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BERKELEY

February 27, 1997

Ms. Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: **Petition to Intervene in Docket 961477-EQ**  
**Motion to Suspend the Procedural Schedule**  
**Request to Participate in Oral Argument**

Dear Ms. Bayó:

Enclosed for filing are the original and eight copies of three pleadings

- the "Petition of Lake Interest Holdings, Inc., to Intervene as a Party," - 02230-97
- the "Motion of Lake Interest Holdings, Inc., to Suspend the Procedural Schedule," and - 02231-97
- the "Request of Lake Interest Holdings, Inc. to Participate in Oral Argument," all - 02232-97 in the above-referenced proceeding, Docket 961477-EQ

02/25/97

Please date-stamp and return one copy of each of the attached pleadings in the enclosed self-addressed envelope as acknowledgement of their receipt, retaining the seven copies of each required under Rule 25-22.0375(3).

I have served this pleading upon those identified in the initial filing as attested in the attached certificate of service, and will serve it upon all other parties on the service list as soon as a copy of that list, which was requested today, can be received from your office

In accordance with the rules, I have included a diskette containing a copy of the attached filings in WordPerfect format. They are provided separately in WP 4.2, WP

ACK \_\_\_\_\_  
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 MIP \_\_\_\_\_  
 CAF \_\_\_\_\_  
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**BRADY & BERLINER**

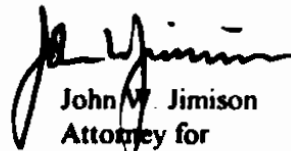
Ms. Blanca S. Bayó  
February 27, 1997  
Page 2

5.0, and WP 6.0 for your convenience.

In addition, the undersigned hereby provides notice of intent to represent Lake Interest Holdings, Inc., before the Commission in this matter as a Class A Practitioner pursuant to Rule 25-22.008. I attach an affidavit attesting to the fact that I am licensed to practice law in the District of Columbia and Virginia, and that I have represented clients before federal and state regulatory commissions. I further attach the required sponsorship by a licensed Florida attorney.

Thank you for your assistance in this matter.

Sincerely,

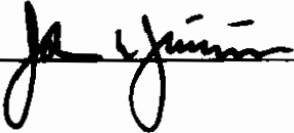


John W. Jimison  
Attorney for  
**Lake Interest Holdings, Inc.**

Attachments

**Affidavit of  
John W. Jimison, Esq.**

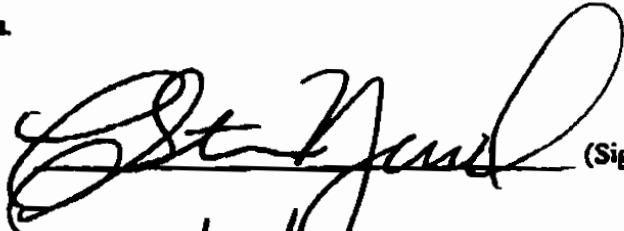
Pursuant to Rule 25-22.008(2)(b), I, John W. Jimison, Esq., hereby request that I be qualified as a Class A Practitioner to appear before the Florida Public Service Commission for the purpose of representing Lake Interest Holdings, Inc., and other clients doing business in Florida. In support of that request, I certify that I am and have been since 1975 a licensed attorney in the State of Virginia (Virginia Bar No. 15165) and that I am and have been since 1980 a licensed attorney in the District of Columbia (D.C. Bar No. 316141). I further certify that I have for more than nine years represented clients before State regulatory Commissions (in particular the California Public Utilities Commission) and before the Federal Energy Regulatory Commission.

 \_\_\_\_\_ (Signature)

February 27, 1997 \_\_\_\_\_ (Date)

**Sponsorship of John W. Jimison, Esq.,  
to Practice before the  
Florida Public Service Commission**

Pursuant to Rule 25-22.008 (2) (b) of the Florida Administrative Code, I. C. Steven Yerrid, Esq., a licensed attorney in the State of Florida, Bar Member No. 207594, do hereby sponsor John W. Jimison, a licensed attorney in the State of Virginia and in the District of Columbia, to practice as a Class A Practitioner before the Florida Public Service Commission in Proceeding No. 961407-EI and in such other matters as may be required in the representation of his clients doing business in Florida.

