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Florida Power
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

March 5, 1997

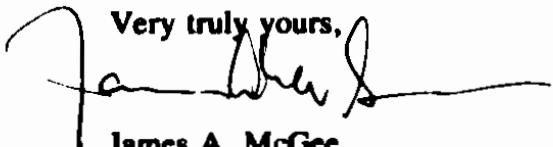
Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. ~~920077~~-EQ

Dear Ms. Bayó:

Enclosed for filing are the original and 15 copies of Opposition and Response to Petition of Lake Interest Holdings to Intervene as a Party and Request of Lake Interest Holdings to Suspend Procedural Schedule by Florida Power Corporation.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced Opposition and Response in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

- ACK _____
- AFA 4
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG April 8
- LEG _____
- LI. 5
- OP _____
- R. I. _____
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- WAS _____
- OTH _____

JAM/kp
Enclosures

DOCUMENT NUMBER

02387 MAR-56

GENERAL OFFICE

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FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Expedited
Approval of Settlement
Agreement with Lake Cogen,
Ltd. by Florida Power
Corporation

Docket No.961477-EQ

Submitted for filing:
March 5, 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Opposition and Response to Petition of Lake Interest Holdings to Intervene as a Party and Request of Lake Interest Holdings to Suspend Procedural Schedule by Florida Power Corporation has been furnished to the following individuals by regular U.S. Mail this 5rd day of March, 1997:

John W. Jimison
Brady & Berliner, P.C.
1225 Nineteenth Street, N.W.
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Washington, DC 20036

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Karen D. Walker
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Tallahassee, FL 32302-0810

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CANADA

Norma J. Rosner, General Counsel
Vastar Gas Marketing, Inc.
200 Westlake Park Blvd., Suite 200
Houston, TX 77079-2648



ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Expedited
Approval of Settlement Agreement
with Lake Cogen, Ltd. by Florida
Power Corporation

Docket No. 961477-EQ

Submitted for filing:
March 5, 1997

**FLORIDA POWER CORPORATION'S OPPOSITION AND
RESPONSE TO PETITION OF LAKE INTEREST HOLDINGS
TO INTERVENE AS A PARTY AND REQUEST OF LAKE INTEREST
HOLDINGS TO SUSPEND PROCEDURAL SCHEDULE**

Florida Power Corporation ("Florida Power"), by and through undersigned counsel, requests that the Commission deny the Petition of Lake Interest Holdings, Inc. ("LIHI") to intervene as a party in this proceeding and deny the Request of LIHI to suspend the procedural schedule for this proceeding, and in opposition and response to such Petition and Motion respectfully submits the following:

OPPOSITION AND RESPONSE TO PETITION TO INTERVENE

1. This proceeding involves the request of Florida Power for approval of a settlement (the "Settlement") between in and Lake Cogen Ltd. ("Lake"), of certain disputes that have arisen with respect to a negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated March 13, 1991 (the "PPA"), to which Lake and Florida Power are parties. Contrary to the assertion of LIHI in its Petition, the validity of the Settlement is not before the Commission for decision in this proceeding, nor will Commission approval of the Settlement have the effect of restructuring the PPA to the possible detriment of LIHI. The issue before the Commission is whether the Settlement is in the public interest, and in this connection the Commission should note that LIHI is not a customer of Florida Power nor a consumer of power provided by Florida Power. The question of the validity and enforceability of the Settlement as

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against Lake is a matter for decision by the civil courts, and will not be affected by the Commission's approval of the Settlement; therefore, LIHI will not be disadvantaged by such approval.

2. LIHI alleges in its Petition that Lake's agreement to the Settlement, and the amendments to the PPA that will be effected by the Settlement, was not properly authorized by Lake's general partners, one of which LIHI claims to be. Florida Power is not a party to Lake's Partnership Agreement and has never been privy to the relationship among the owners of Lake. Prior to the filing of LIHI's Petition and Motion, Florida Power was unaware of any dispute among Lake's general and/or limited partners concerning Lake's agreement to the Settlement. As Florida Power's Petition for approval of the Settlement reflects, the representatives of Lake with whom Florida Power dealt informed Florida Power that the concurrence of LIHI to the Settlement might be required, and undertook to inform LIHI of the Settlement and to obtain such concurrence if necessary. Florida Power believed that the Lake representatives with whom it dealt had authority to act for and bind Lake, and certainly such representatives had apparent authority to do so.

