

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power Corporation for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Lake Cogen, Ltd., in Order No. 24734, Together with Order No. PSC-97-1437-F0F-EQ, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments Thereunder, Including When Firm or As-Available Payments Are Due, Are Limited to Analysis of Avoided Costs Based upon Avoided Unit's Contractually-Specified Characteristics.)	Docket No. 980509-EQ
)	Submitted for Filing:
)	April 30, 1998

**LAKE COGEN, LTD.'S PETITION
TO INTERVENE FOR THE LIMITED PURPOSE
OF MOVING TO DISMISS FLORIDA POWER CORPORATION'S
PETITION FOR DECLARATORY STATEMENT**

LAKE COGEN, LTD., by and through NCP Lake Power, Inc., its general partner, hereinafter collectively referred to as "Lake Cogen" or "Lake", pursuant to Rule 25-33.039, Florida Administrative Code, ("F.A.C."), hereby petitions the Florida

ACK _____ Public Service Commission (the "Commission") for leave to intervene
AFA _____
APP _____ in the above-styled docket for the limited purpose of moving to
CAF _____ dismiss the Petition for Declaratory Statement sought herein by
CMU _____
CTR _____ FLORIDA POWER CORPORATION ("FPC"). In support of its Petition to
EAG 2 Intervene, Lake Cogen states as follows:
LEG _____ 1. The name and mailing address of Intervenor, Lake Cogen
LIN 5
OPC _____ is:
RCH _____ Lake Cogen, Ltd.
SEC 1 c/o GPU International, Inc.
WAS _____ One Upper Pond Road
Parsippany, New Jersey 07054.

RECEIVED & FILED

Mon K.
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04897 APR 30 1998

FPSC-RECORDS/REPORTING

2. All pleadings, motions, orders, and other documents directed to Petitioners are to be served on the following persons:

Robert Scheffel Wright LANDERS & PARSONS, P.A. 310 West College Avenue Post Office box 271 Tallahassee, Florida 32302	Wayne Thomson, Esquire Corporate Counsel GPU International, Inc. One Upper Pond Road Parsippany, NJ 07054
---	---

David N. Hicks, Business Manager
Lake Cogen, Ltd.
c/o GPU International, Inc.
One Upper Pond Road
Parsippany, NJ 07054

For deliveries by hand and by courier service, the Zip Code for 310 West College Avenue is 32301.

3. Lake Cogen owns and operates a 112 megawatts ("MW") gas-fired cogeneration facility in Umatilla, Lake County, Florida (the "Facility"), and sells firm capacity and energy from the Facility to FPC pursuant to that certain Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility Between Lake Cogen And Florida Power Corporation dated March 13, 1991 (the "Contract"). The Contract provides for Lake Cogen to produce and deliver to FPC, and for FPC to purchase, 110 MW of firm electric capacity and energy at a minimum committed on-peak capacity factor of 90 percent from the Facility. Thermal energy produced by Lake Cogen's Facility (in the form of steam) is sold to Golden Gem Growers, Inc., for use in its citrus processing plant. Lake Cogen is a qualifying cogeneration facility or "QF" as contemplated by the applicable rules of the Commission and the Federal Energy Regulatory Commission (the "FERC").

4. In accord with Commission Rule 25-17.0832(2), F.A.C., the

Contract was approved for cost recovery by Commission Order No. 24734, issued on July 1, 1991 in Docket No. 910401-EQ. In Re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy by Florida Power Corporation, 91 FPSC 7:60 (July 1, 1991) (hereinafter the "Contract Approval Order"). By the same order, the Commission approved seven other negotiated contracts for the purchase by FPC of firm capacity and energy from other QFs. These eight negotiated contracts, together with three others approved in separate proceedings¹, are referred to collectively herein as "the Negotiated Contracts." The Commission's Contract Approval Order found that Lake Cogen's Contract was expected to provide savings to FPC's ratepayers of more than \$3 million based upon the then-current forecasts of FPC's avoided costs (Net Present Value). 91 FPSC 7:71.

5. In a letter to Lake Cogen dated July 18, 1994, FPC claimed to have determined that it (FPC) "would not be operating" "an avoided unit" with certain limited characteristics during certain hours, and further declared that, as a result of this determination, FPC would pay for energy delivered in those hours at a rate based on FPC's as-available energy costs, which are less than the firm energy prices that FPC would otherwise be obligated

¹ In Re: Complaint by CFR BioGen Corporation Against Florida Power Corporation for Alleged Violation of Standard Offer Contract, 92 FPSC 3:657; In Re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy between Ecopeat Avon Park and Florida Power Corporation, 91 FPSC 8:196; In Re: Petition for Approval of Cogeneration Contract Between Florida Power Corporation and Seminole Fertilizer Corporation, 91 FPSC 2:271.

to pay to Lake Cogen. FPC claimed that these actions were being taken pursuant to the provisions of Section 9.1.2 of the Contract. FPC sent similar letters, announcing similar claims and intentions, to the other QFs that are parties to the Negotiated Contracts.

