

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of early termination amendment to negotiated qualifying facility contract with Orlando Cogen

DOCKET NO. 961184-EQ

Limited, Ltd. by Florida Power Corporation.

In re: Petition for expedited approval of settlement agreement regarding negotiated contract for purchase of firm capacity and energy from a qualifying facility, with Pasco Cogen, Ltd. by Florida Power Corporation.

DOCKET NO. 961407-EQ

In re: Petition for expedited approval of settlement agreement with Lake Cogen, Ltd. by Florida Power Corporation.

DOCKET NO. 961477-EQ

ORDER NO. PSC 97-1006-FOF-EQ

DATE: August 22, 1997

The following Commissioners participated in the disposition of the matters addressed in Docket 961184-EQ:

SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

The following Commissioners participated in the disposition of the matters addressed in Docket Nos. 961407-EQ and 961477-EQ:

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

ORDER ON REVIEW OF DECISIONS IN DOCKET NOS. 961184-EQ,
961407-EQ, AND 961477-EQ

BY THE COMMISSION:

On July 1, 1997, the Commission's Legal Services Division's Chief of the Bureau of Electric and Gas learned that Lorna Wagner, a former staff attorney of that bureau, had become engaged to Robert Dolan, a Florida Power Corporation (FPC) employee. The

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relationship was alleged to have begun prior to Ms. Wagner's last date of employment, which was June 27, 1997. Among other actions, a review of Ms. Wagner's work assignments was initiated. Based on hearsay information that Ms. Wagner and Mr. Dolan had been dating for a "couple of months," Legal Division supervisory staff reviewed Ms. Wagner's assignments, and recommended that the Commission revisit, at an agenda conference, these three dockets that involved FPC and in which Commission action was taken after March 31, 1997. Staff further recommended that attorneys from the Division of Appeals present these items to the Commission because that Division was not previously involved in the dockets. We approved this recommendation with minor changes on July 15, 1997, deciding to review the decisions made in these three dockets to determine if there was any bias in the information presented to the Commission after March 31, 1997. Order No. PSC-97-1006-FOF-EQ PSC-97-1006-FOF-EQ PSC-97-1006-FOF-EQ PSC-97-0921-PCO-EU.

Information was requested from the parties, including the intervenors, and to those persons that sought to intervene and were denied. In addition, the Office of Public Counsel (OPC) was sent a copy of the letters requesting information in the two dockets in which OPC did not intervene. The letters requested information on the issue of bias in the information presented by staff to the Commission, and specifically whether any information was inaccurate, unsupported, or whether certain information that should have been presented was not.

Appeals counsel also met individually with each Commission staff member assigned to the three dockets or whose name appears on the recommendations considered by us after March 31, 1997. In addition, written documents and transcripts were reviewed.

Each of the three dockets is discussed separately below:

Docket No. 961184-EQ - Petition for Approval of Early Termination Amendment to Negotiated Qualifying Facility Contract with Orlando Cogen Limited, Ltd., by Florida Power Corporation.

FPC filed its petition in October, 1996. We voted to deny the petition on January 7, 1997, and issued a Proposed Agency Action (PAA) order. FPC protested this order and a hearing is scheduled to begin on October 30, 1997. OPC intervened and filed a Motion to Dismiss FPC's petition on February 26, 1997.

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Orlando Cogen Limited, L.P., (Orlando Cogen) petitioned to intervene on May 21, 1997. This petition was granted on May 23, 1997, and is consistent with action taken before March 31, 1997, in the Pasco docket, where intervention was also granted to the party to the contract with FPC for purchase from a qualifying facility.

Staff filed a recommendation to deny OPC's motion to dismiss on May 29, 1997, and this panel voted to approve the recommendation on June 10, 1997. The Division of Electric and Gas (EAG) is the office of primary responsibility on this docket, however, because OPC's motion presented only legal issues, the May 29, 1997, recommendation was written by legal staff. Although Ms. Wagner's name is on the recommendation along with that of staff attorney Cochran Keating, Ms. Wagner took no part in the analysis of the legal issues presented, did not attempt to influence Mr. Keating's analysis or conclusions, and did not write or review the recommendation. Mr. Keating wrote the recommendation and presented it to us at an agenda conference.

