DESTEC ENERGY

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December 13, 1995

Mr. John Brown
Florida Department of Environmental Protection
Air Permitting and Standards
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Re: Tiger Bay Limited Partnership
Title IV - Proof of Nonapplicability

Dear Mr. Brown:

Enclosed you will find a copies of the following documents in support of the nonapplicability of Florida's Title IV - Acid Rain Program on Tiger Bay Limited Partnership's ("Tiger Bay"):

- Florida Public Service Commission "Order Approving Cogeneration Agreements", Docket No.890915-QF dated January 25, 1990.
- U.S. Federal Energy Regulatory Commission "Order Granting Application for Recertification as a Qualifying Cogeneration Facility", Docket No.QF93-15-001 dated February 16, 1994.

These documents establish that Tiger Bay is a qualifying cogeneration facility which had, as of November 15, 1990, a qualifying power purchase commitment with the Florida Power Corporation.

I am submitting these documents in response to your letter dated November 30, 1995 requesting submittal of the Title IV Phase II Permit Application. If upon review you have any questions or require any further information please do not hesitate to contact me at (713) 735-4568.

Very truly yours,

Jeanne Benedetti
Senior Environmental Engineer

Enclosures

cc: File 1253

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of cogeneration contract between Florida Power Corporation and General Peat Resources, L.P.	DOCKET NO. 890915-EQ ORDER NO. 22473 ISSUED: 1-25-90

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING COGENERATION AGREEMENTS

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On November 30, 1988, Florida Power Corporation (FPC) and General Peat Resources L.P. (General Peat) executed two negotiated contracts for the sale of 104 MW of cogenerated power from General Peat's Units 2 and 3 which are located near Lake Placid, Florida. These contracts were submitted to the Commission for approval on July 17, 1989. On July 6, 1989, FPC petitioned this body for permission to close its standard offer associated with the 500 MW 1995 statewide avoided coal unit on the grounds that it had been fully subscribed. In Order No. 22061, issued on October 17, 1989, we granted FPC's petition and found that the two General Peat contracts

discussed above were beyond the 500 MW subscription limit and would have to be evaluated against the next approved statewide avoided unit.

On September 6, 1989, FPC and General Peat filed a joint petition to defer our consideration of the two contracts until after we selected the next statewide avoided unit. The request was granted by Order No. 21924, issued on September 20, 1989, conditioned upon FPC filing the necessary data demonstrating that the General Peat contracts complied with Rule 25-17.083, Florida Administrative Code, within 30 days of the date of the vote on a new statewide avoided unit. Pursuant to Order No. 21924, FPC filed the necessary data on November 15, 1989.

At the agenda in which we selected the current statewide avoided unit, a 385 MW 1993 combined cycle unit, we deferred the issues associated with the implementation of subscription and allocation until a hearing could be held on those issues. In response to that decision, on December 20, 1989, FPC filed a motion for expedited approval of these General Peat contracts requesting that the contracts be approved and that the issue of what, if any, statewide avoided unit these contracts would be subscribed/allocated against be determined at a later date. In support of its position, FPC argues that the subscription and allocation issues may take considerable time to resolve. Further, FPC states that cogeneration facility financing is contingent upon having an approved cogeneration power sales agreement in hand. That being the case, any additional delay would place the economic viability of General Peat's project in jeopardy. We are persuaded by FPC's arguments and will address the suitability of the two contracts while reserving ruling on their impact on either FPC's subscription or allocation amounts.

The General Peat contracts begin with the initial delivery of committed capacity in 1995 and end at 12:00 midnight, December 31, 2024. A summary of the terms and conditions of the two negotiated contracts, which vary from the terms and conditions in FPC's statewide standard offer, are as follows:

a. The contracts provide for 104 MW of capacity

(52 MW per unit) at an overall capacity factor of 70% in addition to an on-peak capacity factor of 75%. The standard offer contract does not require a minimum on-peak capacity factor.

b. The contracts provide for General Peat to receive larger capacity payments from FPC in the early years and smaller payments near the end of the contract. This provision was included in the contract to assist the QF in paying off its debts associated with the construction of the generating facility. The present value of this front-loaded payment stream during the life of the contract is higher than the present value of the capacity payments in the standard offer contract. However, the lower present value of the energy payments during the life of the contract more than offsets the larger capacity payments, thus insuring that the present value of the total payments to the QF is not greater than that of the total avoided cost payments.

c. All front-loaded capital payments paid during the first seven years of the contract will be credited to a "capacity account". The capacity account keeps a cumulative balance of all front-loaded capital payments which are in excess of the year-by-year value of deferral of the statewide avoided unit.

d. In addition to the provisions in the standard offer contract which cover default by a QF, the negotiated contracts state that FPC can declare General Peat to be in default if the two facilities fail to maintain the required on-peak capacity factor on a twelve-month rolling average basis for twenty-four consecutive months.

