

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for) DOCKET NO. 960604-EQ
Expedited Approval of Settlement) ORDER NO. PSC-96-1217-FOF-EQ
Agreement by Florida Power) ISSUED: September 24, 1996
Corporation and Ridge Generating)
Station, L.P.)
_____)

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 APPROVING SETTLEMENT AGREEMENT

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Florida Power Corporation (FPC) and Ridge Generating Station, L.P. (Ridge) executed a negotiated contract for purchased power on March 8, 1991, which we approved for cost recovery in Order No. 24634, issued on July 1, 1991, in Docket No. 910401-EQ. We approved modifications to the negotiated contract in Order No. PSC-95-0540-FOF-EQ, issued on May 2, 1995, in Docket No. 940797-EQ.

Ridge's cogeneration facility is located near the city of Auburndale, Florida, and began commercial operation in May, 1994. Sometime after July 1, 1994, a dispute arose between Ridge and FPC concerning the proper administration and interpretation of the negotiated contract. In particular, the dispute related to differing interpretations of the proper methodology to be employed in determining the energy price to be paid under the negotiated contract.

We addressed certain jurisdictional aspects of the energy pricing dispute in Docket No. 940771-EQ, wherein we found it

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appropriate to defer the dispute to the civil court. In an effort to avoid the expense of resolving the energy pricing dispute through civil litigation, the parties agreed to certain modifications to the negotiated contract. On May 10, 1996, Ridge and FPC filed a joint petition for expedited approval of a Settlement Agreement. The Settlement Agreement is the second modification to their negotiated contract. In this docket, the parties have requested our confirmation that the payments made pursuant to the contract, as modified by the Settlement Agreement, continue to qualify for cost recovery.

THE SETTLEMENT AGREEMENT

FPC estimates that the settlement agreement will result in a benefit of approximately \$13,348,177 to its ratepayers. We believe that this amount may be overstated because these savings are based on the presumption that Ridge would have prevailed if it decided to pursue litigation against FPC. We have, however, determined that the agreement provides net benefits to the ratepayers. Also, we agree that it is beneficial to all concerned to avoid the expense and uncertainties of civil litigation. We, therefore, approve the Settlement Agreement.

The Settlement Agreement addresses the following areas:

- (1) the methodology for computing energy payments;
- (2) the designation of On-Peak hours;
- (3) the curtailment during Off-Peak periods;
- (4) the escalation rate for the Coal Price; and
- (5) an adjustment for energy payments already paid under the negotiated contract to reflect the energy payment calculation established before the dispute.

Our analysis of these areas is set forth below.

I. ENERGY PAYMENTS UNDER THE NEGOTIATED CONTRACT AND SETTLEMENT AGREEMENT

The methodology for computing energy payments under the existing negotiated contract is as follows:

- (1) the energy payments shall be the product of the average monthly inventory charge-out price of fuel burned at the avoided unit fuel reference plant, the fuel multiplier, and

the avoided unit heat rate, plus the avoided unit variable O&M, if applicable, for each hour that the Company would have had a unit with these characteristics operating; and

(2) during all other hours, the energy cost shall be equal to as-available energy cost.

Prior to August 1994, Ridge received firm energy payments for every kWh delivered to FPC. Beginning in August 1994, and ending with this Settlement Agreement, FPC determined that the avoided unit would have been cycled off during certain hours of the day. Therefore, FPC began making energy payments based on both firm (when the avoided unit was on) and as-available energy (when the avoided unit was off).

The Settlement Agreement modifies the methodology for computing energy payments in the following manner:

- (1) during any on-peak hour, Ridge will receive firm energy cost; and
- (2) during off-peak hours, when as-available energy cost is:
 - (a) less than or equal to the firm energy cost, Ridge will receive the greater of:
 - (i) the product of the discount factor and the firm energy cost; or
 - (ii) the as-available energy cost
 - (b) greater than the firm energy cost, Ridge will receive the firm energy cost.

The energy payment provisions of the Settlement Agreement resolve one of the controversies between Ridge and FPC. FPC estimates that the modified energy pricing provisions will provide savings to its ratepayers when compared to Ridge's pre-settlement position. Both FPC and Ridge will benefit from the energy payment settlement by avoiding the cost of litigation.

II. ON-PEAK HOURS

The negotiated contract previously defined on-peak hours to be the lesser of: (1) the hours of 6:00 a.m. to 12:00 noon and 5:00 p.m. to 10:00 p.m. for the months of November through March and the hours of 11:00 a.m. to 10:00 p.m. for the months of April through

October; or (2) the hours when FPC would have operated a unit with the characteristics defined in section 9.1.2(I), of the original negotiated contract. The Settlement Agreement modifies this definition as follows:

- (1) on-peak hours are defined to be 11:00 a.m. to 10:00 p.m., unless temporarily modified by FPC;
- (2) during the periods November through March, FPC may substitute, on a day-by-day basis for a maximum of 30 days, the hours of 6:00 a.m. to 12:00 noon and 5:00 p.m. to 10:00 p.m. as the on-peak hours.

