FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

August 30, 1990

TO: STEVE TRIBBLE, DIRECTOR
DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PALECKI) MP JWD JDJ
DIVISION OF ELECTRIC AND GAS (BALLINGER, DEAN)

RE: DOCKET NO. 900004-EU - PLANNING HEARING ON LOAD FORECASTS, GENERATION EXPANSION PLANS, AND COGENERATION PRICES FOR PENINSULAR FLORIDA'S ELECTRIC UTILITIES.

AGENDA: SEPTEMBER 11, 1990 - CONTROVERSIAL AGENDA - MOTIONS FOR CLARIFICATION OF PROPOSED AGENCY ACTION - PARTIES MAY PARTICIPATE

PANEL: FULL COMMISSION

CRITICAL DATES: NONE.

CASE BACKGROUND

In Order No. 22341 the Commission approved, in concept, a cogeneration subscription limit to the statewide avoided unit. The details of implementing the subscription limit, however, were to be determined later. On January 18, 1990, staff issued its recommendation on implementation of the subscription limit, and on May 25, 1990, the matter was considered by the Commission at its agenda conference. On July 23, 1990, the Commission issued its Order No. 23235, Notice of Proposed Agency Action Order on Subscription.

Since the issuance of Order No. 23235, the AES Corporation (AES), Nassau Power Corporation (Nassau), and Florida Power & Light (FPL) have filed Motions for Clarification of the Order. In addition, Consolidated Minerals, Inc. (CMI) has filed a Memorandum

in Response to the Motions for Clarification which contains additional suggestions for "clarifying" Order No. 23235. This recommendation addresses each of the motions as well as the Memorandum filed by CMI.

DISCUSSION OF ISSUES

ISSUE 1: Should the Motions for Clarification of Order No. 23235 filed by AES and Nassau Power be granted?

RECOMMENDATION: The motions filed by AES and Nassau Power should be granted in part and denied in part. Some clarification is necessary on the issue of whether a negotiated contract having an in-service date prior to the in-service date of the statewide avoided unit should be applied toward the subscription limit. Further clarification as requested by the movants is unnecessary.

STAFF ANALYSIS: The AES Corporation (AES) and Nassau Power Corporation (Nassau) request clarification on Issues 4 and 5 of the Staff Recommendation in this docket, which were discussed at the May 25, 1990 agenda conference. Movants contend that Order No. 23235 does not follow the Commission's vote on the recommendation. Staff has reviewed the transcript from the conference and found an erroneous response to some questions posed by Commissioners. However, Staff believes that Order No. 23235 properly reflects the Commission's vote on Staff's written recommendation.

Both AES and Nassau argue that negotiated contracts having in-service dates prior to 1996 (the in-service date of the statewide avoided unit) should not be applied toward the subscription limit. They request that Order No. 23235 be clarified to reflect their contention. The Order as issued provides in pertinent part:

> We find that the subscription limit approved by Order No. 22341 and the current criteria of Rule 25-17.083(2), Florida Administrative Code, for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, a 1996 coal unit. Any negotiated contract with an in-service date later than 1996 should be evaluated against a utility's individual needs and costs,....
> (emphasis added)

Staff believes that the order as written correctly reflects the Staff's recommendation which was approved by the Commission vote. The only desirable clarification would be to remove any doubt that a negotiated contract having an in-service date prior to the in-service date of the statewide avoided unit should be applied toward the subscription limit.

Staff believes that logic and the Commission's rules require that certain negotiated contracts be applied toward the subscription total. Rule 25.17.083, Florida Administrative Code provides that a negotiated contract will generally be approved for cost recovery purposes if three conditions exist:

a) the purchase of this power can be expected to result in the economic deferral or avoidance of additional capacity construction from a statewide perspective;
b) the cumulative present worth revenue requirements over the term of the contract is less than or equal to the cumulative present worth of the value of a year-by-year deferral of the statewide avoided unit over the term of the contract; and
c) where early capacity payments are involved that adequate security be provided for assurance of performance by the cogenerator.

