

IN THE SUPREME COURT
STATE OF FLORIDA

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 and 24989, PURPA, Florida Statute 366.051 and Rule 25-17.082, F.A.C., 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.

CASE NO. 94,665

980509-ED
980283

FLORIDA POWER CORPORATION,

Petitioner/Appellant,

vs.

FLORIDA PUBLIC SERVICE COMMISSION,

Agency/Appellee;

LAKE COGEN, LTD.,

Intervenor/Appellee.

MOTION TO CONSOLIDATE

Appellee, Lake Cogen, Ltd., moves to consolidate this case (Case No. 94,665) with Case No. 94,664. Consolidation is sought for purposes of the oral argument and decision.

The appellant is Florida Power Corporation (FPC) in both cases and this entity is now represented by two different law firms and each firm has filed a separate brief. Before the Public Service Commission FPC was represented by a single law firm plus in-house counsel to FPC who deferred to the law firm.

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The appellees in Case No. 94,664 are Metropolitan Dade County and Montenay-Dade, Ltd. and the appellee in Case No. 94,665 is Lake Cogen, Ltd. These entities are both non-utility power suppliers with sales contracts with FPC. There is only one issue on appeal--whether the PSC correctly denied petitions by FPC for a declaratory statement. The PSC, in two virtually identical orders of December 4, 1998, denied the two petitions for declaratory statement. The two petitions were considered together by the PSC and acted upon by one vote of the Commissioners.

Other than a difference in the names, the two orders of December 4, 1998, are almost word for word the same. A single argument and vote occurred before the PSC and the two almost identical orders were simultaneously issued and appealed in separate simultaneous notices.

There has been confusion between Case Nos. 94,664 and 94,665. The Dade/Montenay appellant's brief and appendix in 94,664 was not served on counsel for Lake Cogen in 94,665 until a special request was made. On February 19, 1999, before the filing of briefs, this Court's clerk advised all counsel that the cases would "be considered together." The undersigned counsel filed a Notice of Appearance in the cases as being "consolidated." By order of April 12, 1999, the Court granted the two appellee's separate motions for extensions in a single order, but with only one case number on that order. Consolidation will cure this apparent confusion.

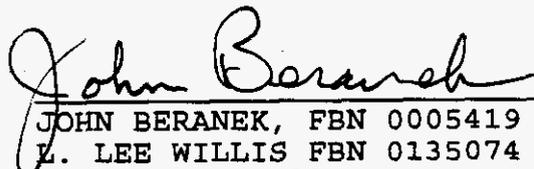
The clerk of the PSC has prepared two indexes to the record, but there is no need to cause delay by altering these documents. Counsel can easily make appropriate reference to the indexes and Lake Cogen and Dade/Montenay are both filing motions to supplement the record because certain items have not been included in the record index. Any further index by the clerk should, of course, be consolidated.

The appellant's brief filed by FPC through attorney Culp in the Lake Cogen matter (No. 94,665) contains only two pages of argument and simply adopts and relies upon the appellant's brief served simultaneously in the other Dade/Montenay case (No. 94,664). Thus, the same appellant's brief has actually been incorporated into both cases. Although Lake Cogen and Dade/Montenay will file separate briefs directed to the two appellant's briefs, these cases should be consolidated for oral argument and decision because they involve the same questions of law and because consolidation will promote judicial efficiency and consistency. Confusion in the handling of these matters will also be eliminated.

A copy of this Motion to Consolidate is being filed in both cases and served on all counsel in both cases. In-house counsel for FPC in both cases James McGee has been contacted regarding his position on the Motions to Consolidate, but has not yet been able to advise of his client's position. We will promptly advise the Court as soon as we learn whether an objection will be filed.

I HEREBY CERTIFY that a copy has been furnished to **ROBERT SCHEFFEL WRIGHT**, Landers & Parsons, 310 West College Avenue, Post

Office Box 271, Tallahassee, Florida 32302; **JODI L. CORRIGAN, MARILYN E. CULP, LISBETH KIRK ROGERS,** Annis, Mitchell, Cockey, Edwards & Roehn, P.A., P.O. Box 3433, Tampa, Florida 33601; **DIRECTOR,** Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32349-9850; **DAVID E. SMITH,** Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Third Floor, Gunter Building, Tallahassee, Florida 32399-0880; **JAMES D. WING,** 701 Brickell Avenue, 30th Floor, P.O. Box 15441, Miami, Florida 33101; **JOHN R. MARKS, III,** Knowles, Marks & Randolph, P.A., 215 South Monroe Street, Suite 130, Tallahassee, Florida 32301; **RODNEY GADDY, JAMES MCGEE,** Florida Power Corporation, Legal Department, P.O. Box 14042, St. Petersburg, Florida 33733; **SYLVIA H. WALBOLT, CHRIS C. COUTROULIS, ROBERT L. CIOTTI, JOSEPH H. LANG, JR.,** Carlton Fields, 200 Central Avenue, Suite 2300, St. Petersburg, Florida 33701; **GAIL P. FELS,** Assistant County Attorney, Dade County Aviation Department, P.O. Box 592075 AMF, Miami, Florida 33159; **ROBERT D. VANDIVER, RICHARD C. BELLAK,** Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850; this 23d day of April, 1999.



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