

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of  
appropriate cost recovery  
amounts for the purchased power  
contract between Lake Cogen and  
Florida Power Corporation.

DOCKET NO. 991781-EI  
ORDER NO. PSC-01-2172-FOF-EI  
ISSUED: November 5, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER CLOSING DOCKET

BY THE COMMISSION:

Florida Power Corporation (FPC) and Lake Cogen Ltd. (Lake), a  
qualifying facility (QF), entered into a Negotiated Contract  
(Contract) on March 13, 1991. The term of the Contract is 20  
years, beginning July 1, 1993 when the facility began commercial  
operation, and expiring July 31, 2013. Committed capacity under  
the Contract is 110 megawatts, with capacity payments based on a  
1991 pulverized coal-fired avoided unit. The Contract was one of  
eight QF contracts which were originally approved for cost recovery  
by the Commission in Order No. 24734, issued July 1, 1991, in  
Docket No. 910401-EQ.

In 1994, FPC conducted an internal audit of its cogeneration  
contracts. FPC's modeling of the avoided unit indicated that  
during certain hours the avoided unit would be cycled off in FPC's  
dispatch. FPC adjusted its payments to Lake and other cogenerators  
to reflect these changes in the operation of the avoided unit.  
This reduced the total energy payment to Lake and ultimately led to  
a pricing dispute between FPC and Lake, and other cogenerators.

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FPSC-COMMISSION CLERK

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Lake subsequently filed for breach of contract in the Fifth Judicial Circuit Court in Lake County. Litigation has continued between the parties, with a trial in the Lake Circuit Court, and an appeal to the Fifth District Court of Appeal (DCA) in Daytona Beach.

In Docket No. 990001-EG, Florida Power Corporation (FPC) sought to recover, through the fuel and purchased power recovery clause, a payment made to Lake Cogen, Ltd. (Lake). This payment was made as a result of the Fifth Circuit Court's interpretation of the energy pricing provisions of FPC's cogeneration contract with Lake. The three-member panel of Commissioners stated in Order No. PSC-99-2512-FOF-EI, issued December 22, 1999:

We believe that FPC's request raises policy issues that would more appropriately be decided by the full Commission in a separate proceeding, rather than the three-Commissioner panel assigned to this proceeding. The full Commission previously considered the policy implications of related issues involving FPC and Lake Cogen, Ltd. in other dockets, and should consider the policy implications of this issue as well.

We note that the majority of these payments appear to be the type of costs that this Commission would routinely allow to be recovered through the fuel clause. We also note that these payments reflect a small percentage of FPC's total fuel costs. Therefore, pending resolution of this issue by the full Commission, we approve recovery of these payments as proposed through FPC's fuel cost recovery factors. If the full Commission determines that any portion of these payments should not be recovered through the fuel clause, that portion shall be subject to refund with interest.

The instant docket was thus opened to monitor the ongoing litigation and ultimately determine, if necessary, the appropriate amount to be recovered by FPC's ratepayers resulting from the litigation. To date, no Commission action has been taken.

In April 2001, the Fifth DCA ruled FPC was underpaying Lake and remanded the case back to the Fifth Circuit Court. As a result

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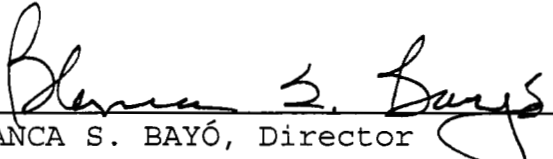
of that opinion, FPC made a \$20 million payment to Lake in September 2001. In Docket No. 010001-EI, FPC seeks recovery of the payment. The Fifth Circuit Court is expected to issue a final order consistent with the appellate court's decision prior to the November hearing in Docket No. 010001-EI.

The instant docket was opened by order of a three-Commissioner panel in Docket No. 990001-EI, in order for the full Commission to consider the appropriateness of payments made by FPC to Lake. In Docket No. 010001-EI, the full Commission will determine the appropriate fuel and purchased power recovery factors for FPC. It is therefore, appropriate and administratively efficient to also consider whether the payments made by FPC to Lake are appropriate. The purpose for which the instant docket was opened can be addressed in Docket No. 010001-EI, and the instant docket should be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of November, 2001.

  
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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 after the issuance 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.