BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Hearings on load forecasts, generation expansion plans, and cogeneration prices for Peninsular Florida's electric utilities.	)	DOCKET NO. 890004-EU
	)	ORDER NO. 22061
	)	ISSUED: 10-17-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD*
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION
ORDER CLOSING STANDARD OFFER

BY THE COMMISSION:

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.

A subscripition limit of 500 MW associated with the current statewide avoided 1995 coal unit was established by Order No. 17480 entered in Docket No. 860004-EU on April 30, 1987. Although we approved the concept of subscription, i.e., the closure of the standard offer once the megawatts of the statewide avoided unit were reached, we did not address the method for determining when that limit had been met. Over the past two years, there have been enough cogeneration power sales agreements entered into, both standard offers and negotiated contracts, that the 500 MW subscription limit is now close to being reached. At this time there are two cogeneration contracts, one negotiated and one a standard offer, which if approved, will cause the subscription limit to be exceeded by 3.7 MW. [Dockets Nos. 891005-EI (Timber/FPC contract) and 890598-EQ (Pasco County/FPC contract).]

This knowledge was the impetus for Royster Phosphates, Inc. (Royster) to file a notice of its reliance on the capacity

remaining available under the 500 MW 1995 coal unit on June 27, 1989. It also motivated Florida Power Corporation's petition of July 6, 1989 asking that we close the existing standard offer based on a 500 MW 1995 coal unit. Royster responded to FPC's petition on July 18, 1989, as did Florida Power & Light (FPL) on July 31, 1989.

Royster essentially wants to be allowed to continue its negotiations with FPL for the sale of 25 MW from its Piney Point Plant using the 1995 coal unit price as the "base price" of its negotiations. Royster does not have an executed contract with FPL as of this date. Royster urges two positions: either don't close the current standard offer or if the standard offer is closed, allow all contracts which are currently being negotiated to be grandfathered in under the current standard offer. FPL contends that the subscription limit has not been met since the 500 MW cap was not intended to include negotiated contracts. Thus, FPL likewise urges that the standard offer contract not be closed.

The initial question to be answered is whether the subscription to the 1995 statewide coal unit should be closed. If one answers this question affirmatively, the next decision is the method used to implement the cap; that is, the prioritization of contracts which have been negotiated against the 1995 coal unit. In its response, Royster argues that it had no way of knowing that the subscription limit was being reached and detrimentally relied upon the continued availability of the current standard offer. Further, Royster states that actually withdrawing the current standard offer is "outside the record and scope of any pending proceeding." Royster Response at 8. And finally, Royster argues that the subscription limit only applies to standard offer contracts, not negotiated contracts.

FPL agrees with Royster's contention that only standard offer contracts are subject to the subscription limit approved by the Commision in Order No. 17480. And, that being the case, FPL contends that there are still plenty of unsubscribed MW of the 500 MW coal unit left. Alternatively, FPL argues that if negotiated contracts are counted toward the subscription limit, the exact "administration" of that limit has never been discussed.

Order No. 17480 states the following:

> We approve the concept of a subscription process. Subscription to standard offer contracts should be limited to the number of megawatts of the unit upon which the offers are based. Since we have selected a 500 MW coal unit as the statewide avoided unit, the subscription limit associated with the new standard offer contracts will be set at 500 MW.

Order No. 17480 at 13.

Although the language of the order uses the term standard offer contracts, the intent of the Commission's decision cannot be deduced totally from Order No. 17480. As Royster correctly points out in its response, pursuant to Rule 25-17.083(2), Florida Administrative Code, only negotiated contracts which are likely to defer the construction of additional capacity "from a statewide perspective" and those whose present value of payments is less than or equal to that of the present worth revenue requirements of the statewide avoided unit are approved for cost recovery purposes. It is obvious that negotiated contracts would be included in any subscription limit count under those conditions. It only makes sense. Additional cogeneration with the same in-service date should defer the construction of the same capacity whether the payments are based on the standard offer or some other negotiated price.

