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FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

January 18, 1989

TO: STEVE TRIBBLE, DIRECTOR
DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BROWNLESS) JDW JWD. RCT
DIVISION OF ELECTRIC AND GAS (BALLINGER) TB

RE: DOCKET NO. 900004-EU - PLANNING HEARINGS ON LOAD FORECASTS, GENERATION EXPANSION PLANS, AND COGENERATION PRICES FOR PENINSULAR FLORIDA'S ELECTRIC UTILITIES.

AGENDA: JANUARY 30, 1990- CONTROVERSIAL - PAA -PARTIES MAY PARTICIPATE

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: With regard to the subscription limits established in Order No. 22341, how should standard offer and negotiated contracts for firm capacity and energy be prioritized to determine the current subscription level?

PRIMARY RECOMMENDATION (Ballinger): Initial priority should be given to all contracts based on the execution date or the last

signature date of the contract. Priority would not become final until Commission approval for cost recovery purposes. For standard offer contracts, the execution and approval date are one in the same. However, if a standard offer contract and a negotiated contract are executed on the same day, the negotiated contract, upon approval by the Commission, should take precedence over the standard offer contract.

SECONDARY RECOMMENDATION (Brownless): Due to the fact that under existing Rule 25-17.083(8), Florida Administrative Code, payments made pursuant to standard offer contracts are recoverable without further action by the Commission, standard offer contracts should "trump" negotiated contracts when both are executed on the same date. As found by the Commission in the last Planning Hearing docket (Issue 25), both standard offer and negotiated contracts count toward the subscription limit. The current rules do not envision more than one standard offer at a time, i.e., a standard offer for each year a unit is identified in the designated utility's least-cost generation expansion plan.

ISSUE 2: How should the utilities who are subject to the Commission designated subscription amounts notify the Commission on the status of capacity signed up against the

designated Statewide avoided unit?

RECOMMENDATION: Utilities who are subject to Commission designated subscription amounts should be required to submit to the Director of the Division of Electric and Gas an informal notice of contract execution within five (5) days of the contract execution date. This notice should include, at a minimum: the type of contract; the in-service year of the project; amount (MW) committed; contracting party or parties; and the amount (MW) remaining under the utility's current subscription level. Either the utility or the cogenerator can submit the notice of contract execution. If a notice of contract execution is not received within five (5) days, priority will then be based upon the date the notice is ultimately received. Filing of the contract should be within thirty (30) days of the date of the notice.

ISSUE 3: What happens when a utility reaches its own subscription limit for a particular unit?

RECOMMENDATION: When a utility reaches its allocated limit for the Commission approved statewide avoided unit, the utility should close out its current standard offer and provide a new standard offer based on the next approved statewide avoided unit. For example, when FPL subscribes 230 MW of the 1993

combined cycle unit, they would then offer a standard offer contract based on the Commission approved statewide avoided unit, a 1994 combined cycle unit. Likewise, when FPL subscribes 230.6 MW of the 1994 avoided unit, they would open a new standard offer contract based on the Commission approved 1995 statewide avoided unit.

ISSUE 4: Does the subscription limit prohibit any utility from negotiating, and the Commission subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility?

PRIMARY RECOMMENDATION (Ballinger): No. The subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, i.e., a 1993 combined cycle unit. Any contract outside of these boundaries should be evaluated on a utility's individual needs and costs, i.e, should be evaluated against the units identified in each utility's own generation expansion plan.

SECONDARY RECOMMENDATION (Brownless): Yes. Although the recommendation of Technical Staff has merit, the rules as currently written simply don't envision cogeneration contracts

that are not tied to the current statewide avoided unit.

ISSUE 5: Should a negotiated contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit be counted towards that utility's subscription limit?

PRIMARY RECOMMENDATION (Ballinger): No. The subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be evaluated against each utility's own avoided cost.

SECONDARY RECOMMENDATION (Brownless): No. Utilities should be prohibited from negotiating for units which are beyond the date of the statewide avoided unit. If, however, such units are contracted for, these contracts should be judged for cost recovery purposes against the avoided costs of the 1994 and 1995 avoided units approved by the Commission in Order No. 22341. After 1995, these contracts should be judged against the units identified in the FCG's 1989 Long Range Generation Expansion Plan.

