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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 1989 Hearings on Load Forecasts, Generation Expansion Plans and Cogeneration Prices for Peninsular Florida.

Docket No. 900004-EU

Submitted for Filing:

January 10, 1990

MOTION FOR RECONSIDERATION

The Florida Industrial Cogeneration Association (FICA), by and through its undersigned attorneys, files its Motion for Reconsideration of Order No. 222341 pursuant to Rule 25-22.060. The Commission should reconsider its decision to designate combined cycle units, rather than coal-fired units, as avoided units. FICA also requests that the Commission reconsider its decisions imposing utility-by-utility subscription limits and denying capacity payments to QFs providing as-available energy.

DESIGNATION OF THE AVOIDED UNIT

The Commission Doesn't Want Combined Cycle Units to be Constructed

1. Although the Commission designated a combined cycle unit as the avoided unit, it is clear that the Commission does not want this unit built. The motion to designate FPL's 1993 combined cycle unit was made "with the understanding that, in so doing, this unit will be deferred." However, the Commission has acted to frustrate its own purpose. By designating this unit as the avoided unit, the Commission *substantially reduced* capacity payments to QFs from the last planning proceeding. The Commission cannot reasonably expect to defer utility capacity by lowering capacity payments to QFs. Instead, it may be ensuring the construction of a combined cycle unit, a unit it does not want built.

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2. If the Commission's goal is to *defer capacity*, it must provide adequate incentives. If the Commission doesn't want a combined cycle unit to be built it must designate a coal unit.[1] Designating a coal unit as the avoided unit will provide the Commission with precisely the result it seeks: protection for the ratepayers from escalations in natural gas and oil costs *and* the "financial risk" of utility-constructed coal-fired capacity. The Commission has recognized that the increased natural gas and oil consumption associated with combined cycle construction will expose the ratepayers, once again, to the threat of escalating energy prices.[2] On the other hand, one of the FCG's "strategic considerations" was the avoidance of the "financial risk" associated with high capacity-cost units. This consideration resulted in the FCG choosing combined cycle capacity even when coal capacity had a lower cost (PWRR).[3]

3. Deferral of utility construction through the designation of a coal unit will protect the ratepayers from the potential escalation of natural gas prices because QFs will be paid coal-based energy payments.[4] Deferral of utility construction will

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[1]In seeking to defer the combined cycle unit, the Commission recognized that there are certain unquantified "costs" inherent to the unit that it would prefer to avoid.

[2]The "fuel flexibility" of combined cycle units provides no protection from these risks, as the units can only burn oil or gas.

[3]Exhibit No. 102, p. 64.

[4]In addition, if gas-fired capacity is not built, Florida's utilities will not divert gas to the new units and will avoid the additional oil consumption that would occur at existing plants with combined cycle unit construction. The ratepayers will thus be

protect the ratepayers from the high front-end cost of coal-fired capacity because QF capacity in smaller increments can better match actual capacity needs. Additionally, under current rules, the "customer risk" of early, levelized coal-based capacity payments to QFs is lower than that of the revenue requirements of utility-constructed combined cycle capacity.

4. The Commission must recognize that designation of gas-fired units as avoided units in this Docket will very likely result in the construction of over 3,000MW of gas-fired utility capacity through the year 1995. (The FCG's avoided unit study selected 3,085MW of gas-fired capacity for construction through 1995.) In approving this plan and designating gas-fired units as the avoided units, the Commission has steered the state to a course that cannot be reversed. Notwithstanding the assertion that the avoided units have been selected for pricing QF capacity, the utilities have been given the clear signal that it is reasonable for them to build gas-fired capacity over the next five years and, because of the short lead times of gas-fired units, it will be far too late to consider other alternatives when applications to certify such units are actually considered.

5. The Commission cannot reasonably rely on the future exercise of its "Grid Bill" powers to control the impact of expanding gas-fired utility capacity in Florida. The Grid Bill directs the Commission to be proactive and establish the utility

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further insulated against the adverse effects of the potential escalation of natural gas and oil prices.

generation expansion plans for the State.[5] The only feasible forum in which to carry out this directive is the periodic planning hearings, which review long-range construction decisions. A statewide view of planning requires a statewide study, as performed by the FCG. An individual utility need determination proceeding is no substitute and, in any event, would be too late.

The Commission Has Adopted a Policy Favoring the Construction of Gas-Fired Capacity

6. Issue No. 33 in this proceeding asked whether the Commission should designate a unit that does not burn coal. This issue was apparently intended to solicit argument relative to choosing gas-fired versus coal-fired avoided unit capacity. In ruling on this issue, the Commission has unwisely adopted a general policy that, whenever the relative economic impact of competing types is small, gas-fired capacity is preferred over coal-fired capacity. This policy springs from the Commission's approval of the FCG's assumptions, strategic considerations and unit selections.

7. The FCG's general preference for gas-fired capacity is clearly stated in its Avoided Unit Study:

> In evaluating alternatives for each year, differences in PWRR were often small relative to the degree of precision possible using forecasts and assumptions. Strategic issues were important in selecting the most likely capacity alternatives. *These strategic issues indicated a general preference for combined*

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[5]Had the Legislature intended the Commission to merely disallow utility expenditures for "imprudent" planning, it would not have enacted the Grid Bill. The Commission has always had the power to disallow cost-recovery after the fact.

cycle plants and combustion turbine units over the conventional coal unit.

