BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Northewest Florida's Electric Utilities.	)	DOCKET NO. 890004-EU-A
	)	ORDER NO. 22271
	)	ISSUED: 12/7/89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

FINAL ORDER

BY THE COMMISSION:

Pursuant to Section 366.04(3), Florida Statutes, the Commission has jurisdiction over the "planning, development, and maintenance of a coordinated electrical power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities..."

In order to fulfill these responsibilities, the Commission has instituted this docket for the purposes of:

(1) Adopting 20-year optimal statewide generation expansion planning studies for northwest Florida;

(2) Reviewing Gulf Power Company's (Gulf) 20-year optimal generation expansion planning studies;

(3) Understanding the relationship between the Southern electric system's 20-year optimal generation expansion planning studies to Gulf's 20-year optimal generation expansion planning studies;

(4) Developing 20-year optimal statewide generation expansion planning studies from the peninsular Florida and Gulf's 20-year optimal generation planning studies; and

(5) Setting the prices at which investor-owned utilities in Northwest Florida must purchase energy and capacity produced by qualifying cogeneration and small power production facilities based on the 20-year optimal statewide generation expansion planning studies.

Public hearings were held on March 8, 1989 in which Gulf presented the testimony of 2 witnesses and 11 exhibits were introduced into evidence. At the time of the hearing, there was one intervenor, Alabama Electric Cooperative, Inc. (AEC) whose role was limited to cross-examination only. On April 7, 1989, Gulf submitted a timely brief in this docket.

Long-Range and Avoided Unit Studies

By Order No. 18805, issued on February 4, 1988, the Commission approved a work plan for use in this proceeding which outlined the scope of Gulf's 20-year generation planning studies individually and as part of the Southern Company. This work plan required the submittal of three documents: a forecast document, generation expansion planning studies document and an aggregate (20-year) plan for the Southern Company. Essentially, the work plan has required that Gulf develop a 20-year optimal generation expansion planning study "base case" and three sensitivity cases. These studies comprise the generation expansion planning studies document referenced above.

Using its own models and assumptions, Gulf's base case represents its expectations of its load growth and generation resource needs over the next two decades. This case includes both existing and prospective (post January 1, 1988) cogeneration. Sensitivity Study No. 1 is similar to the base case except prospective cogenerators are excluded from being considered as a future generation source. Sensitivity Study No. 2 is a hypothetical case which on an individual utility level mimics the Southern Company's base case study with the exception of unit dispatch, interchange and cost of captial. Sensitivity No. 3 is a hypothetical case that replicates Sensitivity No. 2 except prospective cogeneration is not considered as a generation resource.

In addition to the generation expansion planning document just discussed, Gulf also submitted its forecast document. The forecast document essentially contains the base (most likely) load energy forecast including the net energy for load (NEL) and the seasonal peak demand for winter and summer for the years 1988 through 2007.

Having reviewed these studies we find that they are reasonably adequate for estimating Northwest Florida's future electric capacity needs. Further, we find that the avoided unit study prepared by the Southern Company provides a reasonably adequate basis for the identification of the appropriate avoided unit for Northwest Florida. We recognize that the underlying premise of the work plan approved by this body in 1988 which shaped the contents of the studies before us was that Northwest Florida's needs differ so significantly from that of Peninsular Florida that a separate study was required.

In separating Gulf from the rest of the state we followed the precedent established in the last planning hearing dockets, Dockets Nos. 860004-EU and 890004-EU-A. In re: Annual hearings on load forecasts, generation expansion plans and cogeneration prices for Peninsular and Northwest Florida, Order No. 17480, issued April 30, 1987 at 4. The rationale for the separation of Northwest Florida from the rest of the state is due to the fact that Gulf Power Company (Gulf), the largest electric utility in that area from both a customer and capacity standpoint, is part of the Southern Company. Thus Gulf, unlike its Florida counterparts, plans its generation expansion in concert with its sister subsidiaries in the Southern Company system. Although this is still the case, we direct our Staff to revisit this separation since it necessarily results in Gulf having a different avoided unit than other Florida utilities.

Avoided Unit

Gulf's first need for new generation is a 126 MW combustion turbine with a 1995 in-service date. We have previously ruled that combustion turbines (CT) should not be designated as avoided units unless it can be demonstrated that the cogenerator could mimic the economic dispatch of a combustion turbine unit. Order No. 17480 at 8. Such a demonstration has not been made in the record before us. Therefore, we find that it would be inappropriate for Gulf's 1995 CT to be selected as its avoided unit.

