

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint petition for ) DOCKET NO. 950567-EQ  
expedited approval of Settlement ) ORDER NO. PSC-95-1041-AS-EQ  
Agreement by Auburndale Power ) ISSUED: August 21, 1995  
Partners, Limited Partnership )  
and Florida Power Corporation. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On May 17, 1995, Florida Power Corporation (FPC) and Auburndale Power Partners, Limited Partnership (APP) filed a joint petition for expedited approval of a Settlement Agreement. The agreement affects one negotiated contract and two standard offer contracts that we previously approved.

APP's obligations under the contracts are served from APP's cogeneration facility located near the city of Auburndale, Florida, which began commercial operation on July 1, 1994. Some time after July 1, 1994, various disputes arose between APP and FPC concerning the method for calculating the energy price to be paid to APP and the on-peak capacity factor under the negotiated contract.

In Docket No. 940771-EQ, FPC filed a petition regarding the pricing dispute. We ruled that it was appropriate to defer the contract dispute to the civil court. To avoid the expense of civil litigation, the parties have agreed to certain modifications in the contracts. The modifications are subject to our confirmation that

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the contracts continue to qualify for cost recovery. The modifications to the contracts are addressed below.

#### ENERGY PAYMENTS UNDER THE NEGOTIATED CONTRACT

The Settlement Agreement modifies the methodology for computing energy payments under the negotiated contract in two ways: (1) During on-peak hours, energy payments to APP will be based on the firm energy Cost; and (2) during off-peak hours, APP will be paid the greater of as-available energy cost or 90% of firm energy cost, not to exceed the firm energy cost.

The changes apply only to energy delivered up to the committed capacity. For energy delivered above the committed capacity, APP will be paid based on as-available energy cost. These modifications resolve the main controversy between APP and FPC that was the subject of FPC's petition in Docket No. 940771-EQ. Item (2) above establishes a floor for energy payments during Off-Peak hours. FPC estimates that the floor will add an additional cost to the contract of approximately \$3.6 million.

#### ALLOCATION OF ENERGY AMONG THE CONTRACTS

The total committed capacity under the contracts is 131.18 Mw. The net capability of the APP facility is 150 Mw. Before the Settlement Agreement, the parties were in dispute as to how to allocate and price energy purchases above the committed capacity.

Based on the Settlement Agreement, energy purchased from APP is allocated to the individual contracts based on the ratio of each contract's committed capacity to the total committed capacity. Energy purchased above the committed capacity for all the contracts will be paid based on as-available energy cost. For purposes of computing the capacity factor for each contract, all delivered energy will be included in the allocation, provided that no capacity factor exceeds 110% for any month. FPC cannot rely on any energy delivered above committed capacity, therefore these purchases should be based on as-available energy cost.

#### CURTAILMENT

The Settlement Agreement contains extensive provisions regarding the time periods and conditions when energy purchases from APP may be curtailed. The provisions are consistent with FPC's Curtailment Plan, which we approved at our August 15, 1995 Agenda Conference.

The curtailment provisions of the Settlement Agreement include a category of "Special Curtailment Periods." These periods apply only to the years 1995 through 1999 and are limited to ten per calendar year. In order to compensate APP for additional startup costs, FPC will pay APP \$8,000 for each curtailment beyond the initial five special curtailment periods.

On a net present value basis, FPC estimates that the curtailment provisions will result in savings of approximately \$15.3 million. While these savings may be overstated, an agreement to voluntarily curtail could avoid expensive litigation.

#### AVOIDED UNIT VARIABLE O&M

Under the negotiated contract, the escalation rate for variable Operating & Maintenance expense (O&M) is fixed at 5.1% per year. The Settlement Agreement defines the escalation rate as the greater of 3% or the change in the consumer price index (CPI) from the preceding year. The modified escalation rate more closely reflects current and future economic conditions. Currently, CPI is projected to be less than the 5.1% contained in the original contract. The use of CPI as an escalator for variable O&M is reasonable because variable expenses such as labor and consumables typically track the CPI. FPC estimates that this provision alone will save its ratepayers approximately \$6.8 million. If the CPI exceeds 5.1%, these estimated savings will be diminished.

#### CONTRACT RESTRUCTURING

When the standard offer contracts were executed, we established a price for capacity that was based on a statewide avoided unit which is significantly more expensive than FPC's current avoided costs. The Settlement Agreement terminates the last eleven years of the standard offer contracts and mitigates the effects of using the more expensive Statewide avoided unit. It also establishes concurrent terms for all three contracts.

As compensation for the early termination, beginning in 1996, FPC will pay APP a monthly "restructuring payment" for sixty (60) months. The payment is based on the difference between the costs of the standard offer contracts and FPC's current avoided costs. Using a discount rate of 11.5%, the present value of the stream of the restructuring payments is equal to the present value of the savings in the outer years.

The difference in the discount rate used to determine the restructuring payments (11.5%) and FPC's current after-tax cost of

capital (8.95%) yields a net savings to FPC's ratepayers of approximately \$5.1 million. As shown on Attachment 1 under the heading "Estimated Buydown Savings," there will be additional costs in the years 1996 through 2000, along with the savings that will occur in the years 2014 through 2024. The buydown savings shown in these latter years is the difference between the pre-settlement costs of the standard offer contracts and current projected replacement costs.

SETTLEMENT PAYMENT

The methodology to be used in calculating energy payments has been in dispute since August 1994. In order to resolve that dispute, FPC will pay APP a one-time settlement payment of \$1,156,114. This amount reflects the difference between what FPC would have paid to APP for energy had the Settlement Agreement been in effect since August 9, 1994, and what was actually paid.

Upon review, we find that the modifications are reasonable and should be approved for cost recovery. The Settlement Agreement has many benefits and some additional costs, but in total, the modified contracts provide a net benefit to FPC's ratepayers. The restructuring payments are largely capacity related. As such, they should be collected through the Capacity Cost Recovery Clause. The settlement payment is based on the retroactive application of the energy pricing provisions of the Settlement Agreement, which is necessary to fully resolve the dispute between FPC and APP. The settlement payment and any special curtailment payments are energy related. Since FPC's ratepayers receive the benefits of the Settlement Agreement, these energy related payments should be recovered through the Fuel Cost Recovery Clause.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement Agreement between Florida Power Corporation and Auburndale Power Partners, Limited Partnership is approved. The modifications to the parties' cogeneration contracts are approved for cost recovery as discussed in the body of this Order. It is further

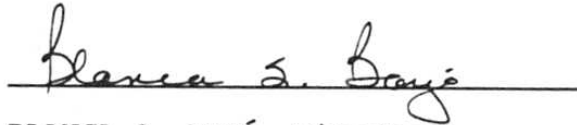
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth

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in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket should be closed.

By ORDER of the Florida Public Service Commission, this 21st day of August, 1995.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

VDJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 11, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.