BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Polk Power Partners for a Declaratory Statement Regarding Eligibility for Standard Offer Contracts	DOCKET NO. 920556-EQ ORDER NO. PSC-92-0683-DS-EQ ISSUED: 07/21/92

The following Commissioners participated in the dispositon of this matter:

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

ORDER GRANTING DECLARATORY STATEMENT IN THE NEGATIVE

BY THE COMMISSION:

BACKGROUND

By petition filed May 28, 1992, Polk Power Partners, L.P. ("Polk") has asked for a declaratory statement that Polk Power Partners may sell additional capacity from a qualifying cogeneration facility via a standard offer contract, where the project's total net generating capacity exceeds 75 megawatts (MW) and where the contemplated standard offer contract provides for committed capacity of less than 75 MW.

Though acknowledging that Rule 25-17.0832(3)(a), F.A.C. provides for standard offer contracts involving "small qualifying facilities less than 75 megawatts..", Polk theorizes an ambiguity as to whether the 75 megawatt cap speaks to the total net generating capacity[1] of the QF, as defined at 18 C.F.R. 292.202 (g) (1990) of the FERC rules implementing PURPA, or the committed capacity which the qualifying facility has contractually committed to deliver on a firm basis to the purchasing utility. It is the latter definition alone which would be consistent with the declaratory statement petitioned for by Polk.

[1] Total net generating capacity, or "Useful power output" of a cogeneration facility means the electric or mechanical energy made available for use exclusive of any such energy used in the power production process.

DISCUSSION

We grant Polk Power Partners' Petition for Declaratory Statement, albeit in the negative.

The mere allegation at p. 8 of the Petition that

> A QF with a total net generating capacity of 95 MW that sells only 70 MW to a purchasing utility is frequently referred to as a 70 MW QF

is hardly sufficient to create authentic ambiguity in this matter in view of the context in which the operable standard offer rule appears. Not only Rule 25-7.0832(3)(a), previously cited, but also Rule 25-17.0832(2) states that

> Negotiated contracts shall not be evaluated against an avoided unit in a standard offer contract, thus preserving the standard offer for small qualifying facilities as described in subsection (3) [e.s.]

All of the language in both rule sections relating the 75 MW cap to the goal of preserving the standard offer for small qualifying facilities would be rendered nugatory by the declaratory statement petitioned for by Polk.

If "committed" capacity, rather than total net generating capacity were the measure by which to calculate the 75 MW cap, QF's of any size could participate in standard offer contracts, contrary to the clear intent of the rules to preserve such participation for small QF's. It is a fundamental principle of statutory construction that statutes are not to be construed in such a manner as to render them meaningless, and that principle should govern the interpretation of rules as well.

Accordingly, we decline Polk's Petition to issue the statement requested. We state instead that the 75 MW cap referenced in Rule 25-17.0832(3)(a) refers to the total net generating capacity of the QF.

In view of the above, it is

ORDERED by the Florida Public Service Commission that Polk Power Partner's Petition for Declaratory Statement is granted in the negative. It is further

ORDERED that this docket is closed.

By Order of the Florida Public Service Commission this 21st day of July, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(SEAL)

by: Kay Flynn
Chief, Bureau of Records

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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.