

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Consolidated) DOCKET NO. 911103-EI  
Minerals, Inc. against Florida ) ORDER NO. PSC-92-0063-PHO-EI  
Power and Light Company ) ISSUED: 3/13/92  
for failure to negotiate )  
cogeneration contract. )  
\_\_\_\_\_ )

Pursuant to Notice, a Prehearing Conference was held on February 24, 1992 in Tallahassee, Florida, before Commissioner Easley, Prehearing Officer.

A. APPEARANCES:

C. HARRIS DITTMAR, Esquire, TIMOTHY J. CORRIGAN, Esquire, and BETH C. LUCIANO, Esquire, Bedell, Dittmar, DeVault & Pillans, P.A., 101 East Adams Street, Jacksonville Florida 32202.  
On behalf of Consolidated Minerals, Inc.

BONNIE DAVIS, Esquire, Steel Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301  
On behalf of Florida Power & Light Company.

MARY ANNE BIRCHFIELD, Esquire, and MICHAEL A. PALECKI, Esquire, 101 East Gaines Street, Suite 226, Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff.

PRENTICE PRUITT, Esquire, and MARSHA E. RULE, Esquire, the Office of the General Counsel, 101 East Gaines Street, Suite 212, Tallahassee, Florida 32399-0861  
On behalf of the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

On October 31, 1991, Consolidated Minerals, Inc. (CMI) filed a complaint with this Commission alleging that Florida Power and Light Company (FPL) failed to negotiate a cogeneration contract with CMI in good faith. CMI simultaneously filed a complaint in the Circuit Court of the Seventh Judicial Circuit based on the same facts as the complaint filed with this Commission. In response to the Circuit Court Action, FPL filed a Motion to Dismiss and Motion to Stay Proceedings on December 9, 1991.

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CONF. RECORDS/REPORTING

On November 20, 1991, FPL filed a Motion for More Definite Statement with this Commission, which was denied by Order No. 25413, issued December 2, 1991. Accordingly, FPL filed its Answer and Affirmative Defenses to the Complaint on December 13, 1991.

The hearing was originally scheduled for February 6 and 7, 1992. An expedited hearing date was set to meet the directive of Rule 25-17.0834(2), Florida Administrative Code. FPL filed a Motion for a continuance of the hearing on December 20, 1991. We moved the hearing to March 18-20, 1992, by Order No. 25549, issued December 30, 1991.

Both parties have filed Motions to Compel discovery which have been resolved by the prehearing officer. In addition, there have been several procedural orders issued since the complaint was filed.

## II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or

if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

### III. PREFILED TESTIMONY AND EXHIBITS

As set forth in the order on prehearing procedure issued in this docket, all parties are required to prefile both direct and rebuttal testimony. New or additional testimony is not permitted at the time the witness takes the stand at the hearing. 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 associated exhibits. All testimony remains subject to appropriate objections.

Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Each witness is cautioned that the summary should be a short, concise statement of matters clearly included in his prefiled testimony. Counsel for each party is requested to review this matter with the witness as the case is prepared for hearing.

Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
F. Browne Gregg	CMI	1 - 15
Charles W. Bush	CMI	1 - 15
Leslie G. Bromwell	CMI	1 - 15
Richard B. Stephens, Jr.	CMI	1 - 14
N. G. Hawk	FPL	2, 3, 4, 5, 11, 14
R. R. Denis	FPL	2, 3, 4, 5, 11, 14
G. R. Cepero	FPL	2, 3, 4, 8, 11, 14
R. R. Sears	FPL	8, 10, 11, 14
S. S. Waters	FPL	5, 6, 7, 8, 9, 10, 11, 14

Rebuttal

Charles W. Bush	CMI	1 - 15
N. G. Hawk	FPL	2, 3, 4, 5, 11, 14
R. R. Denis	FPL	2, 3, 4, 5, 11, 14
G. R. Cepero	FPL	2, 3, 4, 8, 11, 14
C. O. Woody	FPL	14
S. S. Waters	FPL	5, 6, 7, 8, 9, 10, 11, 14

V. BASIC POSITIONS

CONSOLIDATED MINERALS, INC. (CMI): In August or September 1989, CMI offered to sell FPL excess capacity and energy from a 600 MW cogeneration power plant to be built as part of CMI's proposed Pine Level Project. FPL told CMI that FPL needed and wanted the approximate 500 MW energy available from the project and wanted to begin negotiating immediately to have a contract within 60 days. In reliance on FPL's representations and at an expense of several million dollars, CMI began gathering and furnishing FPL requested information on the Pine Level Project, and at FPL's urging, began expedited licensing and permitting efforts so that FPL could obtain power from the project at the very earliest time. Although FPL began negotiating with CMI and received a written proposal from CMI on October 6, 1989, shortly thereafter, in November 1989, FPL began stalling the negotiations. For the next 21 months, FPL sporadically pretended to negotiate with CMI although FPL in fact had no intention of entering into a contract with CMI.

During that 21 month period, FPL repeatedly delayed meetings and discussions with CMI, repeatedly changed the departments and personnel of FPL assigned to deal with CMI, repeatedly requested additional information and submissions from CMI, repeatedly changed FPL's announced contracting policy from (1) a first come-first served basis to (2) a competitive basis to (3) an evaluation basis without disclosed criteria and repeatedly refused to furnish CMI any facts and figures upon which FPL was willing to contract with CMI. In the meantime, FPL sought to meet its power needs for upcoming years by repowering its own facilities, constructing new facilities to be owned by FPL, purchasing a partial interest in a power plant owned by another public utility and by agreeing to purchase electricity from pseudo-cogeneration facilities owned or

controlled by other public utilities.

Finally, in August 1991, FPL notified CMI that it would no longer attempt to negotiate a contract with CMI for the purchase of the capacity and energy of CMI's qualifying cogeneration facility and that FPL would attempt to reach agreements with a "short list" of developers. FPL did not inform CMI of the criteria used by FPL in making up its "short list" and has refused to identify the developers supposedly on the "short list." CMI believes that FPL is attempting to avoid the purchase of capacity and energy from any cogeneration facility included in FPL's so-called "evaluation" and is negotiating a contract with an independent power producer (believed to be NRG/Black & Veatch) for the purchase of 800 MW of power. That project is owned in part or controlled by a public utility (believed to be Northern States Power Co.).

The applicable federal and state laws and regulations recognize that cogeneration production of electricity is beneficial to the public and require public electric utilities to negotiate for and purchase capacity and energy from cogeneration facilities. Although previously criticized by FPSC for failing "to adequately encourage cogeneration" and for failing to "aggressively [pursue] the acquisition of power from qualifying facilities," Order No. 23080 Docket No. 890974-EI at 10-11. FPL has continued to actively avoid the purchase of cogenerated energy from qualifying facilities. By stalling CMI and keeping CMI "dangling on the string" for two years while FPL searched for an opportunity to purchase power from a source more to FPL's liking, FPL has demonstrated a total disregard for the wording and spirit of the cogeneration statutes and regulations. If FPL's treatment of CMI is approved by, or not corrected by, this Commission, no cogeneration facility will be able to play the game because it, like CMI, can spend millions of dollars in the negotiation of, and the preparation for, a power sales contract only to have the negotiations unilaterally terminated by the public utility.

This Commission has the power under the applicable statutes and rules to require FPL to negotiate in good faith with CMI and to require FPL to contract for the purchase of capacity and energy from CMI should the Commission find that FPL has failed to negotiate in good faith. CMI has been and is ready to negotiate in good faith all terms of a reasonable contract with FPL for the sale of capacity and energy from CMI's cogeneration facility. CMI has offered, and does offer, to contract with FPL on the basis of the terms and prices in the contract executed by FPL on May 17, 1990 for the purchase of firm capacity and energy from Indiantown Cogeneration, L.P.

This Commission should require FPL to promptly enter into good faith negotiations for the purchase of the capacity and energy of CMI's cogeneration facility. If FPL fails to negotiate a contract with CMI within 60 days after being ordered to do so, this Commission should order FPL to sign a contract for the purchase of capacity and energy from CMI based on the terms and prices set forth in FPL's contract with Indiantown Cogeneration, L.P. executed May 17, 1990. In the meantime, the Commission should withhold determinations of need, withhold approval of other agreements for the purchase of capacity and energy by FPL and do whatever else may be necessary to preclude FPL from filling its needs for electric power in any other way until it has negotiated in good faith a contract with CMI.

FLORIDA POWER & LIGHT COMPANY (FPL): At all times in its dealings with CMI, FPL has acted in good faith and been in compliance with the Commission's rules concerning cogeneration. CMI's Pine Level project was not and is not the most cost effective alternative available to FPL to meet its need for additional capacity. CMI's request for relief should be denied.

STAFF: No position at this time.

## VI. ISSUES AND POSITIONS

ISSUE 1: When did Consolidated Minerals, Inc. (CMI) become a qualifying facility? And, does the date of QF status have any bearing on FPL's obligation to negotiate?

CMI: From its very inception, CMI's proposed Pine Level Project met the criteria for a QF as established in this Commission's rules, see Rule 25-17.080(3), and under the FERC regulations. From the very beginning of CMI's negotiations with FPL, FPL recognized that CMI's Pine Level Project was a QF and FPL never raised as an issue in the negotiations CMI's lack of QF status. Indeed, an FPL representative even said to CMI words to the effect that CMI's project was "one of the most qualified QFs he had ever seen." Thus, while it is true that CMI did not formally apply to FERC for qualifying facility status for the Pine Level Project until July 1990 (which QF status was granted by FERC in December 1990), this had no bearing on whether CMI's project was in fact a QF before that time, or on FPL's duty to negotiate with CMI in good faith from the very beginning of the negotiations in

1989.

Significantly, the first time that FPL ever raised this issue was after CMI had filed a complaint with the Commission in this action. Additionally, discovery has revealed that Indiantown Cogeneration, L.P. ("ICL") did not self-certify with FERC as a QF until August 1990, three months after FPL entered into a final contract with ICL. Thus, this is a false issue raised by FPL.

FPL: CMI's Pine Level Project was granted QF status by the FERC on December 21, 1990. FPL dealt in good faith with CMI at all times. However the ability to bring a complaint for failure to negotiate in good faith pursuant to Rule 25-17.0834 is limited to QFs; the complaint procedure under the Rule is not available to non-QFs such as independent power producers, or other utilities. CMI's complaint covers a time period that begins in September of 1989. But, the complaint procedure did not become available to CMI until December of 1990.

STAFF: No position at this time.

ISSUE 2: What threshold requirements, if any, must be met by a potential QF before a regulated utility has an obligation under the Commission's rules to negotiate with a potential QF? Did CMI meet those requirements?

CMI : This Commission has established no "threshold requirements" which a potential QF must meet before a regulated utility has an obligation to negotiate in good faith with the QF. Once a project meeting the criteria for a QF, see Rule 25-17.080(3), has identified itself to a public utility, the utility and the QF are "encouraged to negotiate [a contract] for the purchase of firm capacity and energy," Rule 25-17.083(2), and the utility is required to "negotiate in good faith for the purchase of capacity and energy from" the QF. Rule 25-17.0834(1).

FPL has suggested that this Commission's rules require that before a regulated utility has an obligation to negotiate with a QF, the QF must somehow "define" its proposal with a precise degree of specificity. However, nothing in the Commission's rules supports FPL's argument. Indeed, the Commission's rules encourage both QFs and utilities to initiate with each other the



negotiation process. The specifics of each party's proposals may be developed through the negotiating process. FPL's position amounts to advocacy of a bidding system where a QF must make a specific bid proposal before the utility is required to begin negotiations. However, a bid system is not negotiation and this Commission has heretofore declined to institute a bidding system to govern negotiations between utilities and QFs.

Here, CMI's proposed Pine Level Project met the criteria for a QF as established in this Commission's rules and therefore FPL had the duty beginning in September 1989 to commence negotiations with CMI and to thereafter conduct those negotiations in good faith.

FPL : A potential QF has an obligation to:

- (1) define its proposal with a reasonable degree of specificity; and,
- (2) provide a reasonable amount of information concerning its proposed project to permit evaluation of essential elements of the project; and,
- (3) disclose all material information as it becomes available that would affect the potential QF's ability to fulfill the contract it seeks to enter into with a regulated utility;

before a regulated utility has an obligation to evaluate and respond to power sales proposals received from a potential QF.

A potential QF has an obligation to define its proposal with a reasonable degree of specificity including size, cost, in-service date, availability, and dispatchability.

A potential QF has an obligation to provide a reasonable amount of information about its proposed project such as information related to unit availability, experience of the developer, technical maturity of the proposed capacity option, environmental characteristics of the proposed capacity option, permitting and construction schedule, and assurance of long term fuel supply that would permit evaluation of essential elements of the project.

A potential QF has an obligation to disclose all relevant information that would affect the developer's ability to meet proposed contractual commitments, particularly the technical viability of the project, the schedule for licensing, permitting and construction of the facility, and the ability of the developer to complete the project on schedule.

CMI did not meet these threshold requirements.

CMI's October 1989 draft contract and information provided to FPL about the proposed project in 1989 did not define the Pine Level project with a reasonable degree of specificity so that it triggered a duty on the part of FPL to negotiate a power sales agreement with CMI on the basis of that proposal.

CMI did not provide a reasonable amount of information about its proposed project during the period of time CMI claims FPL failed to negotiate in good faith with CMI.

After requesting negotiations with FPL, CMI did not disclose to FPL all relevant information that would have affected CMI's ability to license and construct the facility as it was presented to FPL and CMI's ability to complete the project on the schedule CMI proposed to FPL.

