot, at this point, ask that Lake's petition be dismissed as moot without recognizing that the entire proceeding should be dismissed. By definition, a de novo proceeding is not an appellate proceeding but an original proceeding designed to formulate final agency action. See J.W.C., supra. Section 120.80(13)(b), Florida Statutes, provides that "a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute." The expiration of the settlement agreement, however, effectively eliminated any disputed issues. Godwin, supra, states that "[a] case is 'moot' when it presents no actual controversy or when the issues have ceased to exist." Thus, based on our finding that Lake's petition is valid and initiates a de novo proceeding on the issues disputed therein, we believe that the plain language of Godwin leads to the conclusion that the original proceeding initiated by Lake's petition is moot and should be dismissed. Accordingly, we find (1) that FPC's original petition for approval of the settlement agreement should be dismissed as moot and (2) that our proposed agency action Order No. PSC-97-1437-FOF-EQ is a nullity.

Based on our findings above, we deny FPC's motion to dismiss Lake's petition, and we grant Lake's motion to dismiss this proceeding and close the docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this proceeding, including Florida Power Corporation's petition for approval of a settlement agreement between it and NCP Lake Power, Inc., is moot and is hereby dismissed. It is further

ORDERED that Order No. PSC-97-1437-FOF-EQ is a nullity. It is further

ORDERED that Florida Power Corporation's Motion to Dismiss Lake Cogen, Ltd.'s Petition on Proposed Agency Action is hereby denied. It is further

ORDERED that Lake Cogen, Ltd.'s Motion to Dismiss Proceeding and Close Docket is hereby granted. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 30th day of March, 1998.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.