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: 6-15-95

POST-HEARING BRIEF OF PASCO COGEN, LTD.

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PRELIMINARY STATEMENT

This Post-Hearing Brief is submitted by Pasco Cogen, Ltd. ("Pasco") pursuant to the Prehearing Order in this docket and the applicable rules of the Florida Public Service Commission (the "Commission"). Pasco's Post-Hearing Statement of Issues and Positions, containing summaries of Pasco's positions supported by this brief, is being submitted separately from but simultaneously with this brief.

In addition to those noted above, the following abbreviations are used in this brief. Florida Power Corporation is referred to as "FPC". Orlando CoGen Limited is called "OCL". The Federal Energy Regulatory Commission is referred to as "FERC". References to the transcript of the hearing held in this docket will be made by "Tr.", followed by the page(s) referenced. Exhibits admitted at the hearing will be referenced by the abbreviation "Exh.", followed by the number assigned thereto and the portion (if any) of any composite exhibit being referenced. Other abbreviations will be identified at the time they are first used.

ADOPTION OF POST-HEARING BRIEF OF OCL

With the exception hereinafter noted, Pasco hereby adopts in its entirety and incorporates herein by reference the Post-Hearing Brief submitted herein on behalf of OCL.[1] Pasco does not adopt the

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[1] Aside from the fact that Pasco concurs in the arguments presented in OCL's brief, Pasco's counsel did not receive -- presumably due to the confusion surrounding the move of the Commission to its new quarters -- his copy of the transcript of the hearing in this docket until 11 days following the filing of the last volume thereof with the Commission's Division of Records & Reporting.

portion of OCL's brief with respect to Issue 4, which is as follows:

> Has FPC adequately demonstrated that its proposed plan allocates justifiable curtailments among QFs in a fair and not unduly discriminatory manner?

In view of the adoption of OCL's brief on all other issues, the remainder of Pasco's brief will present facts and arguments related only to Issue 4.

STATEMENT OF THE FACTS

FPC's proposed Generation Curtailment Plan for Minimum Load Conditions (the "Plan"; Exh. 1, RDD-1) sets forth the circumstances under which FPC will curtail purchases from QFs. Among other things, the Plan establishes the order in which the QFs from which FPC makes purchases will be involuntarily curtailed.

The order in which such QFs are required to curtail under the Plan depends upon three different "groups" established by FPC. Group A consists of those QFs with which FPC has entered into formal agreements providing for voluntary output reductions during certain low load hours and/or other time periods. Group B includes all QFs with firm contracts which have not entered into formal agreements with FPC of the type entered into by the Group A QFs. Group C includes QFs making only as-available sales to FPC which have not entered into formal output reduction agreements during low load periods, as well as as-available deliveries by any firm QF in excess of its committed capacity.

FPC's tariffs and contracts governing its purchase of power

from QFs contain no procedures pursuant to which FPC is required to implement involuntary curtailments which are justifiable under the Commission's Rule 25-17.086. Neither any FPC tariff or QF contract, nor Rule 25-17.086, specifies any order or method for determining the order in which purchases from individual QFs or groups of QFs are to be involuntarily curtailed when curtailment is permitted under the Commission's curtailment rule.

None of FPC's negotiated firm QF contracts approved by the Commission in July 1991 (including Pasco's contract) contained any provision with respect to the output levels to be maintained during FPC's typical low load hours. (Tr. 97). Nothing in those contracts required the QFs to assist FPC in minimum load situations or any other factual circumstances, or to negotiate amendments with respect to output reductions during low load periods, such as those between FPC and the QFs in Group A. (Tr. 99).

All of the formal output reduction agreements between FPC and the QFs in Group A are different in terms of the output reductions required of the QFs. Some of the agreements require reductions in output (sometimes referred to by FPC's witness Dolan as "dispatch rights" (Tr. 101, 111)) of less than 50% of committed capacity, while others require reductions in excess of committed capacity. (Tr. 99-100). When FPC negotiated the output reduction agreements with some of the QFs in Group A, it also settled other issues that were then outstanding between FPC and those QFs (Tr. 111), such as backup fuel disputes between the QF and FPC and an FPC protest to one cogenerator's QF status (Tr. 113-115).

FPC has formally agreed with some of the QFs in Group A that it will not seek further output reductions/curtailments from them until after it has obtained involuntary curtailments from QFs which have been unwilling or unable to enter into formal output reduction agreements with FPC. (Tr. 100-101).

