

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of con-	)	DOCKET NO. 890637-EQ
tracts between Florida Power Corpora-	)	ORDER NO. 21952
tion and Pinellas County.	)	ISSUED: 9-27-89
	)	

The following Commissioners participated in the disposition of this matter:

- MICHAEL McK. WILSON, Chairman
- THOMAS M. BEARD
- GERALD L. GUNTER
- JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING COGENERATION CONTRACTS

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.

Pinellas County (County), a political subdivision of the State of Florida and Florida Power Corporation (FPC) entered into an agreement on May 13, 1980, in which the County agreed to sell and FPC agreed to purchase all the electric energy generated by the County's Resource Recovery Facility. This agreement for the purchase of as-available energy was amended on August 1, 1981 and again on December 1, 1983 providing the County with the option to negotiate for the sale of firm capacity. The County is exercising such option with this petition requesting approval of a negotiated contract. The contract calls for the County to provide 60 MWs of firm capacity commencing January 1, 1995, the in-service date of the Commission designated 1995 avoided unit.

The facility is owned by the County and located on the County's refuse landfill site. Wheelabrator Environmental System is under contract with the County for the operation and maintenance of the facility which incorporates three steam boilers and two electric generators capable of producing a

DOCUMENT NUMBER-DATE

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maximum of 75 MW. An electrical tie line agreement was signed with FPC on May 13, 1980, and commercial in-service of the resource recovery facility occurred on May, 1983. From the in-service date through December, 1988, FPC has purchased 1,794,676 MWH of as-available energy from the facility.

In addition to the existing facility, the County is proposing to build a second Resource Recovery facility with an expected in-service date of December 31, 1994. The County will own and contract for the operation and maintenance of the facility to be located at a site within Pinellas County. The unit will have an installed electric generating capacity of approximately fifty megawatts (50 MW) of electric power. FPC and the County have entered into a negotiated contract in which the County will provide 40 MWs of firm capacity and energy to FPC starting on January 1, 1995, the in-service date of the Commission designated 1995 avoided unit. This agreement will become effective upon the Commission's approval and expire December 31, 2024.

#### Terms and Conditions of the Contracts

The negotiated contracts between FPC and the County contain several unique terms and conditions as described below:

##### A. Capacity Payments

- 1) The County's contract provides for 60 MW of capacity for the existing facility and 40 MW of capacity for the new facility at a 70% Total Capacity Factor, and a 70% On-Peak Capacity Factor both calculated on a twelve-month rolling average period. The 70% on-peak capacity factor will be calculated based on FPC's designated peak periods. In the aggregate, this period shall not be less than 3,900 hours nor exceed 4,000 hours per calendar year. The attainment of both capacity factors qualifies the County to receive coal-based payments in accord with Column 1 of Attachment A. A standard offer contract requires a minimum 70% capacity factor over the same twelve month rolling average period, while it does not require the 70% on-peak capacity factor.

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- 2) If the County does not maintain a minimum 70% Total Capacity Factor, but does maintain a 70% On-Peak Capacity Factor, the County will receive payment in accordance with Column 2 of Attachment A. These payments are proxied to the value of deferring a 1995 combined cycle unit.
- 3) If the County does not maintain a minimum 70% Total Capacity Factor, but maintains an On-Peak Capacity Factor of 60%-69.9%, the County will receive payment in accordance with Column 3 of Attachment A. These payments are proxied to the value of deferring a 1995 combustion turbine.

B. Reductions In Capacity

The County may elect to reduce its Committed Capacity by giving FPC a minimum of 5 years advance notice. The County has the option to renominate its committed capacity during two periods: January 1, 2015 through December 31, 2019 and January 1, 2020 through December 21, 2024.

Pursuant to reductions in capacity, FPC and the County will negotiate a capacity payment schedule based on FPC's then-current avoided cost. The maximum capacity payment rate will not exceed those listed in Attachment A as applicable to each of the years during the ten year period. The minimum rates will not be less than those previously negotiated for the year prior to each of the five year renomination periods. For the first renomination period, 2015-2019, the minimum payment will not be less than those rates negotiated for year 2014 as referenced in Attachment A. The minimum payment for the second renomination period 2020-2024 will be those rates previously negotiated for the year 2019.

Pursuant to reductions in Committed Capacity, FPC will reduce its capacity payment obligation applicable to the new committed capacity for a maximum five-year time period. The capacity payment will be calculated according to option A, the capacity reduction, or option B, fifty percent of the reduced capacity level whichever amount affords the County the highest payment. In the hypothetical example illustrated below, option B provides the County with the maximum capacity payment of 17.5 MW for the County's reduction in committed capacity to 35 MW. After the expiration of the maximum five-year period, FPC will

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pay capacity payments pursuant to the County's actual (35MW) reduced committed capacity.

