

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval, ) DOCKET NO. 940797-EQ  
to the extent required, of ) ORDER NO. PSC-95-0540-FOF-EQ  
certain actions relating to ) ISSUED: May 2, 1995  
approved cogeneration contracts )  
by Florida Power Corporation )  

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The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER REGARDING CERTAIN ACTIONS  
RELATING TO APPROVED COGENERATION  
CONTRACTS

**CASE BACKGROUND**

On July 29, 1994, Florida Power Corporation (FPC) filed a petition asking us to approve certain actions, modifications, and agreements relating to cogeneration contracts that were taken after the contracts were approved for cost-recovery. During the last decade, we have approved 23 cogeneration contracts between FPC and various cogenerators. FPC states that its petition was prompted by uncertainty over the question of whether certain actions undertaken after our approval of the contracts might require further approval. FPC filed this petition to determine what actions, modifications, and agreements would require further review by us to ensure that it could continue to obtain cost recovery of payments made to cogenerators under the contracts. We considered FPC's petition at our April 18, 1995 Agenda Conference. Our decision on the issues presented is set out below.

DECISION

A negotiated cogeneration contract is a long-term, comprehensive agreement that attempts to address all circumstances that may arise during the life of the contract. It is nevertheless reasonable to expect that situations will arise that require the

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parties to interpret or adjust the agreement to fit changing circumstances. We believe that a utility should have flexibility to work with qualifying facility (QF) developers when contract questions arise. We also believe, however, that we have the responsibility to ensure that the adjustments made are reasonable and prudent, because the utility's ratepayers are paying the bills for these contracts. As we will explain below, we have decided that routine changes to cogeneration contracts, or changes explicitly contemplated in the original contract, do not require our further review. So that our staff will have current information on the status of all cogeneration contracts, we will require FPC to notify the staff when these actions occur, but we will not require further formal review and approval by the Commission. When the changes are material, however, when they may affect the continuing cost-effectiveness to the ratepayers, the viability of the project, the primary fuel source of the QF facility, the utility's capacity import capability into the state due to a change in location of the facility, or the reliability of the electric grid, we will require further formal review and approval.

**Contract Actions That Do Not Require Further Commission Approval**

Changes to the following cogeneration contracts do not require further Commission approval: Seminole Fertilizer Corp., NRG Recovery Group, Orlando Cogen Limited, Panda-Kathleen, Pasco Cogen Limited, and U.S. Agri-Chemicals Corporation. The actions, agreements, or modifications to these contracts are either expressly permitted in the contract, or routine in the administration of the contract, with no material effect on FPC's ratepayers. No further approval is necessary.

**Seminole Fertilizer Corp.**

Assignment: Contract expressly authorizes QF to assign contract obligations, benefits and duties, with FPC's consent. Contract assigned to Cargill Fertilizer with FPC's consent.

Curtailment: Informal verbal agreement to reduce output as much as possible during off-peak hours.

Routine Contract Administration and Performance: Change of address for payments to Cargill Fertilizer.

**NRG Recovery Group**

Assignment: Contract expressly authorizes QF to assign contract obligations, benefits and duties, with FPC's consent. Contract assigned to Ogden Martin System, National Westminster Bank PLC, and Southeast Bank with FPC's consent.

One-Time Change In Committed Capacity: Contract expressly authorizes an unlimited one-time change in committed capacity. Committed capacity increased from 10.25 to 12.75 MW.

**Orlando Cogen Limited**

Assignment: Contract expressly authorizes QF to assign contract obligations, benefits and duties, with FPC's consent. Contract assigned to the Sumitomo Bank, Ltd., with FPC's consent.

Regulatory Delay: FPC authorized 37 day extension of the construction commencement date, and the commercial in-service date pursuant to the cogeneration contract clause providing for regulatory delays.

Clarification: Agreement with Orlando Cogen Limited and Reedy Creek regarding dispatch rights.

**Panda-Kathleen**

Waiver of Early In-Service Date: FPC agreed to the QF's request to waive the contractual "early in-service date" option from 1995 to 1997. This corresponds with the original 1997 in-service date of FPC's planned capacity addition identified as the avoided unit. Panda will receive normal payments rather than early in-service payments.

**Pasco Cogen Limited**

Assignments: Contract expressly authorizes QF to assign contract obligations, benefits and duties, with FPC's consent. Contract assigned to Prudential and Bankers Trust, with FPC's consent.

Regulatory Delay: FPC authorized 37 day extension of the construction commencement date, and the commercial in-service date pursuant to the cogeneration contract clause providing for regulatory delays.

