State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: MAY 25, 2000

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

FROM: DIVISION OF ELECTRIC AND GAS (FUTRELL, GING) TB DPW RLT
DIVISION OF LEGAL SERVICES (ELIAS) RVE

RE: DOCKET NO. 000184-EG - PETITION BY FLORIDA POWER CORPORATION, MIAMI-DADE COUNTY, AND MONTENAY-DADE, LTD. FOR APPROVAL OF SETTLEMENT AGREEMENT, FOR CONFIRMATION THAT NEGOTIATED CONTRACT CONTINUES TO QUALIFY FULLY FOR COST RECOVERY, AND TO ALLOW FLORIDA POWER CORPORATION COST RECOVERY OF HISTORIC SETTLEMENT PAYMENT MADE TO DADE COUNTY PURSUANT TO SETTLEMENT AGREEMENT.

AGENDA: 06/06/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\SER\WP\000184.RCM

CASE BACKGROUND

Florida Power Corporation (FPC) and Metropolitan Dade County (Dade), a qualifying facility (QF), entered into a Negotiated Contract (Contract) on March 15, 1991. The term of the contract is 22 years, which began on November 1, 1991 when the facility began commercial operation, and expires July 21, 2013. Committed capacity under the Contract is 43 megawatts, with capacity payments based on a 1991 pulverized coal-fired avoided unit. The Contract was one of eight QF contracts which were originally approved for cost recovery by the Commission in Order No. 24734, issued July 1, 1991, in Docket No. 910401-EQ.

The Dade County Resources Recovery Facility, a solid waste-burning facility, sells power pursuant to the Contract. The

facility is owned by Dade County and operated by Montenay-Dade, Ltd. (Montenay).

Section 9.1.2 of the Contract details the energy pricing methodology as follows:

> Except as otherwise provided in section 9.1.1 hereof, for each billing month beginning with the Contract In-Service Date, the QF will receive electric energy payments based upon the Firm Energy Cost calculated on an hour-by-hour basis as follows: (I) the product of the average monthly inventory charge out price of fuel burned at the Avoided Unit Reference Plant, the Fuel Multiplier, 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 (ii) during all other hours, the energy cost shall be equal to the As-Available Energy Cost.

In 1991, when FPC entered into its contract with Dade, FPC's forecasts indicated that as-available energy prices would exceed firm energy prices throughout the entire term of the Contract. Based on these projections, FPC paid Dade firm energy payments for all energy delivered from the cogeneration facility.

In 1994, FPC conducted an internal audit of its cogeneration contracts. Because of falling coal, oil, and natural gas prices, excess generation during low load conditions, and exceptional nuclear performance, FPC's modeling of the avoided unit indicated that during certain hours, firm energy prices would be greater than as-available energy prices indicating that the avoided unit would be cycled off in FPC's dispatch. FPC adjusted its payments to Dade and other cogenerators to reflect these changes in the operation of the avoided unit. The result of this was a reduction in the total energy payment to Dade. Subsequently, a dispute arose between FPC, Dade, and Montenay regarding the price to be paid for energy under the Contract. The dispute centered on two main issues: 1) the correct methodology for determining when energy should be priced at the firm energy rate versus the as-available rate under Section 9.1.2 of the Contract; and 2) the basis for computing the transportation component of the chargeout price of coal to Crystal River Units 1&2, which is the fuel cost component used in calculating the firm energy price under the Contract.

On July 21, 1994, FPC filed a petition (Docket No. 940771-EQ) seeking a declaratory statement that Section 9.1.2 of the negotiated contract was consistent with then Rule 25-17.0832(4)(b),

Florida Administrative Code. This rule referenced avoided energy payments for standard offer contracts, and was a basis for evaluating negotiated contracts. Several cogenerators, including Dade, filed motions to dismiss FPC's petition. FPC later amended its petition and asked the Commission to determine whether its implementation of Section 9.1.2 was lawful under Section 366.051, Florida Statutes, and consistent with Rule 25-17.0832(4)(b), Florida Administrative Code (F.A.C.). In Order No. PSC-95-0210-FOF-EQ, the Commission granted the motions to dismiss on the grounds that the Commission did not have jurisdiction to adjudicate a dispute over a provision in a negotiated contract.

