

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by CFR-Biogen ) DOCKET NO. 900383-EQ  
Corporation Against Florida Power )  
Corporation for Alleged Violation ) ORDER NO. PSC-92-0129-FOF-EQ  
of Standard Offer Contract, and )  
Request for Determination of ) ISSUED: 3/31/92  
Substantial Interests )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING FIRM CAPACITY AND ENERGY CONTRACT AND  
ACKNOWLEDGING VOLUNTARY DISMISSAL OF COMPLAINT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

By Order No. 24729, issued July 1, 1991, we granted CFR's request to amend its original complaint in this Docket and set this matter for hearing, because the parties had not been able to resolve their differences. On September 26, 1991 the parties filed a stipulation by which they agreed to enter into good faith negotiations for the purchase and sale of cogeneration capacity, and those negotiations culminated in the signing of a negotiated power sales agreement on November 19, 1991. On December 5, 1991, Florida Power Corporation and CFR filed a joint petition for approval of the negotiated contract and subsequent dismissal of the complaint.

THE CONTRACT

We grant the joint petition of Florida Power Corporation and CFR Bio-gen for approval of a negotiated power sales agreement, and

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we acknowledge voluntary dismissal of the complaint. We find that the negotiated power sales agreement is a reasonable and beneficial resolution of the parties' disagreements over their original standard offer contracts.

The negotiated contract is more cost-effective than the parties' standard offer agreements. It appears that the negotiated contract will yield a savings of approximately \$7 million over the life of the contract. Also, the negotiated contract contains a completion security of \$5/kw within 30 days of the contract approval and an additional \$5/kw security fee due 2.5 years before the in-service date of the facility, December 16, 1995.

The contract allows FPC to economically dispatch the unit, and it also contains several performance milestones which would permit FPC to terminate the contract if the performance milestones are not achieved. Furthermore, the contract provides for several pre-operational events of default that would operate to terminate the contract upon their occurrence.

One of the pre-operational events of default that would terminate the contract would be if CFR "becomes subject to bankruptcy or receivership proceedings...." CFR's major shareholders have filed a petition to initiate involuntary bankruptcy proceedings against CFR. While we do so with some hesitation, we will approve this contract in spite of CFR's present financial instability. We believe that the default provisions contained in the negotiated contract will adequately protect FPC's ratepayers if the bankruptcy proceedings continue.

We find, based on the facts before us, that firm capacity and energy payments made by Florida Power Corporation to CFR-Biogen Corporation under the terms of this negotiated contract constitute a prudent expenditure by the utility for cost recovery purposes. Cost recovery will not be denied at a later date absent a clear showing that our approval was induced through perjury, fraud, collusion, deceit, mistake, inadvertence, or the intentional withholding of key information.

#### CONCLUSION

We approve the negotiated contract between CFR-Biogen Corporation and Florida Power Corporation for the following reasons:

1. The contract appears to be cost-effective to FPC's ratepayers;

2. FPC's ratepayers are reasonably protected from default by CFR-Biogen; and
3. The contract meets all the requirements and rules governing qualifying facilities.

Therefore, it is

ORDERED by the Florida Public Service Commission that, for the reasons set forth in the body of this order, the negotiated power sales agreement between Florida Power Corporation and CFR-Biogen Corporation is approved. It is further

ORDERED that this Order shall become final unless an appropriate petition for formal proceeding is timely filed herein. It is further

ORDERED that this docket be closed automatically when the protest period has expired.

By ORDER of the Florida Public Service Commission, this 31st day of March, 1992.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

MCB  
OCFR.MCB

( S E A L )

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 21, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.