



**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

February 14, 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. 9611894-EQ and
Docket No. [REDACTED]

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Petition for Proposed Agency Action and Motion for Informal Prehearing 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 document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

JAM/kp
Enclosures
cc: Parties of Record

GENERAL OFFICE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the enclosed Petition for Proposed Agency Action and Motion for Informal Prehearing Schedule of Florida Power Corporation regarding Docket No. 961184-EQ has been furnished to the following individuals by U.S. Mail this 14th day of February, 1997:

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Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Conservation Cost Recovery
Clauses of Electric Companies.

Docket No.970002-EG

Submitted for filing:
February 14, 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Petition for Proposed Agency Action and Motion for Informal Prehearing Schedule by Florida Power Corporation has been furnished to the following individuals by regular U.S. Mail this 14th day of February, 1997:

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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

In re: Energy conservation cost recovery clause.

Docket No. 970002-EU

Submitted for filing:
February 17, 1997

**FLORIDA POWER CORPORATION'S
PETITION ON PROPOSED AGENCY ACTION**

Florida Power Corporation (Florida Power), pursuant to Rules 25-22.029 and 25-22.036, Fla. Admin. Code, hereby files this Petition on Proposed Agency Action with respect to Order No. PSC-97-0086-FOF-EQ (the Order), issued by the Florida Public Service Commission (the Commission) on January 27, 1997 in the above-captioned dockets and, in support hereof, states as follows:

Introduction

1. The name and address of the Petitioner is:

Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733

Copies of all pleadings, notices and correspondence in this case should be directed to the undersigned at the foregoing address.

2. Florida Power received notice of the Commission's Proposed Agency Action Order on January 27, 1997 by facsimile transmission from the Commission.

Background

3. On October 1, 1996, Florida Power filed a petition for approval of an early termination amendment to a Negotiated Contract with Orlando Cogen Limited, Ltd. (OCL), a qualifying facility (QF). The contract provides for a committed capacity of 79.2 MW for a 30-year term expiring December 31, 2023. The amendment terminates the last ten years of the contract. Florida Power's petition also requested authorization to recover the cost of the contract's early termination, \$49,405,000, over a five-year period through the Capacity Cost Recovery clause. In addition, Florida Power asked that the rate impact of the early termination costs on residential customers be mitigated by crediting the Energy Conservation Cost Recovery (ECCR) clause with the previously deferred 1995 revenue decoupling over-recovery balance.

4. On December 26, 1996, Staff filed a recommendation to the Commission on Florida Power's petition which contained both a primary recommendation to approve the early termination amendment for cost recovery and an alternative recommendation to deny the amendment. The primary recommendation was based on Staff's finding that early termination of the OCL contract would relieve ratepayers of \$459.0 million in known capacity payments and \$283.3 million in projected energy payments, or \$742.2 million in total payments under the contract. The costs to ratepayers to replace the last ten years of the contract, including the \$49.4 million early termination payment, were found to be \$279.9 million, thus providing ratepayers a total net savings of \$462.4 million, or \$33.0 million in current (net present value) dollars. The same comparison using an

updated fuel forecast and economic data produced net present value savings of \$30.5 million.

5. The primary recommendation also presented an important policy issue to the Commission. Staff recognized that, in addition to the expected benefits to ratepayers, early termination of the contract will also mitigate potential stranding costs. However, since an open-access environment (when *potential* stranding costs actually become stranded) has not yet arrived, Staff advised the Commission that it was uncertain "whether it is appropriate to address potential stranding costs at this time."

6. The alternative recommendation was based on two primary concerns. First, the payback period was felt to be too long because the \$49.4 million will be borne by ratepayers over the next five years, while the benefits of early termination will not begin for 17 years, thus creating an intergenerational inequity. Second, the alternative recommendation found that by performing a sensitivity study using the high band of a fuel forecast prepared by Florida Power in early 1995 and a 33% higher inflation rate than assumed in the base case, savings are reduced to the point that Florida Power's ratepayers may be no better off than under the original contract.

7. Staff's recommendation was scheduled for the Commission's January 7, 1997 Agenda Conference. At that time the Commission approved Staff's alternative recommendation without discussion or comment. The Commission also approved the crediting of the 1995 residential decoupling over-recovery balance through the ECCR in Docket No. 970002-EU, an action which is not subject to or challenged by this petition.

Disputed Issues of Fact and Policy

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:

- a. That the proposed buyout of the OCL contract is not inconsistent with the objectives of the reverse auction bid solicitation.
- b. That the proposed buyout of the OCL contract does not have negative effects on intergenerational equity such that the proposed buyout should not be approved.
- c. That the proposed buyout of the OCL contract will provide net benefits sooner than 22 years into the future.
- d. Whether, if there is a regulatory goal of intergenerational fairness, it is being applied invalidly in this proceeding.
- e. Whether the "sensitivities" performed in support of the Alternate Staff Recommendation are correct; are inconsistent with planning assumptions and methodologies or are appropriate.
- f. Whether all assumptions from FPC's 1996 Ten Year Site Plan that were used to perform "sensitivities" by Staff in support of the Alternate Staff Recommendation were found to be suitable for planning purposes at the 12/2/96 Internal Affairs Conference whether each of the "sensitivities" developed by the Staff in support of the Alternate Recommendation are reasonable correctly performed and developed and demonstrate the impact of short-term changes in fuel price projections.