Since negotiated contracts are evaluated against the statewide avoided unit for capacity resources, and since contracts with an in-service date prior to the in-service date of the statewide avoided unit will contribute to the deferral of this unit, it only makes sense to "count" these negotiated contracts towards the subscription total. The Commission has previously done just this in the past. When closing the standard offer based on a 1995 coal unit, the Commission included several projects with pre-1995 in-service dates when defining the total subscription amount. However, since negotiated contracts with an in-service date later than the statewide avoided unit could never result in the deferral of the statewide avoided unit, these contracts should be exempt from the subscription limit criteria. As staff stated in its primary recommendation which was approved by this Commission: "Clearly a project that has an in-service date that is later than the in-service date of the statewide avoided unit cannot defer that unit." (Staff's January 18, 1990 Recommendation at Page 23).

This issue was not a primary focus of the January 18, 1990 recommendation because when it was written, the statewide avoided unit was a 1993 combined cycle unit. Due to the type of unit and the short time for contract availability (11 months) staff did not contemplate any negotiated contracts with in-service dates prior to 1993. Nonetheless, the recommendation discussed the two factors which must be considered in deciding whether a negotiated contract having an in-service date prior to the in-service date of the statewide avoided unit should be applied toward the subscription limit: the subscription limit and the deferral of the statewide avoided unit. The subscription limit is meant to quantify the state's requirement for additional QF capacity. It was not imposed to prevent cost-effective negotiations from taking place. Also, deferral of the statewide avoided unit cannot result from a contract with an in-service date later than the in-service date of the statewide avoided unit. In adopting staff's recommendation on these issues, the Commission sent a message to the utilities and cogenerators alike that subscription limits were not intended to impede cost-effective negotiations.

Staff's recommendation provided that the subscription limit should not impede the negotiation of cogeneration because a standard offer contract may not match a utility's needs. The recommendation made it clear that a utility should be able to request approval of a negotiated contract at any time as long as it can be shown to be cost effective to its ratepayers. These views are properly reflected in Order No. 23235.

In summary, Staff believes that the proper treatment of negotiated contracts for subscription limit purposes is as follows:

1) a contract that has an in-service date prior to the in-service date of the statewide avoided unit and before the subscription limit is filled should be counted towards the subscription total until the subscription amount is closed by the Commission; and

2) a contract with an in-service date after the in-service date of the statewide avoided unit should not be counted towards the subscription limt for the unit.

ISSUE 2: Should the Motion for Clarification submitted by FPL be granted.

RECOMMENDATION: No. The questions raised in FPL's motion go beyond the scope of the original recommendation that resulted in Order No. 23235.

STAFF ANALYSIS: FPL has raised questions concerning the absolute evaluation criteria for approval of negotiated contracts, and role of subscription and standard offer contracts in a need determination proceeding. These questions were not addressed at the May 25, 1990 agenda conference and therefore are not appropriate for a motion for clarification of Order No. 23235.

ISSUE 3: Should the issues raised in Consolidated Minerals, Inc.'s Response to Motions for Clarification or Order no. 23235 be decided at this time?

RECOMMENDATION: No. The issues raised in Consolidated Minerals, Inc.'s response goes beyond the scope of the original recommendation that resulted in Order No. 23235.

STAFF ANALYSIS: On August 20, 1990 CMI filed a Memorandum in Response to Motions for Clarification of Order No. 23235. Technically, this is not a motion or a request for clarification. In its response, CMI asks that the Commission declare that "QF contracts negotiated against prior statewide avoided units and executed prior to the Commission's vote on May 25, 1990 are not to be retroactively bound by the 500 MWs subscription limit." This question was not addressed at the May 25, 1990 agenda conference and therefore is not appropriate for a motion for clarification of Order No. 23235.

MAP:bmi
900004a.bmi