

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF FINAL PERMIT MODIFICATION

In the Matter of an  
Application for Permit Modification

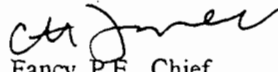
Mr. Rodney Williams, Plant Manager  
Okeelanta Power Limited Partnership  
Post Office Box 8  
South Bay, Florida 33493

DEP File No.0990332-009-AC  
PSD-FL-196

Enclosed is a letter that modifies Permit Number PSD-FL-196. This letter modifies the construction permit for Okeelanta Power's cogeneration facility to allow additional time for concurrent operation of the Okeelanta sugar mill's existing boilers and the new cogeneration boilers while problems with the interconnections between the plants are being resolved. This modification also requires periodic reporting of the status of the interconnection. This permit modification is issued pursuant to Section 403, Florida Statutes.

Any party to this order (permit) 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.

Executed in Tallahassee, Florida.

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

CERTIFICATE OF SERVICE

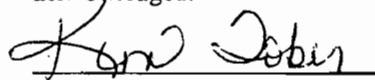
The undersigned duly designated deputy agency clerk hereby certifies that this NOTICE OF FINAL PERMIT MODIFICATION (including the FINAL permit modification) was sent by certified mail (\*) and copies were mailed by U.S. Mail before the close of business on 6-15-98 to the person(s) listed:

Mr. Rodney Williams, Okeelanta Power L.P. \*  
Mr. Daniel Thompson, Berger, Davis & Singerman  
David Knowles, SD  
Isidore Goldman, SED  
James Stormer, PBCHD

Brian Beals, EPA  
John Bunyak, NPS  
David Buff, Golder Associates  
David Dee, Landers & Parsons

Clerk Stamp

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

  
(Clerk) 6-15-98  
(Date)

FINAL DETERMINATION

Okeelanta Power Limited Partnership

Permit No. PSD-FL-196

Permit Modification No. 0990332-009-AC

An Intent to Issue an air construction permit Modification for Okeelanta Power L.P.'s cogeneration facility located near South Bay in Palm Beach County was distributed on March 26, 1998. The Public Notice of Intent to Issue Air Construction Permit Modification was published in the Palm Beach Post newspaper on May 1, 1998. This newspaper has circulation in Palm Beach County.

Comments were submitted in response to the Department's Intent by the permittee's attorney on April 22, 1998. The attorney commented that the cogeneration boilers are reliable and that the permit modification was needed to provide time to improve the interconnections between the sugar mill and the cogeneration facility. The Department has reworded the proposed modifications to specific conditions Nos. 17 and 26 to better describe the reason for the modification.

The final action of the Department will be to issue the permit as proposed except for the changes noted above.

P 265 659 357

US Postal Service  
**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
Rodney Williams	
Street & Number	
Okeelanta Power	
Post Office, State, & ZIP Code	
South 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	
0910332-009-AC P50-FL-196	

PS Form 3800, April 1995

our RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:  
Mr. Rodney Williams  
Okeelanta Power, LP  
P.O. Box 8  
South Bay, FL  
33493

4a. Article Number  
P 265 659 357

4b. Service Type

- Registered
- Certified
- Express Mail
- Insured
- Return Receipt for Merchandise
- COD

7. Date of Delivery  
10-19-98

5. Received By: (Print Name)  
Kathy Gorkes

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

6. Signature: (Addressee or Agent)  
*Kathy Gorkes*

Form 3811

Return Receipt

Thank you for using Return Receipt Service.



# Department of Environmental Protection

Lawton Chiles  
Governor

Virginia B. Wetherell  
Secretary

June 10, 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 affected 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,~~ 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 interconnections (bagasse fuel and steam systems) between the cogeneration facility and the sugar mill are commercially and operationally reliable, but no later than April 1, 2000. 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 boilers' 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 interconnected operations are commercially and operationally reliable, 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

Mr. Rodney Williams  
Page Two  
Okeelanta Power, LP

testing of the cogeneration facility. After April 1, ~~1998~~ 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.

26. Stack monitoring, fuel usage, ~~and~~ fuel analysis data, and the status of the interconnections 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

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.landersonparsons.com

February 27, 1998

RECEIVED

FEB 27 1998

BUREAU OF  
AIR REGULATION

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. A050-169210, 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

Mr. Clair Fancy  
Page Two  
February 27, 1998

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.

TO:

~~17. During the first three years of commercial cogeneration facility operation, the~~ The existing Boilers Nos. 4, 5, 6, 10, 11, 12, 14, and 15 (Permit Nos. A050-169210, 190690, 175414, 190693, 175411, 169215, 189904, and 209094, respectively), may be retained for standby operation. During the period from initial firing until April 1, 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 boilers' steam production reduced by an equivalent amount. After April 1, 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, but no later than~~ April 1, 2001.

Mr. Clair Fancy  
Page Three  
February 27, 1998

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.



Mr. Clair Fancy  
Page Four  
February 27, 1998

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.

Mr. Clair Fancy  
Page Five  
February 27, 1998

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.

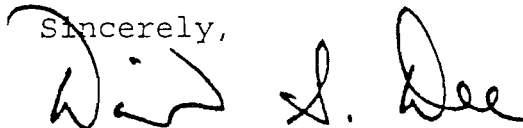
#### Conclusion

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

OKEELANTA COGENERATION FACILITY  
P.O. Box 9  
South Bay, Florida 33409  
(561) 993-1010  
(561) 992-7744 (fax)

**RECEIVED**  
MAY 08 1998  
BUREAU OF  
AIR REGULATION

May 5, 1998

State of Florida  
Department of Environmental Protection  
Twin Towers Office Building  
2600 Blair Stone Road, MS #5505  
Tallahassee, Florida 32399-2400

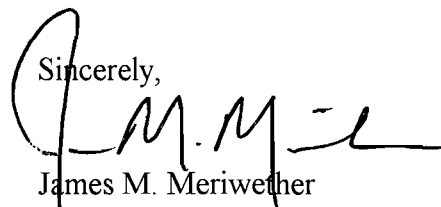
Attn: Mr. A. A. Linero, P.E.  
Administrator  
New Source Review Section

Re: Okeelanta Cogeneration Facility  
Draft Permit Modification No. 0990332-009-AC  
(PSD-FL-196)

Dear Mr. Linero:

Please find enclosed the original copy of the Proof of Publication for the "Public Notice of Intent to Issue Air Construction Permit Modification". The Notice was published in the Palm Beach Post on May 1, 1998. If you have any questions please contact me at (561) 993-1003.