3. LIHI's Petition indicates that it has commenced a civil declaratory action to determine whether it has, and has been denied, the rights under the Lake Partnership Agreement to authorize the agreement of Lake to the Settlement. LIHI affirmatively asserts that the Commission has no jurisdiction over whatever disputes exist among the Lake partners, and clearly if LIHI's rights have been denied it to its detriment, its remedy lies with the civil courts. Even though LIHI now clearly knows what changes the Settlement will make to the PPA, it should be noted that in its Petition LIHI does not specifically assert that LIHI has or will suffer any harm or injury if the Settlement is enforceable against Lake, but rather that it "may" suffer injury. Further, LIHI's Petition does not indicate that prior to its filings herein, LIHI complained to either Lake or Florida Power about the

Settlement's effect on Lake or LIHI or about Lake's alleged failure to have the Settlement approved by Lake's general partners or its management committee.

4. The test for determining whether a party has standing to be allowed to intervene and participate in a regulatory proceeding has been established in *Agrico Chemical Co. v. Dept. of Environmental Regulation*, 406 So.2d 478 (2d D.C. A.Fla.1981), rev.den., 415 So.2d 1359 (fla.1987). In order to have standing a party must show that its substantial interests will be affected by the agency action as to which the party seeks to intervene. To have a substantial interest, the party must show "1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect". LIHI has not and cannot make such a showing. If Lake's agreement to the Settlement is not enforceable against it, the Commission's approval of the Settlement will not make it so. If Lake's agreement to the Settlement is enforceable against it, but can be shown by LIHI to have been obtained without its required consent to its detriment, that injury is not of a type or nature which this proceeding is designed to protect.

5. Florida Power categorically denies all of the allegations in LIHI's Petition to the effect that Florida Power has acted with knowledge of LIHI's rights, if any, with respect to amendments to the PPA, or with intent to deny LIHI any such rights.

OPPOSITION AND RESPONSE TO MOTION TO SUSPEND PROCEDURAL SCHEDULE

6. Florida Power incorporates herein its Opposition and Response to LIHI's Petition to Intervene as a Party.

7. Having failed to demonstrate standing to intervene in this proceeding, there is clearly no basis to grant LIHI's Motion to Suspend Procedural Schedule.

8. Florida Power's Petition which commenced this proceeding was filed on December 12, 1996. Florida Power did not serve a copy of the Petition on LIHI, because it had no reason at that time to do so. Although LIHI alleges in its Motion that it learned of the Settlement and the pendency of this proceeding from the Commission's staff, and not from Lake, LIHI Motion interestingly does not inform the Commission when LIHI gained such knowledge, nor thus how long LIHI delayed before filing its Petition and Motion herein. As already indicated, LIHI does not allege that it made any attempt to contact Florida Power about the claims voiced in its Petition and Motion herein prior to filing them, and in fact it did not do so.

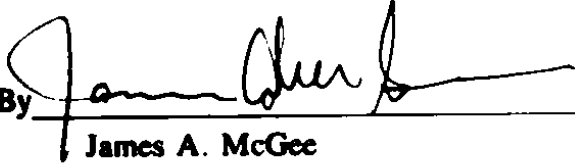
9. Florida Power categorically denies all allegations in LIHI's Motion to the effect that Florida Power has either sought precipitous action by the Commission on its Petition herein, has misled the Commission with respect any matter related to the Settlement, or acted in any manner to deny or limit or attempt to deny or limit any rights of LIHI with respect to the Settlement.

10. Since LIHI's rights will not be affected by the Commission's action on Florida Power's Petition, there is no reason for the Commission to delay this proceeding on LIHI's account.

WHEREFORE, Florida Power requests that the Commission deny LIHI intervention and party status in this proceeding, deny LIHI's Motion to suspend the procedural schedule for this matter, and grant Florida Power such other relief as the Commission deems appropriate.

Respectfully submitted,

**OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION**

By 

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