

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center, 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

JUNE 13, 1996

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

FROM: DIVISION OF ELECTRIC & GAS (COLSON, DUDLEY, GOAD) *RC* *RG* *MB* *KD* *RUE* *MB* *RT*  
DIVISION OF LEGAL SERVICES (BROWN)

RE: DOCKET NO. 960193-EQ - PETITION FOR EXPEDITED APPROVAL OF  
SETTLEMENT AGREEMENT BY FLORIDA POWER CORPORATION.

AGENDA: JUNE 25, 1996 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\EAG\WP\960193.RCM

CASE BACKGROUND

Florida Power Corporation (FPC) and Orlando Cogen Limited, L.P. (OCL) executed a negotiated cogeneration contract on March 6, 1991, which was approved by the Commission for cost recovery in Order No. 24634, issued on July 1, 1991, in Docket No. 910401-EQ. Modifications to the negotiated contract were approved by the Commission in Order No. PSC-95-0540-FOF-EQ, issued on May 2, 1995, Docket No. 940797-EQ.

OCL's cogeneration facility is located near the city of Orlando, Florida, and began commercial operation on September 25, 1993. Sometime after September 25, 1993, various disputes arose between OCL and FPC concerning the proper administration and interpretation of the negotiated contract. In particular, there were disputes about the method to determine the energy price to be paid to OCL, and whether the contract requires the installation of a backup fuel system.

Certain jurisdictional aspects of the backup fuel system and the energy pricing dispute were addressed by the Commission in Docket No. 940357-EQ, in which the Commission determined that it would defer to the civil court to adjudicate the dispute. In an effort to avoid the expense of resolving the energy pricing and the backup fuel supply dispute through civil litigation, the parties have agreed to certain modifications to the negotiated contract.

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On February 19, 1996, FPC filed a petition for expedited approval of a Settlement Agreement. The Settlement Agreement is the second modification to their negotiated contract. In this Docket, the parties have requested Commission confirmation that the payments made pursuant to the contract, as modified by the Settlement Agreement, continue to qualify for cost recovery.

DISCUSSION OF ISSUES

ISSUE 1: Does the negotiated contract, as modified by the Settlement Agreement between Florida Power Corporation (FPC) and Orlando Cogen Limited, L.P. (OCL), continue to qualify for cost recovery?

RECOMMENDATION: Yes. The modified power sales agreement provides a net benefit to FPC's ratepayers and should continue to qualify for cost recovery.

STAFF ANALYSIS: FPC estimates that there is a cumulative net present value (NPV) benefit of approximately \$19,406,729 to its ratepayers derived from the settlement with OCL. Staff believes that this amount is overstated because some of the savings are based on the presumption that OCL would win its litigation against FPC. And while the benefits to FPC's ratepayers have been overstated, staff believes that there are net benefits to the ratepayers and recommends that the Settlement Agreement be approved.

The modifications to the negotiated contract involve:

- (1) the methodology for computing energy payments under the Settlement Agreement;
- (2) resolution of the dispute concerning backup fuel;
- (3) curtailment during Off-Peak periods;
- (4) the escalation rate for the Avoided Unit Variable O&M cost under the negotiated contract;
- (5) an adjustment (referred to in the agreement as the Settlement Payment) for energy payments already paid under the negotiated contract to reflect the energy payment calculation established before the dispute.

Each of these aspects of the Settlement Agreement is discussed below.

ENERGY PAYMENTS UNDER THE NEGOTIATED CONTRACT AND SETTLEMENT AGREEMENT

The methodology for computing energy payments under the existing negotiated contract (Section 9.1.2) is as follows:

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(1) the energy payments shall be the product of the average monthly inventory charge-out price of fuel burned at the avoided unit fuel reference plant, the fuel multiplier (value associated with the unit type selected = 1.0), and the avoided unit heat rate, plus the avoided unit variable O & M, if applicable, for each hour that the company would have had a unit with these characteristics operating; and

(2) during all other hours, the energy cost shall be equal to As-Available energy cost.