In addition, as set forth in FPL's position on Issue 13, even if a potential QF has met these threshold requirements, a regulated utility does not have an obligation to negotiate contract terms and conditions in response to a proposal that is not reasonably related to the Commission's standards for cost recovery of a negotiated contract with a QF or that is not reasonably related to the standards that must be met for an affirmative determination of need for the proposed facility. (Hawk, Denis, Cepero)

STAFF: No position at this time.

ISSUE 3: Was the timing of submission of information between CMI and FPL, and the sufficiency of such information, adequate to provide opportunity for reasonable evaluation of any proposed negotiated contract between the parties for the Pine Level Project?

CMI : Because CMI was extremely interested in reaching a negotiated contract with FPL, CMI consistently strived to provide all available information requested by FPL. FPL's argument that it was unable to negotiate in good faith with CMI because of lack of information from CMI is not supported by the record.

It is true that CMI did not, at the beginning of the negotiations with FPL, give FPL its "bottom line" positions. CMI did not expect FPL to accept CMI's initial terms and consistently told FPL that all terms were negotiable. In true good faith negotiation, the parties start from idealized positions and work toward the middle to a negotiated contract. This was the process in which CMI expected to be involved. However, FPL's position was that CMI should state all of its positions and FPL would merely accept or reject them. FPL would not engage in the "give and take" required of good faith negotiations. The record shows numerous examples of concessions and movement on the part of CMI to meet FPL's needs, but essentially no concessions or movement on the part of FPL to meet CMI's needs. Moreover, FPL refused to negotiate price. While CMI does not contend that FPL was required to give CMI its "bottom line" price and terms from the outset of the negotiations, good faith negotiations did require FPL to at least give CMI targets and ranges and to engage in "give and take" concerning specific terms of a negotiated contract. This FPL refused to do, repeatedly requiring CMI to either bid against itself or stand on its prior proposal.

FPL : No. CMI did not provide a reasonable amount of information about its proposed project during the period of time CMI claims FPL failed to negotiate in good faith with CMI.

In resolving this issue the Commission should consider the nature and scope of information it is reasonable for a regulated utility to request a potential QF to provide if the QF seeks to enter negotiations with the utility to meet the utility's need for additional generating capacity through a power sales agreement.

In determining the reasonableness of information requests, the Commission should consider the nature and scope of the information the Commission has considered in assessing or evaluating the reliability of a proposed

electrical power plant and the need for electric system reliability and integrity during a determination of need proceeding pursuant to the Power Plant Siting Act, since the utility should not commit to a power supply resource for which it was not reasonably likely that an affirmative determination of need could be obtained.

In previous determination of need proceedings involving FPL, the Commission has considered information related to unit performance projections, e.g. unit availability, technical maturity of the proposed capacity option, environmental characteristics of the proposed capacity option, construction schedule, and assurance of long term fuel supply. Each of these areas may affect unit and or system reliability.

In the context of this proceeding the Commission should consider whether the information requests made to CMI by FPL for information concerning the proposed Pine Level Project have been more or less extensive than the scope of information considered by the Commission in determination of need proceedings.

FPL's information requests have not been more extensive than the scope of information considered by the Commission in a determination of need proceeding.

Furthermore, if a QF developer requests negotiations with a regulated utility, the developer is obligated to disclose all relevant information that would affect the developer's ability to meet the proposed contractual commitments, particularly the technical viability of the project, the schedule for licensing, permitting and construction of the facility, and the ability of the developer to complete the project on schedule.

After requesting negotiations with FPL, CMI did not disclose to FPL all relevant information that would have affected CMI's ability to license and construct the facility as it was presented to FPL and CMI's ability to complete the project on the schedule CMI proposed to FPL. (Hawk, Denis, Cepero)

STAFF: No position at this time.

ISSUE 4: What are CMI's obligations under applicable state and federal law when negotiating with FPL to sell energy and capacity? Has CMI fulfilled its obligations under applicable state and federal law?

CMI : CMI's obligations under applicable state and federal law, which includes the FERC and PSC regulations, are to meet the criteria of a qualifying facility and to either offer its excess energy and capacity for sale to a public utility or be receptive to solicitations from public utilities interested in purchasing CMI's excess energy and capacity. CMI did fulfill those requirements in its dealings with FPL regarding the Pine Level Project.

FPL : CMI's obligations under PURPA and the associated FERC regulations are established through Sec. 336.051, Fla. Stat. which is implemented through the Commission's cogeneration regulations, Florida Administrative Code Rules 25-17.080 - 25-17.091. The Commission should find that this body of law imposes a duty on CMI to act in good faith in negotiations with FPL for the sale of energy and capacity.

The Commission should interpret Rule 25-17.0834 to mean that before the Commission will grant relief on a claim of "failure to negotiate", a potential QF should make the following showing:

(1) that the QF met the threshold requirements set forth in Issue 2 as to the provision of a reasonable amount of information about a proposed project that is defined with a reasonable degree of specificity, including the disclosure of all reasonably material information that would affect the developer's ability to construct and operate the proposed project on the terms envisioned by its contract proposal; and,

(2) that the QF's specific contract proposals about which it claims the regulated utility refused to negotiate are reasonably related to the Commission's standards for contract approval and the statutory requirements for an affirmative determination of need; and,

(3) that the QF dealt in good faith with the regulated utility (covered in Issue 5); and,

(4) if the relief sought is award of a contract to the complainant, that an additional showing be made that:

(1) the contract sought in the complaint proceeding was offered to the regulated utility; and,

(2) at the time the contract was offered it was the most cost effective alternative available to the utility to meet a need of the utility for additional generating capacity; and,

(3) when the contract was offered it would have been reasonable and prudent at that time for the utility to make a commitment to meet the projected need for additional capacity the contract was intended to fulfill.

CMI did not meet any of these obligations. CMI did not fulfill the threshold requirements set forth above and more fully discussed in Issue 2.

In addition, CMI did not present any proposals or partial proposals to FPL before March of 1991 that were reasonably related to the Commission's standards for contract approval or the statutory criteria for an affirmative determination of need.

CMI did not deal in good faith with FPL as fully discussed in Issue 5.

Although CMI claims it is entitled to a contract that is "substantially similar" to the contract between FPL and ICL, CMI has not made any showing that:

(1) CMI offered to enter a contract that was the same as or substantially similar to the ICL contract; or,

(2) that at the time CMI demanded that FPL enter into a contract, any of CMI's proposals were the most cost effective alternative available to FPL to meet a need of FPL for additional generating capacity; or,

(3) that when CMI demanded that FPL enter into a contract, it would have been reasonable and prudent

at that time for FPL to make a commitment to meet the projected need for additional capacity the contract might have fulfilled.

FPL does not believe that it had or should have had an obligation to negotiate a contract with CMI to the exclusion of other potential QFs. However if the Commission finds that such an obligation did exist, CMI had a parallel obligation not to negotiate with other potential purchasers at the same time, which it did not meet. (Hawk, Denis, Cepero)

STAFF: No position at this time.

ISSUE 5: Did CMI negotiate in good faith with FPL? And, if not, did CMI's failure to negotiate in good faith relieve FPL of its obligation to negotiate in good faith?

CMI : Although the Commission's rules do not speak to the duty of a QF to negotiate in good faith with a public utility, CMI has no hesitation in stating that it did negotiate in good faith with FPL and that, if FPL had negotiated in good faith with CMI, the parties could have achieved a negotiated contract. CMI's ability to negotiate meaningfully with FPL was hampered by FPL's refusal to engage in serious negotiations with CMI.

CMI believes that the second question in Issue 5 is moot because it did negotiate in good faith.

FPL : CMI did not negotiate in good faith with FPL. The Commission should require a party who seeks to raise a claim of "failure to negotiate" pursuant to Rule 25-17.0834 to make a showing that it dealt in good faith with the party which it accuses of acting in bad faith.

In resolving this issue the Commission should consider the fact that CMI misstated to FPL and the Commission its intention and ability to defer FPL's need for additional Combined Cycle capacity in 1995.

In resolving this issue the Commission should consider the fact that during the period of time CMI alleges FPL stalled and delayed negotiations, CMI failed to timely respond to FPL's reasonable requests for information concerning the proposed project, and failed to timely

provide complete proposals as to size, price, and time to FPL, but represented to FPL and the Commission that it had done so.

In resolving this issue the Commission should consider the fact that CMI misrepresented to FPL and the Commission that FPL made commitments on which CMI relied as a basis on which to compel FPL to give CMI a preferred negotiating status.

In resolving this issue the Commission should consider the fact that during the period of time that CMI alleges it represented to FPL that its licensing and permitting efforts were on a "fast track" basis, there were significant regulatory obstacles facing the project which CMI did not disclose to FPL.

In resolving this issue the Commission should consider the fact (which has been stipulated) that CMI submitted a Standard Offer contract on June 6, 1990 and on September 25, 1990, withdrew it. The Commission should also consider that after withdrawal of its Standard Offer contract, CMI proposed to FPL that it enter negotiations for a contract to supply capacity to meet the need that could be met by others through the Standard Offer subscription. CMI's pricing proposal at that time was higher than the payments it would have received under the Standard Offer contract.

In resolving this issue the Commission should consider that during the period of time CMI demanded that FPL negotiate exclusively with CMI, CMI was conducting parallel negotiations with another utility. (Hawk, Denis, Waters)

STAFF: No position at this time.

ISSUE 6: For what FPL need, if any, for additional generating capacity did CMI submit a proposal? Would CMI's proposal have met that need?

CMI : Throughout the negotiations with FPL, CMI proposed to meet whatever need for power FPL had, as determined by FPL, up to the capacity of the Pine Level Project. In the beginning of negotiations in 1989, FPL told CMI it needed CMI's power. As the negotiations with FPL dragged out, FPL told CMI that its needs were changing but that it



still needed power and CMI expressed willingness to meet whatever need FPL had. Had FPL engaged in good faith negotiations with CMI, CMI's Pine Level Project could have met a FPL need. CMI's project can still meet the 1998 need of FPL which FPL plans to meet with its recent contract with Cypress Energy Partners, Ltd., an independent power producer partially owned by a public utility.

FPL : FPL has repeatedly attempted to get this information from CMI in order to prepare its response to FPL's complaint. FPL sought this information in a Motion For a More Definite Statement (page 6, paragraph 3). The Motion was denied. FPL sought this information through discovery (FPL Interrogatory No. 1 to CMI). CMI's initial response did not address this question; on February 12, 1992 CMI responded that for every proposal it submitted to FPL the avoided unit the proposal was intended to defer was "subject to negotiation, but CMI intended to meet FPL's next avoided unit." Therefore CMI has yet to specify the avoided unit that would have been deferred by any of its proposals to FPL.

CMI maintains that its proposals were "very competitive, if not the best" (Bush, p.33, line 18), and also maintains that as one element of failing to negotiate in good faith FPL kept changing the avoided unit "target". CMI's allegations are inconsistent with CMI's refusal to specify the avoided unit against which CMI measured its proposals to conclude they were cost effective to FPL. CMI's inability or refusal to link the various proposals it made to FPL's avoided unit suggests that CMI was indifferent to what the avoided unit "target" was when the proposal was made.

However, in resolving the overall issue of whether FPL dealt with CMI in good faith, it is critical to determine whether the proposals CMI made to FPL were at least reasonably related to the costs associated with FPL's then current avoided unit. CMI's failure to designate the avoided unit by which its proposals should be judged should not dissuade the Commission from making the comparison and using the results to judge the reasonableness of FPL's conduct towards CMI.

For example, the evidence shows that the proposal CMI submitted in the fall of 1990 after it withdrew the Standard Offer contract exceeded the costs associated with

the avoided unit on which the Standard Offer was based. Thus at the time CMI submitted the offer it exceeded the cost of other options plainly available to FPL and whose availability to FPL was known by CMI. Yet CMI maintains that FPL had a duty to "negotiate" this higher offer with CMI. However, this sequence of events shows not that FPL dealt with CMI in bad faith, but rather that CMI did not deal reasonably with FPL. (Waters)

STAFF: No position at this time.

ISSUE 7: Has any proposal made by CMI been at or below FPL's avoided costs? Is so, when was that proposal made? (FPL)

CMI : This is an FPL issue. CMI's position is that it is not an appropriate or relevant issue in this docket. Although some of CMI's later modifications to its proposal were below FPL's avoided costs, the Commission need not decide this issue to determine whether FPL failed to negotiate in good faith with CMI. If the issue is appropriate at all, CMI believes that the question raised by Issue No. 8 is the more appropriate formulation of the issue.

FPL : CMI's October 1989 proposal, as modified by CMI's December 1989 capacity pricing, to FPL exceeded FPL's then current avoided costs and the Commission's quantification of avoided costs.

The first time CMI submitted a proposal to FPL that was equal to or less than the costs associated with FPL's then current avoided costs was March, 1991. Until that point in time the pricing proposals submitted by CMI exceeded FPL's avoided costs. However, CMI's March, 1991 proposal was not less than the cost associated with other capacity supply alternatives reasonably available to FPL. (Waters)

STAFF: No position at this time.

ISSUE 8: Did any of the proposals made by CMI provide a basis upon which FPL could negotiate with CMI toward a contract which would have been FPL's most cost-effective alternative? (CMI)

CMI : Yes. During the course of negotiations with FPL, CMI made numerous modifications to its proposal concerning price

and other contract terms which provided a basis upon which FPL could negotiate with CMI toward a contract which would have been FPL's most cost-effective alternative. However, FPL refused to make any serious counter-proposals and refused to give CMI any targets or ranges of prices and costs to help CMI formulate a pricing structure which would have been acceptable to FPL. While CMI had available some of FPL's published cost information, FPL had unpublished price and cost information which it did not discuss with CMI. Additionally, FPL would not seriously negotiate concerning other terms of a proposed contract which would have affected the total cost of the contract. (Price, on a stand alone basis, cannot be used exclusively to determine FPL's most cost effective alternative.) CMI was left to make pricing proposals "in the blind," only to have each proposal unilaterally rejected by FPL without any counter-proposal by FPL. Thus, CMI was required by FPL to "bid against itself." This is not good faith negotiation. Had FPL negotiated in good faith with CMI, CMI believes that the parties could have negotiated a package of price, terms and conditions that would have been FPL's most cost-effective alternative.

