

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Requests by Florida Power Corp-) | DOCKET NO. 890484-EI |
| oration for revision of standby) | |
| service rate schedules and the) | ORDER NO. 21302 |
| purchase power provision of nonfirm) | |
| rate schedules.) | ISSUED: 5-31-89 |

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING TARIFF REVISIONS
AND
GRANTING MOTIONS TO INTERVENE

BY THE COMMISSION:

On March 29, 1989, Florida Power Corporation (FPC) submitted two separate requests for revisions to its existing rate schedules. The first request is for revision of the Special Purchased Power Provision for purchasing off-system power in lieu of interrupting or curtailing full-requirements nonfirm customers. The proposed changes are: (1) to require all interruptible service customers to purchase power in lieu of interruption and (2) to clarify the method FPC uses to calculate the additional purchase power cost. The existing provision is optional for IS-1 and IST-1 customers.

The company's second request consists of the following revisions to the Standby Service rate schedules:

- (1) Addition of the definitions of unscheduled and scheduled outages;
- (2) Replacement of the maximum standby service demand with a maximum peak period standby demand for application of the Generation and Bulk Transmission Capacity reservation and daily demand charges;
- (3) Addition of Special Provision No. 11 for firm Standby Service (SS-1) providing for no billing demand recognition of standby power utilized during a restart of customer generation following an electrical isolation of the customer due to conditions originating on the company's system;
- (4) Modification of SS-2 implementing curtailable standby service; and
- (5) Clarification of the calculation of the additional purchase power cost in the Special Purchase Power Provision of SS-2.

DOCUMENT NUMBER-DATE

05481 MAY 31 1989

FPC-RECORDS/REPORTING

ORDER NO. 21302
DOCKET NO. 890484-EI
PAGE 2

On May 12, 1989, Occidental Chemical Corporation (Occidental) filed its petition for leave to intervene and request to defer action on FPC requests. In its petition, Occidental states that it is a customer of FPC currently receiving service under both FPC's non-firm and standby service rates. Based on this representation, we grant Occidental's petition for intervention in this docket.

In support of its request to defer action on this docket, Occidental argues that: (1) FPC did not comply with the notice provisions of Rule 25-6.0438(4)(c), Florida Administrative Code; (2) the optional provision of buy-through service should be retained; (3) the new language might allow FPC to charge interruptible customers for capacity in addition to energy when the buy-through option is exercised; (4) FPC's proposals, specifically the change which would allow the charge for the "higher" of system average or incremental costs is in violation of the currently approved tariff, not a "clarification" of it; (5) FPC's mandatory buy-through provision is contrary to FERC's decision issued on June 27, 1988 in Industrial Cogenerators v. Florida Public Service Commission, 43 FERC ¶ 61,545 (1988); and (6) that these proposed changes should be taken up in conjunction with other non-firm issues, e.g., non-firm target levels, "opportunity" rates, changes in conservation cost recovery clause charges.

On May 15, 1989, the Florida Industrial Cogeneration Association (FICA) also filed a motion for intervention. In its motion, FICA represents that its members are cogenerators owning and operating qualifying facilities in the state. Some of these cogenerators are customers of FPC and receive service under FPC's standby service rate schedules. For these reasons, we find that FICA is a substantially affected party to this proceeding and grant its motion for intervention. FICA succeeds the positions taken by Occidental Chemical Corporation.

On May 16, 1989, the Florida Industrial Power Users Group (FIPUG) filed a motion to intervene in this docket. FIPUG has members who are currently non-firm as well as standby customers of FPC and are substantially affected by the proposed changes in the terms and conditions for the provision of those services by the utility. For that reason, we grant FIPUG's motion for intervention.

Simultaneous with FIPUG's motion for intervention, FIPUG also filed a motion to reject or suspend FPC's proposed tariff revisions. As support for its motion, FIPUG argues that the optional nature of the buy-through provision should be continued. Further, FIPUG states that there would be circumstances in which the "clarification" language proposed by FPC would result in charges higher than those currently allowed under the language of the existing tariff. Finally, FIPUG argues that FPC did not notify affected customers as it was required to do under Rule 25-6.0438(4)(c).

Non-firm purchased power provision

Florida Power has requested two changes to the purchased power provision. The first change makes the presently optional

ORDER NO. 21302
DOCKET NO. 890484-EI
PAGE 3

provision for the purchase of power in lieu of interruption mandatory for all full-requirements interruptible service customers (IS-1 and IST-1). FPC argues that this change is justified by the fact that purchasing power for all interruptible customers reduces the administrative work of the system control center during periods of insufficient generation. Further, FPC states that all the customers currently taking service under IS-1 and IST-1 have elected this provision and any customers not wanting to purchase off-system power can reduce their usage instead of paying for purchased power.

Our Staff sees several problems with this requested change. First, the whole point of an interruptible tariff is to give the utility the flexibility to interrupt that customer at times of system peaks. Because of this provision, the utility does not plan its generation system to serve the peak-hour demands of these customers. The lower rate given to interruptible customers is based on the "savings" in system costs which result from not building capacity to serve their peak-hour demands. If, in fact, the customer taking this service cannot tolerate interruption, he should be a firm service customer. A mandatory "buy-through" provision would indicate that this is in fact the case. Second, any administrative costs associated with having buy-through and non-buy-through interruptible customers seems to Staff to be immaterial. And if not immaterial, these costs should be collected from these customers through the customer charge.

