BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Petition of AES Cedar Bay, Inc.) and Seminole Kraft Corporation for ) determination of need for the Cedar Bay) Cogeneration Project. ) | DOCKET NO. 881472-EQ |
| | ORDER NO. 20671 |
| | ISSUED: 1-30-89 |

ORDER DENYING IMPLEADER

On January 4, 1989, our Staff filed a motion to implead Florida Power and Light Company (FPL) as an indispensable party in this docket. The Staff based its request on its interpretation of the requirements of Section 403.519, Florida Statutes, and Rule 25-22.081, Florida Administrative Code. Responses in objection to Staff's motion were filed by FPL and AES Cedar Bay, Inc. (AES) on January 12, 1989. All parties were heard at an oral motion hearing on January 13, 1989 before Chairman and Prehearing Officer Wilson and a ruling was made at that time.

Section 403.519 lists specific items which "shall" be considered by the Commission in deciding the question of power plant need: "need for electric system reliability and integrity", "need for adequate electricity at a reasonable cost", "whether the proposed plant is the most cost-effective alternative available", "conservation measures . . . which might mitigate the need for the proposed plant" and "other matters within its jurisdiction which it deems relevant."

This language was intended to "flesh-out" the general language of Section 403.507(1)(b), Florida Statutes, which states, in part: "The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant. The report may include the comments of the commission with respect to any matters within its jurisdiction." It is clear from the language of Sections 403.507 and .519 that this Commission is free to consider other issues within its jurisdiction in reaching its decision on power plant need, but must consider the four issues specifically raised. The information required in Rule 25-22.081, Florida Administrative Code, is designed to enable this Commission to satisfy the statutory mandates of Sections 403.507 and .519.

The information required by Rule 25-22.081 can be divided into roughly two areas: information regarding the need of the petitioner for the proposed generating capacity1/ and information regarding the most cost-effective means of providing that need2/. In addition, the rule requests information on the impact of the proposed generating capacity on the electric utilities and other qualifying facilities connected to the statewide electric transmission and distribution grid.3/

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1/ Rule 25-22.081(3) and (6).

2/ Rule 25-22.081(2), (4) and (5).

3/ Rule 25-22.081(1).

A review of the materials submitted to the Commission by AES in support of its need determination petition indicates that AES does not have any independent need of its own. Other than the electricity needed to operate the QF, the entire output of the proposed qualifying facility will be sold to FPL under the terms of a negotiated contract pursuant to Rule 25-17.083, Florida Administrative Code. Thus, our Staff took the position that the purchaser of the electricity, FPL, had the need for the proposed capacity, if a need existed at all. Staff's interpretation would, therefore, require that FPL supply the information required by Rule 25-22.081(1), (3), (4), (5) and (6); that is, that FPL provide its historical and forecasted summer and winter peaks, number of customers, net energy for load, load factors, discuss the other alternatives available to it, and conservation measures which could be taken in order to avoid the construction of the unit. Since all of this information is within the sole possession of FPL, Staff instituted this proceeding in order to implead FPL as an indispensable party under Florida law.

