

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for existing Tiger Bay Electrical Power Plant and minimal electrical capacity increase to that plant by Florida Power Corporation.

DOCKET NO. 971059-EI
ORDER NO. PSC-97-1282-PHO-EI
ISSUED: October 16, 1997

Pursuant to Notice, a Prehearing Conference was held on Thursday, October 9, 1997, in Tallahassee, Florida, before Commissioner Joe Garcia, as Prehearing Officer.

APPEARANCES:

R. ALEXANDER GLENN, Esquire, Florida Power Corporation,
3201 34th Street South, Post Office Box 14042, St.
Petersburg, Florida 33733
On behalf of Florida Power Corporation.

LESLIE J. PAUGH, Esquire, and ROBERT V. ELIAS, Esquire,
Florida Public Service Commission, 2540 Shumard Oak
Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On June 9, 1997, the Commission approved the stipulation between Florida Power Corporation (FPC or Company) and two intervenors for FPC's purchase of the Tiger Bay cogeneration facility, Order No. PSC-97-0652-S-EQ, Docket No. 970096-EQ. The facility is located in Polk County and consists of combustion and steam turbines. Because the steam turbine has been operated at less than 75 megawatts in capacity, the facility was not subject to the Florida Electrical Power Plant Siting Act (Power Plant Siting Act), Sections 403.501-403.518, Florida Statutes.

On August 18, 1997, Florida Power Corporation filed a Petition To Determine Need For Existing Tiger Bay Electrical Power Plant And Nominal Electrical Capacity Increase To That Plant. The Petition was filed because FPC proposes to increase the electrical output for the existing steam turbine to over 75 megawatts by modifying a computer program to alter the set points on the steam turbine. Because of the increased output, the Department of Environmental

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Protection determined that the facility must be certified in accordance with the Power Plant Siting Act and Section 403.519, Florida Statutes, which requires a need determination by the Commission.

Section 3 of FPC's Petition requests a waiver of Rule 25-22.082, Florida Administrative Code. Rule 25-22.082 requires investor-owned electric utilities to issue a Request For Proposals (RFP) for supply-side alternatives to the utilities' next planned generation unit.

Pursuant to Section 120.542(6), Florida Statutes, the amended notice of the rule waiver petition was submitted to the Secretary of State on September 24, 1997, for publication in the Florida Administrative Weekly. The comment period will end October 17, 1997. The statutory deadline for the Commission's decision regarding this Petition is November 17, 1997. The notice advises that the waiver request will be taken up at the commencement of the hearing.

No party has intervened in this Docket. Based on the evidence reviewed to date, Staff believes that the positions taken by Florida Power Corporation are appropriate. Therefore, the issues will be presented to the panel with a recommendation for approval of the positions as set forth herein.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into

evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so

answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issue #</u>
<u>Direct</u>		
Lee G. Schuster	FPC	1 - 7

V. BASIC POSITIONS

FPC: A need exists for the existing Tiger Bay cogeneration facility and the nominal 10-12 MW capacity increase to that facility.

STAFF: Based on the evidence and information reviewed to date, staff recommends approval of Florida Power Corporation's Petition to Determine Need for Existing Tiger Bay Electrical Power Plant and Nominal Electrical Capacity Increase to that Plant.

VI. ISSUES AND POSITIONS

The position listed for each issue is Florida Power Corporation's position as amended after discussion with staff. Staff recommends approval of all issues.

ISSUE 1: Should the Commission grant FPC's request for a waiver of Rule 25-22.082, Florida Administrative Code, in conjunction with the Tiger Bay need determination?

POSITION: Yes. Florida Power Corporation has met the criteria for rule waiver set forth in Chapter 120, Florida Statutes.

In addition, Florida Power Corporation falls within the exception contained in Rule 25-22.082, Florida Administrative Code. No comments were submitted during the comment period which will end October 17, 1997.

ISSUE 2: Will Florida Power Corporation's Tiger Bay facility, and the 12 MW increase of steam electric capacity contribute to the electric system reliability and integrity of Florida Power Corporation and Peninsular Florida?

