BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for determination that the plan for curtailing purchases from Qualifying Facilities in minimum load conditions is consistent with Rule 25-17.086, F.A.C.	DOCKET NO. 941101-EQ FILED: June 15, 1995

ORLANDO COGEN LIMITED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Orlando CoGen Limited (OCL), pursuant to rule 25-22.056(2), Florida Administrative Code, files the following Proposed Findings of Fact and Conclusions of Law. Issue number references are to the issues as listed in the Prehearing Order.

PROPOSED FINDINGS OF FACT

COMPLIANCE OF FPC PROPOSED PLAN WITH COMMISSION RULE (Issue 1)

1. In 1991 FPC executed firm contracts to purchase more than 600 MW of capacity from QFs. (Tr. 85, l. 12-16).

2. Prior to issuing the RFP relating to the 1991 firm QF contracts, FPC considered internally whether to pursue provisions for dispatchability of the QF's units within the contracts. (Tr. 510, l. 9-13; Exh. 9, RJS-9).

3. FPC decided not to negotiate for contractual dispatch rights prior to executing the 1991 QF contracts. (Tr. 90, l. 17-20).

4. In 1993 FPC foresaw that it would experience minimum load periods beginning in 1994 when some of the QF capacity for which it had signed firm, non-dispatchable contracts in 1991 came on line. (Tr. 80, l. 2-7).

5. In 1994 FPC devised a plan to use Commission Rule 25-17.086 to gain contractual rights to dispatch QF units during minimum load situations at no cost. (Exh. 9, RJS-8, at 3).

6. FPC can experience an imbalance between generation and load of 30 MW without violating NERC standards. (Tr. 385, l. 9-18).

7. Crystal River Units 1 and 2 are not assigned any role in Automatic Generation Control. (Tr. 393, l. 17 - Tr. 394, l. 2).

8. On occasion, FPC has operated Crystal River Unit 5 below its normal minimum to help manage low load situations. (Tr. 776, l. 10-22).

9. In some of FPC's "change case" scenarios, FPC identified shutting Crystal River 4 down as the alternative to curtailment. (Tr. 796, l. 11-14; Exh. 16, LDB-1).

10. In its Unit Commit simulation model, FPC has incorporated parameters it regards as necessary to maintain reliability. (Tr. 797, l. 13-14).

MITIGATION (Issue 2)

APPROPRIATE UNIT COMMITMENT (Issue 2a)

11. Prior to four of the seven curtailments declared by FPC, FPC chose to commit all five of its Crystal River base load units to service. (Exh. 11, KJS-2).

12. Prior to the other three curtailments declared by FPC, FPC chose to commit four of its five Crystal River base load units to service. (Exh. 11, KJS-2).

13. On one occasion FPC avoided a generation imbalance by deliberately delaying the return to service of its Crystal River 3 nuclear unit from a planned outage. (Tr. 943, l. 21-23).

14. FPC has also managed low load situations by keeping other base load units that were down for maintenance out of service longer than planned. (Tr. 943, l. 19-20).

15. During all of the seven curtailments declared by FPC, alternatives to base load units in the form of intermediate capacity, peaking capacity, and/or purchased power were available to FPC in sufficient quantity to enable FPC to serve its peak load following the low load event. (Tr. 654, l. 11-15; Exh. 11, KJS-3).

DECREASE GENERATION FROM OTHER SOURCES (Issue 2b)

16. FPC subordinates its firm QF contracts to the minimum take provision of its UPS contract with Southern Company. (Tr. 650, l. 10-12).

17. During two of the seven curtailment events declared by FPC, the amount of power that FPC purchased from Southern Company exceeded the amount of firm QF purchases that it curtailed. (Tr. 651, l. 17-20).

SALES EFFORTS (Issue 2c)

18. When the total of firm QF purchases and must-run base load units exceed system load, a sale by the utility of its excess generation eliminates the imbalance between generation and load. (Exh. 11, KJS-4).

19. A sale by a utility of its excess energy results in no change in the operational status or production costs of its own generators. (Tr. 656, l. 10-14; Exh. 11, KJS-4).

20. A sale by a utility of its excess energy at any price above zero results in a removal of the imbalance between generation and load without any "negative avoided costs." (Tr. 657, l. 15-21).

21. The price of a transaction on the Florida Energy Broker is derived by "splitting the savings," quantified as the difference between the cost of the purchasing utility to generate and the price quoted by the selling utility. (Tr. 952, l. 21 - Tr. 953, l.5).

