BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited approval of agreement with Tiger Bay Limited Partnership to purchase Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida Power Corporation.	DOCKET NO. 970096-EQ ORDER NO. PSC-97-0652-S-EQ ISSUED: JUNE 9, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER APPROVING STIPULATION AND SUPPLEMENTAL STIPULATION

BY THE COMMISSION:

CASE BACKGROUND

On January 22, 1997, Florida Power Corporation (FPC) filed a Petition for Expedited Approval of an Agreement, dated January 20, 1997, with Tiger Bay Limited Partnership (Tiger Bay) to purchase the Tiger Bay cogeneration facility (Facility) and terminate the five related purchased power agreements: three with General Peat, one with Ecopeat, and one with Timber2 (the PPAs). The petition further requested recovery of the purchase cost, approximately $445 million, through the Capacity Cost Recovery Clause (CCRC) over a period not to exceed five years. In addition, FPC requested that the fuel expense associated with the operation of the Facility be approved for recovery through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause). The matter was scheduled for hearing on April 17-18, 1997.

On April 14, 1997, all the parties to the docket, FPC, the Office of Public Counsel (OPC), and the Florida Industrial Power Users Group (FIPUG) filed a Joint Motion for Approval of

Stipulation (Stipulation). The Stipulation resolved all disputed issues among the parties. On April 16, 1997, FPC submitted a supplement to the Stipulation (Supplemental Stipulation) concerning the accounting treatment of the transaction. At the April 17, 1997, hearing, we were presented with both the Stipulation and the Supplemental Stipulation. The Stipulation and Supplemental Stipulation are attached to the order as Attachments 1 and 2, respectively.

DECISION

Stipulation:

There are advantages and disadvantages with the Stipulation. Taken as a whole, however, we believe that the Stipulation reduces FPC's ratepayers' liability throughout the remaining term of the PPAs. Furthermore, the Stipulation represents a reasonable balance between potential ratepayer neutrality to the transaction and encouragement of company contributions. The advantages and disadvantages are discussed below.

A. Advantages: Absent a rate proceeding, FPC's customers are not projected to incur any cost above that which they are currently committed to pay under the existing PPAs. Therefore, approving the proposed Stipulation provides the potential for FPC's ratepayers to be unaffected by the cost of the transaction. In other words, though they would not receive a benefit until the regulatory asset has been fully amortized, FPC's ratepayers also would not incur any additional cost. Furthermore, though FPC may be unable to buy-out or buy-down the current Vastar Gas contract, its ratepayers are projected to receive an additional benefit in the form of reduced fuel costs once the contract terminates in 2010.

Pursuant to the Stipulation, FPC will place $75 million of the purchase cost in existing rate base. This treatment reduces FPC's ratepayers' responsibility, namely for the amount of the Tiger Bay Regulatory Asset, which will be amortized through recovery of the PPA revenues. Reducing the amount of the regulatory asset by $75 million is projected to shorten the recovery period by approximately two years.

Section 2(e) of the Stipulation provides FPC the discretionary ability to contribute dollar amounts from its earnings to accelerate the amortization of the Tiger Bay Regulatory Asset. There are currently no assurances nor any requirements that FPC will exercise this provision of the Stipulation. However, such contributions would be to the advantage of both FPC and its ratepayers in the form of reduced liability.

According to FPC's projections, the method for amortizing the Tiger Bay Regulatory Asset proposed in the Stipulation, using PPA revenues minus fuel expense, results in the asset being fully amortized by January 2008. However, if FPC is able to contribute revenues to accelerate the amortization as permitted under Section 2(e) of the Stipulation, the asset could be fully amortized as early as October 2005.

FPC projects that approving the Stipulation and its proposal to purchase the Facility and terminate the five related PPAs will produce savings for its ratepayers in amounts ranging from $238 to $516 million on net present value basis. These savings are based on the cumulative interaction of assumptions ranging from FPC's projection of Medium-Term note financing costs, the timing of FPC's next rate proceeding, fuel price projections, and the potential that FPC will be able to accelerate the amortization of the Tiger Bay Regulatory Asset using revenues as compared to the PPA costs.

