105

Florida Power
CORPORATION

R. ALEXANDER GLENN
CORPORATE COUNSEL

August 15, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 971059-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen (15) copies of Florida Power Corporation's Petition To Determine Need For Existing Tiger Bay Electrical Power Plant and Nominal Electrical Capacity Increase To That Plant.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

R. Alexander Glenn /mgc

R. Alexander Glenn

RAG/mgc

Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need for Existing Tiger Bay Electrical Power Plant and Nominal Electrical Capacity Increase to that Plant by Florida Power Corporation.	Docket No. Submitted for filing: August 18, 1997

FLORIDA POWER CORPORATION'S PETITION TO DETERMINE NEED FOR EXISTING TIGER BAY ELECTRICAL POWER PLANT AND NOMINAL ELECTRICAL CAPACITY INCREASE TO THAT PLANT

Florida Power Corporation ("Florida Power"), hereby petitions the Florida Public Service Commission (the "Commission") pursuant to Section 403.519, F.S., and Rule 25-22.081, F.A.C., to (1) determine the need for the existing Tiger Bay cogeneration facility and a nominal increase in the electrical capacity of that facility, (2) file its order making that determination with the Florida Department of Environmental Protection ("DEP") pursuant to Section 403.507, F.S., and (3) waive the application of Rule 25-22.082, F.A.C., as provided in Rule 25-22.082(9), F.A.C., and Section 120.542, F.S.

Because Florida Power proposes to increase the electrical output from the existing steam turbine over 75 megawatts, DEP is requiring that the facility be certified in accordance with the applicable provisions of the Power Plant Siting Act ("PPSA") -- including Section 403.519, which requires a need determination by the Commission. To satisfy this literal reading of the PPSA, Florida Power submits this Petition.

As discussed more fully below, the Commission has, as a practical matter, previously determined the need for the Tiger Bay cogeneration facility's electrical capacity in other dockets. Additionally, Florida Power's proposed use of a

nominal 10-12 megawatts of additional steam electric capacity (simply by using steam currently vented and increasing steam pressure) at the facility constitutes a de minimis increase in Florida Power's approximate 7,000 megawatt statewide capacity. Moreover, the nominal capacity increase would impose no additional costs on the ratepayer, involve no additional equipment or operational changes to the facility, and produce no increased emissions or other environmental impact. Furthermore, the fuel savings ratepayers will receive from this capacity increase are expected to exceed $14.2 million over the next ten years. For these reasons, Florida Power believes that the Commission should grant the Petition. Because the Commission has, as a practical matter in prior Orders, already determined the need for the Tiger Bay facility, and given the de minimis increase in that facility's capacity sought by Florida Power, Florida Power further requests that the Commission expedite its review of this Petition.

I. Background

Florida Power is an investor-owned utility that provides electric service to more than 1.2 million customers in its service area, maintains its principal place of business at 3201 34th Street South, St. Petersburg, Florida 33711, and is subject to the Commission's regulatory jurisdiction pursuant to Chapter 366, F.S. All pleadings, notices, orders or other documents required to be served in this docket should be addressed to the undersigned counsel.

As authorized by Rule 25-22.080(1), F.A.C., Florida Power commences this need determination proceeding prior to filing its Tiger Bay facility site certification application with DEP. Florida Power expects to file its site certification with DEP this month. Section 403.519, F.S., and Rules 25-22.080 to 25-22.081, F.A.C., vest the Commission with exclusive jurisdiction to

determine the need for the Tiger Bay facility and the nominal capacity increase, applying the standards set forth in Section 403.519, F.S.

Tiger Bay Limited Partnership completed the construction of the nominally rated 220 megawatt Tiger Bay cogeneration facility in late 1995. The facility consists of a combustion turbine and a separate steam turbine. Because the steam turbine was specifically operated to not produce more than 75 megawatts, the plant was not subject to the PPSA. Florida Power believes, however, that the steam turbine is capable of producing approximately 85.5 net megawatts simply by changing a computer program to alter the control set points on the steam turbine and operate the system at a 5% increased pressure level.

Between 1988 and 1991, Florida Power entered into five purchased power agreements with qualifying facilities for a total committed capacity of 217 megawatts, which were ultimately served by the Tiger Bay facility. The Commission reviewed and approved those contracts and, in so doing, essentially determined that such capacity was needed. See, e.g., In re: Joint petition for approval of cogeneration contract between Florida Power Corporation and General Peat Resources, L.P., Docket No. 890915-EQ, Order No. 22473 (Jan. 1, 1990) (in approving the contract, the Commission held that "there are indicated capacity needs from both a utility and a statewide perspective in 1995."). Copies of this and the other Commission Orders approving the contracts are appended hereto as Exhibit 1.

Tiger Bay Limited Partnership acquired the interests in these five purchased power contracts by assignment from each of the original qualifying facility entities. Consequently, Florida Power received the electrical output of the Tiger Bay cogeneration facility.

On August 29, 1991, the Commission approved FPC's statewide generation expansion plans consisting of, among other things, "500 MW of purchased power in 1995 . . . ." In re: Planning Hearings on Load Forecasts Generation Expansion Plans, and Cogeneration Prices for Florida's Electric Utilities, Docket No. 910004-EU, Order No. 24989 (Aug. 29, 1991), a copy of which is appended hereto as Exhibit 2. This 500 megawatts included the purchased power from the Tiger Bay cogeneration facility through the assignment of the purchased power agreements from the individual qualifying facilities to Tiger Bay Limited Partnership.

On January 20, 1997, Florida Power agreed to purchase the Tiger Bay facility from the Tiger Bay Limited Partnership and terminate the five related purchased power agreements. Florida Power sought the Commission's approval of the agreement, requested recovery of the facility purchase cost, and requested that the fuel expense associated with the operation of the Tiger Bay facility be approved for recovery through the Fuel Clause. Florida Power and two intervenors executed a stipulation, which resolved all disputed issues. On June 9, 1997, the Commission approved the stipulation and Florida Power's purchase of the Tiger Bay facility and termination of the five purchased power contracts stating that "the Stipulation reduces FPC's ratepayers' liability throughout the remaining term of the [purchased power agreements and] . . . represents a reasonable balance between potential ratepayer neutrality to the transaction and encouragement of company contributions." In re: Petition for expedited approval of agreement with Tiger Bay Limited Partnership to purchase Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida

Power Corporation, Docket No. 970096-EQ, Order No. PSC-97-0652-S-EQ (June 9, 1997) at page 2, a copy of which is appended hereto as Exhibit 3.

II. A Need Exists For The Tiger Bay Cogeneration Facility And De Minimis Increase In Capacity As Recognized In Previous Commission Orders

In making a need determination, Section 403.519, F.S., requires the Commission to take into account five factors:

(1) the need for electric system reliability and integrity;

(2) the need for adequate electricity at a reasonable cost;

(3) whether the proposed plant is the most cost-effective alternative method;

(4) the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant; and

(5) other matters within its jurisdiction which it deems relevant.

The existing facility and the de minimis increase in rated capacity meet the statutory requirements.

As noted above, the Commission, on several occasions, has acknowledged the need for the capacity provided by the Tiger Bay cogeneration facility. The Commission's approval of Florida Power's five cogeneration contracts, its statewide load forecasts and generation expansion plans (which included all of Florida Power's purchased power contracts), and its recent approval of Florida Power's purchase of the Tiger Bay facility, for all practical intents and purposes, are tantamount to a determination of need for the facility. For example, factors 1 through 3 above, certainly were addressed in the statewide need determination and in the Commission's initial approval of Florida Power's purchased power contracts. See Exhibits 1 and 3. Moreover, the Commission's approval of

Florida Power's purchase of the Tiger Bay facility and recovery of fuel costs through the Fuel Clause, also necessarily implies that there is a need for the facility and that it is the most cost-effective alternative available to meet Florida Power's capacity requirements taking into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and other relevant matters.

The PPSA requires consideration of conservation measures available to mitigate the need for a proposed plant. The Tiger Bay facility constitutes a conservation measure by statutory definition. Obtaining capacity from cogeneration facilities is a recognized conservation measure pursuant to §366.82, F.S. Specifically, §366.82(2) provides that goals to be adopted by the Commission include those designed to "[increase] the development of cogeneration ... ." Moreover, §366.82(3) provides that "Utility programs may include variations in rate design, load control, cogeneration, residential energy conservation subsidy, or any other measure within the jurisdiction of the commission which the commission finds likely to be effective ... ." The Tiger Bay facility, by its very nature, satisfies this goal because it is a conservation measure and the added nominal megawatts is an enhancement of that conservation measure.

Similarly, the nominal 10-12 megawatt increase also represents the most cost-effective alternative to new construction or purchase of power from all feasible and prudent alternatives. Florida Power proposes to increase the capacity a nominal 10-12 megawatts simply by changing a computer program to alter the set points on the steam turbine. This will result in capturing steam that is currently being vented and increase steam pressure by 5%, will not involve any

material operational changes or equipment expansions to the plant, and will be accomplished at no additional cost to the ratepayer. This enhancement will bring more benefits, in the form of additional, reliable power, to Florida Power's customers at no additional cost. Indeed, in this regard, Florida Power will be able to substitute this additional no-cost power for the more expensive power generated from its other generation sources, thus passing on additional savings to its ratepayers. Attached hereto as Exhibit 4 is a detailed analysis of the expected savings over ten years with an additional 10 megawatts of load increase at the Tiger Bay facility. The savings are based on a blend of seven (7) months at 10 additional megawatts and five (5) months at six (6) megawatts. This nominal increase in the megawatts produces approximately $14,256,000.00 in cumulative savings to ratepayers over ten years.

III. Waiver Of The Rule 25-22.082, F.A.C., Requirements Is Warranted

Rule 25-22.082(2), F.A.C., requires an investor-owned electric utility to evaluate supply-side alternatives to its next planned generating unit by issuing a Request for Proposals ("RFP") prior to filing a petition for determination of need under Section 403.519, F.S. Recent amendments to the Florida Administrative Procedure Act, however, authorize state agencies to grant waivers to requirements of their rules when:

> the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

Given the unique nature of the circumstances requiring this Petition -- determining the need for an existing facility and for a nominal capacity increase to that facility

-- Florida Power believes that a waiver of the requirements of Rule 25-22.082, F.A.C., is warranted.

As an initial matter, issuing an RFP would be a meaningless exercise. The incremental costs of the Tiger Bay facility are zero, because the plant has already been paid for. No proposal submitted through the RFP process therefore could be better than the existing facility. Waiver of this requirement is thus appropriate on this ground alone. Moreover, the nearly $14.3 million savings expected for ratepayers during the next ten years due to the capacity increase (which will impose no additional cost on the ratepayers) warrants waiver of this requirement as well.

Waiver is also appropriate under the criteria set forth in Section 403.519. First, the purpose of Section 403.519 has been achieved. As demonstrated above and in Exhibits 1-3, the Commission, as a practical matter, has already considered the issues required for a need determination under the PPSA. Waiver of the requirements of Rule 25-22.082, F.A.C., thus will not undermine the purpose of Section 403.519, F.S. Requiring Florida Power, on the other hand, to issue an RFP for alternatives to the already constructed and operating Tiger Bay cogeneration facility makes no logical sense and would be inconsistent with the Commission's prior Orders demonstrating the need for the facility.

Second, application of Rule 25-22.082, F.A.C., would create a substantial hardship for Florida Power. Complying with the RFP requirements of the rule alone would impose a significant financial and administrative burden on Florida Power. Issuing, evaluating and responding to proposals also would create an unnecessarily burdensome and duplicative review of issues considered by the

Commission previously. Thus, the eventual certification of the site would be delayed -- also a significant economic and legal hardship on Florida Power.

WHEREFORE, Florida Power respectfully requests that:

(1) a formal proceeding be held in accordance with Section 120.57(1), F.S.;

(2) the Commission give notice of any hearing and commencement of the proceedings as required by Rule 25-22.080(3), F.A.C.;

(3) the Commission expedite its review of the Petition;

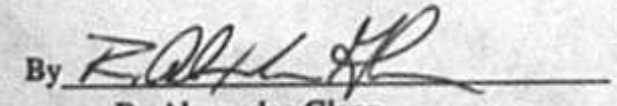
(4) the Commission waive the requirements of Rule 25-22.082, F.A.C. in accordance with subsection (9) of that Rule and §120.542, F.S.;

(5) the Commission submit a final report to DEP under Section 403.507, F.S.; and

(6) the Commission formally determine that there is a continuing need for the Tiger Bay cogeneration facility and a need for an additional, nominal 10-12 megawatts of steam capacity at the facility, and file its order making such determination with DEP in accordance with Section 403.507, F.S.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

R. Alexander Glenn
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5587
Facsimile: (813) 866-4931

COMPOSITE EXHIBIT 1

Order No. 21296, Dated 5-30-89, Docket No. 890094-EQ

1. Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility (Unit 1) dated November 30, 1988 between General Peat Resources L.P., whose interest was assigned to Assignor, and Florida Power Corporation, as amended, clarified and supplemented through the date hereof.

Order No. 22473, Dated 1-25-90, Docket No. 890915-EQ

2. Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility (Unit 2) dated November 30, 1988 between General Peat Resources L.P., whose interest was assigned to Assignor, and Florida Power Corporation, as amended, clarified and supplemented through the date hereof.

3. Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility (Unit 3) dated November 30, 1988 between General Peat Resources L.P., whose interest was assigned to Assignor, and Florida Power Corporation, as amended, clarified and supplemented through the date hereof.

Order No. 24923, Dated 8-19-91, Docket No. 910549-EQ

4. Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility (Unit 4) dated March 28, 1991 between EcoPeat Avon Park, whose interest was assigned to Assignor, and Florida Power Corporation, as amended, clarified and supplemented through the date hereof.

