

930
6

MACFARLANE AUSLEY FERGUSON & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P. O. BOX 391 (ZIP 32302)
TALLAHASSEE FLORIDA 32301
(904) 224-9115 FAX (904) 222-7660

MADISON STREET SUITE 2300
P. O. BOX 151 (ZIP 33601)
TAMPA FLORIDA 33602
(813) 273-4200 FAX (813) 273-4166

400 E. LEVINE STREET
P. O. BOX 1659 (ZIP 34617)
CLEARWATER FLORIDA 34618
(813) 441-6900 FAX (813) 447-8470

October 27, 1994

IN REPLY REFER TO

Ansley Watson, Jr.
P. O. Box 1531
Tampa, Florida 33601

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
Fletcher Building
101 E. Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 941101-EQ -- Petition of Florida Power Corporation for determination that its plan for curtailing purchases from Qualifying Facilities in minimum load conditions is consistent with Rule 25-17.086, F.A.C.

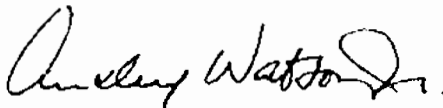
Dear Ms. Bayo:

Enclosed for filing in the above docket on behalf of Pasco Cogen, Ltd., please find the original and 15 copies of a Petition for Leave to Intervene and for Evidentiary Hearing.

Please acknowledge your receipt of the enclosures on the duplicate copy of this letter enclosed for that purpose, and return the same to me in the enclosed preaddressed envelope.

Thank you for your usual assistance.

Sincerely,



ANSLEY WATSON, JR.

- CK
- FA
- PP
- AF
- WJ
- IFU
- ES Futrell
- JN Brown Mas
- SEC
- AWjr/a
- Enclosures
- orig

DOCUMENT NUMBER - DATE

10991 OCT 28 8

FPSC-RECORDS/REPORTING

Ms. Blanca S. Bayo
October 27, 1994
Page 2

cc: James A. McGee, Esquire
Martha Carter Brown, Esquire
Mr. Jack E. Uhl
Mr. E. Elliott White
Mr. Bruce L. Levy
Mr. Greg Lawyer
Kelly A. Tomblin, Esquire
Mr. W. Bruce Miller

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for determination that its plan for curtailing purchases from Qualifying Facilities in minimum load conditions is consistent with Rule 25-17.086, F.A.C.)
)
) Docket No. 941101-EQ
) Submitted for Filing:
) 10-28-94
)
)

PETITION OF PASCO COGEN, LTD.
FOR LEAVE TO INTERVENE AND FOR EVIDENTIARY HEARING

Pasco Cogen, Ltd. ("Pasco"), by its undersigned attorneys and pursuant to Rule 25-22.039, F.A.C., petitions the Commission for leave to intervene as a party to the captioned proceeding, and for an evidentiary hearing pursuant to Section 120.57(1), F.S., and in support of its petition says:

1. The name and mailing address of Intervenor are:

Pasco Cogen, Ltd.
111 E. Madison Street, Suite 1700
P. O. Box 2562
Tampa, Florida 33601-2562
Attention: E. Elliott White

2. The name and mailing address of the person authorized to receive notices, orders and other communications in this proceeding and with respect to this petition are:

Ansley Watson, Jr., Esquire
Macfarlane Ausley Ferguson & McMullen
Post Office Box 1531
Tampa, Florida 33601-1531

3. Pasco owns and operates a gas-fired cogeneration facility in Pasco County, Florida (the "Facility"), and sells firm capacity and energy produced by the Facility to Florida Power Corporation

DOCUMENT NUMBER-DATE

10991 OCT 28 3

FPSC - PUBLIC REPORTING

("FPC") pursuant to that certain Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility between Pasco and FPC dated March 13, 1991 (the "Power Purchase Agreement"). Thermal energy produced by Intervenor's facility (in the form of steam) is sold to Lykes Pasco, Inc. -- a major processor of citrus and other juices -- for use in its processing plant. Pasco is a "qualifying facility" or "QF" as contemplated by the applicable rules of the Commission and the Federal Energy Regulatory Commission (the "FERC"). The Power Purchase Agreement was approved by the Commission's Order No. 24734, issued on July 1, 1991 in Docket No. 910401-EQ.