B. Disadvantages: Approving the Stipulation provides no assurances that FPC will not petition for a rate increase prior to the regulatory asset being fully amortized. A rate proceeding would potentially reduce the overall savings of the transaction as customers' base rates would be adjusted to support the Facility's non-fuel operating costs as well as a return on any undepreciated amount of the $75 million net plant investment.

Under the Stipulation, FPC, OPC, and FIPUG have agreed that the PPA revenues will continue to be recovered through the CCRC and the Fuel Clause until the Tiger Bay Regulatory Asset is fully amortized or as long as the current Vastar contract remains in effect. FPC currently projects that the Tiger Bay Regulatory Asset will be fully amortized in the year 2008. Absent a buy-out or buy-down, the Vastar Gas contract will not terminate until 2010. High load factor customers stand to lose the benefit of lower cost coal based energy pricing under the existing PPAs while also incurring the currently projected higher cost Vastar Gas contract during years 2008 to 2010. The continuance of the recovery of the capacity revenues through the CCRC to compensate for the increased cost in the Fuel Clause, once the regulatory asset has been fully amortized, will offset this impact. Consequently, low load factor residential customers will be adversly impacted. Recovering capacity revenues through the CCRC from all rate classes is a clear example of cross-class subsidization. Absent a buy-down or buy-out of the Vastar contract, cross-class subsidization will occur. If the Tiger Bay Regulatory Asset is fully amortized prior to the termination of the current Vastar Gas contract, FPC will recover the appropriate energy payment pursuant to the PPAs and a reduced capacity payment through the CCRC to minimize the impact of this subsidization.

C. Other Matters: Within paragraph 2(e) of the Stipulation, the parties have agreed to the following:

> On a going forward basis, FPC may, at its option, increase the amortization of the retail portion of the Tiger Bay Regulatory Asset, and each year's increased amount of amortization shall be deemed a prudent regulatory expense in calculating FPC's regulatory earnings for purposes of surveillance reporting, pursuant to Rule 25-6.024, F.A.C.

FPC, OPC, and FIPUG agreed that the intent of this language was directed at the parties; and, that a determination of prudence for the amortization amounts in future reviews remained with us.

The Stipulation contemplates that FPC will seek to buy-out or buy-down the current Vastar Gas contract. Fuel prices under this contract are projected to be greater than forecasted market prices. We encourage FPC to take all necessary steps to buy-out or buy-down fuel contracts when those actions are projected to produce ratepayer savings.

The Supplemental Stipulation

Following is a discussion of the items in the Supplemental Stipulation.

A. Materials and Supplies

As part of the Stipulation, Materials and Supplies for the Facility included in the purchase cost shall constitute a regulatory asset and shall be recorded in Account 182.3, Other Regulatory Assets. According to the Uniform System of Accounts (USOA), Materials and Supplies should be recorded in Account 154, Plant Materials and Operating Supplies. Since the Stipulation provides substantial benefits to both FPC and its ratepayers, we approve the accounting treatment proposed in the Stipulation. On a prospective basis, however, Materials and Supplies will be accounted for in accordance with the USOA. In the Supplemental Stipulation, the parties have agreed that all future purchases of Materials and Supplies for the Facility by FPC shall be recorded in Account 154 and will be included in working capital for surveillance purposes.

B. Deferred Income Taxes

FPC's original filing in this proceeding contemplated recovery of the carrying costs of debit balance deferred income taxes related to the buy-out of the Tiger Bay contracts through existing base rates. These debit balance deferred income taxes will be created if FPC cannot take a current deduction for the Tiger Bay buy-out costs, not related to depreciable plant, on its income tax return. The filing contemplated this worst case scenario since the Internal Revenue Service (IRS) had not issued a private letter ruling on deductibility. FPC estimates that the maximum amount of debit balance deferred taxes will be approximately $42 million, which will reverse to a zero balance over 15 years. FPC's Supplemental Stipulation states that the deferred taxes will be reported in the capital structure for surveillance purposes.