Order No. 21858-A, Dated 10-3-89, Docket No. 891005-EQ

5. Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility (Unit 5) dated July 1989 between Timber Energy Resources, Inc., whose interest was assigned to Assignor, and Florida Power Corporation, as amended, clarified and supplemented through the date hereof.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of cogeneration contract between Florida Power Corporation and General Peat Resources L.P.	)	DOCKET NO. 890094-EQ
	)	ORDER NO. 21296
	)	ISSUED: 5-30-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING COGENERATION CONTRACT

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

General Peat Resources L.P. (G.P.), a biomass-burning small power producer, and Florida Power Corporation (FPC) entered into a negotiated contract for the sale of cogenerated electricity on November 30, 1988. Simultaneous with the signing of the negotiated contract for the sale of electricity, FPC and G.P. also signed an interconnection agreement. Pursuant to the terms of the sales contract, FPC will buy all of the electric power produced by G. P. at its proposed facility, a 61,176 KVA synchronous generator which is designed to produce a maximum of 52 MW. This facility will be located in Highlands County, Florida, near Lake Placid, about 20 miles south of Sebring.

The contract will commence on the date of the first delivery of committed capacity and will end at 12:00 midnight, December 31, 2024. However, if commercial operation of the facility is not accomplished before January 1, 1995, FPC shall not be obligated to make capacity payments to the facility.

G.P. is eligible to receive payments for energy delivered to FPC prior to January 1, 1995. Pursuant to Rate Schedule COG-2, these payments shall be based on FPC's actual hourly avoided as-available energy costs. As of January 1, 1995, G.P. will receive energy payments based on the lesser of FPC's actual avoided energy costs or the fuel cost of the statewide avoided unit as defined in Rate Schedule COG-2.

A summary of the terms and conditions of the contract, which vary from the terms and conditions contained in FPC's standard offer, is as follows:

1. In addition to providing 52 MW of capacity at an overall capacity factor of 70%, G.P. is also required to maintain an on-peak capacity factor of 75% calculated on a twelve-month rolling average.

2. FPC and G.P. have negotiated a 30 year value-of-deferral contract beginning in 1995 consistent with FPC's standard offer which requires a minimum term of ten years past the 1995 in-service date of the statewide avoided unit. However, the capacity stream is front-loaded such that G.P. receives larger payments from FPC in the early years and smaller payments near the end of the contract. The present value of this front-loaded payment stream is equal to the present value of the capacity payments in the standard offer contract.

3. All front-loaded capacity payments paid during the first seven years of the contract will be credited to the capacity account. This capacity account keeps a cumulative balance of all front-loaded capacity payments which are in excess of the year-by-year value of deferral of the avoided unit.

4. In addition to the provisions of FPC's standard offer contract which cover default, the negotiated contract states that FPC can declare G.P. to be in default if the facility fails to maintain the required on-peak capacity factor on a twelve-month rolling average basis for twenty-four consecutive months.

If G.P. defaults, FPC's obligation to make capacity payments to G.P. is suspended until the default is remedied. Default by the facility does not relieve it of its obligation to sell all generated energy to FPC should energy production resume prior to the termination of the contract. In the event G.P. remedies any default or force majeure events, the capacity payment amounts will not exceed those which otherwise would have been paid.

Section 25-17.083(2), Florida Administrative Code, states that a negotiated contract for the sale of cogenerated power will be considered prudent for cost recovery purposes when the following criteria are met:

1. It is demonstrated that the utility's purchases under the negotiated contract can reasonably be expected to result in the economic deferral or avoidance of Florida's utilities' construction of additional generating capacity from a statewide perspective;

2. The cumulative present worth of the utility's payments for firm capacity and energy over the term of the negotiated contract are to be no greater than the cumulative present worth of the value of the year-to-year deferral of the statewide avoided unit over the terms of the contract; and

3. To the extent that annual firm capacity and energy payments by the utility in any year exceed that year's annual value of deferring the statewide avoided unit, there is a security bond or equivalent assurance of the qualifying facility's performance of the terms of the negotiated contract so as to protect the utility's ratepayer.

We find that the proposed contract does meet the above criteria and should be approved. FPC's contract can be reasonably expected to result in the economic deferral or avoidance of the construction of additional generation capacity by Florida electric utilities and falls within the 500 MW subscription limit of the current statewide avoided unit. The cumulative present worth of the stream of payments under the contract does not exceed that of the year-by-year deferral of the statewide avoided unit over the term of the agreement. There is adequate security in the form of either an irrevocable letter of credit or other guarantee acceptable to FPC to cover the fact that the contract has front-loaded capacity payments. And finally, the net present worth of firm capacity and energy payments pursuant to the negotiated contract compared to the year-by-year value of deferring FPC's own 150 MW combustion turbine avoided unit, indicates that the present contract is less than the year-by-year value of deferring FPC's own unit by $6,774,000 over the term of the contract.

For the above stated reasons, it is therefore,

ORDERED by the Florida Public Service Commission that the negotiated contract for the sale of cogenerated power entered into between Florida Power Corporation and General Peat Resources L.P. on November 30, 1988, is hereby approved.

By ORDER of the Florida Public Service Commission, this 30th day of MAY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SBr

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 19, 1989. In the absence of such a petition, this order shall become effective June 20, 1989, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent 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.

If this order becomes final and effective on June 20, 1989, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of cogeneration contract between Florida Power Corporation and General Peat Resources, L.P.	DOCKET NO. 890915-EQ ORDER NO. 22473 ISSUED: 1-25-90

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING COGENERATION AGREEMENTS

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On November 30, 1988, Florida Power Corporation (FPC) and General Peat Resources L.P. (General Peat) executed two negotiated contracts for the sale of 104 MW of cogenerated power from General Peat's Units 2 and 3 which are located near Lake Placid, Florida. These contracts were submitted to the Commission for approval on July 17, 1989. On July 6, 1989, FPC petitioned this body for permission to close its standard offer associated with the 500 MW 1995 statewide avoided coal unit on the grounds that it had been fully subscribed. In Order No. 22061, issued on October 17, 1989, we granted FPC's petition and found that the two General Peat contracts

discussed above were beyond the 500 MW subscription limit and would have to be evaluated against the next approved statewide avoided unit.

On September 6, 1989, FPC and General Peat filed a joint petition to defer our consideration of the two contracts until after we selected the next statewide avoided unit. The request was granted by Order No. 21924, issued on September 20, 1989, conditioned upon FPC filing the necessary data demonstrating that the General Peat contracts complied with Rule 25-17.083, Florida Administrative Code, within 30 days of the date of the vote on a new statewide avoided unit. Pursuant to Order No. 21924, FPC filed the necessary data on November 15, 1989.

At the agenda in which we selected the current statewide avoided unit, a 385 MW 1993 combined cycle unit, we deferred the issues associated with the implementation of subscription and allocation until a hearing could be held on those issues. In response to that decision, on December 20, 1989, FPC filed a motion for expedited approval of these General Peat contracts requesting that the contracts be approved and that the issue of what, if any, statewide avoided unit these contracts would be subscribed/allocated against be determined at a later date. In support of its position, FPC argues that the subscription and allocation issues may take considerable time to resolve. Further, FPC states that cogeneration facility financing is contingent upon having an approved cogeneration power sales agreement in hand. That being the case, any additional delay would place the economic viability of General Peat's project in jeopardy. We are persuaded by FPC's arguments and will address the suitability of the two contracts while reserving ruling on their impact on either FPC's subscription or allocation amounts.

The General Peat contracts begin with the initial delivery of committed capacity in 1995 and end at 12:00 midnight, December 31, 2024. A summary of the terms and conditions of the two negotiated contracts, which vary from the terms and conditions in FPC's statewide standard offer, are as follows:

a. The contracts provide for 104 MW of capacity

(52 MW per unit) at an overall capacity factor of 70% in addition to an on-peak capacity factor of 75%. The standard offer contract does not require a minimum on-peak capacity factor.

b. The contracts provide for General Peat to receive larger capacity payments from FPC in the early years and smaller payments near the end of the contract. This provision was included in the contract to assist the QF in paying off its debts associated with the construction of the generating facility. The present value of this front-loaded payment stream during the life of the contract is higher than the present value of the capacity payments in the standard offer contract. However, the lower present value of the energy payments during the life of the contract more than offsets the larger capacity payments, thus insuring that the present value of the total payments to the QF is not greater than that of the total avoided cost payments.

c. All front-loaded capital payments paid during the first seven years of the contract will be credited to a "capacity account". The capacity account keeps a cumulative balance of all front-loaded capital payments which are in excess of the year-by-year value of deferral of the statewide avoided unit.

d. In addition to the provisions in the standard offer contract which cover default by a QF, the negotiated contracts state that FPC can declare General Peat to be in default if the two facilities fail to maintain the required on-peak capacity factor on a twelve-month rolling average basis for twenty-four consecutive months.

If either of the negotiated contracts are declared to be in default, FPC's obligation to make capacity payments to General Peat for the unit in default will be suspended until the default is remedied. Default does not relieve General Peat of its obligation to sell all generated capacity to FPC should energy production resume prior to the termination of the two contracts.

The terms and conditions of these two contracts are virtually identical to those found in a negotiated contract previously signed by General Peat and FPC and approved us in May of last year. In re: Petition for approval of cogeneration contract between Florida Power Corporation and General Peat Resources L.P., Docket No. 890094-EQ, Order No. 21296, issued on May 30, 1989.

Rule 25-17.083(2), Florida Administrative Code, states that a negotiated cogeneration contract will be considered prudent for cost recovery purposes if the following criteria are met:

a. It is demonstrated that the utility's purchases under the negotiated contract can reasonably be expected to result in the economic deferral or avoidance of the construction of additional generating capacity from a statewide perspective;

b. The cumulative present worth of the utility's payments for firm capacity and energy over the term of the negotiated contract are to be no greater than the cumulative present worth of the value of the year-to-year deferral of the statewide avoided unit over the term of the contract; and,

c. To the extent that annual firm capacity and energy payments by the utility in any year exceed that year's annual value of deferring

> the statewide avoided unit, there is a security bond or equivalent assurance of the qualifying facility's performance of the terms of the negotiated contract so as to protect the utility's ratepayer.

First, we find that the contracts provide capacity that is likely to result in the deferral of new capacity from both a utility and a statewide perspective. FPC's own generation expansion plan shows a need for new combustion turbine capacity in 1995. Moreover, in the recent Planning Hearing docket, the designated utility planning the next statewide avoided unit (FPL) showed a need for 385 MW of combined cycle capacity in 1995. Thus, there are indicated capacity needs from both a utility and a statewide perspective in 1995.

Further, we find that these contracts comport with Rule 25-17.083(2)(b), Florida Administrative Code, since the cumulative present worth of the utility's payments for firm capacity and energy over the term of the negotiated contract does not exceed the cumulative present worth of the value of the year-to-year deferral of the current statewide avoided unit, a 385 MW combined cycle unit with a 1993 in-service date. The cumulative present worth of each negotiated contract offers FPC's ratepayers a savings of $13,793,000 when compared to the present worth of deferring the current statewide avoided unit.

In addition, FPC has provided a comparison of the negotiated contracts with its own next avoidable unit, a 130 MW combustion turbine with a 1995 in-service date. The cumulative present worth of each negotiated contract offers FPC's ratepayers a savings of $1,093,000 when compared to the present worth of deferring FPC's own designated avoided unit.

Finally, we find that these contracts comport with the security requirements of Rule 25-17.083(2)(c), Florida Administrative Code. FPC has required that either a performance bond, such as an irrevocable letter of credit, or some other form of security be issued to guarantee General Peat's performance of the terms of the negotiated contract since it will be receiving front-loaded capacity payments.

This has been further insured by the use of a "capacity account" against which early capacity payments are credited.

Based on the above, it is

ORDERED by the Florida Public Service Commission that the negotiated contracts entered into between Florida Power Corporation and General Peat Resources L.P., executed on November 30, 1988, are hereby approved for cost recovery purposes. It is further

ORDERED that the issue of how the MW associated with these contracts will be counted toward FPC's subscription and allocation limits, if at all, be deferred until a later date.

By Order of the Florida Public Service Commission this 25th day of JANUARY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

(5779L)SBr:bmi

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 15, 1990.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent 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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy between ECopeat Avon Park and Florida Power Corporation.	) DOCKET NO.	910549-EQ
	) ORDER NO.	24923
	) ISSUED:	8/19/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING FIRM CAPACITY AND ENERGY 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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

In July, 1990, Florida Power Corporation (FPC) and Ecopeat Avon Park (Ecopeat) began negotiations on an agreement to provide that Ecopeat would lease FPC's Avon Park Unit No. 2, retrofit the unit to produce electricity, and then sell the firm capacity and energy to FPC. The lease agreement and the contract for the purchase of firm capacity and energy were signed on March 28, 1991.

The following table provides a brief description of the project and major contract terms:

Avoided Unit type	pulverized coal
Committed Capacity	36.5 MW
On-Peak Capacity Factor	85 percent
Contract Term	1/1/96 to 12/31/2025 (30 years)
QF's site	Avon Park Unit II
QF's technology	fluidized bed
QF's fuel type	peat

In addition to this contract, FPC signed nine other contracts against their 1991 need, for a total of 642.3 MW. See Order No 24734 and Order No. 24099.

NEED FOR CAPACITY

The ten QF projects are projected to avoid the 1991 need of 300 MW of coal and 150 MW of combustion turbine capacity that FPC identified in Docket No. 910004-EU, In Re: Planning Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Florida's Electric Utilities. The 605.8 MW associated with the previously approved negotiated contracts, added to the 36.5 MW associated with the Ecopeat contract, exceed FPC's identified need. FPC states that it acquired the additional capacity, however, to provide it with contingent capacity to cover qualifying facility projects that may not come to fruition. FPC has already received requests from several QF's to delay their in-service dates by six months to two years. The amount of capacity that would thus be delayed is almost 300 megawatts. Because the Company is in need of capacity immediately, it will not have time to acquire more QF capacity to replace the capacity from facilities that do not come into service.

