144

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of METROPOLITAN DADE COUNTY for Expedited Consideration of Request for Provision of Self-Service Transmission.	)	DOCKET NO. 860786-EI
	)	ORDER NO. 17510
	)	ISSUED: 5-5-87

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
GERALD L. GUNTER
JOHN T. HERNDON
MICHAEL McK. WILSON

ORDER DENYING REQUEST FOR SELF-SERVICE WHEELING

BY THE COMMISSION:

Pursuant to Notice, the Florida Public Service Commission held public hearings in the above docket in Tallahassee, Florida, on December 9 and 10, 1986.

APPEARANCES: MATTHEW M. CHILDS, Esquire, Steel, Hector and Davis, Suite 200, 201 South Monroe Street, Tallahassee, Florida 32301
On behalf of Florida Power and Light Company

JOSEPH McGLOTHLIN, Esquire, Lawson, McWhirter, Grandoff and Reeves, Post Office Box 3350, Tampa, Florida 33601-3350
On behalf of Thermo Electron Corporation

JASON BROWN, Esquire and ADAM WENNER, Esquire, Suite 2810, Metro-Dade Center, 111 Northwest First Street, Miami, Florida 33128-1993
On behalf of Metropolitan Dade County

MICHAEL B. TWOMEY, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff

WILLIAM H. HARROLD, Esquire and HAROLD McLEAN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0861
On behalf of the Commissioners

SUMMARY OF DECISION

In this case, Metropolitan Dade County (the County) petitioned this Commission requesting that we require Florida Power and Light Company (FPL) to utilize its transmission and distribution system to "wheel" power from a qualifying facility (QF) located in the County's Downtown Government Center to the County's facilities at the Jackson Memorial Hospital/Civic Center complex and other County locations. The County's petition was filed pursuant to Rule 25-17.0882, Florida Administrative Code (the Self-Service Wheeling Rule), which provides that we may, under certain circumstances, require a public utility to "provide transmission or distribution service to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location." Determining that the QF was jointly owned by the County and a limited partnership of other

entities and, therefore, was not the same entity or customer as the County, which was to receive the electrical power, we found that the proposed transaction was not self-service wheeling (SSW) and declined to order FPL to provide the requested service.

PROCEDURAL BACKGROUND

On June 13, 1986 the County filed with this Commission a petition requesting that we issue an order requiring FPL to provide transmission services for certain of the power generated at the QF located at the County's Downtown Government Center to certain of the County's outlying facilities.

On July 7, 1986, FPL responded to the County's petition by filing a Motion to Dismiss and for More Definite Statement, which challenged, among other things, the County's allegation that the requested transmission service constitutes SSW pursuant to Rule 25-17.0882, Florida Administrative Code. FPL asked that the County's petition be dismissed or, in the alternative, that it be clarified so as to adequately apprise FPL of the exact nature and elements of the requested transmission service. On July 21, 1986, the County filed a Memorandum in opposition to FPL's motion.

Oral argument on FPL's motion was heard on September 9, 1986, at which time the County's petition was dismissed with leave to amend. The County filed a revised petition on September 12, 1986. A prehearing conference was held before Commissioner Nichols on September 22, 1986 and hearings were held on December 9 and 10, 1986, when we heard the testimony of seven witnesses. Thermo Electron Corporation was granted intervenor status at hearing. Having considered the evidence presented at hearing and the arguments of the parties expressed in their post-hearing briefs, we have determined, for the reasons that follow, that the County's petition must be denied.

BACKGROUND AND NATURE OF REQUESTED SERVICE

The source of power to be wheeled by the requested service is a 27-megawatt (MW) combustion turbine, which is located on county-owned land adjoining the County's Downtown Government Center. The Federal Energy Regulatory Commission (FERC) has ruled that the combustion turbine and its ancillary equipment is a qualifying cogeneration facility (QF). By utilizing heat rejected from the gas turbine, the QF is expected to produce 2800 tons of chilled water and 170 gpm of hot water in addition to its electric generation.

The ownership of the QF is rather involved. The County has legal title to the building in which the electrical generating equipment is located, the land on which the building is located, an absorbtion chiller plant, heat rejection coolers, a chilled water circulating system, electric and thermal distribution systems, a standby emergency diesel-generator and its fuel oil storage tank, natural gas installation, gas lines, a gas compressor room, an interconnection installation with FPL and electrical switchgear. The County does not have legal title to any of the equipment that will actually produce the power it seeks to have wheeled by FPL.