The premise behind FPC's request is that the costs of buying-out unfavorable contracts are deductible if the result of the buy-out is to reduce expenses into the future. FPC cited cases and rulings dating back to the 1920's in support of its position. The request was filed with the IRS on April 30, 1997. FPC anticipates a response by late fall. FPC shall notify our Division of Auditing and Financial Analysis of the IRS's actions.

If FPC is successful in obtaining a favorable letter ruling, the deferred taxes will carry a credit balance of approximately $100 million, which will reverse to a zero balance. FPC believes that the effect of these credit balance deferred taxes should also flow through existing base rates and be reported in the capital structure for surveillance purposes. By doing so, additional dollars will be provided which FPC may use to write-down the regulatory asset more rapidly. Further, FPC plans to issue intermediate term debt which will have an established payment schedule not necessarily tied to the actual write-down of the regulatory asset.

FPC requested that it have flexibility to establish the amount of the regulatory asset to be written-off each year. All other things being equal, the additional dollars provided by the reversing credit balance deferred taxes may allow a write-off over a shorter period of time. If FPC receives a favorable letter ruling and the write-off of the regulatory asset is not accelerated, we will still have the ability to review the prudence and reasonableness of FPC's actions during surveillance reviews.

We find it is reasonable for FPC to report either debit or credit balance deferred taxes in the capital structure for surveillance purposes and to allow the effect to flow through existing base rates. Therefore, we approve FPC's proposed accounting treatment.

C. Fossil Dismantlement

FPC has estimated a $4.1 million (1997 dollars) fossil dismantlement provision for the Facility. A more detailed site specific estimate will be submitted with FPC's regular depreciation and fossil dismantlement study due in November, 1997. Utilizing the same assumptions used in FPC's 1993 study, the dismantlement accrual for the Facility for 1995 and 1996 should have been $241,000 and $253,000, respectively. The estimated 1997 accrual is $266,000. These accrual amounts appear reasonable at this time. A site specific dismantlement study to be filed later this year will determine the appropriate amount of the final dismantlement provision for the Facility. Since Tiger Bay has made no provision for future dismantlement, FPC will record the accrual amount for 1995 - 1997 during 1997 subsequent to closing the purchase.

D. Depreciation Rate

FPC has proposed a 5.5% depreciation rate (20 year service life, 18 year average remaining life, negative 10% net salvage) for the Facility to be implemented upon the purchase closing which is currently estimated to be July 1, 1997. The life and salvage factors are predicated on the currently prescribed factors for the University of Florida co-generation plant which FPC asserts is similar to the Facility. A site specific study will be filed as part of its next comprehensive depreciation and fossil dismantlement study no later than November 27, 1997 at which time the appropriate remaining life, net salvage, and the depreciation rate will be determined.

E. Non-Fuel Expenses

Pursuant to the Stipulation, FPC, OPC, and FIPUG have agreed that all non-fuel expenses associated with the operation of the Facility will be included in FPC's base rates and recovered accordingly. These non-fuel expenses are defined to include operation and maintenance expenses, taxes, site lease payments, insurance, rate base investment, and the carrying costs of the deferred taxes. These amounts appear reasonable at this time. However, we may review the prudence of these expenses at any time.

The Supplemental Stipulation clarifies certain parts of the Stipulation and resolves outstanding accounting issues in this proceeding. Therefore, we approve the Supplemental Stipulation.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Stipulation between Florida Power Corporation, the Florida Power Industrial Users Group, and the Office of Public Counsel relating to FPC's purchase of the Tiger Bay cogeneration facility and to terminate related purchased power agreements, as discussed within the body of this order, is approved. It is further

ORDERED that Florida Power Corporation's proposed accounting treatment relating to the purchase of the Tiger Bay cogeneration facility and to terminate related purchased power agreements as specified in the Stipulation and the Supplemental Stipulation, as discussed within the body of this order, is approved. It is further

By ORDER of the Florida Public Service Commission, this 9th day of June, 1997.

