

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of early termination amendment to negotiated qualifying facility contract with Orlando Cogen Limited, Ltd. by Florida Power Corporation.

DOCKET NO. 961184-EQ

In re: Petition for expedited approval of settlement agreement regarding negotiated contract for purchase of firm capacity and energy from a qualifying facility, with Pasco Cogen, Ltd. by Florida Power Corporation.

DOCKET NO. 961407-EQ

In re: Petition for expedited approval of settlement agreement with Lake Cogen, Ltd. by Florida Power Corporation.

DOCKET NO. 961477-EQ ✓

In re: Petition for approval of revised program participation standards for Residential Home Energy Improvement and Residential New Construction Programs by Florida Power Corporation.

DOCKET NO. 970056-EG

In re: Petition for expedited approval of agreement with Tiger Bay Limited Partnership to purchase Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida Power Corporation.

DOCKET NO. 970096-EQ
ORDER NO. PSC-97-0921-PCO-EU
ISSUED: August 4, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

DOCUMENT DATE

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-97-0921-PCO-EU
DOCKETS NOS. 961184-EQ, 961407-EQ, 961477-EQ, 970056-EG, 970096-
EQ
PAGE 2

ORDER REQUIRING REVIEW OF DECISIONS IN DOCKET NOS. 961184-EQ,
961407-EQ AND 961477-EQ; AND REQUIRING RECONSIDERATION OF
DECISION IN DOCKET NO. 961477-EQ

BY THE COMMISSION:

CASE BACKGROUND

On Tuesday July 1, 1997, the Commission learned that Lorna Wagner, a former staff attorney with the Legal Services Division's Bureau of Electric and Gas, had become engaged to Robert Dolan, a Florida Power Corporation (FPC) employee. It has been alleged that Mr. Dolan and Ms. Wagner were dating prior to her last date of employment, June 27, 1997. After learning of these allegations, a review of Ms. Wagner's case assignments was initiated to assess the possibility of any bias in the information presented to the Commission. In conducting the review, three categories of cases were examined:

- (1) All cases assigned to Ms. Wagner since January 1, 1996.
- (2) All cases assigned to Ms. Wagner since January 1, 1996, to which Florida Power Corporation was a party.
- (3) All cases pending at the time of her resignation.

The best information available at this time (which is hearsay) is that Ms. Wagner and Mr. Dolan have been dating for a "couple of months." From that information, it has presumed the relationship began some time after March, 1997. Assignments dating back to January 1, 1996, were reviewed in an abundance of caution. The review indicates that Commission action has been taken in five of these cases since March 31, 1997. This recommendation addresses what action the Commission should take concerning the dockets involving Florida Power Corporation assigned to Ms. Wagner in which Commission action was taken after March 31, 1997.

ORDER NO. PSC-97-0921-PCO-EU

DOCKETS NOS. 961184-EQ, 961407-EQ, 961477-EQ, 970056-EG, 970096-EQ

PAGE 3

REVIEW OF DECISIONS TO DETERMINE BIAS IN INFORMATION PRESENTED TO THE COMMISSION

After notice to the parties, we shall review, at an agenda conference, the decisions made in Dockets Nos. 961407-EQ (Pasco), 961477-EQ (Lake), and 961184-EQ (OCL) to determine if there was any bias in the information presented to the Commission. Those items shall be presented to the Commission by attorneys from the Division of Appeals, since that Division was not previously involved in those items. Based on the information known at this time, it does not appear that any further review is necessary with respect to the decisions made in Docket No. 970056-EG (Revision to Conservation Program Participation Standards) and Docket No. 970096-EQ (Tiger Bay).

Each of the five dockets is discussed separately:

Docket No. 970056-EG - Petition for Approval of Revised Program Participation Standards for Residential Home Energy Improvement and Residential New Construction Programs by Florida Power Corporation. The Commission unanimously approved those tariff revisions at the May 6, 1997 agenda conference. There was no discussion of this item at the agenda conference and no party to the docket other than FPC. The order was issued as Proposed Agency action on May 28, 1997. No protest was filed. If our information is correct, Commission action on this item occurred after the relationship had begun. There were no legal issues in the recommendation. E&G staff indicates that the recommendation was based solely on its analysis of the merits of the petition.

