

FLORIDA PUBLIC SERVICE COMMISSION  
Fletcher Building, 101 East Gaines Street  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 6, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF ELECTRIC & GAS (SHINE) *PES DJ*  
DIVISION OF LEGAL SERVICES (BROWN) *MP ACT*

RE: DOCKET NO. 940797-EQ - PETITION OF FLORIDA POWER CORPORATION FOR APPROVAL, TO THE EXTENT REQUIRED, OF CERTAIN ACTIONS RELATING TO APPROVED COGENERATION CONTRACTS

AGENDA: APRIL 18, 1995 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\EAG\WP\940797.RCM

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CASE BACKGROUND

On July 29, 1994, Florida Power Corporation (FPC) filed a petition asking the Commission to approve certain actions, modifications, and agreements relating to cogeneration contracts that were taken after the contracts were approved by the Commission for cost-recovery. During the last decade, the Commission has approved 23 cogeneration contracts between FPC and various cogenerators. FPC states that its petition was prompted by uncertainty over the question of whether certain actions undertaken after Commission approval of the contracts might require further approval by the Commission. FPC filed this petition to determine what actions, modifications, and agreements would require further review by the Commission to ensure that it could continue to obtain cost recovery of payments made to cogenerators under the contracts.

ISSUE 1: Of the twenty-three cogeneration contracts identified in the Appendix to Florida Power Corporation's petition, which contracts do not require further Commission approval?

RECOMMENDATION: The cogeneration contracts that do not require further Commission approval are: Seminole Fertilizer Corp.; NRG Recovery Group; Orlando Cogen Limited; Panda-Kathleen; Pasco Cogen Limited; and U.S. Agri-Chemicals Corporation. The actions,

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 940797-EQ  
DATE: April 6, 1995

agreements, and modifications taken under these contracts are either 1) expressly permitted in the contract, or 2) routine in the administration of the contract, with no material effect on the ratepayers. FPC should be required to file all contract actions, modifications, informal and formal agreements with the Commission for staff's review.

**STAFF ANALYSIS:** A negotiated cogeneration contract is a comprehensive agreement that attempts to address all circumstances that may arise during the life of the contract. At certain times during facility permitting, construction, in-service testing, or commercial operation, however, a situation may arise that requires the parties to interpret or modify the existing contract language. The question in this case is when, and under what circumstances, should FPC notify the Commission or seek further approval of contract actions, modifications, and agreements.

Staff believes the utility should have reasonable flexibility to work with qualifying facility (QF) developers when contract questions arise. Staff also believes, however, that the Commission has the responsibility to ensure that such actions taken with respect to cogeneration contracts are reasonable and prudent, because the utility's ratepayers are paying the bills. Therefore, all contract actions, modifications, informal and formal agreements which may be expressly permitted pursuant to the contract, or routine in the administration of the contract, should be filed with staff. Where the contract actions, modifications, and agreements are significant, the Commission should review them for continuing cost-effectiveness and benefits to the ratepayers. Staff believes the following cogeneration contracts do not require formal Commission approval, because they contain actions and changes that are either expressly authorized, or inherent in the routine administration of the contract.

**Seminole Fertilizer Corp.**

**Assignment:** Contract expressly authorizes QF to assign contract obligations, benefits and duties, with FPC's consent. Contract assigned to Cargill Fertilizer with FPC's consent.

**Curtailment:** Informal verbal agreement to reduce output as much as possible during off-peak hours.

**Routine Contract Administration and Performance:** Change of address for payments to Cargill Fertilizer.

DOCKET NO. 940797-EQ  
DATE: April 6, 1995

**NRG Recovery Group**

Assignment: Contract expressly authorizes QF to assign contract obligations, benefits and duties, with FPC's consent. Contract assigned to Ogden Martin System, National Westminster Bank PLC, and Southeast Bank with FPC's consent.

One-Time Change In Committed Capacity: Contract expressly authorizes an unlimited one-time change in committed capacity. Committed capacity increased from 10.25 to 12.75 MW.

**Orlando Cogen Limited**

Assignment: Contract expressly authorizes QF to assign contract obligations, benefits and duties, with FPC's consent. Contract assigned to the Sumitomo Bank, Ltd., with FPC's consent.

