



Public Service Commission

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RECORDS AND REPORTING

DATE: SEPTEMBER 23, 1999

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

FROM: DIVISION OF ELECTRIC AND GAS (FUTRELL) *M7 RUE*
DIVISION OF LEGAL SERVICES (JAYE) *RTW*

RE: DOCKET NO. 990723-EQ - PETITION BY FLORIDA POWER CORPORATION FOR APPROVAL OF AN AGREEMENT WITH EL PASO POWER SERVICES COMPANY TO RESTRUCTURE EXISTING COGENERATION CONTRACTS WITH POLK POWER PARTNERS, L.P. AND ORANGE COGENERATION LIMITED PARTNERSHIP.

AGENDA: 10/05/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990723A.RCM

CASE BACKGROUND

On August 18, 1999, in Order No. PSC-1623-99-PAA-EQ, the Commission approved Florida Power Corporation's (FPC) petition for approval of an agreement with El Paso Power Services Company (El Paso). This order became final on September 14, 1999 with the issuance of Consummating Order No. PSC-99-1789-CO-EQ. The agreement will restructure and reduce the costs of existing cogeneration contracts between FPC and three Qualifying Facilities (QFs): 1)Royster Phosphates, Inc. (Royster); 2)Mulberry Energy Company (Mulberry); and 3)Orange Cogeneration LP (Orange).

During the July 27, 1999, Agenda Conference, FPC noted that several conditions precedent to El Paso's obligation to close the transaction remained to be satisfied. It was further explained that it might be necessary to amend the agreement with El Paso, in satisfying the obligations, particularly the restructuring of El

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 990723-EQ
September 23, 1999

Paso's financial arrangements with its partner in the project. FPC and El Paso did in fact amend the agreement, and informed the Division of Electric and Gas (EAG) on August 23, 1999. FPC noted in its letter to EAG, that the changes contained in the Amendment have no effect on the analysis performed by FPC in support of its original petition for approval of the agreement with El Paso, nor on the analysis performed by the Commission staff. FPC representatives met with staff on September 7, 1999 to discuss the Amendments. Staff raised questions during that meeting as to whether some of the changes contained in the Amendment require Commission approval pursuant to Rule 25-17.0836(2), Florida Administrative Code. On September 10, 1999, FPC filed its Petition for Determination that Amendment to Restructuring Agreement is not Material or, in the Alternative, for Approval of Amendment.

DISCUSSION OF ISSUES

ISSUE 1: Does the Amendment to the Agreement between Florida Power Corporation and El Paso Power Services Company contain any modifications which require Commission approval?

RECOMMENDATION: Yes. The Amendment contains modifications which affect the performance requirements of the agreement. Rule 25-17.0836, Florida Administrative Code, requires the Commission to approve these modifications.

STAFF ANALYSIS: Rule 25-17.0836, Florida Administrative Code, governs modifications to existing QF contracts. Section two states:

In order for a utility to recover its costs, Commission approval is required for a modification that affects the overall efficiency, cost-effectiveness or nature of the project. Such modifications include, but are not limited to, changes to contractual terms such as location, prime mover technology type, fuel type, performance requirements, contracted megawatt output, the timing of capacity payments, or amount of capacity payments.

Section three states:

Commission approval is not required for modifications explicitly contemplated by the terms of the contract or routine administrative changes. Such modifications include, but are not limited to, an assignment expressly authorized by the terms of the contract, typographical corrections, change of address for payments, or change of name of resident agent.

The Amendment modifies the agreement in the following respects:

1. Amends Article 5.2.1 allowing FPC to call on the capacity of either the Orange or Mulberry facilities, instead of having to call on the combined capacity of both facilities.
2. Amends Article 5.2.6 by shortening the notice period FPC must give for call energy to one hour when required to meet a Firm System Need for Energy, a term newly defined in section three of the Amendment.

3. Amends Article 10.3.3 by reducing the amount of liquidated damages cap by 10 percent.
4. Amends Exhibit A by correcting a typographical error in the 2006 capacity payment.
5. Amends Exhibit H clarifies language regarding the hours used in the calculation of the make whole credit. Adds language regarding the calculation of the make whole credit for a partial year.