POSITION: Yes. The additional 12 MW will improve FPC's reserve margin, and improve system reliability and integrity. The existing 236-MW facility is already included in FPC's reserve margin. If FPC's petition is not approved, FPC's reserve margin will be reduced. The facility and the additional 12 MW will contribute to the reserve margin for Peninsular Florida.

ISSUE 3: Will Florida Power Corporation's Tiger Bay facility, and the additional 12 MW of steam electric capacity contribute to the provision of adequate electricity to FPC and Peninsular Florida at a reasonable cost?

POSITION: Yes. The Commission has previously reviewed costs associated with this facility in approving the stipulation on the purchase of the facility by Florida Power. The 12 MW increase will be achieved at no cost by changing a computer program to alter the set points on the unit's steam turbine.

ISSUE 4: Has Florida Power Corporation demonstrated that its Tiger Bay facility, and the additional 12 MW of steam electric capacity is the most cost-effective alternative available?

POSITION: Yes. No alternative could provide identical capacity at lower cost, given the facility has been sited, is operating, and has been integrated into the transmission grid of Florida Power Corporation and the state of Florida. As discussed in issue three, costs associated with the facility have been reviewed and approved by the

Commission, and the additional 12 MW will be achieved at no cost.

ISSUE 5: Are there any conservation measures taken by or reasonably available to Florida Power Corporation which might mitigate the need for the Tiger Bay facility, and the additional 12 MW of steam electric capacity?

POSITION: No conservation measures could be installed to cost-effectively mitigate the need for the existing baseload facility. No conservation measure could mitigate the additional 12 MW, because this capacity will be achieved at no cost.

ISSUE 6: How will the additional 12 MW of steam electric capacity at the Tiger Bay facility affect the stipulation between FPC, the Office of Public Counsel, and the Florida Industrial Power Users Group in Docket No. 970096-EQ?

POSITION: The additional 12 MW will have no material impact on the stipulation. Staff will continue to monitor recovery of costs related to the stipulation through the Capacity Cost Recovery Clause, and the Fuel and Purchased Power Recovery Clause.

ISSUE 7: Based on the resolution of the previous factual and legal issues, should Florida Power Corporation's petition for determination of need for the Tiger Bay facility, and the 12 MW increase in steam electric capacity be granted?

POSITION: Yes. The petition for determination of need meets the statutory requirements of Section 403.519, Florida Statutes, as discussed below:

The need for electric system reliability and integrity

- The additional 12 MW will improve FPC's reserve margin, and improve system reliability and integrity. The existing 236 MW facility is already included in FPC's reserve margin. If FPC's petition is not approved, FPC's reserve margin will be reduced. The facility and the additional

12 MW will contribute to the reserve margin for Peninsular Florida.

The need for adequate electricity at reasonable cost

- The Commission has previously reviewed costs associated with this facility in approving the stipulation on the purchase of the facility by Florida Power. The 12 MW increase will be achieved at no cost by changing a computer program to alter the set points on the unit's steam turbine.

Whether the proposed plant is the most cost-effective alternative available

- No alternative could provide identical capacity at lower cost, given the facility has been sited, is operating, and has been integrated into the transmission grid of Florida Power Corporation and the state of Florida. As discussed in issue three, costs associated with the facility have been reviewed and approved by the Commission, and the additional 12 MW will be achieved at no cost.

Conservation measures taken by or reasonably available which might mitigate the need for the proposed plant

- No conservation measures could be installed to cost-effectively mitigate the need for the existing baseload facility. No conservation measure could mitigate the additional 12 MW, because this capacity will be achieved at no cost.

Based on the discussion above, staff recommends that FPC's petition for determination of need for the Tiger Bay facility and the additional 12 MW of steam electric capacity be granted.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Schuster	FPC	_____	PROMOD Case Comparison

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Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

Based on the evidence and information reviewed to date, staff recommends approval of Florida Power Corporation's Petition based on the enumerated positions stated herein. To date, no party has intervened in this Docket.

IX. PENDING MOTIONS

None at this time.

It is therefore,

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 16th day of October, 1997.



JOE GARCIA, Commissioner
and Prehearing Officer

ASST. TO

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.