

IN THE SUPREME COURT OF THE STATE OF FLORIDA

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-F0F-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.

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FLORIDA POWER CORPORATION,

Appellant,

vs.

Case No. 94,664

FLORIDA PUBLIC SERVICE COMMISSION,

Agency/Appellee; and

MIAMI-DADE COUNTY and MONTENAY-DADE, LTD.,

Intervenors/Appellees.

MOTION FOR CONSOLIDATION OF APPEALS FOR PURPOSES OF SCHEDULING, ORAL ARGUMENT, AND DECISION

Appellees/Intervenors, MIAMI-DADE COUNTY, FLORIDA ("DADE") and MONTENAY-DADE, LTD. ("MONTENAY"), respectfully move the court, pursuant to Rule 9.300, Florida Rules of Appellate Procedure, and by their undersigned counsel, for an order

consolidating the above-styled appeal (Case No. 94,664, "FPC v. FPSC & DADE/MONTENAY") with the Court's Case No. 94,665, In Re: Petition for Declaratory Statement that Commission's Approval of

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- RRR _____
- SEC _____
- WAW _____
- OTH _____

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Lake Cogen Ltd., 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 ("FPC v. FPSC & LAKE COGEN"), for purposes of scheduling, oral argument, and decision. In support of their motion, DADE and MONTENAY state as follows.

1. The appeals for which Intervenors/Appellees DADE and MONTENAY seek consolidation, FPC v. FPSC & DADE/MONTENAY, and FPC v. FPSC & LAKE COGEN, both arise from the denial by the Florida Public Service Commission ("FPSC") of nearly identical petitions for declaratory statements filed by Appellant Florida Power Corporation ("FPC") in 1998. Consolidation is appropriate because the appeals involve the same basic question of law, and because consolidated consideration of these appeals will promote judicial order and efficiency.

2. Both appeals involve the same basic question of law, namely whether the FPSC erred in denying FPC's petitions for declaratory statements, and basically the same issues relating to that question. These two appeals also involve virtually identical procedural histories, beginning with the inception, in July 1994, of proceedings relating to the underlying disputes between FPC and several non-utility power suppliers, including

DADE/MONTENAY and LAKE COGEN. Both the power sales contract between FPC and DADE/MONTENAY and the contract between FPC and LAKE COGEN were initially approved for cost recovery by the same 1991 FPSC order. In Re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy by Florida Power Corporation, 91 FPSC 7:60. Both were similarly affected by certain actions taken by FPC in 1994, and both would have been similarly affected by two petitions that FPC filed with the FPSC in 1994. Both DADE/MONTENAY and LAKE COGEN were parties to the proceeding in which those petitions were addressed by the Commission, and both filed motions to dismiss FPC's petitions. Both DADE/MONTENAY's and LAKE COGEN's motions to dismiss were granted by FPSC Order No. PSC-95-0210-FOF-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, 95 FPSC 2:263. FPC's 1998 petitions for declaratory statements, the denial of which is appealed in this and the companion proceeding with which DADE and MONTENAY seek consolidation, were essentially identical. Case No. 94,664 (FPC-DADE) R. at 1-85, Case No. 94,665 (FPC-LAKE) R. at 1-83. Moreover, the FPSC's orders from which FPC appeals are virtually identical, the main differences being the references to DADE/MONTENAY and LAKE COGEN in the respective orders. FPC-DADE R. at 506-514, FPC-LAKE R. at 445-453.

3. The subject cases were considered together and decided by the same vote -- i.e., by one vote by the Commissioners on

both petitions -- in the proceedings below from which FPC has appealed. FPC-DADE R. at 501.

4. Intervenors/Appellees DADE and MONTENAY seek consolidation of these cases for the purposes of scheduling, oral argument, and decision by the Court. Pursuant to discussions with counsel for LAKE COGEN, DADE and MONTENAY believe that the Intervenors/Appellees should have the opportunity to file separate briefs, and accordingly, do not move the Court for consolidated briefing. With respect to the record, DADE and MONTENAY suggest that the records in both the FPC v. FPSC & DADE/MONTENAY and FPC v. FPSC & LAKE COGEN appeals be maintained separately but that all parties be authorized to cite to either record in their briefs. This is particularly appropriate because of the similarity of the cases, because of the common procedural histories of the cases, and because Appellant FPC has, in its initial brief for the FPC v. FPSC & LAKE COGEN appeal, basically adopted the arguments advanced in its initial brief in the FPC v. FPSC & DADE/MONTENAY appeal.

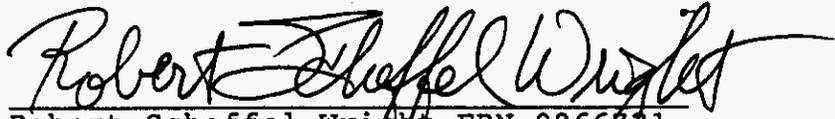
5. This motion for consolidation is not made for the purpose of unnecessary delay, is made in good faith, and will not prejudice the rights of the parties.

6. Counsel for FPSC, Agency/Appellee in this cause, and counsel for LAKE COGEN, LTD., Intervenor/Appellee in the related case, FPC v. FPSC & LAKE COGEN, have advised the undersigned that there is no objection to this requested consolidation. The undersigned has discussed this motion with counsel for Appellant

FPC, who was unable at this time to state whether FPC would object to the motion. Accordingly, the undersigned is unable to state whether Appellant FPC will object to this motion to consolidate; if and when the undersigned is advised as to FPC's position with respect to this motion, he will promptly advise the Court of that position.

WHEREFORE, Appellees/Intervenors MIAMI-DADE COUNTY, FLORIDA and MONTENAY-DADE, LTD. respectfully move the Court for an order consolidating the subject appeals, Case No. 94,664 and Case No. 94,665, for purposes of scheduling, oral argument, and decision.

Respectfully submitted,



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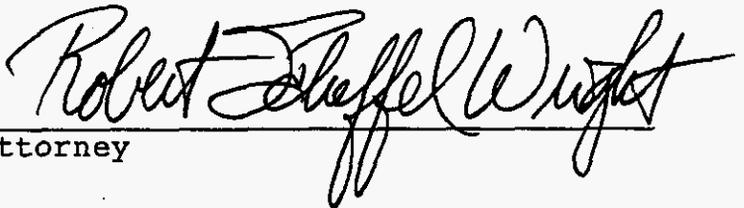
and

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Intervenors/Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Richard C. Bellak, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; John Beranek and Lee L. Willis, Ausley & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32301; Sylvia H. Walbolt, Chris C. Coutroulis, Robert L. Ciotti, and Joseph H. Lang, Jr., CARLTON FIELDS, 200 Central Avenue, Suite 2300, St. Petersburg, Florida 33701; John R. Marks III, Knowles, Marks & Randolph, P.A., 215 South Monroe Street, Suite 130, Tallahassee, Florida 32301; Rodney E. Gaddy and James A. McGee, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733; and Marilyn E. Culp and Jodi L. Corrigan, Annis, Mitchell, Cockey, Edwards & Roehn, P.A., P.O. Box 3433, Tampa, Florida 33601, this 23rd day of April, 1999.



Attorney