

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition not to Accept) DOCKET NO. 940193-EQ
Standard Offer Contract of) ORDER NO. PSC-94-0488-FOF-EQ
Polsky Energy Corporation, by) ISSUED: April 25, 1994
Tampa Electric Company)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION NOT TO ACCEPT STANDARD
OFFER CONTRACT SUBMITTED BY POLSKY ENERGY CORPORATION TO
TAMPA ELECTRIC COMPANY

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Pursuant to Rules 25-17.0832 (3) (c)&(d), Florida Administrative Code, Tampa Electric Company (TECO) has petitioned the Commission to allow TECO to not accept the Standard Offer Contracts presented to TECO by Polsky Energy Corporation (PEC) on January 28, 1994. On December 20, 1993 TECO filed with the Commission a Petition to Close Standard Offer Contract which was assigned Docket Number 931218-EQ. On January 26, 1994 TECO filed a petition for Approval of Standard Offer Contract for Cogenerators and Small Power Producers which was assigned Docket Number 940094-EQ. The "replacement" standard offer contract delays the in-service date of TECO's next avoided unit by two years. Commission consideration of these two petitions is pending.

TECO, in its Petition to not accept the Standard Offer Contract, alleged that the PEC proposal should really be considered a request for a negotiated contract. PEC made changes to the Standard Offer Contract as follows: At paragraph 2.0 (page 8.346)

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they changed the minimum Monthly Availability Factor (MAF) from 90% to 80%; at paragraph 2.4 (page 8.347) they changed the MAF from 90% to 80%; at paragraph 3.0 (page 8.348) they changed the MAF from 90% to 80%; at paragraphs 4.2.4.1 COMPLETION SECURITY, 4.2.4.2 PERFORMANCE SECURITY, and 4.2.4.3 LIQUIDATED DAMAGES (pages 8.400, 8.410 and 8.411) they crossed out the entire paragraphs.

In accord with Rule 25-17.0832(3)(c), Florida Administrative Code, a Standard Offer Contract is to be used in lieu of an negotiated contract. Like any unilateral contract, no changes can be made to a Standard Offer Contract without the consent of the utility. Any changes to the Standard Offer Contract would necessitate negotiation which would negate the use of the Standard Offer Contract.

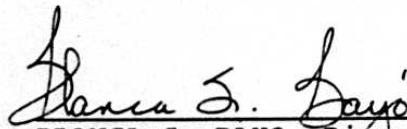
Therefore we find that Tampa Electric Company's (TECO) petition to not accept the Standard Offer Contract by Polsky Energy Corporation (PEC) should be granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's (TECO) petition to not accept the Standard Offer Contract by Polsky Energy Corporation (PEC) shall be granted. It is further

ORDERED that if there is no protest to this proposed agency action within the time frame set forth below, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 25th day of April, 1994.



BLANCA S. BAYO, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 16, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.