

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for determination that its plan for curtailing purchases from qualifying facilities in minimum load conditions is consistent with Rule 25-17.086, F.A.C.

DOCKET NO. 941101-EQ
FILED: 06/15/95

ORIGINAL FILE

POLK POWER PARTNERS, L.P.
AND
ORANGE COGENERATION LIMITED PARTNERSHIP'S
STATEMENT OF ISSUES AND POSITIONS
AND
POST-HEARING BRIEF

Polk Power Partners, L.P. ("Polk") and Orange Cogeneration Limited Partnership ("Orange") hereby file their consolidated post-hearing brief in this docket.

DISCUSSION

1. Has Florida Power Corporation adequately demonstrated that the minimum load conditions for curtailment outlined in its plan comply with Commission Rule 25-17.086, Florida Administrative Code?

ACK ✓

AFA _____

APP _____

CAF _____

C' _____

C _____

Position: Polk and Orange do not object to FPC's curtailment plan.

2. Has Florida Power Corporation adequately demonstrated that its plan incorporates all appropriate measures to mitigate the need for curtailment during minimum load conditions?

Position: Polk and Orange take no position on whether FPC has appropriately committed its own generation, decreased other sources of generation or made all possible off-system sales during given curtailment events. FPC should, however, be directed to pursue authority to appropriately price its energy to increase off-system sales.

Antrell
1 _____

5 _____

SEC 1

WAS _____

RECEIVED

- 1 -

EPSC OFFICE OF RECORDS

DOCUMENT NUMBER-DATE

05645 JUN 15 95

FPSC-RECORDS/REPORTING

- A. Has Florida Power Corporation adequately demonstrated that it has attempted to mitigate any foreseeable imbalance between generation and load during minimum load conditions by committing the most appropriate combination of generation resources for the circumstances?

Position: Polk and Orange agree that FPC could reduce the need for curtailment by appropriate dispatch of its baseload units. They do not object to the plan, however, because it appropriately requires FPC to take its peaking and intermediate generating units off-line, if possible, before curtailing QF purchases.

- B. Does the proposed curtailment plan properly require Florida Power Corporation to take all appropriate measures to decrease other sources of generation to mitigate any imbalance between generation and load?

Position: Polk and Orange do not object to FPC's curtailment plan.

- C. Does the proposed curtailment plan properly require Florida Power Corporation to take all appropriate measures to increase sales to mitigate any imbalance between generation and load?

Position: Polk and Orange do not object to FPC's curtailment plan, but believe that FPC should be ordered to pursue authority to modify off-system sales rates to properly reflect incremental costs in must-run scenarios.

FPC's plan states that the utility will reduce inter-utility capacity purchases to minimum contract levels, maximize off-system sales and reduce its own generation to minimum levels before curtailing QF purchases. [Ex 1, RDD-1 at page 10 of 52] Polk and Orange believe that these actions not only are appropriate but are required before FPC may curtail QF purchases.

Rule 25-17.086, Florida Administrative Code, allows utilities to curtail purchases from QFs under two circumstances: where the purchases would impair the utility's ability to serve customers, or where the utility's operational circumstances are

such that the purchases would either result in higher avoided costs or otherwise would place an undue burden on the utility. The rule clearly indicates, however, that the curtailment option is only a limited exception to the general obligation to purchase QF capacity and energy imposed by Rule 25.17.082, Florida Administrative Code.

By its terms, Rule 25-17.086 only operates to relieve a utility of its general obligation to purchase where there is a cause-and-effect relationship between the purchase from the QF and one of the factors listed in the rule (impaired service or "negative avoided costs"/other undue burden). That is, the purchase must cause the condition, which in turn allows the utility to curtail QF purchases. Rule 25-17.086 does not permit curtailment in the absence of this cause-and-effect relationship. In order to determine whether a particular set of circumstances justifies curtailment, therefore, the Commission must determine whether QF purchases -- rather than purchases from other utilities or FPC's own generation -- actually cause the need for curtailment.

