

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Closure of) DOCKET NO. 911140-EQ
Standard Offer Contract sub-) ORDER NO. PSC-92-0565-FOF-EQ
scription limit and for) ISSUED: 06/24/92
approval for cost recovery of)
two negotiated Power Purchase)
Agreements with Wheelabrator)
North Broward, Inc. and Wheel-)
abrator South Broward, Inc. by)
FLORIDA POWER AND LIGHT COMPANY)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER DISMISSING PETITION FOR FORMAL HEARING
AND GRANTING REQUEST FOR CLARIFICATION

BY THE COMMISSION:

On August 29, 1991 we issued Order No. 24989 approving a 125 megawatt standard offer subscription limit for Florida Power and Light Company (FPL). The first effective date for the standard offer was September 20, 1991. On that date, FPL received twenty standard offer contracts totalling 1009.5 megawatts. Tropicana later withdrew its contract and one project (Noah III) was not considered as it exceeded the less than 75 megawatt maximum.

On November 19, 1991, FPL filed its Petition for Closure of its Standard Offer Contract Subscription Limit, and for Approval of Payments to Be Made under two Negotiated Power Purchase Agreements with Wheelabrator North Broward, Inc. and Wheelabrator South Broward, Inc. The petition asked that contracts submitted by Okeelanta Corporation, Osceola Farms Company and Kenetech Energy Systems Dade, L.P. be applied against the 125 megawatt subscription limit.

The petition also sought approval for cost recovery of payments to be made under supplemental negotiated contracts with Wheelabrator. The Wheelabrator Corporations are the operators of both the north and south Broward county solid waste facilities. Both of these facilities are on-line and have signed 1987 vintage standard offer contracts with committed capacities of 45 megawatts (north facility) and 50.6 megawatts (south facility). Subsequent to the execution of the 1987 standard offer, design changes increased the output of these facilities. The petition indicates

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that Wheelabrator has executed new standard offer contracts for 11 megawatts (north) and 5 megawatts (south).

On March 11, 1992, we issued Order No. PSC-92-0050-FOF-EQ which approved Okeelanta, Osceola and Kenetech as the contracts to fill the standard offer subscription limit and approved for cost recovery the payments to be made to Wheelabrator under the two negotiated agreements.

Sunshine's Petition on Proposed Agency Action

On March 26, 1992, Sunshine Power Corporation (Sunshine) timely filed a Petition on Proposed Agency Action requesting a "Section 120.57 hearing seeking modification of the Proposed Order..." The Petition does not specify what facts are disputed and asks for two modifications of the Order. Sunshine objects to the statement in the Order that it did not provide FPL sufficient information to enable FPL to perform the requisite analysis of the project's viability. Sunshine also alleges that the Order fails "to reflect the decision of the Commission regarding SPC's application regarding a priority for SPC and the other qualifying facilities that formed the queue on September 20, 1991."

KES Dade, L.P. filed a Motion to Dismiss Sunshine Power Corporation's petition. Wheelabrator North Broward, Inc. and Wheelabrator South Broward, Inc. (Wheelabrator) filed a Response in Support of the Motion to Dismiss. Broward County, which shares the revenue from the sale of capacity and energy with Wheelabrator, also filed a Response in Support of the Motion to Dismiss. Osceola Farms, Inc. (Osceola) and Okeelanta Corporation (Okeelanta) filed a response to Sunshine's Petition, alleging that Sunshine was seeking to clarify the Commission's Order, rather than disputing material facts requiring a hearing pursuant to Section 120.57(1), Florida Statutes.

Sunshine filed an admittedly untimely response to the Motion to Dismiss on May 7, 1992. Sunshine asserts that the Order "intimates that there was a deficiency in its filing and SPC has every right to assert a demand for a hearing, if one is required, to seek a determination of this factual issue." Sunshine also reasserted its claim that the Order was inconsistent with the Commission's decision at the agenda conference regarding prioritization for future standard offers.

Sunshine takes exception to the statement in the Order that "all (of the first ten standard offer contracts submitted for approval) but the Sunshine Energy project provided pursuant to section 12.1 of the standard offer contract, sufficient information to perform a viability screening".

Section 12.1 of FPL's approved standard offer contract reads in part:

"To assist FPL in assessing the QF's financial and technical viability as required by Rule 25-17.0832(3)(d), the QF shall provide the following or substantially similar documents to the extent the documents apply to the type of Facility covered by this Contract, and to the extent the documents are available. All documents to be considered by FPL must be submitted at the time this Contract is presented to FPL. Failure to provide the ... documents may result in a determination of non-viability by FPL" (emphasis added).