 (Signature)  
12/18/86 (Date)

FILED

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In re: Petition for Expedited  
Approval of Settlement Agreement  
with Lake Cogen, Ltd. by  
Florida Power Corporation.

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Docket No. 961477-EQ

**PETITION OF  
LAKE INTEREST HOLDINGS, INC.  
TO INTERVENE AS A PARTY**

Pursuant to Rules 25-22.026, 25-22.036, and 25-22.039, Florida Administrative Code, Lake Interest Holdings, Inc. ("LIHI"), respectfully petitions to intervene in the above-styled proceeding as a party. By separate filings made today, LIHI moves to suspend the procedural schedule and requests the opportunity to participate in oral argument. In support of this petition, LIHI states as follows:

**Introduction**

1. All pleadings, motions, notices, orders, or other documents required to be served in this docket should be addressed to the following:

John W. Jimison, Esq.  
Brady & Berliner, P.C.  
1225 19th Street, N.W.  
Washington, D.C. 20036  
Telephone: (202) 955-6067  
Facsimile: (202) 822-0109

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FPSC-RECORDS/REPORTING

and

**Sheldon D. Reid  
Lake Interest Holdings, Inc.  
425 - 1st Street, S.W.  
Calgary, Alberta T2P 4V4  
CANADA  
Telephone: (403) 231-0065  
Facsimile: (403) 231-0501**

2. **LIHI owns 50.1% of the equity in Lake Cogen, Ltd., 49.1% as a limited partner and 1% as a General Partner. LIHI is a wholly-owned subsidiary of North Canadian Resources, Inc. NCRI is a wholly-owned subsidiary of Norcen Explorer, which is in turn a wholly-owned subsidiary of Norcen Energy Resources Ltd. Norcen is a major Canadian energy and resources producer and marketer. LIHI's, NCRI's, and Norcen's corporate offices are all located at the address indicated above for Mr. Reid.**

### **Background**

3. **On December 12, 1996, Florida Power Corporation ("FPC") filed with the Commission a "Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd by Florida Power Corporation" ("FPC Petition"). FPC attached to its Petition a document entitled "Settlement Agreement and Amendment to Negotiated Contract for the Purchase of Firm Energy from a Qualifying Facility between Lake Cogen, Ltd. and Florida Power Corporation" ("Settlement Agreement").**

4. **This Settlement Agreement purports to resolve, among other matters, ongoing litigation between FPC and Lake Cogen, Ltd. ("Lake") concerning the terms, conditions, and payments to be made for purchased power from the Lake plant under the "Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Lake Cogen, Ltd., and Florida Power Corporation" ("Power Purchase Agreement" or "PPA"), from August, 1994, to the date of the Settlement Agreement. The Settlement Agreement also provides revised terms, conditions, and payments for power purchases from the plant into the future.**
  
5. **LIHI is a General Partner in Lake Cogen, Ltd. pursuant to the First Amended and Restated Limited Partnership Agreement of Lake Cogen Ltd., dated July 24, 1992, as amended by the First Amendment thereto, dated June 13, 1994 and subsequent amendments (inclusively, "Partnership Agreement"). A complete copy of the Partnership Agreement, including amendments, can be made available to the Commission if desired**
  
6. **The remaining equity in the Lake partnership is held by GPU International ("GPUI") through subsidiaries including Lake Investment, L.P. which holds a 48.9% share of Lake Cogen, Ltd. as a limited partner and NCP Lake Power Incorporated ("NCP Lake"), which is a 1% General Partner. The equity of Lake Investment, L.P., is held by two entities, NCP Lake, and NCP Gem Incorporated ("NCP Gem"). NCP Lake holds the 1% General Partner interest in Lake Investment, L.P., while NCP Gem holds the limited partnership interest. Thus, in total, LIHI owns 50.1% of Lake Cogen, Ltd., and GPUI**

through Lake Investment and NCP Lake owns 49.9% of Lake Cogen, Ltd., of which both parties hold equal 1 percent interests as General Partners.