Sincerely,



James M. Meriwether  
Environmental Manager

cc: Ricardo Lima  
Rodney Williams  
Bill Tarr  
David Dee

cc: W. Hanks, BAR  
D. Thompson, B D & S  
JD  
PBC

EPA  
NPS

# THE PALM BEACH POST

Published Daily and Sunday  
West Palm Beach, Palm Beach County, Florida

## PROOF OF PUBLICATION

STATE OF FLORIDA  
COUNTY OF PALM BEACH

Before the undersigned authority personally appeared Chris Bull who on oath says that she is Classified Advertising Manager of The Palm Beach Post, a daily and Sunday newspaper published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising, being a Notice in the matter of Intent to Issue Air Construction Permit Modification -- Court, was published in said newspaper in the issues of May 1, 1998.

Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

*Chris Bull*

Sworn to and subscribed before me this 1 day of May A.D. 1998

*[Signature]*

Personally known XX or Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

compliance with Rule 28-5.207 of the Florida Administrative Code. Mediation is not available for this action.

A petition must contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of the facts that the petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement identifying the rules or statutes that the petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take with respect to the action or proposed action.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this permit amendment. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

A complete project file is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at:

Department of Environmental Protection  
Bureau of Air Regulation  
111 S. Magnolia Drive, Suite 4  
Tallahassee, Florida 32301  
Telephone: 850/488-1344

Department of Environmental Protection  
South Florida District  
2295 Victoria Avenue,  
Suite 364  
Fort Myers, Florida 33901  
Telephone: 941/332-6975

Division of Environmental Science and Engineering  
Palm Beach County Health Unit  
901 Evernia Street  
West Palm Beach, Florida 33401  
Telephone: 561/355-3070

Department of Environmental Protection  
Southeast District  
400 N. Congress Avenue  
Reception 2nd Floor  
West Palm Beach, Florida 33416  
Telephone: 561-681-6600

The complete project file includes the Draft Permit Modification, the request, and the information submitted by the responsible official, exclusive of confidential records under Section 403.111, F.S. Interested persons may contact the Administrator, New Resource Review Section at 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301, or call 850/488-1344, for additional information.

PUB: The Palm Beach Post  
May 1, 1998

NOTARY PUBLIC  
STATE OF FLORIDA  
Karen McLinton  
Notary Public, State of Florida  
Commission No. CC 591337  
My Commission Exp. 11/15/2000  
1-800-3-NOTARY Fla. Notary Service & Bonding Co.

NO. 483987  
PUBLIC NOTICE OF INTENT  
TO ISSUE AIR CONSTRUCTION  
PERMIT MODIFICATION  
STATE OF FLORIDA  
DEPARTMENT  
OF ENVIRONMENTAL  
PROTECTION  
DRAFT Permit Modification  
No. 0990332-009-AC,  
PSD-FL-196  
Okeelanta Power  
Limited Partnership  
Palm Beach County

The Department of Environmental Protection (Department) gives notice of its intent to issue an air construction permit modification to Okeelanta Power Limited Partnership for the cogeneration plant located near South Bay, Palm Beach County, A Best Available Control Technology (BACT) determination was not required for this modification pursuant to Rule 62-212.400, F.A.C. and 40 CFR 52.21, Prevention of Significant Deterioration (PSD). The modification will not result in an increase in allowable emissions from the cogeneration facility, and will not cause a violation of any state or federal ambient air quality standards or increments. The applicant's name and address are: Okeelanta Power Limited Partnership, P.O. Box 8, South Bay, FL 33483.

The modification will allow an additional two years for concurrent operation of the Okeelanta sugar mill's existing boilers and the new cogeneration boilers while problems with the interconnections between the two plants are being resolved.

The Department will issue the FINAL Permit Modification, in accordance with the conditions of the DRAFT Permit Modification unless a response received in accordance with the following procedures results in a different decision or significant change of terms or conditions.

The Department will accept written comments concerning the proposed DRAFT Permit Modification issuance action for a period of 30 (thirty) days from the date of publication of this Notice. Any written comments should be provided to the Department's Bureau of Air Regulation, 2600 Blair Stone Road, Mail Station #5505, Tallahassee, Florida 32399-2400. Any written comments filed shall be made available for public inspection. If written comments received result in a significant change in this DRAFT Permit Modification, the Department shall issue a Revised DRAFT Permit Modification and require, if applicable, another Public Notice.

The Department will issue FINAL Permit Modification with the conditions of the DRAFT Permit Modification unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57 F.S. The procedures for petitioning for a hearing are set forth below. Mediation is not available for this action. A person whose substantial interests are affected by this permit amendment may petition for an administrative hearing in accordance with Sections 120.569 and 120.57 F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000, telephone: 850/488-9730, fax: 850/487-4938. Petitions must be filed within fourteen days of receipt of this permit amendment. A petitioner must mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval

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.landersonparsons.com

April 22, 1998

RECEIVED  
APR 29 1998  
BUREAU OF  
AIR REGULATION

Al Linero, P.E.  
Department of Environmental  
Protection  
Bureau of Air Regulation  
2600 Blair Stone Road  
Tallahassee, Florida 32399

Re: Okeelanta Power Cogeneration Facility

Dear Mr. Linero:

I am sending you this letter to confirm the information I provided to you during our discussions on April 16 and 22, 1998.

