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OFFICE OF THE PUBLIC COUNSEL

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JACK SHREVE
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December 1, 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. 961184-EQ

Dear Ms. Bayó: 12197-97 12198-97

Enclosed please find an original and fifteen copies each of Brief of the Office of Public Counsel and Post-Hearing Statement of Issues and Positions for filing in the above referenced docket.

Also Enclosed is a 3.5 inch diskette containing the Brief of the Office of Public Counsel and Post-Hearing Statement of Issues and Positions in WordPerfect for Windows 6.1 format. 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
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EAG Harlow
LEG 1
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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of an early termination amendment to a negotiated qualifying facility contract with Orlando Cogen Limited, Ltd. by Florida Power Corporation.

Docket No. 961184-EQ
Filed: December 1, 1997

POST-HEARING STATEMENT OF ISSUES AND POSITIONS

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, the Order Establishing Procedure in this docket, Order No. PSC-97-0434-PCO-EQ, issued April 17, 1997, and the Order Modifying Procedural Schedule, Order No. PSC-97-1009-PCO-EQ, issued August 25, 1997, submit this Posthearing Statement of Issues and Positions:

STATEMENT OF BASIC POSITION

The petition in this docket is an attempt by FPC to have its customers pay higher rates under traditional regulation so that the company will be in a better competitive position in the unregulated future. FPC believes its cost of electricity from purchased power agreements will be above market prices in a competitive environment. Buying out the OCL contract (as well as others) will improve FPC's ability to compete. If FPC were to fund the buyout, FPC would receive the future benefit of enhanced competitiveness in a market where retail customers have choices.

FPC, however, would rather use its customers' money to reach this and. This leads to the paradoxical argument offered by FPC. Focusing on one source of high-cost electricity allows FPC to ignore other resources which would be below market price under competition. Even under this unrealistically narrow scenario, the company can only show customer "benefits" (using FPC's definition of the term) in the form of questionable future savings which will purportedly flow to customers 17 to 26 years from now. But if customers can choose their electric company in the future, they will pay the market price (to FPC or some other provider) regardless of any amounts paid, or not paid, to FPC under regulation. Thus, if retail rates are expected to be deregulated, customers cannot receive any benefits from funding the buyout. If retail rates are to remain regulated, there is no reason for a buyout in the first place. Since the OCL costs are borne solely by FPC's customers, FPC cannot be harmed from denial of its petition, but the customers will suffer immediate harm if forced to pay higher rates today to put FPC in a better competitive position tomorrow.

Even if the premise of FPC's case is accepted, the company's analysis fails to demonstrate a realistic expectation of benefits for any identifiable customers. Current customers who leave FPC's system over the next 22 years cannot recoup anything. FPC is not guaranteeing any benefits even for persons (if there are any) who are customers today and will remain on FPC's system through 2023.The likelihood of any benefits being received by anyone other than FPC, itself, under the company's proposal is extremely remote and entirely speculative.

If FPC's net-present-value analysis is meaningful at all, it shows that the company should be indifferent to funding the buyout as long as FPC is permitted to recover an equal amount, in net-present-value terms, in the future based on its own projections. It is certainly more likely that FPC will still be selling electricity in Florida 26 years from now than it is that a significant number of current customers will still be buying their electricity from the company. Although, the OCL contract amendment is contingent upon Commission approval of the amendment, it is not contingent upon Commission acceptance of FPC's proposed method of cost recovery.

ISSUES AND POSITIONS

ISSUE 1: Are the economic risks associated with projected ratepayer savings resulting from the Amendment to the Negotiated Contract between Florida Power Corporation and Orlando Cogen Limited, Ltd., reasonable?

OPC: *No. Risks that regulation will not be available to flow back savings, that savings are too far in the future, that customers will leave before seeing savings, that the discount rate is inappropriate, that projections are inaccurate, that costs will not be offset by savings, and others, are all unreasonable.*

ISSUE 2: Are the intergenerational inequities among Florida Power Corporation's ratepayers, if any, associated with the Amendment to the Negotiated Contract between Florida Power Corporation and Orlando Cogen Limited, Ltd., reasonable?

OPC: *No. FPC did not represent the 1991 OCL contract as containing intergenerational inequities, nor was it approved with that understanding by the Commission. The buyout cannot, therefore, mitigate nonexistent inequities. The buyout, however, will impose costs on today's customers so that either future customers or FPC will reap the benefits.*

ISSUE 3: Will the proposed buy out of the OCL contract provide net benefits sooner than 22 years into the future?

OPC: *No. This issue should be deemed stipulated pursuant to Section 120.80(13)(b), Florida Statutes (Supp. 1996), because FPC did not dispute the issue at hearing. Moreover, since the basis of the PAA is not in dispute, the Commission has no basis to retreat from its original denial of FPC's petition. *

ISSUE 4: Should the Amendment to the Negotiated Contract between Florida Power Corporation and Orlando Cogen Limited, Ltd., be approved for cost recovery pursuant to Rule 25-17.0836, Florida Administrative Code?

OPC: *No. FPC did not identify Rule 25-17.0836 in its petition according to Rule 25-22.036(7)(a)4, which requires that the petitioning party identify the rules and statutes which entitle the petitioner to relief.*

ISSUE 5: **If approved, how should Florida Power Corporation recover the expenses associated with the Amendment to the Negotiated Contract between Florida Power Corporation and Orlando Cogen Limited, Ltd.?**

OPC: *FPC should not be permitted to recover the buyout costs from its customers. FPC should, however, be permitted to recover the buyout costs through the fuel and capacity cost recovery mechanisms in the years 2014-2018 if the company funds the buyout.*

ISSUE 6: **Should this docket be closed?**

OPC: *Yes.*

Respectfully submitted,

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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 POST-HEARING STATEMENT OF ISSUES AND POSITIONS has been furnished by U.S. Mail or *Hand-delivery to the following parties on this 1st day of December, 1997.

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