

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint petition for) DOCKET NO. 941155-EQ
expedited approval of contract) ORDER NO. PSC-95-0038-FOF-EQ
modifications to a 1989 Standard) ISSUED: January 9, 1995
Offer Contract by TAMPA ELECTRIC)
COMPANY, ORANGE COGENERATION)
LIMITED PARTNERSHIP, and POLK)
POWER PARTNERS, L.P.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING CERTAIN CONTRACT MODIFICATIONS

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

On October 28, 1994, Tampa Electric Company (TECO), Orange Cogeneration Limited Partnership (Orange) and Polk Power Partners, L.P. (Polk) submitted a joint petition for approval of certain modifications to a Standard Offer contract based on a 1995 statewide coal unit. The modifications affect two cogeneration projects in Polk County: the Mulberry facility and the Orange facility. The following chronology of events describes the facts that give rise to the parties' petition:

DOCUMENT NUMBER-DATE

00244 JAN-95

FPSC-RECORDS/REPORTING

The Mulberry Facility

On April 17, 1989, Arch Ford, doing business as the Polk Power Project, and TECO entered into a Standard Offer contract for 23 Megawatts (MW) of electricity. The original cogeneration facility was to be a multiple fuel facility that would burn such fuel as tires, natural gas, and coal. The facility was to be located near Polk City, Florida.

On March 12, 1991, Arch Ford, through Mulberry Energy Company, Inc., negotiated a 72 MW purchased power agreement with Florida Power Corporation (FPC).

On October 1, 1991, because of environmental permitting difficulties, Arch Ford notified TECO that the Polk Power Project contract would be served from the same location as the Mulberry Energy Company, Inc. contract with FPC. This is referred to as the Mulberry site.

On February 24, 1992, Arch Ford assigned, with TECO's consent, all his interest in the TECO Standard Offer contract to Polk, an affiliate of ARK/CSW Development partnership. Concurrent with the assignment of the Standard Offer contract, Polk acquired Arch Ford's interest in the Mulberry contract with FPC.

In December of 1992, Polk began construction of a 123 MW natural gas-fired combined cycle facility at the Mulberry site. On May 3, 1993, Polk acquired Piney Point Phosphates, Inc.'s interest in a 28 MW negotiated contract with FPC (the "Royster Contract"). The Mulberry facility began commercial operation on August 10, 1994 and is now providing power to FPC under the Mulberry Contract (72 MW), the Royster Contract (28 MW). The facility is providing power to TECO pursuant to the Standard Offer contract (23 MW).

On January 20, 1994, Polk and Tampa Electric entered into a letter of Agreement that modified the performance requirements of the 23 MW Standard Offer contract from an overall seventy percent (70%) capacity factor to an eighty percent (80%) on-peak capacity factor.

The Orange Facility

In November of 1991, CFR-Biogen Corporation and FPC entered into a 74 MW negotiated purchased power agreement (the "CFR Contract").

On April 30, 1993. Orange, also an affiliate of ARK/CSW Development partnership, acquired CFR-Biogen's interest in the CFR Contract. The CFR Contract was to be serviced from a 82 MW facility to be constructed on a site southeast of the city of Bartow, referred to as the Orange site.

On September 30, 1993, TECO and Polk entered into an Agreement and Consent to Assignment that gives Polk a one year option, beginning January 1, 1995, to change the facility out of which the contract is served from the Mulberry site to the Orange site, and to assign the contract to Orange. This assignment and relocation required that Orange revise the design of the facility from a 82 MW to a 102 MW configuration.

In December of 1993, Orange began construction of a 102 MW gas-fired combined cycle facility. Orange plans to serve FPC's 74 MW negotiated contract and TECO's 23 MW Standard Offer contract from this facility.

TECO, Orange and Polk seek our approval that the amended contract, including the prospective assignment from Polk to Orange and the change in location, continues to qualify for cost recovery under our cogeneration rules.

DECISION

Assignment

According to section 9.5 of TECO's Standard Offer contract, the QF shall have the right to assign its benefits under this agreement, but the QF shall not have the right to assign its obligations and duties without TECO's prior written consent. As stated in the case background, Polk received TECO's consent to assign the Standard Offer contract to Orange.

Upon consideration, we find that since both Polk and Orange are affiliates of the same company, ARK/CSW Development, the original obligations to TECO remain. We conclude that this type of assignment was contemplated in TECO's Standard Offer contract, and no further Commission approval is required.

Performance Requirements

The original Standard Offer contract between Arch Ford and TECO is a 1989 vintage contract based on a Statewide avoided unit. During the Statewide Standard Offer era, the performance criterion of a seventy percent (70%) annual capacity factor was established pursuant to Commission rules. TECO and Mulberry negotiated a

modification of this performance criterion to an eighty percent (80%) on-peak capacity factor. While that modification was not contemplated in the original Standard Offer contract, and therefore we need to review it, it does appear that there are significant savings attributable to the change. The change from a 70% annual capacity factor to an 80% on-peak capacity factor is estimated to save between \$1.5 to \$4.5 million during the life of the contract.

According to TECO, on-peak fuel savings are projected to account for between ninety-six percent (96%) and one hundred percent (100%) of the savings in both the \$1.5 million and the \$4.5 million figures. Off-peak purchases and increased off-system sales are projected to account for between zero percent (0%) and four percent (4%) of the savings over the life of the contract. While the projected savings are based on speculative fuel costs, these projections seem reasonable. By requiring the cogenerator to generate more on-peak energy, TECO can avoid more costly on-peak fuel costs. For these reasons we find that the modification to the original standard offer contract will benefit TECO's ratepayers.

Relocation

While the terms of the Standard Offer contract provided for assignment, the terms of the contract did not provide for a change in location and facilities from the Mulberry facility to the Orange facility, and therefore we must evaluate the current effect of the proposed change on the ratepayers. While Polk will be able to commit an additional 10 MW of firm power to FPC from the Mulberry facility if the TECO Standard Offer is relocated to the Orange plant, it appears that TECO's ratepayers will neither be harmed nor helped by the relocation. Both the facilities in question are in FPC's territory and the purchased power will be wheeled to TECO. The actual delivery point to TECO will remain the same. The ratepayers will benefit, however, from the performance criteria modifications. Thus if we consider the proposed modifications as a whole, we find that TECO's ratepayers will benefit, and we approve the modifications for cost recovery purposes. In addition, TECO has received approximately \$1.1 million dollars from Polk in the form of an "Option Payment" in return for its agreement to allow the relocation, which TECO has treated as Other Electric Revenue for accounting purposes. We will consider how TECO should treat the \$1,106,760 associated with the "Option Payment" from Polk during TECO's next fuel adjustment proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition for Expedited Approval of Contract Modifications to

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a 1989 Standard Offer Contract by Tampa Electric Company, Orange Cogeneration Limited Partnership, and Polk Power Partners, L.P. is approved for purposes of cost recovery. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceedings 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 9th day of January, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MCB

DISSENT

Commissioner Garcia dissents from the Commission's decision to review TECO's treatment of the option payment only.

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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 30, 1995.

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 substantially 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.