

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for expedited) DOCKET NO. 960193-EQ
approval of settlement agreement) ORDER NO. PSC-96-0898-AS-EQ
between Florida Power) ISSUED: July 12, 1996
Corporation and Orlando Cogen,)
L.P.)
_____)

The following Commissioners participated in the disposition of this matter:

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

PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT AGREEMENT

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.

BACKGROUND

Florida Power Corporation (FPC) and Orlando Cogen Limited, L.P. (OCL) executed a negotiated cogeneration contract on March 6, 1991, which we approved for cost recovery in Order No. 24634, issued on July 1, 1991, in Docket No. 910401-EQ. We approved modifications to the negotiated contract in Order No. PSC-95-0540-FOF-EQ, issued on May 2, 1995, Docket No. 940797-EQ.

OCL's cogeneration facility is located near Orlando, Florida, and began commercial operation on September 25, 1993. Sometime after September 25, 1993, various disputes arose between OCL and FPC concerning the proper administration and interpretation of the negotiated contract. In particular, disputes arose concerning the method for determining the energy price to be paid to OCL, and whether the contract requires the installation of a back-up fuel system.

We addressed certain jurisdictional aspects of the back-up fuel system and the energy pricing dispute in Docket No. 940357-EQ,

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wherein we found it appropriate to defer the dispute to the civil court. In an effort to avoid the expense of litigation, the parties have agreed to certain modifications to the negotiated contract. On February 19, 1996, FPC filed a petition for expedited approval of a Settlement Agreement. The Settlement Agreement is the second modification to their negotiated contract. The parties have also requested our confirmation that the payments made pursuant to the contract, as modified by the Settlement Agreement, continue to qualify for cost recovery.

THE SETTLEMENT AGREEMENT

FPC states the settlement will result in a benefit to its ratepayers of approximately \$19,406,729. Although we find that this amount is overstated because some of the savings are based on the presumption that OCL would prevail in litigation with FPC, we do find that there are net benefits to the ratepayers. We, therefore, approve the Settlement Agreement.

The Settlement Agreement addresses the following areas:

- (1) the methodology for computing energy payments;
- (2) the dispute concerning back-up fuel;
- (3) curtailment during off-peak periods;
- (4) the escalation rate for the avoided unit variable operating and maintenance (O&M) cost under the negotiated contract; and
- (5) an adjustment, or settlement payment, for payments already made pursuant to the negotiated contract to reflect the energy payment calculation established before the dispute.

Our analysis of these areas is set forth below.

I. ENERGY PAYMENTS UNDER THE NEGOTIATED CONTRACT AND SETTLEMENT AGREEMENT

The methodology for computing energy payments under the existing negotiated contract is as follows:

- (1) the energy payments shall be the product of the average monthly inventory charge-out price of fuel burned at the avoided unit fuel reference plant, the fuel multiplier, and the avoided unit heat rate, plus the avoided unit variable

O & M, if applicable, for each hour that the company would have had a unit with these characteristics operating; and

(2) during all other hours, the energy cost shall be equal to as-available energy cost.

Between September 25, 1993, the in-service date of OCL's generating unit, and August, 1994, OCL received firm energy payments for every kwh delivered. Beginning in August, 1994, and ending in January, 1996, FPC determined that the avoided unit would have been cycled off during certain hours of the day. Therefore, FPC began making energy payments based on both firm and as-available energy, as described above. The result was that the energy payments were reduced. OCL then initiated litigation against FPC.

The Settlement Agreement modifies the methodology for computing energy payments in two fundamental ways:

(1) during on-peak hours, energy payments to OCL will be based on the firm energy cost; and

(2) during off-peak hours, when as-available energy cost is:

(a) less than or equal to the firm energy cost, the greater of:

(i) the discount factor multiplied by the firm energy cost; or

(ii) the as-available energy cost; or

(b) greater than the firm energy cost.

The Settlement Agreement has established a minimum number of 4015 hours per year that OCL will be paid for firm energy during the life of the contract. Also, under the Settlement Agreement, the energy price will be based on a coal price floor of \$1.73/MMBTU. These floors will provide OCL with a more stable revenue stream.

FPC believes that the modified energy pricing provisions will provide savings to its ratepayers when compared to OCL's pre-settlement position. FPC and OCL will also benefit by avoiding the cost of litigation.