FPC's curtailment procedures are set forth in Appendix C to the Plan (Exh. 1, RDD-1, pp. 48-52). Before involuntary curtailments are required of any QFs delivering power to FPC, the QFs in Group A are expected to have reduced their output by the amounts agreed to in their formal output reduction agreements with FPC. When FPC's minimum load situation reaches the level of a "minimum load emergency" (i.e., when FPC's generation dispatcher determines that the system generation can no longer match the decreasing load for the upcoming hour), FPC's Plan requires that the following steps be taken and repeated hourly (or more frequently as required) throughout the Minimum load emergency, as system operating conditions require (Exh. 1, RDD-1, pp. 51-52):

1. Notification of Group C QFs to reduce deliveries of as-available energy by up to 100%.

2. Notification of Group B QFs to reduce output by a specified percentage, up to a maximum of 50% of committed capacity.

3. Notification of Group A QFs (which are already at the reduced output levels specified in their respective formal output reduction agreements) to reduce output by a specified percentage, up to 50% of committed capacity.

4. Notification of QFs in Groups A and B to reduce output by percentages (in excess of 50% of committed capacity as necessary to allow for control of the system to meet falling load.

As the minimum load emergency subsides (i.e., as system load increases), steps 1 through 4 above are to be followed in reverse order and, when it has ended, notification to that effect is to be issued.

As indicated above, when FPC requires involuntary curtailments pursuant to its Plan, it requires such curtailments (by up to 50% of committed capacity) from the QFs in Group B before requiring any involuntary curtailment from QFs in Group A, even though a Group A QF's voluntary output reduction agreement may call for its reducing its deliveries to FPC by only 20% of committed capacity. (Tr. 108-109).

FPC has placed Pasco in Group B under its Plan, since Pasco has not formalized its verbal offer to reduce, when it is able, its output during the evening hours from its contract committed capacity of 109 MW to 95 MW (Tr. 94-95). Although Pasco directly benefits during certain low load hours from the output reduction agreements entered into between FPC and the QFs in Group A, Pasco was not involved in the negotiation of any of those agreements, and did not bargain with FPC for any of the benefits it may receive as a result of those agreements. (Tr. 101-102).

SUMMARY OF ARGUMENT

To the extent FPC's Plan requires involuntary curtailment of up to 50% of committed capacity by QFs in Group B prior to requiring any involuntary curtailment by QFs in Group A, the Plan is unfair to, and unduly discriminates against, QFs in Group B.

The only objective difference between a QF in Group A and a QF in Group B is that the Group A QF has agreed to modify its previously executed power purchase agreement with FPC by reducing, during certain hours or other periods, the power FPC is required to purchase absent a justifiable curtailment pursuant to Rule 25-17.086, and the Group B QF has not so agreed. Neither QF had or has any obligation to FPC to make, or even consider making, such a modification to its previously executed agreement.

Any justifiable involuntary curtailment by FPC of firm purchases from QFs should be implemented on a pro rata basis based on either (a) each QF's original contract committed capacity or (b) each QF's committed capacity at time the curtailment is to be in effect.

ARGUMENT

ISSUE 4

HAS FPC ADEQUATELY DEMONSTRATED THAT ITS PROPOSED PLAN ALLOCATES JUSTIFIABLE CURTAILMENTS AMONG QF'S IN A FAIR AND NOT UNDULY DISCRIMINATORY MANNER?

No. The Plan is unfair to, and unduly discriminates against, QFs in Group B. It is assumed, for purposes of the entire argument which follows, that any involuntary curtailment ordered by FPC is justified under Rule 25-17.086.

Justification for QF Groups

FPC's attempted justification for the different treatment of Group A and B QFs under FPC's Plan is as follows (Tr. 372):

" . . . the Plan operates from the principle that certain QFs who have agreed in writing to follow specific output reduction plans already have assisted greatly in Florida Power's overall efforts to address a significant operational problem. As a result, it would be unfair to require still greater interruption of deliveries from these QFs until after the remaining QFs have been called upon to bear their fair share in solving this problem. Based upon this principle, the Plan directs the Company's system operating personnel to look to the remaining QFs to curtail a specified portion of their firm Committed Capacity amounts before returning to the QFs with pre-arranged output reduction plans for more interruption of energy deliveries than initially made pursuant to those plans."