60 MW Original Committed Capacity  
 35 MW New Committed Capacity  
 A) The capacity reduction.

New Committed Capacity	-	Old Committed Capacity	-	New Committed Capacity
35	-	60	-	35
= 10 MW Payable				

B) Fifty percent of the reduced committed capacity level:

New Committed Capacity	X	50% of New Committed Capacity
35	X	50%
= 17.5 MW Payable		

C. Force Majeure

The parties have included additional criteria for declaring a force majeure. The term includes changes in the characteristics or BTU value of waste processed and changes in or adoption of regulations pertaining to environmental constraints relating to recycling or packaging constraints of waste materials. If either party is unable, by reason of force majeure, to carry out its obligations under this Agreement, the party so failing shall give written notice. No capacity payment obligation shall accrue during any period of force majeure.

FPC will resume its obligation to make capacity payments if the County resumes performance of its original committed capacity or reduces its committed capacity after the declaration of force majeure. Pursuant to reductions in Committed Capacity, FPC will reduce its capacity payment obligation for the County's revised committed capacity. Such reductions shall be calculated in the same manner as applicable

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to options A, the capacity reduction, or option B, fifty percent of the reduced committed capacity level. This procedure is described in the preceding Section under Committed Capacity. Such reduction shall reduce the aggregate amount of capacity payments due the County for a maximum of five years.

The County will be in default of this revised agreement if they are unable to deliver the original or reduced committed capacities within a twenty-four month period. If the County's Force Majeure event is not remedied within the twenty-four month period, but thereafter is remedied, FPC, at its option, may resume capacity payments.

#### D. Declaration Of Special Event

Pursuant to a change in law or regulation which causes the County to perform major air pollution emission modifications, the County may exercise a one-time option to issue a Declaration of Special Event for the existing unit only. The proposed unit will be constructed with the best available control technology, thus, it will not require major emission modifications. The Declaration shall, at a minimum, provide FPC with six months written notice of the modification period and provide a nomination of special committed capacity. The applicable time period shall be no less than twelve (12) consecutive months nor more than twenty-four (24) consecutive months.

The County will be eligible to receive CT capacity payments (Column 3, Attachment A) on its nomination provided that the facility meets the coal capacity (Column 1, Attachment A) performance criteria requiring a 70% total capacity factor and 70% on-peak capacity factor during the declaration period.

#### E. Increases In Capacity

On or after January 1, 1995, the County can give written notice to FPC of its intention to increase committed capacity, provided that the new committed capacity does not make the facility ineligible for Qualifying Facility status pursuant to the rules and regulations of the Florida Public Service Commission or the Federal Energy Regulatory Commission.

Capacity payments for incremental increases in committed capacity will be paid in accordance with Rate Schedule COG-2 as

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it is available at the time of such commitment. If COG-2 is not available, FPC will make incremental capacity and energy payments equal to the Company's avoided capacity and energy cost as these parameters exist at such time the County commits additional capacity.

#### F. Default And Termination

The County shall be in default if the County voluntarily declares bankruptcy or ceases all electric generation for the period of two consecutive months.

FPC may declare the County to be in default if after January 1, 1995, the County fails to receive a coal capacity payment (Column 1, Attachment A) for twenty-four consecutive months, or because of the County's refusal or inability to deliver its Committed Capacity after January 1, 1995.

FPC shall have no capacity payment obligation during a default period. If the County remedies the default and resumes Committed Capacity deliveries within twelve months, FPC will be obligated to make capacity payments pursuant to the revised agreement.

If the County's default is not remedied within twelve months, but thereafter is remedied, FPC, at its option, may resume capacity payments.

FPC's payments to the County for firm capacity and energy are conditioned upon full reimbursement of such payments through the Fuel and Purchase Power Cost Recovery Clause or other authorized rates or charges. Any amounts initially recovered by FPC from its rate payers but for which recovery is subsequently disallowed by the Commission and charged back to FPC may be off-set or credited against subsequent payments made by FPC for purchases from the County.

#### Status Of Facilities

18 CFR §292.203(a), FERC's rules implementing PURPA, provides that a facility qualifies as a "small power production facility" if it meets the maximum size criterion specified in 18 CFR §292.204(a), meets the fuel use criterion in 18 CFR §292.204(b), and meets the ownership criterion of 18 CFR §292.206. The County's existing facility clearly meets those

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criteria: it does not exceed 80 MW; uses solid waste as fuel; and is not owned by a person primarily engaged in the generation or sale of electric power. 18 CFR §292.207(a)(1) then defines this facility as a QF.

The County is not required to file a notice of self-certification, or secure FERC certification in order to qualify the existing resource recovery facility as a qualifying facility. See: Cooley v. Clifton Power Corp., 36 FERC ¶ 61,120 (1986).

The County is currently evaluating potential site locations for the proposed 50 MW facility. Should the proposed facility be located at a site other than the mid-County site, then the proposed facility would qualify as a PURPA small power production facility on the same basis as the existing facility. However, should the proposed facility be located at the mid-County site within one mile of the existing facility, the aggregated MW of both the existing and proposed facilities will be 125 MW, and will exceed the 80 MW same-site limitation imposed on small power producers. 18 C.F.R. §292.204(a).