On March 25, 1998, the Florida Department of Environmental Protection ("DEP") gave notice of its intent to issue a permit modification (No. 0990332-009-AC; PSD-FL-196) for the Okeelanta Power Limited Partnership's ("Okeelanta Power") cogeneration facility in Palm Beach County, Florida. On behalf of Okeelanta Power, I am submitting the following comments concerning the Department's notice and draft permit modification.

Publication of Notice

The first page, second paragraph, of the Department's "Public Notice of Intent to Issue Air Construction Permit Modification" should be revised and clarified by replacing the current language with the following statement:

"The modification will allow an additional two years for concurrent operation of Okeelanta Power's cogeneration facility and the adjacent sugar mill's boilers to provide Okeelanta Power Limited Partnership with an opportunity to fine tune and perfect the interconnected operations between the cogeneration facility and the sugar mills."

No!  
They will  
publish  
notice as  
we gave  
it to them.

Mr. Al Linero  
Page Two  
April 22, 1998

Modified Permit Conditions

The language in the draft permit modification should be revised and clarified in the manner shown below.

1. The first sentence in Specific Condition No. 17 should state that:

"The existing Boilers . . . may be retained for standby operation until the interconnection between the cogeneration facility and sugar mill is perfected, but no later than April 1, 2000, provided their operating permits are valid."

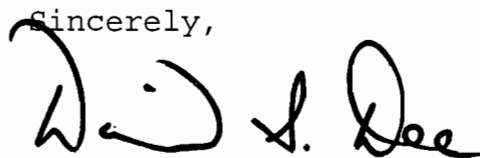
2. The last sentence in Specific Condition No. 17 should state that:

"These existing boilers at the sugar mill shall be shutdown and rendered incapable of operation after fine-tuning of interconnected operations has been completed, but no later than April 1, 2001."

3. The first sentence in Specific Condition No. 26 should state that:

"Stack monitoring, fuel usage, fuel analysis data, and the status of the interconnections between the sugar mill and the cogeneration facility shall be reported" . . . . .

Thank you for your consideration of these comments. Please call me if you have any questions.

Sincerely,  


David S. Dee

cc: Willard Hanks



# Department of Environmental Protection

Lawton Chiles  
Governor

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

Virginia B. Wetherell  
Secretary

March 25, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Re: DRAFT Permit Modification No. 0990332-009-AC (PSD-FL-196)  
74.9 Megawatt Cogeneration Facility

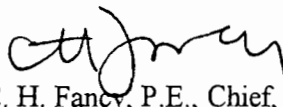
Dear Mr. Williams:

Enclosed is one copy of the Draft Air Construction Permit Modification for the cogeneration facility located near South Bay in Palm Beach County. The Department's Intent to Issue Air Construction Permit Modification and the "PUBLIC NOTICE OF INTENT TO ISSUE AIR CONSTRUCTION PERMIT MODIFICATION" are also included.

The "PUBLIC NOTICE OF INTENT TO ISSUE AIR CONSTRUCTION PERMIT MODIFICATION" must be published within 30 (thirty) days of receipt of this letter. Proof of publication, i.e., newspaper affidavit, must be provided to the Department's Bureau of Air Regulation office within 7 (seven) days of publication. Failure to publish the notice and provide proof of publication within the allotted time may result in the denial of the permit modification.

Please submit any written comments you wish to have considered concerning the Department's proposed action to A. A. Linero, P.E., Administrator, New Source Review Section at the above letterhead address. If you have any other questions, please contact Mr. Willard Hanks at 850/921-9528.

Sincerely,

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

CHF/wh/t

Enclosures

In the Matter of an  
Application for Permit Modification by:

Okeelanta Power Limited Partnership  
Post Office Box 8  
South Bay, Florida 33493

DRAFT Permit Modification No. 0990332-009-AC  
PSD-FL-196  
Okeelanta Cogeneration Facility  
Palm Beach County

### INTENT TO ISSUE AIR CONSTRUCTION PERMIT MODIFICATION

The Department of Environmental Protection (Department) gives notice of its intent to issue an air construction permit modification (copy of DRAFT Permit Modification attached) for the proposed project, as detailed in the request specified above for the reasons stated below.

The applicant, Okeelanta Power Limited Partnership, applied on February 27, 1998 to the Department for an air construction permit modification for its cogeneration facility located six miles south of South Bay, Palm Beach County. The request is to allow additional time for the simultaneous operation of the facility's cogeneration boilers and the boilers at the adjacent sugar mill.

The Department has permitting jurisdiction under the provisions of Chapter 403, Florida Statutes (F.S.), and Florida Administrative Code (F.A.C.) Chapters 62-4, 62-210, and 62-212. The above actions are not exempt from permitting procedures. The Department has determined that an air construction permit modification is required to allow additional time for the simultaneous operation of the cogeneration and sugar mill boilers.

The Department intends to issue this air construction permit modification based on the belief that reasonable assurances have been provided to indicate that operation of these emission units will not adversely impact air quality, and the emission units will comply with all appropriate provisions of Chapters 62-4, 62-204, 62-210, 62-212, 62-296, and 62-297, F.A.C.

