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October 9, 1990

Mr. Steve C. Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

Re: Docket No. 900004-EU

Dear Mr. Tribble:

Enclosed for filing on behalf of Indiantown  
Cogeneration, L.P. are the original and fifteen copies of  
ACK  ICL's Supplemental Brief on Subscription Limit Policy and  
AFA \_\_\_\_\_ Resolution of Queuing Issue.

APP \_\_\_\_\_ By copy of this letter, this brief has been furnished to  
CAF \_\_\_\_\_ the parties on the attached service list.

Very truly yours,

*Richard D. Melson*

Richard D. Melson

- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- LIN 6 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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09079 001-9 1990

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Planning Hearings on Load )  
Forecasts, Generation Expansion Plans ) Docket No. 900004-EU  
and Cogeneration Pricing for Peninsula )  
Florida's Electric Utilities ) Filed: October 9, 1990  
\_\_\_\_\_ )

INDIANTOWN COGENERATION, L.P.'s  
SUPPLEMENTAL BRIEF ON SUBSCRIPTION LIMIT POLICY  
AND RESOLUTION OF QUEUING ISSUE

Indiantown Cogeneration, L.P. ("ICL") hereby files this Supplemental Brief in response to the Commission's instructions at the October 1, 1990 Agenda Conference. This brief addresses FPL's proposal that "queuing" of cogeneration projects should not be based on date of contract execution, but instead should be based on the comparative merits of the projects as demonstrated in need determination proceedings under the Florida Electrical Power Plant Siting Act.

GENERAL PRINCIPLES

In order to make an informed judgment on how best to initially prioritize contracts for subscription limit purposes, it is necessary to focus on the purpose of the subscription limit and the relationship of "queuing" to the need determination process.

The purpose of a subscription limit is to cap the amount of cogeneration capacity that Florida utilities are required

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to accept. It thereby prevents the enforcement of standard offer contracts for cogeneration that may be in excess of the purchasing utility's capacity needs.

The purpose of a need determination proceeding is to ensure that any major generating addition meets the constructing/purchasing utility's needs and does so in a reliable and cost-effective manner. It thereby prevents the licensing and construction of new generating facilities that are unneeded or are not best suited to serve the identified need.

These purposes are interrelated. They are not interchangeable. The Commission's resolution of the queuing issue would advance both purposes, consistent with prior Commission policy, if it included the following principles:

- o **Enforceable (Or Presumptively Enforceable) Contract Is a Prerequisite to Need Determination.** An enforceable or presumptively enforceable contract between a cogenerator and the purchasing utility should be a prerequisite to obtaining a need determination for any cogeneration project. This contract could be either a negotiated contract signed by both parties, or a standard offer contract that meets all prerequisites (i.e. QF status, interconnection agreement, letter of intent with steam user, etc.) for a presumptively enforceable standard offer.

- o **Counting Against Subscription Limit Does Not Create a Presumption of Need.** The prioritization of contracts for subscription limit purposes should not create a presumption of need in favor of those projects that apply against the subscription limit. 1/ For standard offer contracts, counting against the subscription limit (i.e. having a presumptively enforceable contract) is a prerequisite to a favorable need determination, but does not create any presumption of need. For negotiated contracts, which meet the enforceability prerequisite by virtue of having been signed by both parties, counting or not counting against the subscription limit is immaterial for need determination purposes.
  
- o **Counting Against Subscription Limit Does Not Prejudge Criteria for Need Determination or Contract Approval.** The standard for evaluation of a cogeneration project for need determination and, if applicable, contract approval purposes should not depend on whether the project does or does not count against the subscription limit. 2/

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1/ Regardless of its place in the subscription limit queue, a cogeneration project should not be taken as a "given" in another party's need determination proceeding unless and until it has received its own determination of need. (See ICL's Initial Brief, pp. 6, 14-15)

2/ The purchasing utility's own avoided unit should be the standard for evaluation of any negotiated contract, whether or not the project counts against the subscription limit. (See APH Order No. 22341 and ICL's Initial Brief, pp. 5-6, 9-11)

- o **Project's Place In Queue Not Final Until Determination of Need Obtained.** Neither negotiated nor standard offer contracts should finally foreclose additional standard offers until the Commission has determined that the underlying project is needed. Similarly, a standard offer contract should not become enforceable against the utility until such a determination has been obtained.

#### PRIORITIZATION METHOD

The choice of prioritization based on date of contract execution vs. prioritization based on comparative merits as shown in a need determination proceeding is not a simple one. Either method of prioritization could be implemented consistent with the foregoing principles.

