

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090372-EQ

PETITION FOR APPROVAL OF
NEGOTIATED PURCHASE POWER
CONTRACT WITH FB ENERGY, LLC
BY PROGRESS ENERGY FLORIDA.



PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 20

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, October 26, 2010

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

RECEIVED NUMBER DATE
09056 NOV-1 2010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

CHAIRMAN GRAHAM: Item 20 is a panel. I will continue to chair, even though I'm not on the panel. Commissioner Edgar and Commissioner Skop are on this panel.

MS. CRAWFORD: Good morning, Commissioners. Jennifer Crawford for legal staff.

Item 20 is staff's recommendation to grant FB Energy's motion to dismiss, dismissing the amended protest of US Funding Group. No party has requested oral argument, and participation is at the Commission's discretion.

I note that we have Dianne Triplett and Schef Wright present representing respectively Progress Energy and FB Energy. It's my understanding they did not intend to address the Commission, unless there were questions asked of them. Staff is also available to answer questions.

COMMISSIONER GRAHAM: Thank you.

Commissioners? Commissioner Skop.

COMMISSIONER SKOP: Thank you.

A question for staff with respect to the clarification on the staff recommendation that the recommendation to be, "Should the Commission grant Florida Biomass Energy LLC's motion to dismiss?"

1 And I believe that the dismissal is with prejudice,
2 and I think that's the point that I have some
3 concerns on.

4 I do believe that it should be with
5 prejudice, but I think that I'm a little confused as
6 to the legal rationale that got us there.
7 Previously when this came before the Commission
8 before, there was an order issued granting leave,
9 granting the motion for reconsideration. Again, I
10 dissented on that on the basis there was no legal
11 basis in terms of granting that motion, but, again,
12 it was done over my dissent.

13 The issue with prejudice, as I understand
14 it -- I'm trying to get to the correct statutory
15 provision to I can get there.

16 **MS. CRAWFORD:** I believe it's the last
17 paragraph on Page 8.

18 **COMMISSIONER SKOP:** Okay. I'm looking at
19 the statute. There's a two-prong approach to
20 granting with prejudice, and I think that the one
21 without prejudice, if the petitioner was filing a
22 timely amended petition curing the defect, unless it
23 conclusively appears from the face of the petition
24 that the defect cannot be cured, am I to correctly
25 understand that the basis for staff's conclusion

1 that the motion should be -- motion to dismiss
2 should be granted with prejudice is because,
3 specifically, it conclusively appears from the facts
4 of the petition that the defect cannot be cured?

5 **MS. CRAWFORD:** That is correct.

6 **COMMISSIONER SKOP:** Okay. Because that's
7 what I was a little unclear of. Because they didn't
8 file -- well, I don't think they filed -- we never
9 dismissed before, so that's the hang up. So as long
10 as it's on the basis that appears from the face, the
11 petition defect cannot be cured, I'm fine with it,
12 but I just needed some clarification on that. Thank
13 you.

14 **COMMISSIONER GRAHAM:** Anything else from
15 the panel?

16 **COMMISSIONER SKOP:** Just --

17 **COMMISSIONER GRAHAM:** Commissioner Skop.

18 **COMMISSIONER SKOP:** Thank you. Again, to
19 me, the extent that we had to go to -- I understand
20 the reason for the parties, the reason for Progress.
21 As I stated previously, to me, I would have upheld.
22 Originally there's no legal basis for
23 reconsideration. I mean, this was an exercise in,
24 somewhat in futility to get to a more concrete legal
25 result, but I think it wasted a lot of the

1 Commission resources. And I commend Progress Energy
2 and Florida Biomass for moving forward and trying to
3 do the right thing against a long lengthy process on
4 this one.

5 **COMMISSIONER GRAHAM:** Anything else from
6 the panel? Can I get a motion?

7 **COMMISSIONER SKOP:** I move staff's
8 recommendation on Issue 20, or Item 20.

9 **COMMISSIONER EDGAR:** And I both second and
10 concur.

11 **COMMISSIONER GRAHAM:** Moved and seconded.
12 All in favor say aye.

13 (Vote taken.)

14 **CHAIRMAN GRAHAM:** Those opposed?
15 By your action you have approved Item No.
16 20.

17 * * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
:
COUNTY OF LEON)
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 29th day of October, 2010.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732