Regulatory Delay: FPC authorized 37 day extension of the construction commencement date, and the commercial in-service date pursuant to the cogeneration contract clause providing for regulatory delays.

Clarification: Agreement with Orlando Cogen Limited and Reedy Creek regarding dispatch rights.

**Panda-Kathleen**

Waiver of Early In-Service Date: FPC agreed to the QF's request to waive the contractual "early in-service date" option from 1995 to 1997. This corresponds with the original 1997 in-service date of FPC's planned capacity addition identified as the avoided unit. Panda will receive normal payments rather than early in-service payments.

**Pasco Cogen Limited**

Assignments: Contract expressly authorizes QF to assign contract obligations, benefits and duties, with FPC's consent. Contract assigned to Prudential and Bankers Trust, with FPC's consent.

Regulatory Delay: FPC authorized 37 day extension of the construction commencement date, and the commercial in-service date pursuant to the cogeneration contract clause providing for regulatory delays.

DOCKET NO. 940797-EQ  
DATE: April 6, 1995

One-Time Change in Committed Capacity: Contract expressly authorizes a one-time 10% change in committed capacity. Committed capacity increased from 102 MW to 109 MW.

Curtailment: Informal verbal agreement where Pasco Cogen will reduce output as much as possible during off peak hours.

Routine Contract Administration and Performance: Change of address for NCP Dade Power.

**U.S. Agri-Chemicals Corporation (USAG)**

Clarification: Contract amended to clarify USAG's Contract In-Service Date to January 1, 1997. This corresponds with the original 1997 in-service date of FPC's planned capacity addition identified as the avoided unit. USAG notified FPC that it is ready to conduct the performance test establishing the Commercial In-Service Status of the facility. Contract amended to clarify that the Written Consent and Security Guarantee sections of the Contract shall not be applicable.

Committed Capacity: USAG and FPC mutually agree that the USAG may exercise its contract option to increase or decrease the committed capacity by up to 10% at any time during calendar year 1997.

Four additional cogeneration contracts between FPC and Bay Resource Recovery, Timber Energy Resources I, Sun Bank of Tampa Bay (LFC Jefferson), and Sun Bank of Tampa Bay (LFC Madison) do not require further Commission approval. These contracts either contain no contract actions, modifications, and agreements; or the changes to the contracts have already been reviewed and approved by the Commission. See Order No. PSC-94-1306-FOF-EQ, Docket No. 940819-EQ, issued October 24, 1994.

DOCKET NO. 940797-EQ  
DATE: April 6, 1995

**ISSUE 2:** Of the twenty-three cogeneration contracts identified in the Appendix to Florida Power Corporation's petition, which contracts require further Commission approval?

**RECOMMENDATION:** The cogeneration contracts that do require approval are: Royster Phosphate; Mulberry Energy Company; CFR BIO-GEN; Dade County; General Peat Resources L.P.; Ecopeat Company; Timber Energy Resources II; El Dorado Energy; Lake Cogen Limited; Pasco County; Pinellas County; Pinellas County North Facility; and Ridge Generating Station. These contracts require further Commission approval, because they contain actions, modifications, and agreements that are not expressly contemplated by the contracts or not inherent in the routine administration of the contracts.

**STAFF ANALYSIS:** FPC's petition acknowledges that some of the post contract actions may not have been contemplated by the Commission's order approving the contracts or fall outside of the routine administration of the contract and therefore may require further Commission approval. Staff agrees and believes that contract actions, modifications, and agreements of this nature should be reviewed. The rationale is that if the contract has been changed or modified, it is not the same contract that the Commission approved, and the Commission must review all changes to ensure that the contract costs remain prudent and appropriate for cost recovery.

FPC seeks approval, to the extent required, for certain actions, modifications, and agreements taken during the course of performance of the cogeneration contracts approved by the Commission. FPC believes that the contract actions should be approved because they were agreed to by the parties, and because they are in the best interest of the public and FPC's ratepayers.