Counsel for Orlando Cogen states that he is not aware of there being any information presented by Staff to the Commission after March 31, 1997, that reflected bias, was inaccurate, or unsupported, or of any information that should have been presented that was not. OPC responded that the relationship between Ms. Wagner and Mr. Dolan created at least the appearance of bias and that parties should not have the burden of demonstrating actual bias. We agree that the parties do not have this burden.

FPC responded with a copy of the report by a former Federal District Court Judge who was retained by FPC to investigate the relationship between Ms. Wagner and Mr. Dolan. In the report, Judge Lacey concludes that nothing in his firm's investigation indicated that the relationship had any impact upon regulatory proceedings to which FPC is or was a party.

Based upon this review, we conclude that there was not any bias in the information presented by staff to the Commission in this docket.

Docket No. 961407-EQ - Petition for Expedited Approval of Settlement Agreement Regarding Negotiated Contract for Purchase of Firm Capacity and Energy from a Qualifying Facility, with Pasco Cogen, Ltd., By Florida Power Corporation.

FPC filed its petition in November, 1996. Staff filed its recommendation on March 20, 1997. We voted to approve the petition to approve the settlement agreement on April 1, 1997, and a PAA order was issued on May 7, 1997. No protest was filed and the order was final on May 29, 1997.

Pasco Cogen, Ltd., a party to the contract with FPC and the settlement agreement which was presented for Commission approval in this docket, filed a notice of appearance on December 17, 1997, and participated as a party. North Canadian Marketing Corporation's (North Canadian) and Vastar Gas Marketing, Inc.'s (Vastar) petitions to intervene were denied on March 24, 1997. North Canadian and Vastar were not parties to the contract between FPC and Pasco Cogen. Although intervention was denied, both North Canadian and Vastar were permitted to make presentations on the item at our April 1 agenda conference.

Pasco Cogen, Ltd and North Canadian do not believe that any information presented to the Commission reflected any bias that may have been caused by the personal relationship between Ms. Wagner and an FPC employee. They see no reason for us to revisit or further review our decision in this docket. FPC's response, enclosing Judge Lacey's investigation report, is stated above under the Orlando Cogen docket.

Vastar responded that it has "no clear evidence that there was any bias or wrongdoing on Ms. Wagner's part" in this or the Lake docket, but notes that its petitions to intervene, which involved legal standing issues, were denied. Vastar believes FPC benefitted from the denial of its petitions, and that Ms. Wagner was involved in recommending denial to the prehearing officer that issued the order. As noted above, however, Vastar was not a party to the contract with FPC. In addition, its petition to intervene in this docket was denied on March 24, 1997, which was before the relationship is alleged to have started.

The Division of Electric and Gas (EAG) was the office of primary responsibility in this docket, and Ms. Wagner was the lead attorney. The staff recommendation was filed on March 20, 1997, and was written by EAG and Division of Auditing and Financial Analysis (AFAD) staff. Ms. Wagner did not express a preference for approval or disapproval of FPC's petition, but thought that the alternative recommendations (not to approve the settlement agreement) would conflict with the Commission's 1995 order (Order No. PSC-95-0210-FOF-EQ) by reinterpreting the contract. Ms. Wagner's opinion about

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this order was known to other staff well before the relationship with Mr. Dolan was alleged to have started. Ms. Wagner did not attempt to influence the substance of staff's recommendations, and reviewed the recommendation only for clarity and style.

Ms. Wagner introduced staff's recommendation at our agenda conference on April 1, 1997, and presented a summary of each of the issues and the recommendations on those issues. According to the lead technical division staff, Ms. Wagner's summary accurately and fairly stated the recommendations, both for and against approving the settlement agreement that FPC advocated.

Based upon this review, we conclude that there was not any bias in the information presented by staff to the Commission in this docket.

DOCKET NO. 961477-EQ - PETITION FOR EXPEDITED APPROVAL OF SETTLEMENT AGREEMENT WITH LAKE COGEN, LTD., BY FLORIDA POWER CORPORATION.

