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IN THE SUPREME COURT OF THE STATE OF FLORIDA

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SERVICE COMMISSION
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In re: Petition by Florida Power Corporation for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy With Lake Cogen, Ltd., in Order No. 24734, Together with Orders 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 Payments are Due, are Limited to Analysis of Avoided Costs Based Upon Avoided Unit's Contractually-Specified Characteristics

980509-EQ

FLORIDA POWER CORPORATION,

Appellant,

vs.

CASE NO. 94,665

FLORIDA PUBLIC SERVICE COMMISSION,

Agency/Appellee,

LAKE COGEN, LTD.

Intervenors/Appellees.

FLORIDA POWER CORPORATION'S RESPONSE TO LAKE COGEN, LTD.'S JOINDER AND MOTION TO SUPPLEMENT THE RECORD

Appellant, Florida Power Corporation ("Florida Power"), responds to Intervenor/Appellee, Lake Cogen, Ltd.'s ("Lake Cogen") Joinder in Motion to Supplement the Record. Florida Power objects to Lake Cogen's Motion for the following reasons:

1. This appeal arises from an order of the Florida Public Service Commission denying Florida Power's Petition for Declaratory Statement.

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FPSC-RECORDS/REPORTING

2. On or about April 28, 1999, Miami-Dade County, Florida and Montenay-Dade, Ltd. (collectively "Dade/Montenay"), moved to supplement the record in case numbers 94,664 and 94,665. The Motion seeks to supplement the record on appeal by adding seven documents which were not part of the record before the Florida Public Service Commission.

3. On or about April 30, 1999, Lake Cogen filed a Motion for Joinder in Motion to Supplement the Record.

4. Both Dade/Montenay and Lake Cogen have also moved to consolidate these cases.

5. Both the Florida Statutes and the Florida Rules of Appellate Procedure prohibit the inclusion in the record on appeal of materials not present in the record below. Florida Statutes Section 120.57, enumerates the list of documents which should be included in the record for an appeal of an administrative proceeding. Florida Statutes Section 120.68(4) further provides that "judicial review of any agency action shall be confined to the record transmitted . . ." Likewise, Florida Rule of Appellate Procedure 9.190(c)(1) states that "the record shall include only materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court."


6. Neither Dade/Montenay, nor Lake Cogen, assert that the documents with which they seek to supplement the record, were part of the record below or that these documents were furnished to the Public Service Commission in advance of the administrative action of which Florida Power now seeks review.

7. Based on the foregoing, Florida Power believes that Dade/Montenay's Motion to Supplement the Record and Lake Cogen's Joinder in Motion to Supplement the Record should be denied.

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 32349-9850; Richard C. Bellack, 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; John R. Marks, III, Knowles, Marks & Randolph, P.A., 215 South Monroe Street, Suite 130, Tallahassee, Florida 32301; Robert Scheffel Wright and John T. LaVia, III, Landers & Parsons, 310 West College Avenue, Post Office Box 271, Tallahassee, Florida 32302, Gail P. Fels, Office of the County Attorney, Dade County Aviation Division, Post Office Box 592075 AMF, Miami, Florida 33159 and Sylvia H. Walbolt, Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., Post Office Box 3239, Tampa, Florida 33601-3239 this 11th day of May, 1999.

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