Notwithstanding the elaborate statement of principle quoted above, the only objective difference between a QF in Group A and a QF in Group B is that the Group A QF has agreed to modify its previously executed power purchase agreement with FPC by reducing, during certain hours or other periods, the power FPC is required to purchase absent a curtailment pursuant to Rule 25-17.086, and the Group B QF has not. Neither QF had or has any obligation to FPC -- under the previously executed power purchase agreement or any Commission or FERC rule -- (a) to make, or even consider making, such a modification to its previously executed agreement, or (b) to assist FPC in solving, or bear any "share" ("fair" or otherwise) in solving, FPC's minimum load problem.

Under FPC's Plan, Pasco (as a member of Group B) can be required to involuntarily curtail its deliveries to FPC by up to 50% of its contract committed capacity before members of Group A (whose voluntary output reductions may be less than 50% of their committed capacities) are required to curtail involuntarily. This aspect of the Plan -- which results from agreements to which Pasco

is not a party -- can adversely affect Pasco's rights under its contract with FPC, even though Pasco has agreed to no change in the terms of that agreement. Simple logic dictates the unfairness of this result, particularly since Pasco had no part in the negotiations leading to the agreements, and did not bargain for whatever benefits it might derive from them. Under certain circumstances, the curtailment priorities set forth in FPC's proposed Plan permit FPC to obtain from Group B QFs -- without negotiation and involuntarily -- more curtailment than it was able to obtain "voluntarily" from Group A QFs through negotiation.

The simple "proof" of the inequity inherent in FPC's Groups A and B may be found in the following question: If every firm QF had entered into an output reduction agreement with FPC and FPC was nevertheless required to order justifiable curtailments by the QFs, which of the QFs would be -- pursuant to its output reduction agreement -- bearing its "fair share" of the solution to FPC's problem?

Justifiable Curtailments Should Be Ordered Pro Rata

The output reduction agreements between FPC and the QFs in Group A basically reduce the amount of energy FPC is obligated (absent a justifiable curtailment) to accept from each Group A QF during specific hours. FPC witness Dolan acknowledged that if none of the QFs had been willing to enter into output reduction agreements, FPC would most likely have curtailed all firm QFs on a pro rata basis based on the committed capacities under their respective contracts. (Tr. 106-107).

Pasco submits that, particularly in view of the silence of the FERC and Commission curtailment rules on the matter, any justifiable involuntary curtailment by FPC of firm purchases from QFs should be implemented on a pro rata basis based on either (a) each QF's original contract committed capacity or (b) each QF's committed capacity (i.e., agreed output) at the time curtailment is required by FPC.

Pro rata method (b) above would require each firm QF to curtail deliveries, by the same percentage, based on the output level at which it was permitted to be operating (either by its original contract or by amendment thereto) at the time the involuntary curtailment was required by FPC. For example, if each of two firm QFs had a contract with FPC for 100 MW of committed capacity, but one of them (the Group A QF) had agreed to reduce its output to 80 MW during the period FPC needed involuntary curtailments (assume FPC needed to curtail 36 MW to balance generation and load), the Group A QF would cut back another 20% (16 MW) to an output of 64 MW, and the other QF would cut back 20% to an output of 80 MW. This method, while facially fair, might not meet the requirement of some of FPC's output reduction agreements with Group A QFs that FPC seek curtailment from Group B QFs prior to asking for more than the agreed amount from Group A QFs.

Pro rata method (a) above would give effect to the output reduction agreements FPC has negotiated with QFs in Group A while not penalizing Pasco and other Group B QFs. As is the case under FPC's proposed Plan, if the "voluntary" output reductions by Group

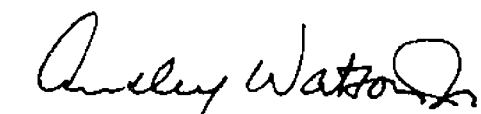
A QFs are sufficient in amount to "solve" FPC's minimum load problem, Pasco and other Group B QFs would not be involuntarily curtailed. If the "voluntary" reductions by Group A QFs were insufficient to solve the problem, all QFs would be required to reduce output by a specified percentage from the contract committed capacity set forth in their respective contracts with FPC.

Absent modifications such as those suggested above, FPC's Plan should not be approved by the Commission because it is unfair to, and unduly discriminates against, Pasco and other Group B QFs.

CONCLUSION

Pasco has suggested two ways in which the undue discrimination against and unfairness to Group B QFs of FPC's proposed Plan can be remedied. However, because of such unfairness and undue discrimination, FPC's Plan should not be approved by the Commission as proposed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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