Under 18 C.F.R. §292.(a)(3), FERC may grant a waiver of the same-site 80 MW limitation. The County has represented in its Memorandum in Support Of Petition For Approval filed on July 20, 1989, that it does intend to seek such a waiver. The County has also represented that it will construct the proposed facility as a cogeneration facility defined in 18 C.F.R. §292.203(b) should the waiver not be obtained. The 80 MW limitation does not apply to cogeneration facilities. Thus under either scenario, both the existing facility and the proposed facility will meet the criteria for qualifying status under both the applicable FERC and FPSC rules.

#### Cost Recovery

The negotiated contracts between FPC and the County fall within the 500 MW subscription limit associated with the avoided unit designated in Order No. 17480. Pursuant to Rule 25-17.083(2), Florida Administrative Code, the three criteria used to determine whether a negotiated contract will be considered prudent for cost recovery purposes are as follows:

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- 1) It must be demonstrated that the utility's purchases under the negotiated contract can reasonably be expected to result in the economic deferral or avoidance of Florida's Utilities' construction of additional generating capacity from a statewide perspective;
- 2) The cumulative present worth of the utility's payments for firm capacity and energy over the term of the negotiated contract are to be no greater than the cumulative present worth of the value of the year-by-year deferral of the statewide avoided unit over the term of the contract; and
- 3) To the extent that annual firm capacity and energy payments by the utility in any year exceed the year's annual value of deferring the statewide avoided unit, there is a security bond or equivalent assurance of the qualifying facility's performance of the terms of the negotiated contract so as to protect the utility's ratepayer.

The FPC-Pinellas County contract with the contractually agreed upon 70% total capacity factor and 70% on-peak capacity factor was analyzed against the capacity payments associated with the statewide avoided unit which assumes a 70% total capacity factor. As indicated in Column 1 of Attachment A, this payment stream is identical to the revenue stream approved in Docket No. 881005-EI, Revision to Rule 25-17.091 capacity and economic payments to solid waste facilities.

FPC also provided a comparison of the present worth of firm capacity and energy payments from the FPC Pinellas County contract to the year-by-year value of deferring FPC's designated 150 MW combustion turbine generating unit. The unit with an in-service date of 1992 represents FPC's least-cost expansion of generating capacity. Unlike the statewide avoided unit analysis, the cumulative thirty-year present worth of FPC's payments for firm capacity and energy to the County exceeds the year-by-year value of deferring FPC's combustion



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turbine unit by approximately \$13,000,000 for the existing 60 MW unit and approximately \$8,000,000 for the proposed 40 MW facility.

Because the construction of these units will be likely to defer the construction of capacity by FPC and the stream of revenues associated with the County's units on a present value basis are equal to or less than that of the stream of revenues associated with the statewide avoided unit, all of the criteria of our rule have been met and we approve these contracts.

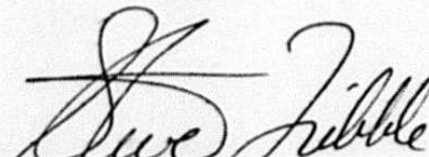
Based on the above, it is

ORDERED by the Florida Public Service Commission that the petition for approval of two negotiated contracts between Florida Power Corporation and Pinellas County for cogenerated power for existing and proposed resource recovery facilities dated November 7, 1988 and February 21, 1989, is hereby granted. It is further

ORDERED that payments made pursuant to these contracts shall be recoverable by Florida Power Corporation through its Fuel and Purchased Power Cost Recovery Clause. It is further

ORDERED that this docket shall be closed after the time has run in which to file a protest or notice of appeal unless such action is taken.

BY ORDER of the Florida Public Service Commission  
this 27th day of SEPTEMBER, 1989.



STEVE TRIBBLE, Director  
Division of Records and Reporting

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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 October 18, 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.

A P P E N D I X A

MONTHLY CAPACITY PAYMENTS -\$/KW

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YEAR	COLUMN 1	COLUMN 2	COLUMN 3
1995	20.06	8.41	6.74
1996	21.32	8.95	7.17
1997	22.67	9.53	7.63
1998	24.11	10.13	8.12
1999	25.63	10.78	8.64
2000	27.26	11.47	9.19
2001	28.98	12.21	9.78
2002	30.82	12.98	10.40
2003	32.77	13.80	11.06
2004	34.85	14.68	11.76
2005	37.06	15.61	12.50
2006	39.41	16.60	13.29
2007	41.91	17.65	14.14
2008	44.57	18.77	15.04
2009	47.40	19.96	15.99
2010	50.41	21.23	17.01
2011	53.61	22.58	18.09
2012	57.01	24.01	19.23
2013	60.64	25.54	20.46
2014	64.49	27.16	21.76
2015	68.59	28.89	23.14
2016	72.95	30.73	24.61
2017	77.60	32.68	26.18
2018	82.53	34.76	27.84
2019	87.79	36.97	29.62
2020	93.38	39.33	31.50
2021	99.32	41.83	33.51
2022	105.65	44.49	35.64
2023	112.38	47.33	37.91
2024	119.54	50.35	40.33

The years stated in this Appendix are those that would otherwise apply should there be no force majeure event(s); and each price listed in Column 1 through Column 3 shall be applicable commencing with the first hour of each stated year. If there is (are) any force majeure event(s), the application of subsequent prices shall be deferred by the sum of previous force majeure hours.