LANDERS & PARSONS, P.A.
ATTORNEYS AT LAW

CINDY L. BARTIN
DAVID S. DEE
JOSEPH W. LANDERS, JR.
JOHN T. LAVIA, III
FRED A. MCCORMACK
PHILIP S. PARSONS
ROBERT SCHEFFEL WRIGHT

HOWELL L. FERGUSON
OF COUNSEL

VICTORIA J. TSCHINKEL
SENIOR CONSULTANT
(NOT A MEMBER OF THE FLORIDA BAR)

310 WEST COLLEGE AVENUE
POST OFFICE BOX 271
TALLAHASSEE, FLORIDA 32302
TELEPHONE (850) 681-0311
TELECOPY (850) 224-5595
www.landersandparsons.com

RECEIVED
FEB 27 1998
BUREAU OF
AIR REGULATION

February 27, 1998

Clair Fancy, P.E.
Bureau Chief
Bureau of Air Regulation
Department of Environmental
Protection
2600 Blair Stone Road
Mail Station 5505
Tallahassee, Florida 32399-2400

Re: Okeelanta Power Limited Partnership
DEP Permit No. AC50-219413;PSD-FL-196 0990332-009-AC

Dear Mr. Fancy:

This law firm assists Okeelanta Power Limited Partnership ("Okeelanta Power") with various environmental law issues affecting the operation of Okeelanta Power's cogeneration facility ("Facility") in Palm Beach County, Florida. On behalf of Okeelanta Power, we hereby request the Department of Environmental Protection ("DEP") to grant an extension of time for the simultaneous operation of the Facility's boilers with the boilers at the adjacent sugar mill. More specifically, Okeelanta Power wishes to amend Specific Conditions 17 and 18 of the Facility's DEP permit (DEP Permit No. AC50-219413; PSD-FL-196), in the manner shown below:

FROM:

17. During the first three years of commercial cogeneration facility operation, the existing Boilers Nos. 4, 5, 6, 10, 11, 12, 14, and 15 (Permit Nos. AO50-169210, 190690, 175414, 190693, 175411, 169215, 189904, and 209094, respectively), may be retained for standby operation. During the period from initial firing until April 1, 1998, all three cogeneration boilers can be operated simultaneously with the existing boilers. Only biomass and No. 2 fuel oil may be used in the cogeneration boilers during periods of simultaneous operation. If more than 910,836 lb/hr steam is generated in the cogeneration boilers, steam in excess of

910,836 lb/hr must be sent to the Okeelanta sugar mill, and the existing boiler's steam production reduced by an equivalent amount. After April 1, 1998, the cogeneration boilers may be operated only when the existing sugar mill boilers are shutdown or in the process of immediately shutting down. During operation, the existing sugar mill boilers must meet all requirements in the most recent construction and operation permits for the boilers. These existing boilers shall be shutdown and rendered incapable of operation within three (3) years of commercial startup of the cogeneration facility, but no later than January 1, 1999.

18. Boiler No. 16 (AC50-191876) may be retained as a standby boiler for the sugar refinery and sugar mill in accordance with its existing permit. Boiler No. 16 may be operated during startup, debugging, and testing of the cogeneration facility. After April 1, 1998, this boiler may be operated only when one or more of the three cogeneration boilers are shutdown. During operation, this boiler must meet all requirements in the current construction or operating permit for the boiler.

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18. Boiler No. 16 (AC50-191876) may be retained as a standby boiler for the sugar refinery and sugar mill in accordance with its existing permit. Boiler No. 16 may be operated during startup, debugging, and testing of the cogeneration facility. After April 1, **2000**, this boiler may be operated only when one or more of the three cogeneration boilers are shutdown. During operation, this boiler must meet all requirements in the current construction or operating permit for the boiler.

Current Status of Operations

On May 14, 1997, Okeelanta Power Limited Partnership filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida. The Chapter 11 filing was precipitated, in large part, by a dispute between Okeelanta Power and Florida Power & Light Company ("FPL") in which FPL claims it has no further obligations under certain power purchase agreements. FPL has refused to make capacity payments to Okeelanta Power, thus causing a shortfall in Okeelanta Power's monthly cash receipts. On or about September 15, 1997, Okeelanta Power suspended operations at the Facility and shutdown the Facility's boilers. Okeelanta Power and other parties entered into a Term Sheet agreement, which was approved by the Bankruptcy Court, authorizing (but not requiring) operation of the Facility on an interim basis.

As you know, the Florida Department of Environmental Protection issued a permit to Okeelanta Power for the construction of the Facility, which was expected to replace the boilers used at Okeelanta Corporation's sugar mill. On June 14, 1996, DEP issued a permit amendment that authorized the simultaneous operation of the Facility and the sugar mill's boilers until April 1, 1997, so that Okeelanta Power might connect, test and fine tune the interconnected operation of the two facilities. In 1997, this deadline was extended to April 1, 1998, because although Okeelanta Power had connected and begun testing, it had not had enough time to perfect the combined operation of the two facilities.

It was expected that the 1997-1998 harvesting season would provide Okeelanta Power with adequate opportunities to complete the fine tuning of the interconnected operations. However, from the date of DEP's permit amendment in 1997 to the present, the Facility has not been able to complete the interconnection testing with the sugar mill for the reasons described below. The Facility could not conduct interconnected operations with the sugar mill after the end of the harvest season in the Spring of 1997 because the sugar mill was shut down for routine repairs and maintenance. Due to the legal problems and resulting financial difficulties described above, the Facility shutdown in September 1997, before the start of the 1997-1998 harvest. The Facility was not restarted until February 25, 1998. Since the current harvest season will end soon, completion of the fine tuning process will not be possible during the 1997-98 harvest season. After the end of the current harvest, the sugar mill will again shutdown, the bagasse will be gone, and it will not be possible to test interconnected operations until the 1998-1999 harvest season, at the earliest.

Request for a Permit Amendment

Given the limited opportunities for interconnected operations during the remainder of the current harvest season, and given the April 1st deadline for the cessation of simultaneous operations, Okeelanta Power believes it is essential to request an extension of time from DEP for simultaneous operations.

In light of the FPL litigation and the bankruptcy case, Okeelanta Power cannot predict accurately how long it will take to connect and fine tune the systems that are used during interconnected operations. The legal proceedings create significant uncertainties and problems for Okeelanta Power. The fine tuning process itself involves additional uncertainties. Given these uncertainties, Okeelanta Power must maintain flexibility in its planning and operations.

Okeelanta Power has significant incentives to complete the fine tuning process expeditiously, but Okeelanta Power does not wish to establish a deadline in the DEP permit that may become unattainable. Okeelanta Power also does not wish to be placed in a position where it must again return to the Department to request another extension of time. Since Okeelanta Power has been unable to connect the Facility to the sugar mill at all during the current harvest season, Okeelanta Power believes its authorization to conduct tests of interconnected operations should be extended to include the next two harvest seasons, if necessary.

Accordingly, for all of the reasons set forth above, Okeelanta Power respectfully requests DEP to amend the Facility's permit to allow the simultaneous operation of the Facility and Okeelanta Corporation's boilers through April 1, 2000.

Okeelanta Power also requests the Department to extend the deadline for dismantling the boilers at the sugar mill until April 1, 2001. This extension is necessary to enable Okeelanta Power to resolve any issues concerning interconnected operations. Obviously, the boilers at Okeelanta Corporation's sugar mill cannot be dismantled until Okeelanta Power has connected to the sugar mill and established normal, long-term operating conditions.

Ambient Air Quality Impacts

The air quality impacts associated with the simultaneous operation of the cogeneration facility and the sugar mill were described by KBN in the permit application for the Facility's construction permit. Those impacts are the same as previously described in the permit application. The simultaneous operation of the Facility and sugar mill will not cause or contribute to a violation of any ambient air quality standards or PSD increments. This request for a permit amendment only extends the time when such impacts potentially may occur.

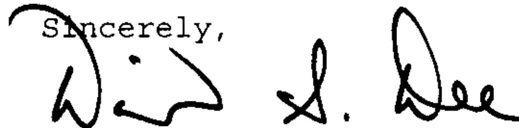
Conclusion

Okeelanta Power would greatly appreciate DEP's prompt consideration of this request for a permit amendment.

We have enclosed a check (No. 006535) from Okeelanta Power in the amount of $250 to pay the DEP fee for a permit amendment.

Please call me at (850) 681-0311 if you have any questions about this request for a permit amendment.

Sincerely,



David S. Dee

cc: David Knowles--DEP Ft. Myers
James Stormer--HRS PBC
Willard Hanks--DEP Tallahassee

/OKEE88

DRAFT

(DATE)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. David S. Dee
Landers & Parsons
Post Office Box 271
310 W. College Avenue
Tallahassee, Florida 32301

Re: Permit Amendment No. _________; PSD-FL-196

Dear Mr. Dee:

The Department has reviewed your letter dated February 27, 1998 and Okeelanta Power Limited Partnership's request that the above-referenced permit be amended to allow additional time for the simultaneous operation of the boilers at Okeelanta Corporation's sugar mill and Okeelanta Power's cogeneration facility. This request is acceptable and the referenced permit is amended as follows:

SPECIFIC CONDITIONS FOR OKEELANTA POWER LIMITED PARTNERSHIP

FROM:

17. During the first three years of commercial cogeneration facility operation, the existing Boilers Nos. 4, 5, 6, 10, 11, 12, 14, and 15 (Permit Nos. AO50-169210, 190690, 175414, 190693, 175411, 169215, 189904, and 209094, respectively), may be retained for standby operation. During the period from initial firing until April 1, 1998, all three cogeneration boilers can be operated simultaneously with the existing boilers. Only biomass and No. 2 fuel oil may be used in the cogeneration boilers during periods of simultaneous operation. If more than 910,836 lb/hr steam is generated in the cogeneration boilers, steam in excess of 910,836 lb/hr must be sent to the Okeelanta sugar mill, and the existing boiler's steam production reduced by an equivalent amount. After April 1, 1998, the cogeneration boilers may be operated only when the existing sugar mill boilers are shutdown or in the process of immediately shutting down. During operation, the existing sugar mill boilers must meet all requirements in the most recent construction and operation permits for the boilers. These existing boilers shall be shutdown and rendered incapable of operation within three (3) years of commercial startup of the cogeneration facility, but no later than January 1, 1999.

DRAFT

18. Boiler No. 16 (AC50-191876) may be retained as a standby boiler for the sugar refinery and sugar mill in accordance with its existing permit. Boiler No. 16 may be operated during startup, debugging, and testing of the cogeneration facility. After April 1, 1998, this boiler may be operated only when one or more of the three cogeneration boilers are shutdown. During operation, this boiler must meet all requirements in the current construction or operating permit for the boiler.

