BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Rule 25-17.080 through 25-17.091, F.A.C., regarding cogeneration and small power production.	DOCKET NO. 910603-EQ ORDER NO. 24882 ISSUED: 8/6/91

Pursuant to Notice, a Prehearing Conference was held on July 10, 1991, in Tallahassee, Florida, before Commissioner Betty Easley, Prehearing Officer.

A. APPEARANCES:

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On behalf of Florida Power & Light Company.

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On behalf of Florida Power Corporation.

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On behalf of Tampa Electric Company.

G. EDISON HOLLAND, JR., Esquire and JEFFREY A. STONE, Esquire, Beggs and Lane, Post Office Box 12950, Pensacola, Florida 32576
On behalf of Gulf Power Company.

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On behalf of Consolidated Minerals, Inc.

JOSEPH A. McGLOTHIN, Esquire and VICKI GORDON KAUFMAN, Esquire, Lawson, McWhirter, Grandoff & Reeves, 522 East Park Avenue, Suite 200, Tallahassee, Florida 32301
On behalf of Falcon Seaboard Power Corporation and Nassau Power Corporation.

JOSEPH A. McGLOTHIN, Esquire and VICKI GORDON KAUFMAN, Esquire, Lawson, McWhirter, Grandoff & Reeves, 522 East Park Avenue, Suite 200, Tallahassee, Florida 32301
On behalf of Hadson Development Corporation.

STEPHEN A. HERMAN, Esquire and GERALD S. ENDLER, Esquire, PG&E Bechtel Generating Company, 7475 Wisconsin Avenue, Bethesda, Maryland 20814-3422
On behalf of PG&E-Bechtel Generating Company and Indiantown Cogeneration, L.P.

PAUL SEXTON, Esquire, and RICHARD A. ZAMBO, Esquire, Richard A. Zambo, P.A., 211 South Gadsden Street, Tallahassee, Florida 32301
On behalf of Decker Energy, International, Mulberry Energy Company and Florida Industrial Cogeneration Association.

SUZANNE BROWNLESS, Esquire, Oertel, Hoffman, Fernandez & Cole, P.A., 2400 Blair Stone Road, Suite C, Tallahassee, Florida 32314 and ROGER A. YOTT, Class B Practitioner, Air Products and Chemicals, Inc., 2 Windsor Plaza, 2 Windsor Drive, Allentown, PA 18195
On behalf of Air Products and Chemicals, Inc.

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On behalf of Destec Energy, Inc.

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On behalf of Ark Energy, Inc.

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On behalf of the Florida Public Service Commission.

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Counsel to the Commissioners.

PREHEARING ORDER

Background

The scope of this proceeding has been defined by three separate Commission Orders. In the first, Order No. 24142, Issued 2/20/91, Commissioner Gunter limited the scope of the May hearing in the 910004-EU docket to exclude negotiated contract issues:

> Given this limited objective, and the limited time available for this hearing, we limit the scope of this hearing to those issues necessary to approve firm capacity and energy tariffs, standard offer contracts, as-available energy tariffs and standard interconnection agreements. We will not consider factual and policy issues relating to the negotiation of contracts or the approval of negotiated contracts. We do not dispute that such issues may be appropriate for Commission consideration at a later date; they are not appropriate for inclusion in this proceeding.

On February 21, 1991, Air Products and Chemicals, Inc. (Air Products) filed a motion for reconsideration of Order No. 24142. In its motion, Air Products requested that the following issue be included in the issues to be considered at the May, 1991 hearing:

> Issue 67: Are all units identified in each utility's generation expansion plan presumptively valid units for Qfs to negotiate against for the sale of firm capacity and energy?

In denying Air Products' motion for reconsideration the Commission in Order No. 24328 stated:

> While this may be a legitimate issue, only three days have been set aside for the "mini" annual planning hearing in this docket. In this three day period we will be required to consider and vote on

> firm capacity and energy tariffs, standard offer contracts, as-available energy tariffs and standard interconnection agreements which were filed by the investor owned utilities in Florida. Consideration of these issues, in addition to the issue proposed by Air Products, cannot be reasonably accomplished in three days. Air Products' motion for reconsideration is therefore denied, however, Air
>
> Products is free to again raise this issue for consideration at a future hearing to be set in this docket to resolve issues related to the negotiation of contracts. (emphasis added)

Finally, on May 2, 1991, Air Products filed a motion to withdraw the "regulatory out" issues, and to strike all testimony addressing those issues from the May, 1991 hearing in the 910004-EU docket. Air Products argued that since "regulatory out" issues applied to negotiated contracts, they shouldn't be considered at the May, 1991 "mini" APH pursuant to Order No. 24142. Commissioner Gunter, as prehearing officer disagreed and in Order No. 24557 stated:

> The issues in question relate directly to the "regulatory out" provisions of the standard offer contracts being considered in this docket. Should the parties wish to raise "regulatory out" issues relating to negotiated contracts at the September, 1991 hearing, they will be free to do so. Air Products' Motion to Strike is therefore denied.

The scope of this proceeding has been adequately defined, and the parties, including Florida's four large investor owned electric utilities have been well apprised of the purpose of this docket.

Use of Prefiled Testimony

All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits, unless there is a sustainable objection. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his testimony at the time he or she takes the stand.

Use of Depositions and Interrogatories

If any party desires to use any portion of a deposition or an interrogatory, at the time the party seeks to introduce that deposition or a portion thereof, the request will be subject to proper objections and the appropriate evidentiary rules will govern. The parties will be free to utilize any exhibits requested at the time of the depositions subject to the same conditions.

B. WITNESSES

In keeping with Commission practice, witnesses will be grouped by the subject matter of their testimony. The witness schedule is set forth below in order of appearance by the witness's name, subject matter, and the issues which will be covered by his or her testimony.

Witness	Subject Matter	Issues
FALCON/NASSAU		
D. Divine	Changes in utility generation expansion plan, opportunity to sell, guidelines for negotiated contracts	1,4,6-10
S. Garrett	Changes in utility generation expansion plan, negotiation parameters, contract approval criteria, standard contract clauses	2-11,21-22
J. Sweeney	Changes in utility generation expansion plan,	2-11,21-22

Witness	Subject Matter	Issues
	negotiation parameters, contract approval criteria, standard contract clauses	
DECKER		
M. Whiting, Jr.		7,8,12,13
MULBERRY		
A. Ford		7,8
FICA		
F. Seidman		1,4,6-10,12,13
AIR PRODUCTS		
R. Simmons		7,8
DESTEC		
J.J. Stauffacher		1,4,6,8,9 10,12,13
D. Mott		6,7,8
ARK ENERGY		
K. Larsen	Contract Provisions	6-10

C. EXHIBIT LIST

Witness	Exhibit Number	Description

All exhibits must be delineated by the parties in a supplemental prehearing statement which will be ordered by the prehearing officer prior to the September 6, 1991 prehearing scheduled in this docket.

D. PARTIES' STATEMENT OF BASIC POSITION

STAFF: No position at this time.

FLORIDA POWER & LIGHT COMPANY (FPL): A basic difficulty in responding to proposed issues in this docket is the lack of an identified scope or purpose for the docket combined with what appears to be the real or potential conflict with the procedures applicable to rulemaking and declaratory statements.

As to the lack of a stated scope or purpose for this docket, FPL would respectfully point out that typically the propriety of an issue is dependent upon the purpose of the proceeding. Absent an identification of the purpose of the proceeding and the issuance of notice of that purpose, it is impossible to properly and accurately assess the propriety of a proposed issue.

As to the real or potential conflict with the procedures applicable to rulemaking and declaratory statement, FPL would point out that the issues preliminarily identified appear to be either a request for the establishment of policy or a ruling as to a party's rights or obligations under existing law and/or rule. The former type of issue is a rule under the Administrative Procedure Act and the latter type of relief is in the nature of a declaratory statement. FPL submits that both of these types of issues are improper in this proceeding.

Of particular concern to FPL, however, is that there has been extensive opportunity for comment and input in the rulemaking proceeding culminating in the issuance of Order No. 23623 revising the Commission's rules relating to cogeneration and small power production on October 16, 1990. As shown by the attached Appendix A, there has been extensive opportunity for and consideration of issues relating to the Commission's rules on cogeneration and small power production. Many issues proposed appear to FPL to be a continuation or duplication of this earlier and extensive rulemaking process. In effect, to permit the type of issues herein proposed would, in many instances, simply continue the rulemaking process and continue it unfairly.

FLORIDA POWER CORPORATION (FPC): Most of the issues proposed by the parties are beyond the scope of this docket. Issues raised concerning contract negotiations are required to be addressed on a case-by-case basis under Rule 25-17.0834, Settlement of Dispute in Contract Negotiations. If the Commission decides to revisit its

decision in the recent cogeneration rulemaking, and desires to follow something other than a case-by-case approach, it must convene a rulemaking proceeding.

Many issues raised indicate that the parties in effect seek a "standard offer negotiated contract." This would violate the Commission's current rules, which limit the standard offer to contracts less than 75 MW. Hence a rule change be required to create a standard offer negotiated contract. Further, as a matter of policy, the Commission should not participate in contract negotiations.