Both AES and FPL objected to Staff's interpretation of Section 403.519's requirements. Both parties argue that the Commission should continue to follow the precedent set by this Commission in the previous seven qualifying facility (QF) need determination cases which have come before this body. In these cases the Commission has taken two tacts. The first is to make no findings on the issues of "need for adequate electricity at a reasonable cost" and "whether the plant is the most cost-effective alternative available." In re: Petition of Florida Crushed Stone Company for determination of need for a coal-fired cogeneration electrical power plant (Crushed Stone), 83 FPSC 2:107 (Order No. 11611, issued on February 14, 1983) and In re: Petition of Pasco County for determination of need for a solid waste-fired cogeneration power plant (Pasco County), 87 FPSC 6:281 (Order No. 17752, issued on June 26, 1987). The second is to find that qualifying facilities, by their very nature "will increase electrical system reliability and integrity and will maintain the supply of adequate electricity at a reasonable cost." Concomitant with this finding is the finding that when cogenerators are paid pursuant to, or at a cost less than, that of the currently approved standard offer contract, their qualifying facility is "the most cost effective alternative available." Additionally, construction of a qualifying facility is found to be a conservation measure "because it may mitigate the need for additional construction by electric utilities." In re: Petition by Hillsborough County for determination of need for a solid waste-fired cogeneration power plant, 83 FPSC 10:104, 105 (Order No. 12610, issued on October 14, 1983); In re: Petition by Pinellas County for determination of need for a solid waste-fired cogeneration power plant, 83 FPSC 10:106 (Order No. 12611, issued on October 14, 1983); In re: Petition by Broward County for determination of need for a solid waste-fired electrical power plant; 85 FPSC 5:67 (Order No. 14357, issued on May 9, 1985); In re: Petition of Palm Beach County Solid Waste Authority for determination of need for solid-waste-fired small power producing electric power plant, 85 FPSC 10:247 (Order No. 15280, issued on October 21, 1985); In re: Petition by Broward County for determination of need for a solid waste-fired electrical power plant, 86 FPSC 2:287 (Order No.

15723, issued on February 21, 1986). The bottom line of these decisions is that findings made in the Commission's planning hearing docket, where the price to be paid to cogenerators is set, are used as a surrogate for the statutory findings required by our rule and Section 403.519, Florida Statutes.

Our Staff does not deny that its current position is contrary to this line of cases, but argues that these cases should not continue to be followed for several reasons. First, unlike the plant proposed in Crushed Stone, AES has no independent need for the electricity its proposed unit will produce. Neither is this proposed plant a solid waste-fired facility like the remaining six plants which have come before this Commission. It can be argued that solid waste-fired plants have been legislatively found to be needed and cost-effective pursuant to the language of Section 377.709, Florida Statutes. AES is not proposing to build a solid waste-fired facility but a 225 MW fluidized bed coal plant.

Third, there is an essential mismatch between the prices paid to cogenerators under the statewide standard offer contract and the state's next avoided unit identified in the last planning hearing docket. This is so because the Commission has neither selected the first unit in the last approved avoided unit study as the basis for payment to cogenerators nor allocated the MW associated with the unit that it did select to each investor-owned utility. So that even if one were to assume that the Commission has already made the finding that the "need" is there, a contract based on the current standard offer does not match that need. Further, a contract based on that price will not necessarily result in the least cost/ most cost-effective alternative. Fourth, the assumption that only investor-owned utilities would be building large power plants simply is no longer true. Staff argues that cogenerated power should be treated as any other generating alternative proposed by an investor-owned utility. It is, after all, paid for by the ratepayers of these same investor-owned utilities. Further, if QF construction is "rubber stamped", Staff argues that the Commission has effectively lost the ability to regulate the construction of an increasingly significant amount of generating capacity built in the future by unregulated QFs.

Having reviewed all the pleadings filed in this case, we find that the motion to implead should be denied. This decision should not be interpreted to mean that the arguments raised by our Staff do not have merit. They do. However, the appropriate place to resolve these issues is in the planning dockets for Peninsular and Northwest Florida which will soon be before us. We expect that all parties involved in this docket will be prepared in that forum to address in some detail the nexus of the planning dockets and future need determinations for QFs as well as investor-owned electric power plants. We also expect that FPL will expeditiously provide AES with all information on electric system reliability and integrity needed to satisfy our rule, e.g., FPL system load flow diagrams, interconnection points, etc.

Therefore, it is

ORDERED by Chairman Michael McK. Wilson, Prehearing Officer, that the Motion of Staff to Implead Florida Power and Light Company as an Indispensable Party is hereby denied for the reasons stated in the body of this order.

BY Order of Chairman Michael McK. Wilson, Prehearing Officer, this 30th day of JANUARY 1989.

MICHAEL MCK. WILSON, Chairman and
Prehearing Officer

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