

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Planning Hearings on Load)	DOCKET NO. 900004-EU
Forecasts, Generation Expansion Plans)	ORDER NO. 23792
and Cogeneration Pricing for Peninsula)	ISSUED: 11-21-90
Florida's Electric Utilities.)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 FRANK S. MESSERSMITH

ORDER ON SUBSCRIPTION

BY THE COMMISSION:

In Order No. 22341 we approved, in concept, a cogeneration subscription limit to the statewide avoided unit. The details of implementing the subscription limit, however, were to be determined later. On May 25, 1990, the matter of implementation of the subscription limit was considered at agenda conference. On July 23, 1990, we issued Order No. 23235, Notice of Proposed Agency Action Order on Subscription.

After the issuance of Order No. 23235, the AES Corporation (AES), Nassau Power Corporation (Nassau), and Florida Power & Light (FPL) filed Motions for Clarification of the Order. In addition, Consolidated Minerals, Inc. (CMI) filed a Memorandum in Response to the Motions for Clarification which contained additional suggestions for "clarifying" Order No. 23235.

At the September 11, 1990 agenda conference we invited the parties to file briefs on the issues raised in the Motions for Clarification and on the issue of prioritizing the cogeneration contracts filed with us. Our intent at that time was to issue a new Notice of Proposed Agency Action after considering the briefs and hearing oral argument at the next agenda conference.

At the October 2, 1990, agenda conference we decided that instead of issuing a new Notice of Proposed Agency Action we would conduct a hearing on October 26, 1990, to determine prioritization of the contracts and to establish the criteria to be employed in prioritization. We directed the parties to file supplemental

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briefs on these issues and to address the question of whether the proceeding would involve a disputed issue of material fact. The notice of the proceeding set forth its purpose as follows:

The purpose of the proceeding shall be to determine the methodology and criteria to be employed by the Commission to determine which contracts for the purchase of Qualifying Facility (QF) power should be selected to fill the 500 MW subscription limit previously defined by the Commission. Once the methodology and criteria is established by the Commission, if no disputed issues of material fact arise, the Commission shall prioritize contract subscription to the 500 MW limit. The proceedings will be governed by the provisions of Section 120.57(2), Florida Statutes.

A prehearing conference was held on October 19, 1990. At the prehearing conference the parties agreed that the following issues should be addressed at the October 26, 1990 proceeding:

- ISSUE 1: What is the purpose and effect of the subscription limit?
- ISSUE 2: What is the effect of queuing contracts for subscription limit purposes?
- ISSUE 3: Which contracts should be considered candidates for filling the current 500 MW subscription limit?
- ISSUE 4: On what basis should the contracts to fill the 500 MW subscription limit be selected?
- ISSUE 5: What is the order of priority of those contracts currently before the Commission?

At the October 26, 1990 proceeding the parties argued their positions with regard to these issues. The proceeding involved no

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disputed issue of material fact and was therefore conducted as an informal proceeding pursuant to the provisions of Section 120.57(2), Florida Statutes. Having considered the argument of the parties, as well as the briefs submitted to us, we now address the issues.

ISSUE 1: What is the purpose and effect of the subscription limit?

The purpose and effect of the subscription limit is to place a maximum limit of 500 MW on the amount of capacity Florida's investor owned utilities are required to purchase pursuant to standard offer contracts.

ISSUE 2: What is the effect of queuing contracts for subscription limit purposes?

The effect of queuing contracts for subscription limit purposes is to lock in a price pending further review (in a contract approval/need determination proceeding) as to whether the proposed project is the most cost-effective alternative to the purchasing utility. When we designated the 1996 statewide avoided unit in Order No. 23234 we approved the subscription limit concept by stating "we will, at least for the present, limit the subscription of the standard offer to 500 MW on a statewide basis. The import of our decision is to require all peninsular Florida utilities to honor negotiated and standard offer contracts until the 500 MW limit has been reached on a statewide basis". In keeping with Order No. 23234 we now specifically find that those standard offer contracts which do not fall within the 500 MW subscription limit are invalid and have no force or effect.

The placement of a contract in the queue does not create a presumption of need and does not mean the applicants need determination will be "rubber stamped". This treatment is consistent with Order No. 22341 where we stated:

[I]n so doing we take the position that to the extent that a proposed electric power plant constructed as a QF is selling its capacity to an electric utility pursuant to a standard offer or negotiated contract, that capacity is meeting the needs of the purchasing utility.

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As such, that capacity must be evaluated from the purchasing utility's perspective in the need determination proceeding, i.e., a finding must be made that the proposed capacity is the most cost-effective means of meeting purchasing utility X's capacity needs in lieu of other demand and supply side alternatives."

Thus, prioritization of a contract within the 500 MW subscription limit does not establish a presumption of need. Contracts within the "queue" must still be evaluated against individual utility need at a need determination proceeding.

ISSUE 3: Which contracts should be considered candidates for filling the current 500 MW subscription limit?

At the May 25, 1990 agenda conference, we made it clear that the 1996 500 MW subscription limit would apply to contracts on a prospective basis from the day of the Commission vote.

The 1996 500 MW statewide avoided unit had not been designated at the time the Indiantown Cogeneration L.P. (ICL) contract was executed. Therefore as a matter of law, the ICL project is not a candidate for filling the 500 MW subscription limit.

ISSUE 4: On what basis should the contracts to fill the 500 MW subscription limit be selected?

Contracts should be selected based on their execution date.

Contract prioritization by execution date is consistent with our past actions regarding standard offer contracts.

ISSUE 5: What is the order of priority of those contracts before the Commission?

Based on our position in Issues 3 and 4, the priority of the contracts is as follows:

1. Nassau Power Corporation (435 MW)
2. Cypress I (180 MW)

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- 3. Cypress II (180 MW)
- 4. Panda Energy (230 MW)
- 5. Mockingbird Energy (220 MW)
- 6. Indeck Lakeland (185 MW)
- 7. Indeck Frostproof (185 MW)
- 8. Telluride I (75 MW)
- 9. Telluride II (75 MW)


Since the subscription limit would be exceeded by 115 MW if both the Nassau and Cypress I contracts are allowed, we limit the queue to Nassau Power Corporation's 435 MW and allow the remaining 65 MW to go to the Cypress I project.

Accordingly it is

ORDERED by the Florida Public Service Commission that subscription to the 500 megawatts designated in Order No. 23234 is hereby limited to 435 megawatts to Nassau Power Corporation and 65 megawatts to Cypress Energy, Inc. It is further

ORDERED that all other standard offer contracts signed up against the 500 megawatt 1996 statewide avoided unit, designated in Order No. 23234, are hereby null and void and shall have no force or effect.

By ORDER of the Florida Public Service Commission, this 21st day of NOVEMBER, 1990.



 STEVE TRIBBLE, Director
 Division of Records and Reporting

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DISSENTING VOTE

Commissioner Beard dissented from the Commission's vote on issues four and five on the ground that execution date is not a legitimate basis for prioritization of standard offer contracts.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.