FPC's winter reserve margin for the 1996-2000 period ranges from 17.4% to 17.6% with the Ecopeat contract, and 16.9% to 17.1% without the Ecopeat contract. FPC's summer reserve margin for the same period ranges from 22.2% to 18.2% with the Ecopeat contract, and 21.6% to 17.7% without the Ecopeat contract.

FPC maintains that the additional need was a result of three factors:

1) Higher Demand

FPC's demand and energy is higher than projected because FPC's forecast underestimated customer growth, underestimated per capita energy usage, and overestimated per customer demand reductions from conservation and load management programs.

2) Remodeled Interface

FPC changed its method of modelling emergency assistance. The old method of modelling emergency assistance overstated the reliability of FPC's system, and thus reduced the apparent need for capacity. By more accurately modelling emergency assistance, FPC's plan showed an accelerated need for capacity in 1991.

3) Lower Assistance From Peninsular Florida Utilities

Because the peninsular Florida utilities have experienced higher than anticipated loads, they have less capacity available to sell FPC on an emergency basis.

As a result of these changes, the FPC Loss of Load Probability (LOLP) was increased, thereby accelerating FPC's need into the 1991 time frame.

CONTRACT PRICE

The Ecopeat contract payments are based on avoiding coal capacity. In its 1990 Facility Plan, FPC identified a need for 300 MW of coal capacity and 150 MW of combustion turbine capacity. The ten contracts that FPC signed to avoid this capacity are all priced based on the cost of a coal unit because FPC found that on a present worth basis the total fuel and capacity costs of 450 MW of coal capacity is very close to the cost of the 300 MW coal and 150 MW combustion turbine option. The total cost (capacity and energy) of the Ecopeat contract is lower than the cost of a 1996 coal unit, or a 1996 combustion turbine unit.

CONTRACT TERMS AND CONDITIONS

The terms and conditions of the Ecopeat contract are similar to those of FPC's eight negotiated contracts recently approved by the Commission. A summary of the terms and conditions in the Ecopeat contract follows:

Security Guarantees

Within sixty days after the contract approval date, the QF must post a Completion Security Guarantee of $10 per KW of Committed Capacity, or $365,000, to ensure completion of the facility in a timely fashion. The Completion Security Guarantee will be reduced by the amount of lease payments the QF pays to FPC, plus the cost of certain engineering work, etc., which would be beneficial to FPC even if the QF fails to achieve commercial in-service status. The QF may delay commercial operation by up to 90 days if it agrees to pay FPC $0.15 per kW, or $5,475 per day of delay. FPC will refund to the QF any cash Completion Security Guarantee, with interest, if the facility achieves commercial in-service at or prior to the contract in-service date.

The contract also contains an Operational Security Guarantee of $20 per KW of committed Capacity, or $730,000, to ensure that the QF does not terminate the contract prior to December 31, 2025. FPC will reduce the Operational Security Guarantee by the cost of any site improvements performed that would be beneficial to FPC. The Operational Security Guarantee, with interest, will be refunded upon conclusion of the contract, so long as the contract is not terminated prematurely.

In addition to the security guarantees, the contract contains several milestones that the QF must meet:

Milestone	Date
submit Completion Security	60 days after contract approval
construction loan date	March 1, 1994*
construction commencement	60 days after construction loan date
in-service date	January 1, 1996*

* may be extended if PSC approval takes more than 120 days.

Changes in Committed Capacity

For the period ending one year immediately after the contract in-service date, the QF may, on one occasion, increase or decrease the committed capacity by no more than 10%. After the one year period, and continuing throughout the term of the Agreement, the QF may decrease its committed capacity without penalty by up to 20% if it provides at least three years written notice. The capacity payment will be prorated to the new capacity amount.

Capacity and Energy Payments

The capacity and estimated energy payments of this contract differ from those of FPC's avoided unit in two ways. First, the QF receives a monthly capacity payment based on the value of its committed on-peak capacity factor. Ecopeat committed to an on-peak capacity factor of 85% which is higher than the 83% on-peak capacity factor of FPC's avoided coal unit's. In order to reflect the additional value of higher availability and reliability to FPC, Ecopeat's payment stream is increased by the ratio of its committed on-peak capacity factor to that of the avoided unit (i.e. 85/83 = 1.024). Second, Ecopeat has chosen a payment option in which 20% of the estimated energy payment is added to the capacity payment. The energy payment the QF receives is then discounted by 20%. The effect is that 20% of the QF's energy payment is guaranteed at the price of FPC's fuel forecast, and 80% of the QF's energy payment is based on the actual price of the avoided unit's fuel.

The contract also includes a monthly capacity payment adjustment that will decrease the capacity payment in the event the monthly on-peak capacity factor is below the respective contractual minimum amount, but greater than or equal to 50%. No capacity payment will be made if the on-peak capacity factor falls below 50%.

Beginning with the contract in-service date, the QF will receive electric energy payments based upon the firm energy cost calculated on an hour-by-hour basis as follows:

(i) the product of the average monthly inventory chargeout price of fuel burned at the Avoided Unit Fuel Reference Plant, the 80% Fuel Multiplier, and the Avoided Unit Heat Rate, plus the Avoided Unit Variable O & M, if applicable, for each hour that the Company would have had a unit with these characteristics operating; and

(ii) during all other hours, the energy cost shall be equal to the As-Available Energy Cost.

Performance Criteria

Under the contract, Ecopeat must maintain an on-peak capacity factor of 85%. This compares favorably to the avoided unit's 83% capacity factor. The contract does not contain a minimum overall capacity factor. Instead, it has an hourly performance adjustment to the energy payment. The performance adjustment acts as a monetary reward or penalty mechanism which provides an incentive to Ecopeat to operate in a manner similar to the operation of the avoided unit.

LEASE AGREEMENT

Under Ecopeat's lease agreement with FPC, Ecopeat will lease FPC's Avon Park Steam Unit No. II, and Ecopeat will refurbish the unit into a fluidized bed steam powered generating unit. Prior to the execution of the lease agreement, the unit was in cold shutdown and FPC's 1990 Facility Plan showed no plans to reactivate it.

The lease contains provisions to ensure that the unit is refurbished and that FPC is not left with a unit that is partly completed and worth less than the unit they have now. During the development phase of the project, Ecopeat must submit a bond to FPC for at least $1 million, to provide security that the unit is restored to a condition equivalent to its current condition, should the lease be terminated by Ecopeat. The lease also contains milestones during the development phase which relate to the selection of an architectural firm, completion of a peat mining study, water permit application filing, fuel harvesting agreement, and construction loan date.

Under the lease agreement, FPC receives revenues two ways. It receives lease payments of approximately $1 million per year, and it will receive bonus payments if Ecopeat's return on its investment exceeds 13.7%. The net present value of lease payments is $7,218,002. This exceeds the total unrecovered costs of Avon Park Steam Plant Unit 2, which is $1,821,033, and it also exceeds the appraised value of the unit, which is $4,450,000. The bonus payment is structured so that FPC receives 25% of the portion of Ecopeat's return that exceeds 13.7%. FPC estimates that the bonus payments would increase its revenues by $8,147,542 on a net present value basis.

INTERCONNECTION AGREEMENT

The contract contains an interconnection agreement which provides that FPC will construct the interconnection and the QF will pay for its construction.

APPROVAL OF THE CONTRACT

Under the provisions of Sections 25-17.082 and 25-17.0832(2), Florida Administrative Code, we grant Florida Power Corporation's petition for approval of the contract with Ecopeat for the reasons discussed below.

Section 25-17.082, Florida Administrative Code, requires electric utilities to purchase electricity produced and sold by qualifying facilities at rates which have been agreed upon by the utility and qualifying facility, or at the utility's published tariff rate. Section 25-17.0832(2), Florida Administrative Code, states that in reviewing a negotiated firm capacity and energy contract for purposes of cost recovery, the Commission shall consider the following factors that affect the purchasing utility's general body of retail and wholesale customers:

a. Whether the additional firm capacity and energy is needed by the purchasing utility and by Florida utilities from a statewide perspective; and

b. The present worth of utility's payments for firm capacity and energy to the QF over the life of the contract are projected to be no greater than the present worth of the year-by-year deferral of the construction and operation of generation by the purchasing utility over the life of the contract; or the present worth of other capacity and energy costs that the contract is designed to avoid; and

c. To the extent that annual firm capacity and energy payments made to the QF in any year exceed that year's annual value of deferring the construction and operation of generation by the purchasing utility or other capacity and energy related costs, whether the contract contains provisions to ensure repayment of such payments exceeding that year's value of deferring that capacity in the event that the QF fails to deliver firm capacity and energy pursuant to the negotiated contract; and

d. Considering the technical reliability, viability and financial stability of the QF, whether the contract contains provisions to protect the purchasing utility's ratepayers if the QF fails to deliver firm capacity and energy as specified by the contract.

a. Need For Power

It is with certain reservations that we approve this contract, because the capacity bargained for here, combined with the capacity contracted for in the nine negotiated contracts recently approved by this Commission, amounts to 642.5 MW, when FPC has only identified a need for 450 MW. We do not believe, as a general rule, that utilities should sign up more capacity than they need. We can support such action in this case, however, because of the following circumstances:

1. FPC's need is immediate, and it cannot risk obtaining less than 450 MW because of possible QF defaults or delays. FPC has reason to believe that some of the QFs they have contracts with will not come on-line as projected.

2. FPC's need is probably greater than the 450 MW they identified in their 1990 plan, because that plan did not anticipate recently requested delays in existing QF projects, or the anticipated one-year delay in FPC's 500 kV transmission line.

3. If all of the existing QF project come on-line as anticipated in the contracts, and FPC has excess capacity, FPC can reduce its purchase from the Southern Company by 200 MW in 1994 and it can delay or cancel the construction of 1993 combustion turbines to mitigate any harmful effect to its ratepayers.

FPC needs the QF capacity from its existing contracts to meet reliability and reserve margin requirements. The purchase from Ecopeat will contribute to maintaining a loss of load probability of less than 0.1 days per year. The capacity provided by Ecopeat will improve the loss of load probability for the state and contribute to the capacity needs of the state.

b. Cost-Effectiveness

The present value of FPC's payments to Ecopeat for firm capacity and energy will be no greater than the present worth of the value of a year-by-year deferral of FPC's avoided costs. The Ecopeat contract has a present worth savings of $897,816 (in 1991 dollars) compared to FPC's full avoided costs. This represents 99.4 % of FPC's full avoided costs. FPC's avoided costs are derived from its 1991 need for 450 MW of pulverized coal and combustion turbine capacity as filed in Docket No. 910004-EU.

FPC's cost-effectiveness analysis did not consider the effects of the lease agreement, but effects of bonus and lease payments will eventually be passed on to the ratepayers, increasing the cost-effectiveness of this agreement. With the lease payment and the estimated bonus payment, the lease agreement provides FPC with $16,865,542 revenues (in 1991 dollars); this amount exceeds the appraised value of the property by $12,415,542. Considering the estimated revenues from the lease and the power purchase contract together, Ecopeat is being paid 91 percent of FPC's full avoided costs.

Ecopeat has chosen a payment option by which it is paid 20% of its energy cost based on FPC's fuel forecast, and 80% of its energy cost based on the actual fuel costs of the avoided unit. This provides the QF with higher fixed payments and lower variable payments than it would have had, had it chosen a normal payment stream. This provision could have a positive or a negative effect on FPC's ratepayers, depending on the accuracy of FPC's fuel forecast. If FPC's fuel forecast is low, Ecopeat's fuel payments will be lower than the actual fuel costs of FPC's avoided unit, but if FPC's fuel forecast is high, Ecopeat's fuel payments will be higher than the actual fuel costs of FPC's avoided unit. The FERC rules on cogeneration allow QFs to receive this option. Section 292.304 (d)(2) states:

> Each qualifying facility shall have the option...[t]o provide energy or capacity pursuant to a legally enforceable obligation...in which case the rates for such purchases shall, at the option of the qualifying facility...be based on either: (i) The avoided costs calculated at the time of delivery; or (ii) The avoided costs calculated at the time the obligation is incurred.

We do not object to this provision for four reasons: 1) the FERC rules allow QFs to receive payments based on the avoided costs at the time the obligation is incurred; 2) the possibility that the ratepayers will pay higher fuel costs is balanced by the possibility that they will pay lower fuel costs; 3) since only 20 percent of the fuel forecast is fixed, the exposure to the ratepayers is not excessive; and 4) the other terms and conditions of the agreement (including the lease agreement) balance any negative effect of this provision.

c. Security for Early Payments

Ecopeat will not be paid early or levelized capacity payments. Thus there is no need to establish a capacity credit account to ensure repayment of capacity payments exceeding that year's value of deferral.

d. Security Against Default

The contract contains security to protect FPC's ratepayers in the event the QF fails to deliver firm capacity and energy as required in the contract. The contract contains several performance milestone dates which would permit FPC to terminate the contract if the milestones are not achieved. In addition, the contract requires Ecopeat to submit a $10/kW completion security deposit and a $20/kW performance security deposit. These security deposits have two benefits. They provide a good faith indicator that Ecopeat will reach commercial in-service status and continue to operate through the contract term, and they will help to mitigate damages if Ecopeat does not deliver capacity and energy as contracted.

