

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: PETITION OF FLORIDA POWER	)	DOCKET NO. 891080-EQ
CORPORATION TO WITHDRAW RATE SCHEDULE	)	
COG-3	)	ORDER NO. 22024
	)	ISSUED: 10-9-89

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The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 JOHN T. HERNDON

ORDER APPROVING THE PETITION OF FLORIDA POWER  
 CORPORATION TO WITHDRAW RATE SCHEDULE COG-3

BY THE COMMISSION:

On August 23, 1989, Florida Power Corporation (FPC) filed a petition to withdraw Rate Schedule COG-3, Intrastate Transmission Service for Delivery of Power and Energy from Qualifying Facilities to Electric Utilities. On September 2, 1983, the Commission issued an order in Docket No. 820406-EU adopting rules applicable to cogeneration and small power production. Those rules related to rates for the transmission of power produced by QFs. On October 27, 1983, in the same docket, the Commission ordered electric utilities to submit tariffs in compliance with these rules. In July, 1984, the Commission and Florida Power & Light Company (FP&L) filed a petition for a declaratory order with the Federal Energy Regulatory Commission (FERC) respecting the Florida Commission's jurisdiction over rates for transmission of power produced by QFs. On October 31, 1984, FERC issued a declaratory order stating that the rates, as well as the terms and conditions, of transmission service are within the exclusive jurisdiction of FERC and beyond the scope of the commission's jurisdiction.

On September 27, 1985, in Docket No. 840399-EU, the Commission issued a notice of Repeal of Rule, Adoption of Rules

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and Withdrawal of Proposed Rule concerning the terms and conditions of transmission service for QFs, and directing utilities to file tariffs in compliance with Rule 25-17.088. On February 18, 1986, FPC filed Rate Schedule COG-3 pursuant to those rules.

On January 20, 1987, in Docket No. 860599-EI, the Commission issued a Notice of Adoption of Rule Amendment amending Rule 25-17.088, which also concerned the terms and conditions of transmission service for QFs. These rules required submission of utility tariffs. No further filing by FP&L was necessary, however, in that the previously filed COG-3 complied with these rules.

In March, 1987, FP&L petitioned FERC for a declaratory order establishing whether FERC has exclusive jurisdiction over the terms and conditions of transmission service for QFs. On July 20, 1987, FERC issued a declaratory order stating that the terms and conditions of transmission service were within the exclusive jurisdiction of FERC and beyond the scope of the Florida Commission's jurisdiction. On October 14, 1988, the U.S. Court of Appeals for the District of Columbia dismissed a challenge to these FERC orders rendering them final. We find that with rates and the terms and conditions of service for the transmission of qualifying facility power, therefore, are within the exclusive jurisdiction of FERC and beyond the scope of the Commission's jurisdiction. Because Rate Schedule COG-3 was filed in compliance with Commission orders, and concerns the rates and terms and conditions of transmission service for qualifying facility power, we find that FPC should withdraw its COG-3 tariff on file with the Commission.

We further find that revisions to Rate Schedules COG-1 and COG-2, deleting references to COG-3 in these two rates, are necessary and should be approved.

In consideration of the foregoing, it is

ORDERED that FPC be allowed to withdraw Rate Schedule COG-3, Intrastate Transmission Service for Delivery of Power and Energy from Qualifying Facilities to Electric Utilities. It is further

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ORDERED that the minor revisions to Rate Schedules COG-1 and COG-2 necessitated by the withdrawal of COG-3 be approved. It is further

ORDERED that this docket be closed after the time has run in which to file a petition for reconsideration or notice of appeal if such actions is not taken. It is further

By ORDER of the Florida Public Service Commission,  
this 9th day of October, 1989.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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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,

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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.