Issues concerning whether a utility must negotiate to purchase QF power to displace all future units identified in the generation expansion plan also are beyond the scope of this proceeding. These issues are statutorily committed to being taken up on a case-by-case basis in a need proceeding under the Electric Power Plant Siting Act. The Commission can neither predecide the outcome of a need case nor decide need issues in a generic fashion as parties urge in this docket. Furthermore, the Siting Act and the Commission's rules require that determinations about building generation take into account a large number of factors. For example, the Commission must determine whether such need can be met by conservation. The Commission must also examine reliability, the cost-effectiveness of the proposed facility, and statewide need. Decisions about who builds future generation cannot be made in the absence of facts as the parties would have the Commission do in this case.

TAMPA ELECTRIC COMPANY (TECO): Tampa Electric believes that the Commission's new rules on negotiated contracts speak for themselves. They were the subject of lengthy debate during the rulemaking proceeding with all parties having had abundant opportunities for input. Tampa Electric believes that no purpose would be served by an implementation hearing other than to afford the cogenerators a forum in which to attempt to ensure, in advance of any negotiations, that all negotiated contracts include various standard provisions favorable to them and exclude various provisions the cogenerators find distasteful. Such attempted rulemaking is unwarranted and inappropriate. For this reason, Tampa Electric objects to the issues set forth in the attachment to Ms. Suzanne Brownless' June 27, 1991 letter to Mr. Michael Palecki.

Tampa Electric does not believe that it is reasonable or appropriate to attempt to define the substance of what should or should not be included in a negotiated contract. The Commission's present rules provide adequate guidelines for negotiations between

a utility and a QF. The particular provisions of a negotiated contract should be developed in the negotiating process on a case-by-case basis -- not prescribed in a vacuum by means of this proceeding. Any qualifying facility which does not feel that a utility is acting reasonably in the negotiating process may pursue the remedies set forth in Commission Rule 25-17.0834.

GULF POWER COMPANY (GULF): It is the basic position of Gulf Power Company that the concerns raised by the cogenerator interests are more appropriately addressed by the utilities and cogenerators in the context of particular contract negotiations. Issues as to what should or should not be part of a contract between a utility and a particular cogenerator or small power producer should be resolved in the context of the Commission's case-by-case analysis of particular contracts brought before it for approval by the parties thereto. Otherwise, the Commission is placed in a position of establishing policy in a vacuum and would thereby remove the flexibility provided within the rules to allow and encourage utilities and cogenerators to tailor an agreement to the particular circumstances faced by the parties at a particular point in time. The risk of such artificial constraints is that a less than optimum mix of generation capacity, both utility-owned and QF, will be the long term result, with consequential adverse financial and/or service related effects being forced upon the state's electric utility ratepayers. The Commission's rules concerning utilities' obligations with regard to cogenerators and small power producers were adopted in their present form after extensive debate and consideration only last October. Nothing has occurred in the past 6-8 months to warrant a change to the rules themselves or the flexibility they provide. Whatever is not specifically spoken to in the rules should be left to development in the context of the Commission's case-by-case review of individual negotiated contracts brought before it under the rules.

Gulf and the other electric utilities with a statutory obligation of service must be allowed the flexibility to plan for and obtain the mix of generating capacity necessary to serve their customers that, over the long term, is optimal for the ratepayers from both a financial and service related viewpoint. Artificial constraints on the negotiation process will not allow this goal to be reached either in the short term or the long term.

CONSOLIDATED MINERALS, INC. (CMI): This proceeding is intended to implement the Commission's new rules on cogeneration as they relate to negotiated contracts between utilities and QFs. The State of Florida's goal is to encourage the development of cogeneration

facilities. This proceeding offers the Commission an opportunity to move toward that goal by providing guidelines for full and fair negotiation of contracts within the new cogeneration rules.

FALCON SEABOARD POWER CORPORATION/NASSAU POWER CORPORATION (FALCON/NASSAU): The purpose of this docket is to address issues relating to negotiated contracts which arise from the implementation of the Commission's new cogeneration rules. Falcon/Nassau believes that the Commission should, provide QFs and utilities with guidance as to the regulatory framework which must be adhered to in the negotiation of cogeneration contracts.

HADSON DEVELOPMENT CORPORATION (HADSON): The purpose of this docket is to address issues relating to negotiated contracts which arise from the implementation of the Commission's new cogeneration rules. Hadson believes that the Commission should, provide QFs and utilities with guidance as to the regulatory framework which must be adhered to in the negotiation of cogeneration contracts.

INDIANTOWN COGENERATION, L.P. (INDIANTOWN): The Generating Company believes that the negotiation of power sale contracts between qualifying facility developers and utilities is a critical component in the successful development of qualifying facilities and in meeting Florida's future capacity needs. The t^E^Rms and conditions of individual negotiated contracts should be agreed upon by the parties to the contract.

DECKER ENERGY INTERNATIONAL (DECKER): The Commission should take the opportunity in this proceeding to further the State and National goals of encouraging the development of cogeneration and small power production facilities (QF's), by resolving those issues and concerns which impede their orderly and expeditious development. Guidelines must be implemented within which QF's will be afforded an opportunity for "real" negotiations with the utilities, even though the standard offer subscription limit has been filled or the utility's last FPSC approved generation expansion plan is no longer being used for planning purposes. The regulatory out clause must be eliminated or restructured in order to minimize its very substantial and detrimental impact on QF financing and economic viability. The Commission should recognize the doctrine of administrative finality, acknowledging that once having approved a contract between a QF and utility, its ability to later deny cost recovery to the utility is substantially constrained as a matter of law. The impact of a utility's "income

tax consequences" as they relate to "early" or advance capacity payments and interconnection costs should be decided as a matter of Commission/State policy, requiring the utilities to take steps necessary to avoid or minimize such tax effects rather than utility policy of simply passing them through to the QF as a reduction in capacity payments or an increase in interconnection cost. Recognition of QF's benefits with respect to the Clear Air Act amendments must be quantified and added to payments received by QF's for energy and/or capacity. The Commission should articulate procedures to be used relative to complaint resolution pursuant to Rule 25-17.0825(5). [Issues relating to avoided energy cost pricing and the availability of "real time" energy pricing must be resolved. Although Decker has tentatively raised these issues here, it recognizes that they may more appropriately be the subject of separate proceedings.]

MULBERRY ENERGY COMPANY, INC. (MULBERRY): The Commission should take the opportunity in this proceeding to further the State and National goals of encouraging the development of cogeneration and small power production facilities (QF's), by resolving those issues and concerns which impede their orderly and expeditious development. Guidelines must be implemented within which QF's will be afforded an opportunity for "real" negotiations with the utilities, even though the standard offer subscription limit has been filled or the utility's last FPSC approved generation expansion plan is no longer being used for planning purposes. The regulatory out clause must be eliminated or restructured in order to minimize its very substantial and detrimental impact on QF financing and economic viability. The Commission should recognize the doctrine of administrative finality, acknowledging that once having approved a contract between a QF and utility, its ability to later deny cost recovery to the utility is substantially constrained as a matter of law. The impact of a utility's "income tax consequences" as they relate to "early" or advance capacity payments and interconnection costs should be decided as a matter of Commission/State policy, requiring the utilities to take steps necessary to avoid or minimize such tax effects rather than utility policy of simply passing them through to the QF as a reduction in capacity payments or an increase in interconnection cost. Recognition of QF's benefits with respect to the Clear Air Act amendments must be quantified and added to payments received by QF's for energy and/or capacity. The Commission should articulate procedures to be used relative to complaint resolution pursuant to

Rule 25-17.0825(5). [Issues relating to avoided energy cost pricing and the availability of "real time" energy pricing must be resolved. Although Mulberry has tentatively raised these issues here, it recognizes that they may more appropriately be the subject of separate proceedings.]

FLORIDA INDUSTRIAL COGENERATION ASSOCIATION (FICA): The Commission should take the opportunity in this proceeding to further the State and National goals of encouraging the development of cogeneration and small power production facilities (QF's), by resolving those issues and concerns which impede their orderly and expeditious development. Guidelines must be implemented within which QF's will be afforded an opportunity for "real" negotiations with the utilities, even though the standard offer subscription limit has been filled or the utility's last FPSC approved generation expansion plan is no longer being used for planning purposes. The regulatory out clause must be eliminated or restructured in order to minimize its very substantial and detrimental impact on QF financing and economic viability. The Commission should recognize the doctrine of administrative finality, acknowledging that once having approved a contract between a QF and utility, its ability to later deny cost recovery to the utility is substantially constrained as a matter of law. The impact of a utility's "income tax consequences" as they relate to "early" or advance capacity payments and interconnection costs should be decided as a matter of Commission/State policy, requiring the utilities to take steps necessary to avoid or minimize such tax effects rather than utility policy of simply passing them through to the QF as a reduction in capacity payments or an increase in interconnection cost. Recognition of QF's benefits with respect to the Clear Air Act amendments must be quantified and added to payments received by QF's for energy and/or capacity. The Commission should articulate procedures to be used relative to complaint resolution pursuant to Rule 25-17.0825(5). [Issues relating to avoided energy cost pricing and the availability of "real time" energy pricing must be resolved. Although FICA has tentatively raised these issues here, it recognizes that they may more appropriately be the subject of separate proceedings.]

AIR PRODUCTS AND CHEMICALS, INC. (AIR PRODUCTS): Among potential contract terms, regulatory out has the potential to most significantly inhibit the development of QF capacity in Florida. The record is clear that regulatory out provisions discourage cogeneration development and discriminate against cogenerated

capacity as a means of meeting public utilities' capacity needs. This discouragement and discrimination is in direct contravention of the public policy expressed in both state and federal legislation and the stated intentions of this Commission.

