

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for resolution ) DOCKET NO. 940357-EQ  
of cogeneration contract dispute ) ORDER NO. PSC-95-0136-CFO-EQ  
with Orlando Cogen Limited, ) ISSUED: January 27, 1995  
L.P., by FLORIDA POWER )  
CORPORATION. )  
\_\_\_\_\_ )

ORDER SUSTAINING FLORIDA POWER CORPORATION'S  
OBJECTION TO INTENDED USE OF CONFIDENTIAL DOCUMENTS  
AND DIRECTING THE RETURN OF DOCUMENT NO. 00412-95

At the behest of Orlando Cogen Limited, L.P (OCL), on January 12, 1995, Florida Power Corporation (FPC) filed two reports entitled Cogeneration Review and Cogeneration & Purchased Power Strategic Proposal. These reports have been identified as Document No. 00412-95. FPC also filed a Notice of Intent to Request Confidential Treatment and Objection to Intended Use of Confidential Documents. On January 23, 1995, OCL filed its response to FPC's notice and objection.

OCL requested the reports be filed, for review by the Commission in furtherance of its motion to dismiss for lack of jurisdiction. OCL contends these reports are relevant to the determination of whether the Commission has jurisdiction over FPC's petition because they will allow the Commission to more fully appreciate the subject matter of the petition.

The issue of whether the Commission has jurisdiction over a dispute, however, is a legal question. Resolution of that issue does not require a factual determination or examination of evidence.

If the Commission determines it has authority to resolve the dispute, OCL will have full evidentiary rights to present relevant evidence and FPC will have the opportunity to rebut the evidence at the appropriate time. Until such time, the filing of evidence for review by the Commission is premature. Accordingly, FPC's objection to the intended use of the documents is sustained and the documents should be returned to FPC.

In consideration of the foregoing, it is

ORDERED by Chairman Susan F. Clark, as Prehearing Officer, that the documents identified as Document No. 00412-95 shall not be

DOCUMENT NUMBER-DATE  
01025 JAN 27 95  
FPSC-RECORDS/REPORTING

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considered by the Commission in resolving the motion to dismiss.  
It is further

ORDERED that the documents identified as Document No. 00412-95  
shall be returned to Florida Power Corporation.

By ORDER of Chairman Susan F. Clark, as Prehearing Officer,  
this 27th day of January, 1995.

  
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SUSAN F. CLARK, Chairman and  
Prehearing Officer

( S E A L )

VDJ

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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary,

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procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.