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October 24, 1990

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Mr. Steve Tribble, Director
Bureau of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
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RE: Docket No.: 900004-EU

Dear Mr. Tribble:

Enclosed herewith for filing are the original and fifteen (15) copies of Cypress Energy Companies Subsidiaries of Mission Energy Company and FHN Energy, Inc.'s Brief to be filed in the above docket.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned.

Respectfully submitted,

Richard E. Benton

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09552 OCT 24 1990

FPSO-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Hearings on Load Forecasts,)
Generation Expansion Plans and)
Cogeneration Prices for Peninsular)
Florida's Electric Utilities)

Docket No. 90004-EU
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**BRIEF OF CYPRESS ENERGY COMPANIES
SUBSIDIARIES OF MISSION ENERGY COMPANY AND
FHM ENERGY, INC. RESPECTIVELY**

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FSC-RECORDS/REPORTING

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**BRIEF OF CYPRESS ENERGY COMPANIES
SUBSIDIARIES OF MISSION ENERGY COMPANY AND
FHN ENERGY, INC. RESPECTIVELY**

Cypress Energy Company, a subsidiary of Mission Energy Company (hereinafter called "Cypress I") and Cypress Energy Company, a subsidiary of FHN Energy, Inc. (hereinafter called "Cypress II") jointly submit the following brief in response to the direction of the Commission at its September 11, 1990 and October 2, 1990 Agenda Conferences, and in response to the briefs of other parties so submitted. The term "Cypress" where used in this brief without a following numeral, shall include collectively both Cypress I and Cypress II; and Mission Energy Company shall be called "Mission" and FHN Energy, Inc. "FHN".

INTRODUCTION

At its September 11, 1990 Agenda Conference, the Commission directed interested parties to submit briefs addressing the issues raised in Order No. 23235, as well as the issue of how to determine the priority of QFs in the queue for the 500 MW 1996 statewide avoid unit. On September 25, 1990, briefs were submitted by Panda/Live Oaks Corporation ("Panda"), Indiantown Cogeneration L.P. ("Indiantown"), Air Products and Chemicals, Inc. ("Air Products"), Florida Power & Light Company ("FPL"), Tampa Electric Company

("TECO"), Broward County ("Broward"), Seminole Fertilizer Corporation ("Seminole") and Nassau Power Corporation ("Nassau"). In the interest of simplifying these proceedings, Cypress elected not to file a brief at that time because it did not foresee the need to raise issues other than those already raised in the briefs of the other parties, and consequently intended simply to respond to the specific treatment of those issues in the briefs of certain of the other parties in the context of the order of the Commission's setting certain of those issues for hearing.

On October 2, 1990, the Commission determined that the following issues should be set for hearing:

1. The priority of QF's in the queue by date.
2. The methodology to be used to determine which QFs remain in the queue.

The Commission directed that the parties file supplemental briefs to address those two issues. The Commission also directed that the parties be given an opportunity to discuss the facts and state whether there are disputed issues of material fact to be considered at hearing. This brief will address the two issues cited by the Commission, as well as the principal facts affecting the positions of Cypress I and II in the queue.

I. FACTS REGARDING CYPRESS

Cypress I filed its acceptance of the standard offer contract with Florida Power & Light ("FPL") on June 18, 1990, and subsequently filed with FPL a standard interconnection agreement pertaining to that standard offer contract. Cypress II filed its

acceptance of the standard offer contract with FPL on June 19, 1990, and subsequently filed with FPL a standard interconnection agreement pertaining to that standard offer contract. Under the terms of these standard offer contracts, Cypress I and Cypress II will as a joint venture construct an up to 360 MW cogeneration facility in Dade County, Florida, consisting of a single or multiple units, with a scheduled in-service date of January 1, 1996. The facility will employ advanced pulverized coal boilers, advanced scrubbing technology, and lower sulphur coal as a primary fuel to produce stable, low cost energy in FPL's load center in an environmentally sensitive manner.

Cypress has letters of intent with Genesis Aquaculture, Inc. and Southern Redfin, Inc. for thermal energy sales of approximately 60,000 lb/hr of steam each, with respect to aquaculture facilities to be constructed adjacent to the cogeneration facility site. The facility of Genesis Aquaculture, Inc. will be an expansion of the successful aquaculture operations it is already conducting in Dade County, Florida. In addition, Cypress is presently negotiating with other industrial customers, including those already in existence near the cogeneration facility site, for additional thermal energy sales, and expects to have at least an additional approximately 40,000 lb/hr of steam sales under contract for this cogeneration project as a result of such negotiations. Cypress has not yet filed with the Federal Energy Regulatory Commission ("FERC") for QF certification because (1) such filing is ordinarily made at a later point in the development process when a power

purchase agreement has been both executed and approved by the regulatory authority and the facility design has been appropriately adjusted to reflect that power purchase agreement, and (2) unlike what appears to be the intent of some of the other parties to this proceeding, Cypress does not intend by virtue of a standard offer contract to force upon its host utility a cogeneration facility which does not benefit the host utility's system and its ratepayers.