FPL : No, if the term "negotiate" in the question implies that FPL failed to pursue, beyond the extent it did, proposals submitted by CMI. On several occasions FPL evaluated proposals made by CMI and informed CMI that its proposals exceeded FPL's avoided costs or exceeded the proposals received from other potential QFs. CMI had several opportunities to submit proposals and did so. However none of the proposals submitted by CMI were competitive enough, when compared to other proposals received by FPL, to form the basis for selection as FPL's most cost effective alternative. (Cepero, Sears, Waters)

STAFF: No position at this time.

ISSUE 9: What proposal, if any, made by CMI to FPL, would have been the most cost-effective alternative available to meet the need for additional generating capacity identified in Issue 6?

CMI : As is the case with Issues 6 and 7, this question attempts to isolate one "CMI proposal," instead of focusing on the entire negotiating process with FPL. CMI believes that, without question, some of its later proposals made in 1991

were below FPL's avoided costs. Had FPL negotiated in good faith with CMI from the beginning, the parties could have reached a negotiated contract which would have been the most cost-effective alternative available to meet FPL's needs. FPL's attempt to require CMI to identify which "proposal" would have been the most cost-effective alternative available to FPL confuses good faith negotiations with a bidding system, where a QF would be required to give its "low bid" proposal to FPL and FPL would either accept or reject it. This Commission has heretofore rejected a bidding system and has instead required regulated utilities such as FPL to engage in good faith negotiations with QFs. CMI made an initial "proposal" to FPL in September and October 1989 and thereafter modified that proposal in an attempt to engage in meaningful negotiations with FPL, but FPL refused to engage in the "back and forth" necessary to good faith negotiations.

FPL : CMI never submitted a pricing proposal to FPL that was the most cost-effective proposal reasonably available to FPL to meet a need for additional capacity. (Waters)

STAFF: No position at this time.

ISSUE 10: Did FPL reasonably evaluate the proposals submitted by CMI for its Pine Level Project? Was it reasonable for FPL to compare CMI's proposal to other generating alternatives available to FPL?

CMI : The first question of Issue 10 is not relevant to the ultimate question in this docket: Whether FPL failed to negotiate in good faith with CMI. Meaningful evaluation of CMI's project could only come after good faith negotiations, which did not occur. Moreover, CMI has neither the information nor the ability to determine whether FPL's internal evaluation of CMI's project was reasonable. However, based on the limited information available to it, CMI has reason to question FPL's ultimate evaluation process. While some of FPL's evaluation criteria are clear and specific, other criteria are subjective and subject to interpretation. From the information available to CMI, it is apparent that FPL's evaluation criteria tend to favor an independent power producer or another utility over a cogenerator. (For example, FPL apparently awarded maximum "points" to any facility which did not have a steam host. By definition,

all cogeneration projects have a host.) This has been confirmed by FPL's disclosure that all of the developers on the "short list" are partially owned by other utilities and that on February 27, 1992, FPL entered into a contract with Cypress Energy Partners, Ltd., to supply 832 MW of capacity to FPL. Cypress, which offered FPL an option to purchase part or all of its project upon completion, is an independent power producer, partially owned by a public utility, Northern States Power Co. Thus, FPL's evaluation criteria and the result of its evaluation process both show that FPL favors buying power from non-cogeneration sources, contrary to this Commission's rules and policy, which require FPL to aggressively pursue cogeneration projects.

As to the second question in Issue 10, CMI acknowledges that in some circumstances it would be reasonable for FPL to compare CMI's project to other generating alternatives; however, in this case, FPL used the excuse of evaluating other projects to avoid good faith negotiations with CMI. As CMI's negotiations with FPL dragged on, FPL advised CMI that it was continually receiving new proposals that it had to evaluate before it could complete its evaluation of CMI's project. This FPL-controlled process created a situation where FPL could delay the negotiating process with CMI because it was constantly receiving new proposals. Thus, without negotiating, FPL kept CMI at bay for almost two years before it informed CMI that CMI had not made the "short list." FPL's abuse of the "evaluation process" as an excuse not to negotiate is part of its failure to negotiate in good faith with CMI.

FPL: Yes. In resolving this issue the Commission should consider whether it is reasonable to compare available capacity alternatives in assessing whether a particular alternative is the most cost-effective alternative available. It is not only reasonable to compare alternatives, it is essential if a regulated utility is to determine which alternative is most cost-effective, and it is essential to the presentation of an affirmative case in a determination of need proceeding.

In resolving this issue the Commission should consider whether the methodology used by FPL to quantify the economics of CMI's proposal and to compare it to other proposals available to FPL was reasonable. The methodology used by FPL to quantify the economics of CMI's final proposal was reasonable and is the same methodology

that was used to compare alternative generation options in determining the statewide avoided unit, FPL's avoided unit, and the cost effectiveness of previous wholesale power sales agreements. (Waters, Sears)

STAFF: No position at this time.

ISSUE 11: Did FPL make a representation of FPL's intent, or make a commitment to purchase firm capacity and energy, from the Pine Level Project upon which CMI reasonably relied? If so, what actions did CMI take in reliance?

CMI : It was FPL's initial expression of serious interest in CMI's project in August and September 1989 that caused CMI to begin negotiations with FPL. In the fall of 1989, FPL told CMI that FPL needed and wanted the excess energy available from the Pine Level Project and wanted to begin negotiations immediately with the objective being to have a contract within 60 days. Even after FPL began to stall the negotiations late in 1989, FPL continued to tell CMI that it wanted CMI's power and that CMI "was not losing ground from the delay" in the negotiations.

In reliance on FPL's representations and at an expense of millions of dollars, CMI began gathering and furnishing the information FPL had requested on the Pine Level Project and, with FPL's encouragement, expedited licensing and permitting efforts so that FPL could obtain power from the project at the earliest time. Even when the negotiations with FPL bogged down, CMI continued to expend significant funds and effort toward licensing and permitting. CMI also committed significant resources toward the negotiating process with FPL which spanned almost two years before FPL informed CMI that it was not on the "short list."

FPL : No; no funds were expended by CMI in reliance on communications from FPL.

In resolving this issue the Commission should consider whether CMI relied on any commitment to purchase power from the Pine Level project made by FPL to CMI in connection with CMI's efforts to obtain licensing for the facility or in the expenditure of funds for the Pine Level project electrical generating facility. FPL did not make and CMI did not rely on any commitment from FPL to CMI to

purchase power from the proposed Pine Level project.

In resolving this issue the Commission should consider whether CMI reasonably relied on communications from FPL in its expenditure of funds to "fast track" its licensing and permitting efforts. CMI did not reasonably rely on any communications from FPL in reaching or implementing its decision to "fast track" its licensing and permitting efforts.

In resolving this issue the Commission should consider the amount, if any, of funds that were expended by CMI to "fast track" its licensing and permitting efforts as a result of CMI's "reliance" on communications from FPL. No funds were expended by CMI as a result of reliance on communications from FPL. (Hawk, Denis, Cepero, Sears, Waters)

STAFF: No position at this time.

ISSUE 12: Does state or federal law require FPL to provide CMI with information regarding its future need for capacity and energy? Does state or federal law require FPL to provide CMI with a price below its avoided costs at which it would purchase capacity and energy to defer future need?

CMI : FPL's obligation to negotiate in good faith with CMI derives from PURPA, 16 U.S.C. §§ 824a-3, et seq.; the FERC regulations, 18 C.F.R. §§ 292.101, et seq.; Section 366.051, Florida Statutes (1989); and this Commission's rules, codified at Chapter 25, Part III, Rules 25-17.080-091, Florida Administrative Code. These laws and regulations do not attempt to specify the nature of the negotiating process between a regulated utility and a QF. Rather, they reflect the legal mandate and policy that it is in the public interest for regulated utilities to purchase cogenerated power from QFs and, therefore, that regulated utilities have an obligation to negotiate in good faith with QFs for the purchase of power from a QFs' cogeneration facility. Thus, these laws and regulations do require a regulated utility such as FPL to provide a QF with sufficient information regarding the utility's future need for capacity and energy and at least a target or range of prices to allow the QF, through the negotiating process, to formulate pricing structures and positions designed to reach a negotiated contract which

will give the utility a cost-effective alternative. By not specifically responding to the CMI proposals, by failing to make any counter-proposals or engage in any meaningful discussions of pricing terms, and by being vague concerning its needs, FPL failed to meet its obligations under state and federal law to negotiate in good faith with CMI.

FPL : FPL had a duty, which it fully discharged, to provide CMI with information on FPL's need for additional generating capacity and FPL's avoided costs.

Neither state nor federal law imposed an obligation on FPL to state a price below its avoided costs at which it would purchase power from CMI. To have done so would have been counterproductive to FPL's efforts to obtain power at the lowest cost for its customers, and would have discouraged the long term development of a competitive market for potential QFs.

STAFF: No position at this time.

ISSUE 13: What are FPL's obligations under applicable state and federal law in negotiating to purchase energy and capacity from CMI's Pine Level Project? Did FPL fail to fulfill its obligation under the applicable state and federal law to negotiate and purchase energy and capacity from CMI's Pine Level Project?

CMI : The state and federal laws and regulation referenced in Issue 12 govern FPL's obligations in negotiating with CMI concerning CMI's Pine Level Project. FPL's obligation can best be stated by quoting this Commission's Rule 25-17.0834(1), which provides that "Public utilities shall negotiate in good faith for the purchase of capacity and energy from qualifying facilities . . . ." FPL has failed to fulfill this obligation.

FPL has attempted to expand this issue by seeking official recognition of numerous planning and needs dockets and by, in effect, arguing that FPL's obligation to negotiate in good faith is obviated by other policies of this Commission and FPL's own assessment of its future needs. There are two simple answers to this argument.

First, issues of whether a negotiated contract with CMI



should be approved by this Commission, needs determination and annual planning have no bearing on FPL's duty to negotiate in good faith. This Commission should not permit FPL to overload this docket with irrelevant information which obscures the very basic issue presented. FPL can always find numerous reasons for not entering into a negotiated contract with a cogenerator. In fact, this is the very reason this Commission promulgated the "good faith negotiation" rule. This Commission should recognize that good faith negotiations with a QF precede issues of contract approval and needs determination by the Commission, and should not permit FPL to turn this docket into a needs determination proceeding.

Second, despite FPL's protestations that this Commission's policies place FPL in a straightjacket in terms of negotiated contracts, when FPL wants to, it seems to be able to negotiate and sign power sales agreements. In May 1990, FPL entered into a contract with the Indiantown Cogeneration group, which is partially controlled by another regulated utility, and just within the last two weeks, FPL has entered into a contract for 832 MW of power with an independent power producer, Cypress, also partially controlled by a utility. Thus, FPL seems to be able to manipulate its needs to fit its desires.

In short, the intent of the applicable federal and state laws and the Commission's rules is to require FPL to purchase cogeneration capacity and energy, but the practice and purpose of FPL is to do everything possible to avoid the purchase of cogeneration capacity and energy. FPL believes that if it can find any possible reason for avoiding the purchase of CMI's cogenerated capacity and energy, it has fulfilled its obligations under the relevant laws. On the other hand, CMI believes that FPL is obligated to encourage and actively pursue the purchase of cogeneration capacity and energy from QFs, including CMI.

FPL : FPL met its obligations under state and federal law with respect to CMI's Pine Level project. FPL provided CMI with information concerning its avoided costs and thoroughly evaluated the proposals submitted by CMI to FPL to the extent the proposals were susceptible of evaluation. FPL did not violate any law in declining to pursue a contract with CMI after a thorough evaluation of CMI's proposals because the proposals were not the most cost effective capacity alternatives available to FPL.

In resolving this issue the Commission should consider that there are two broad legal requirements FPL must meet that are pertinent to this issue. The requirements are: (1) an obligation to buy energy and, if capacity costs otherwise incurred by a utility would be avoided by the purchase, capacity from a QF; (2) at rates which are just and reasonable to the utility's customers and are non-discriminatory to QFs; this requirement is met if the rates for purchase are not greater than a utility's full avoided cost.

The Commission should find that the obligation to negotiate for the purchase of capacity is one means of satisfying the obligation to purchase; the scope and extent of the duty to negotiate should be governed by the objective it was meant to achieve, development of cogeneration through its purchase by a utility so long as it is the most cost effective alternative to meet the need of the purchasing utility for additional capacity. The Commission should find that the duty to negotiate requires a utility to review capacity supply proposals it receives for completeness, to evaluate the economic value and viability of reasonably complete proposals, and to negotiate with those developers who offer to supply capacity at a cost less than that otherwise available to FPL.

While each of these steps, review, evaluation, and negotiation, is encompassed within the duty to negotiate, the Commission should find that it is only upon completion of the first two that a duty to negotiate should arise, in the sense of an attempt to reach agreement as to all of the terms and conditions necessary for a comprehensive power sales agreement.

