BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Florida Power and Light Company for approval of cogeneration agreement with AES Cedar Bay, Inc.	)	DOCKET NO. 881570-EQ ORDER NO. 22424 ISSUED: 1-16-90

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE COMMISSION:

On July 17, 1989, Florida Power and Light Company (FPL) filed a petition for reconsideration of Order No. 21468 issued on June 28, 1989. In its petition, FPL argues that for several reasons it should not be required to resell electricity purchased from qualifying facilities (QFs) at its original cost when FPL does not need the power. First, Rule 25-17.083(5), Florida Administrative Code, only requires that utilities be "encouraged" to take such action. Order No. 21468 "requires" that FPL make the sale and thus is inconsistent with the rule. Second, FPL argues that the language of Rule 25-17.083(5) only applies to standard offer contracts and is not applicable at all to negotiated contracts.

Third, FPL argues that "original cost" may change throughout the life of the contract. For example, under the terms of a "front-end" loaded contract capacity payments are greater than the value of deferral of the avoided unit in the earlier years and less than the value of deferral of the avoided unit in the latter years of the contract. Selling the designated utility QF power in the latter years of the contract at FPL's capacity price would, FPL contends, result in sales at less than the true "original cost" of the power.

Finally, FPL notes that the designated utility is not required to purchase power from FPL at FPL's original cost and

will not do so when its own cost of production is less than that of the proffered QF power or when it can purchase power at less cost than that of the proffered QF power. Conversely, if the price of QF power is higher than the original cost in the cogeneration contract but less than the utility can produce or purchase an equivalent amount of power, the utility will purchase it since it is the least-cost option available. Thus, not only is the "true" cost of QF power under the contracts constantly changing but the designated utility's "cost" of power is also in a state of constant flux.

Rule 25-22.060(3)(a), Florida Administrative Code, requires that petitions for reconsideration be filed within fifteen days of the issuance date of the order sought to be reconsidered. The last day on which FPL's petition could have been timely filed is July 13, 1989, four days before FPL actually filed its petition. Although this petition is untimely, we will render a decision on the merits of the petition.

Petitions for reconsideration should be granted where we have misinterpreted or overlooked evidence in the record in arriving at our decision or erroneously applied statutes or case law. Petitions for reconsideration are not intended as vehicles for rearguing the whole case merely because the petitioner disagrees with the decision. Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962).

FPL's argument that resale applies only to standard offer contracts is unpersuasive. Although the rule references standard offer contracts, the clear intent of the rule is to require the resale of all cogenerated power to the utility designated as that building the statewide avoided unit. The idea is to get the power to the utility with the recognized need; price is immaterial since the price of the negotiated contracts will be the same as or less than that of the standard offer by operation of Rule 25-17.083(2), Florida Administrative Code.

Neither is there any merit to the argument that "requiring" resale is inconsistent with Rule 25-17.083(5). This is true since the requirement to resell by FPL is but one side of the equation; the designated utility must still agree to buy the power. The effect of this decision is to require FPL to offer for sale this cogenerated power at its own cost. There may be no takers at that price.

Which brings us to the last argument advanced by FPL: that its own "true" cost of cogenerated power as well as the "true"

cost of the designated utility is constantly changing. This is absolutely correct. It was also absolutely correct when the cogeneration rules were approved by the Commission in the early 80's. As indicated in the technical supplement to the Staff's recommendation of November 8, 1989, we would expect FPL to recover a higher price from the purchasing utility than the payment made to the cogenerator when the situation demanded it, e.g., in the latter years of a front-end loaded contract. Even with this understanding, FPL is still concerned that it does not get to keep the benefits of a good bargain. That is, when the negotiated price is below that of the standard offer, FPL is required to sell at the lower cost, but when FPL could sell at a price higher than the standard offer, it still must sell at the standard offer price. That being the case, FPL ratepayers either lose money or breakeven; they never make money.

We find this to be very troubling and one of the things that we hope will be addressed in the current review of our cogeneration pricing rules. Having reviewed the materials before us, we find that the question of whether FPL is required to resell, and if so, at what price, is best addressed by this body when such a transaction takes place or a substantially affected person alleges that such a transaction should have taken place.

Therefore, it is

ORDERED BY the Florida Public Service Commission that Florida Power and Light Company's petition for reconsideration filed on July 17, 1989 is hereby denied. It is further

ORDERED that Florida Power and Light Company comply with the appropriate Commission rule on resale of cogenerated electricity.

BY ORDER of the Florida Public Service Commission this 16th day of JANUARY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

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Commissioner Easley dissents.

NOTICE OF 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 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 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.