Subsequent to the filing of FPC's petition in Docket No. 940771-EQ, Dade and other QFs filed lawsuits in the state courts for breach of contract. The Dade contract, along with the Auburndale, Orlando Cogen Limited (OCL), Ridge, Pasco, and Lake Cogen contracts, were affected by FPC's implementation of Section 9.1.2. Disputes concerning the Auburndale, OCL, Ridge, and Pasco contracts have previously been settled through Commission approved agreements. On November 14, 1997, the Commission denied the Settlement Agreement with Lake Cogen by Order No. PSC-97-1437-FOF-EQ, finding in part that it would result in costs that were in excess of the current contract. Order No. PSC-98-0450-FOF-EQ, issued March 30, 1998, declared the Lake Order to be a nullity due to the expiration of the Settlement Agreement prior to the order becoming final.

On February 24, 1998, FPC filed a Petition for Declaratory Statement stating that Order No. 24734, together with Orders Nos. PSC-97-1437-FOF-EQ and 24989, PURPA, Section 366.051, Florida Statutes, and Rule 25-17.082, F.A.C., establish that its contractual energy payments to Dade, including when firm or as-available payment is due, are limited to the analysis of avoided costs based upon the avoided unit's contractually-specified characteristics. FPC's petition was denied by Order No. PSC-98-1620-FOF-EQ issued December 4, 1998. The Commission found that having resolved the energy pricing controversy previously in Order No. PSC-95-0210-FOF-EQ, the prior resolution must stand, consistent with the principles of administrative finality.

On February 14, 2000 FPC filed a petition for approval of a Settlement Agreement between FPC, Dade, and Montenay. The modifications to the Contract pursuant to the Settlement Agreement have the following components:

1) a new mechanism for determining when firm or as-available energy payments are due;

2) no change in FPC's coal transportation and coal pricing practices;

3) the curtailment of energy deliveries during certain off-peak periods, with the ability by Dade and Montenay to sell such power elsewhere, or the provision of such energy to FPC free of charge;

4) reimbursement for the historic energy pricing dispute; and

5) reduce the risk of further litigation and cost.

FPC has paid Dade $2,262,868.10 to reimburse the QF for the disputed portion of energy payments made during the period August 9, 1994 through December 31, 1999. FPC believes that the Settlement Agreement will result in approximately $17 million NPV in benefits to its ratepayers through 2013. These benefits are based on a comparison of costs between Dade's position in its litigation, and the modified Contract.

DISCUSSION OF ISSUES

ISSUE 1: Should the Negotiated Contract, as modified by the Settlement Agreement between Florida Power Corporation, Miami Dade County and Montenay-Dade, Ltd., be approved for cost recovery?

RECOMMENDATION: Yes. The amended energy pricing provisions closely approximate avoided cost. Approval of the Settlement Agreement mitigates the risks associated with the uncertainty of civil litigation which could result in significantly higher cost to FPC's ratepayers.

STAFF ANALYSIS: As summarized in the case background the Settlement Agreement contains several provisions.

Revised Energy Pricing

For all energy up to the committed capacity of 43 MW, Dade will receive the firm energy price during firm hours. Firm hours are defined as 7:00 a.m. through 11:00 p.m., except during up to twenty designated off-peak weekend periods which shall be non-firm hours. During non-firm hours, FPC will pay Dade for power delivered based on FPC's as-available energy cost. For all energy in excess of the committed capacity, Dade will receive the as-available energy price. The energy price will no longer be determined by the scheduling of the avoided unit, but whether energy is delivered during contractually defined firm and non-firm hours. Dade's position in litigation has been that it should be

paid the firm energy price during all hours when power is delivered to FPC.

Coal Transportation Dispute

There has been a disagreement between Dade and FPC, similar to that of other QFs, regarding FPC's coal procurement and transportation actions. These actions have historically lowered the energy price paid to Dade and QFs with similar contracts. Specifically, FPC has adjusted the mix of barge and rail transportation of coal thereby lowering costs. The original contract does not contain specific provisions addressing the ability of FPC to vary the coal transportation practices. The parties agree that FPC may continue its coal procurement and transpiration practices. This provision of the Settlement Agreement protects FPC's ratepayers from future litigation on this issue.