Staff recommends that the primary question is whether the subsequent actions, modifications, and agreements are material in nature and constitute a contract modification or change that may affect: 1) the continuing cost-effectiveness to the ratepayers; 2) the viability of the project; 3) the primary fuel source of the QF facility; 4) the utility's capacity import capability into the state due to a change in location of a QF facility, or; 5) the reliability of the electric grid. The following contract summaries identify each contract action, modification, or agreement which may affect one or more of the areas just mentioned, and therefore require Commission approval. Many of these contracts also contain actions similar to those discussed in Issue 1, and are not shown below.

DOCKET NO. 940797-EQ  
DATE: April 6, 1995

**Royster Phosphate**

Facility Relocation: FPC agreed to the QF's request to relocate the facility to the Polk Power Partners site, which also provides power for the Mulberry facility.

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours.

**Mulberry Energy Company**

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours.

Change in Primary Fuel: Mulberry changed from orimulsion, its original fuel, to natural gas.

**CFR BIO-GEN (Orange)**

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours.

Back-Up Fuel Installation: Facility agreed to install back-up fuel prior to November 1998. If acquisition and installation costs exceed \$1.3 million, FPC has the option to pay the difference, or relieve CFR of the obligation to install back-up fuel.

**Dade County**

Curtailment: FPC reached a Settlement Agreement with the facility regarding fluctuations in output which included a formal agreement to reduce output during off-peak hours.

**General Peat Resources L.P.**

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours.

Change in Primary Fuel: General Peat changed from peat, its original fuel, to natural gas.

**Ecopeat Company**

Facility Relocation: FPC agreed to allow the facility to serve the capacity requirement for the three General Peat contracts, the Timber Energy Resources contract, and the EcoPeat Avon Park contract from the 218 MW Tiger Bay Facility.

DOCKET NO. 940797-EQ  
DATE: April 6, 1995

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours concurrent with negotiations for the facility relocation.

Change in Primary Fuel: EcoPeat changed from peat, or other hydrocarbon fuel to natural gas.

Back-Up Fuel Installation: Tiger Bay agrees to install back-up fuel, while FPC agreed to adjust the lease payments at Avon Park to assist Tiger Bay with their cash flow. If the cost of acquisition and installation exceeds \$2.6 million, FPC has the option of either paying the difference or having Tiger Bay pay FPC \$2.2 million in lieu of requiring the installation.

#### **Timber Energy Resources II**

Facility Relocation: Timber Energy signed two standard offer contracts. The July 1989 standard offer contract for 6 MW was assigned to Tiger Bay. FPC agrees that Tiger Bay will provide power from its 218 MW gas fired facility, in lieu of Timber Energy's wood waste facility. Timber Energy continues to provide 12.7 MW of capacity pursuant to the December 1984 standard offer contract.

Curtailment: FPC entered into a formal Letter Agreement with the facility to accept a reduced output during off-peak hours concurrent with negotiations for the facility relocation of the second standard offer contract.

Change in Primary Fuel: Timber Energy II changed from wood waste for the July 1989 standard offer contract, to natural gas.

#### **El Dorado Energy (Auburndale)**

Curtailment: FPC entered into a formal Letter Agreement with the facility to reduce output during off-peak hours.

#### **Lake Cogen Limited**

Curtailment: FPC entered into a formal written agreement whereby Lake Cogen will reduce its output during all off-peak hours.

#### **Pasco County**

Curtailment: FPC entered into a Letter of Understanding with the facility to reduce output during their Spring and Fall scheduled maintenance outages.

DOCKET NO. 940797-EQ

DATE: April 6, 1995

**Pinellas County (Central Facility)**

Curtailment: FPC entered into a Letter of Understanding with the facility to reduce output during periods of low electric energy load.

**Pinellas County (North Facility)**

Extension of In-Service Date: Original contract agreement specified a January 1, 1995 in-service date which was not achieved by facility. The contract was amended on October 2, 1990 granting a one year extension of time to January 1, 1996, with capacity payments based on FPC's current avoided costs commensurate with the facility's in-service date. Staff recommends this contract come before the Commission for review and approval of the cost-effectiveness if and when entered into by the parties.

**Ridge Generating Station**

Curtailment: FPC entered into a Letter of Understanding with the facility to reduce output during off-peak hours.