Finally, our Staff notes that the Federal Energy Regulatory Commission (FERC) has stated in Industrial Cogenerators v. Florida Public Service Commission, 43 FERC ¶ 61,545 (1988), that interruptible service must be made available to standby service customers on request. FERC also interpreted 18 CFR § 292.305(a)(1)(ii) to mean that all interruptible standby customers are entitled to any interclass subsidies of their full requirements counterparts regardless of the cost-based development of standby rates. Thus, Staff is of the opinion that interruptible standby customers cannot be required to take interruptible service with a mandatory buy-through provision. Such a provision, by definition, makes the service non-interruptible. That FPC's customers want the provision does not change FERC's interpretation of its rules implementing PURPA or PURPA itself.

Further, our Staff argues that the Commission is required to assure that tariffs are nondiscriminatory and that the provisions in the tariffs are reasonably related to the service being provided. The ability to buy-through at times of insufficient capacity is not rationally related to the provision of interruptible service, and in fact, is inconsistent with the whole concept which supports such service. The Staff recognizes that the Commission has approved standby interruptible rates which have the mandatory buy-through provisions. These tariffs were approved prior to the June, 1988 FERC order cited above. Staff also is aware that FPC's full-requirements curtailable service tariffs, CS and CST, also have mandatory buy-through provisions.

ORDER NO. 21302
DOCKET NO. 890484-EI
PAGE 4

Notwithstanding the previous approval of mandatory provisions, in Staff's opinion, the FERC rulings implementing PURPA cited above prohibit mandatory buy-through provisions for standby interruptible and curtailable customers. Optional buy-through provisions for those customers would comport with FERC's rules, however. That being the case, mandatory buy-through for full requirements customers could constitute discrimination between full-requirements and standby non-firm customers. For these reasons, our Staff recommends that this proposal be denied.

The second change clarifies FPC's methodology for determining the additional cost to interruptible customers (above-the-tariff charges) for the power purchased during periods of interruptions and curtailments. This language provides the customer with more complete information on billing. Since our Staff does not consider this to be a change in FPC's current methodology of determining additional purchase power costs, they recommend approval of this change.

Due to the fact that the notice provisions of Rule 6.0438 were not complied with, and in light of the opposition of all of the intervenors, we will deny both of these proposed changes at this time.

Standby service schedules

The utility has requested five changes to its Standby Service Rate Schedules. The first change is the addition of definitions of unscheduled and scheduled outages. FPC has added these definitions to ensure that electric energy or capacity supplied by the utility for true backup service is billed at the appropriate backup service charges and electric energy or capacity supplied by the utility for supplemental service is billed at the appropriate supplemental service charges. Our Staff agrees with FPC that as complete information as is necessary for proper and fair administration of any rate schedule should be included in the rate schedule.

Second, FPC requests the replacement of the maximum standby service demand with a maximum peak period standby demand for application of the Generation and Bulk Transmission Capacity reservation and daily demand charges. Thus, the billing of the Generation and Bulk Transmission Capacity Charges would be on the customer's maximum demand in the on-peak period, not the customer's maximum demand whenever it occurs. This is appropriate because the costs recovered through these charges are driven by system peak demands which normally occur during on-peak periods. The level of the charges have been determined using the 12 monthly system peak demands.

Special Provision No. 11, the third requested change, has been added to Rate Schedule SS-1 to provide for forgiveness of billing demand of standby power taken during a customer generation restart following an electrical isolation of the customer due to conditions originating on the company's system. Our Staff agrees with FPC that a customer taking firm standby service should not have to pay charges for billing demand incurred solely due to conditions originating on the company's system.

ORDER NO. 21302
DOCKET NO. 890484-EI
PAGE 5

Fourth, FPC has modified the SS-2 rate schedule to add the offering of curtailable service to customers taking standby service. The utility has developed charges based on the level of the curtailment credit prior to the 1988 settlement and consistent with the rate level and design prescribed in Order No. 17159 in Docket No. 850673-EI. The charges have been adjusted for 1988 and 1989 rate settlements. A penalty of 115% is applicable to the difference in standby rate charges under SS-2 curtailable service and SS-1 firm service in the event of a partial or full noncurtailment.

Although our Staff agrees with the development of this tariff, for the reasons discussed above, we are of the opinion that standby curtailable service cannot have a mandatory buy-through provision and comport with the requirements of PURPA. Therefore, our Staff has recommended that this section of FPC's tariff be denied.

The fifth proposed change clarifies FPC's methodology for determining the additional cost (above-the-rate schedule charges) for the power purchased during periods of interruptions and curtailments. As stated earlier, our Staff supports this change because the language provides the customer with more complete information on billing and is not a change in the company's methodology of determining additional purchase power costs.

Again, because of the failure of FPC to comply with Rule 25-6.0438's notice requirements, and the opposition of the parties, we will deny all five of FPC's requests to modify its standby service rate schedules as proposed in this docket.

Therefore, it is

ORDERED by the Florida Public Service Commission that the March 29, 1988 proposed revisions of Florida Power Corporation's Schedules IS-1, IST-1, SS-1 and SS-2, as discussed in the body of this order, are hereby denied. It is further

ORDERED that the requests for intervention filed by Occidental Chemical Company, FICA and FIPUG are hereby granted. Pursuant to this grant of intervenor status, copies of all pleadings, notices, and orders in this docket shall be served on:

Joseph A. McGlothlin, Esquire
On behalf of FIPUG
Lawson, McWhirter, Grandoff and Reeves
522 E. Park Avenue
Tallahassee, Florida 32301

Paul Sexton, Esquire
On behalf of FICA
Richard A. Zambo, P.A.
820 East Park Avenue
Suite 200, Building A
Tallahassee, Florida 32301

ORDER NO. 21302
DOCKET NO. 890484-EI
PAGE 6

Earle H. O'Donnell, Esquire
Zori G. Ferkin, Esquire
Sutherland, Asbill and Brennan
1275 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20004-2404

By ORDER of the Florida Public Service Commission,
this 31st day of MAY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SBr

by: *Karp Hagan*
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.