One-Time Change in Committed Capacity: Contract expressly authorizes a one-time 10% change in committed capacity. Committed capacity increased from 102 MW to 109 MW.

Curtailment: Informal verbal agreement where Pasco Cogen will reduce output as much as possible during off peak hours.

Routine Contract Administration and Performance: Change of address for NCP Dade Power.

**U.S. Agri-Chemicals Corporation (USAG)**

Clarification: Contract amended to clarify USAG's Contract In-Service Date to January 1, 1997. This corresponds with the original 1997 in-service date of FPC's planned capacity addition identified as the avoided unit. USAG notified FPC that it is ready to conduct the performance test establishing the Commercial In-Service Status of the facility. Contract amended to clarify that the Written Consent and Security Guarantee sections of the Contract shall not be applicable.

Committed Capacity: USAG and FPC mutually agree that the USAG may exercise its contract option to increase or decrease the committed capacity by up to 10% at any time during calendar year 1997.

Also, the following four cogeneration contracts do not require any further approval: Bay Resource Recovery, Timber Energy Resources I, Sun Bank of Tampa Bay (LFC Jefferson), and Sun Bank of Tampa Bay (LFC Madison). These contracts either do not contain any contract actions, modifications, or agreements; or the changes to the contracts have already been reviewed and approved.

**Contracts that do Require Further Commission Approval**

FPC's petition states that some post-contract actions identified in its petition may not have been contemplated by our original order approving the contracts, or may be more material than a routine administrative change. These are the changes we want to review, because a contract that has been materially changed or modified is not the same contract we originally approved, and it is our responsibility to ensure that the contract costs remain prudent and appropriate for cost recovery from the utility's ratepayers. The threshold question is whether the subsequent actions, modifications, and agreements are material in nature and constitute a contract modification or change that may affect:

1) the continuing cost-effectiveness to the ratepayers; 2) the viability of the project; 3) the primary fuel source of the QF facility; 4) the utility's capacity import capability into the state due to a change in location of a QF facility; or, 5) the reliability of the electric grid.

We have identified the following contracts that have been changed in a material way not expressly addressed in the original contract that may affect one or more of the areas just mentioned. These contract changes require our further review and approval.

**Royster Phosphate**

Facility Relocation: FPC agreed to the QF's request to relocate the facility to the Polk Power Partners site, which also provides power for the Mulberry facility.

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours.

**Mulberry Energy Company**

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours.

Change in Primary Fuel: Mulberry changed from orimulsion, its original fuel, to natural gas.

**CFR BIO-GEN (Orange)**

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours.

Back-Up Fuel Installation: Facility agreed to install back-up fuel prior to November 1998. If acquisition and installation costs exceed \$1.3 million, FPC has the option to pay the difference, or relieve CFR of the obligation to install back-up fuel.

**Dade County**

Curtailment: FPC reached a Settlement Agreement with the facility regarding fluctuations in output that included a formal agreement to reduce output during off-peak hours.

**General Peat Resources L.P.**

Curtailement: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours.

Change in Primary Fuel: General Peat changed from peat, its original fuel, to natural gas.

**Ecopeat Company**

Facility Relocation: FPC agreed to allow the facility to serve the capacity requirement for the three General Peat contracts, the Timber Energy Resources contract, and the Ecopeat Avon Park contract from the 218 MW Tiger Bay Facility.

Curtailement: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours concurrent with negotiations for the facility relocation.

Change in Primary Fuel: Ecopeat changed from peat, or other hydrocarbon fuel to natural gas.

Back-Up Fuel Installation: Tiger Bay agrees to install back-up fuel, while FPC agreed to adjust the lease payments at Avon Park to assist Tiger Bay with their cash flow. If the cost of acquisition and installation exceeds \$2.6 million, FPC has the option of either paying the difference or having Tiger Bay pay FPC \$2.2 million in lieu of requiring the installation.

**Timber Energy Resources II**

Facility Relocation: Timber Energy signed two standard offer contracts. The July 1989 standard offer contract for 6 MW was assigned to Tiger Bay. FPC agrees that Tiger Bay will provide power from its 218 MW gas fired facility, in lieu of Timber Energy's wood waste facility. Timber Energy continues to provide 12.7 MW of capacity pursuant to the December 1984 standard offer contract.

Curtailement: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours concurrent with negotiations for the facility relocation of the second standard offer contract.

Change in Primary Fuel: Timber Energy II changed from wood waste for the July 1989 standard offer contract, to natural gas.



**El Dorado Energy (Auburndale)**

Curtailment: FPC entered into a formal Letter Agreement with the facility to reduce output during off-peak hours.