III. OFF-PEAK CURTAILMENT

The parties previously agreed that for a seven-year period, commencing on May 1, 1994, FPC has the right to curtail capacity and energy deliveries from Ridge by up to 30% during the hours of 12:00 a.m. and 5:00 a.m., though not to exceed 250 total hours during a calendar year. The Settlement Agreement modifies this provision such that throughout the term of the contract, Ridge will:

- (1) curtail energy deliveries to FPC by 30% of the committed capacity, 39.6 MW, between the hours of 12:00 a.m. and 6:00 a.m., without any compensation from FPC;
- (2) attempt to curtail energy deliveries to FPC by a minimum of 50% of committed capacity during the hours of 10:00 p.m. through 6:00 a.m. Ridge will be compensated for energy deliveries that are curtailed beyond the 50% minimum threshold on an hourly basis, as follows:

$$\begin{aligned} \text{Excess Curtailment Compensation} &= \text{Excess} \\ \text{Curtailment, (KWH)} & * [(\text{product of the applicable} \\ \text{Discount Factor times the Firm Energy Cost}) &- (\text{the} \\ \text{As-Available Energy Cost})] &* \text{Delivery Voltage} \\ \text{Adjustment} & \end{aligned}$$

Ridge will not receive compensation when such curtailment of energy deliveries does not equal or exceed 50% of committed capacity. Additionally, Ridge will not receive any compensation when the excess curtailment compensation calculation results in zero or a negative value. This language is consistent with the intent of FPC's curtailment plan which we approved in Order PSC-95-1133-FOF-EQ. The curtailment savings accrue to the benefit of the ratepayers because FPC can replace Ridge's curtailed energy on its system at a lower total cost.

IV. COAL PRICE

The Settlement Agreement's firm energy price will be based on a coal price that will be determined by the higher of:

- (1) the three-month, rolling average, monthly inventory charge-out price of coal burned at the avoided unit reference plant, expressed in \$/MMBTU. This amount will be determined by dividing the "as burned fuel cost (\$)" by the sum of the fuel burned (MMBTU); or
- (2) the amount of \$1.695/MMBTU beginning January 1, 1995, escalating at a fixed rate of one-half percent per year beginning January 1, 1996.

These floors benefit Ridge because they provide a more stable revenue stream. FPC's ratepayers will also benefit from this provision as the three-month, rolling average, monthly inventory charge-out price of coal burned at avoided unit reference plant, in this case Crystal River Units 1 and 2, is not expected to be less than the escalated \$1.695/MMBTU price.

V. SETTLEMENT PAYMENT

FPC has agreed to pay Ridge a one-time Settlement Payment of \$1,197,000. This amount is based upon the difference between what FPC actually paid and what FPC would have paid to Ridge for energy had all the energy been priced at firm energy from August 9, 1994, to January 31, 1996. FPC also paid Ridge \$98,527.23 to reconcile the February, 1996 payment. This amount is also, as previously described, the difference between full firm and actual payments. The entire retroactive payment is a major part of the Settlement Agreement to resolve the dispute between FPC and Ridge.

RECOVERY OF COSTS

As previously discussed, the modified power sales agreement provides a net benefit to FPC's ratepayers. As such, the modified power sales agreement payments shall continue to qualify for cost recovery through the Capacity Cost Recovery and the Fuel and Purchased Power Cost Recovery Clauses.

The method of determining the capacity payment was not modified by the Settlement Agreement. Thus, the capacity payments made under the existing purchased power contract shall continue to qualify for recovery through the Capacity Cost Recovery Clause. As previously discussed, the Settlement Agreement revised the method for calculating energy payments in order to avoid confusion

pertaining to when FPC would be required to pay for firm or as-available energy. This joint agreement to define designated on-peak and off-peak time periods will assist in avoiding costly litigation. Therefore, we find that the energy payments made under the Settlement Agreement shall continue to qualify for recovery through the Fuel and Purchased Power Cost Recovery Clause.

The Settlement Payment is a retroactive payment based on the firm energy pricing provisions of the existing negotiated contract and actual payments. The Settlement Payment is an integral part of the Settlement Agreement which, as a whole, provides a net benefit to FPC's ratepayers. Therefore, we find that the Settlement Payment qualifies for cost recovery through the Fuel and Purchased Power Cost Recovery Clause. FPC did not, however, indicate that it had included the Settlement Payment in a previous energy payment to Ridge. We find that it is inappropriate for a utility to recover these types of costs prior to seeking our approval. Thus, FPC shall seek our approval prior to including such costs in any future energy payments.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement Agreement between Florida Power Corporation and Ridge Generating Station, L.P., is hereby approved. It is further

ORDERED that the capacity payments made under the Settlement Agreement shall continue to qualify for recovery through the Capacity Cost Recovery Clause, and the energy payments made under the Settlement Agreement shall continue to qualify for recovery through the Fuel and Purchased Power Cost Recovery Clause. It is further

ORDERED that the settlement payment qualifies for recovery through the Fuel Cost Recovery Clause. It is further

ORDERED that Florida Power Corporation shall seek Commission approval prior to including the cost of settlement payments in any future energy payments. 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

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

By ORDER of the Florida Public Service Commission, this 24th day of September, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay J. [Signature]
Chief, Bureau of Records

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 15, 1996.

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.

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 substantially 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 wastewater 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.