22. During some hours in which FPC curtailed purchases from firm QFs, other utilities who quoted prices lower than FPC's sold energy on the Florida Energy Broker. (Tr. 223, l. 3-19).

23. During minimum load periods, FPC bases the price that it quotes for off-system sales on the same price sheet that it uses to quote bids during normal circumstances. (Tr. 214, l. 17-24).

24. When the combination of firm QF purchases and must-run base load generation exceeds FPC's minimum load, FPC incurs no incremental cost associated with the amount of the excess. (Tr. 220, l. 6-12; Tr. 526, l. 12-24).

25. Other utilities subject to regulation by FERC -- such as those in the New York Power Pool -- routinely reflect the zero marginal cost of excess energy in the prices they incorporate in inter-utility transactions. (Tr. 658, l. 2-15).

APPROPRIATE COSTS TO CONSIDER (Issue 6a)

26. Whether to increase output from a unit to make a sale is an operational decision. (Tr. 389, l. 5-7). In evaluating such a decision, FPC assesses only short-term, out-of-pocket production costs. (Tr. 388, l. 23 - Tr. 389, l. 4).

27. The selection of which units to commit is an operational decision. (Tr. 387, l. 1-16). In making this decision, FPC assesses only short-term, out-of-pocket production costs. (Tr. 388, l. 23 - Tr. 389, l. 4).

28. The choice of removing a base load unit or curtailing firm QFs is an operational decision. (Tr. 389, l. 8-11).

29. The "unit impact costs" quantified by FPC witness Lefton include changes due to creep and fatigue that may impact a unit over the course of its useful life. (Tr. 536, l. 9-12).

30. The analysis underlying a decision to cycle a base load unit or curtail firm QFs values QF deliveries over only the short-term, measured by FPC to be the curtailment period of several hours. (Tr. 670, l. 1-3).

31. FPC engaged Aptech to perform three of the eleven analyses proposed by Aptech. (Tr. 667, l. 1-4; Exh. 11, KJS-6).

32. The values for cycling costs supplied by Mr. Lefton contain significant uncertainty. The uncertainty has many sources. (Exh. 11, KJS-5 at 3).

APPROPRIATE TIME FRAME (Issue 6b)

33. When FPC evaluates which units it will next commit to service, it examines all values associated with the unit under review for a period of at least one day and usually several days. (Tr. 685, l. 9-12).

34. When FPC evaluates whether to accept or curtail deliveries of firm QF power in a minimum load situation, it values the QFs over a period limited to the curtailment hours. (Tr. 670, l. 1-3).

NEGATIVE AVOIDED COSTS (Issue 6)

35. FPC has not attempted to measure production costs with and without firm QFs at any time prior to its decisions to curtail firm deliveries. (Tr. 912, l. 9-14).

36. When the status of the units on the system is known, it takes only a few minutes to compare the costs of an alternative to curtailment with the Unit Commit system simulation program. (Tr. 754, l. 12-14).

37. With respect to each of FPC's seven original base cases curtailment scenarios, there was available to FPC a feasible shut down alternative involving no negative avoided costs. (Tr. 676, l. 16-21).

38. With respect to the seven modified base cases presented by FPC in rebuttal testimony, there were available to FPC in at least six of the cases feasible shutdown alternatives that involved no negative avoided costs. (Tr. 692, l. 12-14; Exh. 13, KJS-10).

39. In all simulations of the FPC system during the seven curtailment events, using FPC's simulation model and data, the base load unit removed to eliminate the generation imbalance returned to service in time to meet rising load following the minimum load event. (Tr. 763, l. 7-15).

40. FPC uses the same Unit Commit model and data that was employed to prepare the curtailment and change case scenarios to derive the price it pays for as-available energy. (Tr. 886, l. 21-23).

PROPOSED CONCLUSIONS OF LAW

1. One purpose of PURPA is to encourage the development of cogeneration. (16 U.S.C. § 824a-3).

2. PURPA imposed on utilities a mandatory obligation to purchase capacity and energy from QFs. (16 U.S.C. § 824a-3(a)(2)).

3. PURPA directed FERC to promulgate regulations that would carry out the Congressional intent. (16 U.S.C. § 824a-3).

4. As a matter of law, FPC must place a higher priority on firm QF contracts than it places on any agreement it has to purchase capacity and energy from another utility. (Preamble at 12,219; 12,227).

5. Contractual rights of QFs under long-term contracts with utilities take precedence over the FERC's curtailment regulations. (New York State Electric & Gas Corp., FERC Docket No. EL95-28-000 (April 12, 1995); Preamble at 12,228).

