BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power Corporation for approval of an agreement with El Paso Power Services Company to restructure existing cogeneration contracts with Polk Power Partners, L.P. and Orange Cogeneration Limited Partnership.	DOCKET NO. 990723-EQ ORDER NO. PSC-99-1623-PAA-EQ ISSUED: August 18, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING PETITION TO RESTRUCTURE COGENERATION CONTRACTS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

In 1991, Florida Power Corporation (FPC) signed three contracts for the purchase of capacity and energy with Royster Phosphates, Inc. (Royster), Mulberry Energy Company (Mulberry), and CFR Bio-gen Corporation. These companies were recognized as Qualifying Facilities (QFs) under the jurisdiction of the Public Utilities Regulatory Policies Act (PURPA), and this Commission's rules. We approved the Royster and Mulberry contracts by Order No. 24734, issued July 1, 1991, in Docket No. 910401-EQ. The CFR Bio-gen contract was approved by Order No. PSC-92-0129-FOF-EQ, issued March 31, 1992, in Docket No. 900383-EQ. Subsequent to our approval, the Royster and Mulberry contracts were assigned to the Polk Power Partners, L.P. (Polk LP). The CFR Bio-gen contract was later assigned to Orange Cogeneration Limited Partnership (Orange LP).

The following is a summary of the three contracts:

Contract	Committed Capacity	Contract Terminates	Avoided Unit
Royster	30.8 MW	8/8/09	1991 Coal Unit
Mulberry	79.2 MW	8/31/24	1991 Coal Unit
Orange	74 MW	12/31/25	1991 Coal Unit

In Order No. PSC-95-0540-FOF-EQ issued May 2, 1995, in Docket No. 940797-EQ, we approved material changes made to several cogeneration contracts held by FPC. Included in these changes were Royster's request to relocate the facility to the Polk LP site which also was to provide power for the Mulberry contract.

Currently, the Royster and Mulberry contracts are served by the 115 megawatt (MW) natural gas-fired combined cycle Mulberry facility in Polk County. The Orange contract is served by the 106 MW natural gas-fired combined cycle Orange facility in Polk County. The Orange facility also serves a 23 MW QF contract with Tampa Electric Company (TECO).

On June 4, 1999, FPC filed the petition at issue in this docket for approval of the agreement between FPC and El Paso Power Services Company (El Paso) to restructure the contracts and to reduce the costs of the Royster, Mulberry, and Orange contracts respectively.

Capacity payments will be discounted for the term of each contract resulting in savings in excess of $100 million, net present value. Energy payment savings associated with the agreement are forecasted to be approximately $15 million, net present value. There is no up front payment associated with this agreement. Liquidated damages are provided in the agreement to assure delivery of energy to FPC when called upon. The costs associated with this agreement, on a going forward basis, are expected to be recovered through the fuel and purchased power recovery clause, and the capacity cost recovery clause.

Under the agreement El Paso will acquire each of the three contracts by assignment upon consummation of the agreement. The agreement will result in immediate capacity payment discounts, as well as estimated energy payment savings to FPC's ratepayers. The existing capacity commitment and term of each contract will remain as originally approved by the Commission.

The agreement provides for a capacity payment discount percentage to each contract. These discounts begin on the commencement date of the agreement and apply to each year remaining on each contract. Total capacity savings will be in excess of $100 million dollars, net present value (NPV). FPC will not make any up front payment to El Paso in exchange for these capacity discounts. Payback, therefore, is not an issue as it has been in prior cogeneration contract restructuring efforts.

The agreement also provides that El Paso will waive its rights to require FPC to purchase the capacity and energy from the two facilities serving the contracts pursuant to PURPA. El Paso will not be required to maintain the Mulberry and Orange units as QFs under PURPA. El Paso will still be obligated to meet the capacity commitments pursuant to the three existing contracts, as FPC will have first call option on the capacity from El Paso. El Paso will have the option of meeting its capacity obligations to FPC from either the Mulberry and Orange facilities, or by purchasing power sufficient to meet its capacity obligations.

El Paso will be entitled to sell the energy, but not the capacity from the Mulberry and Orange facilities in the wholesale market. The capacity from these contracts will count toward the reserve margin of FPC. Except when used to serve FPC, these facilities will effectively become merchant plants for non-firm energy. Access to the wholesale market is evidently a benefit El Paso gains through this agreement.

FPC will either generate or purchase replacement energy when not taking energy from El Paso. FPC's ratepayers are protected in the event replacement energy prices exceed the energy prices that would have been paid under the existing contracts. FPC will receive a "make whole credit" from El Paso which will be calculated as the difference between FPC's as-available energy prices and the energy prices under the existing contracts. The agreement has specified minimum and maximum energy price differences, as well as a maximum number of hours of replacement energy purchases per year.

FPC has forecasted replacement energy costs, and the make whole credit through 2025, the expiration of the Orange contract. FPC has requested these costs be held confidential, but the net energy savings are estimated to be $15 million NPV. The known capacity savings, therefore, greatly exceed the forecasted energy savings. This provides a higher level of comfort for ratepayer benefits associated with the agreement.

In relinquishing El Paso from having to use the Mulberry and Orange facilities to meet contract requirements, FPC appears to have sufficient protection for its ratepayers in the event of non-performance. Substantial monetary liquidated damages have been negotiated in the event El Paso does not provide capacity and energy when required. If a facility is down other than a force majeure event, and FPC interrupts firm load, damages are set at $2,500/megawatt hour (MWH) plus the cost of replacement energy. It a facility is running and being sold to another party when called upon by FPC, damages are set at $5,000/MWH plus double replacement energy costs.

FPC has requested that we provide assurances that the agreement will be accorded the same treatment as an agreement entered into pursuant to PURPA in any Commission proceeding regarding FPC's stranded costs. Section 2.1.2(h)(iv) of the agreement specifically provides:

> confirming that in any future proceeding regarding Buyer's (FPC) restructuring, stranded costs or unbundled rates, this Agreement and the charges hereunder will be accorded the same treatment as an agreement entered into pursuant to PURPA.

At this point we do not know the timing and nature of any electric industry restructuring. Specifically the definition, calculation, and treatment of stranded costs, if any, remains unknown at present. We need not reach a decision on this particular contract as a PURPA contract. We note, however, that to the extent that the contract does not continue to be treated as a PURPA contract, it may act as a disincentive to renegotiations if potential legislation gives favorable treatment to PURPA contracts. We do not want to provide a disincentive to renegotiate. We acknowledge that FPC's efforts in reaching this agreement will reduce the costs its ratepayers otherwise would have to bear by over $100 million NPV, and therefore mitigate any potential stranded costs.

In summary, the agreement appears to be a cost-effective means of reducing capacity payment obligations. Current and future ratepayers of FPC are expected to experience lower costs without any up front payments by current customers. Energy savings are estimated to also accrue to customers. Protections for non-performance are provided in the agreement in the form of monetary penalties. We will continue to monitor the costs and performance associated with this agreement. For these reasons, we find that the Petition by Florida Power Corporation for approval of an agreement with El Paso Power Services Company to restructure existing cogeneration contracts with Polk Power Partners, L.P., and Orange Cogeneration Limited Partnership, is granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition by Florida Power Corporation for approval of an agreement with El Paso Power Services Company to restructure existing cogeneration contracts with Polk Power Partners, L.P., and Orange Cogeneration Limited Partnership, is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of August, 1999.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 8, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.