

IN THE SUPREME COURT OF THE STATE OF FLORIDA

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FLORIDA POWER CORPORATION,

Appellant,

vs.

FLORIDA PUBLIC SERVICE COMMISSION,

Agency/Appellee,

LAKE COGEN, LTD.

Intervenors/Appellees.

980283-EQ
980509-EQ
Case No. 94,665 and
Case No. 94,664
CONSOLIDATED

**NOTICE TO COURT REGARDING BRIEFS FILED IN CASE NO. 94,665
OR ALTERNATIVE MOTION TO FILE CORRECTED BRIEFS**

Appellant, Florida Power Corporation ("FPC"), files this notice to advise the Court of certain matters relative to the briefs filed in this appeal involving Appellee, Lake Cogen, Ltd., Case No. 94,665, now pending before the Court.

1. On May 13, 1999, this Court consolidated the appeals in Case Nos. 94,665 (the "Lake Cogen Case") and 94,664 (the "Dade-Montenay Case"). See Order Consolidating Cases attached hereto as Exhibit A. Both cases relate to the Public Service Commission's Order denying FPC's Petitions for Declaratory Statements relating to two different cogeneration contract approval orders. The parties and legal issues are similar.

2. When FPC, the appellant in both appeals, consented to the consolidation of these two appeals, FPC advised the Court that because of the differing procedural posture of the two cases, there might be reasons why the cases might later need to be severed. See Florida Power Corporation's Response to Lake Cogen's Motion to Consolidate at ¶ 1, attached hereto as Exhibit B.

APP _____
CAF _____
CMP _____
COM _____
CTR _____
ECR _____
LEG _____
OPC _____
PAI _____
RGO _____
SEC 1 _____
SER _____
DTH _____
1 to each dkt.

DOCUMENT NUMBER-DATE
10792 AUG 31 8
FPSC-RECORDS/REPORTING

3. After consolidation, to avoid duplication of issues and matters before the Court, FPC's Initial Brief in the Lake Cogen Case, Case No. 94,665, adopted by reference the argument made in the Initial Brief that FPC filed in the Dade-Montenay Case, Case No. 94,664.

4. The Court heard Oral Argument on December 6, 1999. At Oral Argument, FPC made one argument relevant to both appeals.

5. Recently, FPC and Dade-Montenay have settled their dispute and are filing a stipulation to dismiss the appeal pending before this Court in Case No. 94,664.

6. The parties to the settlement will ask this Court to dismiss the 94,664 appeal from these consolidated proceedings.

7. Case No. 94, 665 remains pending and therefore, FPC contends that its Initial Brief filed in Case No. 94, 664, should be considered part of the record in Case No. 94, 665.

8. Alternatively, if the Court deems it appropriate, counsel for FPC respectfully requests an opportunity to provide corrected briefs simply setting forth in one document the argument made in the previously incorporated briefs from the Dade-Montenay appeal

WHEREFORE, Appellant, Florida Power Corporation, requests that the Court take notice that FPC's briefs filed in Case No. 94,664 should be considered part of the record in Case No. 94,665, or alternatively, FPC respectfully requests an opportunity to provide corrected briefs simply setting forth in one document the argument made in the previously incorporated briefs.

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 29th day of August, 2000.

Rodney Gaddy FBN 314943
James A. McGee FBN 150483
FLORIDA POWER CORPORATION


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737787 v1 - 6658-007

Supreme Court of Florida

THURSDAY, MAY 13, 1999

FLORIDA POWER CORPORATION, *
*
Appellant, *
*

vs. *
*

CASE NO. 94,664

JOE GARCIA, etc., et al., *
*
Appellees. *

FLORIDA POWER CORPORATION *
*
Appellant, *
*

vs. *
*

CASE NO. 94,665

JOE GARCIA, etc., et al. *
*
Appellees. *
*

Appellees' Motion For Consolidation Of Appeals For Purposes Of Scheduling Oral Argument and Decision is granted.

Appellees' Motion To Supplement The Record is granted without prejudice to Appellant, Florida Power Corporation, moving to strike any portion of the supplemental record which will be considered by the Court after briefs have been completely filed and oral argument held.

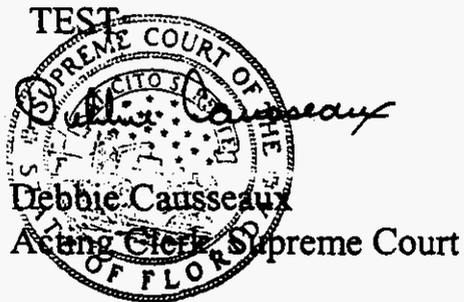
Appellee's brief shall be served on or before June 7, 1999. All briefs are extended accordingly.

MAY 13 1999

EXHIBIT A 1

A True Copy

bdm



cc: Hon. Blanca S. Bayo'
Mr. Robert Scheffel Wright
Mr. John T. LaVia III
Ms. Gail P. Fels
Mr. Richard C. Bellak
Mr. John Beranek
Mr. Lee L. Willis
Ms. Sylvia H. Walbolt
Mr. Chris C. Coutroulis
Mr. Robert L. Ciotti
Mr. Joseph H. Lang, Jr.
Mr. John R. Marks III
Mr. Rodney E. Gaddy
Mr. James A. McGee
Ms. Marilyn E. Culp
Mr. Jodi L. Corrigan
Ms. Lisbeth Kirk Rogers
Mr. David E. Smith
Mr. James D. Wing
Mr. Robert D. Vandiver

0000-0012

IN THE SUPREME COURT OF THE STATE OF FLORIDA

FLORIDA POWER CORPORATION,

Appellant.

vs.

CASE NO. 94,665

JOE GARCIA, etc., et. al.,

Appellees.

**FLORIDA POWER CORPORATION'S
RESPONSE TO LAKE COGEN'S MOTION TO CONSOLIDATE**

Appellant, Florida Power Corporation ("FPC"), by its undersigned counsel attorneys, responds to Lake Cogen, Ltd's ("Lake") Motion to Consolidate, which was served on April 23, 1999.

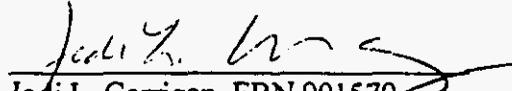
1. Appellant, FPC, does not object to Lake's Motion to Consolidate at this time. Lake seeks to consolidate this case with Case No. 94,664. The appellees in Case No. 94,664, Miami-Dade County and Montenay-Dade, Ltd., have also filed motions to consolidate. This Court should note, however, that the procedural posture underlying Case Nos. 94,664, 94,665 are quite different, and because of the difference, Case Nos. 94,664 and 94,665 may need to be severed in the future. Among other things, the trial proceedings between FPC and Lake, on the one hand, and FPC and Dade and Montenay, on the other hand, have proceeded at disparate paces. The present procedural posture does not preclude consolidation, however, FPC reserves the right to sever the cases if the differing procedural postures become relevant in this appeal.

2. Any consolidation should recognize that FPC will continue to be represented by separate counsel in the Lake and Montenay/Dade matters, including these different appeals, and

will be presenting separate briefs and oral arguments, as its interests may appear.

Respectfully submitted,

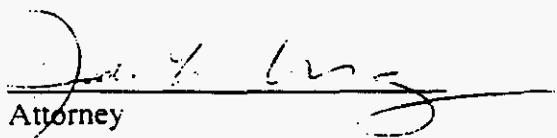
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6658-007/650181


Attorney