

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of CFR)	Docket No. 900382-EQ
BIO-GEN Corporation For)	Order No.: 23276
Declaratory Statement)	Issued: 7-31-90
_____)		

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER DISMISSING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

On May 2, 1990, CFR Bio-Gen Corporation (CFR) filed this Petition for Declaratory statement in which it stated that it entered into two firm energy and capacity purchasing contracts with Florida Power Corporation (Florida Power) on March 17, 1987 and September 20, 1988. Both contracts called for CFR to install and operate a small biogas burning power production facility in Drifton, Jefferson County, Florida. Both contracts also contained provisions which prohibited assignment of rights and obligations under the contracts without the express prior written approval of the utility.

On March 9, 1990, CFR entered into a "Project Development agreement with Enserch Development Corporation (EDC) which provided that CFR's facility would be relocated to Hinson, Gadsden County, Florida. The agreement also assigned CFR's interests in developing, constructing, and operating the facility to EDC.

CFR states that the project was relocated to Hinson, because of the existence of a nearby industry/host facility that would use steam produced by the facility, and because of the availability of a reliable supply of bio-mass material to be used in the plant's gasifier. CFR also stated in its petition that by assigning its rights and obligations to EDC it was attempting to bring into the venture a party that possessed experience, technical capability, and needed financial resources.

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In a letter dated March 29, 1990, CFR's counsel advised Florida Power of the plant relocation, and sought Florida Power's approval of the assignment. On April 9, 1990, Florida Power notified CFR that it would not agree to the relocation or the assignment unless CFR agreed to bear the expense of wheeling the power it generated to South and Central Florida. CFR asks the Commission to declare that "the relocation of projects with a transparent impact upon a purchasing utility [is] beyond the discretionary rejection of that utility." CFR also asked the Commission to declare that ". . . collateral assignment of QF contract rights [is] beyond the discretionary rejection of purchasing utilities." Petition at pps. 3-4.

At the same time that this Petition was filed, CFR also filed a Complaint and Request for Determination of Substantial Interests against Florida Power (Docket NO. 900383-EQ), which includes the same essential facts and allegations as the Petition for Declaratory Statement. Paragraph 14 of the Complaint presents a list of "known disputed issues of material facts in this matter", which include issues also present in the Declaratory Statement Petition.

Florida Power filed a Motion to Intervene and a Motion to Dismiss and Response to Petition on May 23, 1990. Florida Power asserts that it should be permitted to intervene because its substantial interests are affected by CFR's effort to remake the QF project into an entirely new and different project, to assign its rights and obligations under the contracts to another developer, and to construct the project at a new location. Florida Power asserts in its Motion to Dismiss that the Complaint filed by CFR is based on the same facts as the Petition, and because the same issues have been raised in the Complaint, CFR should be estopped from litigating the same matter in two Commission dockets simultaneously.

We agree. The Commission considered CFR's Complaint at its agenda conferences on June 27 and July 17, 1990. Both parties participated. That complaint proceeding, not this declaratory statement proceeding, was the proper forum for consideration of what is clearly a contract dispute between CFR and Florida Power. Either party may request a formal hearing on the Commission's decision regarding the complaint, pursuant to Rule 25-22.029, Florida Administrative Code. Both parties will have the opportunity to present their positions fully to the Commission on any factual matters relevant to the case. CFR will receive full consideration of its dispute with Florida Power in that the complaint proceeding. It is not entitled to consideration of the dispute twice.

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It is therefore,

Ordered by the Florida Public Service Commission that the Motion to Dismiss filed by Florida Power Corporation is granted, and its Motion to Intervene is therefore moot. It is further

ORDERED that this docket is closed.

BY DIRECTION of the Florida Public Service Commission,
this 31st day of JULY, 1990.

STEVE TRIBBLE, Director
Records and Reporting

(S E A L)

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by: Kay Flynn
Chief, Bureau of Records

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, 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.