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Tallahassee
August 20, 1990

ORIGINAL
FILE COPY

VIA HAND DELIVERY

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, Florida 32301

Re: Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Peninsular Florida's Electric Utilities, Docket No. ~~880812-TP~~ 900004-EG

Dear Mr. Tribble:

Enclosed for filing in the docket referenced above are the original and 15 copies of Consolidated Minerals, Inc.'s Petition to Intervene, and the original and 15 copies of Consolidated Minerals, Inc.'s Memorandum in Response to Motions for Clarification of Order No. 23235. Also enclosed is an additional copy of each filing to be date stamped by you and returned to our office.

Thank you for your consideration in this matter.

Sincerely,

HOLLAND & KNIGHT

D. Bruce May

ACK ↘
AFA ___
APP ___
CAF ___
CMU ___
CTR ___
EAG ___
LEG LWLM
LIN 6
OPC ___
RCH ___
SEC 1
WAS ___
OTH ___

Enclosure
DBM/sms
cc: All parties of record
Roy Mims, General Counsel
Mr. Charles Bush
Richard B. Stephens, Jr., Esquire

CMI L0820:162

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

Memorandum
DOCUMENT NUMBER-DATE
07525 AUG 20 1990
FPSC-RECORDS/REPORTING

Petition
DOCUMENT NUMBER-DATE
07524 AUG 20 1990
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re: Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Peninsular Florida's Electric Utilities.

Docket No. 900004-EU
FILED: August 20, 1990

/

MEMORANDUM IN RESPONSE TO MOTIONS FOR CLARIFICATION OF ORDER NO. 23235

On August 13, 1990, Florida Power and Light Company ("FPL"), Nassau Power Corporation ("Nassau Power"), and the AES Corporation ("AES") filed separate motions seeking certain clarifications of Order No. 23235. Pursuant to Florida Administrative Code Rule 25-22.037, CMI responds to those motions as follows:

1. None of the above motions address the fact that the Commission did not intend to retroactively apply the 500 MWs coal-fired unit standard (for purposes of either subscription or cost effectiveness) to qualifying facility ("QF") contracts negotiated against prior statewide avoided units and executed prior to May 25, 1990. This was made clear in a dialog between Commissioners Easley and Wilson at the Vote Conference on May 25, 1990.

> COMMISSIONER EASLEY: I need a what-happens-next type question. Hypothetically, let's say we go along with Commissioner Beard's motion and we designate from this point forward the '96 coal unit as the avoided unit, my understanding is the current contracts remain in place because they were done under the combined cycle.
>
> CHAIRMAN WILSON: That's right.

MS. BROWNLESS: Yes ma'am, the ones that have been signed.

(Tr. 42.) This was later reaffirmed by Chairman Wilson:

> . . . Every contract that has been negotiated up to this point and signed against the '93 [subscription] is a valid contract. But we closed that out, and anybody that negotiates from this date forward with the utility or takes a standard offer contract will be 500 megawatt '96 base load coal-fired plant.

(Tr. 49.) The Commission unequivocally determined that contracts negotiated and executed prior to the Commission's May 25 vote were not to be counted toward the 500 MWs subscription limit or evaluated for cost-effectiveness against the 500 MW coal unit designated in Order No. 23234.

2. With respect to FPL's concerns in its motion for clarification, nothing in Order No. 23235 prohibits a utility from negotiating a QF contract with an in-service date different from that of the statewide avoided unit. In fact, the Commission's May 25 vote to approve staff's primary recommendation on Issue No. 4 (Tr. 76) confirms that not only are those contracts permissible, the contracts are to be evaluated for cost effectiveness against a utility's individual needs and costs. [January 18, 1990 staff recommendation at 17-20. (Attachment A).] A comparison to the secondary recommendation of staff, which was rejected, sharpens this point.

3. The order is also equally clear that if a utility negotiates a QF contract with an in-service date different

than that of the statewide unit, such contract does not count toward the 500 MWs subscription limit. This is specifically confirmed by the Commission's May 25 vote approving staff's primary recommendation on Issue No. 5 (Tr. 77). The Commission's May 25 Vote Sheet on Issue No. 5 states as follows:

> Issue: 5. Should a negotiated contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit be counted toward the utility's subscription limit?
>
> Primary Recommendation: No. The subscription limit set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be evaluated against each utility's own avoided costs.

(Attachment B.) Any doubt as to what this language actually means is erased when one reviews the transcript of the May 25 vote conference. The following dialog between the proponent of staff's primary recommendation on Issue No. 5 -- Tom Ballinger -- and Chairman Wilson is instructive:

> MR. BALLINGER: . . . My recommendation is that subscription only applies to the year that you have a standard offer contract, designated a '96 coal unit. Both negotiated and standard offer contract that have a '96 in-service date, capacity payments starting in '96 for the projects, would count toward the subscription limit.
>
> If somebody negotiates a contract for a '93 in-service date, something like

that, no subscription limit. To me subscription limit was an outgrowth of our rules. It was in addition to our rules. It wasn't ever contemplated in our rules.

