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October 24, 1995

Division of Air
Resources Management

Kathy Barylski
Acid Rain Division
U.S. Environmental Protection Agency
401 M Street, S.W., M.C. 6204J
Washington, D.C. 20460

Re: Orange Cogeneration Facility; Bartow, Florida
Request for Confirmation of Exemption from Acid Rain Program

Dear Ms. Barylski:

Orange Cogeneration Limited Partnership hereby requests that the U.S. Environmental Protection Agency (EPA) confirm that the federal Acid Rain Program does not apply to its Orange Cogeneration facility located near Bartow, Florida. The Orange Cogeneration facility is exempted as a "qualifying facility" under 40 CFR § 72.6(b)(5), and we are seeking the agency's confirmation of this exemption.

Section 72.6(b)(5) provides that "qualifying facilities" meeting certain criteria are not affected units subject to the requirements of the Acid Rain Program. The Orange Cogeneration facility meets those criteria and is therefore exempt. The Orange Cogeneration facility has, nevertheless, been operating for several months under the mistaken impression that the Acid Rain Program applied. For example, a designated representative has been appointed, and a continuous emission monitoring system has been installed and certified consistent with 40 CFR Part 75. Based on Orange Cogeneration Limited Partnership's recent understanding of the exemption available for qualifying facilities under 40 CFR § 72.6(b)(5), however, the Orange Cogeneration facility is exempt and should not be required to comply with the Acid Rain Program. By this letter, the Orange Cogeneration Limited Partnership requests EPA's confirmation that the facility is exempt as a qualifying facility.

The criteria established for the qualifying facility exemption under 40 CFR § 72.6(b)(5), as well as the related definitional provisions under 40 CFR § 72.2, are as follows:

- A. The facility must be a "qualifying small power production facility" within the meaning of Section 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of Section 3(18)(B) of the Federal Power Act.

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- B. One or more legally binding agreements must exist between the qualifying facility and a regulated electric utility that establish the terms and conditions for the sale of power from the facility to the utility.
- C. These power sales agreements must have been entered into as of November 15, 1990, and must require the utility to purchase at least 15 percent of the total planned net output capacity.¹ Changes to the power sales agreements are irrelevant as long as no changes are made regarding the identity of the electric output purchaser² or to allow the costs of compliance with the Acid Rain Program to be shifted to the purchaser.
- D. The facility must have a total installed net output capacity that does not exceed 130 percent of the total planned net output capacity.

As described below, all of these criteria are met and the Orange Cogeneration facility is exempt as a qualifying facility.

1. *Description of facility* - The Orange Cogeneration facility is a 102.7 megawatt (MW) cogeneration facility (at base conditions) supplying steam to Orange-Co. of Florida, Inc., and electricity to Florida Power Corporation (FPC) and to Tampa Electric Company (TECO). The facility is owned by Orange Cogeneration Limited Partnership and operated by CSW Energy, Inc. The facility includes two combustion turbine generators, two unfired heat recovery boilers, and an extraction/condensing steam turbine generator. Natural gas is the sole fuel for these units. Construction commenced on January 10, 1994, and commercial operation commenced on June 16, 1995.

2. *Qualifying facility*--The Orange Cogeneration facility is a "Qualifying Facility" based on the Federal Energy Regulatory Commission's Order Granting Application for Certification as a Qualifying Cogeneration Facility (as defined under Section 3(18)(B) of the Federal Power Act). A copy of this order, issued on December 1, 1993, is attached as Exhibit 1.

¹ Other types of power purchase commitments are allowed but are not relevant to this request.

² The definition of "qualifying power purchase commitment" provides that the identity of the electric output purchaser can be changed if the identity of the steam purchaser and the location of the project remain unchanged. This part of the definition is not relevant to the situation described in this letter.

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3. *Qualifying power purchase commitment(s) for at least 15 percent of total planned net output capacity*--The Orange Cogeneration facility has qualifying power purchase commitments to sell a total of 97 MW of electricity, or 95 percent of the total planned net output capacity of 102 MW, that were in effect as of November 15, 1990. Under legally binding power sales agreements, FPC and TECO, both of which are regulated electric utilities in Florida, are obligated to purchase electricity from the Orange Cogeneration facility, as set forth in paragraphs 4 and 5 below. FPC is obligated to purchase 74 MW, and TECO is obligated to purchase 23 MW, for a total of 97 MW. FPC's obligations originally arose through two separate agreements with CFR Bio-Gen Corporation. CFR Bio-Gen's contract rights were eventually assigned to the Orange Cogeneration Limited Partnership. TECO's obligations originally arose through an agreement with Polk Power Project, whose contract rights were subsequently assigned to Polk Power Partners and later to Orange Cogeneration Limited Partnership. Orange Cogeneration Limited Partnership consolidated all of these contract rights and developed the Orange Cogeneration facility to fulfill its obligation to provide 97 MW of electricity to FPC and TECO. These power purchase agreements and the assignments of rights to the Orange Cogeneration Limited Partnership are more fully described in paragraphs 4 and 5 below.