Exhibit No. 102, p. 7

The FCG's PWRR comparisons confirm the fact that the relative economic impact of different unit selections was minimal. Selecting gas-fired versus coal-fired units produced differences in PWRR that were less than one half of one percent for all four decision years (Exhibit No. 102, Pp. 122-123). Clearly, the selection of units rests on the choice of strategic considerations and how those considerations interact. On balance, the FCG's choice of strategic considerations favored gas-fired capacity, with its attendant increase in natural gas and oil usage.[4] The Commission, by its vote, has *approved* the FCG's strategic considerations *and* the FCG's overall preference for gas-fired capacity.

8. By approving the FCG's approach, the Commission has likewise adopted a policy that favors gas-fired capacity over coal-fired capacity whenever the economic results are similar. This policy is inconsistent with the philosophy behind FEECA and is simply an unwise choice. FEECA was enacted, as a mandate to the Commission, to protect Florida's ratepayers from rising energy costs, caused primarily by increased petroleum fuel use. The Commission, recognizing the clear and present danger of increased

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[4]The Commission cannot reasonably rely on the lower PWRRs for gas-fired units in some decision years as a justification for favoring those units. The FCG itself said that the study was too imprecise to rely on the small differences in PWRR.

oil use, established oil consumption limitations for Florida's utilities in an effort to provide some measure of protection against price instability and interruption of oil supplies. These limitations have now been exceeded, at no small cost to the ratepayers, who have paid for the cost of energy conservation and oil backout programs.

9. The Commission has adopted a policy that clearly reverses its prior policy of protecting the ratepayers, and now fosters the increased consumption of natural gas and oil by Florida's utilities. FEECA's continuing mandate to protect the ratepayers from the danger of increased oil use argues most strongly against the Commission's new policy. The Commission should not reject FEECA; it should reject the policy espoused by its Staff and the FCG by adopting instead, a general policy favoring coal-fired units, except when the relative economics of gas-fired units are demonstrated to be far greater than those of coal. As the FCG's study clearly indicates, this is not presently the case. The Commission should select coal-fired avoided units for the protection of Florida's energy future.

Designating a 1993 Coal Unit

10. The Commission should designate a pulverized coal unit as the avoided unit for 1993. FICA has presented substantial justification for designating a pulverized coal unit in 1992. No 1992 units were designated, however, because the Commission's decision was delayed until the fall of 1989. This delay resulted in a Commission decision not to designate any 1992 units. FICA's

arguments in favor a 1992 coal unit should not be ignored when, due to no fault of its own, those units will not be considered by the Commission. FICA's arguments in favor of a 1992 pulverized coal unit should be considered in designating a 1993 unit.

11. There is a substantial price to be paid if a pulverized coal unit is not designated for 1993. The FCG's studies show that, under a high fuel cost scenario, the 30-year PWRR of its 1993 combined cycle units is far greater than that of pulverized coal units. If the Commission is to give any consideration to protecting the ratepayer from the risk of fuel price escalations, then it must be mindful of the PWRR of different unit types under high fuel cost scenarios. It is not enough to simply note that a high fuel price sensitivity was performed. The results of the sensitivity must be recognized when making unit selections.

12. Order No. 22341 recognizes that combined cycle units cannot be economically converted to coal gasification in the near term under any reasonable assumptions. By emphasizing the high cost of conversion, the Order also emphasizes the fact that only pulverized coal units can economically protect the ratepayers from the risks of fuel price escalation. The high cost of converting combined cycle units to gasification makes it completely illogical to characterize combined cycle units as having the future ability to burn coal.

Retaining a 1995 Coal Unit

13. If the Commission is unwilling to designate a 1993 pulverized coal unit, the record supports retention of a 1995

pulverized coal unit as the avoided unit. The FCG's avoided unit study selected one 500MW pulverized coal unit for 1995 which, during the Commission's deliberations, was erroneously described as the same unit as designated in the last planning hearing. During the Commission's deliberations it was argued that the "same" unit could not be designated again. Aside from the fact that record shows no link between the results of the FCG's current study and the results of its prior study, the subscription of *one* coal unit does not mean that a coal unit should not be designated at this time. Assuming that the FCG's 1995 coal unit has been fully subscribed, using the FCG's strategic considerations, *two* 1995 pulverized coal units should be selected because one unit will be replaced by QF capacity. This leaves one unit available for designation as an avoided unit. Under the FCG's rationale, *two* 1995 coal units provide the lowest cost (PWRR) for the ratepayers *and* only have the "customer risk" of *one* coal unit.

14. The FCG's choice of coal or gas-fired capacity in 1995 rested largely on two competing considerations: the lower PWRR of coal capacity and the higher front-end cost of coal capacity. The FCG's study identified *two* 1995 pulverized coal units as the least cost combination of units. However, the FCG chose a combination with only *one* coal unit to avoid the customer risk of the high front-end cost of two coal units.[7] However, a 1995 coal unit has been deferred by QF subscription. *If* this is the same as the FCG's

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[7]In the FCG's words, this combination had "the best combination of low PWRR (coal) and low risk (non-coal) to the customer."

1995 unit, the rationale for the FCG's rejection of multiple coal units has disappeared. The deferred coal unit has no customer risk at all because its capacity will be replaced by QFs, which will be paid on a value-of-deferral basis, not a revenue requirements basis. Using the *same* strategic considerations as the FCG, the best combination for 1995 is *two* coal units because it has the low PWRR of two coal units, but the low customer risk of QF power. Thus, it would be appropriate to retain a 1995 or earlier coal unit as the avoided unit.