We have recently expressed this rationale in Order No. 21491 which approved the recent AES Cedar Bay, Inc. (AES)/Florida Power and Light Company (FPL) negotiated contract. Order No. 21491 states that: "[T]he negotiated contract between FPL and AES Cedar Bay, Inc. (AES) falls within the 500 MW subscription limit associated with the 1995 statewide avoided coal unit." In re: Petition of AES Cedar Bay, Inc. and Seminole Kraft Corporation for Determination of Need for the Cedar Bay Cogeneration Project, Order No. 21491, issued on June 30, 1989 at 3. When looked at in the broader context of the existing cogeneration pricing rules and previous Commission decisions, we find the argument that the 500 MW subscription limit applies only to standard offer contracts to be unpersuasive.

Both FPL and Royster argue that the details of the administration of the limit were not clearly communicated to either cogenerators or utilities. While it is true that the prioritization of the contracts was not discussed on the record in the last Planning Hearing (Docket No. 860004-EU), the record was fully developed on the consequences of reaching the 500 MW limit: that no more MW would be subscribed at that price once the cap was reached. Thus, it is fair to state that all parties to the 1986 Planning Hearing were on notice that they should be keeping track of the amount of MW signed against the 500 MW limit. We also note that any utility or cogenerator could have easily contacted our Staff or Clerk and quickly found out how may MW were approved and any pending requests for Commission contract approval. Additionally, we are persuaded that all parties to the 1986 Planning Hearing were aware that the basic rule of contract prioritization was "first in time, first in line." Given these facts, we find the argument that Royster detrimentally relied upon the 500 MW coal unit price to be without merit.

In light of the above, we find that the subscription to the 1995 500 MW statewide avoided coal unit should be closed as of the date of our vote, August 29, 1989, and remain closed until a new statewide avoided unit is selected by this Commission. We are currently scheduled to select a new statewide avoided unit from which a standard offer can be derived on October 16, 1989. The short amount of time that a standard offer is unavailable, roughly six weeks, should not significantly impact the development of cogeneration. However, failure to close the existing standard offer could result in a signifciant overpayment by the state's ratepayers for cogenerated power if the next statewide avoided unit selected is other than a coal unit.

Although we decline to rule upon the method for priorizing cogeneration contracts at this time, we find that the cogeneration contracts which have been filed with the Commission as of this date are grandfathered in under the current subscription limit to the extent that they are found to be in accord with our rules and subsequently approved by us. If such approval is given, this results in the cap being set at 503.7 MW. Having capped the subscription to the current standard offer as described above, we find that the request by Royster to negotiate a contract against the 1995 500 MW coal

unit should be denied. This contract is in the "negotiating" stage and has been in that posture since the early part of this year. There is no logical reason why Royster should be given preferential treatment over any other cogenerator who is in the process of currently negotiating a contract for the sale of its power and we decline to do so.

Based on the above, it is

ORDERED by the Florida Public Service Commission that the petition of Florida Power Corporation requesting closure of the current 500 MW 1995 coal unit standard offer contract is hereby granted and the 500 MW 1995 coal unit standard offer is hereby closed as of August 29, 1989. It is further

ORDERED that the 500 MW 1995 coal unit standard offer is capped at 503.7 MW. This cap includes, if subsequently approved by this Commission, the entire amount of MW specified in the contracts for the sale of cogenerated power entered into between Timber Energy Resources, Inc. and Florida Power Corporation (Docket No. 891005-EI) and between Pasco County and Florida Power Corporation (Docket No. 890598-EQ). It is further

ORDERED that the request of Royster Phosphates, Inc. to negotiate a contract against the 1995 500 MW coal unit is hereby denied.

By Order of the Florida Public Service Commission this 17th day of OCTOBER, 1989.

Steve Tribble

STEVE TRIBBLE, Director
Division of Records and Reporting

*Commissioner Beard dissents in part with this decision and would also allow General Peat Resources, Inc., who has executed a contract with Florida Power Corporation, to be included within the 1995 500 MW coal unit subscription limit.

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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.

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 November 7, 1989.

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.