In resolving this issue the Commission should consider that a regulated utility does not have an obligation to purchase energy or capacity at a cost that exceeds the utility's avoided costs. The Commission should further consider its rules for cost recovery for a negotiated contract between a regulated utility and a QF. To be considered prudent for cost recovery purposes, pursuant to Commission Rule 25-17.083(2), a negotiated contract must be shown to contribute to the avoidance or deferral of additional generating capacity by the purchasing utility at a cost that does not exceed the purchasing utility's full avoided costs. Additionally, there must be adequate security to the extent annual contract payments exceed the

annual value of deferral of the avoided unit the purchase is intended to defer.

In light of this the Commission should find that a regulated utility's duty to negotiate in good faith does not include an obligation to accept or negotiate a contract pursuant to the Commission's rules which is not reasonably related to the Commission's standards for cost recovery.

In resolving this issue the Commission should also consider whether, in evaluating generating capacity alternatives, a regulated electric utility has any duty or obligation to evaluate the reliability and costs of that alternative and determine that the alternative selected is the most cost-effective alternative available. The Commission should find that a regulated utility has the responsibility to evaluate the reliability and cost of all feasible alternatives and to select the most cost-effective of these alternatives. This is not only prudent for the regulated utility's customers, it is a requirement of the Power Plant Siting Act.

The Commission should also consider that, since negotiated contracts with a QF larger than 75 MW cannot be fulfilled absent an affirmative determination of need, a contract with a large QF must be the most cost-effective alternative reasonably available to the purchasing utility, and should also meet the other statutory standards in the Power Plant Siting Act.

In resolving this issue the Commission should consider whether it is reasonable and appropriate for an electric utility to add additional generating capacity through construction or purchase only after a reasonable opportunity to evaluate all reasonably available alternatives. The Commission should find that an electric utility has the responsibility to examine all known feasible alternatives before selecting one alternative in order to insure the most cost-effective alternative is selected.

In light of this, the Commission should find that a regulated utility does not have an obligation to accept or negotiate a contract pursuant to the Commission's rules which is not reasonably related to the standards that must be met for an affirmative determination of need for the proposed facility.

Also in light of the foregoing, the Commission should not impose a duty to negotiate on a regulated utility that would result in a contract for which the Commission could not grant cost recovery or an affirmative determination of need because the energy and capacity to be purchased pursuant to the contract were not needed by or cost effective to the purchasing utility.

STAFF: No position at this time.

ISSUE 14: Did Florida Power and Light Company fail to negotiate in good faith with Consolidated Minerals, Inc? If so, did that behavior rise to the level of bad faith negotiations?

CMI : As to the first question, the answer is "Yes." This is the ultimate issue which must be decided by this Commission. Indeed, CMI considers Issues 14 and 15 to be the primary issues which must be decided by the Commission and the remaining issues to be secondary. Rather than a lengthy exposition of its position as to why FPL failed to negotiate in good faith, CMI incorporates by reference its Statement of Basic Position found at Part D of this Prehearing Order.

The second question posed by Issue 14 is whether FPL's behavior rose to the level of bad faith negotiations. CMI's complaint is not predicated upon FPL's bad faith but, rather, upon that portion of Rule 25-17.0834(1), which requires FPL to "negotiate in good faith for the purchase of capacity and energy from" CMI and permits qualifying facilities such as CMI to petition the Commission for relief "should the Commission find that the utility failed to negotiate in good faith." If the Commission finds that FPL failed to negotiate in good faith with CMI, then CMI will be entitled to relief from the Commission. It is not necessary that CMI prove that FPL negotiated in bad faith.

There may be significant differences between proving a failure to negotiate in good faith and proving that FPL "explicitly dealt in bad faith." Rule 25-17.0834(3). (For example, a change in FPL personnel handling the negotiations with CMI may not have been in bad faith, but may be evidence of FPL's inability or failure to negotiate in good faith with CMI. Similarly, a failure by FPL to negotiate at all would be a failure to negotiate in good

faith.) CMI's complaint does not allege, and CMI does not assume the burden of proving, that FPL engaged in bad faith negotiations. If, however, the proof convinces the Commission that FPL acted in bad faith, then, ipso facto, this will also mean that the Commission must find that FPL failed to negotiate in good faith.

FPL : At all times FPL dealt in good faith with CMI.

In resolving this issue the Commission should consider whether, as CMI contends in Paragraph 13 of its Complaint, FPL gave CMI "instructions" on permitting upon which "CMI commenced efforts to obtain the necessary licensing permits and determinations at great cost to CMI", and on which CMI relied to its detriment. FPL did not give CMI any instructions on permitting. Through discovery CMI has indicated that the "permitting instructions" on which the allegation in the Complaint is based consist solely of the FAX message sent by FPL to CMI on October 18, 1989 requesting information on CMI's projected permitting schedule. The Commission should find that this message did not constitute "instructions on permitting" and that at no time did FPL provide "permitting instructions" on which CMI relied to its detriment.

In resolving this issue the Commission should consider whether FPL, as stated on page 37 of Mr. Bush's direct testimony and in Paragraph 14 of CMI's complaint, misled CMI by:

- (a) determining in late 1989 that FPL would not negotiate with CMI but not disclosing this to CMI;

The allegation is unfounded.

- (b) concealing from CMI the intention of FPL to compare all of the offers to supply capacity FPL received from cogenerators while agreeing to individual negotiations with CMI;

The allegation is unfounded. FPL advised CMI on many occasions that it would evaluate and compare offers to supply capacity FPL received from off-system suppliers as it was in the best interests of FPL's customers to do so.

- (c) providing an assurance from FPL's C.O. Woody that CMI would have a contract within thirty days of the date of a meeting with Mr. Woody in January 1991

while concealing from CMI the intention of FPL to compare all of the offers to supply capacity FPL received from cogenerators.

The allegation is unfounded. Mr. Woody did not indicate that CMI would receive a contract from FPL within thirty days of his meeting with them; FPL did not at any time conceal from CMI its intention to evaluate and compare offers to supply capacity FPL received from all off-system suppliers.

In resolving this issue the Commission should consider whether, as CMI alleges in Paragraph 14 of its Complaint, FPL failed to negotiate in good faith in that it stalled and delayed negotiations with CMI:

- a. By repeatedly delaying meetings and discussions with CMI;

This allegation is unfounded; the evidence does not reflect a pattern of meeting delays or cancellations.

- b. By repeatedly changing the departments and personnel of FPL assigned to negotiate with CMI;

This allegation is unfounded. FPL did change the departments responsible for dealing with CMI; however, from April 1990 through August 1991 CMI dealt with the same department and most of the same personnel. The changes made in FPL departments and personnel dealing with CMI and other large QFs and IPPs were made to meet the changing QF market and regulatory requirements. They were not made to prejudice CMI or any other potential power supplier.

- c. By repeatedly requesting additional information and submissions from CMI;

This allegation is unfounded. FPL requested only the information necessary to evaluate thoroughly CMI's large, complex and unusual project. No requests were posed to delay or stall negotiations. Thorough evaluation of the projects competing to meet FPL's customers' need for power requires extensive information. It is not unusual for a project developer to change, as CMI did, its proposals or to refine its project as it moves forward in development. Such changes may warrant an updating of information

previously provided. However, CMI's failure to respond completely to several information requests also resulted in FPL having to repeat or supplement information requests.

- d. By repeatedly changing FPL's announced contracting policy from (1) a first come first served basis, to (2) a competitive bid basis, to (3) an evaluation basis without disclosed criteria;

This allegation is unfounded. In early 1990 FPL made one major policy change in dealing with QFs. The change was made to respond to the changing QF market and regulatory requirements and to allow FPL to react more promptly and fairly with the significantly increased number of potential project developers interested in serving FPL. This policy change was justified and implemented with as little disruption as possible. The policy change was not implemented to delay or stall negotiations with CMI or other project developers.

- e. And by repeatedly refusing to furnish CMI any figures upon which FPL was willing to contract with CMI.

This allegation is unfounded. FPL went to great lengths to work out specific contract terms with CMI and informed CMI relatively early in the process there was no price that would assure CMI a contract, because CMI was being weighed against other developers. FPL clearly advised CMI of its avoided cost, cost which CMI already knew, and told CMI there were other developers with more attractive prices. Any further disclosure of competing offers would have compromised the integrity of the evaluation process.

In resolving this issue the Commission should consider whether, as CMI alleges in Paragraph 15 of its Complaint, FPL failed to negotiate in good faith with CMI to gain favor with public officials and citizens opposed to CMI's proposed Pine Level Project and to lessen the opposition of those public officials and citizens to FPL's plan to construct a new high power transmission line through DeSoto and neighboring counties. This allegation is unfounded. FPL's plans to construct a high power transmission line through DeSoto and neighboring counties are totally unrelated to any dealings FPL has had with CMI. The final route of the line has not been selected.

In resolving this issue the Commission should consider whether, as implied in Paragraph 18 of CMI's complaint, CMI ever offered to execute an agreement with FPL that was the same as the FPL-ICL contract for the purchase of energy and capacity. CMI never made such an offer.

In resolving this issue the Commission should consider whether FPL refused to discuss, develop, negotiate, or sign an interconnection agreement with CMI. FPL did offer to negotiate an interconnection agreement with CMI. In fact, FPL spent a considerable amount of time attempting to obtain necessary technical information from CMI and performing required studies and evaluations necessary for an interconnection agreement.

In resolving this issue the Commission should consider whether the location of the Pine Level project in the service territory of Peace River Electric Cooperative affects any interconnection arrangements FPL may make with CMI.

The Commission should find that CMI's claims with respect to an interconnection agreement are a red herring. The contract proposals submitted by CMI did not contemplate an immediate interconnection or immediate negotiation of an interconnection agreement.

In resolving this issue the Commission should consider whether CMI had the opportunity to accept FPL's Standard Offer contract, or the Standard Offer contract of other utilities, pursuant to the Commission's rules. CMI did have the opportunity and in fact submitted a Standard Offer contract to FPL that was pending from June of 1990 until it was withdrawn by CMI on September 25, 1990. (Hawk, Denis, Cepero, Sears, Waters, Woody)

STAFF: No position at this time.

ISSUE 15: If the Commission finds that FPL failed to negotiate or deal in good faith with CMI, and/or that FPL explicitly dealt in bad faith with CMI, what further action should the Commission take?

CMI : If the Commission finds that FPL failed to negotiate in good faith with CMI, the Commission should require FPL to promptly enter into good faith negotiations for the purchase of capacity and energy from CMI's cogeneration



facility. If FPL fails to negotiate a contract with CMI within 60 days after being ordered to do so, this Commission should exercise the authority granted to it under Rule 25-17.0834(1) and order FPL to sign a contract for the purchase of capacity and energy from CMI based on the terms and prices set forth in FPL's contract with Indiantown Cogeneration LP, executed in May 1990, or on some other reasonable basis. In the meantime, the Commission should withhold determinations of need, withhold approval of other agreements for the purchase of capacity and energy by FPL, and do whatever else is necessary to preclude FPL from filling its needs for electric power in any other way until it has negotiated in good faith a contract with CMI. This would include, but not be limited to, withholding approval of the recently negotiated contract with Cypress Energy Partners, Ltd.

CMI takes no position as to whether, in addition to the relief requested, the Commission should impose any other "appropriate penalties" on FPL, as provided in Rule 25-17.0834(3). CMI also takes no position on what additional action the Commission should take should the Commission find that FPL explicitly dealt in bad faith with CMI.

FPL : FPL does not believe that the evidence in this case supports a finding that FPL failed to negotiate in good faith or that FPL dealt in bad faith with CMI. Should the Commission find otherwise, any relief granted should be consistent with the fact that a regulated utility is not obligated to purchase energy or capacity at a price that exceeds the utility's avoided costs (this is consistent reflected in Rule 25-17.0834). Further, any relief granted should be consistent with the Commission's standards for contract approval and the requirements of the Power Plant Siting Act that there must be a need for any proposed electrical generating facility over 75 MW and that the proposed facility must be the most cost effective alternative for meeting that need.

STAFF: No position at this time.