6. FERC intends that the cost of QF energy relative to the purchasing utility's avoided cost be measured over the life of the contract rather than on a short-term basis. (18 C.F.R. § 292.304(b)(5).

7. FERC provides only two exceptions to the mandatory obligation of the utility to purchase from QFs: § 292.307 (system emergency) and § 292.304(f)(1) (operational circumstances).

8. The Commission's curtailment rule can be no broader in scope than FERC's curtailment regulation. (U.S. Const., Art. VI, cl. 2).

9. To satisfy Commission Rule 25-17.086, FPC has the burden to demonstrate that its plan conforms to one of the two FERC exceptions that Rule 25-17.086 implements.

10. FPC's proposed plan does not satisfy the "system emergency" standard of § 292.307.

11. To satisfy the intent and requirements of PURPA and § 292.304(f)(1), as implemented by Rule 25-17.086, FPC must demonstrate that operational circumstances exist; that it has taken all appropriate measures to mitigate imbalances between generation and load; and that it will experience negative avoided costs unless it curtails QF deliveries.

12. FPC's proposed plan does not demonstrate the type of "operational circumstances" required by § 292.304(f)(1).

13. FPC has not satisfied the mitigation requirements of § 292.304(f)(1) that the Commission implements through Rule 25-17.086.

14. FPC has not satisfied the requirement of § 292.304(f)(1), as implemented by Rule 25-17.086, that it demonstrate the necessity of curtailments to prevent negative avoided costs.

15. FPC has not carried its burden of proof to demonstrate that its proposed plan meets the requirements of PURPA and federal and state regulations implementing PURPA.

16. FPC's declared curtailments have been unauthorized and unwarranted.

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas
315 S. Calhoun Street
Suite 716
Tallahassee, Florida 32301
904/222-2525

and

Gregory A. Presnell
Akerman, Senterfitt &
Eidson, P.A.
Firstate Tower
255 S. Orange Avenue, 17th Floor
P.O. Box 231
Orlando, Florida 32802

Attorneys for Orlando CoGen
Limited, L.P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Orlando CoGen Limited's Proposed Findings of Fact and Conclusions of Law has been furnished by hand delivery* or by U.S. Mail to the following parties of record, this 15th day of June, 1995.

Martha Brown*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald L. Gunter Bldg., Rm. 370
Tallahassee, FL 32399

James A. McGee
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733

Ansley Watson
MacFarlane, Ausley, Ferguson & McMullen
111 Madison Street, Suite 2300
First Florida Tower, 23rd Floor
P. O. Box 1531
Tampa, FL 33601

Gail Fels
County Attorney's Office
Aviation Division
P. O. Box 592075 AMF
Miami, FL 33159

Schef Wright*
Landers & Parsons
310 West College Avenue
Third Floor
P. O. Box 271
Tallahassee, FL 32302

Kelly A. Tomblin
Energy Initiatives, Inc.
One Upper Pond Road
Parsippany, NJ 07054

Richard Zambo, Esquire
Richard Zambo, P.A.
598 S.W. Hidden River Avenue
Palm City, FL 34990

Michael O'Friel
Wheelabrator Environmental Systems, Inc.
Liberty Lane
Hampton, NH 03842

Suzanne Brownless
Suzanne Brownless, P.A.
2546 Blairstone Pines Drive
Tallahassee, FL 32301

Barry Huddleston
Destec Energy Company, Inc.
2500 CityWest Boulevard
Suite 150
Houston, TX 77210-4411

Karla Stetter
Acting County Attorney
7530 Little Road
New Port Richey, FL 34654

R. Stuart Broom
Verner, Liipfert, Bernhard, McPherson & Hand, Chartered
901 15th St., N.W., Suite 700
Washington, D.C. 20005

M. Julianne Yard
Assistant County Attorney
Pinellas County
315 Court Street
Clearwater, FL 34616

Patrick K. Wiggins*
Marsha E. Rule
Wiggins & Villacorta, P.A.
Post Office Drawer 1657
Tallahassee, FL 32302

Bruce May*
Holland and Knight
Post Office Drawer 810
Tallahassee, FL 32302

Robert F. Riley
Auburndale Power Partners,
Limited Partnership
12500 Fair Lakes Circle
Suite 420
Fairfax, VA 22033

Nancy Jones
Polk Power Partners, L.P.
1125 U.S. 98 South
Suite 100
Lakeland, FL 33801

Barrett G. Johnson*
Johnson & Associates
315 S. Calhoun Street
Suite 350
Tallahassee, FL 32301

Joseph A. McGlothlin