DESTEC ENERGY, INC (DESTEC): QF-utility negotiation to avoid units identified in the generation expansion plans upon which utilities are relying is vital to the development of cogeneration facilities that meet the state of Florida's increasing capacity needs in a cost-effective manner.

ARK ENERGY, INC. (ARK ENERGY): Ark Energy believes that all provisions of the utilities' negotiated contracts should be fair. Ark urges the Commission to ensure that "regulatory out clauses" included in negotiated contracts be structured to avoid impairing the ability of QFs to obtain project financing. Ark also urges the Commission to clarify what is to happen when there is a change in the generation expansion plan relied upon by the utility as a premise for negotiations.

ORLANDO UTILITIES COMMISSION (OUC): OUC filed a Notice of Appearance herein on June 19, 1991, asserting that OUC's interests may be substantially affected by the disposition of this docket.

As stated in the Notice of Appearance, OUC has no proposed issues to submit, but respectfully reserves the right to cross examine at the hearing and to submit a post-hearing brief, if appropriate.

E. STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: If the generation expansion plan reviewed pursuant to Rule 25-17.0833 significantly changes, should the utility be required to take any specific action and if so what?

STAFF: No position at this time. This appears to be a legal issue which does not involve a disputed issue of material fact. The submission of briefs by the parties, and argument thereon, rather than an evidentiary proceeding, would therefore be appropriate.

FPL: FPL objects to his issue. This issue seeks to have the Commission make an additional statement of general applicability imposing requirements not otherwise required by rule or statute. That would be rulemaking.

The rule referred to does not address changes to generation plans submitted for review, and it certainly requires no action. If an action is to

be prescribed, that is a rule which should be adopted in a rulemaking proceeding, if a rule is necessary. This issue is simply an attempt to reopen the rulemaking.

The issue also is vague and inaccurate. Rule 25-17.0833 does not address "approval" of generation expansion plans; it only requires "review." Moreover, Rule 25-17.0833 does not state that the plans reviewed are necessarily to be the reference point or standard for negotiated contracts.

FPC: FPC objects to this issue. It is beyond the scope of this proceeding and should be taken up in a Commission rulemaking proceeding (Rules 25-22.010 through 25-22.018).

TECO: Tampa Electric objects to this issue in that it calls for the adoption of a rule.

In addition, the issue assumes that a previously reviewed generation expansion plan will change whereas that plan does not really change. Instead, it becomes obsolete due to subsequent plans being developed by the utility. This issue is unnecessary. Rule 25-17.0832(7) provides:

> (7) Upon request by a qualifying facility or any interested person, each utility shall provide within 30 days its most current projections of its future generation mix including type and timing of anticipated generation additions, and at least a 20-year projection of fuel forecasts, as well as any

other information reasonably required by the qualifying facility to project future avoided cost prices. The utility may charge an appropriate fee, not to exceed the actual cost of production and copying, for providing such information.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

As a practical matter, significant changes in a utility's generation expansion plan will in all likelihood trigger a need for the utility to suspend its approved standard offer contract and submit its then current expansion plan to Commission review in the context of approving a new standard offer contract for the utility.

CMI: No position.

FALCON/NASSAU: Yes. Within thirty (30) days of a significant change in a utility's generation expansion plan, the utility should be required to file a revised plan with supporting documentation for Commission approval. This will put interested parties on notice of a change in a utility's plan. (Divine)

HADSON: Yes. Within thirty (30) days of a significant change in a utility's generation expansion plan, the utility should be required to file a revised plan with supporting documentation for Commission approval. This will put interested parties on notice of a change in a utility's plan.

INDIANTOWN: No position.

DECKER: Yes. As a minimum, the utility should file with the FPSC the generation expansion plan on which it is relying and which reflects such changes. The filing should include all documentation necessary to specifically support and justify each deviation from the expansion plan last approved by the FPSC.

The FPSC should undertake plan review on an expedited basis, providing opportunity for participation in the process by QF's and other affected parties.

MULBERRY: Yes. As a minimum, the utility should file with the FPSC the generation expansion plan on which it is relying and which reflects such changes. The filing should include all documentation necessary to specifically support and justify each deviation from the expansion plan last approved by the FPSC. The FPSC should undertake plan review on an expedited basis, providing opportunity for participation in the process by QF's and other affected parties.

FICA: Yes. As a minimum, the utility should file with the FPSC the generation expansion plan on which it is relying and which reflects such changes. The filing should include all documentation necessary to specifically support and justify each deviation from the expansion plan last approved by the FPSC. The FPSC should undertake plan review on an expedited basis, providing opportunity for participation in the process by QF's and other affected parties.

AIR PRODUCTS: No position.

DESTEC: Although we have no specific recommendation, we believe that there should be a fair and equal opportunity for access to the most recent generation expansion plans of the utilities. Such fair and equal access protects the ratepayers by providing added generation options for meeting identified capacity needs.

ARK ENERGY: Yes. The Commission should require that the utility file a revised plan with supporting documentation within 30 days of a significant change. in its generation expansion plan. This will put interested persons on notice of significant changes in the utility's plan.

TO BE BRIEFED. INVOLVES NO DISPUTED ISSUE OF MATERIAL FACT.

ISSUE 2: As a matter of law is a utility obligated to negotiate contracts for the purchase of firm capacity and energy from QFs based on any unit identified in the generation expansion plan on which the utility is relying?

STAFF: No position at this time. This appears to be a legal issue, to be decided under our existing statutes and rules, which does not involve a disputed issue of material fact. The submission of briefs by the parties, and argument thereon, rather than an evidentiary proceeding would therefore be appropriate.

FPL: This is an obvious legal issue that does not require an evidentiary proceeding.

The resolution of this issue will require the Commission to engage in supplemental rulemaking outside of a rulemaking proceeding.

If the Commission is to engage in supplemental rulemaking, it should follow rulemaking procedures. While the scope of this proceeding is not well defined; it has not yet been suggested to be a rulemaking.

If one takes the position that this issue does not require supplemental rulemaking but merely an interpretation of existing rules (a position which ignores the limits of the existing rules), then the raising of this issue is a improper request for a declaratory statement. Declaratory statements are not generic, they are meant to address a "particular set of circumstances only." There should also be a real controversy. Neither requirement is met.

Most importantly, no party has shown the need for this question to be resolved. There is no known controversy or problem that needs to be addressed.

Another deficiency of the issue is that it is unclear. What does the phrase "based on all units" mean? How does one negotiate on multiple units? Is it intended to read "based on any unit," instead?

FPC: FPC objects to this issue. Issues concerning whether a utility must negotiate to purchase QF power to displace all future units identified in the generation expansion plan are beyond the scope of this proceeding. These issues are statutorily committed to being taken up on a case-by-case basis in a need proceeding under the Electric Power Plant Siting Act. The Commission can neither predecide the outcome of a need case nor decide need issues in a generic fashion as parties urge in this docket. Furthermore, the Siting Act and the Commission's rules require that determinations about building generation take into account a large number of factors. For example, the Commission must determine whether such need can be met by conservation. The Commission must also examine reliability, the cost-effectiveness of the proposed facility, and stateside need. Decisions about who builds future generation cannot be made in the absence of facts as the parties would have the Commission do in this case.

TECO: No. The utility should retain maximum flexibility for ensuring both the orderly and timely development of its system requirements. The determination of an optimal generation expansion plan evolves form a dynamic process which continually evaluates and consistently balances the need for additional new capacity contingent upon an examination of alternative capital, fuel, operating and maintenance costs which ultimately enables the utility to meet its projected needs at the lowest total cost.

Moreover, to the extent that this issue calls for a policy determination by the Commission on whether a utility should be so obligated, Tampa Electric objects to the issue in that it calls for the adoption of a rule.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

Under Rule 25-17.0832(2) F.A.C., utilities are encouraged to negotiate contracts with QFs for the purchase of firm capacity and energy. Utilities are obligated under Rule 25-17.0834 to negotiate

and deal in good faith with QFs. The failure of a utility to negotiate with regard to a particular generating unit within the utility's generation expansion plan must meet these standards. Otherwise the utility would be subject to sanctions by the Commission on its finding, upon proper application and proof by the QF, that the utility failed to negotiate or deal in good faith.

CMI: Yes.

FALCON/NASSAU: Yes. PURPA requires utilities to purchase energy and capacity from QFs. The Commission has implemented this broad federal requirement in Florida through the vehicle of negotiated contracts for QFs over 75 MW. Therefore, pursuant to PURPA, utilities are required to negotiate with QFs as to every utility energy and capacity need which the QF can avoid.

HADSON: Yes. PURPA requires utilities to purchase energy and capacity from QFs. The Commission has implemented this broad federal requirement in Florida through the vehicle of negotiated contracts for QFs over 75 MW. Therefore, pursuant to PURPA, utilities are required to negotiate with QFs as to every utility energy and capacity need which the QF can avoid.

INDIANTOWN: A utility should be required to consider all appropriate options, including negotiated contracts, in connection with units identified in its generation expansion plan.

DECKER: Yes. §366.051, F.S., and 18CFR§292.303 require a utility to purchase electricity offered for sale by a cogenerator or small power producer. Rule 25-17.0834 requires utilities to negotiate in good faith for the purchase of capacity and energy from QFs. A utility may not evade its obligations by declaring that certain planned units are not available for negotiation.

