

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Planning hearing on load fore-) DOCKET NO. 900004-EU
casts, generation expansion plans,)
and cogeneration prices for Peninsular) FILED: August 13, 1990
Florida's electric utilities.)
_____)

Motion for Clarification
of Order No. 23235

The AES Corporation (AES) hereby moves the Commission to enter an order clarifying Order No. 23235, issued on July 23, 1990, and as grounds therefore state:

1. Order No. 23235 states:

The first issue raised is: How should standard offer contracts and negotiated contracts for the purchase of firm capacity and energy be prioritized to determine the current subscription level? Essentially, all contracts should be prioritized according to the execution date of the contract. With regard to standard offer contracts, the execution date is the date on which the cogenerator signs the standard offer and tenders it to the utility.

The fourth issue is: Does the subscription limit prohibit any utility from negotiating, and the Commission from subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility? We find that the subscription limit approved by Order No. 22341 and the current criteria of Rule 25-17.083(2), Florida Administrative Code, for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, a 1996 coal unit. Any negotiated contract with an in-service date later than 1996 should be evaluated against a utility's individual needs and costs, i.e., evaluated against the units identified in each utility's own generation expansion plan.

The fifth issue is: 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? As

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discussed above, we find that 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 judged against each utility's own avoided cost.

Order No. 23235 at 1-3. [Emphasis added.]

2. These issues were intended to address the prioritization of contracts which are counted against the subscription limit for the standard offer and each individual utility's allocation of that subscription limit. Implicit in Issue 1 is the question of whether negotiated contracts with in-service dates other than that of the statewide avoided unit are to be counted toward the avoided unit subscription limit. This core issue was discussed with the Commissioners at the May 25 agenda conference with the Technical and Legal Staff taking differing positions.

3. The Technical Staff advocated only applying contracts to the subscription limit which had the same in-service date as that of the statewide avoided unit. For contracts negotiated with in-service dates either before or after that of the statewide avoided unit, Technical Staff advocated measuring their cost-effectiveness against the units identified in the purchasing utility's generation expansion plan. In essence, what the Technical Staff advocated was a two track plan: standard offer contracts and standard offer prices available for the statewide avoided unit in-service year and negotiated contracts available for every other year identified in FPC's, FPL's or TECO's generation expansion plans measured for cost-recovery purposes against the avoided cost of the purchasing utility.

This whole scheme is premised on Technical Staff's opinion that contracts for other than the in-service year of the statewide avoided unit are permitted under existing Rule 25-17.083, Florida Administrative Code. [T. 59-61, 66; January 18, 1990 Staff Recommendation at 18-20 (Attachment A)]

That this was Technical's position at the agenda is clear from the following exchange between Tom Ballinger of the Electric and Gas Section and Commissioner Wilson:

Mr. Ballinger: My recommendation is that subscription only applies to the year that you have a standard offer contract, designated '96 coal unit. Both negotiated and standard offer

contracts that have a '96 in-service date, capacity payments starting in '96 for the projects, would count toward the subscription limit.

If somebody negotiated a contract for a '93 in-service date, something like that, no subscription limit.

So that's why I feel it should only apply to the year when you have a standard offer contract. Both negotiated and standard offer should apply, but only in that year.

Chairman Wilson: All right. So if a utility, even though the subscription limit may be close to being filled or be filled for 19__, in this case we are talking about 1996. That if a utility signs a contract with a '93, '94, '95 in-service date, we would judge whatever the utility has signed based on a prudent standard, whether they needed the power, or whether they elected to defer, whether it was cost effective, whether it was prudent, and all of that.

Mr. Ballinger: That's right.

[T. 59-61]

4. The Legal Staff took the position that contracts could only be negotiated against the standard offer contract. Thus, cogenerators could not enter into contracts for units with in-service dates other than that of the statewide avoided unit, i.e., could not sign contracts with in-service dates of 1994, 1995, 1998 etc. [T. 61-62] Legal's reasoning was based on the fact that current Rule 25-17.083, Florida Administrative Code, provides that both standard offer and negotiated contracts are to be measured for cost-effectiveness against the present worth revenue requirements of the statewide avoided unit. The rule has no provision for measuring cost-effectiveness against individual utility revenue requirements. [January 18, 1990 Staff Recommendation at 20-22 (Attachment B)]

5. With regards to Issue 1, the Commission voted to adopt the secondary recommendation (Legal's). [T. 67] With regards to Issue 4, the Commission voted to adopt unmodified the primary recommendation (Technical's). [T. 76-77]. The Commission also

voted to approve, unmodified, the primary recommendation (Technical's) on Issue 5. [T. 77].

6. In order to make sense of these votes, they must be considered together and take into account the Staff Recommendation which the Commission had before it. The vote sheet for Item 4 states: "Primary Recommendation: 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."

Consistent with the vote sheet, the discussion in the primary Staff recommendation states: "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." [January 18, 1990 Staff Recommendation at 20].

7. The vote sheet for Item 5 tracks the language of the order, however it does not match the Staff Recommendation which states: "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." [January 18, 1990 Staff Recommendation at 23-24].

8. When all of these facts are considered, it is clear that the Commission voted to apply standard offer contracts and negotiated contracts with the same in-service date as that of the statewide avoided unit to the subscription limit. The Commission also voted to measure the cost-effectiveness of those contracts against the net present value of the year-by-year deferral of the statewide avoided unit for the term of the negotiated contract.