Complying With FEECA

15. Order No. 22341 states that, under FEECA, the Commission should accept generation expansion plans that increase Florida utilities' consumption of and reliance on natural gas and oil fuels, provided that two conditions are met: *first*, that such plans do not exceed the 1989 oil backout goal; and *second*, that the new units can be made to burn coal. The *first* condition is based on a reading of FEECA that mocks Florida's energy conservation policy. It is plainly contrary to FEECA to acquiesce in the potential tripling of Florida utilities' consumption of oil over current levels.[8] The *second* condition concedes FEECA's true purpose but ignores the facts. The record clearly shows that it is not cost effective to convert a combined cycle unit to coal gasification under *any reasonable circumstances*.

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[8]The FCG's forecast of oil consumption through 1995 indicates a doubling from current levels. It is possible for the utilities to triple their oil consumption before exceeding the goal.

16. The Commission's reading of FEECA defies logical state energy policy. It changes state policy from one of advancing the cause of conserving petroleum fuels to a policy of beating an orderly retreat. The Legislature could hardly have contemplated that the Commission would permit the State to reverse course so radically, or that its 1989 amendments would ever be used as justification for a reversal. Essentially, FEECA has, by Commission action, been changed from a means of forcing utility conservation of scarce resources into a paper tiger allowing utilities to revert to the "fuelhardy" days of the '60s and '70s.

17. The basic mandate of FEECA remains as it was in 1980:

> 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.*

The FCG's plan to double oil consumption over a six-year period is clearly contrary to the legislative mandate to conserve expensive resources, *particularly*, petroleum fuels. The Commission must obey FEECA's mandate and reject gas-fired units as avoided units.

18. Order No. 22341 states that the 1989 amendments to FEECA remove the prohibition of increased oil and natural gas usage that the Commission recognized in FEECA just two years ago. At that time, the Commission previously determined that FEECA precluded it

from designating gas-fired capacity as avoided units because of the associated increase in natural gas and oil usage. The 1989 amendments to FEECA had no impact on this interpretation and, in fact, substantiate its continued validity. FEECA continues to preclude the designation of combined cycle units as avoided units. The Commission's present reading of FEECA is unreasonable and contrary to the purpose of the legislation.

19. The 1989 amendments to FEECA underscore two Legislative goals: 1) the continued reduction in natural gas-fired utility generation through encouragement of cogeneration; and 2) the continued reduction in the growth rate of energy consumption. The 1989 amendments *do not* contemplate that increased natural gas and oil usage will be promoted or condoned. Section 366.81 still states that "it is *critical* to utilize the most efficient . . . energy conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens" and that FEECA is to be "liberally construed" to meet the "problem" of *conserving* petroleum fuels.

20. The 1989 legislation recognizes the great value of cogeneration to the "health, prosperity, and general welfare of the state and its citizens" through the reduction in utility investment in generating capacity, reduced energy consumption and reduced natural gas and oil consumption, and numerous other environmental, economic and societal benefits. Historically, most of Florida's cogeneration capacity uses "waste heat" and another substantial percentage burns fuels such as wood, methane, coal and solid

waste.[9] **Even for the relatively small percentage of cogeneration capacity that does burn natural gas or oil, FERC's efficiency standards require that this capacity burn fuels with a *minimum* efficiency that exceeds the *maximum* efficiency of any gas-fired utility generation.**[10] **The Commission cannot reasonably interpret FEECA's encouragement of cogeneration as anything other than a *further* commitment to the limitation of natural gas and oil consumption by Florida's electric utilities *and* as affirmation of the Commission's previous determination that FEECA precludes the designation of combined cycle units as avoided units.**

21. The Legislature revised FEECA to provide for the reduction in *and control* of the growth rates of electric consumption. However, this revision was a simple clarification of FEECA and *did not* make any significant change to the legislative intent behind FEECA. In fact, the Legislature rejected the Commission's proposed language that would have allowed it to either reduce *or* control the growth rate of energy consumption. Instead, it required that *both* be accomplished.

22. The Commission proposed certain language changes to FEECA in a "spreadsheet" transmitted to the President of the Senate and the Speaker of the House. An excerpted copy thereof is appended

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[9]As used in this motion, the term "cogenerator" has the same meaning as the FERC definition.

[10]FERC's efficiency standards require a *minimum* efficiency greater than the efficiency of FCG's combined cycle units. (The heat rate numbers for a combined cycle unit show an efficiency of 40%: 3412 Btus = 1 Kwh; CC heat rate = 8,394Btu/Kwh).

to this Motion. Among other changes, the spreadsheet proposed language that would have changed the FEECA's purpose from reducing the growth rate of electric consumption to reducing *or* controlling the growth rate of electric consumption. The amendments to FEECA actually adopted substituted the word "and" for the word "or," clearly retaining FEECA's original goal of reducing the growth rate of energy consumption.

23. The Commission cannot reasonably rely on the word "control" in FEECA as anything other than a *further* commitment to cost-effective conservation and the continued limitation of natural gas consumption in Florida. This amendment affirms the Commission's previous determination that FEECA precludes the designation of combined cycle units as avoided units.

24. The *second* condition of the Commission's policy, that the planned gas-fired baseload and intermediate units can be made to burn coal, is neither reasonable under the facts of this case, nor compatible with the requirements of FEECA. While it *may* be *technically feasible* to convert combined cycle units to coal gasification, the record shows that it is *economically unfeasible* even under a high fuel-cost scenario and, thus, is not "cost effective."[11] Given this undeniable fact, it is clear from the record that neither the FCG's generation expansion plan nor the

[11]Part of the excessive cost of after-the-fact conversion is that the combined cycle units continue to burn high-cost fuel during the conversion process. This is not true when the unit is initially built with coal gasification technology.