The contract then lists the type of documents required. In the first paragraph of Sunshine's Response to FPL's Amending Petition filed February 10, 1992, Sunshine states "SPC acknowledges that on September 20, 1991 when it filed its Standard Offer Contract, it did not submit detailed information regarding the financial and technical viability of the Sunshine Power Cogeneration project...". The response goes on to state that "SPC filed with FPL a package describing the project on October 23, 1991, approximately one month before the filing by FPL of its Petition in this docket."

Clearly, Sunshine's filing does not meet the plain requirement of the contract. Given the limited time available to FPL to review and take action on these contracts (60 days), the requirement to submit the documents at the same time as the contract is very necessary. Having admitted its failure to do so, Sunshine cannot now allege that FPL timely had sufficient information to properly evaluate the project. Therefore, Sunshine has not alleged any disputed issue of fact.

Sunshine further alleges "The Proposed Order also failed to reflect the decision of the Commission regarding SPC's application regarding a priority for SPC and the other qualifying facilities that formed the queue on September 20, 1991". No such recommendation is found in the recommendation we approved at the February 18, 1992 agenda conference.

In its Motion to Dismiss Sunshine's petition, KES Dade alleges that Sunshine fails to meet the standard enunciated in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478, (Fla. 1st DCA 1981). The holding in that case requires that to have standing to initiate a formal administrative proceeding, a person must demonstrate (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a formal proceeding; and (2) that his substantial interest is of a type or nature which the proceeding is designed to protect. Agrico

Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 1st DCA 1981), review denied, 415 So.2d 1361 (Fla. 1982).

Sunshine does not take issue with the award of this standard offer to Okeelanta, Osceola and KES Dade, LP. Sunshine's only articulated interest is in obtaining priority in some indeterminate future standard offer contract. This docket is not the proper forum for such a determination. This type of broad policy statement should be developed through rulemaking in accord with Section 120.535, Florida Statutes (1991). Therefore, we find that Sunshine does not have standing to request a formal hearing in this docket and the Motion to Dismiss should be and is hereby granted.

Wheelabrator's Request for Clarification

On April 1, 1992 Wheelabrator filed a Request for Clarification of Order No. PSC-92-0050-FOF-EQ and Request for Formal Hearing. Wheelabrator alleges that the wording of the Order could be construed to mean that the prices, terms and conditions of the existing 1987 standard offer contracts were somehow affected by the approval of the new negotiated agreements. Wheelabrator states that if the Commission grants the requested clarification, Wheelabrator will withdraw its request for a formal hearing.

A review of the negotiated agreements indicates the two negotiated agreements do not change the terms, prices and conditions of the 1987 agreements. The increased performance standards are required for payments under the new contracts, but do not supersede or replace the existing contracts. Wheelabrator suggests that the following clarifying language be added to the second paragraph of page two of Order No. PSC-92-0050-FOF-EQ:

The negotiated contract for the north facility allows for an additional 4 to 14 megawatts of committed capacity. The negotiated contract for the south facility allows for an additional .4 to 7 megawatts of committed capacity. Each of the two ~~Both~~ negotiated contracts raise the performance requirements for the entire facilities facility as a condition of Wheelabrator qualifying for the committed capacity under those negotiated contracts. Under the 1987 standard offer contract, the North facility is required to operate at a 70% capacity factor to receive payments for the committed capacity under the contract. This is equivalent to providing 31.5 megawatts constantly. While the performance requirements under the 1987 contracts are unaffected by the negotiated contracts, in order to

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obtain payments for the committed capacity. Under the new contract, the north facility must perform at an equivalent 41.55 megawatts ~~to receive any capacity payments...~~

The request is consistent with the language of the contracts and reflects the Commission's intent in its February 18, 1992 vote. Therefore, we find that the requested clarification should be and is hereby approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition on Proposed Agency Action filed by Sunshine Power Corporation is DISMISSED. It is further

ORDERED that the Request for Clarification filed by Wheelabrator North Broward, Inc. and Wheelabrator South Broward, Inc. is GRANTED as detailed in this Order. It is further

ORDERED that this docket shall be CLOSED.

By ORDER of the Florida Public Service Commission, this 24th day of June, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay Helton
Chief, Bureau of Records

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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.