CONCLUSION

The negotiated cogeneration contract between FPC and Ecopeat is a viable generation alternative, and we approve it, for the following reasons:

1. The capacity and energy generated by the Ecopeat is needed by FPC and Florida's utilities;

2. The contract appears to be cost-effective to FPC's ratepayers;

3. FPC's ratepayers are reasonably protected from default by the terms of the contract; and,

4. The contract meets all the requirements and rules governing qualifying facilities.

It is therefore

ORDERED by the Florida Public Service Commission that the power purchase contract between Florida Power Corporation and Ecopeat is approved for the reasons set forth in the body of this order. It is further

ORDERED that this Order shall become final unless an appropriate petition for formal proceeding is timely filed herein. It is further

ORDERED that this docket be closed automatically when the protest period has expired.

By ORDER of the Florida Public Service Commission, this 19th day of AUGUST, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MCB:bmi
0fpc3.mcb

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 9/9/91.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of standard offer contract between Florida Power Corporation and Timber Energy Resources, Inc.	)	DOCKET NO. 891005-EQ
	)	ORDER NO. 21858-A
	)	ISSUED: 10-3-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

AMENDATORY ORDER APPROVING STANDARD OFFER CONTRACT BETWEEN FLORIDA POWER CORPORATION AND TIMBER ENERGY RESOURCES, INC.

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On July 28, 1989, Florida Power Corporation (FPC) and Timber Energy Resources, Inc. (Timber) filed a joint petition for approval of a standard offer contract between the two companies. The contract, which was signed on July 18, 1989, has a committed capacity of 6.0 MW for a term of ten years. Capacity payments to Timber would commence in 1995 based on FPC's approved COG-2 tariff.

In our Order No. 17480 we established for FPC a subscription limit of 500 MW in firm capacity from qualifying facilities to defer the 1995 statewide avoided unit. Prior to our vote in the instant docket the total of such firm capacity and energy purchases from qualifying facilities already contracted for by FPC and approved by this Commission amounted to 497.6 MW. Thus, this contract will exceed by 3.6 MW, the 500 MW subscription limit established in Order No. 17480. It would appear however that this small amount (3.6 MW) in excess

of the subscription limit is reasonable given the various factors which could possibly reduce the actual capacity being purchased, such as seasonal adjustment to output capability and engineering adjustments to the actual capacity of the qualifying facilities.

While the Timber/FPC contract is a standard offer contract, the interconnection agreement is not. This is due to the fact that the interconnection agreement contains a provision that Timber can terminate the power sales agreement if a yet to be determined transmission capacity cost "will render the construction of the facility uneconomic or not in the QF's best economic interest". At first glance, this provision seems to allow Timber to change its mind at any time depending on how profitable the facility is to the company but a closer look reveals that this provision is prudent for both parties based on FPC's identified transmission constraints in Northwest Florida which are set forth in Docket NO. 890779-EU.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the standard offer contract between Florida Power Corporation and Timber Energy Resources, Inc., filed July 28, 1989, is hereby approved, and that the entire 6.0 MW contracted for be applied to the 500.0 MW subscription limit established in Order No. 17480.

By ORDER of the Florida Public Service Commission, this 3rd day of October, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MAP

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 24, 1989.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent 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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.

EXHIBIT 2

1ST CASE of Level 1 printed in FULL format.

In Re: Planning Hearings on Load Forecasts Generation Expansion Plans, and Cogeneration Prices for Florida's Electric Utilities

DOCKET NO. 910004-EU; ORDER NO. 24989

Florida Public Service Commission

1991 Fla. PUC LEXIS 1386; 91 FPSC 8:560
1991 Fla. PUC LEXIS 1386; 91 FPSC 8; 560

August 29, 1991

PANEL:
[*1]

The following Commissioners participated in the disposition of this matter: THOMAS M. BEARD, Chairman; J. TERRY DEASON; BETTY EASLEY; MICHAEL McK. WILSON

OPINION:
FINAL ORDER

BY THE COMMISSION:

As a result of the revision of the cogeneration rules (Docket No. 891049-EU), we initiated a proceeding to approve new standard offer contracts. Pursuant to Order No. 23625, each utility was required to file by October 30, 1990, its most recent ten-year generation expansion plan, a standard interconnection agreement, and one or more standard offer contracts designed to avoid the construction of capacity identified in its plan.

A hearing was conducted in this docket on May 20, 22, and 23, 1991. Pursuant to Order No. 24142, the scope of this hearing was limited to those issues necessary to approve firm capacity and energy tariffs, standard offer contracts, as-available energy tariffs, and standard interconnection agreements.

FPC'S FORECASTS, ASSUMPTIONS, AND GENERATION ALTERNATIVES

1. FPC'S RELIABILITY CRITERIA

2. FPC'S LOAD FORECAST

3. FPC'S CONSERVATION FORECAST

4. FPC'S FUEL FORECAST

5. FPC'S UNIT PERFORMANCE FORECAST

6. FPC'S PURCHASED POWER FORECAST

7. FPC'S STRATEGIC [*2] CONCERNS

8. FPC'S AVOIDED UNIT GENERATING TECHNOLOGIES
9. FPC'S SUPPLY SIDE ALTERNATIVES

10. FPC'S APPROPRIATE GENERATION EXPANSION PLAN

1. FPC'S RELIABILITY CRITERIA

Florida Power Corporation (FPC) utilizes a dual criteria, consisting of a 0.1 Loss of Load Probability (LOLP) and a 10% winter reserve margin. These two reliability criteria have been used by FPC for some time and they are indicators of different system, requirements. A reserve margin is an indicator of the systems ability to serve the system-wide seasonal peak demand. The percentage of reserve, usually expressed as a percentage of peak demand, is maintained in order to allow for variations in load and unit availability. The actual percentage planned is a judgement based on the utility's size and its interconnections to neighboring utilities. A LOLP criteria is an indicator of the system's ability to meet daily peak demands. This method considers the forced and planned outage rates of the utility's units, as well as the probability of emergency assistance, if needed.

While these two criteria are adequate, they can only be as good as the assumptions that go into the planning process. For example, the LOLP [*3] calculation is very sensitive to assistance from other utilities. Both criteria are also sensitive to errors in load forecasts. These two areas seem to be the major cause of FPC's near term capacity shortage problem. FPC's forecasts for both winter and summer peak demands have been below actual demands for the past five years. FPC's witness Niekum testified that a percentage change in load was about equal to a percentage change in reserve margin. (TR 684) Mr. Niekum also admitted that this concerns him as a planner, and that it may indicate that FPC needs to modify its forecasting criteria. (TR 686)

When questioned as to why FPC's generation plans had changed so radically from data filed with the Commission last year, Mr. Niekum testified that increases in demand and energy forecasts and the modeling of assistance from the Southern Company "were probably the two primary reasons that we changed radically." (TR 677) The change in modeling of assistance from the Southern Company was to include transmission limitations on the State transfer capability. Mr. Niekum testified that this change "showed that our reliability was worse than what we had thought in the last plan." (TR 664-665) [*4] In simple terms, it appears that FPC has been relying on its neighbors for much of the company's reliability, and now with the recent transmission allocation agreement, they have found themselves in a capacity crunch. This may have been best summarized by FPL's witness, Mr. Waters who stated, "We all can't drive our reserves down and rely on each other to back up the system . . . common sense tells you that as soon as we see that result, that we all can't do that." (TR 221)

FPC has responded to its newly projected need by signing nine contracts with various cogenerators. While this embraces our desire to promote cogeneration, FPC's sudden change in its planning process has required us to make decisions on reliability with very little notice. Nonetheless, it appears that FPC's assumptions are appropriate and we are somewhat comforted that FPC's planning appears to more closely reflect reality than it has in the past.

2. FPC'S LOAD FORECAST

FPC's forecast predicts an average annual growth rate in demand of 2.55% over the period from 1990 through 2010. The forecast also predicts an average annual growth rate in energy of 2.94% over the same time period. No other forecast was [*5] offered by any of the parties.

We are concerned that FPC's past forecasts were overly optimistic. We intend to closely monitor FPC's future forecasts.

3. FPC'S CONSERVATION FORECAST

FPC has adopted a wide array of conservation programs, and it has been very aggressive in its direct load control programs. The total capacity for existing and contracted cogenerators is about 325 MW in 1995. The projected total cogeneration capacity by the year 2009 is 1422 MW.

FPC projects a need of 2,796 MW of additional resources between 1991 and 2005. Load management and conservation combined is projected to meet 19% of this need, and cogeneration is projected to meet 18.7% of this need.

While FPC's conservation plans appear to be reasonable for planning purposes, FPC should be more aggressive in the areas of energy reducing and renewable programs.

4. FPC'S FUEL FORECAST

The fuel forecasts presented by the Company are based on experience at making forecasts, information available in trade publications, and advice from reputable, nationally well known consultants. The sources of data and references used include DRI for general inflation estimates, Electric Fuels Corporation for coal projections, [*6] PIRA and Chem Data for natural gas, and oil estimates. Potential impacts of the Clean Air Act Amendments of 1990, oil supplies/interruptions from OPEC nations, and Company specific transportation concerns are addressed in the forecasts. There is no indication that the FPC fuel forecasts are unreasonable or inadequate for the purpose of this proceeding. We will continue to monitor and review all fuel costs incurred by FPC.

5. FPC'S UNIT PERFORMANCE FORECAST (STIPULATED)

All parties to this docket have stipulated to FPC's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that FPC's assumptions regarding the performance of existing units on their system are reasonably adequate for planning purposes.

6. FPC'S PURCHASED POWER FORECAST (STIPULATED)

All parties to this docket have stipulated to FPC's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that FPC's assumptions regarding the performance of operating parameters and cost of existing purchased power contracts are adequate [*7] for planning purposes.

7. FPC'S STRATEGIC CONCERNS

FPC has adequately addressed risk and other strategic concerns. We share FICA's concern regarding the security of gas supplies to drive FPC's new plan. We intend to monitor FPC's efforts toward securing adequate gas supplies to support the new generation plan. FPC appears to be aware of the potential for restrictions on the emission of carbon dioxide. The company should continue to include this consideration in future planning exercises. Momentum for governmental intervention is growing, despite disagreement in the scientific community over the impact of carbon dioxide emissions. FPC's other assumptions appear to be reasonable.

8. FPC'S AVOIDED UNIT GENERATING TECHNOLOGIES

The pricing and operating parameters of generating technologies considered by FPC were developed internally by FPC, and are reasonable when compared to other sources of cost estimates and performance requirements. For example, FPC's cost estimate of 399 $ /kw for CT capacity compares favorably to the estimated cost of 462 $ /kw contained in the EPRI TAG document for similar capacity additions. Also, the projected availability and operating heat rate [*8] are comparable. We approve of the use of in-house cost estimates because a utility can be more site specific when estimating its costs. FICA's concerns over capital additions are answered by a conservative fixed O&M rate and a 5% contingency factor. (TR 1656-1659) More specifically, capital additions may have the effect of lowering the overall $ /KW cost of the plant or increasing its efficiency. FICA's witness ignored these facts. (TR 1543-1544) Also, capital additions are made over the life of the unit, so it would not make any sense to apply these additions to a standard offer contract that has a minimum term of ten years. (TR 1544-1545)

We believe that the pricing and operating parameters used by FPC are reasonable.

9. FPC'S SUPPLY SIDE ALTERNATIVES (STIPULATED)

All parties to this docket have stipulated to FPC's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that FPC adequately considered reasonable forms of available supply side technologies in order to meet its future load growth.

10. FPC'S APPROPRIATE GENERATION EXPANSION PLAN

A generation expansion plan is [*9] only as good as its assumptions. The record indicates that FPC's assumptions are suitable for planning purposes given the caveats previously elaborated. We are most concerned about the accuracy of the load forecast and the availability of natural gas supplies. We intend to monitor these matters in future proceedings. With these concerns noted, we find that the most appropriate generation expansion plan for FPC consists of 300 MW of CT capacity in 1992 and 1993, 500 MW of purchased power in 1995, 150 MW of CT capacity in 1997, and 700 MW of coal capacity added in the years 1998 and 2000.

FPL'S FORECASTS, ASSUMPTIONS, AND GENERATION ALTERNATIVES

1. FPL'S RELIABILITY CRITERIA
2. FPL'S LOAD FORECAST

3. FPL'S CONSERVATION FORECAST

4. FPL'S FUEL FORECAST

5. FPL'S UNIT PERFORMANCE FORECAST

6. FPL'S PURCHASED POWER FORECAST

7. FPL'S STRATEGIC CONCERNS

8. FPL'S AVOIDED UNIT GENERATING TECHNOLOGIES

9. FPL'S SUPPLY SIDE ALTERNATIVES

10. FPL'S APPROPRIATE GENERATION EXPANSION PLAN

1. FPL'S RELIABILITY CRITERIA

Florida Power & Light Company (FPL) utilizes a dual criteria, consisting of a .1 Loss of Load Probability (LOLP) and a 15% summer reserve margin. These [*10] two reliability criteria have been used by FPL for some time and each are indicators of different system requirements. A reserve margin is an indicator of the system's ability to serve the system-wide seasonal peak demand. The percentage of reserve, usually expressed as a percentage of peak demand, is maintained in order to allow for variations in load and unit availability. The percentage allowed is based on the utility's size and interconnections to neighboring utilities.

A LOLP criteria is an indicator of the systems ability to meet daily peak demands. This method considers the forced and planned outage rates for the utility's units, as well as the probability of emergency assistance if needed. Mr. Waters, who testified on behalf of FPL stated that even if FPL's criteria were raised to 20% reserve margins, FPL's generation expansion plans would remain the same. (TR 216) This indicates that FPL's planning is driven more by LOLP than by reserve margin. FPC, on the other hand, is more affected by reserve margin than LOLP. This may be due to the seasonal difference between a summer and winter reserve margin.

