

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-**

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**DATE:** November 8, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Economic Regulation (Sickel, S. Brown)  
Office of the General Counsel (M. Brown)

**RE:** Docket No. 060664-EQ – 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. 060665-EQ – Joint petition for approval of modification to negotiated power purchase contract for purchase of firm capacity and energy from qualifying facility between Royster Phosphates, Inc. and Florida Power Corporation dated March 11, 1991, by Progress Energy Florida, Inc. and Polk Power Partners, L.P.

Docket No. 060666-EQ – Joint petition for approval of modification to negotiated power purchase contract for purchase of firm capacity and energy from qualifying facility between CFR Biogen Corporation and Florida Power Corporation dated November 19, 1991, by Orange Cogeneration, L.P. and Progress Energy Florida, Inc.

**AGENDA:** 11/21/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\060664.RCM.DOC

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### **Case Background**

On October 4, 2006, Progress Energy Florida, Inc. (PEF) filed three petitions requesting contract modifications to existing approved purchased power agreements.

Progress is requesting approval to add new language to the negotiated purchased power contracts from the qualifying facilities known as Mulberry Energy Company and Royster Phosphates, Inc. By 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, the Commission approved the agreements for purchase of 72 megawatts from the Mulberry facility and 28 megawatts from the Royster facility. Subsequent to the Commission approving those contracts, the facilities along with the associated contracts were acquired by Polk Power Partners, L. P. (Polk). Therefore, PEF's petition has been jointly filed with Polk in Docket Nos. 060664-EQ and 060665-EQ.

Progress is also requesting to add the same new language to a negotiated contract for purchase of 74 MW firm capacity and energy from a qualifying facility known as Orange Cogeneration, L. P. (Orange). The original contract for this purchase was approved by Order No. 18725, issued in Docket No. 870560-EQ, In re: Petition by Florida Power Corporation for Approval of Cogeneration Contract with CFR Bio Gen Corporation. That contract was modified by a stipulation approved by order No. PSC-92-0129-FOF-EQ, issued March 31, 1992, in Docket No. 900383-EQ, In re: Complaint by CFR-Biogen Corporation Against Florida Power Corporation for Alleged Violation of Standard Offer Contract, and Request for Determination of Substantial Interests. The contract has since been assigned to Orange, and Docket No. 060666-EQ is a petition for modification jointly filed by PEF and Orange.

Because identical language is proposed for each of the three existing contracts, the analysis and recommendation is equally applicable to each contract. Therefore, this recommendation will address all three requests simultaneously.

The Commission has jurisdiction over provisions of negotiated Firm Capacity and Energy Contracts as set forth in Rules 25-17.082, 25-17.0832 and 25-17.0836, Florida Administrative Code (F. A. C.), pursuant to Sections 366.051 and 366.81, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the petitions submitted by Progress Energy Florida, Inc. (PEF) together with Polk Power Partners, L.P. (Polk) and Orange Cogeneration, L.P. (Orange) requesting approval of a modification to the currently approved purchased power contracts between the parties?

**Recommendation:** Yes. By approving the requests, a modification will be added to each contract to specify parameters with respect to possible errors in future payments. With the proposed modification included, the contracts will continue to be in compliance with provisions of Rules 25-17.082, 25-17.0832, and 25-17.0836 Florida Administrative Code (F.A.C.). No changes to payments are being proposed. (Sickel, S. Brown)

**Staff Analysis:** The three negotiated contracts under consideration in these dockets were originally approved in 1991 for cost recovery of purchased firm capacity and energy. Since the original approvals, the Mulberry Energy Company, Inc. and the Royster Phosphates, Inc. contracts have been assigned to Polk Power Partners, L.P. (Polk), with the agreement of PEF. Likewise, PEF agreed to the assignment of the contract originally with CFR Biogen Corporation to Orange Cogeneration, L.P. All parties have joined in the requests that are addressed in this recommendation.

The parties propose to add new language to each 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. Each contract would be revised to add Section 12.1.5 as follows:

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 these contracts. 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 joint petitioners assert that adding the definitive parameters in the form of time limitation with respect to potential payment errors will enable more effective administration of the contracts. Furthermore, adding such language to these three contracts will bring them into consistency with regard to limitations set forth in other PEF wholesale contracts.

The contracts remain compliant with all provisions in the Florida Administrative Code 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. Staff recommends that the requested approvals should be granted.

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**Issue 2**: Should this docket be closed?

**Recommendation**: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (M. Brown)

**Staff Analysis**: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.