Pursuant to Section 403.815, F.S., and Rule 62-103.150, F.A.C., you (the applicant) are required to publish at your own expense the enclosed "PUBLIC NOTICE OF INTENT TO ISSUE AIR CONSTRUCTION PERMIT MODIFICATION". The notice shall be published one time only within 30 (thirty) days in the legal advertisement section of a newspaper of general circulation in the area affected. For the purpose of these rules, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. Where there is more than one newspaper of general circulation in the county, the newspaper used must be one with significant circulation in the area that may be affected by the permit. If you are uncertain that a newspaper meets these requirements, please contact the Department at the address or telephone number listed below. The applicant shall provide proof of publication to the Department's Bureau of Air Regulation, at 2600 Blair Stone Road, Mail Station #5505, Tallahassee, Florida 32399-2400 (Telephone: 850/488-1344; Fax 850/ 922-6979) within 7 (seven) days of publication. Failure to publish the notice and provide proof of publication within the allotted time may result in the denial of the permit modification pursuant to Rule 62-103.150 (6), F.A.C.

The Department will issue the FINAL Permit Modification, in accordance with the conditions of the enclosed DRAFT Permit Modification unless a response received in accordance with the following procedures results in a different decision or significant change of terms or conditions.

The Department will accept written comments concerning the proposed DRAFT Permit Modification issuance action for a period of 30 (thirty) days from the date of publication of "PUBLIC NOTICE OF INTENT TO ISSUE AIR CONSTRUCTION PERMIT MODIFICATION." Written comments should be provided to the Department's Bureau of Air Regulation, 2600 Blair Stone Road, Mail Station #5505, Tallahassee, Florida 32399-2400. Any written comments filed shall be made available for public inspection. If written comments received result in a significant change in this DRAFT Permit Modification, the Department shall issue a Revised DRAFT Permit Modification and require, if applicable, another Public Notice.

The Department will issue the permit modification with the attached conditions unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57 F.S. The procedures for petitioning for a hearing are set forth below. Mediation is not available for this action.



A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative hearing in accordance with Sections 120.569 and 120.57 F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000, telephone: 850/488-9730, fax: 850/487-4938. Petitions must be filed within fourteen days of publication of the public notice or within fourteen days of receipt of this notice of intent, whichever occurs first. A petitioner must mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-5.207 of the Florida Administrative Code.

A petition must contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of the facts that the petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement identifying the rules or statutes that the petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take with respect to the action or proposed action addressed in this notice of intent.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice of intent. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

In addition to the above, a person subject to regulation has a right to apply for a variance from or waiver of the requirements of particular rules, on certain conditions, under Section 120.542 F.S. The relief provided by this state statute applies only to state rules, not statutes, and not to any federal regulatory requirements. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have in relation to the action proposed in this notice of intent.

The application for a variance or waiver is made by filing a petition with the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000. The petition must specify the following information: (a) The name, address, and telephone number of the petitioner; (b) The name, address, and telephone number of the attorney or qualified representative of the petitioner, if any; (c) Each rule or portion of a rule from which a variance or waiver is requested; (d) The citation to the statute underlying (implemented by) the rule identified in (c) above; (e) The type of action requested; (f) The specific facts that would justify a variance or waiver for the petitioner; (g) The reason why the variance or waiver would serve the purposes of the underlying statute (implemented by the rule); and (h) A statement whether the variance or waiver is permanent or temporary and, if temporary, a statement of the dates showing the duration of the variance or waiver requested.

The Department will grant a variance or waiver when the petition demonstrates both that the application of the rule would create a substantial hardship or violate principles of fairness, as each of those terms is defined in Section 120.542(2) F.S., and that the purpose of the underlying statute will be or has been achieved by other means by the petitioner.

Persons subject to regulation pursuant to any federally delegated or approved air program should be aware that Florida is specifically not authorized to issue variances or waivers from any requirements of any such federally delegated or approved program. The requirements of the program remain fully enforceable by the Administrator of the EPA and by any person under the Clean Air Act unless and until the Administrator separately approves any variance or waiver in accordance with the procedures of the federal program.

Executed in Tallahassee, Florida.



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

**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy agency clerk hereby certifies that this INTENT TO ISSUE AIR CONSTRUCTION PERMIT MODIFICATION (including the PUBLIC NOTICE, and DRAFT permit modification) was sent by certified mail (\*) and copies were mailed by U.S. Mail before the close of business on 3-26-98 to the person(s) listed:

- Mr. Rodney Williams, Okeelanta Power L.P. \*
- Mr. Daniel Thompson, Berger, Davis & Singerman \*
- Mr. David Dee, Landers & Parsons
- Mr. David Knowles, SD
- Mr. Jim Stormer, PBCPHU
- Mr. Brian Beals, EPA
- Mr. John Bunyak, NPS

Clerk Stamp

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

John Ioban  
(Clerk)

3-26-98  
(Date)

P 265 659 320

US Postal Service  
**Receipt for Certified Mail**

No Insurance Coverage Provided.  
Do not use for International Mail (See reverse)

Sent to <i>Rodney Williams</i>	
Street & Number <i>Clairmont Power</i>	
Post Office, State, & ZIP Code <i>South Bay, FL</i>	
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 <i>0990332-004-AC 3/26/98</i> <i>P30-FI-196</i>	

PS Form 3800 April 1995

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

*Mr. Rodney Williams, Plant Mgr*  
*Clairmont Power, LP*  
*P.O. Box 8*  
*South Bay, FL 33493*

4a. Article Number

*P 265 659 320*

4b. Service Type

- Registered
- Express Mail
- Return Receipt for Merchandise
- Certified
- Insured
- COD

7. Date of Delivery

*4/1/98*

5. Received By: (Print Name)

*K. Verkes*

6. Signature: (Addressee or Agent)

*X K. Verkes*

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.

