

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Gulf Power Company for approval of purchased power arrangement regarding Smith Unit 3 for cost recovery through recovery clauses dealing with purchased capacity and purchased energy.

DOCKET NO. 010827-EI
ORDER NO. PSC-01-1948-PCO-EI
ISSUED: September 28, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER ACKNOWLEDGING WITHDRAWAL OF PETITION
AND VACATING DECISION

BY THE COMMISSION:

On June 8, 2001, Gulf Power Company (Gulf) filed a Petition for approval of a purchased power agreement (PPA) with Southern Power Company (Southern Power). The PPA anticipated the transfer of Smith Unit 3, a 575 MW combined cycle generating unit, to Southern Power by Gulf. The Office of Public Counsel (OPC) and the Florida Industrial Power Users Group are intervenors.

On June 28, 2001, the Office of Public Counsel filed a Motion to Dismiss in this docket. Gulf filed its response on July 5, 2001. At the Agenda Conference on August 14, 2001, the Commission voted to deny the Motion.

On August 27, 2001, Gulf filed a Notice of Voluntary Dismissal and/or Withdrawal of Petition and requested an order acknowledging its voluntary dismissal. This Order addresses Gulf's August 27, 2001, filing, and our decision to deny OPC's Motion to Dismiss in light of the withdrawal of the Petition. We have jurisdiction over

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FPSC-000113 PER CLERK

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this subject matter through the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

We have previously considered the issue of whether an entity initiating a proceeding can subsequently voluntarily dismiss its petition, and have decided it can. See Order No. PSC-94-0310-FOF-EQ, issued March 17, 1994, in Docket 920977-EQ; Order No. PSC-01-0082-FOF-EI, issued January 9, 2001, in Docket No. 000442-EI. But for the fact that we have taken official action in this docket, it would be appropriate to handle this matter administratively. Therefore, Gulf's Notice of Voluntary Dismissal and/or Withdrawal of Petition is acknowledged.

As stated previously, OPC's Motion to Dismiss was denied at the August 14, 2001, Agenda Conference. An order on that decision had not yet been issued when, on August 27, 2001, Gulf filed its Notice of Voluntary Dismissal.

In light of the voluntary dismissal of the Petition, a decision on OPC's Motion is unnecessary. We have previously vacated our decisions after a change in circumstances has warranted such action. See Docket No. 000499-TI, Order No. PSC-00-1606-PAA-TI (rescinding a decision to grant a certificate); see also, Docket No. 970381-SU, Order No. PSC-98-1248-FOF-SU (granting motion to rescind previous order); Docket No. 992029, Order No. PSC-00-1214-FOF-TI (rescinding it previous order); Docket No. 000442-EI, Order No. PSC-01-0082-FOF-EI (vacating previous decision). If an order reflecting the August 14, 2001, decision were issued, it may be appealed or it may lead to confusion since there will be no final decision in the docket.

Based on the discussion of the merits provided above, and in an effort to promote administrative efficiency, the decision denying OPC's Motion to Dismiss shall be vacated.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that as requested in Gulf Power Company's Notice of Voluntary Dismissal and/or Withdrawal of Petition, the withdrawal of the Petition is hereby acknowledged. It is further

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ORDERED that our decision, made on August 14, 2001, to deny the Motion to Dismiss filed by the Office of Public Counsel on June 28, 2001, is hereby vacated.

By ORDER of the Florida Public Service Commission this 28th day of September, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

MKS

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 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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.