Commission's policy, represented by approval of that plan, conform to FELCA.

__Complying With the Fuel Use Act__

25. Notwithstanding the amendments to the Fuel Use Act, §8311(a) still requires that new base load power plants have the capability to burn coal or another alternate fuel as a primary energy source. The combined cycle units planned by Florida's utilities cannot meet the requirements of this provision, as they cannot burn any fuels other than natural gas and oil. They cannot burn coal without extensive (and expensive) modification.

26. §8301(b)(5) does not provide any authorization for the planned combined cycle units. The planned units are neither a modernization nor a replacement of any power plants which utilize natural gas. They are designed to serve new load and will not replace any existing units. Rather, they will supplement existing units. Natural gas consumption by the planned units will not reduce natural gas or oil consumption in Florida but will increase it. Further, as noted above, these units cannot be economically converted to coal gasification. *Any* unit can be converted to burn *any* type of fuel if enough money and technology are invested. Congress could hardly have intended §8301(b)(5) to provide such license.

__UTILITY-BY-UTILITY SUBSCRIPTION LIMITS__

27. Order No. 22341 continues the Commission's prior policy of imposing subscription limits on the statewide avoided unit. However, the Order adopts a "new" policy imposing utility-by-

utility-subscription limits based on each utility's "share" of the statewide avoided unit. This new type of subscription limit will lead to unnecessary confusion and difficulty for QFs seeking to obtain firm capacity contracts with utilities, and is contrary to Rule 25-17.083. The Commission should reconsider this new policy and simply retain the previous form of subscription limit.

28. During the March 1989 hearing in this Docket, it was not apparent to FICA or any other party what the practical impact of the Staff's new subscription policy would be. The first hint of that impact occurred in August 1989 when firm capacity contracts approached the subscription limit for then-existing avoided unit. At that time, both utilities and QFs became uncertain as to which contracts fell within the subscription limit (several were ultimately excluded). The practical effect of that event was to place QFs in a position of having a contract negotiated on the basis of an avoided unit which might become obsolete, potentially rendering the contract ineligible for cost-recovery purposes.

29. The true impact of the new utility-by-utility subscription limits was revealed during a Staff "workshop" in Tallahassee scheduled in order to discuss the implementation of subscription limits *after* the Commission voted to impose the new subscription-limit policy. It became apparent from the discussions that the possibility of a QF falling on the "wrong side" of a subscription limit has been greatly increased by the new policy; and that selling firm capacity from a single facility may require *multiple* contracts.

30. Instead of facing a single statewide subscription limit, QFs will be facing four subscription limits, one each for FPL, FPC, TECO and Gulf.[12] These subscription limits are but a fraction of the unit size of the avoided unit and any QF seeking to sign a standard offer, or who is engaged in negotiations with a utility faces the very real prospect that its capacity will exceed the utility's subscription limit.

31. More importantly, re-negotiation or multiple contracts may be necessary if a utility's subscription limit is exceeded. When a QF has capacity that exceeds a utility's allocation of the avoided unit, the QF would be required to re-negotiate in order to sell under the next avoided unit; or, obtain a contract with another utility that is still below its subscription limit. The chances of being caught in this predicament are greater under a negotiated contract, which can take months to finalize. If a utility's subscription limit is reached during contract negotiations, a QF may have to go back to "square one" with that utility; or, start negotiations with another utility *and* obtain a wheeling agreement with the first utility. This can only serve to dissuade QFs from negotiations.[13]

[12]FICA recognizes that Gulf is not currently required to file a standard offer, but this may change in the future.

[13]The difficulty in implementing utility-by-utility subscription limits arises from the fact that they are incompatible with a statewide approach to pricing, not from an asserted failure of statewide pricing.

32. Utility-by-utility subscription limits are contrary to Rule 25-17.083. That rule provides for designation of a statewide avoided unit and requires each utility that receives a valid standard offer contract to purchase firm capacity at the statewide price. The rule provides no exception regarding any single utility's need for capacity and it is clear that a utility cannot avoid the obligation to purchase at the statewide price based on its own need or avoided cost. Instead, the utility is expected to sell the capacity to a utility in need of the capacity:

> (5) To the extent that firm energy and capacity purchased from a qualifying facility by a utility pursuant to the utility's standard offer is not needed by the purchasing utility or that the avoided energy and capacity cost associated with the statewide avoided unit exceed the purchasing utility's avoided energy and capacity cost, these rules shall be construed to encourage the purchasing utility to sell all or part of the energy and capacity purchased from a qualifying facility to the utility planning the statewide avoided unit. The utility which is planning the designated statewide avoided unit is expected to purchase such energy and capacity at the original purchasing utility's cost.

33. In its 1983 Order, the Commission discussed the purpose of the rule:

> While the [prior] rule we finally adopted allows a QF to choose this route, we are unhappy with it as the only alternative. It produces a multiplicity of prices and it forces a QF to deal with more than one utility. We believe that the wiser course is to set a uniform statewide price for QF capacity that is based on the next planned uncertified unit whereever [sic] the need exists in the state. The [current] rule requires every utility to offer to buy QF capacity at that price. While we cannot order it, we fully expect a utility to promptly sell

> unneeded QF capacity to the utility with the statewide avoided unit. We expect these transactions to occur at cost; it is our intention that the utility without the need for QF capacity absorb no costs related to its initial purchase.