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A copy of this letter shall be attached to the referenced permit and shall become a condition of that permit.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

____________________________

Howard L. Rhodes, Director
Division of Air Resources
Management

DRAFT

## CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this INTENT TO ISSUE PERMIT AMENDMENT was sent by certified mail(*) and copies were mailed by U.S. Mail before the close of business on ________, 1998 to the person(s) listed:

David S. Dee, Landers and Parsons*
David Knowles, SD
Isidore Goldman,SED
Silvia Alderman, Katz, Kutter

Brian Beals, EPA
John Bunyak, NPS
James Stormer, PBCHD

Clerk Stamp

**FILING AND ACKNOWLEDGMENT**
**FILED,** on this date, pursuant to §120.52(11), Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

______________________________
Clerk Date

**OKEELANTA POWER LTD, PARTNERSHIP**
*DEBTOR IN POSSESSION CASE # 97-32340*
*P.O. BOX 8*
*SOUTH BAY, FL 33493*

*First Union National Bank*
*Belle Glade, Florida*
*24 Hour Information Service*
*1-800-735-1012*

63-643/670
00760

006535

Pay: ***********************************Two hundred fifty dollars and no cents

| DATE | CHECK NO. | AMOUNT |
|---|---|---|
| February 26, 1998 | 6535 | $*********250.00 |

PAY TO THE ORDER OF

FL Dept of Envr. Protection
2600 Blair Stone Road
Tallahassee,, FL 32399-2400

MP

⑈006535⑈ ⑆067006432⑆ 2090001777751⑈

LANDERS & PARSONS, P.A.
ATTORNEYS AT LAW

CINDY L. BARTIN
DAVID S. DEE
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RECEIVED
FEB 27 1998
BUREAU OF
AIR REGULATION

February 27, 1998

Clair Fancy, P.E.
Bureau Chief
Bureau of Air Regulation
Department of Environmental
Protection
2600 Blair Stone Road
Mail Station 5505
Tallahassee, Florida 32399-2400

Re: Okeelanta Power Limited Partnership
DEP Permit No. AC50-219413;PSD-FL-196

Dear Mr. Fancy:

This law firm assists Okeelanta Power Limited Partnership ("Okeelanta Power") with various environmental law issues affecting the operation of Okeelanta Power's cogeneration facility ("Facility") in Palm Beach County, Florida. On behalf of Okeelanta Power, we hereby request the Department of Environmental Protection ("DEP") to grant an extension of time for the simultaneous operation of the Facility's boilers with the boilers at the adjacent sugar mill. More specifically, Okeelanta Power wishes to amend Specific Conditions 17 and 18 of the Facility's DEP permit (DEP Permit No. AC50-219413; PSD-FL-196), in the manner shown below:

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It was expected that the 1997-1998 harvesting season would provide Okeelanta Power with adequate opportunities to complete the fine tuning of the interconnected operations. However, from the date of DEP's permit amendment in 1997 to the present, the Facility has not been able to complete the interconnection testing with the sugar mill for the reasons described below. The Facility could not conduct interconnected operations with the sugar mill after the end of the harvest season in the Spring of 1997 because the sugar mill was shut down for routine repairs and maintenance. Due to the legal problems and resulting financial difficulties described above, the Facility shutdown in September 1997, before the start of the 1997-1998 harvest. The Facility was not restarted until February 25, 1998. Since the current harvest season will end soon, completion of the fine tuning process will not be possible during the 1997-98 harvest season. After the end of the current harvest, the sugar mill will again shutdown, the bagasse will be gone, and it will not be possible to test interconnected operations until the 1998-1999 harvest season, at the earliest.

Request for a Permit Amendment

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In light of the FPL litigation and the bankruptcy case, Okeelanta Power cannot predict accurately how long it will take to connect and fine tune the systems that are used during interconnected operations. The legal proceedings create significant uncertainties and problems for Okeelanta Power. The fine tuning process itself involves additional uncertainties. Given these uncertainties, Okeelanta Power must maintain flexibility in its planning and operations.

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Okeelanta Power also requests the Department to extend the deadline for dismantling the boilers at the sugar mill until April 1, 2001. This extension is necessary to enable Okeelanta Power to resolve any issues concerning interconnected operations. Obviously, the boilers at Okeelanta Corporation's sugar mill cannot be dismantled until Okeelanta Power has connected to the sugar mill and established normal, long-term operating conditions.

Ambient Air Quality Impacts

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Conclusion

Okeelanta Power would greatly appreciate DEP's prompt consideration of this request for a permit amendment.

We have enclosed a check (No. 006535) from Okeelanta Power in the amount of $250 to pay the DEP fee for a permit amendment.

Please call me at (850) 681-0311 if you have any questions about this request for a permit amendment.

Sincerely,

David S. Dee

cc: David Knowles--DEP Ft. Myers
James Stormer--HRS PBC
Willard Hanks--DEP Tallahassee

/OKEE88

**DRAFT**

April xx, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Rodney Williams, Plant Manager
Okeelanta Power Limited Partnership
Post Office Box 8
South Bay, Florida 33493

Re: Permit Modification No. 0990332-009-AC
PSD-FL-196

Dear Mr. Williams:

The Department has reviewed Mr. David Dee's February 27 letter requesting a modification to the referenced permit. The requested modification is to allow additional time for the simultaneous operation of Okeelanta's existing sugar mill boilers and your new cogeneration boilers. The effected facilities are located near South Bay, Palm Beach County, Florida. This request is acceptable, with conditions, and Specific Conditions Nos. 17, 18, and 26 of the referenced permit are modified as follows:

MODIFIED SPECIFIC CONDITIONS FOR OKEELANTA POWER L. P. PERMIT

17. ~~During the first three years of commercial cogeneration facility operation~~, ~~t~~The existing Boilers Nos. 4, 5, 6, 10, 11, 12, 14, and 15 (Permit Nos. AO50-169210, 190690, 175414, 190693, 175411, 169215, 189904, and 209094, respectively) may be retained for standby operation until the cogeneration facility is a reliable source of steam. During the period from initial firing until April 1, ~~1998~~ 2000 all three cogeneration boilers can be operated simultaneously with the existing boilers. Only biomass and No. 2 fuel oil may be used in the cogeneration boilers during periods of simultaneous operation. If more than 910,836 lb/hr steam is generated in the cogeneration boilers, steam in excess of 910,836 lb/hr must be sent to the Okeelanta sugar mill, and the existing boiler's steam production reduced by an equivalent amount. After April 1, ~~1998~~ 2000, the cogeneration boilers may be operated only when the existing sugar mill boilers are shutdown or in the process of immediately shutting down. During operation, the existing sugar mill boilers must meet all requirements in the most recent construction and operation permits for the boilers. These existing boilers shall be shutdown and rendered incapable of operation ~~within three (3) years of commercial startup of the cogeneration facility,~~ when the cogeneration facility is a reliable source of steam but no later than ~~January 1, 1999~~ April 1, 2001.

18. Boiler No. 16 (AC50-191876) may be retained as a standby boiler for the sugar refinery and sugar mill in accordance with its existing permit. Boiler No. 16 may be operated during startup, debugging, and testing of the cogeneration facility. After April 1, ~~1998~~ 2000, this boiler may be operated only when one

**DRAFT**

or more of the three cogeneration boilers are shutdown. During operation, this boiler must meet all requirements in the current construction or operating permit for the boiler.

26. Stack monitoring, fuel usage, ~~and~~ fuel analysis data, and the status of the bagasse connection between the sugar mill and the cogeneration facility shall be reported to the Department's South and Southeast District Offices and to the Palm Beach County Health Unit on a quarterly basis commencing with the start of commercial operation in accordance with 40 CFR, Part 60, Sections 60.7 and 60.49a, and in accordance with Section 17-297.500, F.A.C.

A copy of this letter shall be filed with the referenced permit and shall become part of the permit. This permit modification is issued pursuant to Chapter 403, Florida Statutes. Any party to this order (permit modification) has the right to seek judicial review of the permit pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Legal Office; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 (thirty) days from the date this Notice is filed with the Clerk of the Department.

Sincerely,

Howard L. Rhodes, Director
Division of Air Resources
Management

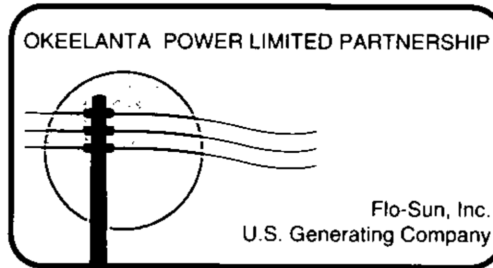
Enclosure: Landers & Parsons February 27, 1998 letter.

HLR/wh

RECEIVED

FEB 03 1998

BUREAU OF
AIR REGULATION




January 29, 1998

State of Florida
Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Attn: Mr. A. A. Linero, P.E.
Administrator
New Source Review Section

Re: Okeelanta Power Limited Partnership
File No. 0990332-008-AC (PSD-FL-196)
74.9 Megawatt Cogeneration Plant

Dear Mr. Linero:

Okeelanta Power has reviewed your letter of January 20, 1998, and at this time respectfully withdraw our request for a permit amendment to modify the averaging period for peak electrical generation. However, Okeelanta Power may wish to revisit this issue in the future and reserves the right to pursue this matter at that time.

If you have any questions please contact me at (561) 993-1003.

Sincerely,

James M. Meriwether
Environmental Manager

cc: David Knowles - FDEP/South District
James Stormer - Palm Beach County
Ricardo Lima
Rodney Williams
David Dee

CC: W. Hanks, BAR

# Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

January 20, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. James T. Carlton
Authorized Representative
Okeelanta Power Limited Partnership
Post Office Box 8
South Bay, Florida 33493

Re: Okeelanta Power Limited Partnership
File No. 0990332-008-AC (PSD-FL-196)
74.9 Megawatt Cogeneration Facility

Dear Mr. Carlton:

On September 19, 1997 the Department sent you a letter asking for additional information on your September 11 request to revise the methodology used to demonstrate the megawatts generated by your cogeneration facility located near South Bay, Palm Beach County, Florida. As of this date, we have not received a response to this letter.

As you know, we do not agree that averaging on a long-term basis is appropriate based on information provided by Okeelanta during original permitting of the facility. Please let us know if you plan to pursue, revise, or withdraw your request for a permit change on the generation issue. If you do not respond to this letter within 30 days, the Department will deny this request.

If you have any questions on this matter, please write to me or call Willard Hanks, review engineer, at 850/488-1344.