ICL submits that date of contract execution is the preferable method for initial prioritization <sup>3/</sup> for several reasons. First, it is the test the Commission has applied in the past. Second, it is relatively easy to apply. <sup>4/</sup> Third, because it does not appear to be necessary to resolve

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<sup>3/</sup> The issue before the Commission should be viewed in terms of "initial" prioritization. The existence of a statutory need determination process dictates that no prioritization can become "final" until each project holding a place in the queue has obtained its determination of need.

<sup>4/</sup> The only complicating factor is the issue of "retroactivity". The dispute among the parties regarding the meaning and application of this principle has been fully aired in the initial briefs filed by ICL and Nassau Power.

any factual disputes in order to apply the date of execution test, it would bring the issue of initial prioritization to closure prior to ICL's December 5th need determination proceeding, and avoid converting that proceeding into a potentially unmanageable "mega" hearing.

FPL's comparative merits test has two theoretical advantages: (i) it addresses and resolves the prioritization issue in a single proceeding, thereby avoiding an initial prioritization that is subject to modification as a result of later need dockets; and (ii) it ensures that all cogeneration projects compete head-to-head based on their relative value to the purchasing utility.

However, ICL fears that this approach may be difficult to implement. ICL is the only project presently on the table that has filed a need determination application. <sup>5/</sup> The other contenders have raced to sign standard offer contracts, but have not advanced to the stage of filing their need determination petitions.

ICL's application, which was filed on August 21st, is scheduled for hearing before Commissioner Wilson, as hearing

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<sup>5/</sup> CMI has also filed a need determination application. However, CMI has given notice of withdrawal of its standard offer contract and currently appears to have no contract for sale of the capacity from its proposed facility.

officer, on December 5th to 7th. 6/ Direct testimony is due in ICL's need docket on October 23rd, three days before the "hearing" in this docket on queuing. If the Commission determines on October 26th that queuing will be based on comparative merit as shown in a need determination hearing, there would be barely adequate time by December 5th for interested parties to prepare for such a hearing. ICL urges the Commission to take no action -- including adopting a new requirement for a comparative hearing to determine queuing -- that would delay the proceedings of the only cogenerator that has diligently pursued its need application. 7/

#### QUEUING ORDER BASED ON EXECUTION DATE

If the Commission decides to use execution date for purposes of contract prioritization, ICL's project is first in the queue based on its May 21st execution date. ICL respectfully refers the Commission to its initial brief for a full discussion of this issue. Specifically, that brief

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6/ Even that hearing date has involved a waiver of the Commission's Rule 25-22.080, which calls for hearings in need determination dockets within 90 days of filing and entry of a final order within 150 days of filing.

7/ If the Commission adopts Nassau Power's position that ICL's negotiated contract is not subject to any subscription limit and should be judged without regard to the queue, a subsequent need hearing could presumably be held on a more reasonable schedule to address and compare all of the outstanding "standard offer" contracts.

addresses the significance of ICL's in-service date of December 1, 1995 (one month prior to the date of the standard offer contract) and of ICL's contract execution date (four days prior to the redesignation of the statewide avoided unit), neither of which justify deviating from the "first in time" principle. (ICL's Initial Brief, pp. 11-14, 15-18)

ICL continues to take no position on the relative position of other parties in the queue. It is not clear from the pleadings filed to date which of those parties meet the prerequisites (QF status, interconnection agreement, letter of intent with steam user, etc.) to have a presumptively enforceable standard offer.

Even more important than ICL's or the other parties' place in the queue, however, are the principles that (i) prioritization for queuing purposes does not create a presumption of need for a project, and (ii) the standard for evaluation of a project is not tied to whether or not it holds a place in the queue. If the Commission confirms that a party's placement in the queue will not be allowed to prejudice these need and contract approval issues, then ICL is indifferent as to whether it is in the queue or not. <sup>8/</sup>

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<sup>8/</sup> Omitting ICL from the queue could theoretically place a Florida utility at risk of having to accept more standard offer capacity than it needs. However, if holding a place in the queue does not prejudice need, then any "unneeded" (continued)



## COMPARATIVE MERITS TEST

### Standards

If the Commission decides to fix the priority of cogeneration projects for subscription limit purposes by comparing their merits in a need determination process, it should look at all factors that bear on the relative value of the projects to the purchasing utility. It is difficult, if not impossible, to create an exhaustive list of such factors without factual inquiry regarding each competing project. Thus any list of criteria the Commission might adopt on October 26 should be regarded as only preliminary, and should not limit the scope of proof in a future need determination hearing.