FPC states in its petition that the Amendment's changes do not affect "performance requirements" as stated in section two of the rule, and therefore do not require Commission approval pursuant to Rule 25-17.0836, Florida Administrative Code. FPC argues that the standard for determining whether a contract modification requires Commission approval is one of materiality. FPC cites subsection (1)(a) of the rule which requires investor-owned utilities to notify staff of any contract modification, and to include in the notice "a statement indicating whether the modification is a material change." Subsection two of the rule, restated previously, identifies modifications that affect the "overall efficiency, cost-effectiveness or nature of the project" as requiring Commission approval. The rule then gives examples of such modifications. FPC argues that the modifications contained in the Amendment are minor in nature, and do not meet the provisions of section two of the rule.

Modifications one, two, and three are performance oriented, and therefore require Commission approval. As described in the order approving the agreement (Order No. PSC-99-1623-PAA-EQ), the Royster and Mulberry contracts are served by the 115 megawatt (MW) Mulberry facility, and the Orange contract is served by the 106 MW Orange facility. The original agreement provided that when FPC called on energy from these facilities, FPC was required to call on the combined capacity of both facilities. Modification one gives FPC the operational flexibility to call on the capacity of either the Orange or the Mulberry facilities, or both. This provision will give FPC the ability to utilize cheaper sources of power, if available, instead of calling on the entire capacity of both facilities. This modification also gives El Paso additional operational flexibility in dispatching the Orange and Mulberry facilities.

Modification two provides FPC added flexibility by shortening the notice period FPC must give El Paso for call energy to one

hour, when required to meet a "Firm System Need for Energy." This new term is defined as a need by FPC to

avoid or mitigate the disruption in service to those demand side management customers on the Buyer's (FPC's) interruptible and curtailable service rate in a situation on the Buyer's electrical system in which, regardless of cause, all other demand side customers of lower service priority are experiencing disruptions.

It appears that this language provides FPC an opportunity for buy-through to prevent a disruption to interruptible and curtailable customers. This provision appears to classify residential load management customers as having a lower priority than commercial/industrial non-firm customers. Despite the title "Firm System Need for Energy", this provision does not appear to have any application to firm service. This modification gives FPC the flexibility to delay its decision to call on El Paso until FPC is reasonably certain that it must call on energy from El Paso to meet the "Firm System Need for Energy." The modification, however, does not affect the ability of FPC to provide firm service to its retail customers.

Modification three reduces the cap on the liquidated damages payable by El Paso to FPC by ten percent. FPC states in its petition that this provision is essential to El Paso's financial restructuring, and hence its ability to bring closure to the proposal. This provision does shift risk to FPC's ratepayers in the event El Paso does not perform according to the terms of the agreement.

Modification one, two, and three are performance oriented, but do not affect the overall cost-effectiveness of the agreement. FPC's ratepayers will realize significant capacity cost savings and are forecasted to realize energy savings pursuant to the agreement.

Modification four is a typographical change which does not require Commission approval, pursuant to Rule 25-17.0836(3), Florida Administrative Code. Modification five adds language regarding the calculation of the make whole credit for a partial year. FPC included the effects of this provision in the analysis of the savings the agreement is projected to provide to FPC's ratepayers. This modification does not require Commission approval because it was already considered in the original analysis.

ISSUE 2: Should the Commission approve the modifications contained in the Amendment to the Agreement between Florida Power Corporation and El Paso Power Services Company?

RECOMMENDATION: Yes, the following modifications should be approved. Modifications one and two provide FPC with greater operational flexibility, and may improve the cost-effectiveness of the agreement. Modification three should be approved, however, it may transfer additional risk to FPC's ratepayers by reducing the liquidated damages cap payable by El Paso.

STAFF ANALYSIS: As described in issue one, modifications one, two, and three of the Amendment are performance oriented. These modifications, may improve the cost-effectiveness of the agreement. The original agreement provides capacity payment discounts to the three QF contracts. This was the most significant factor in the agreement. These modifications do not in any way affect these discounts. FPC's ratepayers, therefore, can expect lower purchased power cost as a result of the agreement and the Amendment. As described in issue one, modification three, which lowers the liquidated damages cap, may transfer additional risk to FPC's ratepayers. This change will have no impact on the capacity payment discounts, and will not impact the cost-effectiveness of the agreement.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected files a request for a Section 120.57(1), Florida Statutes, hearing within 21 days of the order, the order will become final and effective upon the issuance of a consummating order. Because no further action will be required, this docket should be closed.

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