Sincerely,

A. A. Linero 1/20

A. A. Linero, P.E.
Administrator
New Source Review Section

AAL/wh

cc: J. Stormer, PBCPHU
D. Knowles, SED

*"Protect, Conserve and Manage Florida's Environment and Natural Resources"*

*Printed on recycled paper.*

P 265 659 282

US Postal Service

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| Street & Number Okeelanta Power | |
| Post Office, State, & ZIP Code S. Bay, Fl | |
| Postage | $ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to Whom & Date Delivered | |
| Return Receipt Showing to Whom, Date, & Addressee's Address | |
| TOTAL Postage & Fees | $ |
| Postmark or Date 1-21-98 0990332-008-AC PSD-FL-196 | |

PS Form **3800**, April 1995

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1. ☐ Addressee's Address
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3. Article Addressed to:
James O. Carlton, AR
Okeelanta Power, LP
PO Box 8
South Bay, Fl
33493

4a. Article Number
P 265 659 282

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
1-28-98

5. Received By: *(Print Name)*
K Yerkes

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X K. Yerkes

PS Form **3811**, December 1994

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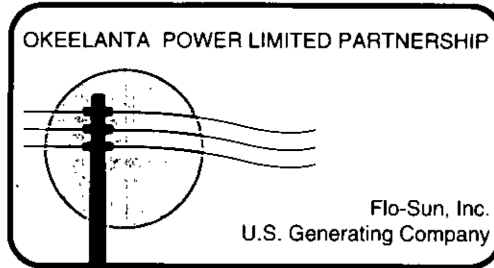


DEPARTMENT OF
ENVIRONMENTAL PROTECTION
SEP 26 1997
SITING COORDINATION

September 19, 1997

Hamilton S. Oven, Jr.
Power Plant Siting Coordinator
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399

Re: Okeelanta Power Limited Partnership
74.9 MW Permit Amendment

Dear Mr. Oven:

Please find enclosed check No. 508 in the amount of $250.00 to pay DEP's application fee for the 74.9 MW permit amendment requested by Okeelanta Power in a letter dated September 11, 1997. The previous check (No. 465) that was inadvertently mailed in advance was returned by the Department.

Sincerely,

James M. Meriwether
Environmental Manager

**RECEIVED**
SEP 29 1997
BUREAU OF
AIR REGULATION

If IMAGESAFE logo in light gray tone is not present on back of document - Do not cash.

**OKEELANTA POWER LTD, PARTNERSHIP**
*DEBTOR IN POSSESSION CASE # 97-32340*
*P.O. BOX 8*
*SOUTH BAY, FL 33493*

508

September 19 19 97

PAY TO THE ORDER OF Florida Department of Environmental Protection $ 250.00

Two hundred fifty dollars---------------------------------------------------- DOLLARS

*First Union National Bank*
*Belle Glade, Florida*
*24 Hour Information Service*
*1-800-735-1012*

FOR 9/2/97 permit modification

⑈000508⑈ ⑆067006432⑆ 2090001777751⑈

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0990332-008-AC

Check #
508

OKEELANTA POWER LTD. PARTNERSHIP
DEBTOR IN POSSESSION CASE # 97-32340
P.O. BOX 8
SOUTH BAY, FL 33493

465

63-643/670
00760

September 4 1997

PAY TO THE ORDER OF Florida Department of Environmental Protection $ 250.00

Two hundred fifty dollars---------------------------------------DOLLARS

FIRST UNION
First Union National Bank
Belle Glade, Florida
24 Hour Information Service
1-800-735-1012

FOR 9/2/97 permit modification

M. A. Grant

⑈000465⑈ ⑆067006432⑆ 2090001777751⑈

Kim from F&A called and said this returned this check to Okeelanta because all of the supporting material had somehow separated from it. I'll let you know when it's resubmitted, but right now there's no fee paid.
9/23

PA OK
Rec'd check 9/29

0990332-008-AC

PSD-FI-196D

# Department of Environmental Protection


Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary


September 19, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. James T. Carlton
Authorized Representative
Okeelanta Power Limited Partnership
Post Office Box 8
South Bay, Florida 33493

Re: File No. 0990332-008-AC (PSD-FL-196)
74.9 Megawatt Cogeneration Facility

Dear Mr. Carlton:

Your request dated September 11, 1997 was received by the Power Plant Siting Office and forwarded to the Bureau of Air Regulation for processing and modification of the PSD permit for the facility. It is our understanding that Okeelanta requests that the present 1-hour rolling average methodology used to demonstrate that the facility generates less than 75 megawatts (MW) of electricity (gross) be modified to a 24-hour rolling average.

On July 2, 1993 KBN (Okeelanta's consultant) provided a discussion regarding the logic of a 1-hour rolling average as well as the procedures to be implemented to promptly restore generation to less than 75 MW should that value be exceeded. The one-hour averaging time insured that short-term or instantaneous peak values would not be interpreted as indication that the facility had exceeded the 75 MW power generation level which would normally trigger site certification. A copy of an order from New York State was included which indicated that it required cogeneration facilities to demonstrate power generation of less than 80 MW on a 15 minute basis to avoid losing status as "qualifying facilities." The state also embarked on a trial program to determine if a 4-hour averaging time is more appropriate.

In order to process your request, please provide the following information:

1. Rationale why a shorter averaging time (e.g. 4-hours) would not accomplish the objective sought by Okeelanta.
2. The nameplate rating in MW of the steam turbine.
3. The maximum capacity ratings in MW of the three boilers.
4. Maximum expected instantaneous and hourly peak MW generation when achieving 74.9 MW on a 24-hour basis.
5. Measures to insure excursions above 75 MW are minimized.

Although the change in rolling average does not affect potential or permitted emissions, it can affect instantaneous or hourly emissions of pollutants. The increase in averaging time could therefore be a relaxation of a permit condition which could increase actual emissions. The requested action is a change in an enforceable condition and the Department will require public notice.

If you have any questions regarding this matter, please contact A. A. Linero, P.E. Administrator at 850/488-1344.

Sincerely,

C. H. Fancy, P.E., Chief,
Bureau of Air Regulation

CHF/aal

Enclosures

cc: Buck Oven, DEP PPSO
Jeff Brown, DEP OGC
Chip Collette, DEP OGC
David Dee, Landers and Parson
Palm Bch Co.

P 265 659 462

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**Receipt for Certified Mail**
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| Postmark or Date | 0990332-008 PSD-Fl-196 |

PS Form **3800**, April 1995

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2. ☐ Restricted Delivery

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3. Article Addressed to:
Mr. James J. Carlton, AR
Okeelanta Power, LP
P O Box 8
South Bay, Fl
33493

4a. Article Number: P 265 659 462

4b. Service Type
- ☐ Registered
- ☒ Certified
- ☐ Express Mail
- ☐ Insured
- ☐ Return Receipt for Merchandise
- ☐ COD

7. Date of Delivery: 9-29-97

5. Received By: *(Print Name)* K. Yerkes

6. Signature: *(Addressee or Agent)* X K. Yerkes

8. Addressee's Address *(Only if requested and fee is paid)*

PS Form **3811**, December 1994 — Domestic Return Receipt

Thank you for using Return Receipt Service.

July 2, 1993

RECEIVED
JUL 02 1993
Division of Air
Resources Management

Mr. Clair Fancy, P.E., Chief
Bureau of Air Regulation
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Re: Okeelanta Power Limited Partnership
DEP File No. AC50-219413, PSD-FL-196

Dear Mr. Fancy:

On behalf of Okeelanta Power Limited Partnership (Okeelanta Power), we are submitting this letter and the following comments on the permit documents issued by the Department of Environmental Protection (DEP) on June 3, 1993, for the above-referenced facility. Our two major concerns are addressed below. A number of other issues are addressed in the addendum which is attached hereto and incorporated herein by reference. This letter does not fully address all of the issues we discussed during our meeting earlier today, but we will promptly provide you with the additional information that you requested in the next few days.

LIMITS ON FACILITY CAPACITY (74.9 MW)

In various documents, including the "Intent to Issue", "Technical Evaluation and Preliminary Determination", "Draft Permit", "BACT Determination" and "RACT Determination", the Department has reported the facility's capacity as 71.25 MW. It is unclear whether the 71.25 MW refers to a net or a gross generating capacity. As noted in the application and all supporting documents, the project will be designed with a gross generating capacity of 74.9 MW.

From discussions with staff at FDEP, we understand the 71.25 MW was selected to provide a significant margin with respect to the 75 MW limit on generating capacity. Roget's Dictionary of Electrical Terms defines "capacity" as a generating facility's "output in kilowatts under ordinary full load conditions." The Okeelanta facility will be designed such that its capacity, as defined above, will be 74.9 MW. Consequently, the electric generating equipment, namely the steam turbine generator, will be so sized. In addition, control systems will be installed to ensure that the capacity of the facility will not exceed 74.9 MW.

Any electric power plant, including particularly a cogeneration plant which supplies steam to a process, is subject to upset conditions (rapid, unexpected changes in steam flow or electrical load) which may result in an instantaneous increase in electrical output. The power plant control systems are designed to control most upset conditions; however, there may be some conditions which are outside the range of the control systems. As stated above, the Okeelanta facility will be designed to generate 74.9 MW under normal operating conditions and will have state-of-the-art controls to assure generation is limited to the design

KBN ENGINEERING AND APPLIED SCIENCES, INC.
1034 Northwest 57th Street Gainesville, Florida 32605 904/331-9000 FAX: 904/332-4189

limit of 74.9 MW under most conditions, including many upset conditions. When an upset or abnormal condition occurs the facility's control system will maintain or, if necessary, promptly restore the electric generator's output to less than 75 MW by initiating one or more of the following:

* The steam turbine governor control valves will operate to maintain throttle steam flow and electrical output at the desired set point.

* If necessary, the steam output of the boilers can be reduced by operating the main steam line controls.

* If necessary, process steam can be bypassed around the steam turbine generator to the heat rejection system (condenser).

* If necessary, process steam can be vented to the atmosphere.

* As a last resort, the Control Room operator can initiate manual controls.

We believe that an upset condition which may result in an excursion of electrical generation above 75 MW will be infrequent, and of short duration, and normal operating conditions should be restored within minutes so that the facility's integrated hourly average will not exceed 75 MW. Consequently, we believe that it is appropriate to maintain the facility's capacity limit at 74.9 MW, subject to an additional requirement of meeting a short-term averaging condition (for example, one hour averaging time) with accompanying monitoring and reporting requirements. We will provide engineering plans, as well as a monitoring and reporting plan, to the Department within 30 days after they become available.

The New York Public Service Commission dealt with a similar question concerning an 80 MW threshold established by New York state law. See Case 91-E-0454, Proceeding on Motion of the Commission to Interpret and Enforce the Output Limitations Implementing the PSL §2(2-a) 80 MW Size Restriction (attached). In New York, there were 14 facilities with capacities at or near 79 MW that were at risk of exceeding the 80 MW threshold during upsets or compliance tests. In response to the arguments presented by those companies, the State of New York ultimately concluded that compliance with the 80 MW threshold could be demonstrated by measuring a facility's electrical output over a four-hour period. By analogy, the New York case helps to confirm our belief that a one-hour averaging period is reasonable, restrictive, and appropriate for demonstrating compliance with Florida's 75 MW threshold.

## RESTRICTIONS ON WOOD WASTE

The draft permit states that any wood waste materials used as fuel shall be "free from painted and chemically treated wood, ... and special wastes...." (page 7, Specific Condition No. 12), which implies that any amount of these materials in the fuel is not permitted. This restriction is unnecessarily severe and restrictive.

