

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Cogeneration) DOCKET NO. 931186-EQ
Rules 25-17.080 through 25-) ORDER NO. PSC-94-1260-FOF-EQ
17.091, F.A.C., For Possible) ISSUED: October 11, 1994
Amendment to Ensure Consistency)
with Bidding Rule 25-22.082.,)
F.A.C.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ON FURTHER PROCEEDINGS

In 1978, Congress enacted the Public Utilities Regulatory Policy Act of 1978 (PURPA) and required electric utilities to purchase power generated by cogenerators and small power producers, collectively known as qualifying facilities (QFs). The original intent behind PURPA was to increase fuel efficiency. In response to PURPA, the Commission adopted cogeneration rules that required investor-owned utilities (IOUs) to negotiate in good faith with QFs as well as provide QFs with the opportunity to take advantage of standard offers. These rules are set forth in Part III, Chapter 25-17, Florida Administrative Code, Utilities' Obligations with Regard to Cogenerators and Small Power Producers.

In December of 1993, we adopted Rule 25-22.082, Florida Administrative Code, Selection of Generating Capacity. This rule, known as the "bidding rule," requires all IOUs to issue Requests for Proposals (RFPs) for any capacity addition with a steam cycle greater than 75 MW that would trigger a need determination proceeding. One of the issues raised during the rulemaking process for Rule 25-22.082 was whether the bidding rule should also require some form of preference for high efficiency cogeneration, municipal solid waste facilities (MSWs), and renewable technologies. Docket No. 931186-EQ was opened to review this issue as well as to review the cogeneration rules to ensure consistency with the bidding rule.

On February 14, 1994, a staff workshop was held to solicit comments on the following four options:

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- 1) Continuing to provide QFs smaller than 75 MW and MSWs smaller than 80 MW with standard offer contracts as well as competitive bidding for all capacity additions greater than 75 MW along with separate good faith negotiations.
- 2) Limiting the size of standard offers to QFs 100 KW or less, which is the Federal Energy Regulatory Commission's (FERC) minimum size requirement, and setting aside a portion of all capacity bids to be met by QF and MSW standard offers.
- 3) Limiting the size of standard offers to QFs 100 KW or less and providing preferential treatment for QFs and MSWs within the bidding process.
- 4) Limiting the size of standard offers to QFs 100 KW or less and obtaining all other capacity through the competitive bidding process with no preferences for any technology.

The following interested persons filed post-workshop comments: Florida Power and Light Company (FPL), Florida Power Corporation (FPC), Tampa Electric Company (TECO), Broward County (Broward), City of Tampa (Tampa), Florida Competitive Energy Producers Association (CEPA), Destec Energy (Destec), Ark Energy, Inc. (ARK), Skyway Power Corporation (Skyway), Florida Industrial Cogeneration Association (FICA), Legal Environmental Assistance Foundation (LEAF), Florida Solar Energy Industries Association (FlaSEIA), and Project for an Energy Efficient Florida (the Project).

A second workshop was held on March 28, 1994, so that the Commissioners could participate in discussions on how, if at all, the cogeneration rules should be amended to ensure consistency with the bidding rule. The following interested persons filed post-workshop comments after the second workshop: FPL, FPC, TECO, Gulf Power Company (Gulf), Broward, Tampa, CEPA, Destec, Ark, FICA, LEAF, FlaSEIA, the Project, and Biomass Energy Systems (Biomass).

For consideration at the September 20, 1994, agenda conference, staff filed a memorandum seeking our direction concerning whether the cogeneration rules should be revised to ensure consistency with the bidding rule. Three recommendations were presented to us:

1. The cogeneration rules should be revised to explicitly provide for the expiration of standard offer contracts and good faith negotiations prior to the issuance of a RFP.

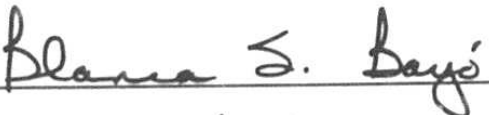
2. The cogeneration rules should be revised to limit the availability of standard offer contracts to facilities 100 KW or less as well as to high thermally efficient QFs, solar or other renewable generators, waste to energy, and waste heat QFs. In addition, standard offers should be made available year-round with no subscription limits. Capacity payments associated with standard offers should be tied to the purchasing utility's average embedded book cost of production plant as well as the embedded fuel cost. Finally, restrictions should be placed on the assignment and changes to standard offer contracts.
3. There should be no revisions to the bidding and cogeneration rules.

Based on staff's recommendations and the discussion at the agenda conference, we have decided to go forward with rulemaking on a limited basis to ensure that the bidding and cogeneration rules mesh. As suggested by the first recommendation, we shall consider whether our cogeneration rules should provide that IOUs be required to terminate good faith negotiations and cancel unsubscribed standard offers prior to issuing a RFP. In addition, we believe that there may be other areas that need to be clarified and it would, therefore, be proper to look at some of the issues raised in the second recommendation. We believe that this may be accomplished in the context of this docket.

It is, therefore,

ORDERED by the Florida Public Service Commission that this docket remain open for further proceedings as indicated above.

By ORDER of the Florida Public Service Commission, this 11th day of October, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MAH

Commissioner Clark dissented from the Commission's decision.

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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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.