6. On July 21, 1994, FPC initiated Docket No. 940771-EQ, In Re: Petition for Declaratory Statement Regarding Application of Rule 25-17.0832, F.A.C., To Certain Negotiated Contracts for Purchase of Firm Capacity and Energy, By Florida Power Corporation, hereinafter cited as the "Energy Pricing Docket," by filing a Petition for Declaratory Statement ("the First Petition"). In that First Petition, FPC asked the Commission to issue 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.

Petition for Declaratory Statement at page 6. (Emphasis supplied.)

7. By petition dated August 18, 1994, Lake Cogen requested the Commission's leave to intervene in the Energy Pricing Docket for the limited purpose of moving to dismiss FPC's petition for declaratory statement. By its Order No. PSC-94-1406-PCO-EQ, issued November 16, 1994, the Commission granted Lake Cogen's petition to intervene. On October 31, 1994, after the Commission Staff recommended that the Commission deny FPC's First Petition because it was inappropriate for a declaratory statement,² FPC filed a pleading styled an "Amended Petition" (hereinafter "the Second

² See Energy Pricing Docket, Staff Recommendation at 5 (FPSC Document No. 10249, October 6, 1994).

Petition"), in which FPC asked the Commission:

for a determination that [FPC's] manner of implementing the pricing mechanism specified in Section 9.1.2 of the negotiated contracts for the purchase of firm capacity and energy from certain Qualifying Facilities . . . 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.

Second Petition at 1. (Emphasis supplied.)

8. On December 1, 1994, Lake Cogen filed its Motion to Dismiss FPC's Amended Petition and Supporting Memorandum of Law. Several other QFs also intervened, and also moved to dismiss FPC's petitions on or about the same date. The Commission heard oral argument on the motions to dismiss on January 5, 1995, and, by Order No. 95-0210-FOF-EQ (hereinafter "the 1995 Dismissal Order"), unanimously granted Lake's motion to dismiss, as well as the motions of the other QFs, and dismissed FPC's Second Petition.

9. In 1995 and 1996, Lake Cogen and FPC pursued settlement negotiations which ultimately led to a settlement agreement between Lake Cogen and FPC which was executed in December, 1996. This settlement was presented to the Commission for its approval, for cost recovery purposes, in In Re: Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd. by Florida Power Corporation, Docket No. 961477-EQ ("the Lake-FPC Settlement Docket"). The Commission eventually voted, 3-to-2, to reject the Lake-FPC settlement agreement. This decision was reflected in the Commission's Proposed Agency Action Order No. 97-1437-FOF-EQ, issued on November 14, 1997 (the "Lake PAA Order"). Lake timely

protested the Lake PAA Order, and subsequently moved to dismiss the proceeding; FPC opposed Lake's protest and also opposed Lake's motion to dismiss the proceeding. On March 30, 1998, by Order No. PSC-98-0450-FOF-EQ, the Commission unanimously granted Lake's motion to dismiss, holding that the Lake-FPC Settlement Docket was moot and that the Lake PAA Order is a nullity.

10. On April 10, 1998, FPC initiated the instant docket by filing yet another petition for declaratory statement (the "Fourth Petition")³. This time, attempting to rely on the same authorities that it cited in its First Petition and in its Second Petition, plus the legally null Lake PAA Order, FPC has asked the Commission:

for a declaratory statement that, under the rationale articulated in Order No. PSC-97-1437-FOF-EQ, issued November 14, 1997 in Docket 961477-EQ, (the "Lake Order" or the "Lake Docket"), the Public Utilities Regulatory Policy Act [sic⁴] ("PURPA"), Fla. Stat. § 366.051, and Rule 25-17.0832, F.A.C., the Commission interprets its Order No. 24734, issued July 1, 1991 in Docket 910401-EQ (the "Approval Docket"), approving the Negotiated Contract for the Purchase of Firm Capacity and Energy between Florida Power and Lake Cogen, Ltd. (the

³ On February 24, 1998, FPC filed a petition for declaratory statement ("the Third Petition") relating to its negotiated power sales contract with Miami-Dade County ("Dade County") and Montenay-Dade, Ltd. ("Montenay"). In Re: Petition for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Metropolitan Dade County, Order No. 24734, Together with Order Nos. PSC-97-1437-FOF-EQ, Rule 25-17.0832, F.A.C., and Order No. 24989, Establish that Energy Payments thereunder, including when Firm or As-Available Payment is Due, Are Limited to Analysis of Avoided Costs based upon Avoided Unit's Contractually-Specified Characteristics, FPSC Docket No. 980283-EQ. Dade County and Montenay have moved to dismiss this Third Petition. The Fourth Petition is nearly identical to the Third Petition.