**NOTICE TO BE PUBLISHED  
IN THE NEWSPAPER**

**PUBLIC NOTICE OF INTENT TO ISSUE AIR CONSTRUCTION PERMIT MODIFICATION**

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

DRAFT Permit Modification No. 0990332-009-AC, PSD-FL-196  
Okeelanta Power Limited Partnership  
Palm Beach County

The Department of Environmental Protection (Department) gives notice of its intent to issue an air construction permit modification to Okeelanta Power Limited Partnership for the cogeneration plant located near South Bay, Palm Beach County. A Best Available Control Technology (BACT) determination was not required for this modification pursuant to Rule 62-212.400, F.A.C. and 40 CFR 52.21, Prevention of Significant Deterioration (PSD). The modification will not result in an increase in allowable emissions from the cogeneration facility, and will not cause a violation of any state or federal ambient air quality standards or increments. The applicant's name and address are: Okeelanta Power Limited Partnership, P.O. Box 8, South Bay, FL 33493.

The modification will allow an additional two years for concurrent operation of the Okeelanta sugar mill's existing boilers and the new cogeneration boilers while problems with the interconnections between the two plants are being resolved.

The Department will issue the FINAL Permit Modification, in accordance with the conditions of the DRAFT Permit Modification unless a response received in accordance with the following procedures results in a different decision or significant change of terms or conditions.

The Department will accept written comments concerning the proposed DRAFT Permit Modification issuance action for a period of 30 (thirty) days from the date of publication of this Notice. Any written comments should be provided to the Department's Bureau of Air Regulation, 2600 Blair Stone Road, Mail Station #5505, Tallahassee, Florida 32399-2400. Any written comments filed shall be made available for public inspection. If written comments received result in a significant change in this DRAFT Permit Modification, the Department shall issue a Revised DRAFT Permit Modification and require, if applicable, another Public Notice.

The Department will issue FINAL Permit Modification with the conditions of the DRAFT Permit Modification unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57 F.S. The procedures for petitioning for a hearing are set forth below. Mediation is not available for this action.

A person whose substantial interests are affected by this permit amendment may petition for an administrative hearing in accordance with Sections 120.569 and 120.57 F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000, telephone: 850/488-9730, fax: 850/487-4938. Petitions must be filed within fourteen days of receipt of this permit amendment. A petitioner must mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in

## **NOTICE TO BE PUBLISHED IN THE NEWSPAPER**

compliance with Rule 28-5.207 of the Florida Administrative Code. Mediation is not available for this action.

A petition must contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of the facts that the petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement identifying the rules or statutes that the petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take with respect to the action or proposed action.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this permit amendment. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

A complete project file is available for public inspection during normal business hours, 8:00 a. m. to 5:00 p.m., Monday through Friday, except legal holidays, at:

Department of Environmental Protection  
Bureau of Air Regulation  
111 S. Magnolia Drive, Suite 4  
Tallahassee, Florida 32301  
Telephone: 904/488-1344

Division of Environmental Science  
and Engineering  
Palm Beach County Health Unit  
901 Evernia Street  
West Palm Beach, Florida 33401  
Telephone: 561/355-3070

Department of Environmental Protection  
South Florida District  
2295 Victoria Avenue, Suite 364  
Fort Myers, Florida 33901  
Telephone: 813/332-6975

Department of Environmental Protection  
Southeast District  
400 N. Congress Avenue  
Reception 2nd Floor  
West Palm Beach, Florida 33416  
Telephone: 561/681-6600

The complete project file includes the Draft Permit Modification, the request, and the information submitted by the responsible official, exclusive of confidential records under Section 403.111, F.S. Interested persons may contact the Administrator, New Resource Review Section at 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301, or call 904/488-1344, for additional information.

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.landersondparsons.com

February 27, 1998

**RECEIVED**

**FEB 27 1998**

**BUREAU OF  
AIR REGULATION**

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

Mr. Clair Fancy  
Page Two  
February 27, 1998

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.

TO:

~~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. During the period from initial firing until April 1, 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 boilers' steam production reduced by an equivalent amount. After April 1, 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, but~~ no later than April 1, 2001.

Mr. Clair Fancy  
Page Three  
February 27, 1998

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.



Mr. Clair Fancy  
Page Four  
February 27, 1998

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.

Mr. Clair Fancy  
Page Five  
February 27, 1998

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.

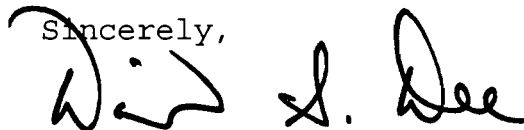
#### Conclusion

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

(DATE)

DRAFT

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.

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.

TO:

17. 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, 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 boilers' steam production reduced by an equivalent amount. After April 1, 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 no later than 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, 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.

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

February 26, 1998

DATE

CHECK NO  
6535

\$\$\$AMOUNT\$\$\$250.00

PAY  
TO THE  
ORDER  
OF

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

MP



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)

RECEIVED

FEB 27 1998

BUREAU OF  
AIR REGULATION

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

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:

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. A050-169210, 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

Mr. Clair Fancy  
Page Two  
February 27, 1998

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.

TO:

~~17. During the first three years of commercial cogeneration facility operation, the~~ 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, 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 boilers' steam production reduced by an equivalent amount. After April 1, 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, but no later than~~ April 1, 2001.



Mr. Clair Fancy  
Page Three  
February 27, 1998

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.

Mr. Clair Fancy  
Page Four  
February 27, 1998

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.

Mr. Clair Fancy  
Page Five  
February 27, 1998

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.

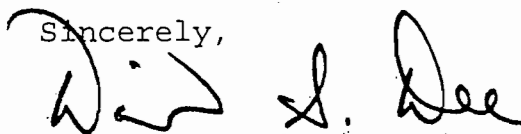
#### Conclusion

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 ✓

**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,~~ 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

Mr. Rodney Williams  
Page Two  
Okeelanta Power, LP

**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

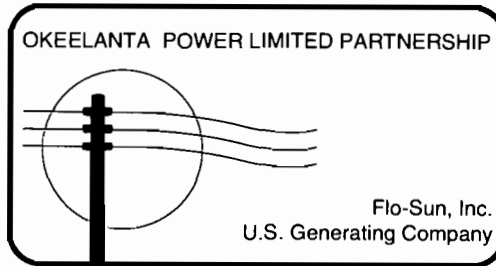
Enclosure: Landers & Parsons February 27, 1998 letter.

