

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 000184-EQ
ORDER NO. PSC-00-1166-PAA-EQ
ISSUED: June 27, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT AGREEMENT AND RELATED COST RECOVERY

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.

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

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cost recovery by the Commission in Order No. 24734, issued July 1, 1991, in Docket No. 910401-EQ. Metropolitan Dade County is now known as Miami-Dade County.

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 with this Commission (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 addressed 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 this 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. In Order No. PSC-95-0210-FOF-EQ, we granted the cogenerators' motions to dismiss on the ground that we 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 other contracts between FPC and Auburndale Power Partners (Auburndale), Orlando Cogen Limited (OCL), Ridge Generating Station (Ridge), Pasco Cogen Limited (Pasco), and Lake Cogen Limited (Lake), 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, we denied the approval of FPC's 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. By Order No. PSC-98-0450-FOF-EQ, issued March 30, 1998, we declared Order No. PSC-97-1437-FOF-EQ 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, Public Utilities Regulatory Policy Act (PURPA), Section 366.051, Florida Statutes, and Rule 25-17.082, Florida Administrative Code, 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. By Order

No. PSC-98-1620-FOF-EQ, issued December 4, 1998, we denied FPC's petition. We 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) reduction of the risk of further litigation and cost.

FPC has paid Dade \$2,262,868.10 to reimburse Dade 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 in net present value (NPV) 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.

The Settlement Agreement provides that 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 instead by 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.

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. In the Settlement Agreement, the parties agree that FPC may continue its coal procurement and transportation practices. This provision of the Settlement Agreement protects FPC's ratepayers from future litigation on this issue.

In the Settlement Agreement, 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 to 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.

The Settlement Agreement provides for FPC to pay Dade \$2,262,868.10 as reimbursement 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 below.

We previously 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 prices 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 under the settlement are significantly lower than they would have been under 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 that the monetary risk of approving the settlement is less than the monetary risk of rejecting the settlement. If Dade's position had ultimately been accepted by the court, FPC's ratepayers would have been responsible for significantly higher costs. The costs under the proposed settlement are only slightly higher than they would have been under FPC's position. We find the proposed settlement mitigates the risks associated with the pending litigation. Based on the foregoing, we approve the Settlement Agreement.

As noted above, 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. Because the settlement payment relates solely to disputed energy payments, we find that it is appropriate for FPC to recover this payment through the Fuel and Purchased Power Cost Recovery Clause (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. We find it appropriate for the resulting energy payments to be recovered through the Fuel Clause.

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Based on the foregoing, it is

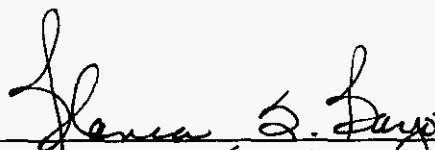
ORDERED by the Florida Public Service Commission that the Negotiated Contract between Florida Power Corporation and Miami-Dade County, as modified by the Settlement Agreement between Florida Power Corporation, Miami-Dade County, and Montenay-Dade, Ltd., is hereby approved for cost recovery. It is further

ORDERED that Florida Power Corporation's energy settlement payment of \$2,262,868.10 and its ongoing energy payments made to Miami-Dade County pursuant to the Settlement Agreement shall be recovered through the Fuel and Purchased Power Cost Recovery Clause. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, 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 in the "Notice of Further Proceedings" attached hereto.

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

By ORDER of the Florida Public Service Commission this 27th day of June, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 July 18, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.