As shown in the plan and discussed at hearing, the exact amount of generation considered to be minimum will vary based on operating conditions, but in general, FPC anticipates taking its intermediate and peaking units off-line during low load conditions, while running its baseload units at their minimum levels. [Ex. 1, RDD-1 at page 13 of 52]. Although Polk and Orange agree with Dade, Lake, Orlando Cogen and Pasco Cogen that

FPC could further reduce the need for curtailment by appropriate dispatch of its baseload units, they take no position on whether FPC's management of its baseload generation was appropriate during any particular curtailment event. Polk and Orange note that Rule 25-17.086 provides an opportunity for investigation of the utility's handling of each curtailment event, which presumably would include a review of the utility's use of its baseload generation before and during each curtailment event.

Polk and Orange take no position on whether FPC must interrupt purchases from other utilities before curtailing QF purchases, but believes that the Commission should require FPC to pursue authority to reduce prices for its off-system sales. Mr. Southwick, FPC's witness, indicated FPC's understanding that "the governing FERC pricing policies mandate that the price of off-system opportunity sales be no lower than the seller's incremental cost." [Tr 347] However, Dr. Shanker, Orlando Cogen and Pasco Cogen's witness, pointed out that the utility's incremental or marginal price would be zero "when there is surplus must-run power on the system." [Tr 544] The record is replete with testimony supporting the common-sense proposition that because energy is fungible, purchasers will buy energy from the seller with the lowest price. Therefore, one must conclude that appropriate pricing, which recognizes true incremental cost in must-run situations, will allow FPC aggressively to pursue off-system sales as required under its curtailment plan.

3. Has Florida Power Corporation adequately demonstrated that the procedures for curtailment outlined in its plan are reasonable and appropriate?

Position: Polk and Orange do not object to FPC's curtailment plan.

4. Has Florida Power Corporation adequately demonstrated that its proposed plan allocates justifiable curtailments among QF's in a fair and not unduly discriminatory manner?

Position: Yes. Separate curtailment schedules for each group of QFs are necessary in order to reflect the relative value of curtailment provided by each group. The plan's allocation of justifiable curtailment among QFs is fair and not unduly discriminatory because it offers similar treatment to QFs who provide similar benefits to FPC.

Although FPC's plan provides different curtailment schedules for the three QF groups, the plan's distinction between groups is fair and reasonable. The plan does nothing more than reflect the relative value to FPC of the type of curtailment received from each QF or NUG.

Both Groups A and B include NUGs that have standard offer or negotiated contracts to sell energy and capacity to FPC. Group A NUGs have made an additional voluntary commitment to provide some form of curtailment to the utility, while Group B NUGs have not. Group C NUGs, on the other hand, provide energy on an as-available basis and have no commitment to the utility.

The type and extent of voluntary curtailment provided by Group A NUGs varies widely. For example, as shown in FPC's Exhibit 1, FPC's agreement with Pasco County Resource Recovery provides curtailment of 4,608 annual MWh over six occasions which

must be scheduled in advance each year¹, while Polk and Orange provide 255,500 and 189,070 of annual MWh, respectively, by going off-line for seven hours each night. [Ex. 1, RDD-3, pgs 4, 7, 10; Tr 134; figures are based on committed capacity only and do not include as-available energy] Although the curtailment agreements vary in the manner and amount of curtailment, all share one common characteristic: they provide 'firm curtailment' that FPC can count on and that collectively avoids the need for additional curtailment events.

The Commission already has determined that the Group A NUGs' curtailment agreements benefit FPC and its ratepayers. In Order No. PSC-95-0540-FOF-EQ, issued on May 2, 1995 in Docket No. 940797-EQ, the Commission approved a series of modifications to FPC's standard offer and negotiated contracts with Group A NUGs because the changes "convey benefits to FPC's ratepayers in the form of lower costs or improved system reliability and import capability." The Commission noted that the curtailment agreements were the main source of the benefits:

The majority of the reduced costs comes from the formal curtailment agreements that FPC negotiated with the QFs. Reduced energy deliveries during minimum load periods can lower FPC's costs for purchased power. The formal curtailment agreements provide FPC flexibility in meeting minimum load conditions, usually occurring between 12:00 a.m. to 6:00 a.m., and they provide for

¹ According to FPC's revised curtailment plan, Pasco County Resource Recovery and FPC will mutually agree to schedule 8 MW of curtailment for 24 days annually, which amounts to 4,608 MWh annually.

increased system reliability that is beneficial to the ratepayers.

