

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power Corporation for Declaratory Statement that Commission's Approval of Negotiated Contract for Purchase of Firm Capacity and Energy between Florida Power Corporation and Lake Cogen, Ltd., in Order No. 24734, Together with Order No. 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.	)	Docket No. 980509-EQ
	)	Submitted for Filing:
	)	April 30, 1998

**LAKE COGEN, LTD.'S MOTION FOR  
EXPEDITED TREATMENT OF ITS MOTION TO DISMISS  
FLORIDA POWER CORPORATION'S  
PETITION FOR DECLARATORY STATEMENT**

LAKE COGEN, LTD., by and through NCP Lake Power, Inc., its general partner, hereinafter collectively referred to as "Lake Cogen" or "Lake", pursuant to Rule 25-22.037(2), Florida Administrative Code, ("F.A.C.") respectfully moves the Florida Public Service Commission ("Commission") to grant expedited

treatment to its Motion to Dismiss Florida Power Corporation's Petition for Declaratory Statement. In support of its request for expedited treatment, Lake Cogen states as follows:

1. On April 10, 1998, Florida Power Corporation ("FPC") filed a petition for declaratory statement seeking Commission action on a contractual dispute with Lake Cogen (the "Fourth Petition"). Simultaneously with this motion for expedited treatment, Lake Cogen has also filed with the Commission a motion to dismiss FPC's

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Petition (the "Motion to Dismiss"). Lake Cogen is seeking expedited treatment of the Motion to Dismiss.

2. This matter has a long and somewhat convoluted procedural background, recounted in the Motion to Dismiss. Accordingly, Lake Cogen will not repeat the procedural background herein; however, it is important to note that, as described in the Motion to Dismiss, FPC and Lake Cogen are currently parties to an action pending in Circuit Court in Lake County (the "Lake Circuit Court Action")<sup>1</sup> in which the trial judge has granted partial summary judgment in favor of Lake Cogen on the energy pricing issue that is at the heart of FPC's Petition. Thus FPC's Petition is a deliberate collateral attack on the Circuit Court's jurisdiction and on the Circuit Court's order granting Lake Cogen's motion for partial summary judgment.

3. Lake Cogen and FPC are currently litigating the Lake Circuit Court Action. Accordingly, Lake Cogen is expending significant sums litigating the Lake Circuit Court Action. By filing its Fourth Petition with the Commission, and collaterally attacking the Lake Circuit Court's jurisdiction and Order Granting Partial Summary Judgment, FPC has forced Lake Cogen to spend significant additional sums relitigating before the Commission the very same jurisdictional issues that the Commission decided-- against FPC--more than three years ago. See In Re: Petition for

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<sup>1</sup> The Lake Circuit Court Action is styled NCP Lake Power, Incorporated, a Delaware corporation, as General Partner of Lake Cogen, Ltd., a Florida limited partnership, Plaintiff v. Florida Power Corporation, a Florida corporation, Defendant, Case No. 94-2354 AC01

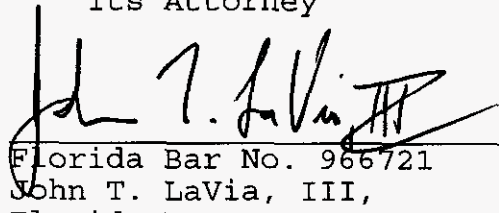
Determination that Implementation of Contractual Pricing Mechanism for Energy Payments to Qualifying Facilities Complies with Rule 25-17.0832, F.A.C., 95 FPSC 2:263 (Order No. 95-0210-FOF-EQ).

4. Defending against FPC's unnecessary and improper Fourth Petition is further draining Lake's financial and human resources. It is patently outrageous that Lake should have to spend any more time, effort, or money defending itself against a collateral attack on the Lake Circuit Court's Order and against FPC's attempts to relitigate the jurisdictional issue on which the Commission ruled against FPC more than three years ago. In order to minimize additional adverse financial impacts, Lake Cogen hereby requests that the Commission expedite treatment of Lake's Motion to Dismiss.

Respectfully submitted this 30th day of April, 1998.

LAKE COGEN, LTD.  
a Florida Limited Partnership

By: Robert Scheffel Wright, Esquire  
Its Attorney

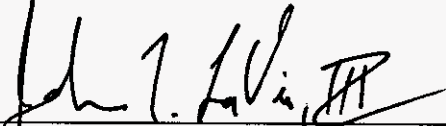


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Florida Bar No. 966721  
John T. LaVia, III,  
Florida Bar No. 853666  
LANDERS & PARSONS, P.A.  
310 West College Avenue  
Post Office Box 271  
Tallahassee, Florida 32302  
(904) 681-0311

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 30th day of April, 1998, by U. S. Mail to James A. McGee, Esquire, Office of the General Counsel, Florida Power Corporation, 3201 34th Street South, Post Office Box 14042, St. Petersburg, Florida 33733-4042; and by hand delivery to Richard C. Bellak, Esquire, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Third Floor, Gunter Building, Tallahassee, Florida 32399-0850.



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ROBERT SCHEFFEL WRIGHT  
Florida Bar No. 966721  
John T. LaVia, III  
Florida Bar No. 853666  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
Telephone: (850) 681-0311  
Telecopier: (850) 224-5595