34. It is quite clear that utility-by-utility subscription limits are directly contrary to both the language and intent of Rule 25-17.083(5). They excuse a utility from purchasing QF capacity at the statewide avoided price, produce a multiplicity of prices and force QFs to deal with more than one utility.[14] The Commission may not adopt these subscription limits by order, as they are inconsistent with an existing rule. §120.68(12)(b), F.S.

CAPACITY PAYMENTS TO AS-AVAILABLE QFS

35. Although capacity payments to QFs providing as-available energy was raised as an issue in this proceeding and ruled on by the Commission, Order No. 22341 appears to be silent on the subject. The record clearly shows that certain QFs providing as-available energy to utilities have been treated as capacity resources for planning purposes. Fairness and the law both dictate that they be paid full avoided cost.[15]

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[14]A single statewide subscription limit does not have this effect, as a uniform price is maintained during the subscription period and utilities are excused from purchases only when the avoided unit is fully subscribed.

[15]The record does not demonstrate that including the demand and energy of these QFs in the FCG's plan does not change the study. Mr. Gillette only studied the impact of removing the energy and capacity of these QFs on the 1992 decision year (TR 121, Exh. No. 110). There was no analysis made regarding the impact on 1993, 1994 or 1995 decisions and the record does not support a conclusion that the FCG's action was "harmless error."

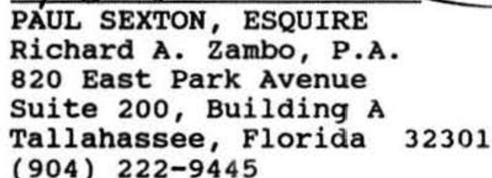
36. There is no validity to the argument that these QFs need not receive capacity payments because there has been no showing that they defer a generating unit. No evidence for such a policy has been presented in this record. Such an argument is contrary to the fundamental assumption underlying the Commission's "cost-effectiveness" test: that all supply-side and demand-side measures that have a capacity impact are assumed to defer capacity. It is this policy that permits the Commission to cumulate the many small impacts of various demand-side programs into "cost-effective" capacity deferral. The Commission has consistently maintained this policy throughout its review of conservation and load control programs and the record does not support a change in this policy.

37. Further, if the Commission now requires proof of unit deferral in order to find a supply-side measure cost-effective, then there is no record support for its finding that the utilities' conservation and load control programs are cost-effective. The record does not show that those programs have deferred any utility unit. Accordingly, they are not cost-effective unless the Commission retains its current policy.

WHEREFORE the Florida Industrial Cogeneration Association moves for reconsideration of Order No. 222341 and requests that the Commission: 1) select only pulverized coal units as avoided units, designating a 1993 500MW pulverized coal unit as the initial avoided unit; 2) apply a subscription limit based solely on the capacity of the statewide avoided unit; and 3) provide for capacity payments to QFs providing as-available energy.

Dated: January 10, 1990

Respectfully submitted,



RICHARD A. ZAMBO, ESQUIRE
Richard A. Zambo, P.A.
205 North Parsons Avenue
P.O. Box 856
Brandon, Florida 33511
(813) 681-3220

PAUL SEXTON, ESQUIRE
Richard A. Zambo, P.A.
820 East Park Avenue
Suite 200, Building A
Tallahassee, Florida 32301
(904) 222-9445

Attorneys for the Florida Industrial Cogeneration Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following persons by U.S. Mail this 10th day of January 1990.

James A. McGee, Esquire
Florida Power Corporation
3201 34th Street South
P.O. Box 14042
St. Petersburg, Florida 33733

Richard D. Melson, Esquire
Hopping, Boyd, Green & Sams
Suite 420
First Florida Bank Building
P.O. Box 6526
Tallahassee, Florida 32301

James D. Beasley, Esquire
Lee L. Willis, Esquire
Ausley, McMullen, McGehee, Carothers & Proctor
227 S. Calhoun St.
P.O. Box 391
Tallahassee, Florida 32302

Matthew M. Childs, Esquire
Charles Guyton, Esquire
Steel, Hector & Davis
310 West College Avenue
Tallahassee, Florida 32301

Joseph A. McGlothlin, Esquire
Lawson, McWhirter, Grandoff & Reeves
522 East Park Avenue
Suite 200
Tallahassee, Florida 32301

G. Edison Holland, Esquire
Beggs and Lane
P.O. Box 12950
Pensacola, Florida 32576

Frederick M. Bryant, Esquire
William J. Peebles, Esquire
306 East College Avenue
P.O. Box 1169
Tallahassee, Florida 32301

Suzanne Brownless
Staff Counsel
Division of Legal Services
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Lee Rampey, Esquire
General Counsel
Department of Energy
Southeastern Power Adm.
Elberton, GA 30635

Susan Delegal, Esquire
Broward County General Counsel
115 South Andrews Avenue
Suite 406
Ft. Lauderdale, Florida 33301

Roy Young, Esquire
Young, Van Assenderp, Vanadoes
and Benton, P.A.
225 South Adams Street
Post Office Box 1833
Tallahassee, FL 32302-1833

Barney L. Capehart
1601 N.W. 35th Way
Gainesville, Florida 32605

Yvonne Gsteiger
Florida Rural Electric
Cooperatives
2916 Appalachee Parkway
P.O. Box 590
Tallahassee, Florida 32302