MULBERRY: Yes. §366.051, F.S., and 18CFR§292.303 require a utility to purchase electricity offered for sale by a cogenerator or small power producer. Rule 25-17.0834 requires utilities to negotiate in good faith for the purchase of capacity and energy from

QFs. A utility may not evade its obligations by declaring that certain planned units are not available for negotiation.

FICA: Yes. §366.051, F.S., and 18CFR§292.303 require a utility to purchase electricity offered for sale by a cogenerator or small power producer. Rule 25-17.0834 requires utilities to negotiate in good faith for the purchase of capacity and energy from QFs. A utility may not evade its obligations by declaring that certain planned units are not available for negotiation.

AIR PRODUCTS: No position.

DESTEC: Yes.

ARK ENERGY: Yes.

TO BE BRIEFED. INVOLVES NO DISPUTED ISSUE OF MATERIAL FACT.

ISSUE 3: As a matter of law is a utility precluded from constructing new capacity while it has pending offers from cogenerators for like capacity at less than avoided cost?

STAFF: Staff believes that a utility's construction of an expansion unit should be determined at a need determination proceeding, on a case-by-case basis, based upon all information available to the Commission at the time. For the Commission to change its policy and make an across-the-board ruling on this issue would require a rulemaking proceeding.

FPL: FPL objects to this issue. This issue completely fails to implement or interpret any existing rule. The amended cogeneration rules in no way address the construction or engineering of an expansion unit. .

What the issue seeks is a Commission determination of general applicability that restricts the conduct of utilities and otherwise affects its rights. Consequently, the issue seeks to have the Commission create a new rule.

There has been no showing of a need for a rule addressing the hypothetical facts posed by this issue. On the face of this issue, the Commission should also be concerned about whether it is being asked to take an action which may be inconsistent with the Power Plant Siting Act. If a utility has been authorized to construct and engineer an expansion unit, it may well be inconsistent with the Act for a utility to preclude from acting as authorized.

Finally, the issue as stated lacks sufficient specificity to allow the Commission to meaningfully address it. The Commission should not attempt to address such a generic issue that is so poorly defined. For instance, it is not clear what is meant by "pending offers" of "like capacity".

FPC: FPC objects to this issue. Issues concerning whether a utility must negotiate to purchase QF power to displace all future units identified in the generation expansion plan are beyond the scope of this proceeding. These issues are statutorily committed to being taken up on a case-by-case basis in a need proceeding under the Electric Power Plant Siting Act. The Commission cannot predecide the outcome of a need case nor decide need issues in a generic fashion as parties urge in this docket. Furthermore, the Siting Act and the Commission's rules require that determinations about building generation take into account a large number of factors. For example, the Commission must determine whether such need can be met by conservation. The Commission must also examine reliability, the cost-effectiveness of the proposed facility, and stateside need. Decisions about who builds future generation cannot be made in the absence of facts as the parties would have the Commission do in this case.

TECO: No. Moveover, the proponents of this issue seek a Commission policy determination of whether a utility should be so precluded. Tampa Electric objects to this issue in that it calls for the adoption of a rule.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

CMI: Yes.

FALCON/NASSAU: Yes. See Issue 2.

HADSON: Yes. See Issue 2.

INDIANTOWN: No position.

DECKER: A utility that proceeds to construct a unit, whether certified or not, runs the risk of disallowance from rate base if it neglects to pursue offers from QFs in lieu of construction.

MULBERRY: A utility that proceeds to construct a unit, whether certified or not, runs the risk of disallowance from rate base if it neglects to pursue offers from QFs in lieu of construction.

FICA: A utility that proceeds to construct a unit, whether certified or not, runs the risk of disallowance from rate base if it neglects to pursue offers from QFs in lieu of construction.

AIR PRODUCTS: No position.

DESTEC: No, but only if a valid certificate of need proceeding pursuant to Section 403.501-.518, F.S., has been conducted (including evaluation of non-utility generating options) and a certification of need granted.

ARK ENERGY: No position.

ISSUE 4: Should QFs have an opportunity to sell capacity and energy to a utility in lieu of new purchases from another source? If so, what procedures, if any, should be implemented?

STAFF: Staff does not believe the Commission should pre-determine the terms and conditions of contracts to be negotiated between QFs and utilities. The provisions of negotiated contracts should be

developed in the negotiating process. As the Commission pointed out in Order No. 13846, Issued November 13, 1984, a QF is free to negotiate with the utility regarding the inclusion of a regulatory out provision in the contract and perhaps get the utility to give up the regulatory out provision in return for the QF's concession on some other point.

The Commission is free to determine in this docket whether as a matter of policy it wishes to dictate one or more terms of negotiated contracts between QFs and utilities. This is not a rulemaking docket however, and should the Commission make such a policy decision, it would be necessary to proceed to rulemaking to adopt rules to implement said policy.

FPL: FPL objects to this issue. This is clearly an attempt to supplement the existing rules. It seeks a policy or procedure of general applicability that the Commission previously declined to adopt in its rulemaking. This issue is a blatant attempt to reopen rulemaking and should not be indulged in this proceeding.

FPC: FPC objects to this issue. It is beyond the scope of this proceeding and should be taken up in a Commission rulemaking proceeding (Rules 25-22.010 through 25-22.018).

TECO: Tampa Electric objects to this issue in that it calls for the adoption of a rule. The issue is ambiguously worded although Tampa Electric believes the intent is to ensure that QFs have an opportunity to sell their output to a utility before the utility can purchase power or schedule contracts with other utilities. This overlooks the fact that there are different ways and different reasons why utilities purchase power from each other, i.e., short-term, long-term, firm or as-available, depending upon need, reliability, cost and availability. QFs which can provide capacity and energy of sufficient reliability and with sufficient legally enforceable guarantees of deliverability to permit a purchasing utility to reduce its firm power purchases from another utility (provided that utility is contractually

able to reduce or avoid its purchases from another utility), do have an opportunity to sell capacity and energy to the purchasing utility based on costs which the utility avoids. QFs should not have a first call on sales to utilities where the result would be detrimental either to the buying or the selling utility

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

None. This should be left open to negotiation in the context of individual agreements between QFs and utilities.

CMI: No position.

FALCON/NASSAU: Yes. When a utility identifies a need to purchase additional energy and capacity, it should be required to advertise such need and evaluate QF alternatives before purchasing from another source. (Divine)

HADSON: Yes. When a utility identifies a need to purchase additional energy and capacity, it should be required to advertise such need and evaluate QF alternatives before purchasing from another utility.

INDIANTOWN: A utility should be required to consider all appropriate options, including negotiated contracts, in connection with units identified in its generation expansion plan.

DECKER: Yes. QF capacity can avoid purchases from other utilities, as well as construction of capacity. Rule 25-17.0832(2) contemplates that QFs be able to negotiate contracts for firm capacity and energy to avoid "other capacity-related costs." However, QFs are unable to do so because utilities provide no information regarding pending purchases of firm power. Each utility should be required to develop a procedure to advise QFs of its intent to enter into agreements to purchase firm power from another utility and provide QFs with an

opportunity to sell firm capacity and energy in lieu thereof. Such procedures should be filed with the Commission and reviewed by the Commission, subject to comment by QFs.

MULBERRY: Yes. QF capacity can avoid purchases from other utilities, as well as construction of capacity. Rule 25-17.0832(2) contemplates that QFs be able to negotiate contracts for firm capacity and energy to avoid "other capacity-related costs." However, QFs are unable to do so because utilities provide no information regarding pending purchases of firm power. Each utility should be required to develop a procedure to advise QFs of its intent to enter into agreements to purchase firm power from another utility and provide QFs with an opportunity to sell firm capacity and energy in lieu thereof. Such procedures should be filed with the Commission and reviewed by the Commission, subject to comment by QFs.

FICA: Yes. QF capacity can avoid purchases from other utilities, as well as construction of capacity. Rule 25-17.0832(2) contemplates that QFs be able to negotiate contracts for firm capacity and energy to avoid "other capacity-related costs." However, QFs are unable to do so because utilities provide no information regarding pending purchases of firm power. Each utility should be required to develop a procedure to advise QFs of its intent to enter into agreements to purchase firm power from another utility and provide QFs with an opportunity to sell firm capacity and energy in lieu thereof. Such procedures should be filed with the Commission and reviewed by the Commission, subject to comment by QFs.

AIR PRODUCTS: No position.

DESTEC: Yes. Any identified new capacity need should be available for competitive procurement. If a need is identified, a QF should have the right to offer capacity and negotiate with the utility to meet that need.

ARK ENERGY: Yes. To ensure that the general body of ratepayers benefit from energy at the lowest effective pair, the price for the block of power

to be purchased from the other utility or other source should constitute the avoided price, and QFs should have the opportunity to bid against that price for the block to be purchased.

TO BE BRIEFED. INVOLVES NO DISPUTED ISSUE OF MATERIAL FACT.

ISSUE 5: As a matter of law does Rule 25-17.0832(2)(a) intend that the same type of documentation or evidence be used for standard offer and negotiated contracts to satisfy the "statewide need" consideration?

STAFF: No position at this time. This appears to be a legal issue which does not involve a disputed issue of material fact. The submission of briefs by the parties, and argument thereon, rather than a evidentiary proceeding, would therefore be appropriate.

FPL: FPL objects to this issue. There is no need to address this issue generically. The Commission declined to address it in the rulemaking. To do so now and create a requirement of general applicability would be supplemental rulemaking.

