STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
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Tallahassee, Florida 32399-1400
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JACK SHREVE
PUBLIC COUNSEL

October 15, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No[illegible]Q

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of the Motion for Order Declaring Provision of Proposed Agency Action Order is Deemed Stipulated, or, in the Alternative, Motion to Strike Portion of Protest of Proposed Agency Action Order for filing in the above referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

John Roger Howe
Deputy Public Counsel

ACK ✓
AFA 4
APP ____
CAF ____
CMU ____
CTR ____
EAG ____
LEG 1
MAS 2
OPC ____
RCH ____
SEC ____
WAS ____
OTH ____

JRH/dsb
Enclosures

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
10588 OCT 15
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of early termination amendment to negotiated qualifying facility contract with Orlando Cogen Limited, Ltd., by Florida Power Corporation	Docket No.: 961184-EQ Filed: October 15, 1997

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MOTION FOR ORDER DECLARING PROVISION OF PROPOSED AGENCY ACTION ORDER IS DEEMED STIPULATED, OR, IN THE ALTERNATIVE, MOTION TO STRIKE PORTION OF PROTEST OF PROPOSED AGENCY ACTION ORDER

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 25-22.037(2), Florida Administrative Code, move the Florida Public Service Commission for an order declaring that the provision of Order No. PSC-97-0086-FOF-EQ concluding that Florida Power Corporation's (FPC's) customers would not see any net savings under the company's proposal for 22 years, until the year 2019, is not disputed and is, therefore, deemed stipulated pursuant to Section 120.80(13)(b), Florida Statutes (Supp. 1996). In the alternative, the Citizens move for an order striking that portion of FPC's protest of the proposed agency action (PAA) order which identifies "the 22-year issue" as a matter in dispute. This motion should be granted for the following reasons:

1. FPC's petition to have its customers fund the buyout costs for the amendment to the Orlando Cogen Limited (OCL) purchased power agreement was denied as a proposed agency action in Order No. PSC-97-0086-FOF-EI. The Commission denied the petition for two, independent reasons:

> **Conclusion**
>
> We deny FPC's petition because the buyout is inconsistent with the objectives of the reverse auction bid solicitation and will not produce net savings before the year 2019. . . .
>
> Order No. 97-0086, at 4.

2. Section 120.80(13)(b) provides that all issues in the proposed agency action order not in dispute are deemed stipulated:

> (b) Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed agency action which are not in dispute are deemed stipulated.

3. FPC, in paragraph 8 of its protest of the PAA, raised nine disputed issues for hearing, including the 22-year issue:

> 8. Florida Power asserts that the disputed issues of fact or mixed issues of fact and policy include, but are not limited to, the following:
>
> * * *
>
> c. That the proposed buyout of the OCL contract will provide net benefits sooner than 22 years into the future.
>
> Florida Power Corporation's Petition on Proposed Agency Action, February 17, 1997, at 4.

Mr. Schuster, at page 2 of his prefiled direct testimony, states that "[t]he purpose of my testimony is to explain FPC's position regarding the disputed issues of fact and policy identified in FPC's Petition on Proposed Agency Action filed February 17, 1997." Nowhere in his testimony, however, does Mr. Schuster challenge (or even address) the Commission's conclusion in Order No. 97-0086 that the company's proposal will not produce net savings before the year 2019. Neither FPC's preliminary list of issues and positions nor its prehearing statement addresses the matter.

4. Mr. Schuster's failure to address the issue is hardly surprising. The company's proposal would have customers paying an additional $9,881,000 per year for five years. Purported savings are projected for the 10-year period 2014-2023, with the majority of savings coming in the later years. There can be no net savings before the year 2019.

5. Section 120.80(13) would be meaningless if parties can object to a PAA on grounds which they are not going to address at hearing. An order declaring that this issue is deemed stipulated would recognize the reality of this case. In the alternative, the Commission should strike subparagraph 8.c. of FPC's protest, which would bring about the same result.

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, move the Florida Public Service Commission for an order declaring that the determination in the proposed agency action order that there will be no net savings under Florida Power Corporation's proposal before the year 2019 is deemed stipulated. In the alternative, the Citizens move for an order striking subparagraph 8.c. of Florida Power Corporation's Petition on Proposed Agency Action.

Respectfully submitted,

Jack Shreve
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John Roger Howe
Deputy Public Counsel

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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 961184-EQ

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION FOR ORDER DECLARING PROVISION OF PROPOSED AGENCY ACTION ORDER IS DEEMED STIPULATED, OR, IN THE ALTERNATIVE, MOTION TO STRIKE PORTION OF PROTEST OF PROPOSED AGENCY ACTION ORDER has been furnished by U.S. Mail, *Hand-delivery or **facsimile and U.S. Mail to the following parties on this 15th day of October, 1997.

****James A. McGee, Esquire**
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