Docket No. 970096-EQ - Petition for Expedited Approval of Agreement with Tiger Bay Limited Partnership to Purchase Tiger Bay Cogeneration Facility and Terminate Related Purchase Power Contracts by Florida Power Corporation. A hearing was scheduled for April 17, 1997 on this petition. At the outset of the hearing, the parties (FPC, the Office of Public Counsel, the Florida Industrial Power Users Group, Destec Energy, Inc. and Tiger Bay Limited Partnership) presented a stipulation approving the purchase buy out. The stipulation was approved unanimously at the May 19, 1997 agenda conference. Given that the case was stipulated by all the parties, the possibility of bias appears unlikely. If our information is correct, Commission action on this item occurred after the relationship had begun. E&G and AFAD staff indicates that the recommendation was based solely on its analysis of the merits of the stipulation.

ORDER NO. PSC-97-0921-PCO-EU

DOCKETS NOS. 961184-EQ, 961407-EQ, 961477-EQ, 970056-EG, 970096-EQ

PAGE 4

Docket No. 961184-EQ - Petition for approval of early termination amendment to negotiated qualifying facility contract with Orlando Cogen Limited by Florida Power Corporation. We voted to deny FPC's petition at the January 7, 1997, agenda conference. FPC protested the Commission's Order and a hearing has been set for October 30 & 31, 1997. If our information is correct, this action predates the relationship by at least three months. OPC filed a Motion to Dismiss FPC's protest on February 26, 1997. Another staff attorney prepared, filed, and presented the recommendation denying OPC's Motion at the June 24, 1997 agenda conference. The panel approved staff's recommendation. If our information is correct, this action took place after the relationship began. However, Ms. Wagner was not involved in this issue. The staff attorney has indicated that Ms. Wagner provided no input and did not review the recommendation.

Docket No. 961407-EQ - Petition for Expedited Approval of Settlement Agreement Regarding Negotiated Contract for Purchase of Firm Capacity and Energy from a Qualifying Facility, with Pasco Cogen, Ltd. by Florida Power Corporation. Ms. Wagner was the lead attorney and did virtually all of the legal work on this petition, which was approved after much discussion by a 3-2 vote, with Commissioners Deason and Kiesling dissenting, at the April 1, 1997, agenda conference. If our information is correct, this action was taken in the same approximate time frame as the relationship began. No protest was filed and the Order approving the settlement was final on May 29, 1997. E&G and AFAD staff indicate that their recommendation was based solely on the analysis of the merits of the petition.

Docket No. 961477-EQ - Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd., by Florida Power Corporation. Ms. Wagner was the lead attorney and did most of the work on this docket. The petition was approved after much discussion by a 3-2 vote with Chairman Johnson and Commissioner Deason dissenting at the June 24, 1997 agenda conference. No Order has been issued reflecting this vote. E&G and AFAD staff indicate that the recommendation was based solely on their analysis of the merits of the petition.

The Commission has the authority to reconsider its Final Orders if they are based on a mistake Peoples Gas System, Inc. v. Mason, 187 So.2d 335(Fla. 1966). While the information revealed so far does not indicate any affirmative evidence of bias in the information presented to the Commission, this review is ongoing. Further, the parties have not had an opportunity to provide information on the issue of possible bias. As stated above, the

ORDER NO. PSC-97-0921-PCO-EU
DOCKETS NOS. 961184-EQ, 961407-EQ, 961477-EQ, 970056-EG, 970096-
EQ
PAGE 5

Tiger Bay docket was resolved by Commission approval of an arms-length negotiated agreement between the parties. At this time, there does not appear to be a reason to revisit this decision. The revision to the Program Participation Standards is fairly categorized as a routine filing, whose purpose was to assure that only cost-effective conservation programs are approved for cost-recovery. There were no other parties to the docket, and no protest was filed. At this time, there does not appear to be a reason to revisit this decision.

The Lake, Pasco, and OCL decisions are different.