Jack Shreve
Office of Public Counsel
624 Fuller Warren Building
202 Blount Street
Tallahassee, FL 32301

Gary Tipps
Seminole Electric Cooperative
P. O. Box 272000
Tampa, Florida 33688-2000

E. M. Grant
Florida Keys Electric Coop.
P.O. Box 377
Tavernier, FL 33070

Edward C. Tannen
Assistant Counsel
Jacksonville Electric
Authority
1300 City Hall
Jacksonville, Florida 32202

City of Chattahoochee
Attn: Superintendent
115 Lincoln Drive
Chattahoochee, FL 32324

Gail Fels
Assistant County Attorney
Metro-Dade Center
111 NW 1st Street, Suite 2810
Miami, Florida 33128-1993

John Blackburn
Post Office Box 405
Maitland, Florida 32751

Mike Peacock
Florida Public Utilities Co.
P. O. Box 610
Marianna, Florida 32302

Ray Maxwell
Reedy Creek Utilities Co.
P. O. Box 40
Lake Buena Vista, FL 32830

Ann Carlin, Esquire
Gainesville Regional Utilities
200 E. University Avenue
Gainesville, FL 32602

Quincy Municipal Electric
Light Department
P. O. Box 941
Quincy, Florida 32351

Alabama Electric Cooperative
P.O. Box 550
Andalusia, Alabama 37320

Terry O. Brackett
Associate General Counsel
Sunshine Natural Gas System
1899 L Street, N.W.
Suite 500
Washington, D.C. 20036

Guyte P. McCord, III, Esquire
Macfarlane, Ferguson, Allison
& Kelly
215 South Monroe St.
Post Office Box 82
Tallahassee, Florida 32302

C.M. Naeve, Esquire
Shaheda Sultan, Esquire
Skadden, Arps, Slate, Meagher
& Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

Paul Sexton

Commissioners:
MICHAEL McK. WILSON, Chairman
GERALD L. (JERRY) GUNTER
JOHN T. HERNDON
THOMAS M. BEARD
BETTY EASLEY

Executive Director
DAVID L. SWAFFORD
(904) 488-7181

Public Service Commission

January 18, 1989

The Honorable Robert Crawford
President, The Florida Senate
Suite 409
The Capitol
Tallahassee, Florida 32399-1100

The Honorable Thomas Gustafson
Speaker, The Florida House of Representatives
Room 420
The Capitol
Tallahassee, Florida 32399

Gentlemen:

Pursuant to the Regulatory Sunset Act, Section 11.61, Florida Statutes, the Florida Legislature has scheduled Chapters 364, 366, and 367 for sunset review during the 1989 Legislative session. As the agency responsible for the administration of these laws, the Florida Public Service Commission (FPSC) is pleased to forward its recommendations regarding sunset of these Chapters for your consideration.

These recommendations have resulted from both an internal review process and public workshops held around the State to elicit input from the general public and other interested parties. Workshops relating to the regulation of the telephone industry were held in Miami, Orlando and Tallahassee. Workshops relating to the electric industry were held in Tampa, Miami and Tallahassee. Workshops relating to the water and sewer industry were held in Sarasota, Orlando and Tallahassee. The recommendations are discussed separately below; specific legislative language is attached.

As you are aware, the FPSC has responded to questionnaires which your staff have sent. The FPSC is committed to providing any further information that you may require for the sunset review. We will be happy to explain the Commission's position in more detail. We will participate in the process and make appearances before the relevant committees as you may direct.

The FPSC believes that no changes to Chapter 364, Florida Statutes, relating to the regulation of telephone companies, are warranted at this time. The existing authority has been flexible enough for the Commission to effectively regulate the industry in a changing environment. Two recent cases have begun regulatory refinements for AT&T and Southern Bell. Each of these situations involve different regulatory standards which will be in effect for the next several years. The success or failure of these experiments will not be known for some time. We therefore believe that the public interest would be best served by reenactment of Chapter 364. This position has been supported by almost every interested party that has made their views known to us. This Commission will recommend legislative changes should the need arise in the future.

For the most part we also believe that the regulatory oversight afforded by Chapter 366 is still appropriate. The FPSC does, however, recommend changes in the following areas. Proposed Legislative language for these changes and other clarifying changes to Chapter 366 are attached. First, we believe the Commission's jurisdiction over the approval of the issuance and sales of securities by public utilities should be expanded to include the review of liabilities and obligations assumed by public utilities. This would help the Commission protect ratepayers and utilities from highly leveraged capital structures associated with leveraged buyouts, mergers, and hostile takeovers which can be accomplished without the issuance of securities by the utility. The proposal would allow the Commission to deny authorization if a security, liability or obligation is for non-utility purposes. Second, we believe the law should make it clear that the Commission has the authority to approve territorial agreements and resolve territorial disputes between natural gas utilities. This is identical to our existing territorial jurisdiction over electric utilities. Third, the FPSC further recommends that the interim rate statute, Section 366.071, should be amended to make it clear that the Commission may, for interim ratemaking purposes, use the return on common equity established for a public utility in a stipulated agreement or limited scope hearing such as a tax refund proceeding. The law currently requires the use of the last authorized rate of return on common equity established in a full rate case. Since the period of time between full rate cases can be several years, it seems reasonable for the Commission to be allowed to use a more currently approved return on equity that may have been authorized for use by the Commission in a proceeding other than a rate case. Finally, the Commission has proposed statutory language that makes it clear that

electricity produced by cogeneration and small power production is of great benefit to the public when included as part of the total energy supply of the entire electric grid of the state. We have proposed changes to Section 366.05 which would establish, by law, a statewide wholesale market for the sale of capacity and energy produced by cogenerators and small power producers to electric utilities in Florida. We have also proposed changes to the Florida Energy Efficiency and Conservation Act, Section 366.80 through 366.85, which would require utilities to consider cogeneration and waste heat conservation in their plans and programs designed to meet the FPSC's conservation goals.