FPC filed its petition on December 12, 1996. Staff's recommendation on FPC's petition was filed on June 12, 1997, and considered by us at our June 24, 1997, agenda conference. Lake Cogen, Ltd., the party to the contract with FPC, and NCP Lake Power, Inc., Lake Cogen's general partner, were granted intervention on June 5, 1997. Vastar, a gas supplier that is not a party to the contract between FPC and Lake Cogen, was denied intervention on April 10, 1997. Lake Interest Holdings, Inc. (LIHI) filed a petition to intervene on February 28, 1997. An order on this petition has not been issued.

The recommendation was initially drafted for filing along with the Pasco recommendation in March, however, Lake Cogen ownership questions arose which delayed its filing. In addition, staff decided a legal issue should be added and the recommendation was not filed until June 12, 1997. We voted to grant the petition on June 24, 1997. On July 15, 1997, before an order was issued, we voted to reconsider our decision at the August 18, 1997, agenda conference.

Except for the addition of a legal issue, the recommendation that was considered by us on June 24, 1997, was substantially the same as in the Pasco case and contained a primary and two alternate recommendations on the issue of whether to approve FPC's petition. According to the EAG and AFAD staff members who wrote all but the

legal issue, Ms. Wagner's role was limited. Ms. Wagner did not try to influence the substantive content of their recommendations, and staff did not observe any actions of Ms. Wagner that indicated she was biased for or against FPC.

Mr. Elias prepared the recommendation on the legal issue, and although Ms. Wagner had stated that she would file an alternative recommendation, she did not. Mr. Elias presented the legal issue at our June 24, 1997, agenda conference, although Ms. Wagner also participated to a limited extent. Ms. Wagner stated her opinion that pursuant to the 1995 order (Order No. PSC-95-0210-FOF-EQ), the Commission could only revisit an earlier cost recovery decision if the evidence showed there was fraud, misrepresentation, or mistake. According to staff members who worked on this and similar dockets, Ms. Wagner had voiced this opinion at least several months before the relationship with an FPC employee is alleged to have begun, and had held the opinion consistently.

Lake Interest Holdings, Inc., responded that it had no basis to believe that any information was biased and there is no reason for us to revisit our decision. Lake Cogen, Ltd., also responded that it had no reason to believe, and is unaware of, any bias in any information presented by Ms. Wagner, or that any key information was withheld. Lake Cogen noted that competing recommendations both for and against the approval of the Lake Cogen-FPC settlement agreement were fully discussed over a period of nearly two hours at the agenda conference. FPC's response, enclosing Judge Lacey's investigation report, is discussed under the Orlando Cogen docket. Vastar also sent one response for both this docket and the Pasco docket and its comments about Ms. Wagner's part in the denial of intervention are stated above.

Vastar's petition to intervene was denied by the prehearing officer on April 10, 1997, during the review period. The denial, however, is the same action taken on March 24, 1997--prior to the time period under review--on Vastar's petition to intervene in the similar Pasco docket, where Vastar's grounds for intervening were substantially the same. As in the Pasco docket, Vastar was not a party to the contract between FPC and Lake Cogen. OPC did not file a notice of intervention in this docket, but participated at the June 24, 1997, agenda conference. Its response is included in the discussion of the Orlando Cogen docket.

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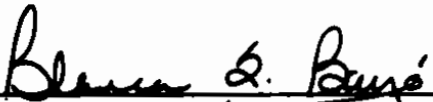
Based on this review, we conclude that there was not any bias in the information presented by staff to the Commission in the Lake docket.

Based on the foregoing, it is

ORDERED that there is no basis to conclude that there was any bias in the information presented by staff to the Commission in Dockets 961184-EQ, 961407-EQ, and 961477-EQ.

ORDERED that Docket No. 961407-EQ is closed. Docket Nos. 961477-EQ and 961184-EQ shall remain open.

By ORDER of the Florida Public Service Commission, this 22nd day of August, 1997.



BLANCA S. BAYÓ, 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 120.569(1), 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 25-22.0376, 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, 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.