"Special wastes" are defined by statue to include "yard trash" and "construction and demolition debris." See Section 403.703(33), Florida Statutes, as amended by Chapter 93-207, Laws of Florida (CS/HB 461). "Yard trash" is defined to mean:

> vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees, and tree stumps.

Section 17-701.200(87), Florida Administrative Code. "Construction and demolition debris" is defined to include "materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to ... lumber, from the construction or destruction of a structure ...." Section 17-701.200(17), F.A.C. The term also includes "tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations ...." Id.

Okeelanta Power intends to use clean wood wastes from yard trash and construction and demolition debris as fuel. There appears to be no legal or factual justification for the Department's proposed restriction on Okeelanta Power's ability to use these "special wastes." Therefore, we request that the term "special wastes" be deleted from Specific Condition No. 12.

As Okeelanta Power has explained to the Department in the past, Okeelanta Power will obtain its wood waste materials from a variety of suppliers, including several local governments. Okeelanta will use its best efforts to ensure that the wood waste materials are free from treated or painted wood. However, Okeelanta cannot guarantee that the fuel will be completely free from such materials at all times. Despite Okeelanta's best efforts, there is always the possibility that some painted or chemically treated wood will be present in the fuel supply. Moreover, Okeelanta has evaluated a "worst case" scenario in its application. Okeelanta considered the possibility that up to 3% of the wood in its fuel supply could consist of treated wood. The analysis of this scenario demonstrated that even the use of 3% treated wood would not result in any adverse air quality impacts. As shown in the application, all ambient air quality standards and the Department's Air Toxics Policy would be satisfied.

We believe the intent of Specific Condition No. 12 is to require that Okeelanta Power implement best efforts to prevent treated or painted wood from being combusted at this facility and ultimately to ensure that air quality standards are met. We are concerned that a literal interpretation of Specific Condition No. 12 would not allow any amount of treated or painted wood in the fuel supply. In order to assure the Department that best efforts are being implemented and air quality standards are being met, a two part compliance program will be performed. A protocol describing this program will be submitted to the Department 60 days prior to commencing operations.

The program will consist of the following elements:

1. A fuel quality inspection, testing, and management program (including daily visual inspections of the incoming wood material and regular inspections at the originating wood yard sites) will be implemented to control the amounts of treated and painted wood in the fuel and fuel concentration limits for arsenic, chromium, and copper will be established.

2. Stack testing for arsenic, chromium and copper emissions will be conducted every six months for the first two years of operations, as required for other pollutants under Specific Condition 24 of the draft permit. Based on the stack testing for arsenic, chromium, and copper, compliance with the No-Threat Levels for these compounds will be demonstrated.

We believe that as a result of implementing this plan, the requirement for ash monitoring, as stated in Specific Condition 12, is no longer necessary and should be deleted.

Attached for your consideration is a revised Specific Condition No. 12.

## CONCLUSION

Thank you for your consideration of these comments. If you have any questions concerning these comments, please call me at 904-331-9000.

Sincerely,

David A. Buff

David A. Buff, M.E., P.E.
Principal Engineer

cc: Gus Cepero, Okeelanta Corp.
David Dee, Carlton-Fields
Jewell Harper, EPA
John Bunyak, NPS
Bevin Beaudet, PBCHU
Mark Carney, USGenCo
Richard Donelan
Clare Lardner
Stephanie Brooks--DEP District
File (2)

DB/ehj

YY#27651.1

ORIGINAL
303

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held in the City of Albany on April 1, 1992

COMMISSIONERS PRESENT:

Peter Bradford, Chairman
Harold A. Jerry, Jr.
Gail Garfield Schwartz
James T. McFarland
Henry G. Williams

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 27

| To David Dee | From Guy Marchmont |
|---|---|
| Co. | Co. |
| Dept. | Phone # 301-718-6841 |
| Fax # 954-222-0398 | Fax # 301-718-6910 |

CASE 91-E-0454 - Proceeding on Motion of the Commission to Interpret and Enforce the Output Limitations Implementing the PSL §2(2-a) 80 MW Size Restriction.

ORDER INTERPRETING AND CLARIFYING THE 80 MW OUTPUT LIMITATIONS
(Issued and Effective April 22, 1992)

BY THE COMMISSION:

BACKGROUND

On August 27, 1991, a Notice Soliciting Comments was issued in the captioned proceeding, requesting comments on a Proposed Order interpreting and implementing the 80 MW limit set forth at PSL §2(2-a), which governs qualification as a cogeneration facility under state law. That standard has been enforced through imposition of the four output limitations, first promulgated in the Salt City Order [1] and later clarified in the Ramapo Order. [2] As set forth in the Ramapo Order, the output

[1] Case 28689, Salt City Energy Venture, Order Approving Contract Subject to Conditions (Issued January 15, 1988).

[2] Case 28689, Consolidated Edison Company of New York, Inc. and Ramapo Cogeneration L.P., Order Granting Rehearing In Part (Issued February 1, 1989).

limitations mandate that a qualifying facility (QF) developer, in order to demonstrate compliance with the §2(2-a) limit, must:

> A. Guarantee that the electric output will not exceed 80 MW for any quarter-hour period;
>
> B. Cause to be installed and maintained in good operating condition, the metering and other equipment necessary for monitoring compliance with the above standard by the utility and for producing records for Staff review;
>
> C. Agree that, in the event of two exceedences of the 80 MW limit within any five-year period, it shall lose status as a cogeneration facility under PSL §2(2-a), and as a result, forego entitlement (if relevant) to the statutory minimum rate set forth in PSL §66-c for the term of the contract; and
>
> D. Agree that even if it loses status as a cogeneration facility under PSL §2(2-a) for a violation of the standards set forth [above], it will not seek to operate the facility at output levels above 80 MW.

These output limitations have been applied to contracts for facilities which, because sized near the 80 MW limit, could potentially exceed the limit. There are fourteen such contracts, including one between Niagara Mohawk Power Corporation (Niagara Mohawk) and Onondaga Cogeneration L.P. (Onondaga), approved before the limitations were first adopted.[1]

This proceeding was instituted, and comments were solicited, premised upon a petition from the Independent Power Producers of New York (IPPNY) requesting interpretation and clarification of the limitations. The Proposed Order resolved the questions IPPNY raised, but asked for comments before any

---

[1] Twelve of these fourteen contracts, in effect as of April 1, 1992, are with Niagara Mohawk, one is with New York State Electric & Gas Corporation (NYSEG), and one is with Consolidated Edison Company of New York, Inc. (Con Edison). These facilities are listed in Appendix A.

decision was implemented. Because the comments raise a number of issues not addressed in the Proposed Order, it is replaced with this Order.

## THE PROPOSED ORDER

### IPPNY's Petition

In a petition filed April 29, 1991, IPPNY asks for an interpretation of the output limitations which it asserts would conform the limitations to reasonable capacity testing procedures. According to IPPNY, compliance with the limitations can be achieved only through installation of elaborate control systems that will continuously monitor plant performance and compensate for variations in generation output caused by either changes within the electricity grid or within the plant. IPPNY worries, however, that pre-commercial testing of control systems, such testing following a major repair, and annual Dependable Maximum Net Capability (DMNC) testing, could force developers to exceed the 80 MW limit, thereby violating the limitations. IPPNY submits that such forced exceedences should not trigger the penalties applicable under the limitations.

Properly tested control systems, IPPNY maintains, are essential to compliance with the limitations. As IPPNY describes it, these systems must be tested prior to a facility's commercial operation, and, during such tests, plant components must be run at their maximum output. IPPNY is concerned that the 80 MW limit might be exceeded as a consequence of that testing. IPPNY adds that the same considerations adhere following major repair or

replacement of major plant components that might occur during the plant's operating lifetime.

IPPNY also relates that developers will conduct four-hour DMNC tests at least yearly to assess the capacity capability of their plants.[1] Interpreting the New York Power Pool (NYPP) DMNC testing procedures as measuring capability on a time-averaged basis over the four-hour period, IPPNY argues that it might be necessary for a facility to operate at more than 80 MW at some times during the four-hour period in order to compensate for other times when it is operating at less than 80 MW. Without an exception from the limitations, says IPPNY, production from a unit must be cycled down during a test, producing an artificially low result and thereby unfairly constraining facilities to a lower DMNC rating. For example, IPPNY insists, a unit might show a test result of 76 MW when it could actually achieve 79 MW. These circumstances, IPPNY asserts, are exacerbated during the summer DMNC tests, because adjustments may be made to the test results based on the average ambient temperature experienced during a utility's summer peak.

Giving these testing protocols, IPPNY contends that no purpose would be served by applying the output limitations during the tests. IPPNY believes developers could not evade the policy underlying the limitations through conducting frequent tests, because the number of such tests is limited under each developer's contract. To remove any incentive to evade the

---

[1] According to IPPNY, the results of those tests will be used for a variety of purposes depending upon the provisions of the particular contract.

limitations through testing, however, IPPNY proposes that developers not be paid for electricity delivered in excess of the 80 MW limitation during a test.

IPPNY maintains that advising utilities to implement the limitations with flexibility during tests is the appropriate relief. As IPPNY sees it, this would defer technical issues to resolution between the utility and the developer, without further administrative intervention.

Resolution of Issues in The Proposed Order

The Proposed Order explains that we have continuing jurisdiction over the output limitations, which insure that the requirements of qualifying status under PSL §2(2-a) are met.[1/] To effectuate that jurisdiction, the Proposed Order resolves some of the issues IPPNY raises. But IPPNY's petition also presents a number of questions that may intrude upon individual contract specifications, because contractual DMNC testing requirements vary significantly, depending upon the terms each utility and developer negotiated in each contract. Therefore, while generic policies were promulgated in the Proposed Order, it was also suggested that refinements to those policies could be made in order to reflect individual circumstances.

The Proposed Order addressed a number of issues related to capacity testing and the output limitations. As to pre-commercial testing, although the output limitations were to be

---

[1/] See, e.g., Case 90-E-1156, Niagara Mohawk Power Corporation and Seneca Power Partners L.P., Order Modifying Environmental Conditions (Issued April 29, 1991); Case 89-E-081, Order Denying Rehearing and Clarifying Prior Order (Issued December 12, 1989).

interpreted broadly because they enforce the statutory mandate incorporated in PSL §2(2-a), their application was limited to "operation" of a facility. Therefore, the Proposed Order states that tests conducted during the pre-commercial period should not be considered within "operation" of the plant, as defined under the limitations. The Proposed Order also advises the utilities to make arrangements with developers to avoid conflicts over exceedences during pre-operational and annual DMNC testing, and allows utilities to insist upon reasonable conditions circumscribing the time, number, extent and duration of such exceedences. Moreover, utilities were informed that in no event was a developer to be paid for any generation delivered in excess of 80 MW.

Similar reasoning was applied to the circumstances when a plant comes back on-line after a major repair. Under the proposed Order, however, definition of what constitutes a "major repair" was left to a later time. The Proposed Order again obligates utilities to craft reasonable conditions circumscribing exceedences during such testing, if they are to be excused, and advises that developers may not be paid for exceedences.