The LOLP calculation is sensitive to assistance from other utilities. [*11] FPL has modeled the assistance from Southern Company as being half of the remaining Statewide transmission capability after firm purchases are considered. This transmission capacity is not owned by FPL, but is controlled by the Jacksonville Electric Authority (JEA). The amount estimated, 454 MW, was based on FPL's approximate share of Peninsular Florida's load. (TR 1558, 1569) Mr. Ross, on behalf of Falcon Seaboard, did not agree with this assumption. Mr. Ross testified that a utility should only rely on transmission capacity that it either owns or has contractual rights to operate. (TR 1253) We disagree. To totally ignore the availability of additional transmission capacity just because it is not contracted for would be irresponsible and shortsighted on the utility's part. FPL is not relying on a price, only a quantity, and until that quantity is fully contracted for, or utilized for firm service, FPL and other

utilities are prudent in making estimations concerning the availability of this resource for emergency service. Mr. Ross is correct in that we should review the assumptions used by other utilities to avoid double or triple counting of this resource. The only utility [*12] that could double count this resource is FPC, whose transmission import capability is capped by its allocated share of the Statewide transmission import limit. Until the in-service date of a proposed new 500 kV line, FPC assumed 400 MW from Southern, which is its firm commitment. (TR 664) Assistance from peninsular Florida is limited to 1200 MW and is further restricted by the availability of generation from the other peninsular utilities. Therefore, there does not appear to be any double counting of the available Statewide transmission capacity.

2. FPL'S LOAD FORECAST

FPL's forecast predicts an average annual growth rate in winter peak demand of 3.0% over the period from 1990 through 1999. The forecast also predicts an average annual growth rate in energy of 2.6% over the same time period. No other forecast was offered by any of the parties.

We have previously expressed our concern about FPC's past forecasts being optimistic. We have the same concern with FPL's forecasts. We intend to closely monitor FPL's future forecasts.

3. FPL'S CONSERVATION FORECAST (STIPULATED)

All parties to this docket have stipulated to FPL's position or have agreed not to object to the stipulation [*13] on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that forecasts of existing and projected conservation and cogeneration are reasonably and adequately considered in FPL's load and energy forecasts.

4. FPL'S FUEL FORECAST

FPL stated that its forecasts are based on a combination of practical experience, information from trade publications, and advice from reputable, nationally-known consultants. The sources of data and references used include ICF (for coal projections), PIRA, and Groppe-Long-Littel (for natural gas and oil estimates). The FPL forecast considers potential impacts of the Clean Air Act Amendments of 1990, oil supplies/interruptions from OPEC nations and company specific transportation considerations. FPL's oil and gas price projections are higher than its coal price projections. This would tend to favor the use of coal in the long term. FPL's oil and gas projections are higher than those submitted by FPC, which we believe to be more realistic. However, since FPL's proposed IGCC unit is coal fired, and since lower oil and gas prices would not alter the technology selected, there is no indication that FPL's fuel forecasts [*14] are unreasonable or inadequate for the purpose of this proceeding. We will continue to monitor and review all fuel costs incurred by FPL's customers.

5. FPL'S UNIT PERFORMANCE FORECAST

The performance projections of FPL's fossil units have not been challenged and appear reasonable. The future performance for FPL's Turkey Point nuclear units 3 and 4 have been disputed in this proceeding by Nassau Power Corporation.

FPL is projecting a significant improvement in performance for these two units over the next several years. Nassau correctly points out that Turkey Point 3 and 4 have had a poor performance record in the late 1980s. FPL states that in addition to repairs and other projects presently underway at Turkey Point 3 and 4, a proactive program is being instituted to reach the performance targets in the planning period.

We have some concern as to whether the performance improvements at Turkey Point 3 and 4 projected by FPL will be attained, given the history of the units. Therefore, FPL's filings in the Generating Performance Incentive Factor docket will be closely monitored as a check on the company's projections in this docket. Because the performance projections appear [*15] to be potentially achievable given reasonable management prudence, we accept FPL's performance projections as reasonable for planning purposes.

6. FPL'S PURCHASED POWER FORECAST (STIPULATED)

All parties to this docket have stipulated to FPL's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that FPL's assumptions regarding the performance of operating parameters and cost of existing purchased power contracts are adequate for planning purposes.

7. FPL'S STRATEGIC CONCERNS

It appears that FPL has adequately addressed risk and strategic concerns, including the potential for Greenhouse Effect legislation. FPL appears to be aware of the potential for governmental restrictions on the emission of carbon dioxide.

Intervenors contested the inclusion of 454 MW of emergency assistance from the Southern Company. Nassau stated that FPL should not rely on transmission capacity that it does not own. As previously discussed, we believe it is proper for FPL to include the capacity for emergency purposes.

8. FPL'S AVOIDED UNIT GENERATING TECHNOLOGIES

The pricing and operating parameters [*16] of generating technologies considered by FPL were developed internally by FPL, and they appear reasonable when compared to other sources of cost estimates and performance requirements. For example, FPL's cost estimate of 1749 $ /kw for IGCC capacity compares favorably to the estimated cost of 2075 $ /kw contained in the EPRI TAG document for similar type capacity additions. Also, the projected availability and operating heat rate are comparable. We approve of the use of in-house cost estimates because a utility can be more site specific when estimating its cost. It appears that the pricing and operating parameters used by FPL are reasonable.

9. FPL'S SUPPLY SIDE ALTERNATIVES (STIPULATED)

All parties to this docket have stipulated to FPL's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that FPL adequately considered reasonable forms of available supply-side technologies in order to meet its future load growth.

10. FPL'S APPROPRIATE GENERATION EXPANSION PLAN

The record indicates that FPL's assumptions are suitable for planning purposes given the caveats elaborated previously. [*17] We are most concerned about the accuracy of the load forecast and about FPL's involvement in load management. We intend to monitor these areas in future proceedings. With these concerns noted, we find that the most appropriate generation expansion plan for FPL consists of 937 MW of IGCC capacity in 1997 and 1998.

GULF'S FORECASTS, ASSUMPTIONS, AND GENERATION ALTERNATIVES

1. GULF'S RELIABILITY CRITERIA

2. GULF'S LOAD FORECAST

3. GULF'S CONSERVATION FORECAST

4. GULF'S FUEL FORECAST

5. GULF'S UNIT PERFORMANCE FORECAST

6. GULF'S STRATEGIC CONCERNS

7. GULF'S AVOIDED UNIT GENERATING TECHNOLOGIES

8. GULF'S SUPPLY SIDE ALTERNATIVES

9. GULF'S APPROPRIATE GENERATION EXPANSION PLAN

1. GULF'S RELIABILITY CRITERIA (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the reliability criteria used by Gulf are reasonably adequate for planning purposes.

2. GULF'S LOAD FORECAST (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on [*18] this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the forecasts of energy and seasonal peak demand as presented in Gulf's load forecast are reasonably adequate for planning purposes.

3. GULF'S CONSERVATION FORECAST (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that forecasts of existing and projected conservation and cogeneration are reasonably and adequately considered in Gulf's load and energy forecasts.

4. GULF'S FUEL FORECAST (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the forecasts of fuel prices and availability as presented in Gulf's generation expansion plan are reasonably adequate for planning purposes.

5. GULF'S UNIT PERFORMANCE FORECAST (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. [*19] Based upon our Staff's analysis, we will accept the stipulation of the parties that Gulf's assumptions regarding the performance of existing units on its system are reasonably adequate for planning purposes.

6. GULF'S STRATEGIC CONCERNS (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that Gulf's generation expansion plan adequately addresses risk and other strategic concerns including, but not limited to, fuel flexibility, weather uncertainty, environmental restrictions, assistance from the Southern Company, constraints in transmission, and state and national energy policies.

7. GULF'S AVOIDED UNIT GENERATING TECHNOLOGIES

The pricing and operating parameters of generating technologies considered by Gulf were developed internally by Gulf and are reasonable when compared to other sources of cost estimates and performance requirements. For example, Gulf's cost estimate of 345 $ /kw for CT capacity compares favorably to the estimated cost of 462 $ /kw contained in the EPRI TAG document for similar type capacity [*20] additions. Also, the projected availability and operating heat rate are comparable. We approve of the use of in-house cost estimates because a utility can be more site specific when estimating its cost. We find that the pricing and operating parameters used by Gulf are reasonable.

8. GULF'S SUPPLY SIDE ALTERNATIVES (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that Gulf adequately considered all reasonable forms of available supply-side technologies in order to meet its future load growth.

9. GULF'S APPROPRIATE GENERATION EXPANSION PLAN (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the generation expansion plan prepared by Gulf is appropriate.

TECO'S FORECASTS, ASSUMPTIONS, AND GENERATION ALTERNATIVES

1. TECO'S RELIABILITY CRITERIA

2. TECO'S LOAD FORECAST
3. TECO'S CONSERVATION FORECAST

4. TECO'S FUEL FORECAST

5. TECO'S [*21] UNIT PERFORMANCE FORECAST

6. TECO'S STRATEGIC CONCERNS

7. TECO'S AVOIDED UNIT GENERATING TECHNOLOGIES

8. TECO'S SUPPLY SIDE ALTERNATIVES

9. TECO'S APPROPRIATE GENERATION EXPANSION PLAN

1. TECO'S RELIABILITY CRITERIA (STIPULATED)

All parties to this docket have stipulated to TECO's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the reliability criteria used by TECO are reasonably adequate for planning purposes.

2. TECO'S LOAD FORECAST (STIPULATED)

All parties to this docket have stipulated to TECO's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the forecasts of energy and seasonal peak demand as presented in TECO's load forecast are reasonably adequate for planning purposes.

3. TECO'S CONSERVATION FORECAST (STIPULATED)

All parties to this docket have stipulated to TECO's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that forecasts of existing and [*22] projected conservation are reasonably and adequately considered in TECO's loan and energy forecasts.

4. TECO'S FUEL FORECAST

The fuel forecasts presented by the Company are based primarily on its existing coal requirements and reports from the independent consulting firm Groppe-Long-Littel. These reports address potential impacts of the Clean Air Act Amendments of 1990 and oil supplies/interruptions from OPEC nations. TECO added its transportation cost projections to the reports supplied by Groppe-Long-Littel. The resulting fuel oil and natural gas prices are close to those submitted by FPL, and higher than those submitted by FPC. Although we believe the FPC forecasts are more realistic, there is no indication that the TECO fuel forecasts are unreasonable or inadequate for the purpose of this proceeding. Lower oil and gas forecasts would not alter TECO's need for peaking and intermediate cycling units. We will continue to monitor and review all fuel costs incurred by TECO's customers.

5. TECO'S UNIT PERFORMANCE FORECAST (STIPULATED)

All parties to this docket have stipulated to TECO's position or have agreed not to object to the stipulation on this issue. Based upon our [*23] Staff's analysis, we will accept the stipulation of the parties that TECO's assumptions regarding the performance of existing units on its system are reasonably adequate for planning purposes.

6. TECO'S STRATEGIC CONCERNS (STIPULATED)

All parties to this docket have stipulated to TECO's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that TECO's generation expansion plan adequately addresses risk and other strategic concerns including, but not limited to fuel flexibility, weather uncertainty, environmental restrictions, assistance from the Southern Company, constraints in transmission, and state and national energy policies.

7. TECO'S AVOIDED UNIT GENERATING TECHNOLOGIES

The use of the EPRI TAG document by TECO is reasonable for planning purposes. As previously discussed, the TAG document served as a point of reference for other in-house estimates and has also been used by the Commission and other utilities in past planning hearings. The Tag estimates for CT capacity are comparable to other utility's estimates.

We find that the pricing and operating parameters considered [*24] by TECO are reasonable.

8. TECO'S SUPPLY SIDE ALTERNATIVES (STIPULATED)

All parties to this docket have stipulated to TECO's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that TECO adequately considered all reasonable forms of available supply-side technologies in order to meet its future load growth.

9. TECO'S APPROPRIATE GENERATION EXPANSION PLAN (STIPULATED)

All parties to this docket have stipulated to TECO's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the generation expansion plan proposed by TECO is appropriate.

FPC'S STANDARD OFFER CONTRACT

1. FPC'S AVOIDED UNIT DETERMINATION

2. FPC'S SUBSCRIPTION LIMIT

3. FPC'S AVOIDED UNIT PARAMETERS

4. FPC'S CAPACITY PAYMENTS

5. FPC'S AVOIDED COST CALCULATION

6. FPC'S LOCATION FACTORS

7. FPC'S CLEAN AIR IMPACT

8. FPC'S STANDARD OFFER TAX PROVISION

9. FPC'S CAPACITY BENEFITS FOR EARLY DELIVERY

10. FPC'S PERFORMANCE REQUIREMENTS

11. FPC'S SLIDING SCALE CAPACITY PAYMENTS

12. FPC'S COMPLETION [*25] SECURITY

13. FPC'S COMPLETION SECURITY ALTERNATIVES

14. FPC'S PROJECT MANAGEMENT REQUIREMENTS

15. FPC'S MILESTONE PROVISIONS

16. FPC'S CAPACITY ACCOUNT SECURITY

17. FPC'S PERFORMANCE SECURITY

18. FPC'S DEFAULT PROVISIONS

19. FPC'S REGULATORY OUT CLAUSE

20. FPC'S BILLING METHOD PROVISIONS

21. FPC'S INTERCONNECTION INSURANCE REQUIREMENT

22. NOTICE TO QF

23. FPC'S STANDARD OFFER CONTRACT AND INTERCONNECTION AGREEMENT APPROVAL

24. FPC'S SUBSCRIPTION

1. FPC'S AVOIDED UNIT DETERMINATION

FPC first proposed a 1991 coal unit, a 1991 combustion turbine, and a 1997 combustion turbine unit as its avoided unit. While the 1991 units could be avoided through negotiated contracts, the designation of 1991 units as avoided units in the standard offer contract violates Rule 25-17.0832 (3)(e)4, Florida Administrative Code, which states:

Each standard offer contract shall, at a minimum, specify . . . the date on which the standard contract offer expires. The date shall be at least four years before the anticipated in-service date of the avoided unit or units unless the avoided unit could be constructed in less than four years, or when the subscription limit is reached. . [*26] . .