A generic finding on this issue would also limit the Commission's flexibility in applying its rule. Depending upon the circumstances, different documentation might suffice, and it is not clear that "criteria" are necessary.

FPC: This issue is beyond the scope of this proceeding and should be taken up in a Commission rulemaking proceeding (Rules 25-22.010 through 25-22.018).

TECO: Tampa Electric objects to this issue in that it calls for the adoption of a rule or the amendment of an existing rule. The Commission should refrain from accepting the cogenerators' invitation for the Commission to voluntarily constrain its own discretion in reviewing generation contracts.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

This issue apparently seeks to limit the Commission in regards to what it may or shall consider. It is in the best interests of the ratepayers for the Commission to retain flexibility with regard to the particular type of document or criteria that will be used in considering ". . . whether additional firm capacity and energy is needed by the purchasing utility and by Florida utilities from a statewide perspective;". With this flexibility, the Commission retains its ability to consider the best evidence available at the time of its review.

CMI: No position.

FALCON/NASSAU: Yes.

HADSON: Yes.

INDIANTOWN: No position.

DECKER: Rule 25-17.0832(2)(a) applies the same "considerations" for approval of standard offer and negotiated contracts. However, the rule does not specify the type of information to be considered by the Commission considering "statewide need" and that consideration could be satisfied by differing submissions.

MULBERRY: Rule 25-17.0832(2)(a) applies the same "considerations" for approval of standard offer and negotiated contracts. However, the rule does not specify the type of information to be considered by the Commission considering "statewide need" and that consideration could be satisfied by differing submissions.

FICA: Rule 25-17.0832(2)(a) applies the same "considerations" for approval of standard offer and negotiated contracts. However, the rule does not specify the type of information to be considered by the Commission considering "statewide need" and that consideration could be satisfied by differing submissions.

AIR PRODUCTS: No position.

DESTEC: The same documentation or evidence used in a Section 25-17.0833 proceeding to evaluate the statewide need for the most recently approved standard offer contracts should be used unless the Commission determines good cause exists to use other documentation or evidence.

ARK ENERGY: Yes.

ISSUE 6: Should the Commission prescribe guidelines or standard provisions in negotiated contracts, and if so to what extent?

STAFF: Ark Energy has stated that Issue 11 may be deleted, however, staff believes it is a legitimate issue and should be retained. Staff believes the issue should be reworded, with the phrase "baseline provisions" changed to "standard provisions".

Staff's position is that the Commission should not predetermine the terms and conditions of contracts to be negotiated between QFs and utilities.

FPL: FPL objects to this issue. This was a fundamental issue addressed by the Commission in its recent rulemaking. At that time the Commission chose the course of a rule that did not prescribe any base line provisions in negotiated contracts. This was a conscious decision on the part of the Commission made in the face of numerous attempts by QFs to have the Commission specify provisions for negotiated contracts. This is no more than an attempt to rehash the determinations made in the earlier rulemaking.

One need only review the existing rules and the total absence of any prescription of terms for negotiated contracts to conclude that the Commission has already addressed this issue. To the extent that this issue attempts to have the Commission readdress this issue, it is a request for supplemental rulemaking. In fact, it is an even more fundamental attempt to have the

Commission rethink its entire approach established in the recently enacted cogeneration rules. This issue is improper and should not indulged in a proceeding ostensibly designed to implement the new rules.

FPC: The Commission should not prescribe any provisions to be followed in negotiations. The parties should negotiate issues between themselves. The Commission should not involve itself in negotiations by prescribing any contract provisions.

TECO: Tampa Electric objects to this vague and broadly worded issue in that it calls for an amendment to the Commission's rules on negotiated contracts. The Commission should not prescribe or preclude any provisions in negotiated contracts whether they be called "guidelines" or "standard provisions".

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

This should be left open to negotiation in the context of individual agreements between QFs and utilities. Each contract presented for Commission approval should be evaluated on a case-by-case basis under the guidelines established in Rule 25-17.0832(2). See Gulf's position on Issue 3, above.

CMI: The Commission should provide guidelines for full and fair negotiation of contracts within the new cogeneration rules.

FALCON/NASSAU: In general, the parties should negotiate the terms and conditions of a negotiated contract. However, the Commission should eliminate "regulatory out" clauses from negotiated contracts. If the Commission does not eliminate such clauses, it should determine fault for the "regulatory out" event at the time the event occurs. See Falcon/Nassau's positions on Issues 7, 8. Further, the Commission should include standard clauses dealing with force majeure and insurance. See Falcon/Nassau's positions on Issues 9 and 10.

HADSON: In general, the parties should negotiate the terms and conditions of a negotiated contract. However, the Commission should eliminate "regulatory out" clauses from negotiated contracts. If the Commission does not eliminate such clauses, it should delineate what the "regulatory out" clause will contain. See Hadson's positions on Issues 7, 8.

INDIANTOWN: No. The terms and conditions of individual negotiated contracts should be agreed upon by the parties to the contract.

DECKER: Yes, the Commission should prescribe guidelines or standard provisions with respect to issues that utilities have declared non-negotiable. Such issues include "regulatory out" and "tax flow through" issues.

MULBERRY: Yes, the Commission should prescribe guidelines or standard provisions with respect to issues that utilities have declared non-negotiable. Such issues include "regulatory out" and "tax flow through" issues.

FICA: Yes, the Commission should prescribe guidelines or standard provisions with respect to issues that utilities have declared non-negotiable. Such issues include "regulatory out" and "tax flow through" issues.

AIR PRODUCTS: No position.

DESTEC: Rule 25-17.0832(2), F.A.C., encourages utilities and QFs to negotiate contracts for the purchase of firm energy and capacity. The rationale for this directive is that the two parties are in the best position to arrive at the terms and conditions that best suit the needs of both the utility and the QF. Thus, the Commission should only prescribe baseline provisions for those terms and conditions which encompass broad policy issues, e.g., regulatory out provisions.

ARK ENERGY: Yes. At a minimum the guidelines should address force majeure, insurance and regulatory out provisions, and should ensure that the resulting

negotiated contracts are consistent with industrial standards accepted throughout the nation.

ISSUE 7: May negotiated contracts contain a "regulatory out" provision which allows modification of the contract in the event that the utility's ability to recover payments made to QFs from its customers is denied or altered by the Commission after initial contract approval?

STAFF: Staff does not believe the Commission should predetermine the terms and conditions of contracts to be negotiated between QFs and utilities. The provisions of negotiated contracts should be developed in the negotiating process. As the Commission pointed out in Order No. 13846, Issued November 13, 1984, a QF is free to negotiate with the utility regarding the inclusion of a regulatory out provision in the contract and perhaps get the utility to give up the regulatory out provision in return for the QF's concession on some other point.

The Commission is free to determine in this docket whether as a matter of policy it wishes to dictate one or more terms of negotiated contracts between QFs and utilities. This is not a rulemaking docket however, and should the Commission make such a policy decision, it would be necessary to proceed to rulemaking to adopt rules to implement said policy.

FPL: FPL objects to this issue. The Commission has a long standing, well articulated preference for negotiated contracts between utilities and QFs. That preference has been incorporated into the amended cogeneration rules. A generic determination by the Commission of a contract term to be excluded from or included in a negotiated contract is entirely at odds with the Commission's cogeneration rules.

An attempt to preclude or include a "regulatory out" provision through a Commission pronouncement in this proceeding would be rulemaking.

Rulemaking is beyond the scope of this proceeding, and to proceed to rulemaking in this case would be procedurally improper.

FPC: FPC objects to this issue. The parties to the contract should negotiate this matter between themselves. The Commission should not involve itself in negotiations by deciding this or any other issue.

TECO: Tampa Electric believes that negotiated contracts can and should contain regulatory out provisions. However, Tampa Electric objects to this issue because it appears to be an effort on behalf of the cogenerators to have the Commission state as a matter of policy that such provisions should be prohibited. As such, it calls for rulemaking. As far as the concept of regulatory out provisions is concerned, Tampa Electric believes it is essential for the protection of the utility. The QF and not the utility should bear the risk of any future change in regulatory philosophy. Under the current Commission rules, the QFs alone are entitled to handsome benefits for providing firm capacity and energy to the utility at full avoided cost whereas the shareholders of a utility obtain no benefits for carefully selecting and managing the firm capacity purchases provided by negotiated QF contracts. Moreover, since the utility is required by law to purchase capacity and energy at full avoided costs from QFs, it would be grossly unfair to make the utility assume the risk of not being able to recover the amounts it is required to pay to QFs. The inclusion of regulatory out provisions in existing contracts previously approved by the Commission has not impeded the ability of QFs in Florida to obtain financing of their projects.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

This should be left open to negotiation in the context of individual agreements. Each contract presented for Commission approval should be evaluated on a case-by-case basis under the guidelines established in Rule 25-17.0832(2).

CMI: Negotiated contracts may contain regulatory out provisions. However, if contracts include such provisions the utility should be expected to negotiate the language of the "regulatory out" provision or work together with the QF to negotiate other provisions to ensure that the project to which the contract pertains is financiable. If the utility takes the position that a regulatory out provision must be included in the contract and that position is not negotiable, the utility should so notify the QF as soon as possible after the negotiation process begins.

FALCON/NASSAU: No, such clauses are inequitable, one-sided, and unnecessary. (Divine)

HADSON: No, such clauses are inequitable, one-sided, and unnecessary.

