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LAW OFFICES

McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

100 NORTH TAMPA STREET, SUITE 2800
TAMPA, FLORIDA 33602-5126

TALLAHASSEE OFFICE
117 N. GADSDEN
TALLAHASSEE, FLORIDA 32301
TELEPHONE (904) 222-2525
FAX (904) 222-5600

LYNWOOD F. ARNOLD, JR.
JOHN W. BAKAS, JR.
HARRY LEE COE, IV
LINDA DARSEY HARTLEY
C. THOMAS DAVIDSON
STEPHEN O. DECKER
LINDA E. JORGE
VICKI GORDON KAUFMAN
JOSEPH A. MCGLOTHLIN
JOHN W. MCWHIRTER, JR.
RICHARD W. REEVES
FRANK J. RIEF, III
DAVID W. STREIN
PAUL A. STRASKE

MAILING ADDRESS: TAMPA
P.O. BOX 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0866
FAX (813) 221-1854
CABLE GRANDLAW

PLEASE REPLY TO:
TALLAHASSEE

February 25, 1997

HAND-DELIVERED

Blanca S. Bayo, Director
Division of Records and Reporting
Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Docket No. **970096-EQ**

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of FIPUG's Response to Florida Power Corporation's Request for Preliminary Prehearing Conference in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited approval of agreement with Tiger Bay Limited Partnership to purchase Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida Power Corporation.)
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Docket No. ~~970096-EQ~~
Filed: February 25, 1997

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S RESPONSE TO FLORIDA POWER CORPORATION'S REQUEST FOR PRELIMINARY PREHEARING CONFERENCE

Pursuant to rule 25-22.037, Florida Administrative Code, the Florida Industrial Power Users Group (FIPUG)¹, files its response to Florida Power Corporation's Motion for Preliminary Prehearing Conference to Establish Issues to be Determined in this Docket.

1. If the Prehearing Officer believes that a preliminary prehearing conference would be helpful, FIPUG has no objection to holding such a conference prior to the prehearing conference already scheduled to be held in this docket. In recognition of the alleged time constraints necessitating prompt action, FIPUG believes that the parties would be better served by engaging in the mediation process prior to the scheduled March 31st prehearing conference and requests that the Prehearing Officer encourage the parties to do so.

2. Florida Power Corporation's (FPC) styles its motion as a request for a preliminary prehearing conference, but it is in fact a motion to strike issues that were identified in the preliminary staff conference and which have been addressed in

¹ FIPUG filed a petition to intervene in this proceeding on February 18, 1997. An order on this petition has not yet been issued by the Commission.

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testimony. These issues are germane to the proceeding. They are issues which adversely affect FIPUG and which involve material disputes of fact.

3. FPC contends that the issues it seeks to jettison are "generic policy matters." However, they are not, but rather relate directly to the transaction for which FPC seeks Commission approval.

4. FPC argues that the future of competition in the electric industry is not germane to this proceeding. FPC incorrectly asserts that the issue at hand is a general policy matter not related to the current docket. The issue as listed in Staff's Revised List of Issues (Issue 25), dated February 21, is "What impact will this proposal have on competition in the electric industry?" (Emphasis supplied). In essence, what FPC is seeking approval to do is to not only terminate several cogeneration contracts, but to buy the facility out of which those contracts are served and have ratepayers pay for this acquisition in five years. As discussed by FIPUG's witness, Mr. Falkenberg, there has been no such case in the history of regulation. And as further discussed by FIPUG's witness, it is FIPUG's view that what FPC is really attempting to do is to position itself for competition in the future at ratepayers' expense.²

5. FPC assumes the focus of the issue is on Tiger Bay's ability to compete. FIPUG respectfully suggests that § 366.06(1), Florida Statutes, requires the Commission to consider the "public acceptance" of the proposed \$60 million rate increase and whether that increase discriminates against current customers in order

² Vastar witness, Mr. Catasein, also discusses the proposed transaction's effect on competition and its precedential effect.

to give FPC a future competitive advantage. The issue is whether the requirement that customers pay for a plant with a 25-year life in just five years is in the customers' interest or merely an effort to give FPC a future competitive advantage against other utilities. This is an issue of critical importance which the Commission must consider as it reviews the proposed transaction.

6. The economic development issue is in a similar vein. The issue is not a general issue on economic development. Rather the issue (Issue 24) is: "Will the proposal impact economic development of customers within Florida Power Corporation's service area?" (Emphasis supplied). As Mr. Falkenberg will testify, under FPC's proposal, the energy costs of high load customers will increase and this increase will be detrimental to industrial expansion in FPC's service territory. Again, this is a critical aspect of the proposed transaction which the Commission should consider as it reviews the proposal.

7. Finally, FPC continually pleads "time constraints" as the basis for its attempt to limit the relevant issues in this proceeding to those which are to FPC's liking. The Prehearing Officer should consider that any "time constraints" which are at work here are purely of FPC's own making in entering into the proposed transaction as structured in the first instance. Parties' rights cannot be disregarded and relevant issues cannot be ignored because FPC alleges that consideration of such issues raised by the parties may extend the proceeding. The mediation process may help expedite resolution when due process for the aggrieved parties cannot legally be completed within FPC's self-imposed window of opportunity.

WHEREFORE, FIPUG requests that:

1. The Prehearing Officer recommend and encourage the parties to mediate this cause prior to the March 31 prehearing conference date rather than litigate the relevance of the proposed issues, and
2. The issues raised by FIPUG remain a part of this docket.

Vicki Gordon Kaufman

John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
Post Office Box 3350
Tampa, Florida 33601
Telephone: (813) 224-0866

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (904) 222-2525

Attorneys for the Florida Industrial
Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FIPUG Response to Florida Power Corporation's Request for Preliminary Prehearing Conference has been furnished by *hand delivery or U.S. Mail to the following this 25th day of February, 1997:

*Lorna Wagner
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Gunter Building, Room 370
Tallahassee, Florida 32399-0850

Roger Howe
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

D. Bruce May
Karen D. Walker
Holland & Knight
Post Office Drawer 810
Tallahassee, Florida 32302

Patrick K. Wiggins
Wiggins & Villacorta
Post Office Box 1657
Tallahassee, Florida 32302

James A. McGee
Florida Power Corporation
3201 34th Street, South
St. Petersburg, Florida 33711


Vicki Gordon Kaufman