7. In accordance with Section 11.2 of the Partnership Agreement, the general management and control of Lake is delegated by the General Partners to a Management Committee. Each General Partner shall appoint two members to the Management Committee, which can only act with a quorum of three-quarters of the four members attending the meeting in person, and with votes of not less than three members. The Management Committee has never met nor voted concerning this matter.
8. NCP Lake is named the Managing General Partner in the Partnership Agreement as amended. However, the Managing General Partner is specifically *not* empowered to amend any of the Operative Documents on behalf of the Partnership without General Partner approval. The Operative Documents are defined in a separate agreement to include the Contracts, which are in turn defined to include the Power Purchase Agreement.
9. To the extent the Management Committee has not formally acted, the prior approval in writing is required from all General Partners to any significant action affecting the legal status, obligations, or entitlements of Lake Cogen, Ltd., and no General Partner can act without the consent of the others. Section 11.1(c) of the Partnership Agreement states as follows



*"Except for those actions taken by the Management Committee pursuant to the authority delegated to it herein, all actions to be taken by the General Partners or by the Partnership or the other Partners shall be taken only with the prior approval in writing of all the General Partners. No General Partner shall have the authority to act on behalf of the Partnership or any Partner without the prior written approval of all of the General Partners."*

10. Thus the Management Committee did not act to approve the Settlement Agreement nor the amendments to the PPA, the Managing General Partner of the partnership (NCP Lake) is specifically prohibited from amending the Power Purchase Agreement on its own, and such action cannot be taken without the consent of LIHI as a General Partner, which was not sought or obtained.

11. Despite its lack of authority to do so on its own and without the consent of LIHI, NCP Lake negotiated and executed the Settlement Agreement and amendments to the PPA.

12. In footnote 3 at page 3 of the FPC Petition, FPC states as follows:

*"The Settlement Agreement is also conditioned upon approval by Lake's Owner Trustee and, to the extent necessary, its partner Lake Interest Holdings, Inc. FPC will advise the Commission when notice of such approval is received"* (Emphasis added).

Similarly, at page 2 of the Settlement Agreement, the document is prefaced by the following statement:

*"Whereas, except as explicitly noted herein, the Parties intend for this Settlement Agreement and for their respective undertakings,*

covenants, and agreements made herein to be strictly conditioned upon the approval of this Settlement Agreement in its entirety by (I) Nationsbank of Florida, National Association ("Owner Trustee") as Owner Trustee under that certain Participation Agreement, dated as of July 29, 1992, by and between Lake, Owner Trustee, TIFD III-C Inc. and General Electric Capital Corporation, as amended, and (ii) *to the extent required* under the First Amended and Restated Limited Partnership Agreement of Lake Cogen, Ltd., as amended (the "Partnership Agreement"), by Lake Interest Holdings, Inc., a Delaware Corporation ("LIHI"), or any successor to LIHI's partnership interest in Lake (Emphasis added).

Finally, at p. 5 of the Settlement Agreement, the document states as follows

**Approval by the Owner Trustee and General Partner**

- a. This Settlement Agreement is further expressly conditioned on its being approved by the Owner Trustee and, *to the extent required* under the Partnership Agreement, by LIHI or any successor to LIHI's partnership interest in Lake, in its entirety without modification or condition. Except as otherwise noted, this Settlement Agreement shall have no force or effect if such approval is not obtained (Emphasis added).
- b. Lake shall promptly contact the Owner Trustee and LIHI and provide this Settlement Agreement to the Owner Trustee and LIHI or its successor. Lake shall make all reasonable efforts to obtain expeditious consideration and approval of this Settlement Agreement by the Owner Trustee and LIHI or its successor.

13. These provisions suggest that FPC and NCP Lake, representing itself as Lake Cogen, Ltd., believe there may be some question whether LIHI's approval is required to an amendment of the PPA. In LIHI's view, the provisions of the Partnership Agreement

leave no room for any such question. As a requirement of the Partnership Agreement, Lake Cogen Ltd. and its Managing General Partner, NCP Lake, were required obtain LIHI's prior written consent to any amendment of the Power Purchase Agreement between Lake and FPC.