INDIANTOWN: The terms and conditions of individual negotiated contracts should be agreed upon by the parties to the contract.

DECKER: No. Such clauses should be precluded by the Commission.

MULBERRY: No. Such clauses should be precluded by the Commission.

FICA: No. Such clauses should be precluded by the Commission.

AIR PRODUCTS: No. The inclusion of a "regulatory out" provision in negotiated contracts is violative of Sections 366.81 and 366.051, F.S., and the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 796 et seq. Further, the inclusion of a regulatory out provision in negotiated contracts is directly contrary to the stated intentions of this .Commission to encourage cost-effective cogeneration and to allow full cost recovery of reasonable and prudent cogeneration payments.

DESTEC: No. Regulatory out provisions are violative of both federal and state law and may constitute undue discriminatory regulatory treatment of QF

capacity. In addition, such provisions increase project risk thereby increasing project cost to the direct detriment of the ratepayer.

ARK ENERGY: Yes.

ISSUE 8: If the Commission determines that a utility's negotiated contracts may contain a "regulatory out" clause, should the Commission prescribe guidelines or the terms and conditions of this clause? If so, what should they be?

STAFF: Same position at Issue 4.

FPL: FPL objects to this issue. The Commission has a long standing, well articulated preference for negotiated contracts between utilities and QFs. That preference has been incorporated into the amended cogeneration rules. A generic determination by the Commission of a contract term to be excluded from or included in a negotiated contract is entirely at odds with the Commission's cogeneration rules.

An attempt to preclude or include a "regulatory out" provision through a Commission pronouncement in this proceeding would be rulemaking. Rulemaking is beyond the scope of this proceeding, and to proceed to rulemaking in this case would be procedurally improper.

FPC: FPC objects to this issue. The parties to the contract should negotiate this matter between themselves. The Commission should not involve itself in negotiations by deciding this or any other issue.

TECO: Tampa Electric objects to this issue on the same ground as stated with respect to Issues 6 and 7. The Commission should not prescribe or preclude any provisions in negotiated contracts whether they be called "guidelines" or an outright prescription or the terms and conditions of contract provisions.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

This should be left open to negotiation in the context of individual agreements. Each contract presented for Commission approval should be evaluated on a case-by-case basis under the guidelines established in Rule 25-17.0832(2). See Gulf's position on Issue 3, above. The regulatory out clause is intended to only provide the utility relief in the event of future regulatory action to deny cost recovery. The purpose of the clause, like regulation of utilities generally, is to protect the ratepayers, not the QF which is not subject to regulatory oversight. The protection of the utility afforded by the regulatory out clause in its negotiated contracts ultimately protects the ratepayer by protecting the availability of needed capital at reasonable cost.

CMI: See CMI's position on Issue No. 7.

FALCON/NASSAU: Yes. If the Commission determines that a "regulatory out" clause should be included in a negotiated contract, it should provide that the Commission will decide which party to the contract will bear the burden of the disallowance by assessing the reason the "regulatory out" clause was triggered at the time the disallowance is made. This prevents the QF from automatically bearing the responsibility for a disallowance, when such disallowance is as likely to be due to utility action. (Divine)

HADSON: Yes. Termination of the contract should not be permitted. If there is a regulatory "modification", it should only occur if the facts in existence at the time of approval are materially different than the fact as represented to the Commission at the time. Finally, if there is a future disallowance, the contract should provide for a reduction in capacity payments in later years to recover the disallowance.

INDIANTOWN: The Commission should establish a clear policy that negotiated contracts that go through a need determination proceeding and receive a need determination order, finding that such contracts and facilities are both need and cost effective, are intended to be approved for the entire contract term.

DECKER: Yes. The regulatory out clause should, by its terms, be inoperative during the term of the original "financing" of the QF. After expiration of the original financing term, the clause would become fully operational. Additionally, the clause should obligate both the utility and the QF to use all reasonable efforts to defend and uphold the validity of the original contract, including cost recovery, by resort to the appropriate administrative, judicial or legislative process or any combination thereof.

MULBERRY: Yes. The regulatory out clause should, by its terms, be inoperative during the term of the original "financing" of the QF. After expiration of the original financing term, the clause would become fully operational. Additionally, the clause should obligate both the utility and the QF to use all reasonable efforts to defend and uphold the validity of the original contract, including cost recovery, by resort to the appropriate administrative, judicial or legislative process or any combination thereof.

FICA: Yes. The regulatory out clause should, by its terms, be inoperative during the term of the original "financing" of the QF. After expiration of the original financing term, the clause would become fully operational. Additionally, the clause should obligate both the utility and the QF to use all reasonable efforts to defend and uphold the validity of the original contract, including cost recovery, by resort to the appropriate administrative, judicial or legislative process or any combination thereof.

AIR PRODUCTS: As stated above, Air Products believes that regulatory out provisions are violative of federal and state law. Should the Commission determine otherwise, Air Products offers the following

comments. The provisions of the clause should provide that if a disallowance occurs before the end of year 15, the QF's payments, subject to a floor of the payments which would have been made under the as-available energy rate, over the next three contract years can be withheld by the utility to repay the amount of disallowance plus interest. At the end of year 18, the QF would be required to make a balloon payment of any outstanding disallowance amount. For disallowances after year 15, the utility may reduce payments to the approved level, subject to a floor of the as-available energy rate, and the QF, at its sole option, can accept the new payment levels, terminate the contract within 18 months of when the disallowance is ordered, or request that the utility renegotiate the contract. Should the QF decide to terminate the contract as a result of payment disallowance, any Capacity Account balance would be forgiven.

DESTEC: As stated above, Destec believes that regulatory out provisions violate both federal and Florida law. However, should the Commission allow regulatory out provisions in negotiated contracts, Destec suggests, without limiting its right to contest such provisions, that such provisions contain at least the following features: 1) the contract payment stream should be locked-in for the term of the initial financing of the project; 2) if the Commission disallows utility recovery of payments as specified in a previously approved contract, the QF at its sole option should have the ability upon 30 days written notice to renegotiate or terminate the contract within 18 months of the disallowance; and 3) the utility should be required to use its "best efforts" to renegotiate the contract should the QF choose to pursue that option.

ARK ENERGY: The "regulatory out" clause should be structured so that is does not preclude a inhibit financing of the project. As a practical matter, however, it will be difficult if not impossible to structure a regulatory out clause that does not preclude or inhibit financing of the project.

ISSUE 9: Should the Commission prescribe a uniform force majeure clause for all negotiated QF power sales contracts?

STAFF: Staff does not believe the Commission should predetermine the terms and conditions of contracts to be negotiated between QFs and utilities. The provisions of negotiated contracts should be developed in the negotiating process.

The Commission is free to determine in this docket whether as a matter of policy it wishes to dictate whether one or more terms should be included in (or excluded from) all negotiated contracts between QFs and utilities. This is not a rulemaking docket however, and should the Commission make such a policy decision, it would be necessary to proceed to rulemaking to adopt rules to implement said policy.

FPL: FPL objects to this issue. Despite several requests by various parties in the recent rulemaking, the Commission has declined to prescribe or specify terms and conditions for negotiated contracts. Indeed, a prescribed term is entirely inconsistent with the concept of a "negotiated" contract. Consequently, this issue is fundamentally at odds with the Commission's existing cogeneration rules. It in no way seeks to implement those rules. Instead, it seeks to undo and undermine those rules. This issue raises a request for rulemaking that is fundamentally at odds with the approach the Commission has adopted in the newly amended cogeneration rules. It would be improper to engage in such rulemaking in this "implementation" proceeding.

FPC: No. The Commission should not prescribe any negotiated contract provisions.

TECO: Tampa Electric objects to this issue in that it requests the Commission to engage in rulemaking. The Commission should not prescribe any provision of negotiated power sales contracts but, instead, should administer its rules pertaining to such contracts.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

No. This should be left open to negotiation in the context of individual agreements. Each contract presented for Commission approval should be evaluated on a case-by-case basis under the guidelines established in Rule 25-17.0832(2). See Gulf's position on Issue 3, above.

CMI: No.

FALCON/NASSAU: Yes. The force majeure clause should excuse either party from performance due to events beyond the party's control. (Divine)

HADSON: No position.

INDIANTOWN: The terms and conditions of individual negotiated contracts should be agreed upon by the parties to the contract.

DECKER: No position.

MULBERRY: No position.

FICA: No position.

AIR PRODUCTS: No position.

DESTEC: No. See response to Issue No. 6. In general, QFs should not be held to higher standards than utilities.

ARK ENERGY: Yes. The Commission should ensure that such clauses are consistent with industrial standards accepted through the nation.

ISSUE 10: Should the Commission prescribe minimum standards for the insurance provisions to be included in negotiated QF power sales contracts?

STAFF: Staff does not believe the Commission should predetermine the terms and conditions of contracts to be negotiated between QFs and utilities. The

provisions of negotiated contracts should be developed in the negotiating process.

The Commission is free to determine in this docket whether as a matter of policy it wishes to dictate whether one or more terms should be included in (or excluded from) all negotiated contracts between QFs and utilities. This is not a rulemaking docket however, and should the Commission make such a policy decision, it would be necessary to proceed to rulemaking to adopt rules to implement said policy.

