

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Skyway ) DOCKET NO. 920978-EQ  
Corporation to require Florida ) ORDER NO. PSC-93-0843-FOF-EQ  
Power Corporation to furnish ) ISSUED: June 7, 1993  
avoided cost data pursuant to )  
Commission Rule 25-17.0832(7). )  
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The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
THOMAS M. BEARD  
SUSAN F. CLARK  
JULIA L. JOHNSON  
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ON RULE 25-17.0832(7)

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.

Skyway Power Corporation (Skyway) filed a complaint requesting that the Commission require Florida Power Corporation (FPC) to furnish Skyway avoided cost data concerning FPC's Polk County Units 3 and 4 pursuant to Rule 25-17.0832(7), Florida Administrative Code. This rule requires electric utilities to provide a qualifying facility or "any interested person," upon request, the

most current projections of its future generation mix including type and timing of anticipated generation additions, and at least a 20-year projection of fuel forecasts, as well as any other information reasonably required by the qualifying facility to project future avoided cost prices. The utility may charge an appropriate fee, not to exceed the actual cost of production and copying, for providing such information.

Skyway is a Florida corporation engaged in qualifying facility (QF) development and independent power generation development activities that also provides consulting services to QF and independent power production (IPP) developers. Skyway alleges it is an "interested person" pursuant to Rule 25-17.0832(7), Florida Administrative Code, because it is involved in QF development

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activities. FPC is a regulated public utility subject to the Commission's jurisdiction pursuant to Chapter 366, Florida Statutes, and Sections 25-6 and 25-17, Florida Administrative Code.

Skyway first requested avoided cost data related to FPC's Polk County Units 3 and 4 on May 7, 1992. FPC refused Skyway's request on June 16, 1992, stating it was inappropriate because the Commission had ruled FPC's Polk County Units 3 and 4 were not needed by Order No. 25808.<sup>1</sup> On May 13, 1992, by separate letter, Skyway requested FPC's PROMOD and PROSCREEN data bases. On June 16, 1992, FPC refused this request as well. FPC provided Skyway with avoided cost data concerning the Polk County units 3 and 4 on October 13, 1992, after Skyway filed its September 29, 1992 complaint.

We have reviewed Skyway's request for avoided cost information and FPC's response. We find that the avoided cost data supplied by FPC concerning the Polk County units 3 and 4 complies with Rule 25-17.0832(7), Florida Administrative Code. We also find that FPC shall not be required to provide PROMOD and PROSCREEN because these data bases exceed the information necessary to "project future avoided cost prices."

PROMOD and PROSCREEN are sophisticated modelling programs written by Energy Management Associates, Inc. (EMA) for which approximately 80 utilities are licensed. PROMOD and PROSCREEN are tools to aid the utility's forecasting effort. We have consistently urged utilities to enhance forecasting abilities, and FPC has done so. The programs are customized so that the software can be configured to accurately model a utility's generating system, and the programs are also used to evaluate alternative generation expansion plans. The end result of the PROMOD and PROSCREEN models are the revenue requirements associated with alternative generation expansion plans; the programs themselves only assist in the process of calculating avoided cost. PROMOD and PROSCREEN are very expensive in their initial software investment and in the time and talent required to maintain them. Because the program is dynamic, the data is constantly updated by FPC's trained staff.

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<sup>1</sup> Order No. 25808 was issued February 25, 1992, in Docket No. 910759-EI - Petition for determination of need for proposed electrical power plant and related facilities, Polk County Units 1-4, by Florida Power Corporation.

While we believe that QFs and other interested persons should have access to the information necessary to negotiate a generation contract, the information requested here may in fact work to the detriment of the ratepayer. The generation of electricity is becoming increasingly competitive. Requiring a utility to provide PROMOD and PROSCREEN data bases to a developer would create a significant disadvantage for the utility. In contract negotiations, experience and information are leverage. PROMOD and PROSCREEN data bases represent the utility's entire stock of information on its system's generation. Requiring FPC to turn over this information would be the equivalent of forcing the company to show its hand before the game has begun. This would work a competitive disadvantage to the party who funded the data base in the first place - the ratepayer.

Rule 25-17.0832(7) was intended to remedy the alleged utility practice of denying a QF the most basic pricing information, that is the current avoided cost. We find that to require FPC or any similarly-situated utility to transfer these data bases goes beyond what we intended in adopting the rule.

Rule 25-17.0834(1), Florida Administrative Code, requires utilities to provide its avoided cost data within 30 days of the request. In this case, FPC provided Skyway with avoided cost data more than 5 months after Skyway made its original request. The avoided cost data supplied by FPC was adequate under the rule; nevertheless, FPC's response was substantially delayed. Such a delay will not be tolerated in the future. Because FPC is a public utility under the Commission's jurisdiction, it must comply with our rules and regulations in a timely manner.

Skyway made four specific requests for relief in its complaint against FPC:

1. The Commission order FPC to provide the avoided cost data for FPC's Polk County units 3 and 4 as requested by Skyway on May 7, 1992.

We find that this information was provided to Skyway on October 13, 1992. If Skyway has specific questions or concerns about FPC's response, FPC has offered to meet with Skyway.

2. The Commission order FPC to provide Skyway FPC's PROMOD and PROSCREEN data bases.

We find that Rule 25-17.0832(7), Florida Administrative Code, does not require FPC to provide Skyway with PROMOD or PROSCREEN data bases in this instance.

3. The Commission order FPC to comply with all applicable rules and regulations, specifically including the "good-faith negotiation" requirement of Rule 25-17.0834(1), Florida Administrative Code.

We find that because FPC is a regulated public utility, it is already required to comply with all applicable Commission rules and regulations.

4. The Commission keep this docket open until the requested data is furnished.

We find that because the avoided cost data for FPC's Polk County units 3 and 4 has been furnished to Skyway, this docket can be closed.

FPC filed an answer and motion to dismiss Skyway's complaint on October 19, 1992. Skyway filed a memorandum in reply to FPC's motion to dismiss on October 26, 1992. We find that our decision on Skyway's complaint renders FPC's motion to dismiss moot.

It is, therefore,

ORDERED by the Florida Public Service Commission that Rule 25-17.0832(7), Florida Administrative Code, does not require FPC to provide Skyway with PROMOD or PROSCREEN data bases in this instance. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission this 7th day of June, 1993.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )  
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Chairman Deason dissented from the Commission's decision.

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 June 28, 1993.

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

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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 wastewater 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.