HLR/wh

**RECEIVED**

**FFR 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

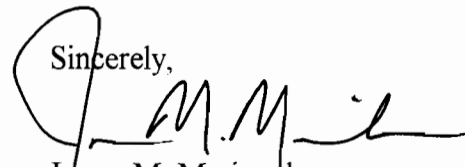
Re: Okeelanta Power Limited Partnership  
File No. 0990332-008-AC (PSD-FL-196)  
74.9 Megawatt Cogeneration Plant

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, 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"

P 265 659 282

US Postal Service

### Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
James J. Carlton	
Street & Number	
Ocellanta 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-FI-196	

PS Form 3800, April 1995

Fold at line over top of envelope to

Is your RETURN ADDRESS completed on the reverse side?

#### SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:  
 James J. Carlton, AR  
 Ocellanta Power, LP  
 P O 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

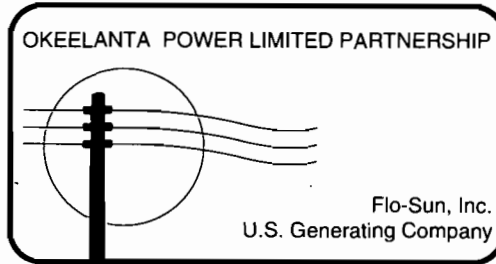
5. Received By: (Print Name)  
 K. Verkes

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

6. Signature: (Addressee or Agent)  
 X K. Verkes

Thank you for using Return Receipt Service.





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,

A handwritten signature in black ink, appearing to read "J.M. Meriwether".

James M. Meriwether  
Environmental Manager

**RECEIVED**

SEP 29 1997

BUREAU OF  
AIR REGULATION

*(If Mac-Safe 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 <sup>5</sup>

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

[REDACTED]

GUARDIAN & SAFETY CLARKE AMERICAN BA

0990332-008-AC  
Check #  
508

Safe 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

September 4 19 97

63-643/670  
00760

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

*M.A. Grant*

FOR 9/2/97 permit modification

[REDACTED]

*Kim  
Ann from F&A called and  
said they 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.  
PA  
OK  
Need check  
9/29*

0990332-008-AC

PSD-FI-196D

POSTED



# 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.

Mr. James T. Carlton  
Page 2  
September 19, 1997

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

*Paern Beh Co.*

P 265 659 462

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PS Form 3800, April 1995

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Ocala Power, LP  
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33493

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P 265 659 462

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X K. Yokes

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July 2, 1993

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

RECEIVED

JUL 02 1993

Division of Air  
Resources Management

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



Clair Fancy  
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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.





Clair Fancy  
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"Special wastes" are defined by statute 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.



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Page Four  
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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,

A handwritten signature in cursive script that reads "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/ej

ORIGINAL  
303STATE OF NEW YORK  
PUBLIC SERVICE COMMISSIONAt 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 <sup>®</sup> brand fax transmittal memo 7871		# of pages 27
To David Dee	From Guy Marchmont	
Co.	Co.	
Dept.	Phone 301-718-6841	
Fax # 904-222-0398	Fax # 301-718-6910	

PICK

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<sup>1/</sup> and later clarified in the Ramapo Order.<sup>2/</sup> As set forth in the Ramapo Order, the output

<sup>1/</sup>Case 28689, Salt City Energy Venture, Order Approving Contract Subject to Conditions (Issued January 15, 1988).

<sup>2/</sup>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.<sup>1</sup>

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

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<sup>1</sup>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.<sup>1/</sup> 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

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<sup>1/</sup>According to IPPNY, the results of those tests will be used for a variety of purposes depending upon the provisions of the particular contract.

Case 91-E-0454

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.<sup>1/</sup> 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

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<sup>1/</sup>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



Case 91-E-0454

resolved,<sup>1/</sup> 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."<sup>2/</sup> Referring to the NYPP Report filed in Case 91-E-0237,<sup>3/</sup> 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.

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<sup>1/</sup>Case 91-E-0923, East Syracuse Generating Company, L.P., Declaratory Ruling (Issued October 2, 1991) (East Syracuse Ruling).

<sup>2/</sup>CCE Comment, p.2.

<sup>3/</sup>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 downtime. 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.<sup>1/</sup> 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

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<sup>1/</sup>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.<sup>1/</sup>

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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<sup>1/</sup>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),<sup>1/</sup> and an approximately 277 MW (gross) facility selling to Con Edison that qualifies only under federal, and not state, law.<sup>2/</sup> 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

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<sup>1/</sup>The April 7, 1988 and February 14, 1990 Letter Orders approving this contract are cited in Appendix A.

<sup>2/</sup>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.<sup>1/</sup> 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."<sup>2/</sup> 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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<sup>1/</sup>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.

<sup>2/</sup>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.



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.<sup>1/</sup> Although, as CCE maintains, the output limitations are to be interpreted broadly because they enforce the 80 MW statutory mandate incorporated in FSL §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.<sup>2/</sup> 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.<sup>3/</sup> 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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<sup>1/</sup>As NYSEG points out, the distinction drawn in the Proposed Order between "pre-operational" testing and other types of testing is confusing and unwarranted.

<sup>2/</sup>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.

<sup>3/</sup>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.

Case 91-E-0454

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,"<sup>1/</sup> and that "New York's statutory structure, sound regulatory practice, and ... limited staff resources"<sup>2/</sup> preclude

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<sup>1/</sup>Case 92-E-0032, Erie Energy Associates, Declaratory Ruling (Issued March 4, 1992), p. 2.