Cypress has a letter of intent with the Miami-Dade Water and Sewer Authority ("WASA") for use of sewer effluent for water make-up and disposal of blowdown from its cogeneration's facility, and consequently has no need to obtain a permit for substantial withdrawals from the aquifer. Cypress has also completed air permit modeling which demonstrates that the emissions from its proposed facility should be permissible within the limits of existing increments and/or emissions offsets available to Cypress. The zoning for the proposed site for its cogeneration facility also appears to be proper for the construction and operation of such a facility, and no variance in that regard appears to be required. Cypress has not discovered any unexpected or unusual permitting difficulties with respect to any of the permitting issues for its cogeneration facility, nor have the officials of the various permitting authorities which have reviewed the Cypress project on a preliminary basis. Accordingly Cypress appears to have a probability of obtaining the necessary permits for construction and operation of its cogeneration facility.

Cypress also appears to have a probability of local community support for its cogeneration facility. On February 27, 1990, its applications for industrial revenue board financing of up to approximately \$954,000,000 for its cogeneration facility (filed under "Manatee Power Company," the former name for this project) was induced and accepted by the Dade County Industrial Development Authority. On November 6, 1989, the Town of Medley, Florida, in which the project site is located, adopted by unanimous vote of the town council a resolution approving in preliminary concept the Cypress cogeneration facility at a size of up to 500 MW. Cypress has also discussed the nature of its proposed cogeneration facility with various principal officials of Dade County and of potentially affected municipalities, and with various known local activists, as early as a year ago, and no significant opposition to the facility has developed.

Finally, Cypress has firm offers or letters of intent for fuel supply and transportation for the term of its standard offer contracts. As a company having over a billion dollars in operating assets and over \$50 million in annual revenue.

II. PRIORITY OF QF's IN THE QUEUE BY DATE.

Order No. 23235 determined that, in applying the subscription limit, the priority of QFs should be established by the signature date of a negotiated contract or the date that a completed standard offer contract is tendered to a utility. Order No. 23235 further stated that, in the case of a negotiated and standard offer contract signed/tendered on the same day, the standard offer

contract will take priority in the queue.

On page 4 of its brief dated October 9, 1990, Panda appears to have accurately summarized the execution dates of the pending standard offer contracts. As stated earlier in this brief, Cypress I tendered its standard offer contract to FPL on June 18, 1990, and Cypress II tendered its standard offer contract to FPL on June 19, 1990. Panda stated in its brief that it tendered its standard offer contract to Florida Power Corporation ("FPC") on July 25, 1990. The record in this proceeding does not disclose when the other standard offer contracts were tendered to the respective utilities, but in each case it was necessarily after the Cypress dates based upon the stated execution dates. Cypress urges the Commission not to adopt the argument of Panda that its contract tendered on July 25, 1990, should be deemed retroactively delivered as of June 13, 1990. If Panda was uncertain as to the effect of certain language in FPC's standard offer contract and chose to delay execution and delivery, Panda should bear the consequences of that choice. Panda could have executed and delivered its standard offer contract at an earlier date and taken the corresponding risk of uncertainty. Because Panda chose to delay execution and tender to gain certainty, it should not now be allowed to gain the benefit in hindsight of early execution and delivery. Unless the Commission by order gives Panda's contract an effective date of June 13, 1990, the potential priority of the various standard offer contracts subject to this proceeding is as follows:

	SIGNATORY	TENDER DATE
1.	Nassau	Unknown
2.	Cypress I	June 18, 1990
3.	Cypress II	June 19, 1990
4.	Panda	July 25, 1990
5.	Mockingbird	Unknown
6.	Indeck Lakeland	Unknown
7.	Indeck Frostproof	Unknown
8.	Telluride I	Unknown
9.	Telluride II	Unknown

The Nassau contract may not be ranked first by date when its tender date, if any, becomes known of record.

III. DETERMINATION OF PRIORITY OF OF'S IN THE QUEUE.

In its brief dated September 25, 1990, Seminole argued, in principal substance, that a negotiated contract should not be precluded by virtue of subscription of the 500 MW statewide avoided east unit (the "Avoided Unit") unless the negotiated contract "counted against" the Avoided Unit by virtue of matching the Avoided Unit as to type and in-service date. In its brief dated September 25, 1990, Broward urged a position essentially identical to that of Seminole. In its brief dated September 25, 1990, TECO took the position that no change in Order No. 23235 is needed, but reserved its right to participate in subsequent proceedings.

