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6. 1. 1995
FILE COPY

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January 9, 1995

D. BRUCE MAY
904-425-6807

VIA HAND DELIVERY

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

Re: 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

Dear Ms. Bayo:

Enclosed for filing in the docket referenced above are the original and 15 copies of Auburndale Power Partners, Limited Partnership's Petition to Intervene and Request for an Evidentiary Hearing. Also enclosed is a copy of the foregoing for our records to be date stamped by you and returned to our office.

ACK Thank you for your consideration in this matter.

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- ___

Sincerely,

HOLLAND & KNIGHT

D. Bruce May
D. Bruce May

Brown
Enclosure
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DBM/kdw

cc: All Parties of Record
Robert F. Riley
Martha Brown

TAL-55848

Jim *Orig Don*

RECEIVED & FILLED

JD

DOCUMENT FILED DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power)
Corporation for Determination That) Docket No. 941101-EQ
Its Plan for Curtailing Purchases)
from Qualifying Facilities in) Filed: January 9, 1995
Minimum Load Conditions is)
Consistent With Rule 25-17.086,)
F.A.C.)

**AUBURNDALE POWER PARTNERS, LIMITED PARTNERSHIP'S
PETITION TO INTERVENE AND REQUEST FOR AN EVIDENTIARY HEARING**

Auburndale Power Partners, Limited Partnership ("APP"), by and through undersigned counsel, pursuant to Rules 25-22.036 and 25-22.039, Florida Administrative Code, requests that it be granted leave to intervene in this proceeding and that an evidentiary hearing be conducted pursuant to Section 120.57(1), Florida Statutes. In support of its Petition, APP states:

Intervenor Information

1. Intervenor, APP is a limited partnership formed under the laws of the State of Delaware and authorized to do business in Florida. APP's full name and address are:

Auburndale Power Partners, Limited Partnership
12500 Fair Lakes Circle, Suite 420
Fairfax, VA 22033

2. Copies of pleadings, notices and other documents in this proceeding directed to APP should be served on:

D. Bruce May
HOLLAND & KNIGHT
P.O. Drawer 810
Tallahassee, FL 32302

and

Robert F. Riley
Auburndale Power Partners, Limited Partnership
12500 Fair Lakes Circle, Suite 420
Fairfax, VA 22033

DOCUMENT NUMBER-DATE

00251 JAN-95

FPSC-REGULATORY REPORTING

Statement of Ultimate Facts

3. APP owns and operates an approximately 150 megawatt gas-fired cogeneration facility located in Polk County, Florida, (the "APP Facility" or the "Facility") and sells capacity and energy generated by the Facility to Florida Power Corporation ("FPC") pursuant to that certain Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility executed by El Dorado Energy Company ("El Dorado") and FPC on March 14, 1991, hereinafter referred to as the "Negotiated Contract." El Dorado subsequently assigned the Negotiated Contract to APP, a limited partnership of which El Dorado is a general partner. By Order issued July 1, 1991, the Commission approved the Negotiated Contract for cost-recovery purposes.¹

4. APP sells steam generated by the Facility to Coca-Cola Foods and Todhunter International, Inc. The Federal Energy Regulatory Commission ("FERC") issued an order holding that the APP Facility is a "qualifying cogeneration facility" ("QF" or "Qualifying Facility") pursuant to the Public Utility Regulatory Policies of 1978 ("PURPA") and the FERC's rules thereunder.²

5. On October 14, 1994, FPC initiated this docket by filing a Petition requesting that the Commission determine that FPC's Generation Curtailment Plan for Minimum Load Conditions (the

¹In re: Petition for Approval of Contracts for the Purchase of Firm Capacity and Energy by Florida Power Corporation, 91 F.P.S.C. 7:60, Docket No. 910401-EQ, Order No. 24734 (July 1, 1991).

² 62 FERC ¶ 62,161 (1993).

"Plan") is consistent with and permitted under Rule 25-17.086, Florida Administrative Code.

6. Prior to obtaining Commission approval, FPC has already commenced curtailments pursuant to its Plan. If FPC continues to implement its Plan, APP will lose revenues it would otherwise receive pursuant to the Negotiated Contract and will incur expenses resulting from the delivery of reduced amounts of energy to FPC during curtailment periods.

7. Federal and state regulatory law requires the Commission to verify FPC's claim that it is relieved of its obligation to purchase power from APP and other QFs during certain periods as a result of FPC's alleged minimum load conditions. Fla. Admin. Code R. 25-17.086; 18 C.F.R. §292.304(f)(4) (1994).

Jurisdiction

8. FPC's Petition seeks a Commission determination that FPC's Plan is consistent with and permitted under Rule 25-17.086, Florida Administrative Code. In contrast to the issues raised by FPC's Petition in Docket No. 940771-EQ (the "Energy Pricing Docket"), jurisdiction over the issues raised in the instant proceeding appear to be properly determined by the Commission rather than the courts. Section 6.3 of the Negotiated Contract explicitly refers to Rule 25-17.086. FPC asserts that its other QF contracts which would be affected by this proceeding also recognize FPC's "statutory and regulatory rights to curtail QF purchases during minimum load conditions." FPC Petition at 6. The Energy

Pricing Docket, in sharp contrast, involves a request by FPC to interpret a negotiated power sales contract and adjudicate a commercial contract dispute involving an energy payment provision in the contract, which provision does not refer to or incorporate any Commission rule.