<sup>2/</sup>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.<sup>1/</sup>

Therefore, the requests for clarification are denied.<sup>2/</sup>

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.<sup>3/</sup>

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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<sup>1/</sup>These management decisions, of course, are subject to later prudence review. Hydro Quebec Order, p. 6.

<sup>2/</sup>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.

<sup>3/</sup>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.<sup>1/</sup>

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

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<sup>1/</sup>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.<sup>1/</sup> 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,<sup>2/</sup> 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

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

<sup>2/</sup>Onondaga did not file comments in response to the Proposed Order.

Case 91-E-0454

exceedence of the 80 MW limit by this facility as a violation of 52(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.<sup>1/</sup> 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."<sup>2/</sup>

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<sup>1/</sup>April 7, 1988 Letter Order, p. 2.

<sup>2/</sup>Niagara Mohawk Staff Memorandum, p. 9.

Therefore, the output limitations<sup>1/</sup> 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.<sup>2/</sup>

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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<sup>1/</sup>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.

<sup>2/</sup>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.<sup>1/</sup> 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.<sup>2/</sup>

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

<sup>2/</sup>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.<sup>1/</sup> 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

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<sup>1/</sup>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.

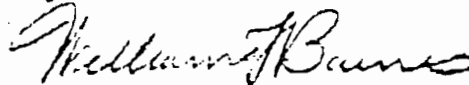
In contrast to the East Syracuse contracts, however, further ratepayer protections need not be imposed here. Unlike the East Syracuse facilities, both of Selkirk Cogen's facilities are largely dispatchable, thereby sufficiently protecting ratepayers from the prospect of purchasing overpriced energy.

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,



WILLIAM F. BARNES  
Deputy Secretary

(SIGNED)

Appendix A

80 MW PSL 62(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).

- Case 2:75-cv-01730-NO.042 P.27
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).



Best Available Copy  
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-196DE

Dear Mr. Carlton:

0990332-008

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.  
Administrator, Siting  
Coordination Office

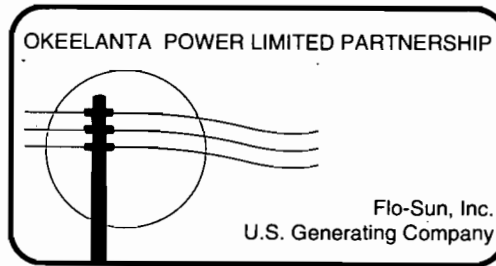
cc: Clair Fancy (w/incl)  
David Dee  
Chip Collette

**RECEIVED**  
SEP 17 1997  
BUREAU OF  
AIR REGULATION

**RECEIVED**  
SEP 17 1997  
BUREAU OF  
AIR REGULATION

September 11, 1997

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



DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
SEP 15 1997  
SITING COORDINATION

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

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 its 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 Statutes.

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.

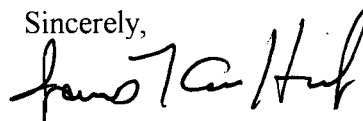
#### Conclusion

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      Perry Odum  
Howard Rhodes      Nevin Smith  
Clair Fancy      James Meriwether  
David Dee

cc: W. Hanks, BAR  
A. Lincro, 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 Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

\_\_\_\_\_  
(Clerk)

\_\_\_\_\_  
(Date)





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 BARR)

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

Hamilton S. Oven, Jr.  
Page Two  
May 9, 1996

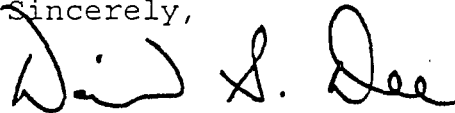
to an upset condition, the facility will have a total of one hour (measured from the start of the upset condition) to reduce the facility's generating rate and attain an average hourly generating rate that is equal to or less than 74.9 MW.

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

P 265 659 357

US Postal Service  
**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

PS Form 3800, April 1995

Sent to	Rodney Williams	
Street & Number	Okeelanta Power	
Post Office, State, & ZIP Code	South 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	0990332-009-AC P50-FL-196	

our RETURN ADDRESS completed on the reverse side?

<b>SENDER:</b> ■ Complete items 1 and/or 2 for additional services. ■ Complete items 3, 4a, and 4b. ■ Print your name and address on the reverse of this form so that we can return this card to you. ■ Attach this form to the front of the mailpiece, or on the back if space does not permit. ■ Write "Return Receipt Requested" on the mailpiece below the article number. ■ The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.
3. Article Addressed to: Mr. Rodney Williams Okeelanta Power, LP P.O. Box 8 South Bay, FL 33493	4a. Article Number P 265 659 357	7. Date of Delivery 6-19-98
5. Received By: (Print Name) Kathy Yerkes	4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
6. Signature: (Addressee or Agent) Kathy Yerkes	8. Addressee's Address (Only if requested and fee is paid)	

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Form 3811

Return Receipt

# THE PALM BEACH POST

Published Daily and Sunday  
West Palm Beach, Palm Beach County, Florida

## PROOF OF PUBLICATION

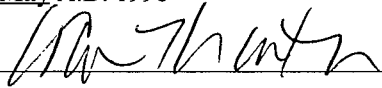
STATE OF FLORIDA  
COUNTY OF PALM BEACH

Before the undersigned authority personally appeared **Chris Bull** who on oath says that she is **Classified Advertising Manager** of The Palm Beach Post, a daily and Sunday newspaper published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising, being a **Notice** in the matter of **Intent to Issue Air Construction Permit Modification** -- Court, was published in said newspaper in the issues of **May 1, 1998**.

Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.



Sworn to and subscribed before me this **1** day of **May** A.D. 1998



Personally known **XX** or Produced Identification \_\_\_\_\_


Type of Identification Produced \_\_\_\_\_

compliance with Rule 28-5.207 of the Florida Administrative Code. Mediation is not available for this action.