The first intermediate or baseload unit to be added by Gulf is a 92 MW portion of a combined cycle unit in the year 2005. However, we are unwilling to designate that 2005 intermediate capacity as Gulf's avoided unit because it is 15 years down the road. That simply is too far in the future for economic and load growth assumptions, and thus optimal generation expansion plans, to be very reliable. For this reason, we will not designate an avoided unit for Gulf at this time nor designate Gulf as the utility planning the statewide avoided unit.

Since Gulf does not have a designated avoided unit, it is unnecessary for us to set firm energy and capacity prices based on the value of deferring that unit. However, Rule 25-17.083(3)(b), Florida Administrative Code, requires utilities to pay cogenerators for firm energy and capacity based on either the value of year-by-year deferral of the statewide avoided unit or the average embedded book cost of fossil steam production plant of the utility "planning the statewide avoided unit." Although we have selected Florida Power and Light Company (FPL) as the utility planning the statewide avoided unit for Peninsular Florida, the use of FPL's average embedded cost of fossil steam production plant would be inappropriate in this docket. The rationale which supports this is the same rationale which supports the separation of Gulf from its peninsular counterparts. Gulf should not be required to offer a tariff based on FPL's average embedded cost of fossil steam plant if it is not required to offer a tariff tied to FPL's avoided unit. Thus, for purposes of implementing this section of the rule, we will substitute Gulf for the utility planning the statewide unit.

We should note here that it is illogical to allow cogenerators to be paid based on Gulf's embedded cost of fossil steam plants when Gulf has no immediate need for intermediate or baseload capacity unitl 2005, i.e., when Gulf has no avoided unit. However, legally Gulf cannot be exempted from making capacity payments based on the average embedded book cost of fossil steam plants.

Section 120.68(12), Florida Statutes, states that:

> (12) The court shall remand the case to the agency if it finds the agency's exercise of discretion to be:
> (a) Outside the range of discretion delegated to the agency by law;

> (b) Inconsistent with an agency rule;
> (c) Inconsistent with an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or
> (d) Otherwise in violation of a constitutional or statutory provision; but the court shall not substitute is judgment for that of the agency on an issue of discretion.

The language above was placed in the rule on June 12, 1984. Prior to that time Section (b) had additional language which allowed an agency to waive its rules if there was competent and substantial evidence in the record to support the waiver. Thus the clear intent of the Legislature in 1984 was to remove this option from state agencies. (There is a strong argument to be made, however, that agencies can still deviate from their "procedural" rules if such deviation does not result in the enlargement of their own jurisdiction or that of the appellate courts. Hall v. Career Service Commission, 478 So. 2d 1111 (Fla. 1st DCA 1985))

An agency may act inconsistently with its rules when those rules are at odds with state or federal statutes or federal rules. This is true since rules which are at odds with state statutes are invalid exercises of an agency's discretion, as are rules which are contrary to preemptive federal statutes or federal rules. That is, those types of rules are legally infirm from the moment the conflict with statute or rule arises. Absent such a conflict, an agency is required to adhere to its own rules since the rule is a valid exercise of the agency's discretion. Seitz v. Duval County School Board, 366 So.2d 119 (Fla. 1st DCA 1979), cert.den. 375 So.2d 911 (Fla. 1979); Louisiana Public Service Commission v. Federal Communications Commission, 476 U.S. 355, 90 L.Ed 2d 369, 106 S.Ct. 1890 (1986); Hines v. Davidowitz, 312 U.S. 52, 85 L.Ed. 581, 61 S.Ct. 399 (1941). See also: C.F. Industries, Inc. v. Nichols, 536 So.2d 234, 238-9 (Fla. 1988).

There is no preemptive federal statute or rule or state statute which would allow the Commission to waive the substantive requirement that Gulf offer a capacity payment equal to the utility's average embedded book cost for fossil steam plants. Thus, this provision cannot be waived without

inviting reversable error upon appeallate review.

That being the case, we find that Gulf is required to file a standard offer tariff for review and approval by this Commission based on the average embedded book cost of its fossil steam plants. We further find that normal capacity payments should not be paid prior to the in-service date of the first intermediate or baseload capacity identified in Southern's generation expansion plan and early payments should not be made prior to seven years before this date. This would result in normal capacity payments commencing in 2005 and early capacity payments commencing no sooner than 1998.

The effective date of this standard offer tariff should be the date of the Commission's vote on this docket, October 16, 1989. Gulf's existing standard offer tariff based on its embedded cost of fossil steam plant should also be closed as of that date.