The actual electric generating equipment, consisting of gas turbines, steam turbines, heat recovery boiler and electric power generators was funded through the use of a lease/sale arrangement. Under this arrangement, the debt component of the financing was provided by the Bank of Boston, while the equity component was raised through a limited partnership formed by Winthrop Financial Corporation, called Florida Energy Partners. Florida Energy Partners, in turn, leases the financed equipment (generating equipment) to a joint venture of Thermo Electron and Rolls-Royce subsidiaries called South Florida Cogeneration Associates, which will operate the QF for the 16 years of the lease. This lease (the Facility lease), also provides that South Florida Cogeneration Associates has the option to purchase the generating equipment from Florida Energy Partners at the end of the lease term for its then fair market value, which is estimated to be $7.5 million. Thus, at this juncture, the County has title to the QF s building and the ancillary equipment, while Florida Energy Partners has title to the generating equipment. South Florida Cogeneration Associates does not have title to any of the QF's equipment, but has a leasehold interest in the generating equipment.

In order to have possession of the entire QF, South Florida Cogeneration Associates leases the building and the ancillary equipment from the County pursuant to an "Agreement and Lease of Space and Ancillary Systems," (the Space lease). As rent, South Florida Cogeneration Associates is obligated to pay the County one-half of the net-after-tax cash flow from operating the QF. A Purchase Option Agreement (Exhibit D to the Space lease) grants the County the option to purchase the generating equipment from South Florida Cogeneration Associates for payment of $1.00. As is more fully discussed later in this order, the County's exercise of its option requires South Florida Cogeneration Associates to exercise its option under the Facility lease to acquire the generating equipment from Florida Energy Partners. Furthermore, although the exercise price of the County's option is $1.00, the Purchase Option Agreement acknowledges that the consideration for the option is the County's performance of its obligations under the Space lease and the Energy Purchase Contract. This means that, under all the pertinent contracts, the County would pay for the generating equipment throughout the 16-year term of the lease and, at the end, Winthrop Financial Corporation and South Florida Cogeneration Associates having been made whole, the County would acquire legal title to the entire QF.

The County gains its entitlement to the output of the QF through the "Contract for the Purchase and Sale of Electrical and Thermal Energy" (Energy Contract) it had entered into with South Florida Cogeneration Associates. Pursuant to the Energy Contract, South Florida Cogeneration Associates agreed to operate the QF and sell to the County, and the County agreed to purchase "(i) all of the power from time to time produced by the Facility and (ii) Thermal Energy from time to time produced . . .," subject to various conditions. The County is obligated to use the QF's power for "(i) all of the requirements of the County in the Downtown Government Center and (ii) all of the requirements for Power of each other building or facility owned or occupied by the County for which a transmission arrangement may be established. . . ."

In the event that the County is not able to use all of the power from the QF, the County has agreed to resell the excess power at the best obtainable price to "Other Energy

Purchasers." Alternatively, South Florida Cogeneration Associates may, subject to the County's approval, arrange for the sale of excess power to "Other Energy Purchasers."

For all power delivered to the County, the County pays to South Florida Cogeneration Associates its "Equivalent Power Costs," which is defined by the contract as "an amount equal to the most favorable cost of service which would have been charged by Florida Power and Light Company . . . for the same units of electrical power consumed at the same times of day during the same period."

On October 1, 1985, FPL and the County entered into an "Interconnection Agreement for Qualifying Facilities" (Interconnection Agreement), which provides that FPL will provide appropriate retail service for the [Downtown Government Center] at Interconnection Point."

The County anticipated that approximately 10 MW of electric power would be used in the Downtown Government Center. If transmission services were available from FPL, the Downtown Government Center would consume all of the chilled and hot water produced by the QF, except that 1 MW of electric power would be used to produce chilled water that would be sold to the State of Florida. Pursuant to its petition, the County requested that we require FPL to transmit the remaining 16 MW of electric power to the County's facilities at three additional locations. They were (1) Jackson Memorial Hospital and Civic Center, (2) the Dade County Water and Sewer Authority, and (3) Dade County Arterial Street Lighting. Dade County proposed to pay FPL a wheeling rate in the range of 5 to 7.5 mills/kwh.