We need to set the way these are going to be implemented. To me they should only apply to the standard offer contract because they were first applied to keep from having too much cogeneration signed, and the only way that you may have too much cogeneration signed is if you've got the standard offer that is a free sign on the line you get it.

So that's why I feel it should only apply to the year when you have a standard offer contract. Both negotiated and standard offer should apply, but only in that year.

CHAIRMAN WILSON: All right. So if a utility even though the subscription limit may be close to being filled or be filed for 19-, in this case we are talking about 1996.

MS. BROWNLESS: Uh-huh.

CHAIRMAN WILSON: That if a utility signs a contract with a '93, '94, '95 in-service date, we would judge whatever the utility has signed based on a prudent standard, whether they needed the power, or whether they elected to defer, whether it was cost effective, whether it was prudent, and all of that.

MR. BALLINGER: That's right.

(Tr. 59-61.)

Wherefore, CMI respectfully requests that the Commission confirm that under Order 23235:

1. QF contracts negotiated against prior statewide avoided units and executed prior to the Commission's vote

on May 25, 1990 are not to be retroactively bound by the 500 MWs subscription limit, and

2. The current subscription limit does not apply to QF contracts with in-service dates different from that of the current statewide avoided unit, i.e., January 1, 1996.

Respectfully submitted,

D. Bruce May
Richard B. Stephens, Jr.
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(904) 224-7000

Attorneys for Consolidated Minerals, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to the following this 20th day of August, 1990.

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D. Bruce May

CMI CLARRESP:162

subscription limit for a particular unit?

RECOMMENDATION: When a utility reaches its allocated limit for the Commission approved statewide avoided unit, the utility should close out its current standard offer and provide a new standard offer based on the next approved statewide avoided unit. For example, when FPL subscribes 230 MW of the 1993 combined cycle unit, they would then offer a standard offer contract based on the Commission approved statewide avoided unit, a 1994 combined cycle unit. Likewise, when FPL subscribes 230.6 MW of the 1994 avoided unit, they would open a new standard offer contract based on the Commission approved 1995 statewide avoided unit.

STAFF ANALYSIS: This is the methodology approved by the Commission in Order No. 22341. Each utility would be required to petition the Commission for closure of its existing standard offer contract and associated tariff. This methodology is also consistent with the action which the Commission just took in closing out the 1995 avoided coal unit.

ISSUE 4: Does the subscription limit prohibit any utility from negotiating, and the Commission subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility?

PRIMARY RECOMMENDATION (Ballinger): No. The subscription

limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, i.e., a 1993 combined cycle unit. Any contract outside of these boundaries should be evaluated on a utility's individual needs and costs, i.e, should be evaluated against the units identified in each utility's own generation expansion plan.

SECONDARY RECOMMENDATION (Brownless): Yes. Although the recommendation of Technical Staff has merit, the rules as currently written simply don't envision cogeneration contracts that are not tied to the current statewide avoided unit.

POSITION OF PARTIES:

FPC, FPL, TECO, FICA: Agree with Technical Staff.

STAFF ANALYSIS (PRIMARY): The Commission's current rules never envisioned the concept of a subscription limit or cap being placed on the purchase of capacity and energy from qualifying facilities. The purpose of a subscription limit is an attempt to maintain the amount of cogeneration to a level that is needed from a statewide perspective. Because our current rules and the subscription limit requirement are based on a statewide avoided unit, which doesn't always match an individual utility's needs, any contract outside of these boundaries

should be evaluated based on the utility's own needs and costs just like any other wholesale purchase power agreement.

In the recent past, the Commission has been forced by our current rules to approve some cogeneration contracts that were shown to be above the purchasing utility's own avoided cost. The subscription limit and allocation requirements were developed to limit this mismatch between statewide and individual pricing, not to impede the development of cogeneration in this state. Prohibiting utilities from negotiating contracts outside of these limitations would frustrate the Commission's cogeneration policy and the new FEECA statutory requirement to encourage cogeneration. A utility should be allowed to purchase as much cogeneration as it needs as long as it is shown to be cost-effective to its own ratepayers.

It is not Technical Staff's intention to inhibit the development of cogeneration and that is why we are recommending that the subscription limit be applied only to contracts negotiated against the current statewide avoided unit. Neither allocation nor subscription is mentioned in our current rules. Since the existing cogeneration rules do not refer to either of these concepts, it is our opinion that they should not be interpreted to prohibit this implementation of these concepts.

The benefits of allowing utilities to negotiate contracts outside of these boundaries are twofold. First, the ratepayers are protected from the statewide/individual utility need mismatch. Second, utilities are permitted and encouraged to pursue cost-effective cogeneration that meets their specific needs.

For these reasons, Technical Staff recommends that the approved subscription amounts be applied only to standard offer contracts and contracts negotiated against the designated statewide avoided unit. All other negotiated contracts should be approved if less than or equal to the purchasing utility's own avoided cost.