14. As this motion establishes, moreover, FPC's and Lake's claim in their settlement (at Paragraph 14) to have obtained or to be in a position to obtain "all necessary corporate or partnership approvals, as appropriate, to execute the Release when said Release is executed" is a false and misleading statement. By the same token, the Representations and Warranties stated in Paragraph 14 of the Settlement Agreement that the necessary approvals of third parties are limited to those of the Owner Trustee and the FPSC are also false and misleading.

15. Despite their own stated recognition that the Settlement Agreement may be conditioned on LIHI's approval, and despite the provisions of the Partnership Agreement that make clear that LIHI's approval is required, LIHI has not as of the date of this Petition and Motion been contacted with regard to its approval of the Settlement Agreement by FPC nor by Lake, nor has LIHI's approval been obtained.<sup>1</sup>

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<sup>1</sup> The FPC Petition and Settlement Agreement were not served upon or otherwise provided by FPC or Lake to LIHI. This failure was directly contrary to the Settlement's own provisions at p. 5. Neither FPC nor Lake informed LIHI that they had reached and filed a settlement agreement with this Commission. Instead, LIHI became aware of the FPC Petition and

16. Pursuant to the above, LIHI submits that Lake lacked the necessary authority to enter into the Settlement Agreement with FPC. As a result, the Settlement Agreement is invalid and must be presently considered of no force or effect as it has not been executed by any person with the proper authority to execute it on behalf of Lake.

17. The failure to seek LIHI's consent despite acknowledgement of its consent right, and the failure to inform or serve LIHI with a filing so clearly involving its interests and rights despite explicit representations to the effect that such notice would be or has been given, coupled with the wholly unsupported petition for expedited approval, leads LIHI to believe that Lake and FPC have attempted to lead the Commission into precipitous action on their proposal and to present LIHI with a *fait accompli*. They seek an unjustifiably hasty review and approval of their Settlement Agreement in their motion for expedited approval, in part in order to prevent LIHI from adequately representing its own interest in the matter.

18. Neither this dispute, nor the Partnership Agreement under which it arises, are within this Commission's jurisdiction.

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the Settlement Agreement as a function of oral communications with FPSC Staff during a meeting concerning Pasco Cogen Ltd. LIHI first obtained a copy of the FPC Petition and Settlement Agreement from the Commission itself upon request to the Commission staff.

19. **As a result, in defense of its interest in the project, LIHI has today filed a Complaint for Declaratory Relief in the Circuit Court of the Fifth Judicial Circuit in and for Lake County, Florida, seeking a determination that the Settlement Agreement, as purportedly executed and filed, was entered into without authority by NCP Lake on behalf of Lake Cogen, Ltd., and is therefore without legal force or effect. A copy of this Complaint is attached to LIHI's Motion to Suspend the Procedural Schedule, separately filed today, as Attachment A to that document.**

**Petition to Intervene as a Party**

20. **In light of the facts stated above, LIHI has a direct and substantial interest in the Settlement Agreement presented for approval to the Commission in this docket. No other party can adequately represent LIHI's interest in this matter. For these reasons and those presented below, the Commission should grant LIHI status as a party to this proceeding. LIHI submits that it meets the tests to have standing as a party to this proceeding.**
21. **LIHI, the majority interest owner in Lake, clearly has no less right to standing to appear as a party in this case than does Lake, which is in fact nothing more than NCP Lake, the Managing Partner but a minority interest owner without, in LIHI's view, the requisite authority to bind Lake to the Settlement Agreement FPC has placed before the Commission. Lake itself, as a signatory to the Settlement Agreement, is not really present**

before the Commission as a party because no one with the proper authority signed the Settlement. Instead, NCP Lake has negotiated, signed, and represented the Settlement Agreement to the Commission. To the extent the Commission permits participation on behalf of Lake by NCP Lake, it must also permit participation on behalf of Lake by LIHI

22. In *Agrico Chemical Company v. Dept. Of Environmental Regulations*, 406 So 2d 478, 482 (Fla. 2d DCA 1981), a two-part test was established to determine whether an intervenor's interest in a matter before a Florida administrative agency was sufficient to warrant that party's standing to appeal such an action. If the Commission determines that LIHI does not merit standing on the same basis as Lake or NCP Lake acting for Lake, then LIHI respectfully submits that its participation in this proceeding as a party meets the test articulated in that case and following cases.

