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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: June 15, 1995
Minimum Load Conditions is)
Consistent With Rule 25-17.086,)
F.A.C.)

**AUBURNDALE POWER PARTNERS, LIMITED PARTNERSHIP'S
POST-HEARING BRIEF**

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I. INTRODUCTION

The Florida Public Service Commission ("Commission") conducted a hearing in this docket on May 8-10, 1995. Issue 4 in this proceeding addresses whether Florida Power Corporation ("FPC") has adequately demonstrated that its Generation Curtailment Plan for Minimum Load Conditions (the "Curtailment Plan") allocates justifiable curtailments among qualifying facilities ("QFs") in a fair and not unduly discriminatory manner. Auburndale Power Partners, Limited Partnership ("APP") sponsored the testimony of witness L. Roy Smith on this issue at the hearing.¹ APP, by and through undersigned counsel, now respectfully submits this Post-Hearing Brief on Issue 4 in accordance with Rule 25-22.056, Florida Administrative Code, and Order No. PSC-95-0550-PHO-EQ.²

II. SUMMARY OF APP'S POSITION

The curtailment priority schedule under FPC's Curtailment Plan is fair, reasonable and not unduly discriminatory because the three Non-Utility Generator ("NUG") classifications: (1) are based on reasonable and objective differences between Group A NUGS versus Group B and C NUGS; and (2) fairly recognize the benefits that Group A NUGs provide to Group B and C NUGS.

¹Lake Cogen, Ltd.; Montenay-Dade, Ltd. and Metropolitan Dade County, Florida; and Tiger Bay Limited Partnership also sponsored the testimony of witness Smith.

²References to the transcript of the hearing, by volume and page number, are signified [Tr. ____]. References to exhibits entered into the record during the hearing are signified [Exh. ____] followed by a parenthetical description of the material.

III. ARGUMENT AND AUTHORITIES

A general principle governing regulated utilities is that they must treat parties that are similarly situated in a fair and equitable manner.³ A utility's different treatment of different classes of parties, however, is fair and not unduly discriminatory if the classifications are based upon legitimate distinctions.⁴ The Federal Energy Regulatory Commission ("FERC") has interpreted the Public Utilities Regulatory Policy Act of 1978 ("PURPA") to apply these same principles to QFs. As noted by FPC witness Southwick in his rebuttal testimony, the FERC has stated:

[T]he most reasonable reading of PURPA precludes discrimination against QFs as a class; it does not require that all QFs be treated the same. The [FERC's] current rules allow for different rates for QFs . . . QFs offering different services or different prices are not similarly situated. Thus, differentiation among QFs is not necessarily discriminatory.⁵

³See §366.03, Fla. Stat. (1993); Tampa Electric Co. v. Cooper, 14 So. 2d 388 (Fla. 1943).

⁴See C.F. Industries, Inc. v. Nichols, 536 So. 2d 234, 238 (Fla. 1988) ("[r]ates are not discriminatory simply because they are different for different classes of customers"); see also City of New Smyrna Beach v. Fish, 384 So. 2d 1272, 1276 (Fla. 1980) (city's classifications of garbage customers were valid and reasonable because they were based on legitimate differences between the customer classes); City of Pompano Beach v. Oltman, 389 So. 2d 283, 286 (Fla. 4th DCA 1980), rev. denied, 399 So. 2d 1144 (Fla. 1981) (city could charge higher rates for users of its utility system outside city limits than to users inside city limits where users outside city limits paid less for their share of municipal services than customers inside city limits).

⁵[Tr. VII, 982-83]; [Exh. 17] (HIS-9)(Regulations Governing Bidding Programs, IV FERC Stats & Regs 32,455 at 32,027 (1988)).

A. FPC's Curtailment Plan Legitimately Distinguishes Between Group A, B, and C NUGs.

The curtailment priority schedule under FPC's Curtailment Plan calls for Group A NUGs to reduce their output pursuant to their voluntary agreements with FPC prior to the initiation of any involuntary curtailments from Group B or C NUGs. If involuntary curtailments are necessary, the curtailment priority schedule requires FPC to curtail Group C NUGs first, Group B NUGs second, and Group A NUGs last. This priority schedule is based on legitimate distinctions between the different NUG classifications. Group C NUGs have not made a firm commitment to deliver capacity to FPC. Group B NUGs have made a firm commitment to deliver capacity to FPC, but have not made a formal commitment to voluntarily reduce their output during minimum load conditions. Group A NUGs have made a commitment to deliver capacity to FPC and have also made a formal commitment to voluntarily reduce their output to help FPC mitigate minimum load conditions. It is clear then that FPC's NUG suppliers are not similarly situated and the three NUG classifications in the Curtailment Plan are based upon reasonable and objective differences between the NUGs.⁶

B. FPC's Curtailment Plan Fairly Reflects the Benefits That Group A NUGs Provide to Group B and C NUGs.

The curtailment priority schedule under FPC's Curtailment Plan is fair and equitable because it appropriately recognizes the benefits that Group A NUGs provide to Group B and C NUGs. Although the Group B and C NUGs may not have been involved in the voluntary curtailment agreements between the Group A NUGs and

⁶[Tr. VI, 812.]

FPC, the imposition of involuntary curtailment on Group C and B NUGS before Group A NUGs is not unduly discriminatory because Group B and C NUGS undoubtedly benefit from the voluntary curtailment agreements of the Group A NUGs. FPC witness Dolan testified that absent the voluntary curtailment agreements with the Group A NUGs, the number of involuntary curtailments from Group B and C NUGs prior to the hearing would probably have been "in the 50s" as compared to the seven actual curtailment events.⁷ FPC witness Dolan further testified that the voluntary curtailment agreements executed by Group A NUGs is projected to reduce the duration of FPC's minimum load problem by seven years.⁸ Thus, the prioritization of curtailment under the Curtailment Plan fairly and equitably recognizes that the number and magnitude of involuntary curtailments of Group B and C NUGs is reduced as a result of the Group A NUGs' voluntary curtailment agreements. Indeed, it would be unfair and inequitable if FPC's Curtailment Plan did not recognize the differences among the NUG groups and the assistance that FPC has received from Group A NUGs in alleviating its minimum load conditions.

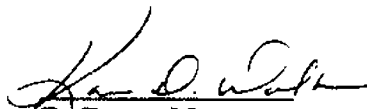
⁷[Tr. I, 107.]

⁸[Tr. I, 116.]

IV. CONCLUSION

Based on the uncontroverted record in this proceeding, it is clear that the curtailment priority schedule under FPC's Curtailment Plan is fair and not unduly discriminatory.

Respectfully submitted,



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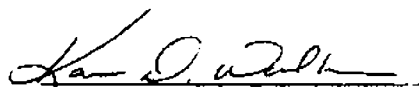
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