9. For negotiated contracts which have in-service dates either before or after that of the statewide avoided unit, the Commission voted not to apply them toward the subscription limit for the statewide avoided unit. Further, the Commission voted to measure their cost-effectiveness against the net present value of the year-by-year deferral of units identified in the purchasing utility's generation expansion plan.

10. If Order No. 23235 stands as currently written, Florida

utilities will not be able to negotiate contracts with cogenerators with in-service dates prior to 1996 and use their own avoided unit(s) as the measure of cost-effectiveness. Approximately 1900 MW of cogenerated power "has been signed up" against the 1996 500 MW statewide avoided unit. Thus, the practical effect of this order as currently written is to bring negotiations for cogeneration facilities with pre-1996 in-service dates to a standstill. In light of the individual utilities' demonstrated need for capacity in this time period, the discouragement of negotiated cogeneration contracts does not serve the best interests of cogenerators, electric utilities or the state's ratepayers.

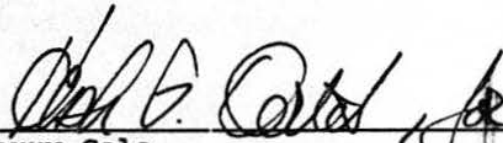
Wherefore, AES respectfully requests that the language of Order No. 23235 be clarified as follows:

a. Issue 1, page 1 - "Essentially, all contracts with the same in-service date as that of the statewide avoided unit identified in the standard offer should be prioritized according to the execution date of the contract."

b. Issue 4, page 3 - "Any negotiated contract with an in-service date other than 1996 should be evaluated against a utility's individual needs and costs, i.e., evaluated against the units identified in each utility's own generation expansion plan."

c. Issue 5, page 3 - "As discussed above, we find that the subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to contracts with the same in-service date as the statewide avoided unit."

Respectfully submitted,



Terry Cole
Oertel, Hoffman, Fernandez & Cole
2700 Blair Stone Road
Suite C
Tallahassee, Florida 32301
(904)-877-0099

Attorney for the AES Corporation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the MOTION FOR CLARIFICATION OF ORDER NO. 23235 by Terry Cole on Behalf of The AES Corporation has been furnished by hand delivery to Michael Palecki, Florida Public Service Commission, Division of Legal Services, 101 East Gaines Street, Tallahassee, Florida 32399 and by U.S. Mail to the following on this 13 day of August, 1990.

James D. Beasley
Ausley, McMullen, McGehee
Carothers and Procter
Post Office Box 391
Tallahassee, Florida 32302

Susan Clark, Gen. Counsel
Division of Appeals
Florida Public Service
Commission
101 East Gaines Street
Tallahassee, Florida 32399

Stephen C. Burgess
Deputy Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Claude Pepper Bldg., Room 812
Tallahassee, Florida 32399

Matthew M. Childs
Steel, Hector & Davis
215 S. Monroe Street
First Florida Bank Building
Suite 601
Tallahassee, Florida 32301-1804

Gail P. Fels
Assistant County Attorney
Metro-Dade Center
111 N.W. First Street
Suite 2810
Miami, Florida 33128

James P. Fama
Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733

Mike Peacock
Florida Public Utilities
Post Office Box 610
Marianna, Florida 32446

Paul Sexton
Richard Zambo, P.A.
211 S. Gadsden Street
Tallahassee, Florida 32301

Ann Carlin
Gainesville Regional
Post Office Box 490, Suite 52
Gainesville, Fl 32602

Edison Holland, Jr.
Beggs and Lane
Post Office Box 12950
Pensacola, Florida 32576

William J. Peebles
Frederick M. Bryant
Moore, Williams & Bryant
Post Office Box 1169
Tallahassee, Florida 32302

Richard D. Melson
Hopping, Boyd, Green & Sams
Post Office Box 6526
Tallahassee, Florida 32314

Florida Keys Electric Coop.
E.M. Grant
Post Office Box 377
Tavernier, Florida 33070

Edward C. Tannen
1300 City Hall
Jacksonville, Florida 32202

City of Chattahoochee
Attn: Superintendent
115 Lincoln Drive
Chattahoochee, Florida 32324

Susan Delegal
115 S. Andrew Avenue, Rm. 406
Ft. Lauderdale, Fl 33301

Quincy Municipal Electric
Post Office Box 941
Quincy, Fl 32351

Barney L. Capehart
601 N.W. 35th Way
Gainesville, Fl 32605

Cogeneration Program Manager
Governor's Energy Office
301 Bryant Building
Tallahassee, Fl 32301

John Blackburn
Post Office Box 405
Maitland, Fl 32751

C. M. Naeve
Shaheda Sultan
Skadden, Arps, Slate, Meagher
& Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

Ray Maxwell
Reedy Creek Utilities Co.
Post Office Box 40
Lake Buena Vista, Florida 32830

Roy Young
Young, Van Assenderp,
Varnadoe & Benton
Post Office Box 1833
Tallahassee, Florida 32302-1833

Department of Energy
Southeast Power Adm.
Attn: Lee Rampey
Elberton, Ga 30635

Florida Rural Electric Coop.
Post Office Box 590
Tallahassee, Fl 32302

Alabama Electric Coop.
Post Office Box 550
Andalusia, AL 37320

Gene Tipps
Seminole Electric Coop.
Post Office Box 272000
Tampa, Fl 33688-2000

Terry O. Brackett
1899 L Street, N.W.
Washington, D.C. 20036

Patrick K. Wiggins
Wiggins and Villacorta
501 East Tennessee Street
Suite B
Tallahassee, Fl 32308

Bruce May
Holland and Knight
Post Office Drawer 810
Tallahassee, Fl 32302


Terry Cole