A coal unit or a combustion turbine unit could probably not be constructed in less than one year in order to meet 1991 in-service dates. These units were

identified for the purpose of attracting cogeneration capacity within a short time frame. When asked what other unit(s) would FPC propose if the 1991 units were not selected, FPC's witness Niekum stated that the next available unit would be a 1997 combustion turbine. (TR 605) In order to develop the payment stream for this unit, FPC proposed to allow the cogenerator the choice of either a 1997 coal unit or a 1997 combustion turbine. The coal unit was added as an option because on a NPV basis, the coal unit costs less than the CT unit. While this may sound like a good choice, the coal unit does not become cost effective until the last few years of a thirty year analysis. FPC, therefore, chose to include CT capacity in 1997 in its facility plan in order to avoid the risk of reliance on later year fuel savings to justify a project.

We find that FPC's avoided unit for its standard offer contract should be a 1997 combustion turbine.

2. FPC'S SUBSCRIPTION LIMIT

Setting the limit to the amount of capacity available under [*27] the standard offer contract requires a careful balance. There are negative effects associated with setting the limit too low or too high. If the subscription is set too low, the standard offer will be fully subscribed too quickly and QFs wishing to sign a standard offer will have to wait for the next one. If the subscription is set too high, large QFs that may be needed will not be able to negotiate against that capacity.

We believe that the consequences of setting the subscription limit too high are greater than the consequences of setting it too low. If the subscription limit is set too low, and it is subscribed quickly, small QFs have the option of negotiating a contract.

However, if the subscription limit is set too high and there are not enough small QFs (the standard offer is available only to QFs less than 75 MW) willing to sign the standard offer, large QFs cannot negotiate against that capacity, even if FPC needs the capacity.

FPC proposed that 80 MW of its 150 MW, 1997 combustion turbine unit be designated as its standard offer avoided unit, leaving the remaining 70 MW available for negotiated contracts. While its proposed subscription limit may seem low, FPC has [*28] demonstrated that QFs are more likely to sign negotiated contracts with FPC than to sign its standard offer contracts. Under the old cogeneration rules, FPC has 410 MW of contracts and only 50 MW of those contracts are standard offer contracts. (TR 798) Since FPC has only received 50 MW of standard offer capacity in the past seven years, and since QFs have been more likely to sign negotiated contracts with FPC than sign a standard offer contract, it is reasonable to set FPC's standard offer subscription at 80 MW.

3. FPC'S AVOIDED UNIT PARAMETERS

We adopt the parameters provided by FPC for its 1997 Combustion Turbine unit, as shown below:

FPC 1997 COMBUSTION TURBINE UNIT

a.	Type of fuel	Distillate
b.	Average annual heat rate	11610 BTU/kWh

c.	Cost of fuel	Distillate at Bartow CT Units
d.	Construction cost (mid-1991 $ /kW)	$ 399
e.	Construction escalation rate	5.1%
f.	In-service cost (10/1996 $ /kW)	$ 525
g.	Incremental capital structure	
	1. Debt	45%
	2. Preferred Stock	10%
	3. Common Stock	45%
h.	Cost of capital	
	1. Debt	10.0%
	2. Preferred Stock	8.5%
	3. Common Stock	14.0%
i.	Book life	20 years
j.	AFUDC rate	9.96%
k.	Effective tax rate	37.63%
l.	Other taxes	1.57%
m.	Discount rate	9.96%
n.	Fixed O&M costs (mid-1991 $ /kW/yr)	$ 6.18
o.	Variable O&M (mid-1991 $ /MWh)	$ 1.83
p.	O&M escalation rate	5.1%
q.	Value of K	1.5259

[*29]

The above parameters are required by Rule 25-17.0832, Florida Administrative Code, to calculate the value of QF capacity and energy payments pursuant to a standard offer contract.

FPC, in its original testimony prefiled in October 1990, had chosen as avoided units a 1991 Coal unit, a 1991 Combustion Turbine unit, and a 1997 Combustion Turbine unit. However, at the hearing, FPC noted that its 1991 avoided unit choices were in direct conflict with Rule 25-17.0832(3)(e)4, Florida Administrative Code, which requires that an avoided unit be at least four years into the future. (TR 606-607) This left FPC with its 1997 Combustion Turbine unit. FPC has offered to price this unit at both coal and combustion turbine prices, at the option of the QF. (TR 607) We have rejected FPC's offer to price this unit at coal prices, and specifically find that the parameters designated by FPC for its combustion turbine unit are appropriate.

4. FPC'S CAPACITY PAYMENTS

We find that the revised capacity payments provided in FPC's COG-2 tariff have been properly calculated using the preceding parameters, in accordance with the formulas set forth in Rule 25-17.0832(5), Florida Administrative Code.

5. [*30] FPC'S AVOIDED COST CALCULATION

FICA's testimony asserts that FPC, as well as the other three utilities, have failed to fully quantify the cost of constructing avoided units. (TR 1044-1045) FICA stated that cogeneration prices should be set "with an intent to encourage cogeneration and avoid confusion, thereby maximizing the benefits of cogeneration." (TR 1043)

FICA stated that none of the utilities have included, in the installed cost of their avoided units, the cost of capital additions over the life of the

units. (TR 1048) FICA's testimony proposed that a "conservative" 10% capital addition factor be added to the installed cost of avoided units to account for capital additions. (TR 1048)

We do not agree with FICA's proposal to add a 10% capital addition factor onto the in-service cost of an avoided unit. FICA based this 10% figure on a "limited survey" of capital additions to existing plants in Florida. (TR 1048) FICA has not provided a case-by-case calculation of construction costs for FPC's or any other utility's avoided units. We therefore find that FICA's 10% value is arbitrary and should not be added to the in-service cost.

FICA further stated that QF capacity could [*31] avoid risks that occur when a utility constructs and operates a power plant, and that these risks could be quantified and should be included in the avoided cost calculation. (TR 1055) FICA provided examples of these risks, such as: the possibility that the in-service date of a utility's unit may be delayed; the installed cost of a utility's unit may exceed projections; energy production by the plant may be less than projected; and capital costs may be added over the life of the unit. (TR 1053)

FICA proposed in its testimony that we add a 25% "risk aversion premium" to the installed cost of each utility's avoided units. (TR 1057) FICA has proposed this risk aversion premium to account for the risks discussed above and for the capital additions (the 10% discussed above). In its brief, FICA changed its position to state that the risk aversion premium should be 23%.

We do not agree with FICA's quantification of risks with respect to the construction cost of an avoided unit. FICA assumed that any risks caused by delays in a unit's in-service date, cost overruns, or reduction in performance will result in excessive costs which are always passed on to ratepayers. FICA did not consider [*32] the chance that future events might decrease the cost of the unit as well. (TR 1656) Furthermore, there is no guarantee that we would allow excess costs to be passed on to ratepayers. (TR 1658) FICA's proposal to increase the in-service cost of FPC's avoided unit by 23% would result in ratepayers paying more than full avoided cost for cogeneration, and we therefore reject FICA's proposal.

We find that FPC has included all costs related to the calculation of the construction cost of the avoided unit in its standard offer contract.

6. FPC'S LOCATION FACTORS

FPC has demonstrated that it will be unable to accept capacity from QFs in north Florida unless import capacity is acquired. (TR 1669) Such import capability would not have to be purchased if FPC constructed its avoided unit, which would have been located in Polk County or Hardee County. Because the costs associated with transporting QF capacity will depend on the QF's location and may be different from those associated with FPC's avoided unit, FPC may include location factors in its standard offer contract. These factors ensure that the ratepayers will not pay for transmission they would not have paid for, had FPC constructed [*33] its avoided unit.

By incorporating factors relating to the QF's location into its standard offer contract, FPC is in compliance with Section 366.051, Florida Statutes, which defines avoided cost as "incremental costs to the utility of the electric

energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source." It also complies with section 16 U.S.C. 824-3(b)(2) of PURPA which contains a similar definition of avoided cost.

FICA maintains that location penalties should not be assessed to QFs since, "it is the planning choices of the utilities and not the availability of the QF alternatives that causes the diminishing of and the cost to replace tie-line capability." (TR 1059) We disagree. FPC has reasonably demonstrated that, from a planning perspective, units on its Polk County site provide lower cost electricity than those located in northern Florida. FICA has not demonstrated that ratepayers should pay additional costs associated with a QF's choice of location.

There are several methods that could be used to account for the effects of a QF's location, such as adjusting a [*34] northern QF's capacity payments to reflect its reduced value to FPC's system, or charging the QF for the transmission capacity it uses. FPC proposes that the standard offer only be available to QFs located north of FPC's Central Florida Substation if: "(i) by the Contract In-Service date the Company can make available an amount of Import Capability equal to the diminution of Import Capability caused by the Facility during the Term of the Agreement; and (ii) the QF shall reimburse the Company for such costs incurred by the Company to make available such Import Capability." (Sheet 9.511) Under this provision, QFs will pay the exact costs for obtaining import capability. (TR 773)

FPC's method of considering a QF's location is different from FPL's method because FPC has different transmission concerns. FPC has no firm interface to the Southern Company available; whereas, FPL has some firm import capability available. If FPC were to use FPL's method of adjusting capacity payments, the penalty assessed to the QFs would be 100 percent.

We approve FPC's method for accounting for a QF's location. It ensures that the ratepayers do not pay for transmission capacity that they would not [*35] have purchased, had FPC constructed its avoided unit in Polk or Hardee County. It is fair to the QFs in that it ensures that they are paid full avoided cost and that they pay the exact cost of obtaining their needed import capability. It provides incentives for QFs to locate where their capacity is most valuable.

7. FPC'S CLEAN AIR IMPACT

FPC has submitted a clause for inclusion in its standard offer contract that would allow for a credit to the QF if a benefit occurs to the company as a result of the purchase of firm capacity and energy from the QF. We approve of this change to FPC's standard offer.

8. FPC'S STANDARD OFFER TAX PROVISION

FPC proposed language in its tariff which makes the QF liable for any taxes or impositions for which FPC would not have been liable if it had produced the energy and constructed the facility itself. The purpose of such a clause is to insure that the QF pays all costs that it causes, leaving the ratepayer neutral to the source of the capacity and energy. (TR 1679) Several intervenors argued that the utilities' tax clauses should not be open-ended and should be more

specific. Witness Dolan testified that FPC could not provide an all-inclusive [*36] list of liabilities because tax laws and interpretations can change. (TR 759)

On cross examination Witness Dolan agreed that FPC should refund QFs any tax savings FPC obtains by virtue of purchasing power from the QF. (TR 794) We believe that this is a reasonable compromise and that FPC should modify its standard offer contract to refund QFs any tax savings or carrying costs that FPC obtains by virtue of purchasing power from the QF.

9. FPC'S CAPACITY BENEFITS FOR EARLY DELIVERY

The Florida Public Service Commission's rules on cogeneration and small power production require QFs to deliver firm capacity and energy as a condition for receiving early capacity payments. Rule 25-17.0832(3)(g)2, Florida Administrative Code, states, "early capacity payments may commence at any time after the specified early capacity payment date and before the anticipated in-service date of the avoided unit provided that the qualifying facility is delivering firm capacity and energy to the utility."

FPC's standard offer contract recognizes that QFs must deliver capacity and energy in order to receive capacity payments, whether early or normal. No party has objected to this language in FPC's proposed [*37] standard offer contract. We therefore approve of that language in sections 6.1, 8.1 and 9.1 of FPC's standard offer which specifies that capacity payments will not commence until the contract in-service date.

10. FPC'S PERFORMANCE REQUIREMENTS

Since FPC's standard offer contract does not allow for dispatchability, performance parameters for a CT unit are very difficult to define. If a utility owns a CT, the unit would typically be operated at extreme peak periods, not all peak hours. However, the true value of a CT unit is it's ability to be called upon for service on short notice. This means that a more representative measure of a CT's performance is it's availability, not it's capacity factor. Since availability is virtually impossible to measure without dispatchability, the utility must rely on a capacity factor measure which can be easily monitored. By requiring a high on-peak capacity factor of 90%, FPC will be encouraging a high availability factor as well. FPC is also offering optional performance adjustments which would encourage the QF to perform when FPC's customers need the power and which would reward the QF for this energy.

We therefore find that the operating [*38] performance requirements contained in FPC's standard offer contract are reasonable.

11. FPC'S SLIDING SCALE CAPACITY PAYMENTS

Section 8.5 of FPC's standard offer contract discusses the components of the monthly capacity payment made to cogenerators. One of these components is a capacity payment adjustment. FPC proposes an adjustment which exponentially reduces the QF's capacity payment in a month when the twelve-month rolling average of the on-peak capacity factor is below the avoided unit minimum. (TR 757) This adjustment broadens the range of performance in which the QF can be paid for performance, while encouraging the QF to provide capacity during FPC's peak periods. Under our previous rules regarding standard offer payments, a QF

did not receive any capacity payment if the QF did not meet the minimum capacity factor.

FICA's position is that a QF should not be penalized in the manner that FPC proposes. Rather FICA argues that a QF should be rewarded with incentive payments for performance in excess of the stated capacity factor. These incentive payments would result in a capacity payment which would be in excess of the utility's full avoided cost.

We do not believe that [*39] FICA's proposal should be part of the standard offer contract. FPC's adjustment to capacity payments is reasonable, given that a QF can still receive a payment in a month that the capacity factor does not meet the required value. Therefore, we find that the capacity payment adjustment proposed in section 8.5 of FPC's standard offer contract for calculating monthly capacity payments to the QF is reasonable.