In the Water and Sewer area, we have prepared several proposals. The demand for water and sewer service reflects the problems of growth in Florida. The impact of new residents moving to Florida is felt most keenly in this area.

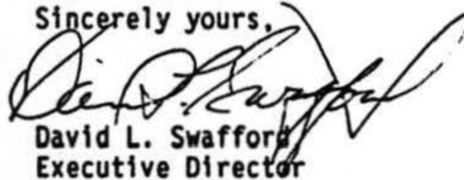
We recommend a provision that allows the commission to exercise jurisdiction over certain exempt utilities to investigate complaints and resolve disputes. These exempt utilities are systems serving 100 or fewer persons, landlords providing service to tenants without specific compensation, and developer controlled cooperatives or associations. Customers of these systems currently have no clear recourse if they believe they are receiving inadequate service, or being discriminated against. Another proposed revision would prohibit exempt utilities and non-jurisdictional utilities such as county and city systems from constructing facilities or providing service within the territory of a utility certificated by the commission, except upon a finding of public interest. Commission regulated utilities are currently prohibited from serving anywhere but within their certificated areas. Other non-regulated systems can and have built facilities to serve customers inside the territory of a certificated company. Much like the electric grid bill, the concern is duplicative or unnecessary facilities without a determination of it being in the best interest of the public.

Granting the commission authority to order temporary interconnects between and among all water and/or wastewater systems in emergency situations is also recommended. The commission currently has authority to order interconnects between and among regulated utilities only. In the case of a natural disaster, major service interruptions, etc, temporary interconnections may be necessary for the health and safety of the citizens.

One issue that was the subject of extensive discussion in the water and sewer area was contributions-in-aid-of construction (CIAC). However, at this time the Commission does not recommend any statutory changes.

Again, we are pleased to provide you with our recommended changes and look forward to working with you in the coming months.

Sincerely yours,



David L. Swafford
Executive Director

DLS/ms
Attachments
0233E

cc: Chairman Wilson
Commissioner Beard
Commissioner Easley
Commissioner Gunter
Commissioner Herndon
Chair, Senate Economic, Professional and Utility Regulation Committee
Chair, House Science, Industry and Technology Committee
Chair, Public Utilities Subcommittee of House Science, Industry and Technology Committee

ELECTRIC AND GAS
CHAPTER 366
PROPOSED LEGISLATION
SPREADSHEET

EXISTING STATUTE

366.81 Legislative findings and intent.-- 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. Reduction in the growth rates of electric consumption and of weather-sensitive peak demand are of particular importance. The Legislature further finds that the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans related to the conservation of electric energy and natural gas usage. The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop a plan for increasing energy efficiency and conservation within its service area, subject to the approval of the commission. Since solutions to our energy problems are complex, the Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, and load-control systems be encouraged. Accordingly, in exercising its jurisdiction, the commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such systems or devices. This expression of legislative intent shall not be construed to preclude experimental rates, rate structures, or programs. 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.

PROPOSED CHANGES

366.81 Legislative findings and intent.-- The Legislature finds and declares that it is critical, in meeting the energy needs of consumers, to utilize the most efficient and cost-effective energy conservation and cogeneration measures systems in order to protect the health, prosperity, and general welfare of the state and its citizens. 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 directs that the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans related to the conservation of electric energy and natural gas usage. The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop a plans and implement programs for increasing energy efficiency and conservation within its service area, subject to the approval of the commission. Since solutions to our energy problems are complex, the Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, waste heat conservation and load control systems be encouraged. Accordingly, in exercising its jurisdiction, the commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such facilities, systems or devices. This expression of legislative intent shall not be construed to preclude experimental rates, rate structures, or programs. 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 or controlling the growth rates of electric consumption and decreasing 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 waste heat conservation facilities; and conserving expensive resources, particularly petroleum fuels.

COMMENTS

366.81:

These proposed changes make it clear that cost effective cogeneration is an important conservation measure which should be considered when the Commission establishes conservation goals. The other changes are for clarification.

EXISTING STATUTE

366.82 Definition; goals; plans; annual reports; energy audits.--

(1) For the purposes of ss. 366.80-366.85 and 403.519, "utility" means any person or entity of whatever form which provides electricity or natural gas at retail to the public, specifically including municipalities or instrumentalities thereof and cooperatives organized under the Rural Electric Cooperative Law and specifically excluding any person or entity providing natural gas at retail to the public whose annual sales volume is less than 100 million therms.

(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. The Executive Office of the Governor shall be a party in the proceedings to adopt goals. The initial goals shall be adopted no later than September 1, 1980, for the succeeding 5-year period. The commission may change the initial goals for reasonable cause and may reset the time period for accomplishing the goals. After the programs and plans to meet those goals are completed, the commission shall determine whether further goals, programs, or plans are warranted and, if so, shall adopt them.