Order No. PSC-95-0540-FOF-EQ at 8. Significantly, the Commission did not find any ratepayer benefit resulting from the informal curtailment agreements entered into by Cargill (Seminole Fertilizer) and Pasco Cogen, both Group B NUGs.²

The Commission's finding of ratepayer benefit in Order No. PSC-95-0540-FOF-EQ provides sufficient basis for differentiation between Group A and Group B NUGs. Group A NUGs provide benefits to FPC not provided by Group B NUGs, and the curtailment plan fairly recognizes those benefits when allocating involuntary curtailment. Differentiation between the two groups prevents, rather than causes, inequitable treatment of NUGs in the curtailment process.

In addition to the financial benefits discussed in Order No. PSC-95-0540-FOF-EQ, however, the firm curtailment provided by Polk, Orange and other Group A NUGs also offers FPC increased certainty in its daily planning activities. Mr. Harper testified that the plan's curtailment procedures are intended to minimize last minute uncertainty [Tr 158]. In his testimony, he detailed

² In its Order, the Commission discussed the involuntary curtailment agreements in conjunction with other contract actions not requiring Commission approval, stating:

The actions, agreements, or modifications to these contracts are either expressly permitted in the contract, or routine in the administration of the contract, with no material effect on FPC's ratepayers. No further approval is necessary.

Order PSC-95-0540-FOF-EQ at 2.

the constant efforts of FPC's dispatchers to balance generation with load during a typical low load situation [Tr 181 - 185] and noted the time and effort necessary to implement and follow through with involuntary curtailment procedures. Firm curtailment meets the utility's expressed needs by increasing certainty in the planning process, avoiding some curtailment events entirely, decreasing last minute decision-making and reducing the time and effort necessary to implement involuntary curtailment procedures.

Firm curtailment from members of Group A also benefits Group B NUGs by reducing the number and severity of involuntary curtailment events. [Tr 101 - 102, 809, 812, 818] According to Mr. Dolan, the firm curtailment provided by Group A NUGs as a whole has prevented as many as 30 additional curtailment events. [Tr 132] Further, it is easy to see from even a cursory review of the Minimum Load Emergency Curtailment Summaries in Exhibit 3 (CJH-1) that FPC's involuntary curtailments of Group B NUGs would have been more severe during each of the seven curtailment episodes detailed in Mr. Harper's testimony had Polk, for example, not provided 100 MW of firm curtailment.

The Minimum Load Emergency Curtailment Summary for the January 2nd curtailment period [Ex. 3, CJH-1, Tab 3] indicates that FPC required involuntary curtailment of 201 MW at 1:00 a.m., which translated to 100% curtailment of Group C, 50% curtailment of Group B and an additional 40% from Group A (over and above firm curtailment). Later that morning, FPC required an

additional 57 MW of curtailment from Group A NUGs, which brought them to 47% curtailment. Without Polk's agreement to provide 100 MW of firm curtailment, Group B NUGs would have been curtailed to a much greater degree.

Pasco Cogen would have the Commission -- as well as FPC -- ignore the very real benefits provided by Group A NUGs on two grounds: first, that members of Group B are passive recipients of curtailment benefits, such that it is somehow unfair to treat them differently, and second, that Group A NUGs entered into curtailment agreements in order to settle other disputes with the utility. The first argument, however, does not take into account the curtailment benefits provided to FPC. As discussed above, FPC receives substantial benefits from the voluntary firm curtailment provided by Group A NUGs, and the plan's grouping of NUGs appropriately acknowledges those benefits.

The second argument is not supported by the record. Mr. Dolan characterized as 'misleading' Pasco Cogen's suggestion that Orange executed its curtailment agreement as part of resolution of a different issue relating to backup fuel, (T. 114) and testified that a disagreement between FPC and Mulberry "did not result in that [curtailment] agreement being settled or signed." (T. 115) Pasco did not produce a witness or document to rebut Mr. Dolan's testimony. There is simply no evidence in the record that would allow the Commission to reach this conclusion.

5. If the procedures set forth in Florida Power Corporation's curtailment plan are consistent with Rule 25-17.086, Florida Administrative Code, did Florida Power Corporation properly implement the procedures during the curtailments that occurred from October, 1994 through January, 1995?

Position: Polk and Orange do not object to FPC's implementation of its curtailment plan during the curtailments that occurred from October, 1994 through January, 1995.