VII. EXHIBIT LIST

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
		<u>CMI's DIRECT EXHIBITS</u>
<u>(CWB-1)</u>	Bush (CMI)	Pine Level Project illustrated by flow chart.
<u>(CWB-2)</u>	Bush (CMI)	9/14/89 letter from Mr. Wilkins to Mr. Gregg.
<u>(CWB-3)</u>	Bush (CMI)	10/6/89 letter from Mr. Gregg to Mr. Wilkins. Attached is CMI's proposed draft contract.
<u>(CWB-4)</u>	Bush (CMI)	10/9/89 letter from Mr. Bush to Mr. Seijas.
<u>(CWB-5)</u>	Bush (CMI)	10/12/89 letter from Mr. Seelig to Mr. Seijas.
<u>(CWB-6)</u>	Bush (CMI)	FPL activities to date.
<u>(CWB-7)</u>	Bush (CMI)	Contractual issues.
<u>(CWB-8)</u>	Bush (CMI)	Action items.
<u>(CWB-9)</u>	Bush (CMI)	12/4/89 letter from Mr. Seijas to Mr. Bush.
<u>(CWB-10)</u>	Bush (CMI)	12/13/89 letter from Mr. Bush to Mr. Wilkins.
<u>(CWB-11)</u>	Bush (CMI)	12/1/89 letter from Mr. Bush to Mr. Seijas.
<u>(CWB-12)</u>	Bush (CMI)	12/14/89 letter from Mr. Bush to Mr. Wilkins.
<u>(CWB-13)</u>	Bush (CMI)	12/15/89 letter from Mr. Bush from Mr. Seijas.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(CWB-14)</u>	Bush (CMI)	12/15/90 letter from Mr. Gregg to Mr. Williams.
<u>(CWB-15)</u>	Bush (CMI)	4/13/90 letter from Mr. Cepero to Mr. Gregg.
<u>(CWB-16)</u>	Bush (CMI)	5/17/90 letter from Mr. Cepero to Mr. Gregg.
<u>(CWB-17)</u>	Bush (CMI)	Executive summary, status of negotiations with FPL and chronology of events.
<u>(CWB-18)</u>	Bush (CMI)	9/25/90 letter from Mr. Simpson to Mr. Cepero.
<u>(CWB-19)</u>	Bush (CMI)	Order approving need determination and denying motions for reconsideration, issued 6/15/90.
<u>(CWB-20)</u>	Bush (CMI)	8/3/90 from Mr. Atkinson to Mr. Bush.
<u>(CWB-21)</u>	Bush (CMI)	8/21/90 letter from Mr. Gregg to Mr. Cepero.
<u>(CWB-22)</u>	Bush (CMI)	10/16/90 letter from Mr. Bush to Mr. Gilbert. Attached is extensive information.
<u>(CWB-23)</u>	Bush (CMI)	10/31/90 letter from Mr. Gilbert to Mr. Bush.
<u>(CWB-24)</u>	Bush (CMI)	10/16/90 letter from Mr. Stephens to Mr. Cepero. Attached is CMI's draft power sales agreement.
<u>(CWB-25)</u>	Bush (CMI)	12/14/90 letter from Mr. Bush to Mr. Gilbert. Attached is FPL's draft agreement with CMI's comments.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(CWB-26)</u>	Bush (CMI)	1/8/91 letter from Mr. Gilbert to Mr. Bush.
<u>(CWB-27)</u>	Bush (CMI)	Letter faxed on 1/22/91 from Mr. Gilbert to Mr. Bush.
<u>(CWB-28)</u>	Bush (CMI)	2/5/91 memorandum from Mr. Bush to Mr. Gregg.
<u>(CWB-29)</u>	Bush (CMI)	2/6/91 draft power sales agreement.
<u>(CWB-30)</u>	Bush (CMI)	Cost comparisons between CMI and Indiantown.
<u>(CWB-31)</u>	Bush (CMI)	2/27/91 letter from Mr. Bush to Mr. Gilbert.
<u>(CWB-32)</u>	Bush (CMI)	3/13/91 letter from Mr. Stephens to Mr. Cepero. Attached is CMI's 3/13/91 draft power sale agreement.
<u>(CWB-33)</u>	Bush (CMI)	4/5/91 letter from Mr. Bush to Mr. Cepero.
<u>(CWB-34)</u>	Bush (CMI)	4/30/91 letter from Mr. Bush to Mr. Cepero.
<u>(CWB-35)</u>	Bush (CMI)	5/2/91 letter from Mr. Bush to Mr. Cepero.
<u>(CWB-36)</u>	Bush (CMI)	CMI's presentation to FPL on 5/21/91.
<u>(CWB-37)</u>	Bush (CMI)	7/11/91 letter from Mr. Sears to Mr. Bromwell.
<u>(CWB-38)</u>	Bush (CMI)	8/14/91 letter from Mr. Sears to Mr. Bush.
<u>(CWB-39)</u>	Bush (CMI)	2/7/91 letter from Mr. Gilbert to Mr. Bush.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(CWB-40)</u>	Bush (CMI)	2/18/91 letter from Mr. Gilbert to Mr. Bush.
<u>(CWB-41)</u>	Bush (CMI)	4/25/91 letter from Mr. Cepero to Mr. Bush.
<u>(LGB-1)</u>	Bromwell (CMI)	10/10/91 article from <u>The Herald Advocate</u>
<u>(LGB-2)</u>	Bromwell (CMI)	10/15/91 article from <u>The Sarasota Herald Tribune</u>
<u>(RBS-1)</u>	Stephens (CMI)	3/26/90 letter from Mr. Cepero to Mr. Stevens ( <u>sic</u> )
<u>(RBS-2)</u>	Stephens (CMI)	12/14/90 from Mr. Gilbert to Mr. Stephens.
<u>(FBG-1)</u>	Gregg (CMI)	10/18/89 telecopy from Mr. Seijas to Mr. Bromwell.
<u>(FBG-2)</u>	Gregg (CMI)	10/25/89 letter from Mr. Wilkins to Mr. Gregg.
<u>(FBG-3)</u>	Gregg (CMI)	5/25/90 letter from Mr. Gregg to Mr. Wilson.
<u>(FBG-4)</u>	Gregg (CMI)	6/1/90 letter from Mr. Gregg to Mr. Cepero.
<u>(FBG-5)</u>	Gregg (CMI)	CMI's standard offer contract, dated 6/6/90.
<u>(FBG-6)</u>	Gregg (CMI)	6/7/90 letter from Mr. Cepero to Mr. Gregg.
<u>(FBG-7)</u>	Gregg (CMI)	10/2/90 letter from Mr. Gilbert to Mr. Gregg.
<u>(FBG-8)</u>	Gregg (CMI)	1/4/91 letter from Mr. Gregg to Mr. Gilbert.
<u>(FBG-9)</u>	Gregg (CMI)	1/28/91 letter from Mr. Gregg to Mr. Woody.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FBG-10)</u>	Gregg (CMI)	8/21/91 letter from Mr. Gregg to Mr. Yackira.
<u>(FBG-11)</u>	Gregg (CMI)	9/9/91 letter from Mr. Yackira to Mr. Gregg.
<u>(FBG-12)</u>	Gregg (CMI)	6/11/90 letter from Mr. Dean to Mr. Walker.
<u>(NGH-1)</u>	Hawk-FPL (CMI)	10/3/89 memo from Mr. Seijas to Mr. Corn.
<u>(NGH-2)</u>	Hawk-FPL (CMI)	11/13/90 memo from Mr. Hawk to Mr. Corn.
<u>(NGH-3)</u>	Hawk-FPL (CMI)	10/12/89 memo from Mr. Seijas to Mr. Corn.
<u>(NGH-4)</u>	Hawk-FPL (CMI)	12/11/89 memo from Mr. Seijas to Mr. Fries.
<u>(NGH-5)</u>	Hawk-FPL (CMI)	12/19/89 memo from Mr. Hawk to Mr. Denis.
<u>(GRC-1)</u>	Cepero-FPL (CMI)	3/14/90 memorandum from Mr. Seijas.
<u>(GRC-2)</u>	Cepero-FPL (CMI)	8/21/90 letter from Mr. Cepero to Mr. Dean.
<u>(GRC-3)</u>	Cepero-FPL (CMI)	Sample of Mr. Cepero's handwriting.
<u>(GRC-4)</u>	Cepero-FPL (CMI)	List of FPL production numbers which identify Mr. Cepero's handwritten meeting notes.
<u>(GRC-5)</u>	Cepero-FPL (CMI)	2/13/91 memorandum from Mr. Presto to Mr. Cepero.
<u>(RRD-1)</u>	Denis-FPL (CMI)	12/21/89 memorandum from Mr. Wilkins to various FPL personnel.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(SSW-1)</u>	Waters-FPL (CMI)	Analysis of security for the CMI contract, 4/9/91.
<u>(SSW-2)</u>	Waters-FPL (CMI)	6/11/90 memorandum from Mr. Jenkins to various FPSC commissioners.
<u>(SSW-3)</u>	Waters-FPL (CMI)	3/22/91 memorandum from Mr. Morera to Mr. Gilbert.
<u>(SSW-4)</u>	Waters-FPL (CMI)	4/10/91 memorandum from Mr. Morera to Mr. Cepero.
<u>(RBS-3)</u>	Stephens (CMI)	5/24/90 letter from Williams to Mr. Jenkins.
<u>(RBS-4)</u>	Stephens (CMI)	12/18/90 letter from Mr. May to Mr. Futrell.
<u>CMI'S REBUTTAL EXHIBITS</u>		
<u>(CWB-42)</u>	Bush (CMI-R)	Schedule of CMI-Pine Level costs, 9/89-8/91.
<u>(CWB-43)</u>	Bush (CMI-R)	6/11/90 memo from Mr. Jenkins to FPSC Commissioners.
<u>(CWB-44)</u>	Bush (CMI-R)	6/4/90 FPL draft agreement.
<u>(CWB-45)</u>	Bush (CMI-R)	5/21/90 Indiantown cogeneration agreement.
<u>CMI'S SUPPLEMENTAL EXHIBITS</u>		
<u>SUPP-1</u>	(CMI)	Comparison of generation costs, leveled costs -- large QF's, IPP's, and IGCC, 4/9/91.
<u>SUPP-2</u>	(CMI)	12/20/89 memo from Seijas to distribution.
<u>SUPP-3</u>	(CMI)	4/23/90 memo by BFG.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>SUPP-4</u>	(CMI)	4/2/91 memo of CMI meeting.
<u>SUPP-5</u>	(CMI)	5/2/91 letter, Mr. Marcotte to Mr. Broadhead.
<u>SUPP-6</u>	(CMI)	10/8/91 letter, Mr. Frank to Ms. Frankowski.
<u>SUPP-7</u>	(CMI)	FPL No. 13341, Docket No. 910004-EI, 3rd Set of Interrogatories, No. 29.
<u>SUPP-8</u>	(CMI)	FPL No. 13340, Docket No. 910004-EI, 3rd Set of Interrogatories, No. 30.
<u>SUPP-9</u>	(CMI)	FPL No. 13352, Docket No. 880004-EU, Ind. Cogen.'s 1st Set of Interrogatories, No. 8.
<u>SUPP-10</u>	(CMI)	FPL No. 13355, Docket No. 900796-EI, Staff's 1st Set of Interrogatories, No. 10.
<u>SUPP-11</u>	(CMI)	FPL No. 13358, Docket No. 890973-EI etc., Pub. Counsel's 2nd Set of Interrogatories, No. 24.
<u>SUPP-12</u>	(CMI)	FPL No. 13421, Excerpt from FPL Ten Year Power Plant Site Plan 4/1/91.
<u>SUPP-13</u>	(CMI)	FPL No. 13422, Excerpt from Demand Side Management Plan for the 90's.
<u>SUPP-14</u>	(CMI)	FPL No. 13423, Excerpt from Waters' Testimony, Docket No. 900796.



<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>SUPP-15</u>	(CMI)	FPL No. 13427, Excerpt from Denis' Testimony, Docket No. 890973-EI and 890974-EI.
<u>SUPP-16</u>	(CMI)	2/6/91 memo, Mr. Villar to distribution.
<u>SUPP-17</u>	(CMI)	7/17/90 Active Projects.
<u>SUPP-18</u>	(CMI)	9/14/90 Active Projects.
<u>SUPP-19</u>	(CMI)	10/1/90 Cogeneration Projects Greater than 75MW.
<u>SUPP-20</u>	(CMI)	8/27/90 letter, Mr. Owen to Ms. Clark.
<u>SUPP-21</u>	(CMI)	12/12/90 CMI Meeting notes.
<u>SUPP-22</u>	(CMI)	Fact Sheet Florida Cogen. 10/30/89.
<u>(SUPP-23)</u>	Seijas-FPL (CMI)	Project status -- power CMI, 3/14/90.
<u>(SUPP-24)</u>	Seijas-FPL	Project status -- power CMI (roll forward of (CMI) plant siting permitting 3/14/90 memo).
<u>(SUPP-25)</u>	Gilbert-FPL (CMI)	4/23/90 memo BFG, FPL #3444.
<u>(SUPP-26)</u>	Gilbert-FPL (CMI)	8/13/90 memo from Mr. Gilbert to Mr. Fair.
<u>(SUPP-27)</u>	Gilbert-FPL (CMI)	CMI T-L Intertie Mtg. 12/5/90.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(SUPP-28)</u>	Gilbert-FPL (CMI)	12/14/90 letter from Mr. Bush to Mr. Gilbert, FPL #3893.
<u>(SUPP-29)</u>	Woody-FPL (CMI)	2/20/91 memo from Mr. Presto to Mr. Sutherland, FPL #9521.
<u>(SUPP-30)</u>	Gilbert-FPL (CMI)	7/1/90 memo from Perez Alonso to Mr. Denis, FPL, #9607.
<u>(SUPP-31)</u>	Gilbert-FPL (CMI)	Evaluation ranking of the 13 highest RFP capacity solicitation bids, FPL #5714.
<u>(SUPP-32)</u>	Gilbert-FPL (CMI)	1/10/90 memo from Mr. Gilbert to Distribution, FPL #9520A.
<u>(SUPP-33)</u>	Gilbert-FPL (CMI)	6/12/90 memo from Conway to Ballard, FPL #5334.
<u>(SUPP-34)</u>	(CMI)	5/15/90 FPSC Vote Sheet, Docket No. 890974-EI and Docket No. 890973-EI.
<u>(SUPP-36)</u>	(CMI)	Excerpts from transcript of 3/22/90 hearing, Vol. IV, Docket No. 890974-EI and Docket No. 890973-EI.
<u>(SUPP-36)</u>	(CMI)	Transcript of March 1990 proceedings, Docket No. 890974-EI and Docket No. 890973-EI.
<u>(SUPP-37)</u>	(CMI)	Appendix C to Broward County's Post Hearing Brief, dated 4/6/90, Docket No. 890974-EI and Docket No. 890973-EI.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(SUPP-38)</u>	(CMI)	Excerpt from memo from DEG of Division of Records and Reporting, 4/18/90, Docket No. 890974-EI and Docket No. 890973-EI.
<u>(SUPP-39)</u>	(CMI)	Exhibit 51 to March 1990 proceedings, Interrogatory #1 of Staff's First Set of Interrogatories, Docket No. 890974-EI and Docket No. 890973-EI.
<u>(SUPP-40)</u>	(CMI)	FPL's PETition for Clarification and/or Reconsideration, dated 4/30/90, Docket No. 890974-EI and Docket No. 890973-EI.
<u>(SUPP-41)</u>	(CMI)	Excerpt from agenda conference dated 8/28/90, Docket No. 891049-EU.
<u>(SUPP-42)</u>	(CMI)	Excerpt from memo from Division of Appeals to Division of Records, dated 9/6/90, Docket No. 891049-EU.
<u>(SUPP-43)</u>	(CMI)	Notice of Adoption of Rules, dated 10/16/90, Docket No. 891049-EU.
<u>(SUPP-44)</u>	(CMI)	Excerpts from testimony of Hawk, dated 12/20/89, Docket No. 891049-EU.
<u>(SUPP-45)</u>	(CMI)	Comments on Post-Hearing Statements, dated 2/8/90, Docket No. 891049-EU.
<u>(SUPP-46)</u>	(CMI)	Excerpts of comments of FPL on Staff's proposed final version of Cogen. Rules, dated 3/16/90, Docket No. 891049-EU.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
(SUPP-47)	(CMI)	Transcript of January 1990 proceedings, Docket No. 891049-EU.
(SUPP-48)	(CMI)	Final Order, dated 2/3/92, Docket No. 910603-EQ.
(SUPP-49)	(CMI)	Memo from Conway to Ballard, dated 2/8/91, FPL #5330.
(SUPP-50)	(CMI)	Memo from Conway to Ballard, dated 12/6/90, FPL #5331.
(SUPP-51)	(CMI)	Letter from Mr. Sears to Mr. Peterson, dated 8/14/91, FPL #6503.
(SUPP-52)	(CMI)	FP&L Large QF/IPP Evaluation Results, dated 8/13/91, FPL #6508.
(SUPP-53)	(CMI)	Memo from Mr. Sears to Distribution, dated 8/19/91, FPL #5734.
(SUPP-54)	(CMI)	Memo from Christian to Hevia dated 7/25/91, FPL #7841.
(SUPP-55)	(CMI)	Exhibit Nos. 30, 31, 32, 33, and 92; Docket No. 890974-EI and Docket No. 890973-EI.
(SUPP-56)	(CMI)	FPL's Response to CMI's First Set of Interrogatories, Nos. 1-10.
(SUPP-57)	(CMI)	4/4/91 QF Proposal Evaluation Process Mtg.
(SUPP-58)	(CMI)	4/3/91 QF Proposal Evaluation Process Mtg.
(SUPP-59)	(CMI)	Large QF Project Schedule Summary.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(SUPP-60)</u>	(CMI)	4/9/91, Memo, Larnard to Gilbert.
<u>(SUPP-61)</u>	(CMI)	6/5/90 Memo, Gilbert to Steve A.
<u>(SUPP-62)</u>	(CMI)	3/8/91 memo, Woody to Delivery Cross-Functional Mgmt. Committee.