In its brief dated September 25, 1990, ICL agreed, in substance and among other things (1) that negotiated contracts should be favored, or at least not discriminated against; (2) that

the Avoided Unit subscription limit should be enforced to prevent utilities from being forced to take unneeded capacity; (3) that any cogeneration power purchase agreement should be economically evaluated against the purchasing utility's individual avoided costs regardless of whether the contract "counts against" the Avoided Unit; (4) that inclusion of a project in the subscription queue for the Avoided Unit should have no bearing on the separate need determination process; (5) that Order No. 23235 should, in general, not be modified but may require clarification in various respects; (6) that the subscription limit should in no way preclude negotiated cogeneration contracts with willing utilities; (7) that a negotiated contract with an in-service date the same as or prior to the Avoided Unit should "count against" the Avoided Unit regardless of what the statewide avoided unit was at the time the negotiated contract was executed; and (8) that the ICL contract with FPL necessarily "counts against" the Avoided Unit, notwithstanding an execution date prior to the establishment of the Avoided Unit and during the existence of a prior statewide avoided unit structure, because its in-service date is prior to that of the Avoided Unit.

In its brief dated September 25, 1990, FPL argued, in substance, that all contracts which defer the need for the Avoided Unit should "count against" the Avoided Unit, and that accordingly the need determination process should be the forum for determining satisfaction of the subscription limit for the Avoided Unit and queue position within that subscription limit. In its briefs dated

September 25, 1990 and October 9, 1990, Panda argued, among other things (1) that the subscription limit should be enforced; (2) that position in the queue to satisfy the subscription limit should be determined in this proceeding rather than in separate need determinations for each project; (3) that the place of a project in the queue should be determined by the five-part formula proposed by Panda in its briefs; (4) that negotiated contracts executed prior to May 25, 1990 (e.g., the ICL contract) should not be included in the queue; and (5) that Panda's standard offer contract is the only one which satisfies its formula and consequently the only one entitled to a place in the queue.

Cypress agrees with much of the position advanced by Panda in its briefs, but believes that this position should be modified to address the legitimate concerns expressed by FPL and the other parties in their respective briefs. FPL urges, for instance, that determining priority strictly by date may have the effect of forcing it to contract with a project which creates at best a marginal benefit to its systems, where such a contract would prevent it from correspondingly contracting with another project which would create a great benefit to its system. Accordingly, Cypress urges the Commission to adopt a prioritization formula that includes, in addition to ranking by date of tender, a threshold assessment of project viability and usefulness to the best utility as of the date the standard offer contract was tendered to the utility.

Cypress respectfully suggests that this formula, largely

similar to that suggested by Panda, consist of the following:

1. Does the facility have a reasonable probability of attaining QF status?
2. Does the facility have an existing interconnection agreement approved by the interconnecting utility, or can the facility establish that it will interconnect at a location acceptable to the utility? In particular, will dispatch of the facility if interconnected as proposed, prevent the purchasing or wheeling utilities from obtaining economy power?
3. Does the facility have agreements or letters of intent for wheeling, if needed?
4. Has all security been agreed-upon with the appropriate utilities, or can the QF demonstrate a clear ability to provide appropriate security?
5. Is there evidence of a reasonable probability of construction of the QF and benefit to the purchasing utility, including:
 - a. Letters of intent or agreements with sufficient thermal hosts for QF status;
 - b. Evidence of availability of adequate water supply;
 - c. Evidence of a reasonable availability of air emissions increments or offsets;
 - d. Evidence of the existence of appropriate zoning or a reasonable possibility of obtaining the

same;

- e. Letters of intent or firm offers for fuel supply and transportation; and
- f. Evidence of a reasonable possibility of community support and/or lack of significant local opposition.

The foregoing determinations should be threshold determinations only, and should not constitute a prejudgment of the need for the facility, which will be determined by separate proceeding.

IV. APPLYING FACTS TO THE CYPRESS FORMULA.

The Cypress project is in a high level of development. As set forth in Section I, Cypress can satisfy all of the elements of the foregoing formula, and has so stated of record. Commission records indicate that Panda can satisfy some of the foregoing elements, and Panda may or may not be able to satisfy the remaining elements if afforded the opportunity to do so. Commission records contain no evidence that the Nassau, Mockingbird, Indeck Lakeland, Indeck Frostproof, Telluride I and Telluride II projects can satisfy any of the foregoing elements.

CONCLUSION

Additional information is needed to determine the queueing by date of the contracts subject to this proceeding. The formula suggested by Cypress provides an appropriate balance of the positions of the parties hereto, and should be used to determine which contracts remain in the queue and their respective

priorities. Based upon the facts of record, the Cypress I and II contracts are the only ones which satisfy all the elements of the foregoing formula and which would consequently be entitled to first priority in the queue. Assessment of liability appears to require an evidentiary hearing.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Cypress Energy Companies, Subsidiaries of Mission Energy Company and FHN Energy, Inc.'s Brief has been furnished by hand delivery or by U.S. Mail to the following parties of record, this 24th day of October, 1990.

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