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August 14, 1990

**ORIGINAL
FILE COPY**

Mr. Steve Tribble, Director
Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

RE: ~~Docket No. 900004-EU~~ - Planning hearing on load forecasts, generation expansion plans, and cogeneration prices for Peninsular Florida's electric utilities.

Dear Mr. Tribble:

Enclosed are the original and 12 copies of Attachments A and B which were inadvertently omitted from the AES Corporation's Motion for Clarification of Order No. 23235 made yesterday in the above docket.

Sincerely,

Terry Cole
Terry Cole

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG
- LEG c:0069
- LIN 6
- OPC _____
- RCH _____
- SEC 1
- WAS _____

OTH RECEIVED & FILED

EPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07337 AUG 14 1990

EPSC-RECORDS/REPORTING

1 offer contracts be counted against what has now been
2 approved as the 500 megawatt 1996 subscription limit.

3 COMMISSIONER GUNTER: I thought their
4 recommendation was, correct me if I'm wrong, I thought
5 the staff's recommendation in this, and I don't have
6 that recommendation with it, the only differentiation
7 between the standard offer and negotiated was who got
8 slipped in.

9 MS. BROWNLESS: No, that's mine.

10 COMMISSIONER GUNTER: Into the pie. Was that
11 yours?

12 MS. BROWNLESS: That was my side.

13 MR. BALLINGER: There are two parts.

14 CHAIRMAN WILSON: There is both. Yours says that
15 if you had them signed on the same day, the negotiated
16 contract would take precedent over the standard offer.

17 MR. BALLINGER: Correct.

18 MS. BROWNLESS: Yes, and mine is --

19 MR. BALLINGER: And the second part of that is --
20 Ms. Brownless is a little incorrect on what we are
21 saying that subscription is only to standard offers.

22 My recommendation is that subscription only applies to
23 the year that you have a standard offer contract,
24 designated a '96 coal unit. Both negotiated and
25 standard offer contracts that have a '96 in-service

GOMIA AND ASSOCIATES

DOCUMENT NUMBER-DATE

07337 AUG 14 1990

FPSC-RECORDS/REPORTING

1 date, capacity payments starting in '96 for the
2 projects, would count toward the subscription limit.

3 If somebody negotiates a contract for a '93 in-
4 service date, something like that, no subscription
5 limit. To me subscription limit was an outgrowth of
6 our rules. It was in addition to our rules. It wasn't
7 ever contemplated in our rules.

8 We need to set the way these are going to be
9 implemented. To me they should only apply to the
10 standard offer contracts because they were first
11 applied to keep from having too much cogeneration
12 signed, and the only way that you may have too much
13 cogeneration signed is if you've got the standard offer
14 that is a free sign on the line you get it.

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

19 CHAIRMAN WILSON: All right. So if a utility,
20 even though the subscription limit may be close to
21 being filled or be filled for 19--, in this case we are
22 talking about 1996.

23 MS. BROWNLESS: Uh-huh.

24 CHAIRMAN WILSON: That if a utility signs a
25 contract with a '93, '94, '95 in-service date, we would

1 judge whatever the utility has signed based on a
2 prudent standard, whether they needed the power, or
3 whether they elected to defer, whether it was cost
4 effective, whether it was prudent, and all of that.

5 MR. BALLINGER: That's right.

6 MS. BROWNLESS: Essentially I think staff is
7 suggesting that the standard, the standard for a 1996
8 unit would be ~~is~~ are the payments less than or equal
9 to the standard offer contract. In other words a '96
10 coal unit. As long as the payments were equal to or
11 less than that we would approve that negotiated
12 contract. But for contracts in years other than 1996
13 you would apply the purchasing utility's own avoided
14 cost for that particular year, and that would be the
15 price that determined whether or not it was prudent.

16 And I would suggest to you that your current rules
17 don't allow you to do that. 17.083 has three criteria,
18 and the criteria that you judge by is the standard
19 offer statewide avoided unit.

20 So I don't see how you can, I don't see how you
21 can implement Mr. Ballinger's plan.

22 MR. BALLINGER: I would still judge pricing --

23 CHAIRMAN WILSON: Can we implement in it two hours
24 after we finish changing the rules?

25 MS. BROWNLESS: Well, it depends on how you change

1 CHAIRMAN WILSON: So is the only difference
2 between the two of you is whether the negotiated or the
3 standard offer contract takes priority?

4 MR. BALLINGER: That and whether or not you can
5 negotiate outside of the year of the standard offer
6 contract.

7 MS. BROWNLESS: That is a different issue.

8 CHAIRMAN WILSON: That is another issue.

9 MR. BALLINGER: No, this issue, that's right.

10 CHAIRMAN WILSON: Okay. This issue, the only
11 difference between you is who trumps who.

12 MS. BROWNLESS: Who trumps.

13 MR. BALLINGER: Yes. I can give you my rationale
14 as to why. The subscription limit came about after our
15 rules were written. Our rules never envisioned it.
16 It's a new accessory to our rules. I don't think we
17 should be totally bound to strict interpretation of the
18 rules when implementing subscription.

19 I am trying to do something that is in the intent
20 of the rules to encourage negotiated contracts and at
21 the same time don't hinder precedent or the purpose of
22 a standard offer. I think the Commission's intent has
23 been expressed on and on that we would rather have
24 negotiated contracts. I think in that instance since
25 subscription is a new animal we need to put both of

1 them on a fair shake and which one would you prefer.

2 MS. BROWNLESS: But we both agree that the
3 execution date of the contract is the date that should
4 prioritize.

5 MR. BALLINGER: So you are talking about a very
6 small what if.

7 MS. BROWNLESS: And that is the date the last
8 person has to sign signs.

9 COMMISSIONER EASLEY: The only, you know, when
10 it's flip a coin, I tend to want to come down on the
11 legal side.

12 COMMISSIONER BEARD: I'm going to move the
13 secondary recommendation for the rule as it currently
14 exists, which hopefully in the near term future will,
15 because of that, same thing, in an abundance of
16 caution.

17 COMMISSIONER EASLEY: It really doesn't have
18 anything to do with the preference of the contracts. I
19 am now down to a legal argument.

20 CHAIRMAN WILSON: This is assuming that you don't
21 have two contracts that come in that actually are not
22 only date stamped but time stamped as well, when they
23 are signed?

24 MS. BROWNLESS: Yeah. Because we would consider
25 that to be prior execution.

1 CHAIRMAN WILSON: Okay. Fine.

2 Issue 2.

3 COMMISSIONER BEARD: Issue 2 is basically moot.

4 CHAIRMAN WILSON: We can do that consistent with
5 what we did in the rule, which is notify within 24
6 hours and provide the contract within 10 days.

7 MS. BROWNLESS: Yeah, we, what we did when we
8 were talking to the parties, we worked out a very
9 detailed method by which they would give us notice
10 within so many days, and file the contracts within so
11 many days. Everybody has agreed to that. Every
12 utility in the State has agreed to that. Every
13 cogenerator that came to these meetings has agreed to
14 it.

15 CHAIRMAN WILSON: The five days?

16 MS. BROWNLESS: Whatever we have got down here is
17 what everybody agreed to.

18 MR. BALLINGER: Yes.

19 CHAIRMAN WILSON: Okay, that is fine with me.
20 We'll leave it the way everybody has agreed to it. And
21 if we want to change it in the rule, we will change in
22 it the rule.

23 MR. BALLINGER: The rule will be prospective.

24 MS. BROWNLESS: This is what we will do until
25 there is a rule change.

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

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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:

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- 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