The County stated that, if its request for SSW were denied, it would construct its own transmission line from the Downtown Government Center to the Jackson Memorial Hospital/Civic Center Complex, a distance of some two miles. Furthermore, the County stated that it would utilize electric energy from the QF to provide chilled water to others near the Downtown Government Center. The County argued that these sales of chilled water would displace the use of electric energy from FPL, which otherwise would have been used to operate electric chillers.

Although the County acknowledged that FPL's provision of SSW to the three desired locations would result in a net reduction in the utility's revenues, it argued that FPL would still be better off accepting the wheeling rates, as opposed to forcing the County to construct its own transmission line. The County maintained that the latter would result in FPL losing both retail sales revenues and the wheeling revenues. Using these "with SSW" and "without SSW" scenarios, the County concluded that the costs to FPL's other ratepayers would be lower if SSW were provided than if it were not.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue 1: Whether the transactions described by Dade County's Petition for the transmission of the electrical output (transmission service) of the cogeneration facility at the Downtown Government Center (facility) is self-service wheeling (SSW).

At the outset, we note that we are here to interpret the applicability of one of our administrative rules to the facts presented by this case and, accordingly, to determine whether the County is entitled to the service it has requested. It may be helpful to keep in mind that the requested service involves ordering an investor-owned electric utility to "hire out" its privately-owned transmission/distribution system to another party. This rule, Rule 25-17.0882, Florida Administrative Code, was promulgated in Docket No. 840399-EU, in which we considered and rejected the notion that any customer could demand access to a utility's transmission/distribution system if willing to pay the associated costs. Considering that there is no federal or Florida statutory right for a generating customer to serve either itself or others over a utility's transmission/distribution system, we limited our rule to those who desired to serve themselves, as opposed to those who would make sales to others. Having made that determination in Docket No. 840399-EU, it is not our intention to rehear it now.

By its revised petition the County requested that we order FPL to utilize its privately-owned transmission facilities to transport power from one location to another for the county's benefit. The County's petition was pursuant to Rule 25-17.0882, Florida Administrative Code, which provides as follows:

> Transmission Service Not Required for Self-Service. Public utilities are not required to provide transmission or distribution service to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location unless the customer or the utility demonstrates that the provision of this service and the charges, terms, and other conditions associated with the provision of this service are not likely to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers.

By its title, the rule addresses "self-service." Webster's New Collegiate Dictionary defines "self-service" as "the serving of oneself . . .." "Oneself," in turn, is defined as "a person's self: one's own self . . .." And, lastly Webster's defines "self" as "to, with, for, or toward oneself or itself." This dictionary contains close to four full pages of words modified by "self." Not surprisingly, their common theme is that they are things done "to, with, for, or toward oneself or itself." Our rule is consistent with the common usage of the term "self-service" and speaks to "transmission or distribution service to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location. . . ." Thus, the question becomes whether we intended the "customer" to be the same entity at both ends.

Self-service wheeling or SSW is clearly applicable where the owner of the QF is identical to the customer whose facilities the electrical power is to be transmitted to. Such was the case in Docket No. 861180-EU, In re: Petition of W.R.

Grace and Co. for a declaratory statement. There, as is reported in Order No. 17389, all parties agreed that Grace owned both the cogeneration facility at Ridgewood and the mining operations it sought to have power "wheeled" to at Hookers Prairie. However, notwithstanding the fact that SSW was applicable because the same customer was to be found at both ends of the desired service, the requested service was denied because we found that Grace had not demonstrated that provision of the SSW was not likely to result in higher cost electric service to Tampa Electric Company's general body of customers.

In the case at hand, it is clear from the evidence, and we find, that the requested service is not SSW and, therefore, that Rule 25-17.0882, Florida Administrative Code, is not applicable. This determination is based upon our finding that, while the customer to receive the "wheeled" power is clearly the County, it is just as clear that the electrical power to be wheeled is not "generated by" the County as required by our rule.