4. FPC's petition in this docket requests a determination by the Commission that FPC's Generation Curtailment Plan For Minimum Load Conditions ("FPC's Plan") is consistent with and permitted under Rule 25-17.086, F.A.C. In its petition, FPC has essentially claimed that circumstances justifying curtailment may or will occur, and the Commission is responsible for verifying that claim. 18 CFR § 292.304(f)(4); Rule 25-17.086, F.A.C.

5. Pasco submits that FPC's petition and the material accompanying it do not contain all the information necessary for the Commission to grant the relief sought by FPC's petition.

6. In the brief time since FPC filed its petition herein, FPC has required Pasco to curtail deliveries of energy produced by its Facility by 50%, causing Pasco a loss of revenue from sales it would have otherwise made to FPC pursuant to the Power Purchase Agreement, and causing an increase in the expenses incurred by

Pasco in delivering the reduced amounts of energy which FPC would accept during such period of curtailment. Upon information and belief, Pasco submits that FPC's recent curtailment of purchases from Pasco and other QFs is the first such curtailment implemented by any Florida electric utility since the Commission's adoption of Rule 25-17.086 in the early 1980s. By request separate from this petition to intervene, Pasco has requested that the Commission Staff investigate and verify whether FPC was justified in curtailing purchases from Pasco which were otherwise required by law. FPC's continued implementation of its Plan will cause Pasco to suffer further losses in the future.

7. The Commission's action on FPC's petition in this proceeding will directly affect the substantial interests of Pasco in that such action may or will determine whether, and under what circumstances, FPC may refuse to purchase electric energy from Pasco pursuant to the Power Purchase Agreement and/or applicable law, and Pasco is therefore entitled to intervene.

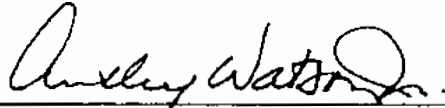
8. Because FPC's petition raises disputed issues of material fact (e.g., whether FPC's alleged "minimum load" conditions exist at any given time) and/or mixed questions of law and fact (e.g., whether FPC's alleged "minimum load" problems -- if they exist at all -- constitute the type of "system emergencies" or "operational circumstances" which might permit FPC to curtail purchases from Pasco otherwise required by law), Pasco submits that a hearing is required in this docket pursuant to Section 120.57(1), F.S., and hereby requests that such a hearing be ordered by the Commission.

In addition, while processing FPC's petition herein pursuant to the Commission's "proposed agency action" procedure would likely not deny any party the right to request a hearing under Section 120.57(1), F.S., such procedure would merely delay the Commission's consideration of the issues raised by the petition, since Pasco will -- in response to any notice of proposed agency action -- promptly request that a formal evidentiary proceeding be held.

9. Pasco's position is that the facts will show FPC is not entitled, under the circumstances described in the petition, to curtail purchases of energy from Pasco under either the provisions of the Power Purchase Agreement or of applicable law (including, but not limited to, Rule 25-17.086, F.A.C.). Pasco will ask the Commission to prohibit FPC from implementing its Plan to curtail purchases of energy from Pasco except under circumstances lawfully justifying FPC to curtail such purchases.

WHEREFORE, Pasco requests that the Commission enter its order granting this Petition for Leave to Intervene, permitting Pasco to participate as a party in this proceeding, directing that copies of all pleadings, notices, orders and other communications filed, given or entered herein be furnished to the person named in paragraph 2 hereof, and setting this matter for hearing pursuant to Section 120.57(1), F.S.

Respectfully submitted,

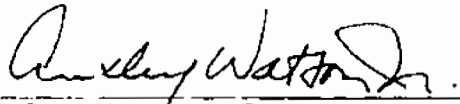


Ansley Watson, Jr.
Macfarlane Ausley Ferguson & McMullen
Post Office Box 1531
Tampa, Florida 33601-1531
(813) 273-4200

Attorneys for Pasco Cogen, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 27th day of October, 1994, by regular mail, to James A. McGee, Esquire, Office of the General Counsel, Florida Power Corporation, Post Office Box 14042, St. Petersburg, Florida 33733-4042, and Martha Carter Brown, Esquire, Division of Legal Services, Florida Public Service Commission, Fletcher Building, 101 E. Gaines Street, Tallahassee, Florida 32399-0863.



Ansley Watson, Jr.