BACKGROUND

In the last Planning Hearing, Docket No. 890004-EU, the issues of subscription and allocation were voted upon and approved by this Commission. Order No. 22341 at 20-23. The details of implementing the subscription and allocation limits, however, were left to be determined after a one day hearing which would address same. Order No. 22341 at 23. In an effort to avoid that hearing, all of the parties to the Planning Hearing docket and its companion docket, Docket No. 890004-EU-A, were invited to attend a meeting for discussion of these issues. The following is simply a synopsis of the results of that discussion.

Given the diversity of opinion which still exits among the utilities and the Staff, the Commission may be best served by setting this matter for hearing and not reaching the merits at this time. The other course of action is to issue a Proposed Agency Action Order and only hold a hearing if a substantially affected party protests that order. There are disadvantages to both procedures.

It would be difficult to secure a hearing date within the next six months. The tariffs associated with the 1993 avoided unit have already been filed. The utilities and cogenerators need to know how to implement their subscription limits since

that plays an important role in negotiations for cogeneration contracts. On the other hand, the Commission has just heard testimony on proposed rule changes to the rules which govern cogeneration pricing. Many of the allocation and subscription limit implementation issues discussed below will become moot if the rules are filed as currently written. Finally, FICA filed a timely motion for reconsideration of Order No. 22341 on January 10, 1990. In its motion, FICA argues against allocation of the subscription amount to individual utilities as well as the selection of a 1993 combined cycle unit as the statewide avoided unit. If the Commission is inclined to grant either of these points on reconsideration, it may be well to simply defer this matter until after the Commission rules on FICA's motion for reconsideration.

DISCUSSION

ISSUE 1: With regard to the subscription limits established in Order No. 22341, how should standard offer and negotiated contracts for firm capacity and energy be prioritized to determine the current subscription level?

PRIMARY RECOMMENDATION (Ballinger): Initial priority should be given to all contracts based on the execution date or the last signature date of the contract. Priority would not become final until Commission approval for cost recovery purposes.

For standard offer contracts, the execution and approval date are one in the same. However, if a standard offer contract and a negotiated contract are executed on the same day, the negotiated contract, upon approval by the Commission, should take precedence over the standard offer contract. The current rules do not envision more than one standard offer at a time, i.e., a standard offer for each year a unit is identified in the designated utility's least-cost generation expansion plan.

SECONDARY RECOMMENDATION (Brownless): Due to the fact that under existing Rule 25-17.083(8), Florida Administrative Code, payments made pursuant to standard offer contracts are recoverable without further action by the Commission, standard offer contracts should "trump" negotiated contracts when both are executed on the same date. As found by the Commission in the last Planning Hearing docket (Issue 25), both standard offer and negotiated contracts count toward the subscription limit. The current rules do not envision more than one standard offer at a time, i.e., a standard offer for each year a unit is identified in the designated utility's least-cost generation expansion plan.

POSITION OF PARTIES:

FPL, FPC: Negotiated contracts should "trump" standard offer contracts of the same execution date. There should be three

standard offer contracts based on the generation expansion plans of FPL, the utility which has been designated as the utility building the statewide avoided units in the years 1993, 1994 and 1995. These standard offer contracts would be available simultaneously and the cogenerator would be free to pick the one which most closely matched his project with regards to unit type and in-service date.

TECO: TECO agrees that negotiated contracts should take precedence over standard offer contracts of the same execution date. TECO, however, would have only one standard offer contract at a time. In the instant case, the standard offer would be limited to the 1993 combined cycle unit. When the 1993 unit is fully subscribed or closed-out due to the two year sign up limitation in the rule, the next year's avoided unit would become available as the standard offer.

STAFF ANALYSIS (PRIMARY): While there are many ways to prioritize the capacity signed up to defer the statewide avoided unit, both Technical and Legal Staff believe that the most equitable prioritization is execution date of the contract. In some instances, the contracts are not signed simultaneously by the parties but signed by one party and then tendered to the other party for signature. In such instances, the prioritization date would be the last signature date. This

initial prioritization would become a final prioritization upon approval by the Commission for cost recovery purposes. Since the standard offer contract is really a tariff offering, only the execution date is required for final prioritization.

Both Legal and Technical Staff believe that this method is the most reasonable since priority is based on the date that the two contracting parties agreed to the terms and conditions of the sales agreement. This is significant because a utility's generation expansion plans are constantly being updated as new data becomes available.

