

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of modification to negotiated power purchase contract for purchase of firm capacity and energy from qualifying facility between Mulberry Energy Company, Inc. and Florida Power Corporation dated March 12, 1991, by Progress Energy Florida, Inc. and Polk Power Partners, L.P.

DOCKET NO. 060664-EQ
ORDER NO. PSC-06-0991-PAA-EQ
ISSUED: November 30, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING MODIFICATION TO A
NEGOTIATED POWER PURCHASE AGREEMENT

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.

On October 4, 2006, Progress Energy Florida, Inc. (Progress) and Polk Power Partners, L.P. (Polk) filed a petition requesting a modification to the purchased power agreement between Mulberry Energy Company, Inc. and Florida Power Corporation, which was approved by the Commission in Order No. 24734, dated July 1, 1991, in Docket No. 910401-EQ, In re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy by Florida Power Corporation. We have jurisdiction over this matter pursuant to Sections 366.051 and 366.81, Florida Statutes.

The parties propose to add new language to the contract providing that, if an error in the amount of a payment or payments is discovered more than twelve months after the date of payment, then the party finding the error is not entitled to any additional remuneration, except in a case of fraud. The contract would be revised to add Section 12.1.5 as follows:

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In the event that an error in the amount of a payment or payments is discovered more than twelve (12) months from the date on which the payment or payments is/are made, then the party claiming such error shall not be entitled to any additional remuneration with respect thereto, unless the error shall have resulted from the fraud of the other Party.

The proposed additional wording does not have any effect on the cost effectiveness of the contract. By agreeing to a limitation of twelve months in the period of time that recourse would be available, the parties can achieve a timely resolution if an error is discovered and maintain mutually agreeable operations. The parties assert that adding definite time limits for recovery of payment errors will enable more effective administration of the contract. Furthermore, this language is consistent with payment limitations in other Progress wholesale contracts.

The contract remains compliant with all Commission rules for purchase of firm capacity and energy, and the proposed addition promotes resolution in the event of a possible error in the administration of the contracts. No changes to capacity or energy payments are being proposed. We approve the proposed modification.

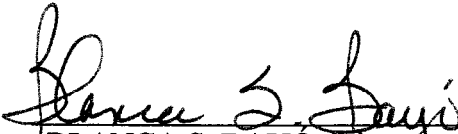
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint petition for approval of modification to negotiated power purchase contract for purchase of firm capacity and energy from qualifying facility between Mulberry Energy Company, Inc. and Florida Power Corporation dated March 12, 1991, by Progress Energy Florida, Inc. and Polk Power Partners, L.P. is granted. 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 the Commission Clerk and Administrative Services, 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. It is further

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

By ORDER of the Florida Public Service Commission this 30th day of November, 2006.



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

(S E A L)

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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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 21, 2006.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.