

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Implementation of Rule) DOCKET NO. 910603-EQ
25-17.080 through 25-17.091,) ORDER NO. PSC-92-0245-FOF-EQ
F.A.C. regarding cogeneration and) ISSUED: 04/23/92
small power corporation.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER DENYING AIR PRODUCTS'
MOTION FOR RECONSIDERATION

BY THE COMMISSION:

In Order No. 25668, issued in this docket on February 3, 1992, we addressed numerous issues related to negotiated cogeneration contracts. In Issue 7 we considered whether negotiated contracts may contain regulatory out provisions and concluded that we would not prohibit regulatory out clauses in negotiated contracts. On February 18, 1992, Air Products and Chemicals, Inc. (Air Products) filed a Motion For Reconsideration of Order No. 25668, specifically requesting that we reconsider the regulatory out issue and that we prohibit regulatory out clauses in all cogeneration contracts.

The purpose for a motion for reconsideration is to bring to the attention of the Commission some point of fact, or law which was overlooked, or which we failed to consider when rendering an order in the first instance. See Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. DCA 1981). It is not an appropriate avenue for rehashing matters which we have already considered.

In this docket, the arguments now being raised by Air Products were already made at the hearing and in the briefs, and have been thoroughly considered by this Commission. In particular, Air Products' contention that the existence of a regulatory out provision will automatically make any QF project unfinancable was argued exhaustively at the hearing and in the briefs.

Air Products' contention is also refuted by the record. The record reflects that our recent rulings on the finality of Commission approval of cost recovery on QF contracts (See Order No. 24989, issued August 29, 1991 in Docket No. 910004-EU, as well as Order No. 25668, now at issue), have made it easier to finance contracts with regulatory out provisions (TR. 192-193). Witness Larsen testified that lenders were comforted by the "finality"

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language in the above referenced order, and he credited the "ease in obtaining financing" for one of his projects, to the finality language. In addition he testified that he didn't anticipate any problem in financing an upcoming project with FPL. (TR. 192-193). Air Products' argument not only repeats an argument already decided, but also is refuted by the record.

It is therefore,

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. 25668 filed by Air Products and Chemicals, Inc., on February 18, 1992, is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 23rd day of April, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MAP:bmi

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

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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.