With this caveat, ICL submits that the criteria should include at least the following factors:

- o strength and experience of project sponsors
- o project location in relationship to utility's load center
- o impact of project on the bulk power grid
- o utility control over energy and capacity
  - dispatchability of project
  - coordination of maintenance scheduling
  - utility input into project design

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capacity would be eliminated from contention during the subsequent need determination process, and this theoretical risk would not become a reality.

- utility input into maintenance plan
- incentives for on-peak performance
- o cost of capacity and energy over life of project
  - impact of pay for performance provisions
- o status of project development
  - status of site selection and acquisition
  - status of arrangements with steam user
  - status of arrangements for interconnection with native utility
  - status of arrangements for wheeling (if necessary) to purchasing utility
  - status as QF under FERC regulations
- o ability to finance the project
- o stability and security of fuel supply
- o nature of assurances for on-time project development
- o nature of assurances for reliable, long-term operation, including provisions for protection of utility in event of default

#### Merits of Specific Projects

The comparative merits of the various cogeneration projects cannot be judged without a full evidentiary hearing. Accordingly, ICL understands that regardless of what method is selected on October 26 for determining subscription limit priority, the Commission will not attempt at that time to rank projects based on comparative merit.

Nevertheless, because both Nassau Power and Panda/Live Oak discussed the status of their projects in the initial

briefs, ICL feels compelled to note that the value of its project to FPL is documented in its pending application for determination of need and that additional or updated information will be provided when ICL's direct testimony is filed on October 23.

In summary, ICL spent approximately 18 months negotiating a detailed power sales agreement with FPL for the electric capacity and energy from its 300 MW coal-fired project; ICL has filed a complete need determination petition and is on schedule to file its full site certification application in December, 1990; the general partners of ICL are subsidiaries of Pacific Gas & Electric Company and Bechtel Group, Inc., who together have significant experience in all aspects of the electric generation business, including the construction and operation of power plants; the Indiantown Project is located close to FPL's load center and its interconnection into the existing Martin-Indiantown 230 kV transmission line will have no adverse impact on the bulk power grid nor the ability to import power to South Florida; the project will be fully dispatchable by FPL and maintenance scheduling will be coordinated with FPL; ICL's construction and maintenance plans will be reviewed by independent engineers to ensure the capability for high capacity factor operation; the contract is on a pay-for-performance basis with substantial incentives for high capacity factor and on-peak

performance; the cost to FPL is significantly below its own avoided cost; ICL has an exclusive three-year option to purchase the plant site and an written agreement with its steam user; pursuant to their negotiated contract, ICL and FPL are finalizing the details of their interconnection agreement; ICL has provided self-certification of QF status under FERC's regulations; the plant will burn coal, which is a stable, domestically-sourced fuel; ICL has committed to enter into long term agreements covering at least 50% of the plant's coal requirements; ICL has agreed to meet contractual milestones and to provide \$9,000,000 as security for payment of \$750,000 per month in liquidated damages if ICL fails to begin commercial operation according to the terms and conditions of the agreement; ICL has agreed to provide substantial assurances to support long-term operation of the project, including a \$5,000,000 cash reserve fund to ensure continued QF status, a \$30,000,000 cash reserve fund to support major overhauls of the plant, a second mortgage on the facility to secure all of ICL's obligations to FPL, and minimum equity and other financial restrictions; and the overall package of agreements relating to the facility will be designed to ensure that it can be financed.

Given these factors, ICL is confident that it not only exceeds any minimum standards the Commission might apply to cogeneration projects, but in fact is the best alternative

for meeting the first 300 MW of FPL's 1996 capacity needs under any comparative standards that might be developed.

#### CONCLUSION

WHEREFORE, for the reasons set forth above and in ICL's initial brief, ICL respectfully requests that the Commission:

(a) adopt date of contract execution as the basis of initial prioritization for subscription limit purposes and determine that ICL is first in the queue based on the execution date of its contract; and

(b) regardless of the method used to prioritize contracts or the priority assigned to ICL:

(i) state that the standard for evaluation of a cogeneration contract for need determination and contract approval purposes does not depend on whether the contract does or does not count against the subscription limit; and

(ii) state that the prioritization of contracts for subscription limit purposes does not create a presumption of need in favor of those projects that apply against the subscription limit.

RESPECTFULLY SUBMITTED this 9th day of October, 1990.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail this 9th day of October, 1990, to the following:

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