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April 17, 1995

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**ORIGINAL
FILE COPY**

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
101 East Gaines Street
Tallahassee Florida 32399

Re: Docket No. ~~95-1000-00~~ Petition of Florida Power Corporation for determination that its plan for curtailing purchases from Qualifying Facilities in minimum load conditions is consistent with Rule 25-17.086, F.A.C.

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of Orlando CoGen Limited, L.P.'s Prehearing Statement. Also enclosed is a diskette containing the pleading, titled OCL.PHS.

ACK
AFA Please acknowledge receipt of the above on the extra copy
APP enclosed herein and return it to me. Thank you for your
CAF assistance.
CMT
CTR

Yours truly,

Joe McGlothlin
Joseph A. McGlothlin

ED *Jahne*

LE

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CC Enclosures

RR

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[Signature]
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OCL has not yet identified its rebuttal witnesses, if any, and reserves the right to add them to its Prehearing Statement.

C. EXHIBITS:

<u>Exhibit</u>	<u>Witness</u>	<u>Description</u>
Exhibit No. ____ (RJS-1)	Shanker	Qualifications of Dr. Roy J. Shanker
Exhibit No. ____ (RJS-2)	Shanker	House Conference report on PURPA
Exhibit No. ____ (RJS-3)	Shanker	Congressional Record - Senate Congressmen's remarks on PURPA
Exhibit No. ____ (RJS-4)	Shanker	Notice of Proposed Rulemaking
Exhibit No. ____ (RJS-5)	Shanker	Summary of Comments on Cogeneration & Small Power Production
Exhibit No. ____ (RJS-6)	Shanker	PURPA Preamble
Exhibit No. ____ (RJS-7)	Shanker	PURPA Public Hearing excerpts
Exhibit No. ____ (RJS-8)	Shanker	FPC Cogeneration Review
Exhibit No. ____ (RJS-9)	Shanker	FPC Internal Correspondence
Exhibit No. ____ (RJS-10)	Shanker	FPC Cogeneration and Purchased Power Strategic Proposal
Exhibit No. ____ (RJS-11)	Shanker	Excerpt of Wieland Testimony
Exhibit No. ____ (KJS-1)	Slater	Resume
Exhibit No. ____ (KJS-2)	Slater	Table 1 - FPC Committed Capacity During Curtailment Incidents
Exhibit No. ____ (KJS-3)	Slater	Table 2 - FPC Uncommitted Generating Resources Available for Use at the Time of Peak Load on Each Curtailment Day

Exhibit No. ____ (KJS-4)	Slater	Bar graph - Effect of Sale in Lieu of Curtailment on Utility Production
Exhibit No. ____ (KJS-5)	Slater	Excerpt from Aptech Report
Exhibit No. ____ (KJS-6)	Slater	Excerpts showing scope of Lefton work
Exhibit No. ____ (RAY-1)	Yott	Correspondence between OCL & FPC

D. STATEMENT OF BASIC POSITION:

OCL's Statement of Basic Position:

The Commission should not approve the curtailment plan submitted by Florida Power Corporation. In order to come under the narrow exception to PURPA's clear statutory mandate requiring utilities to purchase from QFs, FPC must demonstrate that it will experience unforeseen "operational circumstances" which give rise to "negative avoided costs" and that it has taken all available measures to mitigate the circumstances. FPC has failed to fulfill any of these requirements. Its plan is simply an attempt to extract from QFs dispatchability rights which, as a matter of deliberate long-term planning, it chose not to negotiate and pay for at the time it entered into the QF contracts. The attempt is an abuse of the curtailment regulation.

The curtailment plan proposed by FPC improperly subordinates firm QF purchases to FPC's purchases from other utilities. The plan does not include any forward planning to attempt to eliminate minimum load situations through realistic unit commitment. The plan fails to require FPC to market excess generation at a price designed to ensure a sale. Even if the Commission were to

determine that "operational circumstances" were present and that FPC had exhausted all avenues to balance load and generation, FPC has improperly quantified the avoided costs associated with firm QF purchases. Correctly viewed, FPC would not have incurred any negative costs as a result of QF purchases in any of the curtailments to date.

E. STATEMENT OF ISSUES AND POSITIONS:

Validity of Grounds

1. ISSUE: Has FPC met its burden to demonstrate that the alleged minimum load condition on which it bases its proposed curtailment plan is the type of circumstance that may warrant curtailment under rule 25-17.086, Florida Administrative Code?

OCL: No. The very limited kind of curtailment envisioned by the FERC regulation, upon which rule 25-17.086 is based, must be the result of extraordinary, unforeseen operational circumstances. FPC's alleged minimum load situation is instead the result of a conscious long-term planning decision not to incur the cost associated with contractual dispatchability provisions. FPC's attempt to gain these rights through 25-17.086 is an abuse of the rule.

Steps to Mitigate

2. ISSUE: If the Commission determines that the alleged minimum load condition on which FPC bases its proposed curtailment

plan may serve as the basis for curtailments, has FPC adequately demonstrated that it has attempted to mitigate any foreseeable minimum load conditions by committing the most appropriate combination of generation resources for the circumstances?