- g. Whether the assumptions used in performing the "sensitivities" in support of the Alternate Recommendation are appropriate and appropriately characterized in the Alternate Recommendation.
- h. Whether the "scenarios of higher fuel prices and higher rates of inflation [are] consistent with historical events over recent history" and whether these scenarios "represent reasonable scenarios for the future" are correct assertions and whether inconsistent with the planning approach approved by the Commission.
- i. That the Order fails to consider "whether it is appropriate to address potential strandable costs at this time."

9. As is more fully explained in Florida Power's Motion for Informal Prehearing Schedule, which accompanies this petition, the resolution of the foregoing issues may not require a full evidentiary hearing pursuant to Section 120.57(1), Florida Statutes. Florida Power believes that an informal procedure whereby discussions may be conducted among the parties would greatly facilitate which disputed issues are presented to the Commission for resolution and how that presentation, in the judgment of both Staff and Florida Power, might be made.

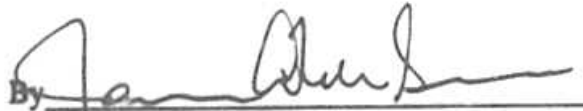
Florida Power's Substantial Interests

10. Florida Power has a substantial interest in the amendment to the OCL contract in that the amendment will provide net savings of over \$400 million to Florida Power and its customers and will mitigate the exposure of Florida Power and its customers to potentially strandable costs in the future. Denial of Florida Power's petition for approval the amendment will adversely affect these substantial interests.

WHEREFORE, Florida Power Corporation respectfully requests that the Commission grant this Petition on Proposed Agency Action and set an informal prehearing schedule consistent with Florida Power's accompanying motion.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

James A. McGee
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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

In re: Energy conservation cost recovery clause.

Docket No. 970002-EU

Submitted for filing:
February 17, 1997

MOTION FOR INFORMAL PREHEARING SCHEDULE

Florida Power Corporation (Florida Power) hereby files this Motion for Informal Prehearing Schedule requesting authorization for Florida Power and the Commission Staff to meet prior to the Commission's determination of whether a Section 120.57(1) or Section 120.57(2) hearing will be held. Florida Power submits that such meeting would facilitate the hearing process and that the parties should attempt to narrow the issues in dispute and consider an alternative method of addressing and resolving factual and potential policy and legal issues. In support of this Motion, Florida Power states:

1. Florida Power Corporation, pursuant to Commission Rules 25-22.029 and 25-22.036, Fla. Admin. Code, has filed its Petition on Proposed Agency Action concerning the Notice of Proposed Agency Action Order Denying Petition for Approval of Early Termination Amendment issued by the Commission on January 27, 1997. The Petition on Proposed Agency Action was filed on February 17, 1997 and was thus timely filed.

2. Pursuant to Rule 25-22.036(9)(b), Fla. Admin. Code, if a petition on proposed agency action is granted, the Commission may determine whether a Section 120.57(1) hearing or a Section 120.57(2) hearing is required.

3. As set forth in Florida Power's Petition on Proposed Agency Action in this docket, the Commission's decision involves not only issues of fact but also issues that are a mixture of policy and fact and policy and law. Moreover, the procedure leading to the issuance of the Commission's Notice of Proposed Agency Action did not involve the establishment of separate discrete issues as would be developed during a prehearing conference.

4. As the Commission is aware, the Staff recommendation contained both a primary and alternative recommendation. The Commission approved the alternative recommendation which not only addresses matters of policy but also concluded that the proposed "buyout's cost-effectiveness appears to be too sensitive to fluctuations in fuel price projections and inflationary assumptions."

5. Florida Power is not yet fully appraised of the factual basis for the conclusion that the "cost-effectiveness appears to be too sensitive" to various assumptions. However, Florida Power believes that an informal procedure whereby discussions may be conducted would greatly facilitate which disputed issues are presented to the Commission for resolution and how that presentation, in the judgment of both the Commission Staff and Florida Power, might be made.

6. Florida Power submits that granting the Motion for Informal Prehearing Schedule, and either establishing a series of noticed meetings between Staff and Florida Power or allowing Staff and Florida Power to mutually agree to a series of noticed meetings would not only facilitate the ultimate resolution of this matter

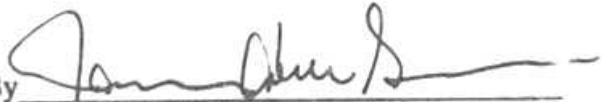
and reduce administrative cost and expense but would also assist the Commission in determining whether a Section 120.57(1) hearing or a Section 120.57(2) hearing is required.

WHEREFORE, Florida Power respectfully requests that the Commission grant its Motion for Informal Prehearing Schedule and requests a schedule of meetings (or allow the parties to schedule such meetings) between the Commission Staff and Florida Power prior to the Commission's determination of whether a Section 120.57(1) or a Section 120.57(2) hearing will be held. Florida Power submits that such meetings would facilitate the hearing process and allow the parties an attempt to narrow the issues in dispute and consider an alternative method of addressing and resolving factual and potential policy and legal issues.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By



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