A petition must contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of the facts that the petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement identifying the rules or statutes that the petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take with respect to the action or proposed action.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this permit amendment. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

A complete project file is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at:  
Department of Environmental Protection  
Bureau of Air Regulation  
111 S. Magnolia Drive, Suite 4  
Tallahassee, Florida 32301  
Telephone: 850/488-1344  
Department of Environmental Protection  
South Florida District  
2295 Victoria Avenue,  
Suite 364  
Fort Myers, Florida 33901  
Telephones: 941/332-6975  
Division of Environmental Science and Engineering  
Palm Beach County  
Health Unit  
901 Evernia Street  
West Palm Beach, Florida 33401  
Telephones: 561/355-3070  
Department of Environmental Protection  
Southeast District  
400 N. Congress Avenue  
Reception 2nd Floor  
West Palm Beach, Florida 33416  
Telephone: 581-681-6600  
The complete project file includes the Draft Permit Modification, the request, and the information submitted by the responsible official, exclusive of confidential records under Section 403.111, F.S. Interested persons may contact the Administrator, New Resource Review Section at 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301, or call 850/488-1344, for additional information.  
PUB: The Palm Beach Post  
May 1, 1998

  
Karen McLinton  
Notary Public, State of Florida  
Commission No. CC 591337  
My Commission Exp. 11/15/2000  
1-800-3-NOTARY Fla. Notary Service & Bonding Co.

NO. 463987  
PUBLIC NOTICE OF INTENT  
TO ISSUE AIR CONSTRUCTION  
PERMIT MODIFICATION  
STATE OF FLORIDA  
DEPARTMENT  
OF ENVIRONMENTAL  
PROTECTION  
DRAFT Permit Modification  
No. 0890332-009-AC,  
PSD-FL-196  
Okeelanta Power  
Limited Partnership  
Palm Beach County

The Department of Environmental Protection (Department) gives notice of its intent to issue an air construction permit modification to Okeelanta Power Limited Partnership for the cogeneration plant located near South Bay, Palm Beach County. A Best Available Control Technology (BACT) determination was not required for this modification pursuant to Rule 62-212.400, F.A.C. and 40 CFR 52.21, Prevention of Significant Deterioration (PSD). The modification will not result in an increase in allowable emissions from the cogeneration facility, and will not cause a violation of any state or federal ambient air quality standards or increments. The applicant's name and address are: Okeelanta Power Limited Partnership, P.O. Box 8, South Bay, FL 33493.

The modification will allow an additional two years for concurrent operation of the Okeelanta sugar mill's existing boilers and the new cogeneration boilers while problems with the interconnections between the two plants are being resolved.

The Department will issue the FINAL Permit Modification, in accordance with the conditions of the DRAFT Permit Modification, in response received in accordance with the following procedures results in a different decision or significant change of terms or conditions.

The Department will accept written comments concerning the proposed DRAFT Permit Modification issuance action for a period of 30 (thirty) days from the date of publication of this Notice. Any written comments should be provided to the Department's Bureau of Air Regulation, 2600 Blair Stone Road, Mail Station #5505, Tallahassee, Florida 32399-2400. Any written comments filed shall be made available for public inspection. If written comments received result in a significant change in this DRAFT Permit Modification, the Department shall issue a Revised DRAFT Permit Modification and require, if applicable, another Public Notice.

The Department will issue FINAL Permit Modification with the conditions of the DRAFT Permit Modification unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57 F.S. The procedures for petitioning for a hearing are set forth below. Mediation is not available for this action. A person whose substantial interests are affected by this permit amendment may petition for an administrative hearing in accordance with Sections 120.569 and 120.57 F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000, fax: 850/487-4938. Petitions must be filed within fourteen days of receipt of this permit amendment. A petitioner must mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 F.S. or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in

P 265 659 320

US Postal Service  
**Receipt for Certified Mail**

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Sent to <i>Rodney Williams</i>	
Street & Number <i>Keelanta Power</i>	
Post Office, State, & ZIP Code <i>S. Bay, FL</i>	
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 <i>0990332-009-AC 3/26/98</i> <i>POD-FI-196</i>	

PS Form 3800, April 1995

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- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1.  Addressee's Address
2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:  
*Mr. Rodney Williams, Plant Mgr*  
*Keelanta Power, CP*  
*PO Box 8*  
*South Bay, FL 33493*

4a. Article Number  
*P 265 659 320*

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

7. Date of Delivery  
*4/1/98*

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

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

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

PS Form 3811, December 1994

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P 265 659 282

US Postal Service

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Sent to	
James J. Carlton	
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	
0990332-608-AC	
P50-FI-196	

PS Form 3800, April 1995

Fold at line over top of envelope to

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- Complete items 3, 4a, and 4b.
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- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

James J. 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

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.

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

465

September 4 19 97<sup>8</sup>

63-643/670  
00760

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

*M.A. Grant*

FOR 9/2/97 permit modification

██████████ : ██████████ : ██████████

*9/23*  
*Know Ann from F&A called and said they returned this check to Okelanta 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.*  
*PA*

*OK*  
*Need check 9/29*

0990332-008-AC

PSD-FI-196D

POSTED



P 265 659 462

US Postal Service  
**Receipt for Certified Mail**

No Insurance Coverage Provided.  
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PS Form 3800, April 1995

Sender's Name <i>James Carlton AR</i>	
Street & Number <i>Oleelanta Power</i>	
Post Office, State, & ZIP Code <i>South Bay, FL</i>	
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	<i>0990332-008 P50-11-196</i>

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I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:  
*Mr. James J. Carlton, AR  
Oleelanta 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  
*9-29-87*

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

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

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

Thank you for using Return Receipt Service.