BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for Approval of Standard Offer Contracts of FLORIDA POWER CORPORATION and AUBURNDALE POWER PARTNERS, LIMITED PARTNERSHIP	DOCKET NO. 940819-EQ ORDER NO. PSC-94-1306-FOF-EQ ISSUED: October 24, 1994

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING CONTRACT MODIFICATIONS

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 a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

By Order No. 21947, issued September 27, 1989, we approved a standard offer contract between Florida Power Corporation (FPC) and the Sun Bank of Tampa Bay (Sun Bank) for 8.5 MW of capacity generated by a wood waste burning cogeneration unit in Jefferson County. In Order No. 21948, a companion order issued that same date, we approved a standard offer contract between FPC and Sun Bank for 7.969 MW of capacity generated by a similar unit in Madison County.

Both standard offer contracts contained provisions that permitted assignment of the contracts with FPC's prior written approval, and in fact Sun Bank had already assigned both standard offer contracts to LFC Corporation (LFC) on April 14, 1989. Both standard offer contracts also contemplated a one-time adjustment of

committed capacity; and on December 18, 1992, LFC increased the committed capacity for the Madison facility from 7.969 MW to 8.5 MW. The combined committed capacity of the facilities is now 17 MW. The facilities have been operational since 1990.

The standard offer contracts were assigned again by LFC to Auburndale Power Partners, Limited Partnership (Auburndale) in a "Consent and Agreement" (Consent), executed by LFC, FPC and Auburndale on April 18, 1994. By the terms of the Consent, Auburndale would generate the firm capacity and energy committed by LFC's standard offer contracts from Auburndale's own existing 150 MW natural gas fired cogeneration facility in Polk County, not from LFC's existing wood waste burning cogeneration facilities in Madison and Jefferson Counties. Auburndale already plans to sell 114 MW of firm capacity to FPC pursuant to a negotiated contract that we approved in Order No. 24634, Docket No. 910401-EQ, issued July 1, 1991. The Consent also provided that FPC could curtail energy purchases from Auburndale under certain circumstances. If the Consent is approved, LFC plans to discontinue operations at the Madison and Jefferson County facilities.

On August 5, 1994, Auburndale and FPC filed this Joint Petition for Expedited Approval of Contract Modifications. In the joint petition the parties have asked us to confirm that the standard offer contracts as modified continue to qualify for cost recovery and are not subject to the provisions of the Commission's current Rule 25-17.0832(3)(a), which limits the availability of Standard Offer Contracts to Qualified Cogeneration Facilities (QF) under 75 MW. The modifications in question include: LFC's assignment of the standard offer contracts to Auburndale; a change in location and facilities from LFC's plants in Madison and Jefferson counties to Auburndale's natural gas fired plant in Auburndale; and, curtailment provisions that permit FPC to reduce energy purchases from Auburndale during certain periods when FPC's load is reduced.

At our September 20, 1994 Agenda Conference we addressed four substantive issues raised by the joint petition:

1) Is LFC's assignment of its standard offer contracts with Florida Power Corporation to Auburndale Power Partners contemplated by the terms of those contracts?

2) Is the change in location from the existing LFC facilities in Madison and Jefferson counties to the Auburndale facility in Polk county, Florida contemplated pursuant to the original standard offer contracts?

3) Are the agreed upon "Off-Peak Curtailment Periods" as defined in the Consent and Agreement between Auburndale, FPC, and LFC contemplated pursuant to Sections 5(a) and 5(c) of LFC's original standard offer contract?

4) Should the joint petition for approval of contract modifications be approved?

Our decision on those issues is memorialized below.

The Assignment

The standard offer contracts in question specifically provide for assignment with the prior written approval of FPC. This requirement was met when LFC, Auburndale, and FPC entered into the Consent and Agreement. The Consent assigned the responsibility of generating the power and the rights and benefits of the standard offer contracts to Auburndale. By an amendment to the Consent, LFC has retained its original obligations to FPC. Upon consideration we find that this type of assignment was contemplated in the original standard offer contracts that were approved by the Commission in Order Nos. 21947 and 21948. Therefore, no further Commission approval is required.

The Change in Facilities and Location

While the terms of the standard offer contracts provided for assignment, the terms of the contracts did not provide for a change in location and facilities from the existing woodburning facilities in Madison and Jefferson counties to the Auburndale natural gas facility in Polk county.

