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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|                                    |                                 |
|------------------------------------|---------------------------------|
| In re: Petition for Approval, to ) | DOCKET NO. <del>940797</del> EQ |
| the Extent Required, of Certain )  |                                 |
| Actions Relating to Approved )     | FILED: September 9, 1994        |
| Cogeneration Contracts by FPC. )   |                                 |
| )                                  |                                 |

ORLANDO COGEN LIMITED, L.P.'S PETITION TO INTERVENE

Orlando CoGen Limited, L.P. ("OCL"), through its undersigned counsel, pursuant to rules 25-22.036(7)(a) and 25-22.039, Florida Administrative Code, files this Petition to Intervene. In support of the Petition, OCL states:

ACK  1. The name and address of the Petitioner is:  
 AFA \_\_\_\_\_ Orlando CoGen Limited, L.P.  
 APP \_\_\_\_\_ c/o Air Products and Chemicals, Inc.  
 CAF \_\_\_\_\_ 7201 Hamilton Boulevard  
 CMU \_\_\_\_\_ Allentown, P.A. 18195

CTR  2. The name and address of the person who should receive notices and other communications is as follows:

LEG  *Chis* Joseph A. McGlothlin  
 LIN  *6* Vicki Gordon Kaufman  
 OPC  *1* McWhirter, Reeves, McGlothlin,  
 ROH \_\_\_\_\_ Davidson and Bakas  
 SEC \_\_\_\_\_ 315 S. Calhoun Street, Suite 716  
 WAS \_\_\_\_\_ Tallahassee, Florida 32301  
 OTH  *Oris Dan* Gregory Presnell  
 Akerman, Senterfitt & Eidson  
 P. O. Box 231  
 Orlando, Florida 32802-0231

3. In March, 1991, Florida Power Corporation ("FPC") and OCL executed a "negotiated" power purchase contract. Under the terms

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of the negotiated contract, OCL agreed to sell and FPC agreed to buy 72 MW of capacity and energy from a cogeneration facility in Orlando, Florida. The Commission approved the negotiated contract between OCL and FPC for purposes of cost recovery in Order No. 24734, issued in Docket No. 910401-EQ, on July 1, 1991.

4. In the July 28, 1994 Petition of FPC which initiated this docket, FPC seeks the Commission's approval, to the extent required, of certain actions taken during the course of performance of its negotiated cogeneration contracts. Appendix 15 to the Petition includes certain changes and clarifications relating to the negotiated contract between FPC and OCL. The following documents were submitted with FPC's petition:

- An agreement, dated December 13, 1991, in which FPC agreed to a 37 day extension to the date for commencement of construction and to the Commercial In-Service date, as a consequence of a regulatory delay of 37 days, and in which FPC confirmed that the delivery voltage adjustment applies to the entire energy payment.
- An agreement, dated September 29, 1992, in which FPC agreed to an assignment of the negotiated contract to facilitate the financing of construction.
- An agreement, dated October 7, 1993, in which FPC and OCL agreed to a methodology for allocating the capacity and energy of OCL's generation between the

requirements of the contract with FPC and OCL's contractual obligations to the Reedy Creek Improvement District.

5. Several other documents pertaining to various changes to and clarifications of the negotiated contract between FPC and OCL were not included as part of FPC's application. These documents include:

- A September 27, 1993 OCL election under Section 7.2 of the contract to increase the committed capacity by the full ten percent from 72,000 kW to 79,200 kW.
- An August 17, 1993, OCL notice specifying where emergency or operation communications should be diverted under Section 28.2 and Appendix B, Section 5.1 of the contract.
- A September 8, 1993, election by OCL under Section 7.2 of the contract to increase the committed capacity from 72,000 kW to 79,200 kW.


6. As a party to several of the "course of performance" changes to and clarifications of the negotiated contract for which FPC seeks approval "to the extent necessary," the substantial interests of OCL will be affected by any decision that the Commission may make in this docket. Accordingly, OCL is entitled to intervene and participate as a party.

7. Any decision made by the Commission regarding the OCL/FPC documents that FPC submitted for approval will affect OCL's

substantial interests. Additionally, any decision regarding whether approval of these and similar documents is necessary would have an impact on any documents that have not, for whatever reason, been submitted by FPC to this point. Intervention is necessary in order to permit OCL to fully protect its interests.

8. OCL's position is that the agreements and clarifications implementing the negotiated contract between OCL and FPC, examples of which have been identified by FPC and herein, do not require the approval of the Commission. It is further OCL's position that unnecessary intrusions by the Commission into contractual matters - - in the form of the creation of regulatory burdens and uncertainty relative to negotiated agreements -- would add to the perceived risk of the independent power market in Florida and have a chilling effect on the willingness of lenders and developers to participate in Florida's energy market, all to the detriment of ratepayers in Florida.

Wherefore, Orlando CoGen Limited respectfully requests the Commission to grant this Petition to Intervene in this proceeding.

  
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407/843-7860

Attorneys for Orlando CoGen  
Limited, L.P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Orlando CoGen Limited, L.P.'s Petition to Intervene has been furnished by hand delivery\* or by U.S. Mail to the following parties of record, this 9th day of September, 1994.

Robert Elias\*  
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Florida Public Service  
Commission  
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\_\_\_\_\_  
Joseph A. McGlothlin