23. In keeping with the first element of the *Agrico* test, LIHI, as the majority interest owner in Lake, whose consent to the amendment to the PPA and Settlement Agreement has unjustifiably not been sought or obtained, may suffer significant injuries if the Settlement Agreement is approved by this Commission and the PPA is restructured, since such restructuring may be an unwise business decision and may preemptively establish conditions that are out of accord with the current terms, conditions, intent, and economics of the PPA, as previously approved pursuant to the Partnership Agreement

24. Under the second element of the *Agrico* test, LIHI's interest, as a General Partner

and majority co-owner of the Lake Cogen facility, is within the range of interests that the Commission's jurisdiction over such agreements between regulated utilities and cogenerators is designed to protect. The Commission cannot serve the ratepayers' interest in approving a Settlement Agreement amending a PPA under which costs are passed through to ratepayers, if that Settlement Agreement and those amendments were reached without valid authority on the part of one of the parties thereto, and are subject to being overturned and revised. For its own purposes of protecting the public interest, the Commission must grant LIHI standing as a party in this case, as well as for the purpose of allowing LIHI to protect itself against those who would violate its contractual and ownership rights over Lake.

25. LIHI is *not* asking the Commission to review, judge, take jurisdiction over, or settle any issues arising under the Partnership Agreement. LIHI is not asking for standing in this proceeding as a function of any need, requirement, or authority for the Commission to govern the performance of the Partnership Agreement. The Commission does not have jurisdiction over the Partnership Agreement, nor does it need to have such jurisdiction merely to recognize that, as a function of the consent rights embodied in those documents, the Commission cannot review the validity of the proposed amendments to the PPA in the Settlement Agreement without LIHI participating as a party. The Commission is not limited, however, to recognizing the legal effects of only those contracts over which it has direct jurisdiction such as the PPA; it must also recognize that non-jurisdictional contracts such as the Partnership Agreement may establish rights and obligations that bind parties in

their performance of or amendments to a jurisdictional contract.

26. Once this Commission is apprised of LIHI's rights and their equivalence to Lake's own right with regard to any amendments of the PPA, as the Commission is hereby apprised, the Commission should not and properly may not move to consideration of such proposed amendments without, at a minimum, granting standing to LIHI to participate in the proceeding. The Commission cannot make a finding on the proposed Settlement Agreement which is supported adequately by a record developed in LIHI's absence. There is clear evidence available to counter all statements by the Applicants to the effect that they have obtained the necessary consents to their agreement and have the power to reach the agreement they put before the Commission. There can be no competent, substantial evidence to the contrary in the record of any proceeding the Commission conducts to review their agreement.<sup>2</sup> To the extent that the Commission determines to move forward in review of the FPC Petition and Settlement Agreement, it can only appropriately do so after granting LIHI standing as a party.

#### **Disputed Issues of Fact**

27. LIHI submits that, should the Commission deny LIHI's motion and move to consideration of this matter, disputed issues of fact concerning which LIHI would supply

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<sup>2</sup> See Fla. Stat. §120.68(7)(b)

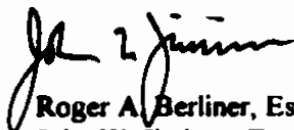


probative evidence include, but are not limited to:

- a. the effect on the validity of the proposed Settlement Agreement of Lake's failure to obtain LIHI's required consent under the Partnership Agreement;
- b. the effectiveness of the proposed Settlement in its claim to terminate litigation and avoid litigation expenses with potential effect on ratepayers; and
- c. the accuracy of assertions in the Settlement Agreement such as the assertion that necessary third party consents have been obtained or reasonably sought.

28. *Wherefore*, LIHI should be granted the right to intervene as a party in this proceeding.

Respectfully submitted,



Roger A. Berliner, Esq.  
John W. Jimison, Esq.  
Peter G. Hirst, Esq.  
Brady & Berliner  
1225 19th Street, N.W.  
Washington, D.C. 20036

Attorneys for  
**Lake Interest Holdings, Inc.**

February 27, 1997

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled in this proceeding.

Dated at Washington, D.C. this 28th day of February, 1997.

Evonne Edmonds

Evonne Edmonds