**Lake Cogen Limited**

Curtailment: FPC entered into a formal written agreement whereby Lake Cogen will reduce its output during all off-peak hours.

**Pasco County**

Curtailment: FPC entered into a Letter of Understanding with the facility to reduce output during their Spring and Fall scheduled maintenance outages.

**Pinellas County (Central Facility)**

Curtailment: FPC entered into a Letter of Understanding with the facility to reduce output during periods of low electric energy load.

**Pinellas County (North Facility)**

Extension of In-Service Date: Original contract agreement specified a January 1, 1995 in-service date which was not achieved by facility. The contract was amended on October 2, 1990 granting a one year extension of time to January 1, 1996, with capacity payments based on FPC's current avoided costs commensurate with the facility's in-service date. This contract will come before us for review and approval of the cost-effectiveness if and when entered into by the parties.

**Ridge Generating Station**

Curtailment: FPC entered into a Letter of Understanding with the facility to reduce output during off-peak hours.

**Further Approval Of Contract Actions, Modifications, And Agreements**

FPC provided a present worth revenue requirement (PWRR) analysis for each modified or changed contract that compared the current capacity and energy payments to the original contract costs. We approve the material changes made to all of the contracts mentioned above. The changes convey benefits to FPC's ratepayers in the form of lower costs or improved system reliability and import capability.

The majority of the reduced costs comes from the formal curtailment agreements that FPC negotiated with the QFs. Reduced energy deliveries during minimum load periods can lower FPC's costs

for purchased power. The formal curtailment agreements provide FPC flexibility in meeting minimum load conditions, usually occurring between 12:00 a.m. to 6:00 a.m., and they provide for increased system reliability that is beneficial to the ratepayers.

Six contracts have changed their primary fuel source from the original proposal. The Mulberry Energy, General Peat, and Ecopeat contracts have been built to burn natural gas instead of orimulsion and peat. The Timber Energy II contract and both Sun Bank of Tampa Bay contracts changed their primary fuel source from wood waste to natural gas when the contracts were assigned to other facilities. Changes in primary fuel sources would not usually affect the cost-effectiveness of a contract, but they could affect the viability of a cogeneration facility. We are also mindful of our responsibility under the Florida Energy Efficiency Conservation Act (FEECA) to encourage the use of renewable fuels. For these reasons, we need to review changes in fuel sources. In this case we find that the changes do not adversely affect the viability of the six contracts.

We note that the utilities' current avoided costs are lower than the avoided costs contained in these cogeneration contracts. When modifications to the contracts are sought, we believe it is a prudent course of action for a utility to negotiate price and other concessions that will benefit its ratepayers through lower costs or improved system reliability and import capability. Our review of the modifications to the cogeneration contracts we have described above demonstrates that those modifications do convey a benefit to FPC's ratepayers in the form of lower payments or improved system reliability and import capability. We, therefore, approve the changes for cost recovery purposes.

Based on the foregoing, it is

ORDERED that Florida Power Corporation need not seek further formal approval for changes to the following cogeneration contracts: Seminole Fertilizer Corp., NRG Recovery Group, Orlando Cogen Limited, Panda-Kathleen, Pasco Cogen Limited, U.S. Agricultural Chemicals Corporation, Bay Resource Recovery, Timber Energy Resources I, Sun Bank of Tampa Bay (LFC Jefferson), and Sun Bank of Tampa Bay (LFC Madison). The changes are either expressly contemplated by the terms of the original contracts or they are routine administrative changes. It is further

ORDERED that Florida Power Corporation shall notify the Commission staff of all contract changes that do not require further formal Commission approval. It is further



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ORDERED that changes to the following cogeneration contracts do require further Commission review and approval: Royster Phosphate, Mulberry Energy Company, CFR BIOGEN, Dade County, General Peat Resources L.P., Ecopeat Company, Timber Energy Resources II, El Dorado Energy, Lake Cogen Limited, Pasco County, Pinellas County, Pinellas County North Facility, and Ridge Generating Station. It is further

ORDERED that we approve the changes to the following cogeneration contracts: Royster Phosphate, Mulberry Energy Company, CFR BIO-GEN, Dade County, General Peat Resources L.P., Ecopeat Company, Timber Energy Resources II, El Dorado Energy, Lade Cogen Limited, Pasco County, Pinellas County, Pinellas County North Facility, and Ridge Generating Station. It is further

ORDERED that the issues presented in this case and the particular modifications to individual contracts are separable. A protest of one proposed action will not delay the other actions from becoming final. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket should be closed.

By ORDER of the Florida Public Service Commission, this 2nd day of May, 1995.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

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MCB/LW