12. FPC'S COMPLETION SECURITY

FPC proposed that its standard offer contract contain a security deposit of $ 10 per kW of committed capacity. This proposal is consistent with Rule 25-17.0832(3)(f)1, Florida Administrative Code, which states, "[t]he Commission may approve contracts that specify . . . provisions to protect the purchasing utility's ratepayers in the event the qualifying facility fails to deliver firm capacity and energy in the amount and times specified in the contract. . . ."

It is important for utilities to include provisions to protect the purchasing utility's ratepayers from the risk of a QF not coming on-line as contracted. Requiring a security deposit is a reasonable way of protecting the utility's ratepayers because: 1) it provides assurance that the [*40] QF will reach commercial in-service status; and 2) it will help to mitigate damages if the QF doesn't achieve commercial in-service status.

FICA argues that utilities should not require security deposits because they are not paying full avoided costs. Witness Seidman claims that utilities are not paying full avoided costs because their avoided costs do not reflect the risk of utility construction. (TR 1073-1077) This argument assumes that utility-constructed plants will always be over budget and behind schedule. It also fails to consider the risks associated with QF construction. (TR 1062-1175) We disagree with FICA's assertion that utilities should not require security deposits because they are not paying full avoided costs.

FPC has proposed that QFs submit a $ 10 per kW security deposit within 60 days of contract execution, to be refunded if the QF achieves commercial in-service status on or before the contract in-service date. FPC's $ 10 per kW is very favorable to QFs when compared to security deposits required by other utilities in the country. FPC introduced an exhibit listing performance securities required by 31 utilities. Except for projects under 1 MW, these deposits [*41] range from $ 15 per kW to $ 55 per kW. We believe a $ 10 per kW security provides sufficient incentive for a QF project to come on-line. We approve FPC's security deposit of $ 10/kW.

Nassau Power and Falcon Seaboard have no objection to the level of FPC's security deposit. (TR 1371) However, they maintain that FPC should phase in its security deposit, rather than requiring its submission at one time. Falcon's suggestion is reasonable, but we believe that FPC's security deposit is too low

to be phased in.

We are not requiring that all of the utilities' performance securities be for the same amount of money. There is no "correct" amount for a security deposit. Throughout the country, utilities require different security deposits. It may be advantageous to allow Florida's utilities to set different security deposits, so that we can study their effects. At this point, we do not favor the setting of statewide security deposits; rather, we make our findings based on the reasonableness of each utility's proposal.

13. FPC'S COMPLETION SECURITY ALTERNATIVES

Section 13.1 of FPC's standard offer allows the QF to provide a cash deposit or an unconditional, irrevocable direct pay [*42] letter or other promise to pay provided that the method of securing the deposit is acceptable to FPC. Rule 25-17.0832(3)(f)1, Florida Administrative Code, specifies that the security, "may be in the form of an up-front payment, surety bond, or equivalent assurance of payment." While a surety bond would qualify as an "other promise to pay", we find that the surety bond option should be specifically set forth in the standard offer contract. In addition to these alternatives FPC should allow governmental solid waste facilities to use an unsecured promise to pay pursuant to Rule 25-17.091, Florida Administrative Code.

FICA argues in favor of the following options for providing security: 1) a surety bond; 2) an irrevocable letter of credit; 3) an escrow; 4) an unsecured promise to pay by the owners of the facility; or 5) other acceptable guarantees. Except for an unsecured promise to pay, FPC offers the alternatives above. We will not allow QFs to secure their projects with an unsecured promise to pay. By its name, an unsecured promise to pay provides little, if any, security that the QF will perform as contracted, and it provides no discouragement against frivolous signing of [*43] FPC's standard offer contract. Allowing an unsecured promise to pay would remove the benefits gained by requiring a security guarantee.

14. FPC'S PROJECT MANAGEMENT REQUIREMENTS

It is prudent for a utility to monitor the development of QFs that have signed the standard offer contract through quarterly progress reports. These reports will provide FPC with an early warning of any potential difficulties associated with the development of the QF's facility. Such an early warning will put FPC in a better position to accommodate a change in the QF's in-service date. This will reduce the probability that FPC will have to purchase high cost replacement power or suffer blackouts if the QF doesn't come on-line as scheduled.

15. FPC'S MILESTONE PROVISIONS

Section 4.2 of FPC's standard offer requires the QF to specify the dates of: 1) the execution of the Transmission Agreement (if the QF has to wheel power to FPC); 2) construction commencement; and 3) commercial in-service status. Section 4.2 is reasonable because it allows the QF to specify these dates, and it allows these dates to be modified by up to sixty days because of a force majeure event.

It is prudent for FPC to have a [*44] means of terminating a contract prior to the in-service date if it is evident that the QF will not perform as specified in the contract. As Witness Dolan stated, "[a] commitment to milestones is an on-going means of ensuring that the QF will come on line by the in-service date of the avoided unit as well as a contractually-specified means of monitoring the progress of QF development . . . The sooner a utility knows that a QF will not be operational by its expected in-service date, then the utility will have more time to try to arrange alternative supplies." (TR 1670) Without milestone requirements there would be no clear signal that a QF contract would not be fulfilled and FPC could be reluctant to secure replacement power. A QF's failure to meet milestones will provide FPC with a clear signal that it should acquire replacement power.

FICA argues that the utilities should not require QFs to post security deposits and meet specified milestones, and that specifying milestones should be an alternative to posting a security deposit. We disagree. Milestone provisions and security deposits serve two different purposes. Security deposits provide some assurance that the QF will [*45] reach commercial in-service status and help to mitigate damages if the QF doesn't achieve commercial in-service status. Milestone requirements give the utility the authority to terminate the contract if it is clear that the QF will not perform its duties under the contract.

16. FPC'S CAPACITY ACCOUNT SECURITY

Section 8.6.3 of FPC's standard offer contract requires QFs to execute a promise to pay the balance of their Capacity Accounts and to secure that promise by a means acceptable to FPC, but it does not identify any means that would be acceptable. We believe that QFs need some guidance as to what means would be acceptable.

FPC's standard offer should specify the following alternatives for securing early or levelized payments: 1) a letter of credit; or 2) a surety bond; or 3) other means acceptable to FPC. In addition, pursuant to Rule 25-17.091, Florida Administrative Code, governmental solid waste facilities should be allowed to secure their early or levelized payments using an unsecured promise to pay. If this is done, there is no need to specify criteria for approval of the security alternative.

17. FPC'S PERFORMANCE SECURITY

Section 7.4 of FPC's proposed standard offer [*46] contract requires QFs to annually re-demonstrate their commercial in-service status within 60 days of demand by FPC. It is reasonable to require QFs to demonstrate that they are capable of delivering the amount of capacity that they contracted to deliver. Section 7.4 provides the QFs with a reasonable time frame of 60 days in which to so demonstrate.

18. FPC'S DEFAULT PROVISIONS

Under Section 15.1(b) of FPC's proposed standard offer contract, a QF is in pre-operational default if: 1) the QF becomes insolvent; 2) any representation made by the QF is false or misleading (60 day cure period allowed); 3) the QF has not entered into a transmission service agreement (if it has to wheel to

FPC); 4) construction has not commenced by the date specified by the QF; 5) QF fails to diligently pursue construction; 6) QF fails to achieve in-service by the date; 7) QF fails to comply with other material terms of contract (60 day cure period allowed).

Nassau Power and Falcon Seaboard maintain that FPC should allow a 60 day cure period for all events of default. (TR 1373) We disagree. If the QF fails to meet the milestones it specifies, or if it becomes insolvent, it is unlikely that the QF [*47] will perform as contracted. FPC's previous standard offer contract did not allow for a cure period, and no compelling reasons to change the existing practice were introduced at the hearing. We therefore approve section 15.1 of FPC's standard offer contract.

Sections 13.3 and 15.2 of FPC's standard offer contract specify that in the event of a pre-operational default, FPC may terminate the contract and retain the security deposit. This is a reasonable approach. The idea behind the security deposit is that the utility keeps the deposit if the QF defaults. We therefore approve section 13.3 and 15.2 of FPC's standard offer contract.

Under section 15.3, a QF is in operational default if: 1) the QF fails to re-demonstrate commercial in-service status; 2) the QF fails to qualify for capacity payments for twenty-four consecutive months; 3) the QF fails to comply with material terms or conditions (60 day cure period allowed); or 4) the QF becomes insolvent. These events of default are reasonable. If a QF fails to perform as contracted, FPC should have the right to declare the QF in default.

19. FPC'S REGULATORY OUT CLAUSE

As discussed below, we have instructed each of the utilities [*48] (including FPC) to remove the regulatory out clause from standard offer contracts.

20. FPC'S BILLING METHOD PROVISIONS (STIPULATED)

All parties to this docket have stipulated to FPC's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that section 6.2 of FPC's standard offer contract, which permits a one-time only election of billing methodologies, be approved.

21. FPC'S INTERCONNECTION INSURANCE REQUIREMENT

A $ 1,000,000 minimum insurance requirement is in compliance with Rule 25-17.087(6)(c), Florida Administrative Code, which calls for "public liability insurance, including property damage, in an amount not less than $ 300,000 for each occurrence; more insurance may be required as deemed necessary by the utility." Throughout the course of this docket, most parties, including Staff, have come to the general agreement that $ 1,000,000 for each occurrence is an appropriate minimum insurance requirement to cover potential public liabilities associated with the interconnection facilities. We therefore approve FPC's $ 1,000,000 minimum interconnection insurance requirement.

FPC's [*49] insurance provision also leaves any amount over the minimum insurance requirement of $ 1,000,000 to the discretion of the QF. We approve this provision which permits the QF to set any additional coverage it may wish

over the $ 1,000,000 minimum.

22. NOTICE TO QF

18 C.F.R. § 292.304(f)(2) requires that a utility may refuse to purchase energy only when it has provided sufficient notice to the qualifying facility in time to cease generation. While section 6.3 of FPC's proposed standard offer contract contains no language which would directly conflict with 18 C.F.R. § 292.304(f)(2), it does not contain any notice provision. FPC is therefore instructed to amend its tariff to include a notice provision in section 6.3 of its standard offer contract.

23. FPC'S STANDARD OFFER CONTRACT AND INTERCONNECTION AGREEMENT APPROVAL

We approve FPC's standard offer contract and interconnection agreement subject to the changes we require in this order.

FPC's standard offer contract and tariff provide for the payment of full avoided cost as required by Rule 25-17.0832(5)(a), Florida Administrative Code. In addition, the standard offer and tariff contain security provisions which consider the [*50] technical reliability, viability, and financial stability of the qualifying facility as set forth in Rule 25-17.0832(2)(d), Florida Administrative Code.

We find that the terms and conditions of FPC's standard offer contract, once modified pursuant to the requirements of this order, constitute a reasonable and prudent expenditure by FPC based on the information submitted to the Commission at this time.

24. FPC'S SUBSCRIPTION

Once FPC's standard offer is fully subscribed, FPC should file a petition requesting the closure of its standard offer contract. In its petition, FPC should provide the Commission with an estimate of the date that it will be filing an updated standard offer contract for approval. FPC should then reassess its needs for capacity, and petition the Commission for approval of a new standard offer contact which reflects its updated needs for capacity. If FPC's new standard offer contract is based on a different generation expansion plan than its previously approved standard offer contract, FPC should include the generation expansion plan supporting its choice of avoided unit in its petition for approval of its new standard offer contract.

FPL'S STANDARD OFFER [*51] CONTRACT

1. FPL'S AVOIDED UNIT DETERMINATION

2. FPL'S SUBSCRIPTION LIMIT

3. FPL'S AVOIDED UNIT PARAMETERS

4. FPL'S CAPACITY PAYMENTS

5. FPL'S AVOIDED COST CALCULATION

6. FPL'S LOCATION FACTORS

over the $ 1,000,000 minimum.

22. NOTICE TO QF

18 C.F.R. § 292.304(f)(2) requires that a utility may refuse to purchase energy only when it has provided sufficient notice to the qualifying facility in time to cease generation. While section 6.3 of FPC's proposed standard offer contract contains no language which would directly conflict with 18 C.F.R. § 292.304(f)(2), it does not contain any notice provision. FPC is therefore instructed to amend its tariff to include a notice provision in section 6.3 of its standard offer contract.

23. FPC'S STANDARD OFFER CONTRACT AND INTERCONNECTION AGREEMENT APPROVAL

We approve FPC's standard offer contract and interconnection agreement subject to the changes we require in this order.

FPC's standard offer contract and tariff provide for the payment of full avoided cost as required by Rule 25-17.0832(5)(a), Florida Administrative Code. In addition, the standard offer and tariff contain security provisions which consider the [*50] technical reliability, viability, and financial stability of the qualifying facility as set forth in Rule 25-17.0832(2)(d), Florida Administrative Code.

We find that the terms and conditions of FPC's standard offer contract, once modified pursuant to the requirements of this order, constitute a reasonable and prudent expenditure by FPC based on the information submitted to the Commission at this time.

24. FPC'S SUBSCRIPTION

Once FPC's standard offer is fully subscribed, FPC should file a petition requesting the closure of its standard offer contract. In its petition, FPC should provide the Commission with an estimate of the date that it will be filing an updated standard offer contract for approval. FPC should then reassess its needs for capacity, and petition the Commission for approval of a new standard offer contact which reflects its updated needs for capacity. If FPC's new standard offer contract is based on a different generation expansion plan than its previously approved standard offer contract, FPC should include the generation expansion plan supporting its choice of avoided unit in its petition for approval of its new standard offer contract.