Between September 25, 1993 (the in-service date of the OCL's generating unit), and August, 1994, OCL received firm energy payments for every KWH delivered. Beginning in August, 1994, and ending in January, 1996, FPC determined that the avoided unit would have been cycled off during certain hours of the day. Therefore, FPC began making energy payments based on both Firm (when the avoided unit was on) and As-Available energy (when the avoided unit was off), as described above. The result was that the energy payments were reduced and thereafter, OCL initiated litigation against FPC.

The methodology for computing energy payments has been modified by the Settlement Agreement in two fundamental ways:

(1) during On-Peak hours, energy payments to OCL will be based on the Firm energy cost (listed in Definition 1 of the Settlement agreement); and

(2) during Off-Peak hours, when As-Available Energy Cost is:

(a) Less than or equal to the Firm Energy Cost, the greater of:

(i) the discount factor (listed in Appendix G of the Settlement Agreement, which is applicable to the energy payments during Off-Peak hours for each calendar year) multiplied by the Firm Energy Cost; or

(ii) the As-Available Energy Cost

(b) Greater than the Firm Energy Cost, The Firm Energy Cost.

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The Settlement Agreement has established a minimum number of hours (floor) that OCL will be paid for firm energy during the life of the contract (4015 hours per year). Also, the Settlement Agreement energy price will be based on a coal price floor of \$1.73/MMBTU. These floors benefit OCL because they provide a more stable revenue stream.

The energy payment provisions of the Settlement Agreement resolved one of the controversies between OCL and FPC. FPC estimates that the modified energy pricing provisions will provide savings to its ratepayers when compared to OCL's pre-settlement position. Both FPC and OCL will benefit from the energy payment settlement by avoiding the cost of litigation. Also, OCL will gain additional benefits from the fuel and the energy price floor.

#### BACK-UP FUEL

Section 3.3 of the existing negotiated contract states that "Except for Force Majeure Events declared by the Facility's fuel supplier(s) or fuel transporter(s), which comply with the definition of Force Majeure Events as specified in this Agreement and occur after the contract In-Service Date, the Facility's ability to deliver its Committed Capacity shall not be encumbered by interruptions in its fuel supply." FPC's position was that this section required a back-up fuel supply.

The Settlement Agreement specifies that if OCL cannot perform under its contract due to an interruption of its primary fuel supply and concurrent lack of an adequate back-up fuel supply, then OCL will reimburse FPC \$40,000 per hour up to \$600,000 per year with a lifetime maximum of \$3,600,000. This amount shall be prorated for a partial hour or partial interruption (or both), in which OCL suffers a partial forced outage to its primary fuel supply.

This provision resolved the main controversy between OCL and FPC. Staff believes that OCL's fuel supply interruption penalty is a positive benefit to FPC's ratepayers. The hourly energy payment will more than compensate FPC for any replacement power purchases.

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#### CURTAILMENT

The Settlement Agreement contains extensive language on the time periods and conditions under which energy purchases from OCL may be curtailed. This language is consistent with FPC's Curtailment Plan and its Voluntary Curtailment Agreement with OCL approved by Commission Orders PSC-95-1133-FOF-EQ and PSC-95-1088-FOF-EQ, respectively. The curtailment savings accrue to the benefit of the ratepayers because FPC can replace OCL's curtailed energy on its system at a lower total cost. It is staff's opinion that FPC has the right to curtail any QF if such purchases result in negative avoided costs. However, a voluntary curtailment agreement should avoid expensive litigation.

#### AVOIDED UNIT VARIABLE O&M

Under the existing negotiated contract, the variable O&M escalation rate was fixed at 5.1 percent per year. The Settlement Agreement modified this escalation rate to 4.5 percent per year. This modified escalation rate is above the current consumer price index of 3 percent per year, but has positive benefits to FPC's ratepayers. FPC estimates that this provision alone will save its ratepayers a net present value of approximately \$4.78 million throughout the life of the contract.

#### SETTLEMENT PAYMENT

FPC has agreed to pay OCL a one-time Settlement Payment of \$2,942,000. This is the difference between what FPC would have paid to OCL for energy had all the energy been priced at firm since August, 1994, and what FPC actually paid. The retroactive payment is a major part of the Settlement Agreement to resolve the dispute between FPC and OCL. The last of a series of payments was made to OCL in February, 1996. These payments are shown on Attachment 1.

