

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: OCTOBER 4, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF SAFETY & ELECTRIC RELIABILITY (FUTRELL) *MF TD*
DIVISION OF LEGAL SERVICES (ELIAS) *RVE RJ*

RE: DOCKET NO. 991781-EI - DETERMINATION OF APPROPRIATE COST
RECOVERY AMOUNTS FOR THE PURCHASED POWER CONTRACT BETWEEN
LAKE COGEN AND FLORIDA POWER CORPORATION.

AGENDA: 10/16/01 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\SER\WP\991781.RCM

CASE BACKGROUND

Florida Power Corporation (FPC) and Lake Cogen Ltd. (Lake), a qualifying facility (QF), entered into a Negotiated Contract (Contract) on March 13, 1991. The term of the Contract is 20 years, beginning July 1, 1993 when the facility began commercial operation, and expiring July 31, 2013. Committed capacity under the Contract is 110 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.

In 1994, FPC conducted an internal audit of its cogeneration contracts. FPC's modeling of the avoided unit indicated that during certain hours the avoided unit would be cycled off in FPC's dispatch. FPC adjusted its payments to Lake and other cogenerators to reflect these changes in the operation of the avoided unit.

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This reduced the total energy payment to Lake and ultimately led to a pricing dispute between FPC and Lake, and other cogenerators.

Lake subsequently filed for breach of contract in the Fifth Judicial Circuit Court in Lake County. Litigation has continued between the parties, with a trial in the Lake Circuit Court, and an appeal to the Fifth District Court of Appeal (DCA) in Daytona Beach.

In Docket No. 990001-EG, Florida Power Corporation (FPC) sought to recover, through the fuel and purchased power recovery clause, a payment made to Lake Cogen, Ltd. (Lake). This payment was made as a result of the Fifth Circuit Court's interpretation of the energy pricing provisions of FPC's cogeneration contract with Lake. The three-member panel of Commissioners stated in Order No. PSC-99-2512-FOF-EI, issued December 22, 1999:

We believe that FPC's request raises policy issues that would more appropriately be decided by the full Commission in a separate proceeding, rather than the three-Commissioner panel assigned to this proceeding. The full Commission previously considered the policy implications of related issues involving FPC and Lake Cogen, Ltd. in other dockets, and should consider the policy implications of this issue as well.

We note that the majority of these payments appear to be the type of costs that this Commission would routinely allow to be recovered through the fuel clause. We also note that these payments reflect a small percentage of FPC's total fuel costs. Therefore, pending resolution of this issue by the full Commission, we approve recovery of these payments as proposed through FPC's fuel cost recovery factors. If the full Commission determines that any portion of these payments should not be recovered through the fuel clause, that portion shall be subject to refund with interest.

The instant docket was thus opened to monitor the ongoing litigation and ultimately determine, if necessary, the appropriate amount to be recovered by FPC's ratepayers resulting from the litigation. To date, no Commission action has been taken.

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In April 2001, the Fifth DCA ruled FPC was underpaying Lake and remanded the case back to the Fifth Circuit Court. As a result of that opinion, FPC made a \$20 million payment to Lake in September 2001. In Docket No. 010001-EI, FPC seeks recovery of the payment. The Fifth Circuit Court is expected to issue a final order consistent with the appellate court's decision prior to the November hearing in Docket No. 010001-EI.

DISCUSSION OF ISSUES

ISSUE 1: Should this docket be closed?

RECOMMENDATION: Yes. The instant docket was opened by order of a three-Commissioner panel in Docket No. 990001-EI, in order for the full Commission to consider the appropriateness of payments made by FPC to Lake. Now that the full Commission will preside over the upcoming fuel hearing in Docket No. 010001-EI, this docket should be closed. The issues which caused the instant docket to be opened, may be considered in Docket No. 010001-EI.

STAFF ANALYSIS: The full Commission has considered the policy implications of the dispute between FPC and Lake on several occasions in Docket Nos. 940771-EQ, 961477-EQ, and 980509-EQ. In Docket No. 010001-EI, the full Commission will determine the appropriate fuel and purchased power recovery factors for FPC. It is therefore appropriate and administratively efficient for the Commission to also consider whether the payments made by FPC to Lake are appropriate. The purposes for which the instant docket was opened can be decided in Docket No. 010001-EI, and the instant docket should be closed.