FPL'S DIRECT EXHIBITS

<u>(NGH-1)</u>	Hawk (FPL)	FPL QF projects firm capacity contracts signed prior to 1989.
<u>(NGH-2)</u>	Hawk (FPL)	Unsolicited large QF projects under discussion for power purchases with FPL during 1989.
<u>(RRD-1)</u>	Denis (FPL)	Schedule of FPL's Request for Power Supply Proposals.
<u>(RRD-2)</u>	Denis (FPL)	Summary of projects registering.
<u>(RRD-3)</u>	Denis (FPL)	Summary of projects submitting bids.
<u>(GRC-1)</u>	Cepero (FPL)	FPL Qualifying Facilities (QF's) Cogeneration Information Requirements.
<u>(GRC-2)</u>	Cepero (FPL)	Letter from G. R. Cepero to F. Browne Gregg dated April 13, 1990.
<u>(GRC-3)</u>	Cepero (FPL)	Letter from James Dean to W. G. Walker dated June 11, 1990.
<u>(GRC-4)</u>	Cepero (FPL)	Letter from G. R. Cepero to James Dean dated August 21, 1990.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(GRC-5)</u>	Cepero (FPL)	Comparison of CMI to Statewide Avoided Unit.
<u>(GRC-6)</u>	Cepero (FPL)	Letter from F. Browne Gregg to G. R. Cepero dated June 1, 1990.
<u>(GRC-7)</u>	Cepero (FPL)	Letter from Gus R. Cepero to F. Browne Gregg dated June 7, 1990.
<u>(GRC-8)</u>	Cepero (FPL)	Letter from F. Browne Gregg to G. R. "Gus" Cepero dated August 21, 1990.
<u>(GRC-9)</u>	Cepero (FPL)	Letter from G. R. Cepero to Charles W. Bush dated April 25, 1991.
<u>(GRC-10)</u>	Cepero (FPL)	Letter from F. Browne Gregg Ben Gilbert dated January 4, 1991.
<u>(GRC-11)</u>	Cepero/ Woody (FPL)	1991 letter from C. O. F. Browne Gregg dated January 28, 1991.
<u>(RRS-1)</u>	Sears (FPL)	Summary of proposals evaluated.
<u>(RRS-2)</u>	Sears (FPL)	Letter from Michael Yackira to F. Browne Gregg dated September 9, 1991.
<u>(SSW-1)</u>	Waters (FPL)	Summary of Generation Expansion Plans Presented to FPSC since 1988.
<u>(SSW-2)</u>	Waters (FPL)	Summary of direct costs of new Generating Units Presented to FPSC.
<u>(SSW-3)</u>	Waters (FPL)	Summary of the decisions of Dockets in which FPL Plans were presented to FPSC.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(SSW-4)</u>	Waters (FPL)	Summary of Pricing Information provided by CMI regarding Pine Level Cogeneration Project.
<u>FPL'S REBUTTAL EXHIBITS</u>		
<u>(NGH-1)</u>	Hawk (FPL-R)	FP&L negotiations re: Pine Level to L. G. Bromwell from C. W. Bush.
<u>(NGH-2)</u>	Hawk (FPL-R)	Telephone call to FBG - from Nelson Hawk (FP&L).
<u>(NGH-3)</u>	Hawk (FPL-R)	Pine Level environmental review by FPL, Form 4.
<u>(NGH-4)</u>	Hawk (FPL-R)	Pine Level Project: Preliminary overview of Permitting Requirements.
<u>(NGH-5)</u>	Hawk (FPL-R)	Pine Level Phosphoric Products Complex.
<u>(NGH-6)</u>	Hawk (FPL-R)	Consolidated Minerals, Inc. (CMI) and AES initial designs and attachments
<u>(NGH-7)</u>	Hawk (FPL-R)	Chronology.
<u>(NGH-8)</u>	Hawk (FPL-R)	Facsimile to C. Bush from C. Seijas avoided capacity payments.
<u>(COW-1)</u>	Woody (FPL-R)	1/28/91 letter to Gregg from Woody re: CMI proposed Pine Level Project.
<u>(COW-2)</u>	Woody (FPL-R)	1/30/91 memo to file from Woody re: meeting with CMI Jan. 29, 1991.
<u>(SSW-1)</u>	Waters (FPL-R)	Comparison of CMI's Oct. 16, 1990 Proposal to FPL's Agreement with ICL.

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(SSW-2)</u>	Waters (FPL-R)	Comparison of CMI's Oct. 16, 1990 Proposal to Std. Offer for a 1996 pulverized coal unit.
<u>(SSW-3)</u>	Waters (FPL-R)	Economic ranking of QF/IPP Proposed projects as compared to FPL 1988 IGCC.
<u>(GRC-12)</u>	Cepero (FPL-R)	April 25, 1990 Memo to File by Charles W. Bush.
<u>(GRC-13)</u>	Cepero (FPL-R)	May 21, 1990 Facsimile from Charles W. Bush to F. Browne Gregg.
<u>(GRC-14)</u>	Cepero (FPL-R)	Notes of Gus Cepero from February 26, 1991 Meeting.
<u>(GRC-15)</u>	Cepero (FPL-R)	March 18, 1991 Letter from Charles Bush to Walter Howard.
<u>(GRC-16)</u>	Cepero (FPL-R)	April 5, 1991 Letter from Charles Bush to G.R. Cepero.
<u>(GRC-17)</u>	Cepero (FPL-R)	August 4, 1989 Memo from Charles Bush to F. Browne Gregg.
<u>(GRC-18)</u>	Cepero (FPL-R)	October 2, 1990 Letter from B.F. Gilbert to F. Browne Gregg.
<u>(GRC-19)</u>	Cepero (FPL-R)	Meeting Materials from November 9, 1990 Meeting.
<u>(GRC-20)</u>	Cepero (FPL-R)	Pricing Comparisons presented to CMI, February 7, 1991
<u>(GRC-21)</u>	Cepero (FPL-R)	February 14, 1991 Economic Analysis Prepared for CMI.



<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(GRC-22)</u>	Cepero (FPL-R)	Economic Analysis of March 13, 1991 CMI Proposal, Presented to CMI at April 2, 1991 Meeting.
<u>(GRC-23)</u>	Cepero (FPL-R)	Contract Term Comparisons Prepared for November 9, 1990 Meeting.
<u>(GRC-24)</u>	Cepero (FPL-R)	June 12, 1990 Staff Memorandum Raising Questions About CMI Standard Offer.
<u>(GRC-25)</u>	Cepero (FPL-R)	August 3, 1990 Letter from S.W. Atkinson to Charles Bush.
<u>(GRC-26)</u>	Cepero (FPL-R)	October 17, 1990 Memorandum from Charles W. Bush to F. Browne Gregg.
<u>(GRC-27)</u>	Cepero (FPL-R)	February 7, 1991 Letter from B.F. Gilbert to Charles W. Bush.
<u>(GRC-28)</u>	Cepero (FPL-R)	May 24, 1990 Letter from J.W. Williams Jr. to Joseph Jenkins.
<u>(GRC-29)</u>	Cepero (FPL-R)	Notes from September 21, 1990 Meeting.

FPL'S SUPPLEMENTAL EXHIBIT LIST

<u>(FPL-1)</u>	<u>FPL</u>	Agreement for the Purchase of Firm Capacity and Energy Between Indiantown Cogeneration, L.P. and FPL, dated May 21, 1990, amended December 5, 1990.
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<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-2)</u>	<u>FPL</u>	Composite Exhibit: Request for Power Supply Proposals - 1989 Solicitation with Attachments A-D (Undated); 1989 Solicitation Supplemental Information (December 1990)
<u>(FPL-3)</u>	<u>FPL</u>	B203362 - B203374
<u>(FPL-4)</u>	<u>FPL</u>	B203385 - B203391
<u>(FPL-5)</u>	<u>FPL</u>	B204348 - B204387
<u>(FPL-6)</u>	<u>FPL</u>	B1000135
<u>(FPL-7)</u>	<u>FPL</u>	B1000128 - B1000129
<u>(FPL-8)</u>	<u>FPL</u>	B1000069 - B1000074
<u>(FPL-9)</u>	<u>FPL</u>	B1000104 - B1000105
<u>(FPL-10)</u>	<u>FPL</u>	B1000116 - B1000117
<u>(FPL-11)</u>	<u>FPL</u>	B203410
<u>(FPL-12)</u>	<u>FPL</u>	B202229 - B202231
<u>(FPL-13)</u>	<u>FPL</u>	B1000204 - B1000205
<u>(FPL-14)</u>	<u>FPL</u>	B1000478 - B1000480
<u>(FPL-15)</u>	<u>FPL</u>	B203844 - B203845

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<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-16)</u>	<u>FPL</u>	BC03028
<u>(FPL-17)</u>	<u>FPL</u>	BC00246 - BC00247
<u>(FPL-18)</u>	<u>FPL</u>	B203933
<u>(FPL-19)</u>	<u>FPL</u>	B202070
<u>(FPL-20)</u>	<u>FPL</u>	B203383 - B203384
<u>(FPL-21)</u>	<u>FPL</u>	B203408 - B203409
<u>(FPL-22)</u>	<u>FPL</u>	B202016
<u>(FPL-23)</u>	<u>FPL</u>	B203858 - B203862
<u>(FPL-24)</u>	<u>FPL</u>	B1000066 - B1000068
<u>(FPL-25)</u>	<u>FPL</u>	B206319 - B206322
<u>(FPL-26)</u>	<u>FPL</u>	B201845 - B201847
<u>(FPL-27)</u>	<u>FPL</u>	B201826
<u>(FPL-28)</u>	<u>FPL</u>	B1000083
<u>(FPL-29)</u>	<u>FPL</u>	B1000087 - B1000090
<u>(FPL-30)</u>	<u>FPL</u>	B201817 - B201820

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-31)</u>	<u>FPL</u>	B201813 - B201814
<u>(FPL-32)</u>	<u>FPL</u>	B1000095 - B1000096
<u>(FPL-33)</u>	<u>FPL</u>	February 15, 1990 letter - Gregg to Wilkins
<u>(FPL-34)</u>	<u>FPL</u>	March 26, 1990 letter Cepero to Stephens
<u>(FPL-35)</u>	<u>FPL</u>	B206517
<u>(FPL-36)</u>	<u>FPL</u>	B206523 - B206524
<u>(FPL-37)</u>	<u>FPL</u>	B206629 - B206636
<u>(FPL-38)</u>	<u>FPL</u>	B206518 - B206522
<u>(FPL-39)</u>	<u>FPL</u>	BC00240 - BC00244
<u>(FPL-40)</u>	<u>FPL</u>	B206525 - B206540
<u>(FPL-41)</u>	<u>FPL</u>	B1000017
<u>(FPL-42)</u>	<u>FPL</u>	B1000087
<u>(FPL-43)</u>	<u>FPL</u>	B1000095 - B1000096
<u>(FPL-44)</u>	<u>FPL</u>	B206319 - B206322
<u>(FPL-45)</u>	<u>FPL</u>	B201813 - B201814