6. Has Florida Power Corporation adequately demonstrated that the curtailments that have occurred from October 1, 1994, through January 31, 1995, were necessary to avoid negative avoided costs?

Position: Polk and Orange do not object to FPC's curtailments from October, 1994 through January, 1995.

- A. In determining whether purchases of firm QF's generation during an operational circumstance that satisfies Rule 25-17.086 would cause FPC to incur costs greater than the costs FPC would incur if FPC supplied the energy, what costs are appropriate to consider?

Position: No position at this time.

- B. In determining whether purchases of firm QF's generation during an operational circumstance that satisfies Rule 25-17.086 would cause FPC to incur costs greater than FPC would incur if FPC supplied the energy, what is the appropriate time frame to measure?

Position: No position at this time.

LEGAL ISSUE

7. What is the permissible scope of Rule 25-17.086, Florida Administrative Code, in view of the federal standards of 18 CFR Sec. 292.304 implementing Section 210 of PURPA?

Position: No position at this time.

8. Should the Commission approve Florida Power Corporation's curtailment plan as being in compliance with Rule 25-17.086, Florida Administrative Code?

Position: Yes, with the proviso that FPC must take its peaking and intermediate generating units off-line before curtailing QF purchases, unless a particular unit is required for system stability.

Respectfully submitted this 15th day of June, 1995.



Patrick K. Wiggins
Marsha E. Rule

WIGGINS & VILLACORTA, P.A.
501 E. Tennessee St., Suite B
Post Office Drawer 1657
Tallahassee, Florida 32302
(904) 222-1534

Attorneys for Polk Power
Partners, L.P. and
Orange Cogeneration Limited
Partnership

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing post-hearing brief has been furnished by U.S. Mail this 15th day of June, 1995 to the following parties of record:

Barry N.P. Huddleston
Destec Energy Company Inc.
2500 CityWest Blvd.
Suite 150
Houston, TX 77210-4411

Martha Brown
Vicki Johnson
FPSC
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Gregory Presnell
Akerman Law Firm
P.O. Box 231
Orlando, FL 32802-0231

Ansley Watson
P.O. Box 1531
Tampa, FL 33601-1531

Robert Riley
Auberndale Power Partners
12500 Fair Lakes Circle, #420
Fairfax, VA 22033-3808

Joseph McGlothlin
315 S. Calhoun St. #716
Tallahassee, FL 32301

Florida Industrial Cogeneration Assoc.
c/o Richard Zambo, Esq.
598 SW Hidden River Ave.
Palm City, FL 34990

Metro. Dade Cnty. Brd, of
Commissioners
Asst. Cnty. Attny/Fels
P.O. Box 592075 AMF
Miami, FL 33159

Florida Power Corporation
Mr. James A. McGee, Esq.
P.O. Box 14042
St. Petersburg, FL 33733-4042

Montenay-Dade, LTD.
3225 Aviation Ave.
4th FL
Miami, FL 33131

Holland and Knight
Bruce May
P.O. Drawer 810
Tallahassee, FL 32302

Wheelabrator Environm.
Services, Inc.
Michael O'Friel
Liberty Lane
Hampton, NH 03842

Johnson & Associates
Barrett Johnson
P.O. Box 1308
Tallahassee, FL 32302

Orlando CoGen Limited
c/o Air Products
7201 Hamilton Blvd.
Allentown, PA 18195

Lake Cogen, Ltd.
c/o Energy Initiatives, Inc.
Kelly Tomblin
One Upper Pond Road
Parsippany, NJ 07054

Panda Energy Corp.
Stephen Argenbright
4100 Sprg Valley Rd #1001
Dallas, TX 75244

Polk Power Partners
1125 U.S. 98 South, Ste 100
Lakeland, FL 33801

Landers and Parsons
Scheffel Wright
P.O. Box 271
Tallahassee, FL 32302

Pasco County
County Attorney
7530 Little Road
New Port Richey, FL 34654

Ridge Generating Station, L.P.
Rodney Williams
3131 K-Ville Ave.
Auburndale, FL 33823

Pasco Cogen, Ltd.
Elliott White
111 E. Madison St. #1700
Tampa, FL 33601-2562



Marsha E. Rule