

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of) DOCKET NO. 920977-EQ
contract for the purchase of) ORDER NO. PSC-93-1251-FOF-EQ
firm capacity and energy between) ISSUED: August 30, 1993
General Peat Resources, L.P. and)
Florida Power and Light Company.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING PETITION FOR CONTRACT APPROVAL

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.

Pursuant to Rule 25-17.0832(8), Florida Administrative Code, General Peat Resources, L.P., Destec Energy, Inc., and The Ecopeat Company (SFP), L.P. (hereinafter General Peat), filed a petition on September 28, 1992. The petition requested the Commission to determine whether a negotiated contract between petitioner and Florida Power and Light Company (FPL) for the purchase of 52 MW of firm capacity and energy was prudent for cost recovery purposes.

Because of unresolved issues regarding the contract, this proceeding was abated until March 27, 1993 to give the parties an opportunity to work out any disagreements concerning the contract. On April 9, 1993, General Peat filed a status report stating there were still outstanding issues and requested that the Petition for Contract Approval be expeditiously processed. On May 12, 1993, FPL filed its response to the petition which stated that it believes there are disputed issues of material fact and that a contract approval proceeding is not an opportunity for unilateral contract revision.

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The avoided unit on which the initial contract was based was FPL's 1995 combined cycle unit. Pursuant to a subsequent amendment, the project's in-service date was delayed until 1996 and the termination fee schedule was modified to reflect FPL's then current avoided unit, a 1997 Integrated Gasified Combined Cycle plant (IGCC). The capacity payments to General Peat were not changed. FPL's current avoided unit is a combined cycle in the year 2000. We must decide here against which avoided unit the contract should be evaluated. Because the 1996 in-service date will not defer construction of the 1995 unit, we find that the 1995 avoided unit is no longer an option.

Both parties' economic analysis comparing the project to the 1997 IGCC showed the project to be cost-effective: General Peat's analysis indicated that the project was approximately \$2.5 million cheaper and FPL's analysis indicated that the project was approximately \$8.4 million cheaper. While both of these analyses indicate the project is marginally cost-effective on a net present value basis over the life of the contract, we find the 1997 IGCC is not the appropriate avoided unit against which to evaluate the General Peat project because the 1997 unit is no longer needed by FPL. The only reason the 1997 IGCC unit was identified as the avoided unit in the amendment was because FPL and General Peat renegotiated the contract at the same time the 1997 IGCC unit was approved for FPL's standard offer contract, and General Peat was not included in the subscription amount for that standard offer.

FPL also compared the General Peat contract to the current avoided unit. This analysis indicated that, on a net present value basis over the life of the contract, the General Peat contract would cost approximately \$40.4 million more than it would cost FPL to build the combined cycle unit in the year 2000. This is due primarily to the capacity payments starting in 1996 rather than the year 2000 when FPL needs the capacity. General Peat did not provide an analysis comparing the project to FPL's current needs. The initial delays for filing the contract for cost recovery were at the request of General Peat. Further delays were caused by General Peat when it planned to move the project and change the fuel from peat to natural gas. If a developer cannot proceed quickly with a project after a negotiated contract is signed, it runs the risk of the utility's needs changing. We find that the current avoided unit should be used to evaluate the project because it is representative of FPL's current needs.

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Using the 2000 combined cycle as the appropriate avoided unit, the General Peat project is not cost-effective. In addition, neither the 1997 or 2000 unit analyses provide for early capacity payment security provisions. Pursuant to Rule 25-17.0832(2)(c), Florida Administrative Code, if the payments to a qualifying facility exceed the value of deferral of the avoided unit in any year, provisions must be made to ensure repayment of these early payments. This fact alone requires us to deny cost recovery. Accordingly, we find that General Peat's petition for approval of the negotiated contract between General Peat and FPL shall be denied.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Petition filed by General Peat Resources, L.P., Destec Energy, Inc., and The Ecopeat Company (SFP), L.P. seeking approval of the 52 MW negotiated contract with Florida Power and Light Company for cost recovery purposes is hereby denied. 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 30th day of August, 1993.



STEVE TRIBBLE, 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 120.59(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 September 20, 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 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.