STAFF ANALYSIS (SECONDARY): What Technical Staff is attempting to do through this implementation order is to achieve individual utility cogeneration pricing without the benefit of a rule hearing. The existing cogeneration pricing rule, Rule 25-17.083, Florida Administrative Code, clearly envisions one statewide avoided unit from which a standard offer would be developed and against which negotiated contracts would be measured for reasonableness. Rule 25-17.083(2), Florida Administrative Code, states that a negotiated contract will be considered prudent for cost recovery purposes if the contract:

FLO(A PUBLIC SERVICE COMMISSI(

VOTE SHEET

SPECIAL COMMISSION CONFERENCE

DATE 5/25/90

RE: DOCKET NO. 900004-EU - Planning Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Peninsular Florida's Electric Utilities. (Deferred from the April 17, 1990 Commission Conference)

Issue: 1. With regard to the subscription limits established in Order No. 22341, how should standard offer and negotiated contracts for firm capacity and energy be prioritized to determine the current subscription level?
Primary Recommendation: Initial priority should be given to all contracts based on the execution date or the last signature date of the contract. Priority would not become final until Commission approval for cost recovery purposes. For standard offer contracts, the execution and approval date are one and the same. However, if a standard offer contract and a negotiated contract are executed on the same day, the negotiated contract, upon approval by the Commission, should take precedence over the standard offer contract.

Denied

The first three sentences of the recommendation were approved. The last sentence was denied.

ST

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' VOTES

APPROVED	APPROVED WITH MODIFICATIONS	DISAPPROVED	DEFER
	(1)		

REMARKS/DISSENTING COMMENTS:

TO:

Attachment B

Secondary Recommendation: Due to the fact that under existing Rule 25-17.083(8), F.A.C., payments made pursuant to standard offer contracts are recoverable without further action by the Commission, standard offer contracts should "trump" negotiated contracts when both are executed on the same date. As found by the Commission in the last planning hearing docket (Issue No. 25), both standard offer and negotiated contracts count toward the subscription limit. The current rules do not envision more than one standard offer at a time, i.e., a standard offer for each year a unit is identified in the designated utility's least-cost generation expansion plan.

APPROVED - instead of last sentence in primary recommendation.

Issue: 2. How should the utilities who are subject to the Commission-designated subscription amounts notify the Commission on the status of capacity signed up against the designated statewide avoided unit?
Recommendation: Utilities who are subject to Commission- designated subscription amounts should be required to submit to the Director of the Division of Electric and Gas an informal notice of contract execution within five days of the contract execution date. This notice should include, at a minimum: the type of contract, the in-service year of the project, the amount (MW) committed, the contracting party or parties, and the amount (MW) remaining under the utility's current subscription level. Either the utility or the cogenerator can submit the notice of contract execution. If a notice of contract execution is not received within five days, priority will then be based upon the date the notice is ultimately received. Filing of the contract should occur within 30 days of the date of the notice.

APPROVED

Vote Sheet
Special Commission Conference
Docket No. 900004-EU
May 25, 1990

Issue: 3. What happens when a utility reaches its own subscription limit for a particular unit?
Recommendation: When a utility reaches its allocated limit for the Commission-approved statewide avoided unit, the utility should close out its current standard offer and provide a new standard offer based on the next approved statewide avoided unit. For example, when FPL subscribes 230 MW of the 1993 combined cycle unit, they would then offer a standard offer contract based on the Commission-approved statewide avoided unit, a 1994 combined cycle unit. Likewise, when FPL subscribes 230.6 MW of the 1994 avoided unit, they would open a new standard offer contract based on the Commission-approved 1995 statewide avoided unit.

MODIFIED - Allocation has been eliminated by the decision in docket 900004-EU - reconsideration of avoided unit -, however, when the 500MW of the 1996 coal unit have been subscribed, it will be closed and the Commission will consider the options available to it at that time.

Issue: 4. Does the subscription limit prohibit any utility from negotiating, and the Commission from subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility?
Primary Recommendation: No. The subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to contracts negotiated against the current designated statewide avoided unit, i.e., a 1993 combined cycle unit. Any contract outside of these boundaries should be evaluated on a utility's individual needs and costs, i.e., it should be evaluated against the units identified in each utility's own generation expansion plan.

APPROVED

Secondary Recommendation: Yes. Although the recommendation of technical staff has merit, the rules as currently written simply do not envision cogeneration contracts that are not tied to the current statewide avoided unit.

DENIED

Vote Sheet
Special Commission Conference
Docket No. 900004-EU
May 25, 1990

Issue: 5. Should a negotiated contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit be counted towards that utility's subscription limit?
Primary Recommendation: No. The subscription limits set forth in Order No. 22341 and the current criteria for approval of negotiated contracts should only apply to the statewide avoided unit. Any contract outside of these boundaries should be evaluated against each utility's own avoided cost.

APPROVED

Secondary Recommendation: No. Utilities should be prohibited from negotiating for units which are beyond the date of the statewide avoided unit. If, however, such units are contracted for, these contracts should be judged for cost recovery purposes against the avoided costs of the 1994 and 1995 avoided units approved by the Commission in Order No. 22341. After 1995, these contracts should be judged against the units identified in the FCG's 1989 Long Range Generation Expansion Plan.

DENIED