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BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

ATTACHMENT 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited approval of an agreement to purchase the Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida Power Corporation.

Docket No. 970096-EQ

STIPULATION

This Stipulation is entered into by and among Florida Power Corporation ("FPC"), the Office of Public Counsel ("Public Counsel"), and the Florida Industrial Power Users Group ("FIPUG") (collectively, "the Parties"), as follows:

1. Public Counsel and FIPUG hereby withdraw any and all objections they have made, shall make no further objections, and shall fully support FPC's petition for approval of its agreement to purchase the Tiger Bay Facility ("the Facility"), terminate its five purchase power agreements, and recover the financing costs associated therewith (collectively the "Purchase Cost"), and for approval of the method and timing of recovery by FPC of the retail portion of the Purchase Cost, as set forth in this Stipulation.

2. FPC's request for recovery of the Purchase Cost shall be modified so that recovery will occur in the following manner, instead of in the manner set forth in FPC's petition and pre-filed testimony.

a. $75 million of the Purchase Cost shall be included in FPC's rate base, and all non-fuel expenses associated with the Facility shall be included in FPC's base rates and recovered accordingly. The remaining amount of the Purchase Cost (approximately $370 million), which shall be determined in an amount certain at closing, shall constitute a regulatory asset ("the Tiger Bay Regulatory Asset") and shall be recorded in Account 182.3, *Other Regulatory Assets*. The retail portion of the Tiger Bay Regulatory Asset shall be amortized in accordance with sub-paragraphs (b) through (g) below.

b. Upon closing of the transaction to purchase the Facility and terminate the five (5) power purchase agreements (three with General Peat, one with Ecopeat, and one with Timber2) (the "PPA's"), FPC shall continue to recover costs from FPC's ratepayers under the Capacity Cost Recovery Clause ("CCR") and the Fuel Adjustment Clause ("FAC"), as part of FPC's Fuel and Purchased Power Cost Recovery proceedings, and as if the PPA's were still in effect such that the full capacity payments and the appropriate energy payments were being made. This shall continue for as long as the existing gas contract with Vastar Gas Marketing, Inc. (the "Vastar Gas Contract") remains in effect, or a balance on the retail portion of the Tiger Bay Regulatory Asset exists. In no event shall the amount collected hereunder exceed the sum of the balance on the retail portion of the Tiger Bay Regulatory Asset plus the Natural Gas Costs as defined in sub-paragraph (c) below.

c. The revenues recovered through the mechanism set forth in sub-paragraph (b) above shall be utilized by FPC first to pay for the natural gas supply and transportation costs associated with the operation of the Facility (the "Natural Gas

Costs"), and second to amortize the principal and interest costs associated with the retail portion of the Tiger Bay Regulatory Asset. For as long as the Vastar Gas Contract remains in effect or a balance on the retail portion of the Tiger Bay Regulatory Asset exists, the charges shall be recovered from FPC's customers in the following manner: The coal energy charge specified in the PPA's, less steam payments if any (the "PPA Energy Cost"), shall be recovered through the FAC. The capacity charge specified in the PPA's shall be recovered through the CCR and shall be applied only to: (1) the remaining fuel cost (the Natural Gas Costs less the PPA Energy Costs) if any, (2) interest applicable to the unamortized balance of the retail portion of the Tiger Bay Regulatory Asset, and (3) amortization of the remaining principal of the retail portion of the Tiger Bay Regulatory Asset. Once the retail portion of the Tiger Bay Regulatory Asset has been reduced to a zero balance and the Vastar Gas Contract is terminated or replaced, recovery pursuant to sub-paragraph (b) above shall cease and the Natural Gas Cost shall be recovered through the FAC.

d. In the event FPC negotiates a buy-out or buy-down of the Vastar Gas Contract, and the Commission issues an order approving such buy-out or buy-down, the retail portion of costs associated with such buy-out or buy-down shall be added to the amount of the retail portion of the Tiger Bay Regulatory Asset and recovered in the same manner as set forth in sub-paragraphs (b) and (c) above, and sub-paragraphs (e) through (g) below. Public Counsel and FIPUG shall retain the right to participate in any proceeding relating to the buy-down or buy-out of the Vastar Gas Contract.