FPL: FPL objects to this issue. Despite several requests by various parties in the recent rulemaking, the Commission has declined to prescribe or specify terms and conditions for negotiated contracts. Indeed, a prescribed term is entirely inconsistent with the concept of a "negotiated" contract. Consequently, this issue is fundamentally at odds with the Commission's existing cogeneration rules. It seeks to undo and undermine those rules. This issue raises a request for rulemaking that is fundamentally at odds with the approach the Commission has adopted in the newly amended cogeneration rules. It would be improper to engage in such rulemaking in this "implementation" proceeding.

FPC: No. The Commission should not prescribe any negotiated contract provisions.

TECO: Tampa Electric objects to this issue in that it is another attempt at rulemaking. The Commission should not prescribe any provisions in negotiated contracts other than a general requirement that the payments for capacity and energy should not exceed the utility's full avoided costs.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

No. This should be left open to negotiation in the context of individual agreements. Each contract presented for Commission approval should

be evaluated on a case-by-case basis under the guidelines established in Rule 25-17.0832(2). See Gulf's position on Issue 3, above.

CMI: No.

FALCON/NASSAU: Yes. The Commission should require a minimum of $1 million of insurance with any greater insurance requirements left up to the QF and its lender. (Divine)

HADSON: No position.

INDIANTOWN: The terms and conditions of individual negotiated contracts should be agreed upon by the parties to the contract.

DECKER: The Commission should establish a cap beyond which the utilities may not require coverage.

MULBERRY: The Commission should establish a cap beyond which the utilities may not require coverage.

FICA: The Commission should establish a cap beyond which the utilities may not require coverage.

AIR PRODUCTS: No position.

DESTEC: If the Commission prescribes insurance requirements, such requirements should be based on a standard of consistency. These requirements should not be punitive and should act to encourage cogeneration without placing ratepayers at risk. In fact, our concerns regarding insurance provisions center around possible excessive insurance requirements - suggesting a need for a reasonable insurance ceiling rather than an insurance floor.

ARK ENERGY: Yes. The Commission should ensure that such clauses are consistent with industrial standards accepted through the nation.

TO BE BRIEFED. INVOLVES NO DISPUTED ISSUE OF MATERIAL FACT.

ISSUE 11: As a matter of law may the QF negotiate to own whatever portion of the interconnection it is required to pay for?

STAFF: Staff envisions such a provision as being a matter to be negotiated upon by the parties on a case-by-case basis. For the Commission to prohibit such provisions in all negotiated contracts between QFs and utilities would require a rulemaking proceeding.

In addition staff believes this issue should be reworded as follows:

"Should the negotiated contracts contain provisions that require a QF to construct the interconnection, transfer ownership to the utility, and cover the utility's Federal income tax liability for contributions in aid of construction?

FPL: FPL objects to this issue. This issue in no way addresses an existing cogeneration rule. INstead, it seeks to supplement the existing rule and establish a new policy not currently addressed in the rules.

It is not clear just what rule or rule provision this issue is designed to address. However, it appears that the issue seeks a generic determination of a rather specific set of facts. Consequently, it appears to be an inappropriate request for a declaratory statement in the context of a generic proceeding.

If there is a concern on the part of a particular QF about a utility's conduct, there are at least two remedies available to the QF independent of this proceeding. First, a declaratory statement can be sought that would address a particular circumstances in question. Second, there is a remedy under the cogeneration rules in which a QF may seek a determination of whether or not a utility has been acting in good faith. Either of

these specific remedies are such more appropriate for the specific questions raised by this issue than this generic "rule implementation" proceeding.

FPC: FPC objects to this issue. It is beyond the scope of this proceeding and should be taken up in a Commission rulemaking proceeding (Rules 25-22.010 through 25-22.018) or under Commission Rule 25-17.0834 Settlement of Disputes in Contract Negotiations.

TECO: Tampa Electric objects to this issue because of the vagueness of the term "negotiate to own." A QF is free to attempt to obtain whatever agreements it considers desirable in the negotiating process. However, Issue 11 appears to be an oblique effort on the part of the cogenerators to establish that they have the absolute right to own whatever portion of the interconnection they are required to pay for. All utility interconnections to serve retail customers are paid for by retail customers. However, this does not establish that the retail customer has the right to own the interconnection. QFs should not be treated differently.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

Yes. This should be left open to negotiation in the context of individual agreements. Each contract presented for Commission approval should be evaluated on a case-by-case basis under the guidelines established in Rule 25-17.0832(2). See Gulf's position on Issue 3, above.

CMI: Yes, except for those portion of the interconnect which, for safety and reliability reasons, must be owned and not just controlled by the utility.

FALCON/NASSAU: Yes, the QF may negotiate to own whatever portion of the interconnection it pays for or some portion of what it pays for. The definition of what constitutes the interconnection should be determined on a case-by-case basis.

HADSON: No position.

INDIANTOWN: The terms and conditions of individual negotiated contracts should be agreed upon by the parties to the contract.

DECKER: Yes. Rule 25-17.087 is silent on this subject. As long as it constructs the facility in accordance with utility specifications and complies with reasonable safety or operational requirements, a QF should be permitted to construct and own any portion of the interconnection it must pay for.

MULBERRY: Yes. Rule 25-17.087 is silent on this subject. As long as it constructs the facility in accordance with utility specifications and complies with reasonable safety or operational requirements, a QF should be permitted to construct and own any portion of the interconnection it must pay for.

FICA: Yes. Rule 25-17.087 is silent on this subject. As long as it constructs the facility in accordance with utility specifications and complies with reasonable safety or operational requirements, a QF should be permitted to construct and own any portion of the interconnection it must pay for.

AIR PRODUCTS: No position.

DESTEC: Yes.

ARK ENERGY: Yes.

ISSUE 12: May negotiated contracts contain provisions which assess a QF for assumed Federal income taxes resulting from the payment to the QF of early, and/or levelized capacity payments without obligating the utility to first seek an IRS ruling that the taxes ought not to apply?

STAFF: Staff envisions such a provision as being a matter to be negotiated upon by the parties on a case-by-case basis. For the Commission to prohibit such

provisions in all negotiated contracts between QFs and utilities would require a rulemaking proceeding.

In addition, staff believes this issue should be reworded as follows:

"Should negotiated contracts contain provisions which assess a QF for Federal income taxes resulting from the payment to the QF of early, and/or levelized capacity payments?

FPL: FPL objects to this issue. In a contract negotiation, a utility cannot "assess a QF". THe QF and the utility agree to terms mutually acceptable to both parties. If the parties cannot agree, they can petition the Commission for resolution of their dispute. Perhaps this issue might have had some validity in the context of a standard offer, but standard offer terms and conditions are not at issue in this proceeding.

This issue appears to be very specific factual determination, which may turn on specific facts at issue. Consequently, it is inappropriate for a generic proceeding such as this. This issue is more appropriately addressed in a specific request for declaratory statement.

FPC: FPC objects to this issue. It is beyond the scope of this proceeding and should be taken up in a Commission rulemaking proceeding (Rules 25-22.010 through 25-22.018) or under Commission Rule 25-17.0834 Settlement of Disputes in Contract Negotiations.

TECO: Tampa Electric objects to this issue because it appears to call for rulemaking. Although it is couched in terms of "may" negotiated contracts contain certain provisions, the apparent underlying intent of this issue is to urge a Commission determination that those provisions should as a matter of policy be precluded. Issues of this type should be resolved on a case-by-case basis -- not in the hypothetical. If the QF disagrees with the utilities approach or the utility's calculation or interpretations of tax liability, the QF can pursue its own remedies.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

Yes. This should be left open to negotiation in the context of individual agreements. Each contract presented for Commission approval should be evaluated on a case-by-case basis under the guidelines established in Rule 25-17.0832(2). See Gulf's position on Issue 3, above.

CMI: No position.

FALCON/NASSAU: No position.

HADSON: No position.

INDIANTOWN: The terms and conditions of individual negotiated contracts should be agreed upon by the parties to the contract.

DECKER: No. If a utility seeks to include a tax "flow through" provision in a contract, it should have an obligation to first take a position and seek a ruling from the IRS that such a tax ought not be collected prior to assessing the QF for any taxes.

MULBERRY: No. If a utility seeks to include a tax "flow through" provision in a contract, it should have an obligation to first take a position and seek a ruling from the IRS that such a tax ought not be collected prior to assessing the QF for any taxes.

FICA: No. If a utility seeks to include a tax "flow through" provision in a contract, it should have an obligation to first take a position and seek a ruling from the IRS that such a tax ought not be collected prior to assessing the QF for any taxes.

AIR PRODUCTS: No position.

DESTEC: Destec objects to this issue. In a contract negotiation, a utility cannot "assess a QF".

ARK ENERGY: Yes.

ISSUE 13: Should the Commission prescribe the methods for compensating QFs for reducing costs (if any) for utility compliance with the Clean Air Act amendments in negotiated contracts?

STAFF: Staff believes that this is a matter which should be resolved on a case-by-case basis, based on the specific facts surrounding each project, and the specific Clean Air Act treatment accorded each project. For the Commission to make an across-the-board pronouncement on this issue would require a rulemaking proceeding.

In addition, staff believes this issue should be rephrased as follows:

"Should the Commission prescribe the methods for compensating QFs for reducing costs for utility compliance with the Clean Air Act amendments in negotiated contracts?"

FPL: FPL objects to this issue. It calls for supplemental rulemaking. It is also inconsistent with the approach under the amended rules that the Commission will not be involved in the negotiation of utility and QF contracts. Whether or not there is a reduction cost under the Clear Air Act to the utility due to a QF is an issue properly addressed through negotiations. Under the existing rules, that is where the Commission has left the issue. Any further action in this regard would not implement the existing rules but change them. Such a result would inappropriate for a rule implementation proceeding.