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-46)</u>	<u>FPL</u>	B202069
<u>(FPL-47)</u>	<u>FPL</u>	B204382
<u>(FPL-48)</u>	<u>FPL</u>	B1000202 - B1000203
<u>(FPL-49)</u>	<u>FPL</u>	B206712 - B208261
<u>(FPL-50)</u>	<u>FPL</u>	B203933
<u>(FPL-51)</u>	<u>FPL</u>	B209068
<u>(FPL-52)</u>	<u>FPL</u>	B203863-67
<u>(FPL-53)</u>	<u>FPL</u>	B203858-62
<u>(FPL-54)</u>	<u>FPL</u>	B209064-65
<u>(FPL-55)</u>	<u>FPL</u>	B203934-35
<u>(FPL-56)</u>	<u>FPL</u>	B203851-57
<u>(FPL-57)</u>	<u>FPL</u>	B209004-63
<u>(FPL-58)</u>	<u>FPL</u>	B209063
<u>(FPL-59)</u>	<u>FPL</u>	B203869-71
<u>(FPL-60)</u>	<u>FPL</u>	B209003

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-61)</u>	<u>FPL</u>	B203845
<u>(FPL-62)</u>	<u>FPL</u>	B206346
<u>(FPL-63)</u>	<u>FPL</u>	B209091
<u>(FPL-64)</u>	<u>FPL</u>	B203848-50
<u>(FPL-65)</u>	<u>FPL</u>	B203717-19
<u>(FPL-66)</u>	<u>FPL</u>	BC00191
<u>(FPL-67)</u>	<u>FPL</u>	B209074
<u>(FPL-68)</u>	<u>FPL</u>	B203846-47
<u>(FPL-69)</u>	<u>FPL</u>	B209072-73
<u>(FPL-70)</u>	<u>FPL</u>	B203844
<u>(FPL-71)</u>	<u>FPL</u>	B209071
<u>(FPL-72)</u>	<u>FPL</u>	9/25/90 Letter from S.R. Simpson, III to G.R. Cepero
<u>(FPL-73)</u>	<u>FPL</u>	9/24/90 Letter from R.B. Stephens, Jr. to J. Seelke
<u>(FPL-74)</u>	<u>FPL</u>	Notice of Execution of Utility/QF Power Purchase Agreement
<u>(FPL-75)</u>	<u>FPL</u>	5/4/90 Letter from F.B. Gregg to M.H. Phillips

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-76)</u>	<u>FPL</u>	Summary of Consolidated Minerals, Inc. (CMI)
<u>(FPL-77)</u>	<u>FPL</u>	10/8/90 Letter from J.P. Fama to R.B. Stephens, Jr.
<u>(FPL-78)</u>	<u>FPL</u>	9/21/90 Letter from J.P. Fama to R.B. Stephens, Jr.
<u>(FPL-79)</u>	<u>FPL</u>	FPL's Petition for Approval of Cogeneration Agreement with Indiantown Cogeneration, L.P.
<u>(FPL-80)</u>	<u>FPL</u>	BC03132
<u>(FPL-81)</u>	<u>FPL</u>	BC03139 - BC03174
<u>(FPL-82)</u>	<u>FPL</u>	BC03125 - BC03126
<u>(FPL-83)</u>	<u>FPL</u>	BC03084 - BC03086
<u>(FPL-84)</u>	<u>FPL</u>	BC03080 - BC03082
<u>(FPL-85)</u>	<u>FPL</u>	BC03127 - BC03129
<u>(FPL-86)</u>	<u>FPL</u>	BC03079
<u>(FPL-87)</u>	<u>FPL</u>	BC03055
<u>(FPL-88)</u>	<u>FPL</u>	BC03054

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-89)</u>	<u>FPL</u>	BC03057 - BC03064
<u>(FPL-90)</u>	<u>FPL</u>	BC03053
<u>(FPL-91)</u>	<u>FPL</u>	BC03051
<u>(FPL-92)</u>	<u>FPL</u>	BC03052
<u>(FPL-93)</u>	<u>FPL</u>	BC03050
<u>(FPL-94)</u>	<u>FPL</u>	BC03102 - BC03103
<u>(FPL-95)</u>	<u>FPL</u>	BC03044
<u>(FPL-96)</u>	<u>FPL</u>	BC03045
<u>(FPL-97)</u>	<u>FPL</u>	BC03046
<u>(FPL-98)</u>	<u>FPL</u>	B204382
<u>(FPL-99)</u>	<u>FPL</u>	B1000204 - B1000205
<u>(FPL-100)</u>	<u>FPL</u>	BC00297
<u>(FPL-101)</u>	<u>FPL</u>	BC00298 - BC00299
<u>(FPL-102)</u>	<u>FPL</u>	BC00245
<u>(FPL-103)</u>	<u>FPL</u>	Composite Exhibit: CMI's responses to Interrogatory Nos. 1 - 21



<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-104)</u>	<u>FPL</u>	Composite Exhibit: Gregg Deposition Exhibits 1-10
<u>(FPL-105)</u>	<u>FPL</u>	Composite Exhibit: Stephens Deposition Exhibits 1 - 6
<u>(FPL-106)</u>	<u>FPL</u>	B201656-B201672
<u>(FPL-107)</u>	<u>FPL</u>	B201675-B201678
<u>(FPL-108)</u>	<u>FPL</u>	B201680
<u>(FPL-109)</u>	<u>FPL</u>	B206379
<u>(FPL-110)</u>	<u>FPL</u>	B206387
<u>(FPL-111)</u>	<u>FPL</u>	B206377-78
<u>(FPL-112)</u>	<u>FPL</u>	B202727
<u>(FPL-113)</u>	<u>FPL</u>	B206437-38
<u>(FPL-114)</u>	<u>FPL</u>	BC02773-78
<u>(FPL-115)</u>	<u>FPL</u>	B206379
<u>(FPL-116)</u>	<u>FPL</u>	B204274-79
<u>(FPL-117)</u>	<u>FPL</u>	B202962-64
<u>(FPL-118)</u>	<u>FPL</u>	B206323-24

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-119)</u>	<u>FPL</u>	BC02726-58
<u>(FPL-120)</u>	<u>FPL</u>	B206444-57
<u>(FPL-121)</u>	<u>FPL</u>	May 20, 1991 Letter from Roger W. Sims to Dr. Leslie G. Bromwell regarding permitting
<u>(FPL-122)</u>	<u>FPL</u>	BC02799-02804
<u>(FPL-123)</u>	<u>FPL</u>	B201661
<u>(FPL-124)</u>	<u>FPL</u>	B201821-22
<u>(FPL-125)</u>	<u>FPL</u>	BC02473-76
<u>(FPL-126)</u>	<u>FPL</u>	B206429-31
<u>(FPL-127)</u>	<u>FPL</u>	BC02990
<u>(FPL-128)</u>	<u>FPL</u>	BC00260-72
<u>(FPL-129)</u>	<u>FPL</u>	B200388-91
<u>(FPL-130)</u>	<u>FPL</u>	B200367-74
<u>(FPL-131)</u>	<u>FPL</u>	BC00600-22
<u>(FPL-132)</u>	<u>FPL</u>	BC00588-99
<u>(FPL-133)</u>	<u>FPL</u>	BC00584-87

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<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-134)</u>	<u>FPL</u>	BC00632-44
<u>(FPL-135)</u>	<u>FPL</u>	BC00627-28
<u>(FPL-136)</u>	<u>FPL</u>	BC00645-59
<u>(FPL-137)</u>	<u>FPL</u>	BC00629-31
<u>(FPL-138)</u>	<u>FPL</u>	BC00623-26
<u>(FPL-139)</u>	<u>FPL</u>	B204286-87
<u>(FPL-140)</u>	<u>FPL</u>	B204292-94
<u>(FPL-141)</u>	<u>FPL</u>	B204288-91
<u>(FPL-142)</u>	<u>FPL</u>	B209708-09
<u>(FPL-143)</u>	<u>FPL</u>	BC00728-30
<u>(FPL-144)</u>	<u>FPL</u>	BC00725-27
<u>(FPL-145)</u>	<u>FPL</u>	BC00704-06
<u>(FPL-146)</u>	<u>FPL</u>	BC00731-33
<u>(FPL-147)</u>	<u>FPL</u>	BC00734-42
<u>(FPL-148)</u>	<u>FPL</u>	BC00714-15

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<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-149)</u>	<u>FPL</u>	BC00751-56
<u>(FPL-150)</u>	<u>FPL</u>	BC00716-19
<u>(FPL-151)</u>	<u>FPL</u>	BC00723-24
<u>(FPL-152)</u>	<u>FPL</u>	BC00720-22
<u>(FPL-153)</u>	<u>FPL</u>	BC00707-13
<u>(FPL-154)</u>	<u>FPL</u>	BC00747-50
<u>(FPL-155)</u>	<u>FPL</u>	BC00743-46
<u>(FPL-156)</u>	<u>FPL</u>	B202779-80
<u>(FPL-157)</u>	<u>FPL</u>	BC02474
<u>(FPL-158)</u>	<u>FPL</u>	BC02482-538
<u>(FPL-159)</u>	<u>FPL</u>	BC02543
<u>(FPL-160)</u>	<u>FPL</u>	BC02479
<u>(FPL-161)</u>	<u>FPL</u>	BC02469-72
<u>(FPL-162)</u>	<u>FPL</u>	BC00238
<u>(FPL-163)</u>	<u>FPL</u>	BC02480

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<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-164)</u>	<u>FPL</u>	BC02545
<u>(FPL-165)</u>	<u>FPL</u>	B206443
<u>(FPL-166)</u>	<u>FPL</u>	BC02477-78
<u>(FPL-167)</u>	<u>FPL</u>	B206359-63
<u>(FPL-168)</u>	<u>FPL</u>	BC02464
<u>(FPL-169)</u>	<u>FPL</u>	BC02462-63
<u>(FPL-170)</u>	<u>FPL</u>	BC02795-96
<u>(FPL-171)</u>	<u>FPL</u>	BC02450
<u>(FPL-172)</u>	<u>FPL</u>	BC02448
<u>(FPL-173)</u>	<u>FPL</u>	BC02466-67
<u>(FPL-174)</u>	<u>FPL</u>	B206390
<u>(FPL-175)</u>	<u>FPL</u>	BC02446-49
<u>(FPL-176)</u>	<u>FPL</u>	B206429
<u>(FPL-177)</u>	<u>FPL</u>	B200795-807
<u>(FPL-178)</u>	<u>FPL</u>	B200785-94

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<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-179)</u>	<u>FPL</u>	BC01485-87
<u>(FPL-180)</u>	<u>FPL</u>	B206458-63
<u>(FPL-181)</u>	<u>FPL</u>	B206409-11
<u>(FPL-182)</u>	<u>FPL</u>	B200405-06
<u>(FPL-183)</u>	<u>FPL</u>	B200400-04
<u>(FPL-184)</u>	<u>FPL</u>	B200395-98
<u>(FPL-185)</u>	<u>FPL</u>	B200243-52
<u>(FPL-186)</u>	<u>FPL</u>	B200317-18
<u>(FPL-187)</u>	<u>FPL</u>	B206412
<u>(FPL-188)</u>	<u>FPL</u>	B200750-780
<u>(FPL-189)</u>	<u>FPL</u>	B20037987
<u>(FPL-190)</u>	<u>FPL</u>	B200359-63
<u>(FPL-191)</u>	<u>FPL</u>	B200355-58
<u>(FPL-192)</u>	<u>FPL</u>	B200346-354
<u>(FPL-193)</u>	<u>FPL</u>	B200333-B200345

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-194)</u>	<u>FPL</u>	B200319-32
<u>(FPL-195)</u>	<u>FPL</u>	B200253-67
<u>(FPL-196)</u>	<u>FPL</u>	B200268-74
<u>(FPL-197)</u>	<u>FPL</u>	B200276-85
<u>(FPL-198)</u>	<u>FPL</u>	Composite Exhibit: All CMI submissions and agency responses regarding all of CMI's applications for environmental permits, including but not limited to, CMI's SCA, DRI, CRP and NPDES permits
<u>(FPL-199)</u>	<u>FPL</u>	May 13, 1991 Charlotte Sun Herald article regarding CMI's DER information
<u>(FPL-200)</u>	<u>FPL</u>	BC03186- BC03324
<u>(FPL-201)</u>	<u>FPL</u>	B201821-22
<u>(FPL-202)</u>	<u>FPL</u>	B201862-67
<u>(FPL-203)</u>	<u>FPL</u>	B202279-80
<u>(FPL-204)</u>	<u>FPL</u>	B202251-55
<u>(FPL-205)</u>	<u>FPL</u>	B202272
<u>(FPL-206)</u>	<u>FPL</u>	B1000195-201

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-207)</u>	<u>FPL</u>	B202156-66
<u>(FPL-208)</u>	<u>FPL</u>	B202111-15
<u>(FPL-209)</u>	<u>FPL</u>	B202103-110
<u>(FPL-210)</u>	<u>FPL</u>	B1000556-57
<u>(FPL-211)</u>	<u>FPL</u>	B202086-92
<u>(FPL-212)</u>	<u>FPL</u>	B202079-84
<u>(FPL-213)</u>	<u>FPL</u>	B202064-67
<u>(FPL-214)</u>	<u>FPL</u>	B202076-78
<u>(FPL-215)</u>	<u>FPL</u>	B202041-45
<u>(FPL-216)</u>	<u>FPL</u>	B202017-21
<u>(FPL-217)</u>	<u>FPL</u>	B1001535
<u>(FPL-218)</u>	<u>FPL</u>	B202064-67
<u>(FPL-219)</u>	<u>FPL</u>	B202310-12
<u>(FPL-220)</u>	<u>FPL</u>	B202313-19
<u>(FPL-221)</u>	<u>FPL</u>	B202363-64