PROPOSED CHANGES

366.82 Definitions; goals; plans; programs; annual reports; energy audits.--

(1) For the purposes of ss. 366.80-366.85 ~~and 403.519~~, "utility" means any person or entity of whatever form which provides electricity or natural gas at retail to the public, specifically including municipalities or instrumentalities thereof and cooperatives organized under the Rural Electric Cooperative Law and specifically excluding any person or entity providing natural gas at retail to the public whose annual sales volume is less than 100 million therms or any person or entity providing electricity at retail to the public whose annual sales to end use customers is less than 500 gigawatthours.

(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 and control the growth rates of electric consumption and to decrease especially the growth rates of weather sensitive peak demand. The Executive Office of the Governor shall be a party in the proceedings to adopt goals. ~~The initial goals shall be adopted no later than September 1, 1980, for the succeeding 5 year period.~~ The commission may change the initial goals for reasonable cause and may reset the time period for accomplishing the goals. After the programs and plans to meet those goals are completed, the commission shall determine what whether further goals, programs, or plans are warranted and, if so, shall adopt them.

COMMENTS

366.82:

(1) This proposed change would exclude small electric utilities from being required to develop commission approved conservation plans. These small utilities have very few technically skilled people who are experts on conservation and therefore cannot offer extensive conservation services without incurring substantial expense. The proposed 500 GWH annual sales threshold would affect 41 small electric utilities whose combined sales is only 7% of the total electric energy sales in Florida. The remaining 15 large utilities which would be required to develop commission approved conservation progams account for 93% of total electric energy sales in the state.

(2) These changes are for clarification and to remove the initial dates relating to goals and plans.

EXISTING STATUTE

366.82 (Continued)

(3) Following adoption of goals pursuant to subsection (2), the commission shall require each utility to develop a plan to meet the overall goals within its service area. If any plan includes loans, collection of loans, or similar banking functions by a utility shall perform such functions, notwithstanding any other provision of the law. The commission may pledge up to $5,000,000 of the Florida Public Service Regulatory Trust Fund to guarantee such loans. However, no utility shall be required to loan its funds for the purpose of purchasing or otherwise acquiring conservation measures or devices, but nothing herein shall prohibit or impair the administration or implementation of a utility plan as submitted by a utility and approved by the commission under this subsection. Plans to meet the initial goals must be submitted to the commission no later than November 1, 1980. The Commission shall approve or disapprove each plan no later than December 1, 1980. If the commission disapproves a plan, it shall specify the reasons for disapproval, and the utility whose plan is disapproved shall resubmit its modified plan within 30 days. Each plan shall commence January 1, 1981. Prior approval by the commission shall be required to modify or discontinue a plan, or part thereof, which has been approved. If any utility has not implemented its plan and is not substantially in compliance with the provisions of its approved plan at any time after January 1, 1982, then the commission shall adopt a program which will be required for that utility to achieve the overall goals, which may include variations in rate design, load control, residential energy conservation subsidy, or any other measure within the jurisdiction of the commission which the commission finds likely to be effective; this provision shall not be construed to preclude these measures in any plan.

PROPOSED CHANGES

(3) Following adoption of goals pursuant to subsection (2), the commission shall require each utility to develop ~~a plan~~ plans and programs to meet the overall goals within its service area. If any plan or program includes loans, collection of loans, or similar banking functions by a utility and the plan is approved by the commission, the utility shall perform such functions, notwithstanding any other provision of the law. The commission may pledge up to $5,000,000 of the Florida Public Service Commission Regulatory Trust Fund to guarantee such loans. However, no utility shall be required to loan its funds for the purpose of purchasing or otherwise acquiring conservation measures or devices, ~~but~~ nothing herein shall prohibit or impair the administration or implementation of a utility plan as submitted by a utility and approved by the commission under this subsection. ~~Plans to meet the initial goals must be submitted to the commission no later than November 1, 1980. The commission shall approve or disapprove each plan no later than December 1, 1980.~~ If the commission disapproves a plan, it shall specify the reasons for disapproval, and the utility whose plan is disapproved shall resubmit its modified plan within 30 days. ~~Each plan shall commence January 1, 1981.~~ Prior approval by the commission shall be required to modify or discontinue a plan, or part thereof, which has been approved. If any utility has not implemented its programs ~~plan~~ and is not substantially in compliance with the provisions of its approved plan at any time ~~after January 1, 1982,~~ then the commission shall adopt a programs which will be required for that utility to achieve the overall goals. ~~which~~ Utility programs may include, but are not limited to, increasing the use of natural gas to reduce electric demands where such use of natural gas provides benefits to both the electric and natural

COMMENTS

366.82 (Continued)

These changes clarify that utility's are to develop both conservation plans and programs.

Other changes are to remove the initial dates relating to goals and plans.

This proposed change facilitates the use of natural gas where it is a more efficient and cost effective end use fuel than electricity. The proposed change facilitates what is known as

EXISTING STATUTE	PROPOSED CHANGES	COMMENTS
	<u>366.82 (Continued)</u> <u>gas consumers,</u> variations in rate design, load control, <u>cogeneration,</u> residential energy conservation subsidy, or any other measure within the jurisdiction of the commission which the commission finds likely to be cost-effective; this provision shall not be construed to preclude these measures in any plan <u>or program</u>.	<u>366.82 (Continued)</u> integrated resource planning, and specifically allows the increased use of natural gas as an integrated resource program. To the extent that electric ratepayers benefit from the increased use of natural gas, they should also be responsible for a proportionate share of the program costs. This proposed change makes it clear that cogeneration may be included in utility programs to meet the Commission goals.