Acceptance of generation expansion plans

We find that we should accept generation expansion plans as reasonable which would increase Florida utilities' consumption of and reliance on natural gas and oil fuels provided such plans do not exceed the 1989 oil backout goal of 58,734,000 barrels per year and provided new base and intermediate units causing the increase can be made to burn coal.

Sections 366.80-.85 and 403.519, Florida Statutes, commonly referred to as the Florida Energy Efficiency and Conservation Act (FEECA), was crucial to the rationale which supported our decision in the last planning hearing. Section 366.81, Florida Statutes (1987), states in part:

> The Legislature finds and declares that it is critical to utilize the most efficient and cost-effective energy conservation systems in order to protect the health, prosperity and general welfare of the state and its citizens. . . . The Legislature further finds and declares that ss. 366.80-366.85 and 403.519 are to be liberally construed in order to meet the complex problems of reducing the growth rates of electric consumption and

> weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; and conserving expensive resources, particularly petroleum fuels.

(Emphasis added.)

Section 366.82(2), Florida Statutes (1987), goes on to state:

> (2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels and to reduce the growth rates of electric consumption, especially of weather-sensitive peak demand. . .

(Emphasis added.)

In this legislative session, Sections 366.81 and 366.82 were both amended. Section 366.81 now reads, in part, as follows:

> Reduction in, and control of, the growth rates of electric consumption and of weather-sensitive peak demand are of particular importance. . . . The Legislature further finds and declares that ss. 366.80-366.85 and 403.519 are to be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; encouraging further development of cogeneration facilities; and conserving expensive resources, particularly petroleum fuels.

(Legislative format; underlined words are additions.)

Likewise, Section 366.82(2) now reads in part:

> (2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, and to reduce and control the growth rates of electric consumption, and to reduce the growth rates of weather-sensitive peak demand. . .

(Legislative format; underlined words are additions.)

The addition of these few words is significant. The initial language of Sections 366.81 and 366.82 could have been read as an expression of the Legislature's intent that no increase in the consumption of natural gas or oil be allowed in the state. We did so interpret it in Order No. 17480, issued on April 30, 1987, in the last planning hearing docket. Order No. 17480 at 10. Historically, cogeneration facilties which are not refuse burners have been fueled in whole or in part by natural gas. Their inclusion in the list of activities to be encouraged by us indicates that the Legislature is interested in the most economic use of natural gas and oil, not in an absolute ban on increased gas and oil usage. Likewise, the addition of language which indicates that the growth rate of both peak demand and electric consumption should be reduced and controlled indicates that an absolute prohibition against increased use of petroluem fuels is not what is intended. Peaker units are fueled exclusively by natural gas and oil.

At the last planning hearing we also put great emphasis on the fact that the federal Power Plant and Industrial Fuel Use Act (Fuel Use Act), 42 USC Section 8301 et seq., prohibited the use of petroleum or natural gas as the primary fuel in any new electric power plant or any new major fuel burning installation that consisted of a boiler. 42 USC Sections 8311 and 8312. The initial legislation also required existing power plants using natural gas to stop using that fuel by 1990. 42 USC Section 8341.

Since that time, Section 8341 of the Fuel Use Act has been repealed as has Section 8312. [Act May 21, 1987, P.L. 100-42, §1(a)(1), 101 Stat. 301] Further, Section 8311 has been modified to delete the requirement that new electric powerplants not burn natural gas or petroleum as a primary energy source unless granted an exemption. [Act May 21, 1987, P.L. 100-42, §1(c)(4)(A), 101 Stat. 311.] This leaves only the Section 8311 requirement that new base load powerplants have the "capability to use coal or another alternate fuel as a primary energy source." Section 8311(a).

The statement of purpose of the Fuel Use Act was also modified to encourage the "modernization or replacement of existing and new electric powerplants which utilize natural gas or petroluem as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum." (Emphasis added). Section 8301(b)(5). As has been testified to in this docket, the construction and use of combined cycle units will actually lower the amount of natural gas and oil burned in the state since they will be able to replace less efficient units. Thus, the construction of combined cycle units which have the ability to be converted to coal gasification is entirely consistent with the current Fuel Use Act.

Based on these changes to both the Fuel Use Act and FEECA, we are of the opinion that the mandate of this Commission given by both the Congress and Legislature is to encourage the most economic use of natural gas and oil, not to prohibit its use completely. That being the case, neither FEECA nor federal law prohibit the adoption of these generation expansion plans which would increase Florida utilities' consumption of and reliance on natural gas and oil fuels.