<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-222)</u>	<u>FPL</u>	B202361-62
<u>(FPL-223)</u>	<u>FPL</u>	B202412-15
<u>(FPL-224)</u>	<u>FPL</u>	B202416-17
<u>(FPL-225)</u>	<u>FPL</u>	B202439-44 FPL
<u>(FPL-226)</u>	<u>FPL</u>	B202680-85
<u>(FPL-227)</u>	<u>FPL</u>	B1001939
<u>(FPL-228)</u>	<u>FPL</u>	B202755-59
<u>(FPL-229)</u>	<u>FPL</u>	B202273
<u>(FPL-230)</u>	<u>FPL</u>	B1000155-170
<u>(FPL-231)</u>	<u>FPL</u>	B201983
<u>(FPL-232)</u>	<u>FPL</u>	B206629
<u>(FPL-233)</u>	<u>FPL</u>	B206630-36
<u>(FPL-234)</u>	<u>FPL</u>	BC00240-44
<u>(FPL-235)</u>	<u>FPL</u>	B206517-22
<u>(FPL-236)</u>	<u>FPL</u>	B206523-24

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-237)</u>	<u>FPL</u>	Florida Power & Light Company Request for Power Supply Proposals/1989 Solicitation
<u>(FPL-238)</u>	<u>FPL</u>	B206525
<u>(FPL-239)</u>	<u>FPL</u>	B1000017
<u>(FPL-240)</u>	<u>FPL</u>	B206526
<u>(FPL-241)</u>	<u>FPL</u>	B206527-40
<u>(FPL-242)</u>	<u>FPL</u>	BC02546-52
<u>(FPL-243)</u>	<u>FPL</u>	B201845-47
<u>(FPL-244)</u>	<u>FPL</u>	B201821-22
<u>(FPL-245)</u>	<u>FPL</u>	B206379
<u>(FPL-246)</u>	<u>FPL</u>	B200229-42
<u>(FPL-247)</u>	<u>FPL</u>	BC02473-76
<u>(FPL-248)</u>	<u>FPL</u>	B1000093-93A
<u>(FPL-249)</u>	<u>FPL</u>	B201813-14
<u>(FPL-250)</u>	<u>FPL</u>	B1000066-68
<u>(FPL-251)</u>	<u>FPL</u>	B201826

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-252)</u>	<u>FPL</u>	B1000083
<u>(FPL-253)</u>	<u>FPL</u>	B206339-44
<u>(FPL-254)</u>	<u>FPL</u>	B206336-37
<u>(FPL-255)</u>	<u>FPL</u>	B206323-24
<u>(FPL-256)</u>	<u>FPL</u>	B202069
<u>(FPL-257)</u>	<u>FPL</u>	B1000095-96
<u>(FPL-258)</u>	<u>FPL</u>	B1001521-22
<u>(FPL-259)</u>	<u>FPL</u>	December 13, 1990 letter from C. Bush to B.F. Gilbert
<u>(FPL-260)</u>	<u>FPL</u>	BC02559-61
<u>(FPL-261)</u>	<u>FPL</u>	B203931-32
<u>(FPL-262)</u>	<u>FPL</u>	BC02721-23
<u>(FPL-263)</u>	<u>FPL</u>	B202426-33
<u>(FPL-264)</u>	<u>FPL</u>	B1001523-24
<u>(FPL-265)</u>	<u>FPL</u>	BC02773-76
<u>(FPL-266)</u>	<u>FPL</u>	BC00260-72

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-267)</u>	<u>FPL</u>	BC00294
<u>(FPL-268)</u>	<u>FPL</u>	B204286-87
<u>(FPL-269)</u>	<u>FPL</u>	B1001815
<u>(FPL-270)</u>	<u>FPL</u>	B1001747-48
<u>(FPL-271)</u>	<u>FPL</u>	B206253
<u>(FPL-272)</u>	<u>FPL</u>	B202450
<u>(FPL-273)</u>	<u>FPL</u>	B203494-512
<u>(FPL-274)</u>	<u>FPL</u>	B202451
<u>(FPL-275)</u>	<u>FPL</u>	B202365-69
<u>(FPL-276)</u>	<u>FPL</u>	December 14, 1990 letter from B.F. Gilbert to R. Stephens
<u>(FPL-277)</u>	<u>FPL</u>	B100125-34
<u>(FPL-278)</u>	<u>FPL</u>	B202086-92
<u>(FPL-279)</u>	<u>FPL</u>	January 25, 1991 memorandum from R.E. Ware to A.C. Hernandez, and attachments
<u>(FPL-280)</u>	<u>FPL</u>	December 7, 1990 memorandum from W.C. Ray to distribution

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-281)</u>	<u>FPL</u>	February 25, 1991 memorandum for R.E. Ware to file
<u>(FPL-282)</u>	<u>FPL</u>	B1001995-2015
<u>(FPL-283)</u>	<u>FPL</u>	B202370-87
<u>(FPL-284)</u>	<u>FPL</u>	B202445-49
<u>(FPL-285)</u>	<u>FPL</u>	B202727
<u>(FPL-286)</u>	<u>FPL</u>	B202728-32
<u>(FPL-287)</u>	<u>FPL</u>	May 30, 1991 letter from C. Bush to B.F. Gilbert, and attachments
<u>(FPL-288)</u>	<u>FPL</u>	September 25, 1990 letter from L. Bromwell to L. Cashell
<u>(FPL-289)</u>	<u>FPL</u>	July 9, 1990 letter from L. Bromwell to FERC, and attachments
<u>(FPL-290)</u>	<u>FPL</u>	September 20, 1990 letter from L. Cashell to L. Bromwell
<u>(FPL-291)</u>	<u>FPL</u>	November 21, 1990 letter from L. Bromwell to FERC, and attachments
<u>(FPL-292)</u>	<u>FPL</u>	Executed agreement for purchase of firm capacity and energy between Florida Crushed Stone, Inc. and Florida Power and Light Company

<u>EXHIBIT NO.</u>	<u>WITNESS</u>	<u>DESCRIPTION</u>
<u>(FPL-293)</u>	<u>FPL</u>	FPL's June 4, 1990 draft Contract For The Purchase Of Firm Capacity and Energy Between Consolidated Minerals, Inc. and Florida Power and Light Company
<u>(FPL-294)</u>	<u>FPL</u>	FPL's December 7, 1990 draft Contract For The Purchase Of Firm Capacity and Energy Between Consolidated Minerals, Inc. and Florida Power and Light Company
<u>(FPL-295)</u>	<u>FPL</u>	BC02553
<u>(FPL-296)</u>	<u>FPL</u>	BC02465
<u>(FPL-297)</u>	<u>FPL</u>	BC02544
<u>(FPL-298)</u>	<u>FPL</u>	BC02539-42
<u>(FPL-299)</u>	<u>FPL</u>	BC02554-58 & B206390
<u>(FPL-300)</u>	<u>FPL</u>	BC00192-224
<u>(FPL-301)</u>	<u>FPL</u>	Composite Exhibit: C. Bush deposition exhibits 1-56 and A-H
<u>(FPL-302)</u>	<u>FPL</u>	Composite Exhibit: Documents produced by CMI at March 3, 1992 deposition of C. Bush but not yet copied and sent to FPL (FPL does not yet have copies of these documents, and therefore, cannot identify them more precisely)

FPL also includes as its exhibits all documents listed as exhibits by CMI.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

DEPOSITIONS CMI INTENDS TO USE  
AS SUBSTANTIVE EVIDENCE

The entire deposition of Caesar F. Seijas, deposed on March 5, 1992.

The following portions from the deposition of B.F. Gilbert, deposed on March 5, 1992:

<u>Page/line</u>	<u>to</u>	<u>page/line</u>
Page 1, line 1 to		page 2, line 11
Page 4, line 1 to		page 14, line 5
Page 24, line 17 to		page 26, line 1
Page 30, line 15 to		page 52, line 23
Page 57, line 10 to		page 58, line 11
Page 68, line 19 to		page 75, line 16
Page 75, line 17 to		page 78, line 17 (sealed)
Page 79, line 20 to		page 82, line 17
Page 82, line 18 to		page 86, line 4 (sealed)
Page 88, line 3 to		page 88, line 19 (sealed)
Page 90, line 4 to		page 94, line 5 (sealed)
Page 95, line 1 to		page 96, line 14
Page 118, line 11 to		page 119, line 11 (sealed)

DEPOSITIONS FPL INTENDS TO USE  
AS SUBSTANTIVE EVIDENCE

The following portions from the deposition of Charles W. Bush taken on February 18, 21, and 3, 1992:

Non-confidential portions of transcripts:

p. 9, lines 8 to 19  
p. 9, line 23 to p. 10, line 20  
p. 10, line 24 to p. 11, line 14  
p. 12, lines 5 to 13  
p. 34, lines 4 to 24  
p. 34, line 25 to p. 35, line 14  
p. 35, line 18 to p. 36, line 13  
p. 37, line 19 to p. 38, line 7 & p. 41, lines 2 to 15  
p. 41, line 9 to p. 42, line 18  
p. 42, line 22 to p. 43, line 5  
p. 43, line 9 to p. 44, line 5 & p. 45, lines 17 to 25  
p. 44, lines 6 - 13

p. 49, line 24 to p. 50, line 8  
p. 50, lines 12 to 22  
p. 50, line 23 to p. 59, line 8  
p. 59, lines 14 to 23  
p. 60, line 21 to p. 62, line 14  
p. 63, lines 10 to 16  
p. 85, line 22 to p. 87, line 15  
p. 80, line 22 to p. 82, line 25  
p. 89, line 8 to p. 90, line 3  
p. 97, lines 17 to 19  
p. 101, line 13 to p. 102, line 25  
p. 106, line 14 to p. 110, line 18  
p. 111, line 20 to p. 112, line 9  
p. 114, lines 1 to 15  
p. 115, line 6 to p. 116, line 15  
p. 119, line 1 to p. 126, line 18  
p. 129, lines 12 to 18  
p. 131, line 1 to p. 132, line 3  
p. 132, line 23 to p. 141, line 12  
p. 145, line 17 to p. 147, line 15  
p. 173, line 12 to p. 174, line 20  
p. 183, line 23 to p. 184, line 6  
p. 195, line 25 to p. 198, line 19  
p. 206, line 2 to p. 226, line 23  
p. 228 line 6 to p. 229, line 20  
p. 236, line 1 to p. 242, line 14  
p. 244, line 14 to p. 247, line 17  
p. 252, line 11 to p. 254, line 8  
p. 254, line 9 to p. 257, line 6  
p. 261, lines 6 to 25  
p. 264, line 13 to p. 265, line 25  
p. 269 line 8 to p. 272, line 13  
p. 272, line 21 to p. 276, line 11  
p. 278, line 4 to p. 279, line 9  
p. 279, line 23 to p. 280, line 25  
p. 284, line 5 to p. 289, line 2  
p. 294, lines 6 to 18  
p. 307, line 12 to p. 310, line 17  
p. 315, line 4 to p. 319, line 9  
p. 364, line 14 to p. 369, line 9

Confidential Transcript portions:

p. 27, line 19 to p. 32, line 2



#### VIII. PROPOSED STIPULATIONS

CMI and FPL stipulated at the prehearing conference that CMI submitted a Standard Offer contract in June of 1990 and later withdrew that contract.

#### IX. PENDING MOTIONS

On March 6, 1992, both CMI and FPL filed Motions for Official Recognition (CMI's Motion was an Amended Motion for Official Recognition). Both parties have stated that a Response will be filed to the other's Motion. At the Prehearing Conference, Commissioner Easley stated she would rule on these Motions before the hearing.

Both parties have stated that there is a possibility that confidential exhibits will be used at hearing; however, as of March 12, 1992, neither party has filed a Request for Confidentiality with this Commission.

#### X. RULINGS

On February 21, 1992, CMI filed a Motion to Conduct Hearing by the Use of Live Testimony. The parties argued the motion at the prehearing conference on February 25, 1992. The Prehearing Officer denied this motion because CMI was unaware of any information, at the time the motion was filed, which would require the presentation of additional testimony. In addition, she noted the ability of each witness to summarize his or her prefiled testimony. Finally, the prehearing officer noted that each party has the ability to cross examine a witness. Therefore, the process allows the parties the opportunity to demonstrate the credibility or lack of credibility of a witness. In so doing, Commissioner Easley noted that a request by either party for additional supplemental direct or additional surrebuttal would be considered upon the appropriate motion.

At the prehearing conference, the prehearing officer ruled that all parties who wish to use depositions as substantive evidence were to file a notice of intent to do so by March 12, 1992. The portions of depositions that the parties filed on this date are listed above.

The prehearing officer also ruled at the prehearing conference that a supplemental exhibit list was to be filed Monday, March 9, 1992, that included all exhibits that each party knew it would attempt to introduce at the hearing. This list was to include exhibits to be used on direct and cross examination. If there was

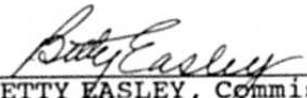
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a strong possibility that an exhibit would be presented at hearing, that exhibit was also to be included on the supplemental list. However, if there was only a small chance that an exhibit would be introduced, or if a party did not know whether an exhibit would be introduced, then that exhibit did not need to be included on the supplemental list.

It is, therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 13th day of MARCH, 1992.

  
BETTY EASLEY, Commissioner  
and Prehearing Officer

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