4. *Power sales agreements with FPC*--CFR Bio-Gen Corporation entered into a contract with FPC on March 17, 1987 (Exhibit 2), obligating FPC to purchase 50 MW of electricity from what is now known as the Orange Cogeneration facility (see page 2, paragraphs 4.2.1 and 4.2.2). The planned net output based on this contract was 55 MW (see page 2, paragraph 1). CFR Bio-Gen entered into a second contract with FPC on September 20, 1988 (Exhibit 3), obligating FPC to purchase an additional 24 MW of electricity from what is now known as the Orange Cogeneration facility (see page 3, paragraph 4.2.1). The net planned output based on this contract was 24 MW (see page 1, paragraph 1). Therefore, as of September 20, 1988, the combined total amount of electricity that FPC agreed to purchase was 74 MW and the combined total planned net output was 79 MW. CFR Bio-Gen and FPC consolidated these two prior contracts into a single contract on November 19, 1991. A copy of this contract is attached as Exhibit 4. CFR Bio-Gen later assigned its rights under the contract to AP Cogen, Ltd., on June 18, 1992; a copy of this assignment is attached as Exhibit 5. Thereafter, AP Cogen, Ltd., assigned its contract rights to the Orange Cogeneration Limited Partnership on April 30, 1993; a copy of this agreement is attached to Exhibit 6. While the identity of the supplier of electricity and other provisions may have changed due to these transfers and assignments of contract rights, the identity of the electric output purchaser, FPC, did not change. The terms and conditions from the original contracts remained substantially the same and were not changed in any way to allow the costs of compliance with the federal Acid Rain Program to be shifted from Orange Cogeneration Limited Partnership to FPC.

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5. *Power sales agreement with TECO*--Arch Ford, doing business as the Polk Power Project, entered into a contract with TECO on April 17, 1989 (Exhibit 7), that obligated TECO to purchase 23 MW of electricity from what is now known as the Orange Cogeneration facility (see page 4, paragraph 4.2.1 and subsequent fulfillment of paragraph 4.2.2, as described in footnote 3 below).³ The planned net output based on this contract was 23 MW (see page 1, paragraph 1). Arch Ford/Polk Power Project's contract rights were subsequently assigned to Polk Power Partners, L.P., on February 24, 1992; a copy of this agreement is included as Exhibit 9.⁴ Orange Cogeneration Limited Partnership was assigned those contract rights by Polk Power Partners, L.P., on July 1, 1995; a copy of this agreement is included as Exhibit 10. While the identity of the supplier of electricity may have changed due to these transfers and assignments of contract rights, the identity of the electric output purchaser, TECO, did not change. The terms and conditions remained substantially the same⁵ and were not changed in any way to allow the costs of compliance with the federal Acid Rain Program to be shifted from Orange Cogeneration Limited Partnership to TECO.

6. *Total installed net output capacity*--The Orange Cogeneration facility, as stated above, includes two combustion turbine generators, two unfired heat recovery boilers, and an extraction/condensing steam turbine generator. Based on the power sales agreements, these units had a total *planned* net output capacity of 102 MW (55 MW based on the March 17, 1987, contract with FPC; 24 MW based on the September 20, 1988, contract with FPC; and 23 MW based on the April 17, 1989, contract with TECO). As constructed and operated, the facility has a total *installed* net output capacity of 102.7 MW (at base conditions). The total installed

³ The contract initially provided for the sale of 20 MW of electricity. On December 14, 1992, however, the amount of electricity being sold to TECO was increased to 23 MW, consistent with the provisions of Section 4.2.2 of the original contract. See letter from Polk Power Partners, L.P., to TECO, included as Exhibit 8.

⁴ The "TECO Power Purchase Agreement" referenced in Exhibit A-1 to this assignment agreement means the April 17, 1989, contract between Arch Ford, doing business as Polk Power Project, and TECO for the purchase and sale of 23 MW of electricity. If a copy of the November 25, 1991, Purchase Agreement (also referenced in this assignment agreement), which clarifies the content and date of the "TECO Power Purchase Agreement" in its definitional section, is needed, please let us know and a copy of the document or pertinent provisions will be sent to you immediately.

⁵ Certain contract provisions were clarified or changed on at least three different occasions that were unrelated to the purchaser's identity or the amount of electricity being sold. Copies of those agreements dated September 30, 1993 (Exhibit 11), December 14, 1993 (two letters) (Exhibit 12), and January 20, 1994 (Exhibit 13) are included for informational purposes only and should not affect applicability of the qualifying facility exemption.

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net output capacity is therefore approximately 100 percent of the total planned net output capacity.

7. *Summary*--As you can see from the information provided, the Orange Cogeneration facility is a "qualifying facility" with power purchase agreements to sell 95 percent of the total planned net output capacity. These agreements were entered into prior to November 15, 1990. Additionally, the total installed net output capacity does not exceed 130 percent of the total planned net output capacity. The Orange Cogeneration facility is therefore a qualifying facility exempt from the requirements of the federal Acid Rain Program under 40 CFR §72.6(b)(5).

Thank you for your consideration of this request. We look forward to your confirmation that the Orange Cogeneration facility is not subject to the Acid Rain Program. If a formal petition under 40 CFR § 72.6(c) is necessary, please let us know and one will be submitted immediately. If you have any questions or need any additional information to process our request, please call me at (303) 273-9730.⁶ Please send any correspondence, including your notice of confirmation, to me at 1901 Clear Springs Road, Bartow, Florida 33830.

Sincerely,

ORANGE COGENERATION
LIMITED PARTNERSHIP

By: 
Thomas F. Donovan, Program Manager
and Authorized Representative

cc: John Paul Jones, Orange Cogeneration Facility Manager (Designated Representative)
CSW Energy, Inc., Operator, Orange Cogeneration Facility
Howard Rhodes, Director,
Division of Air Resources Management
Florida Department of Environmental Protection
Angela Morrison, Hopping Green Sams & Smith

⁶ Orange Cogeneration Limited Partnership has authorized me to execute and submit documents related to permits and government approvals. See Grant of Signature Authority attached as Exhibit 14.