The Proposed Order also described potential conflicts between the output limitations and the terms of some individual contracts. These included the Onondaga - Niagara Mohawk contract, which was approved before the limitations were adopted, and the Niagara Mohawk - East Syracuse contract, which provided for a size increase that raised questions regarding the limitations. While the East Syracuse contract conflict has been

resolved,[1] the Onondaga contract problem remains, and another developer, Selkirk Cogen Partners L.P. (Selkirk Cogen) reports an additional potential conflict.

POSITIONS OF THE PARTIES

CCE

Concerned Citizens for the Environment, Inc. (CCE) argues that overly-broad exemptions from the output limitations might "erode the ratepayers' federally protected right to receive fair and reasonable rates while benefitting from a safe, reliable, electric generating system."[2] Referring to the NYPP Report filed in Case 91-E-0237,[3] CCE argues that an excess of capacity supplies from state-qualifying cogenerators threatens to expose ratepayers to negative impacts, such as the burden of payments for unneeded capacity. According to CCE, tight controls must be placed on QF output to avoid exacerbating those negative impacts. Indeed, it believes that QFs should be fined for exceedences, and that the amount of the fines should be refunded to ratepayers through the fuel adjustment clause. CCE also urges that reporting requirements be imposed on QFs and that contracts be reopened for further review if a QF exceeds the output limitations on a recurring basis.

---

[1] Case 91-E-0923, East Syracuse Generating Company, L.P., Declaratory Ruling (Issued October 2, 1991)(East Syracuse Ruling).

[2] CCE Comment, p.2.

[3] Case 91-E-0237, Report of the Member Corporations of the New York Power Pool Concerning 1991 Long-Run Avoided Cost Estimates (August 30, 1991).

CCE also interprets §2(2-a) as limiting our discretion. According to CCE, the authority to supervise the implementation of that statute cannot be delegated to the utilities. CCE urges strict interpretation and enforcement of the few legislative mandates applicable to QFs, who, it says, are not otherwise regulated, except by contract language.

Kamine

Kamine Syracuse Cogen Co., Inc. (Kamine), a developer planning to build a 79 MW facility, maintains that the definition of a "major repair" should be expanded. The developer believes that the definition propounded in the Proposed Order includes only instances where the entire plant undergoes substantial down-time. According to the developer, major repairs may also take place where performance from the plant is significantly reduced, but the plant does not cease production entirely. As Kamine describes it, its combined-cycle facility could undergo a major repair to the steam turbine component while the gas turbine component continues to operate. Under such circumstances, the developer says, bringing the steam turbine back into service would implicate testing procedures as rigorous as those that would be employed if the entire plant had been out of service.

Lavair

Lavair Cogeneration L.P., another 79 MW developer, supports IPPNY's position and asks that it be informed of the outcome of this proceeding.

Niagara Mohawk

Niagara Mohawk begins by noting that it is the purchasing utility for 12 of the 14 projects governed by the output limitations. Niagara Mohawk requests that it be accorded more flexibility in enforcing those limitations. It also questions whether DMNC testing upon return to service after a major repair implicates the same considerations as pre-operational testing.

According to the utility, it needs greater flexibility in implementing the limitations. It asks that it be authorized to measure a facility's output over a four-hour period instead of the fifteen minute interval contemplated under the first output limitation. The utility asserts the four-hour period is preferable, because it is the standard used to conduct DMNC tests and to measure output when determining the size of a facility.[1] The utility also argues that the four-hour output is easily determined from a facility's generation log book and is more reliable than measurement over the fifteen minute interval, which, it says, may be prone to telemetering errors.

Niagara Mohawk is also concerned that in order to comply with the limitations, developers will install devices which automatically trip a unit off-line if it appears that the 80 MW limit will be exceeded during a fifteen minute interval. Measuring output over the four-hour period instead, the utility believes, will allow the developer to average out such temporary

[1] *See* Case 90-E-0238, American Ref-Fuel Company of Hempstead, Declaratory Ruling (Issued August 22, 1990).

exceedences, and avoid the potentially harmful consequences to system reliability of tripping a unit off-line with little or no notice. The utility also maintains that using the four-hour average would accommodate DMNC testing protocols, and that an exception to the limitations for exceedences that occur during such tests would not be needed if developers could average output (and exceedences) over the four-hour period.

Foreseeing emergency circumstances where operating a facility at its maximum output, even if it exceeds 80 MW, might benefit ratepayers, Niagara Mohawk also argues that the output limitations should be waived under extreme or unusual circumstances. For example, the utility says, extra output might be needed to sustain voltage in an area, to provide for system restoration, or to increase operating reserve during a severe generation shortage. The utility suggests that the limitations should be waived when it requests additional production from an 80 MW facility under such circumstances.

Niagara Mohawk also asks for guidance in implementing its contract with Selkirk Cogen. As the utility describes it, that developer intends to build two facilities at its Selkirk site, one selling to Niagara Mohawk and another selling to Con Edison. According to the utility, those two facilities might not be truly separate, and, if interconnected, would exceed the 80 MW limit, thereby violating the output limitations. Niagara Mohawk

asks for clarification of application of the output limitations to this site.[1/]

NYSEG

NYSEG is concerned that the Proposed Order's construction of the word "operation" might affect its 79 MW contract with South Corning. That contract, the utility relates, contains provisions requiring the developer to operate its facility in accordance with NYSEG's operating procedures. The utility claims these contract provisions should control electricity deliveries at all times, despite language in the Proposed Order indicating that the output limitations would not adhere to electricity deliveries made during a "pre-operational" period.

NYSEG also asks for clarification that the reasonable conditions it is to negotiate circumscribing exceedences during capacity testing also govern the length and size of each exceedence permitted during such a test. The utility believes that exceedences of undue length or amount in size over 80 MW could harm interconnection equipment, unless it were reconfigured to absorb the exceedence. NYSEG also requests permission to refuse to excuse an exceedence even during testing, if the exceedence is due to an equipment failure instead of caused by reasonable efforts to comply with testing protocols. Finally, NYSEG asserts that, although the output limitations have been

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[1/] Niagara Mohawk's proposals to measure output over a four-hour period, and waive the limitations during unusual circumstances, were supported by IPPNY, in a letter dated November 8, 1991, and G.A.S., another 79 MW developer, in a letter from its agent, Entek Research, Inc., dated December 3, 1991.

imposed only on cogeneration facilities in the past, they should also be applied to any new energy-only contracts that might be entered into with small hydro facilities or alternate energy production facilities.

Selkirk Cogen

Selkirk Cogen Partners L.P. (Selkirk Cogen), the successor to J.M.C. Selkirk, Inc., criticizes some of the proposed policies expressed in the Proposed Order, and asks for relief specific to its project. The developer also supports Niagara Mohawk's proposed implementation of the output limitations.

Selkirk Cogen objects to two aspects of the proposed Order. First, it believes that it should be paid for electricity delivered in excess of 80 MW during testing periods. It claims the amount of such exceedences should be small, and that the utilities cannot be excused from paying for electricity delivered during exceedences, because PURPA, PSL §66-c and QF contracts require such payments.

Second, concerned that utilities might unfairly implement the conditions governing exceedences during testing, Selkirk Cogen contends that utilities should be required to publish their policies on these matters in advance, with an opportunity for administrative review. Without such guidelines, the developer believes that the numerous disputes between utilities and developers over these issues would have to be adjudicated.

Selkirk Cogen also complains that the Proposed Order erects an obstacle to development of its project. As the developer reads the Proposed Order, a state-qualifying facility sharing a site with a second facility must be "truly separate" from the second facility in order to comply with the output limitations. Selkirk Cogen reports it intends to build two facilities at its Selkirk site -- a 79 MW facility selling to Niagara Mohawk, qualifying under PSL §2(2-a),[1] and an approximately 277 MW (gross) facility selling to Con Edison that qualifies only under federal, and not state, law.[2] Although Selkirk admits that it plans to thermally interconnect the two facilities, it argues that this design configuration does not violate the output limitations or forfeit its qualification under PSL §2(2-a).

The developer describes its contract with Niagara Mohawk as requiring it to maintain state QF status under §2(2-a), or a rate penalty will be imposed. The developer relates, however, that the contract explicitly waives application of the penalty provision if sales exceeding 80 MW are made from a facility located at the site to Con Edison (or another third-party utility). The developer also claims its contract with Con Edison requires that utility to purchase all the electricity

[1]The April 7, 1988 and February 14, 1990 Letter Orders approving this contract are cited in Appendix A.

[2]Case 28689, Consolidated Edison Co. of N.Y., Inc. and J.M.C. Selkirk, Inc., - Contract No. 346, Letter Order (Issued October 24, 1989) and Letter Order (Issued November 14, 1991).

produced at the site except that electricity sold to Niagara Mohawk.

The developer then cites the Con Edison Staff Memorandum accompanying approval of the Con Edison contract as noting that project plans called for the sharing of a steam turbine generator between the two facilities.[1] Selkirk also quotes the Niagara Mohawk Staff Memorandum accompanying approval of Supplement Nos. 1 and 2 to the Niagara Mohawk contract as stating that the rate penalty provision exception "is apparently in anticipation of the loss of state QF status that will occur when, if ever, the 252 MW Phase II [i.e., Con Edison] portion of this facility becomes operational."[2] According to Selkirk, the only condition placed upon its combined two-facility arrangement was that, upon entry of the Con Edison facility into service, the developer was required to provide firm security for both the existing and projected front-load under the contract.

Consequently, Selkirk concludes that a thermally and electrically interconnected facility was approved, and that two thermally and electrically isolated projects were not mandated. Selkirk also argues that, although the net generation standard of PSL §2(2-a) was imposed on its Niagara Mohawk contract, the four output limitations were not. According to Selkirk, approval of

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[1] Case 28689, Consolidated Edison Co. of N.Y., Inc. and J.M.C. Selkirk, Inc. - Contract No. 346, Staff Memorandum (Filed Session of October 18, 1989), p. 3.

[2] Case 28689, Niagara Mohawk Power Corporation and J.M.C. Selkirk, Inc. - Contract No. 524, Supp. Nos. 1 and 2, Staff Memorandum (Filed Session of February 14, 1990), p. 2.

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the contract for that facility is therefore exempt from the fourth output limitation, which restricts future output to 80 MW.

Selkirk asks for clarification that it may proceed with its development plans which, at a minimum, requires that the two facilities share a steam turbine, and so be thermally interconnected. The developer also argues that it should be permitted to electrically interconnect the two facilities, even though it admits it might be possible to supply Niagara Mohawk with electricity from only a single combustion turbine and to supply Con Edison with electricity exclusively from the remaining combustion turbines and the shared steam turbine. Finally, the developer claims that both projects are fully dispatchable, so that each utility's ratepayers are protected against the prospect of overpayments.