In conclusion, these contracts, and future contracts containing similar actions require further Commission approval, because they contain actions, modifications, and agreements that are not expressly contemplated by the contracts or inherent in the routine administration of the contracts.

**ISSUE 3:** Should the Commission approve the contract actions, modifications, and agreements to the following cogeneration contracts: Royster Phosphate, Mulberry Energy Company, CFR BIO-GEN, Dade County, General Peat Resources L.P., Ecopeat Company, Timber Energy Resources II, El Dorado Energy, Lake Cogen Limited, Pasco County, Pinellas County, Pinellas County North Facility, and Ridge Generating Station?

**RECOMMENDATION:** Yes, in all contracts, the actions, modifications, and agreements convey a benefit to the ratepayers in the form of lower payments or improved system reliability and import capability.

**STAFF ANALYSIS:** FPC provided a present worth revenue requirement (PWRR) analysis for each modified or changed contract that compared the current capacity and energy payments to the original contract costs. In all contracts, staff has identified benefits to the ratepayers as a result of the changes, either through reduced costs or increased system reliability and import capability.



DOCKET NO. 940797-EQ

DATE: April 6, 1995

The majority of the reduced costs originate from the formal curtailment agreements signed with the QFs. FPC was able, in most instances, to model and forecast the monetary impact of the reduced energy deliveries during minimum load periods. However, the curtailment agreements signed by Pinellas and Pasco County solid waste facilities allow these QFs additional flexibility in nominating spring and fall scheduled maintenance dates to correspond with FPC's minimum load periods. Consequently, quantifying anticipated energy payment reductions is difficult due to the timing uncertainty of curtailment events, which affect FPC's ability to run PROMOD, a production costing program. Notwithstanding, all formal curtailment agreements provide FPC flexibility in meeting minimum load conditions, usually occurring between 12:00 a.m. to 6:00 a.m., and they provide for increased system reliability, which benefits the ratepayers.

Six contracts have changed their primary fuel source from the original proposal. The Mulberry Energy, General Peat, and EcoPeat contracts have been constructed to burn natural gas instead of orimulsion and peat. The Timber Energy II contract and both Sun Bank of Tampa Bay contracts changed their primary fuel source from wood waste to natural gas when the contracts were assigned to other facilities. While changes in primary fuel source typically do not affect the cost-effectiveness of a contract, they can affect the viability of a cogeneration facility. Changes in primary fuel source may also hinder the Commission's ability to implement the intent of the Florida Energy Efficiency Conservation Act (FEECA) to encourage renewable fuels. Additionally, the ensuing benefits to society have changed as a result of the increased reliance on fossil fuels. For these reasons, staff believes that a change in primary fuel source is a major modification to a cogeneration contract that should be reviewed by the Commission. The viability of these six contracts, however does not appear to have been compromised as a result of the change in primary fuel source.

It is important to note that today's avoided costs have decreased relative to the costs contained in these contracts. Consequently, obtaining price and non-price concessions may benefit the utility's ratepayers in the form of lower costs or improved system reliability and import capability. Staff believes that it is a prudent course of action to pursue such negotiations when accommodating changes desired by the parties to the contracts. Pursuant to the analysis performed on each of the previously mentioned contracts, staff recommends approval because the actions, modifications, and agreements convey a benefit to the ratepayers in the form of lower payments or improved system reliability and import capability.

DOCKET NO. 940797-EQ  
DATE: April 6, 1995

**ISSUE 4:** Should the Commission's Proposed Agency Action Order in this docket sever the decisions on the issues presented and on the specific contract modifications identified in Issues 2 and 3?

**RECOMMENDATION:** Yes. Any protest to any of the actions proposed in the Order should be specific as to the action being protested. If no protest is filed to any specific proposed action, including approval or disapproval of modifications to the specific contracts identified in Issues 2 and 3, then all actions not specifically protested should become final.

**STAFF ANALYSIS:** The issues presented in this case, and the particular modifications to individual contracts are separable. A protest of one proposed action should not delay the other actions from becoming final.

**ISSUE 5:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed if no timely protests are filed to the specific agency actions proposed.

**STAFF ANALYSIS:** If no protests to any of the specific proposed agency actions are filed within 21 days of the issuance of the order, staff recommends that this docket should be closed.