



Public Service Commission

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DATE: January 17, 1995
 TO: PARTIES TO DOCKET NO. 941101-EQ
 FROM: JOSEPH D. JENKINS, DIRECTOR, DIVISION OF ELECTRIC & GAS
 RE: COMMUNICATION WITH JOE MCGLOTHLIN

JDJ

On January 17, 1995 Joe McGlothlin called to alert me that the attached letter was sent to staff attorney, Martha Brown. I said that as far as staff is concerned all issues relating to FPC's curtailments "are on the table" and that a second letter is being drafted to this effect. Mr. McGlothlin said that would satisfy his attached letter.

cc: W/att.
Records and Reporting
Martha Brown

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January 17, 1995

HAND DELIVERED

Martha Brown
Division of Legal Services
Florida Public Service Commission
101 East Gaines Street
Fletcher Building, Rm. 212
Tallahassee, FL 32399

Re: Docket No. 941101-EQ, FPC's proposed curtailment plan.

Dear Martha:

I represent Orlando CoGen Limited, an intervenor in the proceeding on FPC's proposed curtailment plan. Ansley Watson, counsel for Pasco Cogen, Ltd. has provided me with copies of a letter that Joe Jenkins of the PSC Staff wrote to him on November 15, 1994, and of Mr. Watson's reply dated December 15, 1994.

In his letter, Mr. Jenkins purports to communicate the results of an investigation by technical staff of FPC's decision to curtail purchases from QFs on October 19, 1994. In his reply, Mr. Watson correctly points out that neither FPC nor Staff has addressed the critical issue of whether FPC's decision to curtail was warranted by a demonstration of negative avoided costs -- the criterion in the FERC rule which the Commission has implemented through its Rule 25-17.086, F.A.C. He identifies other related considerations and demonstrates why it would be premature to form any conclusions regarding the propriety of FPC's action at this point. Without reiterating all of the comments in Mr. Watson's letter of December 15, 1994, OCL strongly concurs in the substantive points he makes regarding FPC's burden to justify the curtailment and the necessary

Ms. Brown
January 17, 1995
Page 2

scope of any adequate review of a utility's decision to curtail purchases from QFs.'

Mr. Jenkins' letter also creates significant procedural concerns. I attended the meeting between FPC and Staff on November 2, 1994. During the meeting, Staff Counsel and Pasco Cogen agreed that Pasco Cogen's request for an investigation would be rolled into and considered as part of the evidentiary proceeding on FPC's proposed curtailment plan. Additionally, because FPC claims that the decision to curtail was consistent with and implemented the proposed plan that is the subject of FPC's petition, a consideration of the circumstances surrounding FPC's action of October 19 is relevant to the issues in the docket, with or without such an agreement. (Since Mr. Watson's letter of December 15, FPC has curtailed purchases from QFs five more times. The circumstances surrounding these curtailment episodes bear on a consideration of the proposed plan as well. The additional curtailments illustrate further why individual occurrences should be considered with the underlying plan.)

More importantly, the nature of the "investigation" by Staff is substantive rather than administrative. That being the case, the function of the Staff under Rule 25-17.086 cannot be defined by looking at the rule in isolation. It must be considered in the context of the due process rights of affected parties and the responsibility of the Commission to decide substantive matters that affect parties' interests. Any decision regarding the validity of a utility's action in refusing to purchase energy from QFs with whom it has binding contracts would impact the most fundamental interests of the affected QFs. Even in the absence of related Docket No. 941101-EQ, any staff position regarding the October 19 curtailment could be no more than the preliminary basis of a recommendation for a Commission decision. That action by the Commission, whether taken through an order on proposed agency action or (as OCL believes was contemplated by all concerned in this case) following an evidentiary hearing, would necessarily be subject to the right of affected parties to participate and to be fully heard.

In short, OCL regards the legitimacy of FPC's October 19 decision to curtail as a contested issue in Docket No. 941101-EQ. As a pending issue, it is properly the subject of discovery, and of an opportunity for an evidentiary hearing. These parties' rights

In Docket no. 941101-EQ, OCL has initiated discovery of FPC on the subject of whether the October 19 curtailment was preceded by a proper analysis of the impact of QF purchases on FPC's costs, among other things.


Ms. Brown
January 17, 1995
Page 3

must not be prejudiced by an "investigation report" which at best is premature and devoid of essential considerations.

OCL believes it is imperative to remove the uncertainty regarding the procedural status of the issue that is evident in Mr. Watson's letter. If Staff or FPC disputes the right of OCL or any party to pursue this issue in Docket No. 941101-EQ without prejudice, or if Staff, FPC, or any party regards technical Staff's letter to Mr. Watson as anything more than a preliminary position subject to change as a result of the process (including discovery, issue identification, testimony, cross-examination, and post-hearing briefs) to come, it would be OCL's intent to raise the matter with the Prehearing Officer for resolution.

Please inform me as soon as possible as to Staff's position regarding the right and opportunity of parties to address this subject in Docket No. 941101-EQ and present the issue to the Commission for disposition following the hearing. I am available to discuss this procedural matter individually or during a status conference.

Yours truly,


Joseph A. McGlothlin

JAM/jfg

cc: Ansley Watson
Joseph D. Jenkins
James McGee