

The name and mailing address of Intervenor, Montenay is:

Montenay-Dade, Ltd.
3225 Aviation Avenue
Fourth Floor
Miami, FL 33133

The names and addresses of the persons authorized to receive notices, orders, and other communications in this proceeding and with respect to this petition are:

Gail P. Fels, Esq.
Assistant County Attorney
Dade County Aviation Dept.
P.O. Box 592075 AMF
Miami, FL 33159
(305) 876-7040

Robert Scheffel Wright, Esq.
Landers & Parsons
310 West College Avenue
P.O. Box 271
Tallahassee, FL 32302
(850) 681-0311

2. Dade County owns and Montenay operates an approximately 77 MW solid waste recovery facility located in Dade County, Florida (the "Facility"), from which they sell 43 MW of firm capacity and energy to FPC pursuant to that certain Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility between Dade County and FPC dated March 15, 1991 (the "Power Purchase Agreement"). The Facility is a "qualifying small power production facility" or "QF" as contemplated by the applicable rules of the Florida Public Service Commission (the "Commission") and the U.S. Federal Energy Regulatory Commission. The Power Purchase Agreement was approved by Commission Order No. 24734, issued on July 1, 1991 in Docket No. 910401-EQ.

3. In a letter to Dade County dated July 18, 1994, FPC claimed that it had determined it (FPC) "would not be operating" an avoided unit with certain characteristics during certain hours, and as a result would pay for energy delivered in those hours at the as-available energy cost rate.

4. On July 21, 1994, FPC filed a Petition for Declaratory Statement (Docket No. 940771-EQ) (the "First Petition") in which it requested the following relief:

WHEREFORE, Florida Power Corporation requests that the Commission enter an order declaring that the utilization of the pricing mechanism specified in Section 9.1.2 of the Negotiated Contracts to determine the periods when as-available energy payments are to be substituted for firm energy payments, complies with Rule 25-17.0832(4)(b), F.A.C., and the orders of this Commission approving the Negotiated Contracts.

On October 31, 1994, after the Commission Staff had recommended that FPC's First Petition was inappropriate for a declaratory statement proceeding, FPC filed an Amended Petition in Docket No. 940771-EQ (the "Second Petition") in which it changed its request for relief to the following:

WHEREFORE, Florida Power Corporation requests that the Commission enter an order determining that the manner in which the Company has implemented the pricing mechanism specified in Section 9.1.2 of the Negotiated Contracts to determine the periods when as-available energy payments are to be substituted for firm energy payments, is lawful under Section 366.051, F.S., and complies with Rule 25-17.0832(4)(b), F.A.C., and the orders of this Commission approving the Negotiated Contracts.

5. On August 18, 1994, Dade County and Montenay jointly filed a petition to intervene in Docket No. 940771-EQ for the limited purpose of moving to dismiss FPC's Petition for Declaratory Statement. In FPC's Answer to Dade County's and Montenay's Petition to Intervene for the Limited Purpose of Moving to Dismiss FPC's Petition for Declaratory Statement filed by FPC in Docket No. 940771-EQ, FPC acknowledged that both

Dade County and Montenay were entitled to intervene in that proceeding. By Order No. PSC-94-1405-PCO-EQ, the Commission granted Dade County's and Montenay's requests to intervene. On September 16, 1994, Dade County and Montenay jointly filed a Motion to Dismiss FPC's Petition for Declaratory Statement (the First Petition) and Supporting Memorandum of Law, and on December 1, 1994, Dade County and Montenay jointly filed a Motion to Dismiss FPC's Amended Petition (the Second Petition) and Supporting Memorandum of Law. Several other QFs also intervened and moved to dismiss FPC's petitions.

6. On February 15, 1995, the Commission issued its order granting the motions to dismiss FPC's Second Petition. In Order No. PSC-95-0210-FOF-EQ, the Commission stated that

FPC's petition fails to set forth any claim that the Commission should resolve. We defer to the courts to answer the question of contract interpretation raised in this case.

7. On February 24, 1998, FPC initiated the instant docket by filing yet another Petition for Declaratory Statement (the "Third Petition"). In this Third Petition, FPC requests the following relief:

WHEREFORE, FPC requests that the Commission issue a statement that, under Order No. PSC-97-1437-FOF-EQ, PURPA, Fla. Stat. § 366.051, and Rule 25-17.0832, F.A.C., the Commission interprets its Order No. 24734 approving the Negotiated Contract with Metropolitan Dade County to require that FPC:

- (A) Pay for energy based upon avoided energy costs, strictly as reflected in the Contract;
- (B) Use only the avoided unit's contractually-specified characteristics in § 9.1.2 and not other or additional

unspecified characteristics that might have been applicable had the avoided unit actually been built, to assess its operational status for the purpose of determining when Dade is entitled to receive firm or as-available energy payments;

- (C) Use the actual chargeout price of coal to FPC's CR 1 & 2 resulting from FPC's current mix of transportation, rather than the mix of transportation in effect at the time the Contract was executed or some other mix, to compute firm energy payments to Dade.

8. As a party to the contract with respect to which FPC has requested a declaratory statement in the Third Petition, Dade County's substantial interests will clearly be affected by any decision that the Commission may reach in this docket, and accordingly, Dade County is entitled to intervene. As the party operating the Facility from which Dade County supplies firm capacity and energy to FPC, and as a party to the contract as amended and approved by the Commission,¹ Montenay's substantial interests will likewise be affected by any Commission decision in this proceeding, and accordingly, Montenay is also entitled to intervene.