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**ISSUE 2:** How should the costs resulting from the Settlement Agreement be recovered?

**RECOMMENDATION:** The capacity payments made under the Settlement Agreement should continue to qualify for recovery through the Capacity Cost Recovery Clause. The energy payments made under the Settlement Agreement should continue to qualify for recovery through the Fuel and Purchased Power Cost Recovery Clause. The Settlement Payment should qualify for recovery through the Fuel and Purchased Power Cost Recovery Clause.

**STAFF ANALYSIS:** As discussed in Issue 1, staff believes that the modified power sales agreement provides a net benefit to FPC's ratepayers. As such, the modified power sales agreement should continue to qualify for cost recovery through the Capacity Cost Recovery and the Fuel and Purchased Power Cost Recovery Clauses.

Staff recommends that the capacity payments made under the Settlement Agreement continue to qualify for recovery through the Capacity Cost Recovery Clause, and the energy payments made under the Settlement Agreement continue to qualify for recovery through the Fuel and Purchased Power Cost Recovery Clause.

The Settlement Payment is a retroactive payment based on the firm energy pricing provisions of the existing negotiated contract. This payment is necessary to resolve the dispute between FPC and OCL. As shown on Attachment 1, FPC has paid the \$2,942,000 Settlement Payment to OCL. This amount was included in the energy payments made to OCL which are reflected on FPC's A-Schedules. Prior to this petition, FPC failed to inform the Commission of this recovery treatment. Staff believes that FPC should have informed the Commission during the last Fuel and Purchased Power Cost Recovery proceedings of its intent to recover the OCL Settlement Payment. FPC has followed this practice in past Settlement Agreements with cogenerators.

Staff recommends that the Settlement Payment qualify for recovery through the Fuel Cost Recovery Clause since FPC's ratepayers receive the benefits of the Settlement Agreement. This Settlement Payment should be reflected in the August, 1996, Fuel Cost Recovery proceedings.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If no substantially affected person timely files a protest to the Commission's Proposed Agency Action, this docket should be closed at the conclusion of the 21 day protest period.

## Settlement Payments - OCL

For the month of:	Actual Energy Payment	Energy Payments when Always Firm	Amount Owed to OCL according to Settlement	30 day Commercial Paper Interest	Total Amount Due to OCL	Payments Made to OCL
Aug-94	\$1,102,928	\$1,238,496	\$135,568			
Sep-94	\$1,163,629	\$1,395,687	\$232,057			
Oct-94	\$1,216,100	\$1,409,784	\$193,685			
Nov-94	\$1,159,665	\$1,380,001	\$220,337			
Dec-94	\$1,117,949	\$1,324,622	\$206,673			
Jan-95	\$1,050,236	\$1,181,555	\$131,320			
Feb-95	\$1,020,390	\$1,119,129	\$98,739			
Mar-95	\$1,183,702	\$1,284,392	\$120,691			
Apr-95	\$1,102,328	\$1,283,695	\$181,367			
May-95	\$1,310,885	\$1,412,430	\$101,445			
Jun-95	\$1,196,804	\$1,348,813	\$152,009			
Jul-95	\$1,194,410	\$1,354,839	\$160,429			
Aug-95	\$1,239,949	\$1,430,508	\$190,559			
Sep-95	\$1,153,546	\$1,353,215	\$199,669			
Sub-Total as of Nov-8-95			\$2,324,547	\$105,453	\$2,430,000	
Oct-95	\$282,124	\$336,917	\$54,793			* (\$2,019,000)
Nov-95	\$774,342	\$1,030,713	\$256,371			* (\$307,000)
Dec-95	\$1,160,352	\$1,348,055	\$187,703			* (\$334,000)
Jan-96						* (\$282,000)
Feb-96						* (\$282,000)
Sub-Total			\$498,867	\$13,133	\$512,000	(\$2,942,000)
<b>TOTAL</b>			<b>\$2,823,414</b>	<b>\$118,586</b>	<b>\$2,942,000</b>	<b>(\$2,942,000)</b>

- \* Wired to OCL on November 29, 1995
- \* Wired to OCL on December 29, 1995
- \* Wired to OCL on January 30, 1996
- \* Wired to OCL on February 12, 1996

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