II. BACK-UP FUEL

Section 3.3 of the existing negotiated contract states that "Except for Force Majeure Events declared by the Facility's fuel supplier(s) or fuel transporter(s), which comply with the definition of Force Majeure Events as specified in this Agreement and occur after the contract In-Service Date, the Facility's ability to deliver its Committed Capacity shall not be encumbered by interruptions in its fuel supply." FPC's position was that this section required a back-up fuel supply.

The Settlement Agreement specifies that if OCL cannot perform under its contract due to an interruption of its primary fuel supply and concurrent lack of an adequate back-up fuel supply, then OCL will reimburse FPC \$40,000 per hour, up to \$600,000 per year, for a lifetime maximum of \$3,600,000. This amount will be prorated in the event that OCL suffers a partial forced outage to its primary fuel supply.

We find that OCL's fuel supply interruption penalty benefits FPC's ratepayers. The hourly energy payment will sufficiently compensate FPC for any replacement power purchases.

III. CURTAILMENT

The Settlement Agreement contains extensive language on the time periods and conditions under which energy purchases from OCL may be curtailed. This language is consistent with FPC's curtailment plan and its Voluntary Curtailment Agreement with OCL, approved in Orders PSC-95-1133-FOF-EQ and PSC-95-1088-FOF-EQ, respectively. The curtailment savings benefit the ratepayers because FPC can replace OCL's curtailed energy on its system at a lower total cost.

IV. AVOIDED UNIT VARIABLE O&M

Under the existing negotiated contract, the variable O&M escalation rate was fixed at 5.1% per year. The Settlement Agreement modified this escalation rate to 4.5% per year. This modified escalation rate is above the current consumer price index of 3% per year, but has positive benefits to FPC's ratepayers. FPC estimates that this provision alone will save its ratepayers a net present value of approximately \$4.78 million throughout the life of the contract.

V. SETTLEMENT PAYMENT

The settlement payment is an important component of the Settlement Agreement. The payment is retroactive and based upon the firm energy pricing provisions of the existing negotiated contract. Under this provision, FPC has agreed to pay OCL a one-time settlement payment of \$2,942,000. This amount is the difference between what FPC would have paid to OCL for energy had all the energy been priced at firm since August, 1994, and what FPC actually paid. This amount was included in the energy payments made to OCL which are reflected on FPC's A-Schedules.

RECOVERY OF COSTS

As previously discussed, the modified power sales agreement provides a net benefit to FPC's ratepayers. As such, the modified power sales agreement payments shall continue to qualify for cost recovery through the Capacity Cost Recovery and the Fuel and Purchased Power Cost Recovery Clauses.

The capacity payments made under the Settlement Agreement shall continue to qualify for recovery through the Capacity Cost Recovery Clause, and the energy payments made under the Settlement Agreement shall continue to qualify for recovery through the Fuel and Purchased Power Cost Recovery Clause.

Although FPC failed to inform us during the last Fuel and Purchased Power Cost Recovery proceedings of its intent to recover the OCL settlement payment, we note that FPC has followed the practice of including settlement payments in past Settlement Agreements with other cogenerators. We find that the settlement payment qualifies for recovery through the Fuel Cost Recovery Clause since FPC's ratepayers receive the benefits of the Settlement Agreement. This settlement payment shall be reflected in the August, 1996, Fuel Cost Recovery proceedings.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement Agreement between Florida Power Corporation and Orlando Cogen, L.P., is hereby approved. It is further

ORDERED that the capacity payments made under the Settlement Agreement shall continue to qualify for recovery through the Capacity Cost Recovery Clause, and the energy payments made under the Settlement Agreement shall continue to qualify for recovery through the Fuel and Purchased Power Cost Recovery Clause. It is further

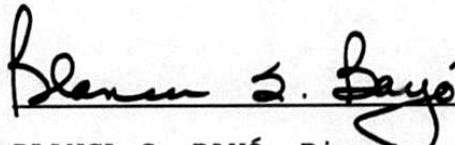
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ORDERED that the settlement payment qualifies for recovery through the Fuel Cost Recovery Clause. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 12th day of July, 1996.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 2, 1996.

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.