The Lake decision is not yet final. There was a significant amount of discussion of the item at the June 24, 1997, agenda conference. While Ms. Wagner's participation at the agenda conference was limited to an issue which was not voted and no affirmative evidence of bias in the information presented to the Commission has been found to date, this item was recently decided. While some information (hearsay) suggests that this relationship began very recently, it appears likely that the relationship began before the Commission's consideration of this docket. Therefore, we find that, in an abundance of caution, after notice to the parties, we shall review the decision, at an agenda conference, to determine if there was any bias in the information presented to the Commission. This matter shall be presented by the attorneys of the Appeals Division, since that Division was not involved in this docket.

While it is now a final decision, the Pasco settlement/buy out was extensively discussed at the April 1, 1997 agenda conference. The relationship may not have started until after Commission action on this item. While no affirmative evidence of bias has been shown to date, in an abundance of caution, after notice to the parties, we shall review the decision, at an agenda conference, to determine if there was any bias in the information presented to the Commission. Absent a showing of bias in the information presented to the Commission, no review on the merits would be necessary. This matter shall be presented by attorneys of the Appeals Division, since that Division was not involved in this docket.

Ms. Wagner was the lead counsel on Docket No. 961184-EG (Orlando Cogen). The staff recommendation on OPC's Motion to Dismiss FPC's Protest of the Commission's Order Denying the Settlement Agreement was prepared and presented by another attorney. The recommendation was a straight-forward application of well-established law on the question of FPC's substantial interests. The recommendation was approved without discussion at

ORDER NO. PSC-97-0921-PCO-EU
DOCKETS NOS. 961184-EQ, 961407-EQ, 961477-EQ, 970056-EG, 970096-
EQ
PAGE 6

the June 10, 1997 agenda conference. The attorney has indicated that Ms. Wagner provided no input and did not review his recommendation, nor did she participate in the preparation of the Order. While Ms. Wagner did not participate in any way in the formulation of this recommendation, in an abundance of caution since she was the lead attorney, we find that this matter shall be reviewed at an agenda conference, to allow the parties to provide input on the issue of bias in the information presented to the Commission.

RECONSIDERATION OF DECISION TO APPROVE PETITION IN DOCKET NO. 961477-EQ - PETITION FOR EXPEDITED APPROVAL OF SETTLEMENT AGREEMENT WITH LAKE COGEN, LTD., BY FLORIDA POWER CORPORATION.

As previously stated, we voted to approve this petition at the June 24, 1997, agenda conference. The vote was 3-2 in favor of the petition. It has since come to light that one Commissioner intended to vote consistent with her decision in Docket No. 961407-EQ, but inadvertently voted to approve, rather than to deny the petition. By the time the error was discovered, the parties had left the agenda conference. To correct this mistake, we will reconsider our decision on this petition at the August 18, 1997, agenda conference.

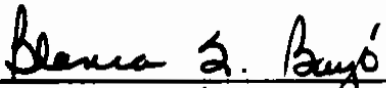
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we shall review, at an agenda conference, the decisions made in Docket Nos. 961407-EQ (Pasco), 961477-EQ (Lake), and 961184-EQ (OCL), to enable the parties to the respective dockets to present information to the Commission concerning any bias in the information presented to the Commission in rendering its decisions. Absent a showing of bias in the information presented to the Commission, no review on the merits would be necessary. In the interest of assuring a completely independent review, it is appropriate for legal staff from the Appeals Division to participate in the further consideration of the possibility of bias in these three cases. It is further

ORDERED that we shall reconsider our decision on the petition filed in Docket No. 961477-EQ - Petition for Expedited Approval of Settlement Agreement with Lake Cogen, Ltd., by Florida Power Corporation at the August 18, 1997, agenda conference.

ORDER NO. PSC-97-0921-PCO-EU
DOCKETS NOS. 961184-EQ, 961407-EQ, 961477-EQ, 970056-EG, 970096-
EQ
PAGE 7

By ORDER of the Florida Public Service Commission, this 4th
day of August, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric,

ORDER NO. PSC-97-0921-PCO-EU

DOCKETS NOS. 961184-EQ, 961407-EQ, 961477-EQ, 970056-EG, 970096-EQ

PAGE 8

gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.