9. With respect to issues germane to the propriety of FPC's Third Petition, Dade County and Montenay strongly believe that FPC is barred by the doctrine of res judicata, collateral estoppel, or both from even seeking the Commission's consideration of its Third Petition. Moreover, in its Third Petition, FPC relies heavily on --indeed cites as "precedent set"-- a timely-protested Proposed Agency Action Order in Docket No. 961477-EQ (the "Lake

¹In Order No. PSC-95-0540-FOF-EQ, the Commission approved a modification to the contract that included FPC's, Dade County's and Montenay's agreement to certain contract amendments relating to capacity payments, curtailment concessions, maintenance coordination, and other matters.

PAA Order"), dated November 14, 1997. FPC's reliance is misplaced. The Lake PAA Order is clearly a non-final order with no precedential effect; moreover, the Commission has now concluded, by unanimous vote at its March 10, 1998 agenda conference, that the Lake PAA Order is a nullity. See Staff Recommendation at 7 (Docket No. 961477-EQ, February 26, 1998). Dade County and Montenay intend to file, in the near future and under separate cover, a motion to dismiss FPC's Third Petition, raising these issues and others as grounds for dismissal.

10. This petition for leave to intervene is filed for the limited purpose of moving to dismiss FPC's petition. The Commission has previously granted intervention for the limited purpose of moving to dismiss a petition. See In Re: Petition for Determination that Implementation of Contractual Pricing Mechanism for Energy Payments to Qualifying Facilities Complies with Rule 25-17.0832, F.A.C., 95 FPSC 2:263; In Re: Petition of Nassau Power Corporation to Determine Need for Electrical Power Plant, Docket No. 920769-EQ, Order No. PSC-92-1074-PCO-EQ (September 29, 1992). As demonstrated above, and as admitted by FPC, Dade County's and Montenay's substantial interests will be affected by any decision that the Commission might make in this docket, and accordingly, the Commission should grant this petition for leave to intervene to assure fundamental due process to Dade County and Montenay.

11. As described above, this petition for leave to intervene is filed for the limited purpose of moving to dismiss FPC's petition. Neither this petition, nor the filing thereof with the Commission, should be construed as agreement or acquiescence by Dade County and Montenay that the Commission has jurisdiction over the issues raised by FPC's petition. Dade

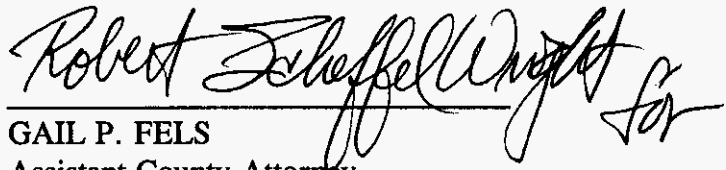
County and Montenay reserve their right to seek the Commission's leave to participate as a full party intervenor in this proceeding if the Commission, after considering this motion to dismiss, decides to entertain the Third Petition and render a declaratory statement in this matter.

WHEREFORE, Dade County and Montenay respectfully request that the Commission enter an Order granting this Petition for Leave to Intervene, and directing that copies of all pleadings, notices, orders, case schedules, and other communications filed, given, or entered herein be furnished to the persons named in Paragraph 1 hereof.

Respectfully submitted this 11th day of March, 1998.

ROBERT A. GINSBURG
County Attorney

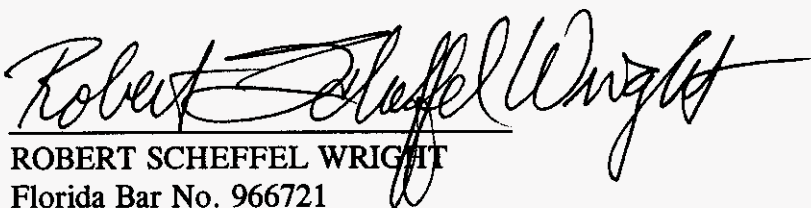
By:



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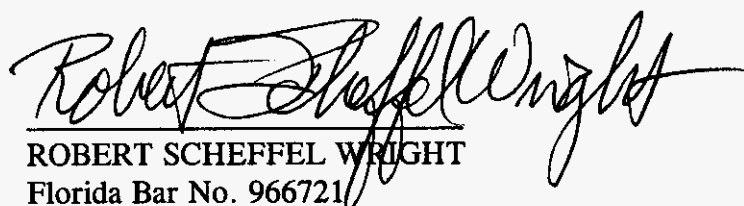
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COUNSEL FOR MONTENAY-DADE, LTD.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 11th day of March, 1998, by regular U.S. Mail to Chris S. Coutroulis, Esquire and Robert L. Ciotti, Esquire, Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Post Office Box 3239, 777 S. Harbour Island Blvd. Tampa, FL 33602 and James A. McGee, Esquire, Office of the General Counsel, Florida Power Corporation, 3201 34th Street South, Post Office Box 14042, St. Petersburg, FL 33733-4042 and by hand-delivery to David E. Smith, Esquire, Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Third Floor, Gunter Building, Tallahassee, Florida 32399-0850.


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