## DISCUSSION AND CONCLUSION

IPPNY's proposals to clarify the output limitations, as modified in the Proposed Order, are generally acceptable. Niagara Mohawk's proposal to experiment with implementation of the output limitations also may be permitted in part. But if the utility's proposed method proves unworkable, both it and developers must be prepared to return to the method originally envisioned for implementation, upon reasonable notice to the affected QFs. The further clarification some utilities and QFs request concerning the principles governing testing exceedences is, however, not necessary. Finally, the output limitations are applicable to the Onondaga and Selkirk Cogen contracts, albeit that some flexibility in that application is appropriate.

Excusing Testing Exceedences

As IPPNY suggests, exceedences that occur during pre-operational testing, testing during return to service following a major repair, and DMNC testing may be excused.[1] Although, as CCE maintains, the output limitations are to be interpreted broadly because they enforce the 80 MW statutory mandate incorporated in PSL §2(2-a), they are primarily intended to control the amount of output for which a developer can receive payment. Because, as IPPNY concedes, developers may not be paid for exceedences which occur during the testing process, the output limitations need not adhere to such events.[2] This reasoning adheres whether the exceedence occurs during pre-operational tests, tests following major repairs, or other DMNC tests.

Utilities, however, may insist on conditions circumscribing such exceedences, if they are to be excused. Utilities may require notice before a test is conducted, and may reasonably limit their time, number, extent, and duration.[3] Moreover, in no event may a developer be paid for any generation delivered in excess of 80 MW, because that would violate both the

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[1] As NYSEG points out, the distinction drawn in the Proposed Order between "pre-operational" testing and other types of testing is confusing and unwarranted.

[2] For this reason, and because power purchase contracts already penalize developers for loss of §2(2-a) status, the further sanctions CCE proposes are redundant and so will not be adopted.

[3] In negotiating such conditions with QFs, utilities should remember that contractual provisions governing tests differ significantly, and the negotiated conditions should reflect analysis of individual contract language.

PSL §2(2-a) requirement that utility ratepayers' obligation to purchase from state-qualifying facilities be limited to 80 MW and the fourth output limitation, which restricts production to 80 MW. Selkirk Cogen's argument that it must be paid for electricity delivered during exceedences is rejected because it conflicts with that principle, and because neither federal law nor its contract require such payments.

Several parties petitioned for a more exact and detailed statement of rules which would govern testing exceedences. Although we are obligated to construe the Public Service Law and our policies, we need not regulate all of these details, which are a component of the ongoing utility - QF relationship. As responsible business entities, utilities and QFs should be able to resolve such technical issues without further intervention. Indeed, it has been explained that the utility - QF contractual relationship is no different from contractual arrangements that "involve fuel, labor or equipment...not subject to...regulation under normal conditions,"[1] and that "New York's statutory structure, sound regulatory practice, and ... limited staff resources"[2] preclude

[1] Case 92-E-0032, Erie Energy Associates, Declaratory Ruling (Issued March 4, 1992), p. 2.

[2] Case 90-E-0775, Consolidated Edison Company of New York, Inc., et al., Order Accepting Contracts For Filing and Denying Petition (Issued December 10, 1990)(Hydro Quebec Order), p. 8.

ongoing supervision of such utility management issues.[1] Therefore, the requests for clarification are denied.[2]

Similarly, the description of "major repair" in the Proposed Order -- as a repair that causes substantial down-time at a facility -- adequately guides the parties. Since developers generally are not paid when their capacity is unavailable, there is no incentive to manufacture a "major repair" event in order to avoid the limitations. Of course, exceedences caused by minor equipment failures that do not result in substantial down-time may not be excused. As explained in the Salt City Clarification Order:

> The output limitations were established to force a developer to design its facility so that exceedences simply would not occur...[D]evelopers [may not] evade that responsibility, through claiming that an exceedence resulted from negligence or some other failure that was not intentional.[3]

Consequently, requests for further definition of the "major repair" terminology are denied as well.

Niagara Mohawk's Proposal

Niagara Mohawk asks that it be allowed to implement the output limitations through measuring output over a four-hour period instead of the 15-minute interval prescribed in the first limitation. IPPNY and several QFs support this proposal.

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[1] These management decisions, of course, are subject to later prudence review. Hydro Quebec Order, p. 6.

[2] NYSEG also asks for guidance in applying the limitations to future, hypothetical contracts. Such hypotheticals, however, are not ripe for review here, and NYSEG should negotiate future contracts in good faith.

[3] Case 28689, Salt City Energy Venture, Order Granting In Part Petition For Clarification (Issued November 1, 1988), p. 4.

Niagara Mohawk believes that its four-hour method would be easier to implement, and would avoid potential threats to system reliability. Maintaining that reliability, the utility asserts, could be difficult if an 80 MW unit were to trip off-line with little or no notice in order to forestall an exceedence measured over the 15-minute interval. If such an exceedence could be averaged out over the four-hour period, however, this threat could be avoided. Moreover, the utility claims that so averaging out temporary exceedences over the four-hour period would eliminate the need to excuse exceedences occurring during testing. These are sufficient reasons to allow the utility to experiment with implementation of its method.[1]

Both the utility and the developers are advised, however, that if the utility's method produces unforeseen consequences or requires the utility to absorb excessive amounts of generation, permission to use the method can be rescinded. In that event, developers must be prepared to reconfigure their facilities to abide by the 15-minute interval. While the experiment will not be terminated without reasonable notice, developers must take that possibility into account in designing their facilities.

Niagara Mohawk also suggests that the output limitations should be waived under unusual circumstances where use of additional generation might prove beneficial. This proposal conflicts with §2(2-a) and would undermine the integrity

[1] Con Edison and NYSEG may join in this experiment at their option.

of the 80 MW limitation. Under the proposal, developers must be paid for production in excess of 80 MW, flatly contradicting the PSL §2(2-a) mandate circumscribing the benefits associated with state-qualifying status to facilities which restrict sales to 80 MW. Moreover, this proposal has been rejected before, when propounded by developers.[1] Consequently, Niagara Mohawk's request -- for permission to waive the limitations and purchase power in excess of 80 MW under unusual circumstances -- is denied.

The Onondaga Contract

The 79 MW Onondaga - Niagara Mohawk contract was approved before the limitations were adopted. Although the contract requires the developer to maintain §2(2-a) status, or it is voidable at the option of either party, it does not establish a method for demonstrating compliance with the 80 MW limit. As a result, given the language of §2(2-a), even one exceedence of the 80 MW limit by the developer would violate the statute, and at the utility's option, would invalidate the contract.

As discussed in the Proposed Order,[2] to ameliorate this harsh result, Niagara Mohawk is directed to amend that contract to provide for application of the output limitations, if the developer agrees. If the developer declines to accept the limitations, however, the utility is directed to treat any

[1] Case 28689, Central Hudson Gas and Electric Corporation and Mid-Hudson Cogeneration L.P., Order Approving Contract Subject to Conditions (Issued August 30, 1988).

[2] Onondaga did not file comments in response to the Proposed Order.

exceedence of the 80 MW limit by this facility as a violation of §2(2-a).

The Selkirk Cogen Contract

Selkirk Cogen complains that the application of the output limitations described in the Proposed Order conflicts with the approvals of its contracts with Niagara Mohawk and Con Edison for two facilities at its Selkirk site. Those approvals, says Selkirk Cogen, exempt it from the limitations and allow it to thermally and electrically integrate its facilities. Although, contrary to this allegation, the output limitations were applied to the contract with Niagara Mohawk and remain in effect, the developer may be accorded some relief. As it points out, the approvals for its contracts were confusing, and should be clarified here.

The output limitations clearly were imposed on Selkirk Cogen's contract with Niagara Mohawk. The April 7, 1988 Letter Order approving that contract tied the approval to the January 15, 1988 Order in Case 28689 (i.e., the Salt City Order), where the output limitations were first promulgated.[1] Moreover, any confusion which might have existed over application of the output limitations was clarified in the Niagara Mohawk Staff Memorandum, which stated that:

> "The net generation standard adopted in Case 28689 for determining eligibility for state QF status would apply to this facility. Consequently, the output limitations, as modified in the Ramapo Order, apply to this contract."[2]

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[1] April 7, 1988 Letter Order, p. 2.

[2] Niagara Mohawk Staff Memorandum, p. 9.

Therefore, the output limitations[1] adhere to Selkirk Cogen's facility selling to Niagara Mohawk, and those limitations prohibit deliveries in excess of 80 MW from that facility.

Selkirk is correct, however, in contending that the approvals of its contract with Niagara Mohawk were confusing. In this respect, its circumstances are similar to those described in the East Syracuse Ruling. There, the developer asserted that it could, under its approvals, expand production of its facility beyond the 80 MW limit. It was decided, however, that the fourth output limitation, which prohibits production in excess of 80 MW, applied to that facility because:

> While compliance with that requirement is easily preserved when an entirely separate power plant component is subjected to that limitation, it makes less sense to assume that the limitation would be applied to a plant with integrated components, as East Syracuse surmises.[2]

Similar logic adheres to Selkirk Cogen. Like East Syracuse, however, Selkirk Cogen did not have adequate warning that its proposed arrangements were impermissible. Indeed, the approval language described as misleading in the East Syracuse Ruling resembles the approval language applied to Selkirk Cogen's Niagara Mohawk contract. Moreover, again like East Syracuse, Selkirk Cogen has moved forward diligently with project

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[1] The "net generation standard" and the "output limitations" terminologies both refer to the four conditions originally adopted in the Salt City Order. See, e.g., Kamine Syracuse April 20, 1988 Letter Order (cited in Appendix A); Case 28689, Niagara Mohawk Power Corporation and Dresser-Rand Company, Order Approving Contract Subject to Conditions and Denying Petition (Issued June 19, 1989), pp. 12-14.

[2] East Syracuse Ruling, p. 9.

development efforts based on its interpretation of the approvals. In fact, its Niagara Mohawk facility is expected to enter service before the end of the year. Therefore, Selkirk Cogen is entitled to relief similar to that accorded East Syracuse.

In the East Syracuse Ruling, that developer was allowed to proceed with its plans upon conditions that would effectuate the intent behind the output limitations and protect ratepayers. As CCE asserts, however, the output limitations enforce a statutory mandate that protects ratepayers from excessive payments for overproduction and so cannot be waived entirely. As a result, the relief accorded Selkirk Cogen must preserve the output limitations, including the ban against production in excess of 80 MW.

This can be accomplished by permitting Selkirk Cogen to build a facility that is thermally, but not electrically, interconnected. The developer proposed exactly that arrangement in its Environmental Information Report submitted in conjunction with the approval of its Con Edison contract.[1] As it stated there:

> A separate 79 MW turbine cogeneration project...at the [Selkirk] site...for the sale of 79 MW of electricity...to Niagara Mohawk...will be built and operated regardless of [the Con Edison project]....[The latter] project will be housed in buildings separate from the 79 MW project. However,...steam from the initial project...will be ducted to the new 110 MW steam turbine.[2]

[1] Developers were required to file such reports as part of the contract approval process. Case 27834, Order Establishing Filing Requirements (Issued May 30, 1989).

[2] Case 28689, J.M.C. Selkirk, Inc., Environmental *Information* Report (Filed July 19, 1989), p. 2.