Further, Technical Staff contends that parties who have negotiated in good faith should be given priority over those who choose to sign the standard offer contract at the last minute. This helps to insure that a utility's ratepayers are buying power that they truly need and are not being required to purchase power based on parameters established in the last planning hearing which was held months or even years in the past. This aspect conforms to the Commission's encouragement of negotiated contracts and the "last resort" use of the standard offer contract. In addition, Technical Staff believes that if a negotiated and standard offer contract were executed on the same day, priority should be given to the negotiated contract. Technical Staff is of the opinion that this

implementation conforms with the Commission's existing rules which are intended to encourage negotiated contracts.

STAFF ANALYSIS (SECONDARY): As indicated above, Legal agrees that the execution date is the most equitable means of establishing priority among all types of contracts. The filing date is often delayed due to considerations which do not affect the Commission and which may be out of the parties' control to some extent. Further, Legal agrees that both negotiated contracts and standard offer contracts should be counted toward the subscription limit of the utility executing the contract. Legal takes issue with Technical however, on the point that negotiated contracts of the same execution date should "trump" standard offer contracts.

With regards to giving precedence to standard offer over negotiated contracts, standard offer contracts are automatically approved for cost recovery on the date executed by operation of Rule 25-17.083(8). Therefore, a standard offer will always take precedence over a negotiated contract of the same date. The only way a standard offer contract will be refused for cost recovery is if the subscription limit has been met. In that instance, by operation of Order No. 22341, the standard offer contract is no longer valid.

The method for prioritizing contracts should take into

account the legal concept of permanent offer. The standard offer contract which is currently in place is the legal equivalent of a price tag. If the cogenerator is willing to live with the terms, he is entitled to receive payment for his energy and capacity at the Commission-approved price on the date he executes the standard offer if he has a valid interconnection agreement and has provided the appropriate security when early capacity payments are involved. Likewise, the utility is entitled to recover those payments from its general body of ratepayers through the fuel adjustment clause without further action by the Commission.

I agree that all contracts should be prioritized based on the execution date of the contract with the approval date making that date final for purposes of computing the subscription limit. Further, I also agree that standard offer contracts are automatically approved by the operation of our rule on the date that they are executed. That leads me inexoribly to the conclusion that a standard offer will always trump a negotiated contract of the same date. This is so since the standard offer has already been approved while the negotiated contract cannot be approved until the Commission votes at some future agenda conference.

There is no doubt that this construction favors standard

offer contracts over negotiated contracts in the race to fill subscription limits. There is also no doubt that this approach is contrary to the idea expressed in the rules, and often repeated in Commission orders, that negotiated contracts are to be encouraged because they can be more closely honed to the needs of the purchasing utility, i.e., its own avoided cost. It is, however, entirely consistent with the concept of a statewide price based on a statewide avoided unit.

The whole concept of a statewide standard offer contract with one statewide price is premised on the policy decision that that price is the proper price to pay for cogenerated power anywhere in the state. Likewise, the terms and conditions in the standard offer have already been found to be fair, just and reasonable to both the purchasing utility and any cogenerator. Perhaps the time has come to change this policy, as the proposed cogeneration rules do. As of this date, however, the prioritization outlined here more closely tracks the existing policy statements made by this Commission in both rule and order.

With regard to having either more than one standard offer contract at any given time, Legal takes the position that the rules preclude that course of action. FPL has consistently made the argument, most recently in the last Planning Hearing,

that they should be allowed to offer sequential standard offer contracts geared to either the units identified in the designated utility's generation expansion plan or better yet, the units identified in FPL's own generation expansion plan. The Commission has just as consistently rejected that idea. Apparently the rationale followed by the Commission in rejecting this approach was the concern that simultaneous contracts would lower the likelihood that any one unit would actually be deferred. This concern has more validity when dealing with avoided units with in-service dates 7 or more years in the future, e.g., the 1992 or 1995 coal units previously selected as avoided units.

The problem raised by the utilities now is that with only three years left before the in-service date of the statewide avoided unit, many viable cogenerators simply cannot get their plants on line by that date. If utilities are made to wait until January 1, 1991 or until the subscription amount is filled up for 1993 units, the utilities believe that these cogenerators will fail to materialize because of the inability to obtain financing to go forward with the project. Financing of cogeneration projects is almost always contingent upon having a Commission-approved power sales agreement.