As the name implies, a standard offer contract is just that, an "off-the-shelf" offering that has certain blank terms to be filled in when a particular QF executes the contract. Those terms include the name of the QF, the effective date of the contract, the location of the facility, the size of the facility, the term of the contract, the committed capacity, the in-service date, and the capacity payment option. Once the blanks are filled in and the standard offer is signed, those terms are not subject to negotiation or modification unless the contracts specifically provide for the modification.

Auburndale and FPC suggest that the change in location is a minor modification, because the location was originally left blank in the standard offer contract. The location provision of a

standard offer contract is left blank because the utility does not know the location or type of a facility when it publishes its standard offer contract tariff. The fact that this information was not specified by the utility before the standard offer was executed does not mean that the information is insignificant and can be changed at will. It means that at the outset the cogenerator has the flexibility and the responsibility to provide the location information so that the purchasing utility can, from that point on, manage its purchased power contracts and plan its system accordingly. The changes in location and facilities significantly modify the project that was the subject of the original standard offers. We must evaluate the current effect of those changes on the ratepayers.

FPC indicated that the current LFC standard offer contracts are more expensive than FPC's current avoided costs by approximately $20 million. FPC's analysis of the benefits of the proposed changes shows a net present value benefit of approximately $12 million compared to the original standard offers. Auburndale and FPC state in their joint petition that the "new location will reduce line loss incurred in the transmission of power to the load center, provide greater reliability as the transmission distance will be significantly shortened, and increase FPC's opportunity for purchase of bargain and emergency power from the non-peninsular Florida System." At the Agenda Conference, FPC indicated that the majority of the $12 million benefit was the result of replacing expensive as-available energy with less expensive firm energy. We believe that in this instance there are significant benefits to be gained by FPC's ratepayers, and accordingly we approve the modification.

Curtailment

Section 4(d) of the Consent and Agreement defines "Off-Peak Curtailment Periods" as the off-peak hours, 12:00 a.m. to 6:00 a.m, for certain months of the year. These are the "[t]imes the Company shall be deemed unable to accept energy and capacity deliveries". This section relieves FPC of the obligation to purchase excess as-available energy which may not be economical.

Section 5 of LFC's standard offer contract reads as follows:

> During the term of this agreement, QF agrees to:
>
> (a) Provide The Company prior to October 1 of each calendar year an estimate of the amount of electricity generated by the Facility and delivered

> to The Company for each month of the following calendar year, including the time, duration and magnitude of any planned outages or reductions in capacity;
>
> (b) Promptly update the yearly generation schedule and maintenance schedule as and when any changes may be determined necessary;
>
> (c) Coordinate its scheduled Facility outages with The Company;
>
> (d) Comply with reasonable requirements of The Company regarding day-to-day or hour-by-hour communications between the parties relative to the performance of this Agreement; and
>
> (e) Adjust reactive power flow in the interconnection so as to remain within the range of 85% leading to 85% lagging power factor.

Section 5 of the standard offer requires that the QF and the utility coordinate planned outages of the QF so the utility can manage its system. Typically, planned outages are for maintenance purposes for the QF. They are not to relieve minimum load problems of the utility. The "Off-Peak Curtailment Periods" provision in the Consent are intended to relieve minimum load problems that FPC contends exist, to avoid economic penalties associated with the continuing purchase of as-available energy during off-peak hours. The "Off-Peak Curtailment Periods" provision is a modification to the terms of the original standard offer contract that is not provided for in the contract.

Having said that, we do believe the parties have adequately demonstrated that the new curtailment provisions will provide FPC the opportunity to avoid the continuing purchase of as-available energy during off-peak hours, and thus, like the change in location and facilities, will provide benefits to FPC's ratepayers. We therefore approve the curtailment provisions. We view the question of whether current Rule 25-17.0832(3)(a), Florida Administrative Code applies to these contracts as modified to be moot. It is, therefore,

ORDERED by the Florida Public Service Commission that the Joint Petition for Expedited Approval of Contract Modifications of Florida Power Corporation and Auburndale Power Partners, Limited Partnership is approved for purposes of cost recovery. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceedings is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 24th day of October, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MCB

Chairman Deason and Commissioner Clark concur in the Commission's decision that the proposed modifications to the standard offer contracts are beneficial to FPC and its ratepayers and should be approved. They do not believe that it is necessary to decide whether the modifications were contemplated in the original contracts.

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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 14, 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 substantially 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.