Construction of that facility, where one combustion turbine is dedicated to Niagara Mohawk while the others are dedicated to Con Edison, and waste heat from all those turbines drives a steam turbine dedicated to Con Edison, may be excused under these circumstances even though the facilities will not be entirely physically separate.[1] Selkirk Cogen could have used waste heat from the Niagara Mohawk turbine for purposes other than generating electricity for sale to that utility, even if the Con Edison facility were never built. Consequently, allowing the developer to generate electricity for sale to Con Edison using that heat may be permitted under these circumstances.

Electrically interconnecting the plants now, however, would violate the output limitations by forcing Niagara Mohawk to buy generation produced from plant components sized well in excess of 80 MW, and also deviates from the plant configuration the developer itself described. Moreover, as discussed in the East Syracuse Ruling, developers are bound to the size of facility described in their contract. An attempt by Selkirk Cogen to sell Con Edison production in excess of the 252 MW (net) limitation in that contract, by using electrical production from the combustion turbine dedicated to Niagara Mohawk, would constitute a size increase requiring entry into a new contract governing production from the "extra" turbine. Selkirk Cogen may preserve its existing contracts only if the plant components are

[1] Other developers, however, who cannot point to implicit approval of their plans are now on notice that the 80 MW limit is violated unless facilities at the same site producing in excess of that amount are physically separate. East Syracuse Ruling, pp. 11-12.

dedicated in accordance with the developer's originally-proposed configuration.

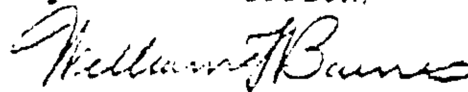
In contrast to the East Syracuse contracts, however, further ratepayer protections need not be imposed here. Unlike the East Syracuse facilities, both of Selkirk Cogen's facilities are largely dispatchable, thereby sufficiently protecting ratepayers from the prospect of purchasing overpriced energy.

The Commission orders:

1. Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, and Niagara Mohawk Power Corporation are directed to enforce the 80 MW limit established by PSL §2(2-a), as applied to their power purchase contracts with state-qualifying facilities through the output limitations, in conformance with the discussion in the body of this Order.

2. This proceeding is continued.

By the Commission,



(SIGNED)

WILLIAM F. BARNES
Deputy Secretary

Appendix A

80 MW PSL 52(2-a) STATE-QUALIFYING CONTRACTS

1. Onondaga. Case 28689, Niagara Mohawk Power Corporation and Onondaga Cogeneration L.P. - Contract No. 507, Letter Order (Issued November 6, 1987).

2. G.A.S. Case 29292, Niagara Mohawk Power Corporation and G.A.S. Alternative Systems, Inc. - Contract No. 449, Order Conditioning Contract (Issued July 7, 1987) and Order on Rehearing (Issued January 26, 1988).

3. Salt City. Case 28689, Niagara Mohawk Power Corporation and Salt City Energy Venture - Contract No. 452, Order Approving Contract Subject to Conditions (Issued January 15, 1988) and Order Denying Petitions For Rehearing and Motion for Clarification (Issued May 27, 1988).

4. J.M.C. Selkirk. Case 28689, Niagara Mohawk Power Corporation and J.M.C. Selkirk, Inc. - Contract No. 524, Letter Order (Issued April 7, 1988) and Letter Order (Issued February 14, 1990) and Letter Order (Issued June 15, 1990).

5. Kamine Syracuse. Case 28689, Niagara Mohawk Power Corporation and Kamine Syracuse Cogen Co., Inc. - Contract No. 527, Letter Order (Issued April 20, 1988) and Order Approving Contracts Subject to Conditions (Issued March 12, 1990) and Letter Order (Issued November 21, 1990).

6. Hadson. Case 28689, Niagara Mohawk Power Corporation and Hadson Power Partners of Rensselaer (formerly Ultra Cogen Systems, Inc.) - Contract No. 540, Order Approving Contract Subject to Conditions (Issued September 12, 1988) and Letter Order (Issued October 31, 1990) and Letter Order (Issued March 5, 1991).

7. Power City. Case 28689, Niagara Mohawk Power Corporation and Power City Generating, Inc. - Contract No. 574, Letter Order (Issued February 6, 1989) and Letter Order (Issued September 12, 1989) and Order Granting Rehearing in Part (Issued March 12, 1990) and Letter Order (Issued January 15, 1991).

8. Indeck Olean. Case 28689, Niagara Mohawk Power Corporation and Indeck Energy Services of Olean, Inc. (formerly Dresser-Rand Co.) - Contract No. 576, Order Approving Contract Subject to Conditions and Denying Petition (Issued June 19, 1989) and Letter Order (Issued November 30, 1990) and Letter Order (Issued June 3, 1991).

9. Ag-Energy. Case 28689, Niagara Mohawk Power Corporation and Ag-Energy, Inc. - Contract No. 529, Letter Order (Issued September 27, 1989) and Letter Order (Issued August 10, 1990) and Letter Order (Issued December 17, 1990).

10. East Syracuse. Case 28689, Niagara Mohawk Power Corporation and East Syracuse Generating Co. L.P. (formerly Old River A-9) - Contract No. 588, Letter Order (Issued September 27, 1989) and Letter Order (Issued August 10, 1990) and Letter Order (Issued March 4, 1991).

11. Lavair. Case 28689, Consolidated Edison Co. of N.Y., Inc. and Lavair Cogeneration L.P. - Contract No. 343, Letter Order (Issued October 10, 1989) and Order Granting Rehearing in Part (Issued January 26, 1990) and Order Granting Petition (Issued July 2, 1990) and Letter Order (Issued September 20, 1990).

12. Kamine Beaver Falls. Case 28689, Niagara Mohawk Power Corporation and Kamine Beaver Falls Cogen, Inc. - Contract No. 613, Letter Order (Issued May 29, 1990) and Order Granting Rehearing (Issued September 21, 1990) and Letter Order (Issued April 22, 1991).

13. NCP. Case 28689, Niagara Mohawk Power Corporation and Northern Consolidated Power, Inc. - Contract No. 606, Letter Order (Issued July 23, 1990) and Order Clarifying Prior Order (Issued December 5, 1990) (Letter Order Pending).

14. South Corning. Case 28689, New York State Electric & Gas Corporation and South Corning Cogeneration, Inc. - Contract No. 481, Letter Order (Issued September 21, 1990) and Letter Order (Issued April 1, 1991).

# Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

September 16, 1997

Mr. James T. Carlton
Okeelanta Power Limited Partnership
P. O. Box 8
South Bay, Florida 33493

Re: Okeelanta Power Limited Partnership - DEP Permit AC50-219413; PSD-FL-196D E

0990332-008

Dear Mr. Carlton:

I have referred your letter of September 11, 1997, to the Bureau of Air Regulation. I have no authority to amend or modify the above referenced permits.

Sincerely,

Hamilton S. Oven

Hamilton S. Oven, P.E.
Adminstrator, Siting
Coordination Office

cc: Clair Fancy (w/incl)
David Dee
Chip Collette

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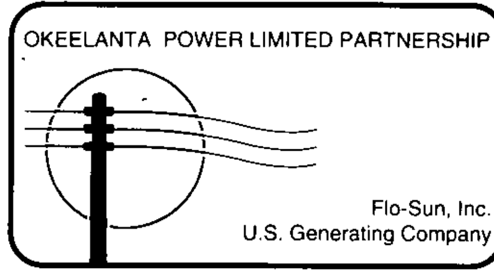



DEPARTMENT OF ENVIRONMENTAL PROTECTION
SEP 15 1997
SITING COORDINATION

September 11, 1997

Hamilton S. Oven, Jr.
Power Plant Siting Coordinator
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399

Re: Okeelanta Power Limited Partnership
DEP Permit AC50-219413; PSD-FL-196D

Dear Mr. Oven:

As you know, Okeelanta Power Limited Partnership ("Okeelanta Power") owns and operates an electric cogeneration facility ("the Facility") located in Palm Beach, County, Florida. The Facility is subject to a permit ("the Permit") issued by the Florida Department of Environmental Protection (DEP Permit No. AC50-219413; PSD-FL-196D), which authorizes the Facility to generate 74.9 megawatts ("MW") of electricity. Under the Permit, the Facility's electrical output is determined by using a one hour rolling average. For the reasons described below, Okeelanta Power hereby respectfully requests the Department of Environmental Protection ("Department" or "DEP") to amend the Permit to allow Okeelanta Power to use a 24-hour rolling average when determining the Facility's electrical output.

No Increase in Emissions Limits

At the outset, it is important to recognize that changing the Permit to allow the use of a 24-hour rolling average will not result in any new or unpermitted environmental

P.O. BOX 8 SOUTH BAY, FL 33493 561-993-1000 FAX 561-996-6596

impacts. This change will not affect or increase any of the emission limits for the Facility. This change will not cause an increase in the Facility's emissions above the levels that were previously reviewed and approved by the Department.

Rationale for this Permit Amendment

Okeelanta Power's cogeneration facility serves two basic purposes. First, the Facility provides electric power to Florida Power & Light Company ("FPL"), which sells the electricity to customers located throughout South Florida. Second, the Facility provides steam to the Okeelanta Corporation's sugar mill and sugar refinery, where the steam is used to operate the machinery that produces sugar.

Bagasse and wood wastes are used as fuels in the Facility. The moisture content and heating value (Btu content) of these fuels can fluctuate, which can cause fluctuations in the amount of steam generated in the Facility's boilers. The steam flow from the Facility's boilers is directly related to the electrical output of the Facility's turbine generator. Consequently, the fluctuations in the Facility's fuels cause fluctuations in the Facility's electrical generation rate.

The steam needs of the Okeelanta Corporation's sugar mill and refinery also fluctuate significantly. When the sugar mill or refinery commences or materially changes it operations, there are very significant changes in the steam flow at the Facility and, in turn, there are significant changes in the Facility's electrical output. As a result of these operating conditions at the Facility, it is difficult for Okeelanta Power to maintain compliance continuously with a one-hour rolling average, unless Okeelanta Power operates at a level substantially less than 74.9 MW.

The one hour averaging period unduly and unnecessarily restricts Okeelanta Power's ability to generate electricity. To ensure compliance with the one hour averaging period, Okeelanta Power must restrict its electrical production rates to artificially low levels. Reduced energy production adversely affects Okeelanta Power, as well as FPL and the citizens of South Florida who need electrical power.

Okeelanta Power would like to use a 24-hour rolling average because the enlarged averaging period would provide Okeelanta Power with a greater margin of safety for establishing compliance with the 74.9 MW limitation. Short-term variations in the Facility's energy generation rates can be compensated for more easily when there is a longer averaging period. A 24 hour rolling average also would allow Okeelanta Power to generate more electricity and operate closer to a true average of 74.9 MW, rather than at lower levels.

The Florida Electrical Power Plant Siting Act

The Permit provides that the Facility

> shall not exceed 74.9 (gross) megawatt generating capacity, 1 hour average, except during emission compliance and equipment performance tests.