> If either of the negotiated contracts are declared to be in default, FPC's obligation to make capacity payments to General Peat for the unit in default will be suspended until the default is remedied. Default does not relieve General Peat of its obligation to sell all generated capacity to FPC should energy production resume prior to the termination of the two contracts.

The terms and conditions of these two contracts are virtually identical to those found in a negotiated contract previously signed by General Peat and FPC and approved us in May of last year. In re: Petition for approval of cogeneration contract between Florida Power Corporation and General Peat Resources L.P., Docket No. 890094-EQ, Order No. 21296, issued on May 30, 1989..

Rule 25-17.083(2), Florida Administrative Code, states that a negotiated cogeneration contract will be considered prudent for cost recovery purposes if the following criteria are met:

a. It is demonstrated that the utility's purchases under the negotiated contract can reasonably be expected to result in the economic deferral or avoidance of the construction of additional generating capacity from a statewide perspective;

b. The cumulative present worth of the utility's payments for firm capacity and energy over the term of the negotiated contract are to be no greater than the cumulative present worth of the value of the year-to-year deferral of the statewide avoided unit over the term of the contract; and,

c. To the extent that annual firm capacity and energy payments by the utility in any year exceed that year's annual value of deferring

> the statewide avoided unit, there is a security bond or equivalent assurance of the qualifying facility's performance of the terms of the negotiated contract so as to protect the utility's ratepayer.

First, we find that the contracts provide capacity that is likely to result in the deferral of new capacity from both a utility and a statewide perspective. FPC's own generation expansion plan shows a need for new combustion turbine capacity in 1995. Moreover, in the recent Planning Hearing docket, the designated utility planning the next statewide avoided unit (FPL) showed a need for 385 MW of combined cycle capacity in 1995. Thus, there are indicated capacity needs from both a utility and a statewide perspective in 1995.

Further, we find that these contracts comport with Rule 25-17.083(2)(b), Florida Administrative Code, since the cumulative present worth of the utility's payments for firm capacity and energy over the term of the negotiated contract does not exceed the cumulative present worth of the value of the year-to-year deferral of the current statewide avoided unit, a 385 MW combined cycle unit with a 1993 in-service date. The cumulative present worth of each negotiated contract offers FPC's ratepayers a savings of $13,793,000 when compared to the present worth of deferring the current statewide avoided unit.

In addition, FPC has provided a comparison of the negotiated contracts with its own next avoidable unit, a 130 MW combustion turbine with a 1995 in-service date. The cumulative present worth of each negotiated contract offers FPC's ratepayers a savings of $1,093,000 when compared to the present worth of deferring FPC's own designated avoided unit.

Finally, we find that these contracts comport with the security requirements of Rule 25-17.083(2)(c), Florida Administrative Code. FPC has required that either a performance bond, such as an irrevocable letter of credit, or some other form of security be issued to guarantee General Peat's performance of the terms of the negotiated contract since it will be receiving front-loaded capacity payments.

This has been further insured by the use of a "capacity account" against which early capacity payments are credited.

Based on the above, it is

ORDERED by the Florida Public Service Commission that the negotiated contracts entered into between Florida Power Corporation and General Peat Resources L.P., executed on November 30, 1988, are hereby approved for cost recovery purposes. It is further

ORDERED that the issue of how the MW associated with these contracts will be counted toward FPC's subscription and allocation limits, if at all, be deferred until a later date.

By Order of the Florida Public Service Commission this 25th day of JANUARY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

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(5779L)SBr:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 15, 1990.

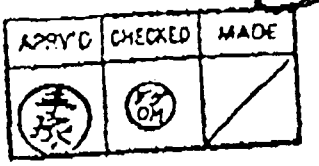
In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

PM 94-16

66 FERC ¶ 62,080



UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tiger Bay Limited Partnership)

Small Power Production and)
Cogeneration Facilities)
-- Qualifying Status)

Docket No. QF93-15-001

ORDER GRANTING APPLICATION FOR RECERTIFICATION
AS A QUALIFYING COGENERATION FACILITY
(Issued February 16, 1994)

Summary:

On September 15, 1993, as completed on January 10, 1994, Tiger Bay Limited Partnership (Tiger Bay) filed an application for recertification of a topping-cycle cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. 1/ Tiger Bay submitted the application to reflect a change in the applicant's name and changes in the ownership structure of the facility. According to Tiger Bay, other than these modifications, no material changes have occurred with respect to the facility.

Notices of the application were published in the Federal Register with comments, protests or motions to intervene due on or before January 31, 1994. 2/ No responses were received.