Although Legal agrees that the utilities have expressed a

real concern, unfortunately the language of the current rule, Rule 25-17.083, Florida Administrative Code, is couched in terms of one standard offer contract based upon one statewide avoided unit. In conformance with that reading of the rule, previous orders implementing the cogeneration rules have only had one standard offer associated with one statewide avoided unit. The last Planning Hearing order, Order No. 17480, also kept the standard offer contract open until fully subscribed and then closed that offer. This was the course of action followed by this Commission in August of last year when the 1995 coal unit was found to be fully subscribed. [Order No. 22061, issued on October 17, 1989.] For that reason, Legal recommends that only one standard offer contract be allowed at any given period and that that offer be kept open until fully subscribed or until January 1, 1991.

ISSUE 2: How should the utilities who are subject to the Commission designated subscription amounts notify the Commission on the status of capacity signed up against the designated Statewide avoided unit?

RECOMMENDATION: Utilities who are subject to Commission designated subscription amounts should be required to submit to the Director of the Division of Electric and Gas an informal

notice of contract execution within five (5) days of the contract execution date. This notice should include, at a minimum: the type of contract; the in-service year of the project; amount (MW) committed; contracting party or parties; and the amount (MW) remaining under the utility's current subscription level. Either the utility or the cogenerator can submit the notice of contract execution. If a notice of contract execution is not received within five (5) days, priority will then be based upon the date the notice is ultimately received. Filing of the contract should be within thirty (30) days of the date of the notice.

POSITION OF PARTIES:

FPL, FPC, TECO, FICA: All parties agree with this recommendation.

STAFF ANALYSIS: All parties have agreed that this approach is a reasonable way to track the status of the subscription amounts of the utilities involved. This up-front agreement of the parties should avoid complications with implementation in the future. This method should also serve to keep the Commission up to date on the status of cogeneration for a variety of uses.

ISSUE 3: What happens when a utility reaches its own

subscription limit for a particular unit?

RECOMMENDATION: When a utility reaches its allocated limit for the Commission approved statewide avoided unit, the utility should close out its current standard offer and provide a new standard offer based on the next approved statewide avoided unit. For example, when FPL subscribes 230 MW of the 1993 combined cycle unit, they would then offer a standard offer contract based on the Commission approved statewide avoided unit, a 1994 combined cycle unit. Likewise, when FPL subscribes 230.6 MW of the 1994 avoided unit, they would open a new standard offer contract based on the Commission approved 1995 statewide avoided unit.

STAFF ANALYSIS: This is the methodology approved by the Commission in Order No. 22341. Each utility would be required to petition the Commission for closure of its existing standard offer contract and associated tariff. This methodology is also consistent with the action which the Commission just took in closing out the 1995 avoided coal unit.

ISSUE 4: Does the subscription limit prohibit any utility from negotiating, and the Commission subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility?

PRIMARY RECOMMENDATION (Ballinger): No. The subscription

limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, i.e., a 1993 combined cycle unit. Any contract outside of these boundaries should be evaluated on a utility's individual needs and costs, i.e, should be evaluated against the units identified in each utility's own generation expansion plan.

SECONDARY RECOMMENDATION (Brownless): Yes. Although the recommendation of Technical Staff has merit, the rules as currently written simply don't envision cogeneration contracts that are not tied to the current statewide avoided unit.

POSITION OF PARTIES:

FPC, FPL, TECO, FICA: Agree with Technical Staff.

STAFF ANALYSIS (PRIMARY): The Commission's current rules never envisioned the concept of a subscription limit or cap being placed on the purchase of capacity and energy from qualifying facilities. The purpose of a subscription limit is an attempt to maintain the amount of cogeneration to a level that is needed from a statewide perspective. Because our current rules and the subscription limit requirement are based on a statewide avoided unit, which doesn't always match an individual utility's needs, any contract outside of these boundaries

should be evaluated based on the utility's own needs and costs just like any other wholesale purchase power agreement.

In the recent past, the Commission has been forced by our current rules to approve some cogeneration contracts that were shown to be above the purchasing utility's own avoided cost. The subscription limit and allocation requirements were developed to limit this mismatch between statewide and individual pricing, not to impede the development of cogeneration in this state. Prohibiting utilities from negotiating contracts outside of these limitations would frustrate the Commission's cogeneration policy and the new FEECA statutory requirement to encourage cogeneration. A utility should be allowed to purchase as much cogeneration as it needs as long as it is shown to be cost-effective to its own ratepayers.