9. Furthermore, Rule 25-17.086, Florida Administrative Code, expressly requires continuing participation by the Commission and its staff in investigating claims by a utility of the occurrence of an operational circumstance permitting the utility to be relieved of its obligation to purchase from a QF. Thus, the parties cannot by private negotiations establish the Commission's role under this rule. Moreover, in the instant proceeding, there is a need for uniform regulatory approach to the issue because there is an interdependence between the curtailment rights granted to various QFs. Indeed, a failure by one QF to curtail during a light loading period can increase the amount of generation on the system, thereby affecting the curtailment that may be imposed on another QF. These facts differ dramatically from the pricing of energy payments under the Negotiated Contract in which (1) there is no continuing role for the Commission or its staff, (2) the relevant provisions of the Negotiated Contract do not explicitly refer to or incorporate any Commission rule, and (3) energy payments to a QF are contract specific and do not affect the payments available to other QFs.

10. By filing this Petition to Intervene and Request for Evidentiary Hearing, APP seeks to address the fundamental issue in

this proceeding: whether FPC's plan should be approved under Rule 25-17.086, Florida Administrative Code. APP does not concede that the Commission has the authority to interpret the terms of a negotiated contract or resolve disputes relating to a negotiated contract once approved for cost recovery. APP reserves its right to respectfully question the Commission's authority in this or any other Commission proceeding over the interpretation of negotiated contracts or the resolution of disputes relating to negotiated contracts.

Substantial Interest Affected

11. APP has standing to intervene in this proceeding, and such intervention is necessary for APP to fully protect its interests. Intervention in a Commission proceeding is granted to those entities whose substantial interests are subject to determination or will be affected through the proceeding. Rule 25-22.039, Florida Administrative Code. FPC's Petition asks the Commission to determine when, and under what circumstances if any, FPC may refuse to purchase power from APP, which FPC is obligated to do under the Negotiated Contract. Because Commission action in this docket will directly affect APP's rights to sell power to FPC, APP has standing and is entitled to intervene in order to protect its interests.

Disputed Issues of Material Fact

12. The Commission will need to resolve disputed issues of material fact raised by FPC's Petition before it can determine

whether FPC's Plan is consistent with and permitted under Rule 25-17.086, Florida Administrative Code. The disputed issues of material fact of which APP has knowledge at this time include, without limitation, the following:

- (a) whether FPC's alleged minimum load conditions exist at any given time;
- (b) whether FPC needs to curtail QF purchases to avoid problems created by excess generation;
- (c) whether FPC's alleged minimum load problem was caused by acts or omissions of FPC;
- (d) the costs that FPC will incur if it shuts down one of its baseload units during its alleged minimum load conditions rather than curtailing purchases from QFs;
- (e) whether, as FPC contends, FPC has maximized its ability to sell excess energy to others during light loading periods;
- (f) whether FPC's "minimum generation" levels and "additional AGC requirement" levels specified in its Plan (Page 11) have been properly calculated and are appropriate; and
- (g) whether FPC has properly demonstrated that if lower generation levels are established, it will incur net negative avoided costs.

13. In addition, this proceeding will involve disputed mixed questions of law and fact including, but not limited to:

- (a) whether FPC's plan is consistent with the requirements of PURPA, as amended;
- (b) whether FPC is relieved of its obligation to purchase power from QFs pursuant to Rule 25-17.086, Florida Administrative Code, as a result of FPC's alleged minimum load conditions; and, if so, whether FPC's Plan is consistent with Rule 25-17.086, Florida Administrative Code; and
- (c) whether, as FPC argues, that its purchases from The Southern Company should be treated as "must run" obligations.

14. Because a Commission decision in this proceeding will determine the substantial interests of APP and the proceeding will involve disputed issues of material fact, APP is entitled to an evidentiary hearing conducted by the Commission pursuant to Section 120.57(1), Florida Statutes. Thus, APP respectfully requests that the Commission set this matter for hearing.

Basic Position

15. APP's basic position is that neither federal nor state statutory and regulatory law permits FPC to curtail purchases of power from APP and other QFs based on the unproven allegations and circumstances set forth in FPC's Petition and the Plan. Thus, FPC should be immediately enjoined from further implementing its Plan.

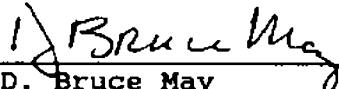
WHEREFORE, APP respectfully requests that the Commission:

- a. Grant APP intervenor status in this proceeding;

b. Set this matter for hearing pursuant to Section 120.57(1), Florida Statutes, and

c. Grant such other relief as the Commission deems appropriate.

Respectfully submitted this 9th day of January, 1995.



D. Bruce May
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(904) 224-7000

**Attorneys for Auburndale Power
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail this 9th day of January, 1995 to:

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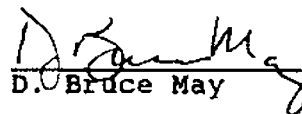
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