Discussion:

Ownership:

Section 292.206 of the Commission's Regulations requires that no more than 50% of the equity interest in a qualifying facility (QF) be held, directly or indirectly through subsidiaries, by electric utilities and/or electric utility holding companies. In determining equity interest, the Commission looks to the stream of benefits which flow from the

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1/ In Docket No. QF93-15-000, Central Florida Power, L.P. was granted certification for a 215.9 MW gas-fired topping-cycle cogeneration facility [62 FERC ¶ 62,092 (1993)]. The facility was to be located in Polk County, Florida, and was to consist of a combustion turbine generator, an unfired heat recovery boiler and an extraction/condensing steam turbine generator. Thermal output from the facility was to be used by Fort Meade Chemical Products for the production of fertilizer.

2/ 58 Fed. Reg. 51,067 (1993) and 59 Fed. Reg. 2,838 (1994).

facility, as well as to the exercise of control. [See Ultrapower I, 27 FERC ¶ 61,094 (1984), and CMS Midland, Inc., 38 FERC ¶ 61,244 (1987)].

As it is now structured, Tiger Bay has one general partner and four limited partners. Three of Tiger Bay's limited partners have an interest in the general partner. IPS Avon Park Corporation has a limited partner interest of 2.43%. Combined general and limited partner interests are held by the following: EIF-Tiger Bay Investment Limited Partnership, with 25.61%, General Peat Resources, L.P. (General Peat) with 21.17%, and Polk County CoGen, Inc. (Polk), with 50.79%.

1. General Peat

General Peat develops QFs. General Peat is owned by individuals, three of whom own 34.73%, 11.18% and 10.15%. General Peat is not engaged in the generation or sale of electric power, and has no ownership or operating interest in any electric facilities other than QFs.

2. Polk

Polk is a wholly-owned subsidiary of Destec Energy, Inc. (Destec Energy). Destec Energy's outstanding common stock is 72% owned by Dow Chemical Company (Dow) and 28% owned by various individuals, none of whose interest exceeds 10%. Dow is a publicly traded company whose outstanding common stock is held by various shareholders, none of whose interest exceeds 10%. Dow's primary business is the production of chemicals. Other than QFs, exempt wholesale generators (EWGs), 3/ and self-generation, 4/ neither Dow nor its affiliates is engaged in the generation or sale of electric power, or has any ownership or operating interest in any electric facilities.

General Peat and Polk, which, based on the above, are determined not to be electric utility entities, are entitled to a share of the stream of benefits which flow from the facility in proportion to their combined ownership percentage of 71.96%. In

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3/ Pursuant to Section 32(a) of the Public Utility Holding Company Act of 1935, as amended (PUHCA), an EWG is not considered an electric utility company under Section 2(a)(3) of PUHCA. In addition, pursuant to Section 32(j) of PUHCA, ownership of an EWG does not result in primary engagement in the generation or sale of electric power under Sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act.

4/ Dow consumes electric power generated at its non-QF facilities. However, none is sold to other parties.

addition, since General Peat and Polk appoint five of the seven members to the board of Tiger Bay's general partner (and actions require a majority vote), they exercise more than 50% control over the facility. Consequently, since electric utilities are entitled to no more than 50% of the stream of benefits from the facility, and have no more than 50% control of Tiger Bay, the facility meets the ownership criteria of Section 292.206 of the Commission's Regulations and the interpreting cases. 5/

Finding:

The topping-cycle cogeneration facility, as described in the application submitted by Tiger Bay, meets the requirements established in Section 292.203(b) of the Commission's Regulations regarding certification as a qualifying cogeneration facility.

The Director:

Grants recertification of qualifying status to the facility referenced in the submittal filed on September 15, 1993, as completed on January 10, 1994, by Tiger Bay pursuant to Section 292.207(b) of the Commission's Regulations and Section 3(18)(B) of the Federal Power Act, as amended by Section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA), provided that the facility is owned and operated in the manner described in the application and this order. 6/ To the extent that facts or representations which form the basis for this order change, this order cannot be relied upon. While the facility might still be a

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5/ Since the Commission's ownership requirement is satisfied by virtue of General Peat's and Polk's combined interest in the facility, it is not necessary here to determine the status of the other Tiger Bay partners.

6/ Certification as a qualifying facility serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's Regulations, 18 C.F.R. Part 292. It does not relieve a facility of any other requirements of local, state or federal law, including those regarding siting, construction, operation, licensing and pollution abatement. Certification does not establish any property rights, resolve competing claims for a site, or authorize construction.

qualifying facility under the changed circumstances, self or Commission recertification at that point will be necessary. 7/

Authorities:

Authority to act on this matter is delegated to the Director, Division of Applications, pursuant to Section 375.308 of the Commission's Regulations.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. Section 385.713.

Donald J. Gelinas

Donald J. Gelinas, Director
Division of Applications

7/ See Citizens for Clean Air and Reclaiming our Environment v. Newbay Corporation, 56 FERC ¶ 61,428 (1991), and Midland Cogeneration Venture Limited Partnership and CMS Midland, Inc., 56 FERC ¶ 61,361 (1991).

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DESTEC ENERGY

Mr. John Brown
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