More importantly, the actions sought, of requiring utilities to submit "basic negotiated contract forms" (whatever that may be) is inconsistent with the approach taken by the Commission in the amended cogeneration rules to foster negotiated contracts. The Commission has articulated over time, and has now committed to rule, a preference for negotiated contracts. It has steadfastly refused to specify negotiated contract terms and conditions, and this issue is simply an attempt to rehash what the Commission has already declined to do.

FPC: The Commission should not prescribe how any contract term should be negotiated. The parties should negotiate issues between themselves. The Commission should not involve itself in negotiations.

TECO: Tampa Electric objects to this issue in that it calls for rulemaking. To the extent a QF can establish that it reduces costs related to utility compliance with the Clean Air Act, it can seek compensation therefor through the negotiating process.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

This should be left open to negotiation in the context of individual agreements. Each contract presented for Commission approval should be evaluated on a case-by-case basis under the guidelines established in Rule 25-17.0832(2). See Gulf's position on Issue 3, above.

CMI: No position.

FALCON/NASSAU: No position.

HADSON: No position.

INDIANTOWN: The terms and conditions of individual negotiated contracts should be agreed upon by the parties to the contract.

DECKER: Yes. The impact of QF capacity and energy on the cost of Clean Air Act requirements is uniquely suited for Commission consideration.

MULBERRY: Yes. The impact of QF capacity and energy on the cost of Clean Air Act requirements is uniquely suited for Commission consideration.

FICA: Yes. The impact of QF capacity and energy on the cost of Clean Air Act requirements is uniquely suited for Commission consideration.

AIR PRODUCTS: No position.

DESTEC: QFs should at least be compensated for any benefits which utilities receive by virtue of the fact that the utility either avoids the use or purchase of SO_2 emission allowances. The form of the compensation, however, should be left to individual negotiation between the QF and the utility.

ARK ENERGY: No, not at this time. If a utility's costs of complying with evolving environmental requirements are reduced due to purchase of energy from a QF, the Commission should ensure that the benefit of these reduced costs is shared between the utility and the QF. This is best achieved by ensuring that "avoided costs" contemplate all relevant and foreseen costs that are avoided. However, when avoided costs are relevant but too speculative to be viewed as foreseen, the Commission should allow the utility and QF to apportion their benefit through negotiation.

TO BE BRIEFED. INVOLVES NO DISPUTED ISSUE OF MATERIAL FACT.

ISSUE 14: Does Commission approval of a negotiated contract for firm energy and capacity sales from a QF to a utility constitute a determination by the Commission that capacity and energy payments made to a QF by the purchasing utility in accordance with the contract constitute a reasonable and prudent expenditure by the utility based on information submitted to the Commission at the time of approval?

STAFF: No position at this time. This appears to be a legal issue which does not involve a disputed issue of material fact. The submission of briefs by the parties, and argument thereon, rather than a evidentiary proceeding, would therefore be appropriate.

FPL: FPL objects to this issue. It is wordy, convoluted, and confusing. The cogeneration rules already address the reasonableness and prudence of payments to QFs pursuant to negotiated contracts. This issue does not require an evidentiary hearing.

As stated, this lengthy issue is, at best, confusing. It refers to 366.06, F.S., as if that statute addresses "reasonable and prudent expenditures;" it does not. It has totally unnecessary, qualifying phrases at its end that state the obvious and diminish the import of the determination sought.

However, even if the issue were pared down and restated in a less convoluted fashion, it is unnecessary. Even if it is determined affirmatively, it does not remove the remaining uncertainty about prospective recovery of payments to QFs. The issue serves little or no purpose and does not warrant a hearing.

FPC: The legal effect of the Commission's approval of a negotiate contract is provided in Commission Rule 25-17.080(8).

TECO: Tampa Electric objects to this issue because resolution of it would depend on the wording of the Commission approval. Tampa Electric would construe Commission approval of a negotiated contract to constitute a determination by the Commission that payments made pursuant to the contract are prudent and would be recoverable.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

Yes. This is a legal issue. A similar issue has been raised in Docket No. 910004-EU in connection with the standard offer contracts (Issue 186), and has been stipulated to in the affirmative by the parties

CMI: No position.

FALCON/NASSAU: Yes. .

HADSON: Yes.

INDIANTOWN: Yes.

DECKER: Yes. The Commission employs the same standard in approving cost-recovery of payments to QFs under Rule 25-17.0832 as it does in approving any other cost-recovery for utilities. Prudence is determined based on the information provided to the Commission which was reasonable available to the utility at the time the decision was made to enter into the contract.

MULBERRY: Yes. The Commission employs the same standard in approving cost-recovery of payments to QFs under Rule 25-17.0832 as it does in approving any other cost-recovery for utilities. Prudence is determined based on the information provided to the Commission which was reasonable available to the utility at the time the decision was made to enter into the contract.

FICA: Yes. The Commission employs the same standard in approving cost-recovery of payments to QFs under Rule 25-17.0832 as it does in approving any other cost-recovery for utilities. Prudence is determined based on the information provided to the Commission which was reasonable available to the utility at the time the decision was made to enter into the contract.

AIR PRODUCTS: Yes.

DESTEC: Yes.

ARK ENERGY: Yes.

TO BE BRIEFED. INVOLVES NO DISPUTED ISSUE OF MATERIAL FACT.

ISSUE 15: May the Commission, having approved a negotiated contract between a QF and utility after finding it to be prudent, at a later date deny cost recovery to the utility of payments made to or yet to be made to the QF pursuant to the contract? If so, what would be a legal basis for such denial?

STAFF: Yes. The Commission has already ruled on this issue in several other proceedings and has held that it cannot bind future Commissions. Staff recommends that the Commission not reverse itself on this longstanding fundamental principal.

It appears that this matter does not involve a disputed issue of material fact. The submission of briefs by the parties, and argument thereon, rather than an evidentiary proceeding would therefore be appropriate.

In addition, staff suggests that the following phrase be added:

"If so what would be a legal basis for such denial?"

Any decision of the Commission to deny cost recovery would have to be made on a case-by-case basis. The Commission should not attempt "crystal ball gazing" by attempting to predict what extraordinary factual circumstances might cause future Commissions to take such action.

FPL: This issue is clearly a legal issue addressing Commission authority, it does not warrant an evidentiary proceeding. If the Commission has such authority, nothing that the Commission can say in this proceeding or rules will deprive it of that authority. FPL objects to being asked to provide a road map to potential adverse parties in challenging the recovery of payments made pursuant to these rules.

FPC: FPC objects to this issue as overly-broad and conjectural. FPC will not speculate on the legal basis for future Commission action.

TECO: Tampa Electric objects to this issue on the ground that it calls for speculation about how the Commission should resolve a vaguely stated hypothetical question. Presumably, the Commission could take the action described in this issue, although Tampa Electric believes that such action likely would be confiscatory, given the very generation statements contained in the hypothetical speculation described in this issue.

GULF: Gulf objects to this issue. See Gulf's discussion under "MOTIONS". Gulf's position is stated below subject to its pending objection to the issue.

Once the contract has been found to be prudent, the Commission, as a matter of policy, should not revisit the finding of prudence absent proof of conduct in the original approval proceeding by the utility or QF constituting an intentional material misrepresentation amounting to fraud or its equivalent.

CMI: This issue would require the Commission to consider a myriad of hypothetical fact scenarios which are not ripe for consideration by the Commission in this proceeding.

FALCON/NASSAU: No.

HADSON: No.

INDIANTOWN: The Commission should establish a clear policy that negotiated contracts that go through a need determination proceeding and receive a need determination order, finding that such contracts and facilities are both needed and cost effective, are intended to be approved for the entire contract term.

DECKER: According to established case law, all orders must eventually pass beyond the Commission's power to modify them, except in extreme circumstances, such as where the order was induced through perjury, fraud or the intentional withholding of key information.

MULBERRY: According to established case law, all orders must eventually pass beyond the Commission's power to modify them, except in extreme circumstances, such as where the order was induced through perjury, fraud or the intentional withholding of key information.

FICA: According to established case law, all orders must eventually pass beyond the Commission's power to modify them, except in extreme circumstances, such as where the order was induced through perjury, fraud or the intentional withholding of key information.

AIR PRODUCTS: No position.

DESTEC: No. While we understand that the Commission has the authority under Chapter 366, Florida Statutes, to disallow payments made to QFs, we cannot envision a circumstance, absent fraud or misrepresentation at the time of contract approval, in which such action should be taken.

ARK ENERGY: No.

F. STIPULATED ISSUES

None.

G. PENDING MOTIONS

GULF: Gulf objects to including Issues 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, as part of this docket on the basis that they have already been appropriately addressed in the Commission's existing rules. With regard to the other issues identified for this docket, Issues 2, 14, and 15, Gulf does not believe it is either necessary or appropriate for the Commission to resolve these matters in the context of the hearings planned in this docket and argues that the scheduled hearings should be canceled as unnecessary.

Gulf's motion has been denied.

HADSON: Hadson Development Corporation's Motion to Intervene has been granted.

H. OTHER MATTERS

None.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that these preceedings shall be governed by this order unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 6th day of AUGUST, 1991.

Betty Easley

BETTY EASLEY, Commissioner
and Prehearing Officer

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