Curtailment

Dade and Montenay have agreed to curtail deliveries to no more than 5 megawatt-hours per hour up to 63 times per year, for up to six hours on each occasion between 12:00 a.m. and 6:00 a.m. During those periods, Dade is free to sell its energy to another purchaser. If Dade does not sell another party, it does not have to curtail to 5 megawatt-hours per hour, but if it does not curtail all energy delivered shall be free to FPC. This provision will reduce costs to FPC in the form of reduced startups of FPC owned generation to cover output fluctuations from Dade during curtailment periods.

Historic Pricing Dispute

The Settlement Agreement provides for FPC to pay Dade $2,262,868.10 as reimbursement, with interest, for the disputed energy payments during the period August 9, 1994 through December 31, 1999. FPC has paid Dade this amount, and the recovery of these costs is addressed in Issue 2.

The Settlement Agreement should be approved because, while resulting in slightly higher cost, closely represents avoided cost as defined by FPC, and reduces the risk of potentially higher cost if the dispute continues in court. As discussed in the Case Background, the Commission denied FPC's Settlement Agreement with Lake Cogen because it would have resulted in costs in excess of avoided cost. The energy pricing provision of the Lake agreement would have resulted in FPC paying Lake the firm energy price for all hours. Typically, FPC's on-peak hours are 11:00 a.m. - 10:00 p.m. in the summer, and in the winter 6:00 a.m. - 12:00 p.m., and 5:00 p.m. - 10:00 p.m. The Lake agreement would have required FPC

to pay firm energy during hours when the avoided unit would not have run, as well as system off-peak hours. The Dade energy pricing settlement attempts to mimic FPC's system on-peak hours by requiring firm energy for 7:00 a.m. - 11:00 p.m. It also more closely approximates the hours of operation of the avoided unit as modeled by FPC. The settlement does result in costs higher than FPC's interpretation of the Contract, but only slightly as seen in the table below. The costs of the settlement are significantly lower than Dade's position of firm energy for all hours.

Cost-Effectiveness Analysis of Settlement Agreement NPV in Millions				
	Historical Dispute 11/91-12/99	Future Payments 1/00-7/13	Total	Difference Compared to FPC's Position
FPC	28.6	48.7	77.3	---
Dade	34.9	65.6	100.5	23.2
Settlement	30.8	52.6	83.4	6.1

The table above shows the monetary risk of approving the settlement is less than the monetary risk of rejecting the settlement. If Dade's position is ultimately approved, by the court, FPC's ratepayers will be responsible for significantly higher costs. The proposed settlement is only slightly higher than FPC's interpretation. Staff believes the proposed Settlement mitigates the risks associated with the pending litigation. Therefore staff recommends the Settlement Agreement be approved.

ISSUE 2: If approved, how should the settlement payment and revised energy payments pursuant to the Settlement Agreement be recovered from FPC's ratepayers?

RECOMMENDATION: The energy settlement payment of $2,262,868.10 and the ongoing energy payments made pursuant to the Settlement Agreement should be recovered through the Fuel and Purchased Power Cost Recovery (Fuel) Clause. The recovery of payments made prior to their inclusion for recovery through the adjustment clauses should include interest from the date the payments were made.

Should the Settlement Agreement not be approved, any necessary adjustments to the Fuel Clause to reflect the method of pricing energy under the Contract prior to the Settlement Agreement should be made at the next Fuel Adjustment hearing. [GING]

STAFF ANALYSIS: FPC has paid $2,262,868.10 to Dade pursuant to the Settlement Agreement. This payment results from the settlement of the dispute regarding the pricing of energy payments pursuant to the contract for the period August, 1994 through December, 1999. It represents the difference between recalculated energy payments for the period and the actual energy payments, as well as accrued interest. Because the settlement payment relates solely to disputed energy payments, staff believes that it is appropriate to recover it through the Fuel Clause.

Pursuant to the Settlement Agreement, Dade and FPC have agreed upon the method to be used in calculating the energy payments for the remaining term of the contract. The resulting energy payments should be recovered through the Fuel Clauses. Should the Settlement Agreement not be approved, any necessary adjustments to the Fuel Clause to reflect the energy pricing in effect prior to the settlement should be made at the next Fuel Adjustment hearing.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the Commission's proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon issuance of a Consummating Order.

STAFF ANALYSIS: If no person whose substantial interests are affected by the Commission's proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon issuance of a Consummating Order.