It is not Technical Staff's intention to inhibit the development of cogeneration and that is why we are recommending that the subscription limit be applied only to contracts negotiated against the current statewide avoided unit. Neither allocation nor subscription is mentioned in our current rules. Since the existing cogeneration rules do not refer to either of these concepts, it is our opinion that they should not be interpreted to prohibit this implementation of these concepts.

The benefits of allowing utilities to negotiate contracts outside of these boundaries are twofold. First, the ratepayers are protected from the statewide/individual utility need mismatch. Second, utilities are permitted and encouraged to pursue cost-effective cogeneration that meets their specific needs.

For these reasons, Technical Staff recommends that the approved subscription amounts be applied only to standard offer contracts and contracts negotiated against the designated statewide avoided unit. All other negotiated contracts should be approved if less than or equal to the purchasing utility's own avoided cost.

STAFF ANALYSIS (SECONDARY): What Technical Staff is attempting to do through this implementation order is to achieve individual utility cogeneration pricing without the benefit of a rule hearing. The existing cogeneration pricing rule, Rule 25-17.083, Florida Administrative Code, clearly envisions one statewide avoided unit from which a standard offer would be developed and against which negotiated contracts would be measured for reasonableness. Rule 25-17.083(2), Florida Administrative Code, states that a negotiated contract will be considered prudent for cost recovery purposes if the contract:

a. can be reasonably expected to defer the construction of additional capacity "from a statewide perspective";

b. has a cumulative present worth revenue requirement over the term of the contract less than or equal to that of the value of a year-by-year deferral of the statewide avoided unit over the term of the contract; and

c. where there are early capacity payments, has adequate security or equivalent assurance of performance by the cogenerator.

Perhaps unwisely the rule limits Commission approval of negotiated contracts to these criteria. Just as the rule does not envision more than one avoided unit and/or more than one standard offer contract at a time, the rule is also statewide in perspective. The language of the rule is "statewide avoided unit" not "individual utility avoided unit". Even if one were to accept the argument that subscription and allocation should not apply to contracts negotiated for cogeneration capacity with in-service dates other than the in-service date of the statewide avoided unit, the contracts should be judged against the units identified in the FCG's avoided unit study, not each individual utility's generation expansion plan. The FCG's

avoided unit study is a statewide generation expansion plan. And one thing is clear, that this Commission has consistently rejected the efforts of the utilities to set cogeneration prices on individual utility avoided costs.

For these reasons, Legal recommends that utilities be limited in their negotiations to capacity with in-service dates which are the same as the current statewide avoided unit. In that case, all contracts would count against a utility's subscription and allocation limits. This interpretation most closely comports with the current cogeneration pricing rule.

ISSUE 5: Should a negotiated contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit be counted towards that utility's subscription limit?

PRIMARY RECOMMENDATION (Ballinger): No. The subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be evaluated against each utility's own avoided cost.

SECONDARY RECOMMENDATION (Brownless): No. Utilities should be prohibited from negotiating for units which are beyond the date

of the statewide avoided unit. If, however, such units are contracted for, these contracts should be judged for cost recovery purposes against the avoided costs of the 1994 and 1995 avoided units approved by the Commission in Order No. 22341. After 1995, these contracts should be judged against the units identified in the FCG's 1989 Long Range Generation Expansion Plan.

POSITION OF PARTIES:

FPC, FPL, TECO, FICA: Agree with Primary Staff Recommendation.

STAFF ANALYSIS (PRIMARY): As discussed in Technical Staff's analysis for Issue 2, a contract that is outside the boundaries of the statewide avoided unit should be evaluated against the purchasing utility's own needs and avoided costs. Clearly, a project that has an in-service date that is later than the in-service date of the statewide avoided unit cannot defer that unit. However, an individual utility may have a need of its own and should pursue cogeneration where cost-effective to its ratepayers.

Based on the above, Technical Staff would recommend that a contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit would be beyond the scope of our existing rules and should be evaluated based on the purchasing utility's own needs and

avoided costs.

STAFF ANALYSIS (SECONDARY): As discussed above in Issue 2, utilities should be prohibited from negotiating for units which are beyond the date of the statewide avoided unit. If, however, such units are contracted for, these contracts should be judged for cost recovery purposes against the avoided costs approved by the Commission in Order No. 22341. After 1995, these contracts should be judged against the units identified in the FCG's 1989 Long Range Generation Expansion Plan.

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