⁴ The correct title of PURPA is the Public Utility Regulatory Policies Act of 1978.

"Negotiated Contract" or "Contract" between FPC and "Lake"), to require that Florida Power:

- (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 Lake is entitled to receive firm or as-available energy payments;
- (C) Use the actual chargeout price of coal to Florida Power's Crystal River ("CR") Units 1 and 2, resulting from Florida Power's prevailing mix of transportation, rather than the mix of transportation in effect at the time the Contract was executed or some other mix, to compute the level of firm energy payments to Lake.

FPC's Fourth Petition at 1-2. (Emphasis supplied.) (Footnotes omitted.)

11. As a party to the Contract with respect to which FPC has requested a declaratory statement in the Fourth Petition, and as the party operating the Facility, Lake Cogen's substantial interests will clearly be affected by any decision that the Commission may reach in this docket, and accordingly, Lake Cogen is entitled to intervene.

12. With respect to issues germane to the propriety of FPC's Fourth Petition, Lake Cogen strongly believes that FPC is barred by the doctrines of res judicata, collateral estoppel, or both, as well as the doctrine of administrative finality, from even seeking the Commission's consideration of its Fourth Petition. Moreover, in its Fourth Petition, FPC relies heavily on the Lake PAA Order, which is a nullity. See Order No. PSC-98-0450-FOF-EQ. Concurrent

with the filing of this Petition, Lake Cogen is filing a motion to dismiss FPC's Fourth Petition, raising these issues and others as grounds for dismissal.

13. 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 FPCS 2:263; In Re: Petition of Nassau Power Corporation to Determine Need for Electrical Power Plant, Docket No. 920768-EQ, Order No. PSC-92-1074-PCO-EQ (September 29, 1992); Energy Pricing Docket, Order No. PSC-94-1406-PCO-EQ at 1. As demonstrated above, Lake Cogen'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 Lake Cogen.

14. 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 hereof with the Commission, should be construed as agreement or acquiescence by Lake Cogen that the Commission has jurisdiction over the issues raised by FPC's petition. Lake Cogen reserves its 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

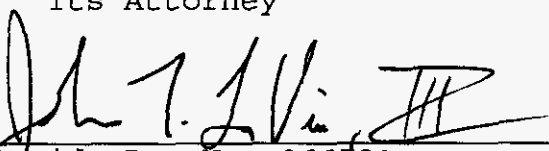
dismiss, decides to entertain the Fourth Petition and render a declaratory statement in this matter.

WHEREFORE, Lake Cogen, Ltd., respectfully requests 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 2 hereof.

Respectfully submitted this 30th day of April, 1998.

LAKE COGEN, LTD.
a Florida Limited Partnership

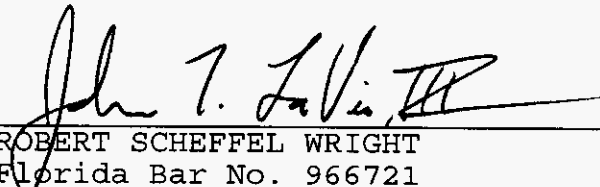
By: Robert Scheffel Wright, Esquire
Its Attorney



Florida Bar No. 966721
John T. LaVia, III,
Florida Bar No. 853666
LANDERS & PARSONS, P.A.
310 West College Avenue
Post Office Box 271
Tallahassee, Florida 32302
(904) 681-0311

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 30th day of April, 1998, by U. S. Mail to James A. McGee, Esquire, Office of the General Counsel, Florida Power Corporation, 3201 34th Street South, Post Office Box 14042, St. Petersburg, Florida 33733-4042; and by hand delivery to Richard C. Bellak, Esquire, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Third Floor, Gunter Building, Tallahassee, Florida 32399-0850.



ROBERT SCHEFFEL WRIGHT
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302
Telephone: (850) 681-0311
Telecopier: (850) 224-5595