

VOTE SHEET

AUGUST 18, 1997

RE: DOCKET NO. 961477-EQ - Petition for expedited approval of settlement agreement with Lake Cogen, Ltd., by Florida Power Corporation.

Issue 1: Can the Commission deny cost recovery of a portion of the energy payments made to Lake regardless of the outcome of the current litigation?
Recommendation: Yes. Jurisdiction over retail cost recovery is exclusive to this Commission. An adjudication of rights between a utility and a qualifying facility by a court is not dispositive of the utility's authorization to recover these costs from the ratepayers. Cost recovery under PURPA and Section 366.051, Florida Statutes, is limited to the utility's full avoided cost, as of the time the contract was approved. At least one recent decision suggests that a state regulatory commission has jurisdiction to clarify and interpret its QF contract approvals.

DEFERRED

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

REMARKS/DISSENTING COMMENTS:

*To the September 23
Commission Conf.*

DOCUMENT NUMBER-DATE

98314 AUG 18 97

FPSC-RECORDS/REPORTING

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Issue 2: Should the Settlement Agreement between Florida Power Corporation and Lake Cogen, Ltd. (Lake) be approved for cost recovery?

Primary Recommendation: Yes. Approval of the Settlement Agreement mitigates the risks associated with the uncertainty of civil litigation. On balance because there is more monetary risk in rejecting the Settlement Agreement than approving it, giving at least some intuitive recognition to the reduced need for replacement capacity due to deregulation increases the Settlement Agreement's cost-effectiveness, and using traditional regulatory rate base accounting as the basis to calculate simple payback, the contract buy-out should be approved.

Alternative Recommendation: No. The proposed Settlement Agreement should not be approved because it is not cost-effective. The modifications to the Contract result in a net overpayment of avoided costs of approximately \$17.1 million NPV. Chapter 366.051, Florida Statutes, Section 210 of PURPA and this Commission's Rules require that QF payments not exceed a utility's full avoided costs.

Second Alternative Recommendation: No. The proposed Settlement Agreement should be denied since it cannot be shown to be cost-effective. Based on reasonable economic and legal assumptions, sensitivity analyses indicate that the likelihood of the agreement yielding ratepayer losses is roughly equivalent to the likelihood of it yielding ratepayer savings.

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Issue 3: If approved, how should the settlement payment and revised capacity and energy payments pursuant to the Settlement Agreement be recovered from the ratepayers?

Recommendation: The energy settlement payment of \$5.5 million and the ongoing energy payments made pursuant to the Settlement Agreement should be recovered through the Fuel and Purchased Power Cost Recovery (Fuel) Clause. The capacity payments as determined and paid pursuant to the Settlement Agreement should be recovered through the Capacity Cost Recovery Clause. The recovery of payments made prior to their inclusion for recovery through the adjustment clauses should include interest from the date the payments were made. Should the Settlement Agreement not be approved, any necessary adjustments to the Fuel Clause to reflect the method of pricing energy under the Contract prior to the Settlement Agreement should be made at the next Fuel Adjustment hearing.

Issue 4: If the Settlement Agreement is approved, what is the appropriate method for recovering the Special Monthly Payments associated with terminating the contract on December 31, 2009?

Recommendation: If the Settlement Agreement is approved, 72 percent of the special monthly payments should be recovered through the Capacity Cost Recovery Clause and 28 percent should be recovered through the Fuel and Purchased Power Cost Recovery Clause. This split between the clauses reflects the fact that the payments are justified based on anticipated capacity and energy savings in the buy-out years. The recovery of payments made prior to their inclusion for recovery through the adjustment clauses should include interest from the date the payments were made.

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Issue 5: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the Commission's proposed agency action files a protest within 21 days of the issuance of this order, this docket should be closed.