The County never disputed that it lacked legal title to the entire QF or, more specifically, that it lacked title to the electric "generating equipment." Rather, the County argues that we may look to the "business and economic realities to determine whether, for purposes of the rule, the customer should be considered the owner of both the facility and the remote loads to which power would be wheeled." In pursuing this theory, the County states that it has legal title to the "ancillary equipment" and "equitable title" to the remaining generating components. We reject the County's theory as being insufficient to establish it as the customer generating the power.

As is apparent from the background facts recited earlier in this order, the County has title only to the building, some heating and air conditioning and other ancillary equipment that it is no longer in possession of, because it has leased it to another party. The generating equipment that will actually produce the electrical power is owned, or title is held by, either Winthrop Financial Co., Inc. or Florida Energy Partners. In turn, neither of these parties has possession of the generating equipment because it has been leased to South Florida Cogeneration Associates. We find that the County does not "generate" the electrical power to be wheeled because it must first purchase the power from South Florida Cogeneration Associates pursuant to their contract. We conclude that this relationship and these facts do not qualify as SSW pursuant to Rule 25-17.0882, Florida Administrative Code.

We note that the County's equitable title argument rests on its option to acquire title to the generating equipment from South Florida Cogeneration Associates after the latter has exercised its option to acquire title of the same from Florida Energy Partners. Although not determinative of our rejection of the County's equitable title theory, we note that the up to $2.5 million the County will have to expend to exercise its option is a far cry from the $1 payment it cited in its petition as the cost of entirely owning the facility at the end of the lease term. We also note that the potential $2.5 million payment by the County to acquire title could be questioned as being "nominal" in relation to the equipment's expected market value of $7.5 million.

Issue 2: If the transmission service is SSW, what is the proper test for determining whether the provision of self-service wheeling is not likely to result in higher cost electric service to FPL's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers?

Inasmuch as we found that the requested service was not SSW, we consider this issue moot and decline to render a decision on it. However, see our discussion of the related issue in Order No. 17389, issued in the W.R. Grace & Co. docket.

Issue 3: What are the key elements of the wheeling arrangement the county is requesting?

As with Issue 2, we find that this issue is moot and decline to render a decision on it.

Issue 4: If Dade County owned pieces of equipment called the electrical generators and purchased steam or mechanical energy from the joint venture, and also maintained its current ownership interest in the facility, would Dade County be eligible for SSW?

This is a hypothetical issue, inasmuch as the County is not the owner of the electrical generating equipment. However, we consider that the ownership of merely another piece of the QF, without the ownership of the entire QF, would be insufficient to make the County the customer generating the electrical power. Accordingly, we find that even if the County owned the electrical generators and purchased steam or mechanical energy from South Florida Cogeneration Associates, it still would not quality for SSW pursuant to Rule 25-17.0882, Florida Administrative Code.

Issue 5: If the Commission grants the County's request for transmission service, what relief should it order?

Having found the requested service to not be SSW, we find this issue to be moot and decline to render a decision on it.

Issue 6: What are the appropriate rates, terms and conditions for the provision of backup service to the loads to which power would be wheeled?

The appropriate rates, terms and conditions for the provision of backup service to the loads to which power would be wheeled has been addressed in Docket No. 850673-EU Generic Investigation of Issues Related to Standby Rates and answered in Order No. 17159 issued in that docket.

Issue 7: Would provision of the requested service constitute conjunctive billing?

Inasmuch as the provision of the requested service has been denied, this issue, too, is moot.

Issue 8: Whether the construction and operation of an electrical line to the Jackson Memorial Hospital/Civic Center Complex and piping for chilled water by Dade County is technically and economically feasible?

We have determined that no finding on this issue is necessary. However, see Order No. 17389 for a discussion of a related issue in the W.R. Grace case.

In view of the above, it is

ORDERED by the Florida Public Service Commission that Metropolitan Dade County's Revised Petition requesting that we find that the proposed transmission of power from the Cogeneration Facility to the specified Dade County facilities satisfies the standards in Rule 25-17.0882, Florida Administrative Code, is denied for the reasons stated in the body of this order. It is further

ORDERED that Metropolitan Dade County's request that we require Florida Power and Light Company to provide the requested transmission service is denied because the requested service does not qualify pursuant to Rule 25-17.0882, Florida Administrative Code.

By ORDER of the Florida Public Service Commission, this 5th day of MAY, 1987.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MBT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. 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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 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 after the issuance 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.