Use of planning hearing decisions

The original purpose of this docket, its companion docket, Docket No. 890004-EU, and their predecessors, was to ensure that utilities and this body take a coordinated, long-range approach to planning new generation in Florida. We agree with our Staff and Gulf that the findings of this docket should establish a framework within which we gauge the validity of individual electric utility and qualifying facility (QF) need determination applications filed pursuant to Section 403.501-.517, (Siting Act) or 403.519, Florida Statutes. These

findings should not be used as a surrogate for the factual findings required by the Siting Act in the need determination applications of either electric utilities or qualifying facilities.

The Siting Act, and Section 403.519 require that this body make specific findings as to system reliability and integrity, need for electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Clearly these criteria are utility and unit specific. The information in both the avoided unit study and the 20 year optimal generation expansion plan adopted in this docket are best used only as a means of testing the reasonableness of a proposed electric power plant project.

By this finding, we overrule those previous decisions in which we held that in QF need determination cases as long as the negotiated contract price was less than that of the standard offer and fell within the current MW subscription limit both the need for and the cost-effectiveness of the QF power has already been proven. See: In re: Petition of AES Cedar Bay, Inc. and Seminole Kraft Corporation for determination of need for the Cedar Bay Cogeneration Project (AES), Order No. 21491, issued on June 30, 1989. In so doing we take the position that to the extent that a proposed electric power plant constructed as a QF is selling its capacity to an electric utility pursuant to a standard offer or negotiated contract, that capacity is meeting the needs of the purchasing utility. As such, that capacity must be evaluated from the purchasing utility's perspective in the need determination proceeding, i.e., a finding must be made that the proposed capacity is the most cost-effective means of meeting purchasing utility X's capacity needs in lieu of other demand and supply side alternatives.

We recognize that QFs which are solid waste facilities may be in a different category than other QFs by virtue of Section 377.709, Florida Statutes. So that while it may be appropriate to "automatically" approve the need for a solid waste facility, it is not for other units which will burn oil or natural gas as their primary fuel. In reversing our position on the use of planning hearing decisions in QF need determination applications we have been persuaded by several arguments. First, that because the current standard offer is based upon a statewide avoided unit, rather than individual utility avoided

units, this necessarily causes a mismatch between the prices paid to cogenerators and the price of the unit being avoided by the utility purchasing the power. So that even if one assumes that all cogenerated power is "needed", the finding that cogenerated power is the most cost-effective means of satisfying that need does not necessarily follow. This problem is not corrected by the designation of a utility planning the statewide avoided unit unless it is the designated utility which is purchasing the power.

Second, an increasing share of the state's electrical needs will be supplied by either cogenerators or independent power producers. If we continue to "rubber stamp" QF projects with the only criterion being that the price of that electricity is equal to or less than that of the standard offer, this body has effectively lost the ability to regulate the construction of an increasingly significant amount of generating capacity in the state.

Third, after the conclusion of the AES proceeding, our Staff recieved a letter from Hamilton S. Oven, with the Department of Environmental Services, dated August 28, 1989. In his letter Mr. Oven referred to correspondence he had received from Marion Jones, of the United States Environmental Protection Agency, requesting some clarification of our final order in that docket. The correspondence indicates that EPA cannot prepare its SAR/EIS statement for the certification hearing since the order indicates that no "examination of generation and management alternatives to the proposed plant" were performed. It is obvious that EPA is analyzing this plant from the perspective of the purchasing utility's needs, not that of the QF.

Fourth, as discussed above, we adopt the position that "need" for the purposes of the Siting Act, is the need of the entity ultimately consumming the power, the electric utility purchasing the power. Cogeneration is another alternative to that purchasing utility's construction of capacity or purchase of wholesale power from another source.

Based on the considerations discussed above, we are persuaded that the appropriate decision is to use planning hearing results in QF need determination hearings in the same manner that they are used when electric utilities come before us: for informational purposes only.

Therefore, it is

ORDERED by the Florida Public Service Commission that Gulf Power Company shall submit a tariff in compliance with Rules 25-17.080 through .087, Florida Administrative Code, as described in the body of this order, within ten (10) days of the date of this order. It is further

ORDERED that Gulf Power Company shall submit a standard offer contract for the purchase of firm capacity and energy from QFs in compliance with Rules 25-17.080 through .087, Florida Administrative Code, as described in the body of this order. It is further

ORDERED that the effective date of Gulf Power Company's tariff shall be October 16, 1989.

BY ORDER of the Florida Public Service Commission this 7th day of DECEMBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

by: Kay Flynn
Chief, Bureau of Records

SBr

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.

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.