e. On a going-forward basis, FPC may, at its option, increase the dollar amount of amortization of the retail portion of the Tiger Bay Regulatory Asset, and each year's increased amount of amortization shall be deemed a prudent regulatory expense in calculating FPC's regulatory earnings for purposes of surveillance reporting, pursuant to Rule 25-6.024, F.A.C.

f. In the event of a general rate proceeding on the level of FPC's base rates, Public Counsel and FIPUG shall support as a prudent FPC expense for cost recovery in FPC's base rates, all non-fuel expenses associated with the Facility, including but not limited to the return on the remaining undepreciated rate base of the Facility, all operating and maintenance expenses, taxes, and depreciation, but not including future capital additions and associated increases in non-fuel expenses. Public Counsel and FIPUG shall also support as a prudent FPC expense for cost recovery in FPC's CCR, FPC's average annual increased dollar amount of amortization of the retail portion of the Tiger Bay Regulatory Asset for the period beginning on the day of closing of the transaction to purchase the Facility and ending at the conclusion of the twelve month period preceding the rate case test year; provided, however, that once the retail portion of the Tiger Bay Regulatory Asset has been reduced to a zero balance, FPC shall remove this average annual amount from its CCR expense.

g. If, in the future, the electric utility industry in Florida is deregulated or restructured in a manner that prevents FPC from continuing to recover the retail portion of the Tiger Bay Regulatory Asset as set forth in sub-paragraphs (b) through (f) above, Public Counsel and FIPUG shall not object to legislative or regulatory efforts by FPC to include the unamortized balance of the retail portion of the Tiger Bay Regulatory Asset for recovery by an appropriate mechanism designed as a non-bypassable charge for recovery of stranded costs or PURPA contract costs; provided, however, that Public Counsel and FIPUG shall retain the right to otherwise participate in any proceeding relating to the recovery of stranded costs or PURPA contract costs, including but not limited to the appropriate level of total stranded or PURPA contract costs to be recovered by FPC.

3. This Stipulation is contingent on approval in its entirety by the Commission.

4. This Stipulation may be executed in counterpart originals. A facsimile of an original signature shall be deemed an original.

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ATTACHMENT 1

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By: Vicki Gordon Kaufman

DOCKET NO. 970096-EQ

FLORIDA POWER CORPORATION SUPPLEMENTAL STIPULATION

In addition to the matters stipulated to by Florida Power in the April 14, 1997 Stipulation entered into among Florida Power, Office of Public Counsel and FIPUG in this case (the Stipulation), Florida Power Corporation further stipulates and agrees as follows:

1. All future Materials and Supplies for the Tiger Bay facility acquired by Florida Power after closing the Tiger Bay purchase shall be recorded in Account 154 and included in working capital for surveillance reporting purposes.

2. Deferred taxes associated with the Tiger Bay acquisition shall be reflected in Florida Power's capital structure for surveillance reporting purposes.

3. Fossil dismantlement accruals for the Tiger Bay facility of $241,000 for 1995, $253,000 for 1996 and $266,000 for 1997 will be recorded in 1997 subsequent to closing the Tiger Bay purchase.

4. For depreciation purposes, the Tiger Bay facility shall have the following characteristics:
   - Average service life = 20 years
   - Average remaining life at closing = 18 years
   - Net salvage = negative 10%
   - Depreciation rate = 5.5%

5. Other than the Tiger Bay Regulatory Asset, as defined in the Stipulation, all non-fuel costs associated with the acquisition and operation of the Tiger Bay facility (operation and maintenance expenses, taxes, site lease payments, insurance, rate base investment and the carrying costs of the deferred taxes) will be initially absorbed by Florida Power's existing base rates and included as utility expenses for surveillance reporting purposes.

FLORIDA POWER CORPORATION

By James P. Fama
James P. Fama
April 16, 1997