QCL: No. FPC has the responsibility to commit the feasible least cost combination of units for the circumstances. In all of the curtailment episodes to date, FPC failed to use forward planning to manage foreseeable low load situations. FPC over committed base load units, thereby creating the imbalance to which it points as justification to curtail firm QFs. (Slater)

3. ISSUE: If the Commission determines that the alleged minimum load condition on which FPC bases its proposed curtailment plan may serve as the basis for curtailments, does the proposed plan properly require FPC to take all appropriate measures to decrease other sources of generation to mitigate any imbalance between generation and load?

QCL: No. The Plan subordinates firm QF purchases to FPC's minimum obligations under its UPS contract with Southern Company. As the New York PUC ruled in 1989, in order to comply with requirements of regulations implementing PURPA, a utility must interrupt all purchases from other utilities prior to curtailing firm purchases from QFs. (Shanker, Slater)

4. ISSUE: If the Commission determines that the alleged minimum load condition on which FPC bases its proposed curtailment plan may serve as the basis for curtailments, does the proposed plan properly require FPC to take all appropriate measures to increase sales to mitigate any imbalance between generation and load?

QCL: No. FPC has failed to price the energy it attempts to sell during low load situations at a level designed to find any market. When the combination of firm QF purchases and the output of must-run units exceeds system load, there is no incremental cost associated with generating the excess. A sale of the excess at any price above zero would enable FPC to avoid minimum load conditions without experiencing negative avoided costs. (Shanker, Slater)

Negative Avoided Costs

5. ISSUE: In determining whether purchases of firm QFs' generation during an operational circumstance that satisfies rule 25-17.086 would cause FPC to incur costs greater than the costs FPC would incur if FPC supplied the energy, what costs are appropriate to consider?

QCL: The only appropriate costs to consider are variable production costs. "Unit impact costs", as the term is used by FPC, include such items as future change outs of equipment and future changes in maintenance

schedules that are associated with changes in mode of operation over the life of a unit. Such costs, if they occur, are the result of long-term planning decisions (such as capacity selections or, in this case, the choice of non-dispatchable contracts) and are properly borne by the utility. (Slater, Shanker)

6. ISSUE: In determining whether purchases of firm QFs' generation during an operational circumstance that satisfies rule 25-17.086 would cause FPC to incur costs greater than FPC would incur if FPC supplied the energy, what is the appropriate time frame to measure?

OCL: FPC must consider the cost for the unit in question for all hours for which the scheduled unit was to be in service. Approximately one week is the time between normal commitment decisions. (Slater)

7. ISSUE: Has FPC demonstrated that curtailments to date were necessary to avoid negative avoided costs?

OCL: No. FPC's claim of negative avoided costs is based on its use of a truncated review period which skews the analysis. A conservative comparison of avoided variable production costs following the curtailment shows that FPC would not have incurred negative avoided costs by purchasing firm QF energy in any of the episodes to

date if the comparison includes a period of less than two days following curtailment. (Slater)

Fairness of Allocating Involuntary Curtailments

8. ISSUE: Has FPC adequately demonstrated that its proposed plan would allocate justifiable curtailments among QFs in a fair and not unduly discriminatory manner?

OCL: No. FPC has refused to treat OCL during the period OCL's short-term voluntary reduction is in effect consistently with its treatment of QFs who have entered long-term contractual reductions, despite the fact that OCL's short-term reduction provides assistance of corresponding value. In addition, any plan should contain a crediting mechanism to track and adjust for QF responses in past involuntary curtailments and thereby assure equitable treatment over time. (Yott)

Implementation

9. ISSUE: Did Florida Power Corporation properly implement the procedures set forth in the plan during the curtailments that have occurred since October, 1994?

OCL: As presently worded, this issue appears to presume the validity of a matter in dispute. It should be rephrased. To the extent the issue deals with the severity of curtailment as compared to FPC's own determination of the extent of an imbalance, FPC has

curtailed far more than was necessary to respond to the minimum load situation on at least two occasions. This led FPC to, among other things, later overstate the avoided cost associated with the scenario in which it would have purchased firm QF generation. Further, subordinating the purchase of UPS power to the delivery of firm QFs would have completely obviated the need for two curtailments. (Slater)

Other

10. ISSUE: [LEGAL] What is the permissible scope of rule 25-17.086 in light of the standard of FERC's rule, C.F.R. § 292.304 (f) (4)?

OCL: Rule 25-17.086 implements CRF § 292.304 (f) (4); therefore, its scope is the same as that of the FERC rule. The authority to implement PURPA and its regulations was delegated to the states by the federal government. The states have no ability to enlarge the delegation provided. Thus, the only circumstances in which curtailment is permissible pursuant to rule 25-17.086 are the same as those circumstances which would be permissible under the FERC rule; that is, unforeseen and unavoidable "operational circumstances" which give rise to negative avoided costs. (Shanker)

11. ISSUE: Has FPC demonstrated any basis for curtailment other than that permitted by Rule 25-17.086, as it implements the standard of CRF § 292.304(f)(4)?

OCL: No. The only other basis countenanced by PURPA and implementing regulations is that of a system emergency. FPC has failed to support either its proposed plan or individual curtailments on this basis. (Shanker)

F. STIPULATED ISSUES:


None at this time.

G. PENDING MOTIONS:

OCL has no pending motions.

H. OTHER MATTERS:

None at this time.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Orlando CoGen Limited, L.P.'s Prehearing Statement has been furnished by hand delivery* or by U.S. Mail to the following parties of record, this 17th day of April, 1995.

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