Permit, page 7 of 14, Specific Condition 11. This limitation on the Facility's generating capacity was not established to ensure compliance with ambient air quality standards or any other substantive environmental regulation. To the contrary, the 74.9 MW limitation was imposed by DEP solely to ensure that the Facility is not subject to the procedural

permitting requirements contained in the Florida Electrical Power Plant Siting Act ("PPSA"), Sections 403.501-.518, Florida Statues.

The PPSA expressly provides that "this act shall not apply to any electrical power plant or steam generating plant of less than 75 megawatts in capacity . . . ." Section 403.506(1), F.S.; see also Section 403.503(12), F.S. The PPSA and the rules adopted thereunder (Chapter 62-17, F.A.C.) do not define "capacity" or explain whether the "capacity" of a power plant should be determined on the basis of the power plant's gross or net electrical output.

The PPSA and the rules in Chapter 62-17 do not contain any prohibitions or limitations that would preclude the Department from granting the relief requested by Okeelanta Power in this case. Here, the Department may exercise its discretion when interpreting the PPSA.

The Department exercised its discretion in a similar fashion when DEP issued the Permit to Okeelanta Power. As noted above, the Permit already allows Okeelanta Power to use a rolling average when determining compliance with the 74.9 MW limitation on energy generation. The only question now is whether a longer averaging period is appropriate.

It also should be noted that the Permit already authorizes Okeelanta Power to exceed the 74.9 MW limit at certain times. Okeelanta Power may produce more than 74.9 MW of electricity when Okeelanta Power is performing emissions compliance tests and when performing equipment performance tests. These provisions in the Permit, as well as the use of a one hour averaging period, reflect DEP's previous determination that the Facility may generate more than 74.9 MW of electricity at times without being subject to

the provisions of the PPSA.

In the instant case, a 24-hour rolling average will ensure that the Facility generates less than 75 MW in any 24 hour period, thus ensuring compliance on a daily basis with the PPSA. Since Okeelanta Power's request would allow the Facility to produce more electrical energy for the citizens of South Florida, without causing any increase in permitted emissions, Okeelanta Power believes it is appropriate for DEP to authorize the use of a 24-hour rolling average.

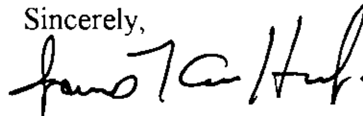
Conclusion

For the reasons set forth above, Okeelanta Power again respectfully requests the Department to approve an amendment to the Permit and thereby authorize the use of a 24-hour rolling average at the Facility.

A check in the amount of $250.00 (check number 465) to pay DEP's application fee for the permit amendment was inadvertently mailed to the Department in advance of this request. A copy of the check is enclosed.

Please call James Meriwether at (561) 993-1003 or David S. Dee at (850) 681-0311 if you have any questions concerning this request. Thank you for your prompt consideration of this matter.

Sincerely,



James T. Carlton
Authorized Representative

cc: Chip Collette
Howard Rhodes
Clair Fancy
David Dee
Perry Odum
Nevin Smith
James Meriwether

cc: W. Hanks, BAR
A. Linero, BAR
NPS
EPA
SFD

September____, 1997

James T. Carlton
Authorized Representative
Okeelanta Power Limited Partnership
P.O. Box 8,
South Bay, Florida 33493

Re: Okeelanta Power Limited Partnership
Permit AC50-219413; PSD-FL-196D

Dear Mr. Carlton:

The Department has reviewed your letter dated September 11, 1997, which requested an amendment to the above-referenced permit to allow Okeelanta Power Limited Partnership to use a 24-hour rolling average when determining whether Okeelanta Power's cogeneration facility is generating 74.9 megawatts of electricity. This request is acceptable and the permit hereby is amended as follows:

Facility Description on Page 1 of 14, Second paragraph

FROM:

> "A 74.9 megawatt (gross) electric, (1-hour average), cogeneration facility (biomass--bagasse and wood waste material as the primary fuel, No. 2 fuel oil as a supplementary fuel and low sulfur coal as an alternate fuel) located at Okeelanta Corporation's sugar mill that is six miles south of South Bay, off U.S. Highway 27, Palm Beach County, Florida.

TO:

> "A 74.9 megawatt (gross) electric, (24-hour average),

cogeneration facility (biomass--bagasse and wood waste material as the primary fuel, No. 2 fuel oil as a supplementary fuel and low sulfur coal as an alternate fuel) located at Okeelanta Corporation's sugar mill that is six miles south of South Bay, off U.S. Highway 27, Palm Beach County, Florida.

Specific Condition No. 1

FROM:

"The facility shall be designed, constructed, and operated so that its gross generating capacity shall not exceed 74.9 megawatt (MW), 1-hour average, except during scheduled emission compliance and equipment performance tests."

TO:

"The facility shall be designed, constructed, and operated so that its gross generating capacity shall not exceed 74.9 megawatt (MW), 24-hour average, except during scheduled emission compliance and equipment performance tests."

Specific Condition No. 11

FROM:

"The facility shall not exceed 74.9 (gross) megawatt generating capacity, 1-hour average, except during emission compliance and equipment performance tests."

TO:

"The facility shall not exceed 74.9 (gross) megawatt generating capacity, 24-hour average, except during emission compliance and equipment performance tests."

[Insert Standard DEP paragraphs beginning with the following language]

1. "A person whose substantial interests are affected by this permit amendment may petition for an administrative hearing . . . "

2. The Petition must contain the following information: . . .

3. Because the administrative hearing process is designed to formulate final agency action, . . .

4. This permit amendment is final and effective on the date filed with the Clerk of the Department unless . . .

5. When the Order (permit amendment) is final, any party to the Order has the right to seek judicial review . . .

6. A copy of this letter shall be filed with the referenced permit and shall become part of the permit.

Sincerely,

__________________________
Howard L. Rhodes
Director
Division of Air Resource Management

Certificate of Service

The undersigned duly designated deputy agency clerk hereby certifies that this permit amendment was sent by certified mail (*) and copies were sent by U.S. Mail before the close of business on ____________________, 1997 to the person (s) listed below:

Mr. James T. Carlton*
Authorized Representative
Okeelanta Power Limited Partnership
Post Office Box 8
South Bay, Florida 33493

Mr. Hamilton S. Oven, Jr., DEP

Mr. James Stormer, PBCPHU

Mr. David S. Dee, Landers & Parsons

Mr. David Knowles, SD

Ms. Isadora Goldman, SED

Mr. Brian Beals, EPA

Mr. John Bunyak, NPS

Mr. Dan Thompson, FP&L*

FILING AND ACKNOWLEDGEMENT FILED, on this date, pursuant to Section 120.52 (7), Florida Statues, with the designated Department Clerk, receipt of which is hereby acknowledged.

______________________________
(Clerk)

______________________________
(Date)

SureSafe logo in light gray tone is not present on back of document - Do not cash.

OKEELANTA POWER LTD, PARTNERSHIP
DEBTOR IN POSSESSION CASE # 97-32340
P.O. BOX 8
SOUTH BAY, FL 33493

465

63-643/670
00760

September 4 19 97

PAY TO THE ORDER OF Florida Department of Environmental Protection $ 250.00

Two hundred fifty dollars---------------------------------------------DOLLARS

First Union National Bank
Belle Glade, Florida
24 Hour Information Service
1-800-735-1012

FOR 9/2/97 permit modification

M. A. [signature]

⑈000465⑈ ⑆067006432⑆ 2090001777751⑈

LANDERS & PARSONS
ATTORNEYS AT LAW

CINDY L. BARTIN
DAVID S. DEE
JOSEPH W. LANDERS, JR.
JOHN T. LAVIA, III
RICHARD A. LOTSPEICH
FRED A. McCORMACK
PHILIP S. PARSONS
ROBERT SCHEFFEL WRIGHT

HOWELL L. FERGUSON
OF COUNSEL

VICTORIA J. TSCHINKEL
SENIOR CONSULTANT
(NOT A MEMBER OF THE FLORIDA BAR)

310 WEST COLLEGE AVENUE
POST OFFICE BOX 271
TALLAHASSEE, FLORIDA 32302
TELEPHONE (904) 681-0311
TELECOPY (904) 224-5595

RECEIVED
MAY 13 1996
BUREAU OF
AIR REGULATION

May 9, 1996

Hamilton S. Oven, Jr.
Power Plant Siting Coordinator
Department of Environmental
Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

RE: Okeelanta and Osceola Cogeneration Facilities

Dear Mr. Oven:

This law firm assists Okeelanta Power Limited Partnership (Okeelanta) and Osceola Power Limited Partnership (Osceola) with environmental law issues affecting their cogeneration facilities in Palm Beach County, Florida. On behalf of Okeelanta and Osceola, we are sending you this letter to confirm our understanding about the issues we discussed with you during our telephone conversation on May 1, 1996.

The PSD permit for the Okeelanta cogeneration facility provides that the facility's "gross generating capacity shall not exceed 74.9 megawatts (MW), 1-hour average, except during scheduled emissions compliance and equipment performance tests." ACO 50-219413, PSD-FL-196 at page 5, Specific Condition No. 1; see also page 7, Specific Condition No. 11. The PSD permit for the Osceola cogeneration facility provides that the facility's maximum generating capacity "shall not exceed 74 megawatt (MW), 1 hour average." ACO50-269980, PSD-FL-197A at page 5, Specific Condition No. 1.

Based on our recent telephone discussion with you, it is our understanding that the "1-hour average" described in these PSD permits is a 1 hour rolling average. The one hour averaging period starts when the facility's generation rate exceeds the applicable MW threshold (e.g., 74.9 MW at Okeelanta). In a hypothetical situation, if the gross generating rate of the Okeelanta cogeneration facility momentarily exceeds 74.9 MW due

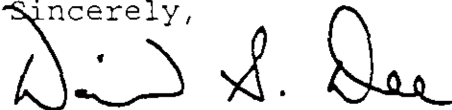
to an upset condition, the facility will have a total of one hour (measured from the start of the upset condition) to reduce the facility's generating rate and attain an average hourly generating rate that is equal to or less than 74.9 MW.

Conversely, the Department will not apply the one hour average to one hour blocks of time (e.g., 1 P.M. until 2 P.M.). This approach will not be used because, if an upset condition occurred 59 minutes after the start of the one hour block, the cogeneration facility would not have an adequate opportunity to reduce its generating rate and come into compliance with the 74.9 MW limit.

Okeelanta and Osceola have raised this issue with the Department because they want to ensure that there is no confusion in the future concerning the proper interpretation of the Department's permit limits. For this reason, Okeelanta and Osceola would greatly appreciate it if the Department would confirm in writing that our understanding about these issues is correct.

Thank you for your cooperation and assistance with this matter. Please call me if you have any questions.

Sincerely,



David S. Dee

cc: Chip Collette
Clair Fancy
Al Linero
Willard Hanks
James Stormer

cc: T. Tittle, SFD
D. Knowles, SD