



**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

February 19, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 970096-EQ

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Motion for Preliminary Prehearing Conference to Establish Issues to be Determined in this Docket by Florida Power Corporation.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee
for James A. McGee

- ACK _____
- AFA 2
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG Dudley
- LEG 2
- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

JAM/kp
Enclosures
cc: Parties of Record

DOCUMENT NUMBER-DATE

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CERTIFICATE OF SERVICE

Docket No. 970096-EQ

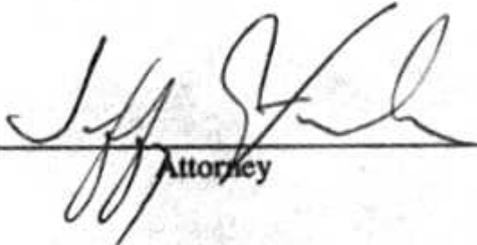
I HEREBY CERTIFY that a true and correct copy of the Motion for Preliminary Prehearing Conference to Establish Issues to be Determined in this Docket has been sent by regular U.S. mail to the following individuals this 19th day of February, 1997:

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Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited approval of an agreement to purchase the Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida Power Corporation.

Docket No. 970096-EQ

Submitted for filing:
February 19, 1997

**MOTION FOR PRELIMINARY PREHEARING CONFERENCE
TO ESTABLISH ISSUES TO BE DETERMINED IN THIS DOCKET**

Florida Power Corporation ("Florida Power"), Petitioner herein, hereby requests that the Commission order a preliminary prehearing conference for the purpose of expediting the delineation of the issues to be heard and determined by the Commission herein, and in support thereof submits the following:

1. As reflected by Florida Power's Petition and its prepared testimony filed herein in support thereof, the opportunity for Florida Power to purchase the Tiger Bay generating facility and terminate the power purchase agreements for the facility's capacity and power pursuant to the Purchase Agreement dated January 20, 1997 ("Purchase Agreement") by and between Florida Power and Tiger Bay Limited Partnership ("Tiger Bay"), represents a unique opportunity to provide significant long term benefits to Florida Power's ratepayers. Rarely does a utility have the chance to acquire an existing, reliably operating generating plant the

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owners of which enjoy the advantage of agreements for the sale of the plant's capacity and power sanctioned by the Public Utility Regulatory Policies Act ("PURPA") at prices exceeding the current price of power in the wholesale market which assure long term profitability for their investment.

2. The terms of the Purchase Agreement expressly make time of the essence as to the closing of the contemplated transaction. Tiger Bay insisted as a significant part of the consideration for the sale of its facility that the Purchase Agreement specify a date certain by which Florida Power would have to satisfy the condition to its obligations under the Purchase Agreement that its proposed recovery of the purchase price shall have been approved by a final, non-appealable order of the Commission. That date is July 1, 1997.

3. This is not a proceeding in which the Commission is being asked to set broad policy. Indeed, the nature of the transaction before the Commission is so specific and unusual, and the legitimate interests of the parties who have chosen to participate in its subject matter are so limited, that it would be inappropriate for the Commission to use this docket as the basis for establishing generally applicable policy. While Florida Power does not seek to unduly limit debate with respect to the true subject matter of this proceeding, which is the rate treatment it proposes for the purchase price for the Tiger Bay facility and the cost of fuel to operate the facility under the gas supply contract it will (and must) assume

under the Purchase Agreement, and approval of the termination of the Tiger Bay power purchase agreements, clearly the debate should be appropriately focused on issues relevant to that subject matter.

4. Generic policy matters, such as the future of competition in Florida's electric power industry and economic development in Florida Power's service territory are not germane to the subject matter of this proceeding. Whether or not the Tiger Bay transaction closes and Florida Power acquires the Tiger Bay facility, that facility is and will be a dedicated component of Florida Power's generation fleet, permanently if the transaction closes, and at least until 2025 under the existing power purchase agreements if it does not. The price payable for capacity and power under Florida Power's power purchase agreements with Tiger Bay was established based on avoided cost at a specific point in time under the sanction of PURPA, so that rather than being a competitor in the Florida power generation market, Tiger Bay is effectively exempted by federal statute from having to compete for the sale of its capacity and power over the thirty year life of those agreements. Therefore, Florida Power's acquisition of the Tiger Bay facility simply will not have the effect of eliminating an actual or potential competitor. To the extent that Florida Power's acquisition of the Tiger Bay facility lowers the future cost of power to Florida Power's customers, the transaction may have some positive effect on economic development; and conversely, if the transaction does not close, the status quo will continue. There

is, therefore, simply no economic development issue relevant to this proceeding. If this proceeding becomes burdened with broadly generic issues having no relevance to the merits of the real subject matter of Florida Power's Petition, it is very unlikely that the proceeding can be completed in time for Florida Power to meet the time constraint imposed on the Tiger Bay acquisition by the Purchase Agreement.

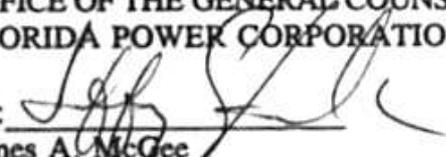
5. Similarly, the Commission should not permit matters of contract law, such as whether the transaction contemplated by the Purchase Agreement will adversely affect Vastar Gas Marketing, Inc.'s rights under its gas supply contract with Tiger Bay, which are appropriately within the jurisdiction of the civil court system, to be included as issues in this proceeding. Otherwise, the amount of time inherently required to complete this proceeding will very likely cause the Purchase Agreement transaction to become untenable to Tiger Bay and therefore unavailable to Florida Power.

THEREFORE, Florida Power respectfully requests that the Commission convene a preliminary prehearing conference at the earliest possible date for the purpose of establishing and appropriately limiting the issues which the parties to this proceeding are to address and which the Commission will hear and determine in response to Florida Power's Petition, in order that this proceeding can be

concluded in an efficient and timely manner consistent with the time constraint imposed on Florida Power under the Purchase Agreement.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

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