

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.

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ORIGINAL FILE COPY

TIGER BAY LIMITED PARTNERSHIP'S STATEMENT OF ISSUES AND POSITIONS AND POST-HEARING BRIEF

Tiger Bay Limited Partnership ("Tiger Bay") hereby files its 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?

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Position: Tiger Bay does 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:

Tiger Bay takes 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.

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?

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Signature and title of FPCS BY HEAD OF RECORDS

DOCUMENT NUMBER-DATE

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FPC-RECORDS/REPORTING

Position: Tiger Bay agrees that FPC could reduce the need for curtailment by appropriate dispatch of its baseload units. It does 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: Tiger Bay does 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: Tiger Bay does not object to FPC's curtailment plan, but believes 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] Tiger Bay believes 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 Tiger Bay agrees with Dade, Lake, Orlando Cogen and Pasco Cogen that FPC could further reduce the need for curtailment by appropriate dispatch of its baseload units, it takes no position on whether FPC's management of its baseload generation was appropriate

during any particular curtailment event. Tiger Bay notes 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.

Tiger Bay takes 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: Tiger Bay does 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 year<sup>1</sup>, while Tiger Bay provides six complete outage weeks each year as well as additional curtailment of 22%, or 48 MW, for a period of seven hours each night. [Ex. 1, RDD-3, pg 3; Tr 100] 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 increased system reliability that is beneficial to the ratepayers.

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<sup>1</sup> 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.

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.<sup>2</sup>

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 Tiger Bay 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 the constant efforts of FPC's dispatchers to balance generation

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<sup>2</sup> 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.

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, as Mr. Dolan testified, "Tiger Bay being off line for two consecutive weeks in March and two consecutive weeks in April definitely contributed to a number of . . . "not events."" [Tr 137]<sup>3</sup>

A review of a specific curtailment event shows the magnitude of Tiger Bay's contribution to FPC's overall curtailment. For example, 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.,

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<sup>3</sup> In addition to its firm curtailment, Tiger Bay voluntarily contributed additional curtailment in October and November 1994 by going off-line ten times upon request by FPC. [Late Filed Ex. 2] Mr. Dolan estimated a "high likelihood that Tiger Bay's voluntary actions may have eliminated up to 15 to 20 curtailment events." [Tr 141]



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. Group B NUGs would have been curtailed to a much greater degree without Tiger Bay's automatic provision of 48 MW of firm curtailment.

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, which shows no such settlements with Tiger Bay or other QFs. Although Mr. Dolan stated that FPC had agreed to relocation of Tiger Bay's Timber Energy 6 MW contract, he also indicated that FPC believed that its agreement was not necessary in view of the language in the contract that merely "contemplated" a location for the plant. [Tr 112, 113] Additionally, Mr. Dolan characterized as 'misleading' Pasco Cogen's suggestion that another QF 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 a third QF "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.

Finally, the Commission must honor its approval of FPC's agreement with Tiger Bay in Order No. PSC-95-0540-FOF-EQ. As noted in Appendix A to the curtailment plan, and as Mr. Dolan testified, [Tr 126] Tiger Bay's letter agreement with FPC specifies the order in which the utility will seek curtailment from QFs:

FPC would initially curtail purchases from only those cogenerators that have not agreed to reduce their off-peak electrical output. Only if such curtailments were insufficient to remedy FPC's operational problems would FPC then begin to curtail purchases from Tiger Bay and the other cogenerators who have contractually agreed to reduce their off-peak electrical power. [Ex.1, RDD-3, page 3]

Both Tiger Bay and FPC are entitled to rely on the Commission's approval of this agreement in Order No. PSC-95-0540-FOF-EQ. The Commission should avoid taking any action in this docket that would cast doubt upon its previous order.

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: Tiger Bay does 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: Tiger Bay does 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

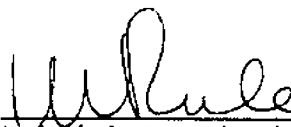
7. What is the permissible scope of Rule 25-17.086, Florida Administrative Code, in view of the federal standards of 18 CFR Sec. 292.304 implementing Section 210 of PURPA?

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.



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