FPL'S STANDARD OFFER [*51] CONTRACT

1. FPL'S AVOIDED UNIT DETERMINATION

2. FPL'S SUBSCRIPTION LIMIT

3. FPL'S AVOIDED UNIT PARAMETERS

4. FPL'S CAPACITY PAYMENTS

5. FPL'S AVOIDED COST CALCULATION

6. FPL'S LOCATION FACTORS

7. FPL'S CLEAN AIR IMPACT
8. FPL'S STANDARD OFFER TAX PROVISION

9. FPL'S CAPACITY BENEFITS FOR EARLY DELIVERY

10. FPL'S PERFORMANCE REQUIREMENTS

11. FPL'S SLIDING SCALE CAPACITY PAYMENTS

12. FPL'S MAINTENANCE SCHEDULING

13. FPL'S VIABILITY DOCUMENTS

14. FPL'S COMPLETION SECURITY

15. FPL'S PROJECT MANAGEMENT REQUIREMENTS

16. FPL'S PERFORMANCE SECURITY

17. FPL'S EARLY OR LEVELIZED CAPACITY PAYMENT SECURITY

18. FPL'S DEFAULT PROVISIONS

19. FPL'S DEFAULT CURE PERIODS

20. FPL'S LIQUIDATED DAMAGES PROVISIONS

21. FPL'S FORCE MAJEURE PROVISIONS

22. FPL'S REGULATORY OUT CLAUSE

23. FPL'S QF CERTIFICATION PROVISION

24. FPL'S COMMITTED CAPACITY ADJUSTMENT

25. FPL'S NOTICE BEFORE REFUSAL TO PURCHASE

26. FPL'S FIRM ENERGY PAYMENTS

27. FPL'S STANDARD OFFER APPROVAL

28. FPL'S SUBSCRIPTION

1. FPL'S AVOIDED UNIT DETERMINATION

FPL's plan shows a need for capacity in 1997 and 1998. Without QF contracts, FPL would construct a 907 MW IGCC. FPL would have [*52] phased in the unit by constructing 272 MW of combustion turbines in 1997 and by constructing the remainder of the unit in 1998. FPL intends to avoid this unit through the purchase of QF capacity, and it has designated a portion of the 1997 phase of this unit as its avoided unit in its standard offer contract. Since FPL's plan shows that capacity is needed in 1997, and that an IGCC unit is the most cost-effective way to meet its needs, FPL's designation of a 1997 IGCC unit as

an avoided unit is reasonable.

2. FPL'S SUBSCRIPTION LIMIT

FPL wishes to avoid its 907 MW IGCC by purchasing QF power. A portion of this unit will be avoided through standard offer contracts and a portion will be avoided through negotiated contracts. Any QF can negotiate a contract, while only QFs under 75 MW can sign standard offer contracts. If the subscription limit is set too low, and it is subscribed quickly, small QFs have the option of negotiating a contract. However, if the subscription limit is set too high, and there are not enough small QFs willing to sign the standard offer, large QFs cannot negotiate against that capacity, even if FPL needs the capacity.

FPL set its subscription amount by [*53] projecting the number of small QFs that will be willing to sign a standard offer contract. Witness Cepero stated that FPL projects 125 MW of small QFs that can deliver by 1997. (TR 320) No party has demonstrated that FPL's prediction is not reasonable. While it is difficult to project the number of QFs who will want to sign a standard offer contract, we find that FPL has made a reasonable prediction. Therefore, FPL's proposal of a 125 MW subscription limit is approved.

3. FPL'S AVOIDED UNIT PARAMETERS

The appropriate values for the parameters associated with FPL's avoided unit are:

FPL 1997 INTEGRATED GASIFICATION UNIT

a.	Type of Fuel	Coal
b.	Average Annual Heat Rate	8,420 BTU/kWh
c.	Cost of Fuel	Coal delivered to St. Johns River Power Park plus transportation differential
d.	Mid-Year 1990 Construction Cost $ /kW	$ 1,074.52
e.	Construction Escalation Rate	5.0% per year
f.	In-Service Cost ($ /kW)	$ 1,749
g.	Incremental Capital Structure	
	1. Debt	46%
	2. Preferred Stock	9%
	3. Common Stock	45%
h.	Cost of Capital	
	1. Debt	10.3%
	2. Preferred Stock	9.8%
	3. Common Stock	14.6%
i.	Book Life	30 Years
j.	AFUDC Rate	12.0%
k.	Effective Tax Rate	37.63%
l.	Other Taxes	1.64%
m.	Discount Rate (After Tax)	10.41%
n.	Beginning 1997 Fixed O&M Cost ($ /kW-yr)	$ 101.86
o.	Beginning 1997 Variable O&M Costs ($/mWh)	$ 1.94
p.	O&M Escalation Rate	5.1%
q.	Value of K	1.711

[*54]

The above parameters are required by Rule 25-17.0832, Florida Administrative Code, to calculate the value of QF capacity and energy payments pursuant to a standard offer contract.

The parameters designated by FPL for its IGCC unit are comparable to other units of the same technology type. We find that FPL's parameters are appropriate for the type of unit chosen.

4. FPL'S CAPACITY PAYMENTS

In its original filing of the COG-2 tariff sheets in this docket in October 1990, FPL incorrectly included the variable O&M cost component as part of the capacity payment instead of the energy payment. This error was realized prior to the hearing; during the hearing, FPL sponsored revised tariff sheets with properly calculated capacity and energy payments.

We find that the capacity payments in FPL's revised COG-2 tariff (Exhibit 19) have been properly calculated using the preceding parameters, in accordance with the formulas set forth in Rule 25-17.0832(5), Florida Administrative Code.

5. FPL'S AVOIDED COST CALCULATION

FICA argued that the in-service cost of FPL's proposed avoided un t has been understated by 23%. FICA's position is that FPL failed to include all costs associated with [*55] the calculation of the avoided capital cost of FPL's avoided unit. See our previous analysis of FICA's position with respect to FPC's avoided cost calculation above.

FICA's proposal to increase the in-service cost of FPL's avoided unit by 23% will result in ratepayers paying more than full avoided cost for cogeneration. We find that FPL has included all costs related to the calculation of the construction cost of the avoided unit in its standard offer contract.

6. FPL'S LOCATION FACTORS

FPL has demonstrated that a QF located in northern Florida avoids less capacity than it would avoid had the QF located near the Martin site (the site of FPL's avoided unit). This happens because QFs in northern Florida would need to use FPL's transmission system to transmit their capacity to FPL's load center, decreasing FPL's ability to import emergency assistance from Southern. This causes FPL to have a lower system reliability than it would have achieved if the QFs were located near the Martin site, and this forces FPL to add additional capacity in later years to compensate for the relative reduction in reliability. (TR 113)

QFs should be paid based on their ability to avoid the construction [*56] of capacity at FPL's Martin site. Since FPL has demonstrated that the amount of capacity a QF avoids at FPL's Martin site depends on the location of the QF, FPL should incorporate factors relating to the QF's location into its standard offer contract. If a utility's avoided cost payment rates do not recognize this, the utility's ratepayers will pay for a level of capacity deferral benefit that they do not receive. (TR 109)

Nassau (TR 1221) and FICA (TR 1059-1060) took the position that prices paid QFs should not reflect the location of the QF. We do not accept this position.

A QF's location affects the amount of capacity that is deferred at FPL's Martin site, and consequently the magnitude of the avoided capacity and energy cost on the system.

FPL's scheme does not result in payment to the QFs of less than FPL's avoided costs. Since the siting of a plant in a remote location will result in less avoided costs to FPL, a consistent reduction in the prices paid to the QF is not violative of Section 366.05, Florida Statutes.

Methods that could be used to account for the effects of a QF's location include adjusting a northern QF's capacity payments to reflect the reduced value [*57] to FPL's system, or charging the QF for the transmission capacity the QF uses. FPL has proposed that an adjustment be made to a QF's capacity payment so that the QF is paid for the amount of capacity it avoids at FPL's Martin site.

Falcon Seaboard and Nassau Power maintain that FPL's proposed location adjustment is ill-conceived because it penalizes a QF, even though the QF allowed the utility to satisfy system reliability criteria. (TR 1221-1225) They also maintain that FPL should use the cost of firm transmission service to determine its location penalty. (TR 1258) We disagree. The QF should only be paid for the amount of capacity it avoids at FPL's Martin site.

We approve FPL's method of accounting for a QF's location. It is fair to the QFs in that it ensures that they are paid full avoided costs for the capacity that they avoid. It provides monetary incentives for QFs to locate where the capacity of the QFs is most valuable.

FPL's standard offer contract provides that FPL will calculate the location adjustment on a case-by-case basis, but it does not say when such determination will be made. Witness Waters stated that such a determination can be made within 60 days of [*58] request. (TR 127) Air Products recommended and we agree that FPL's standard offer contract should be modified to notify QFs that FPL will provide them with the calculation of the location adjustment within 60 days of receipt of a standard offer contract.

7. FPL'S CLEAN AIR IMPACT

A QF may provide benefits to a utility by allowing the utility to retain emission allowances or to avoid the purchase of allowances it would have otherwise needed to operate the avoided unit. At this time, the cost of emission allowances are yet to be determined. Despite the uncertainty of the cost of emission allowances, a provision regarding emission allowance cost benefits should be included in the standard offer contract to allow a QF the opportunity to capture potential cost benefits in the future.

Under cross examination, Mr. Waters agreed that a clause could be included in the standard offer contract acknowledging emission allowance benefits so that once a value was placed on the emission allowances, a QF could receive credit for any benefits it may produce. (TR 174) In addition, Florida Power Corporation and Tampa Electric Company have provided standard offer contract language recognizing [*59] emission allowance cost benefits. We therefore instruct FPL to submit a clause for inclusion in its standard offer tariff that would allow for a credit to the QF if a benefit occurs to FPL as a result of the purchase of firm capacity and energy from the QF.

8. FPL'S STANDARD OFFER TAX PROVISION

FPL originally proposed language in its tariff which made the QF liable for any taxes or impositions for which FPL would not have been liable if it had produced the energy and constructed the facility itself. Several intervenors criticized this language as being too vague. We agree that this language can and should be modified to be more favorable to the QFs while maintaining revenue neutrality for FPL's ratepayers. FPL has agreed to modify the language in section 12.12 to specify which taxes the QF will be responsible for paying, by substituting the language it has provided in Exhibit 26.

Exhibit 26 contains tariff language which specifies that, "In the event that FPL becomes liable for additional taxes, including interest and/or penalties arising from the Internal Revenue Service's determination . . . that FPL's early, levelized or early levelized capacity payments to the QF are not [*60] fully deductible when paid (additional tax liability), FPL may bill QF monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these early, levelized capacity payments are not currently deductible for federal and state income tax purposes . . . These costs would be calculated so as to place FPL in the same economic position as it would have been in if the entire early, levelized or early levelized capacity payments had been deductible in the period in which the payments were made. . . ." We approve the language in Exhibit 26.

FICA argued that the Commission should require utilities to seek an IRS ruling prior to assessing any possible tax effects on QFs. We expect that FPL will take reasonable and prudent steps to identify, clarify, and minimize the effects of such taxes. We will not, however, require FPL to seek an IRS ruling in all cases.

9. FPL'S CAPACITY BENEFITS FOR EARLY DELIVERY

FPL's standard offer contract should and does recognize that a QF must deliver firm capacity and energy as a condition of receiving early capacity payments. Section 9 need not specify this condition because Section 4.1 (via [*61] COG-2 tariff sheet 10.201) and Section 11 specify that capacity payments will not commence until the contract in-service date.

10. FPL'S PERFORMANCE REQUIREMENTS (STIPULATED)

All parties to this docket have stipulated to FPL's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the operating performance requirements in FPL's standard offer contract reasonably reflect the performance of FPL's avoided unit.

11. FPL'S SLIDING SCALE CAPACITY PAYMENTS

Appendix C to FPL's standard offer contract provides the computation of the monthly capacity payment made to cogenerators. FPL proposes an adjustment which exponentially reduces the QF's capacity payment in a month when the twelve-month rolling average of the on-peak capacity factor is below the avoided unit minimum. This adjustment broadens the range of performance in which the QF can be paid for performance while encouraging the QF to provide capacity during

FPL's peak periods.

FPL's adjustment to capacity payments is reasonable. Therefore, we approve the capacity payment adjustment proposed in Appendix C of FPL's standard [*62] offer contract for calculating monthly capacity payments to the QF.

12. FPL'S MAINTENANCE SCHEDULING

The QF and the utility should work together to ensure that the QF's maintenance schedule is acceptable to both parties. However, FPL must have the ultimate ability to reject a QF's maintenance schedule to prevent planned outages when FPL needs the capacity.

The language in sections 6.1 and 6.2 of FPL's standard offer provides a mechanism for the QF and the utility to develop a mutually acceptable maintenance schedule. These sections allow the QF to perform its maintenance when it wishes, if possible. If the QF requests a maintenance schedule that would lessen FPL's reliability, FPL will advise the QF of an acceptable time period which is close to the one it requested. This approach is reasonable.

13. FPL'S VIABILITY DOCUMENTS

FPL's original tariff requires: a) articles of incorporation or partnership agreement and recent annual report; b) description of the QF's experience; c) letters of intent on financing, fuel, and architect; d) evidence of property options or ownership; e) prospectus for securities or bond offerings; f) contract with municipality; g) description of facility; [*63] h) technical and environmental data; and i) feasibility studies. FPL stated that it needs these documents to determine whether it is prudent and reasonable to rely on a particular QF. (TR 1592)

Witness Divine testified that these documents are not readily available to QF developers. (TR 1365) In response, witness Cepero said that FPL would be willing to add language making the section more flexible and allowing QFs to submit the documents to the extent that the documents are available. He cautioned that the absence of such documents will affect FPL's assessment of the project's viability. (TR 1593) The alternate language FPL submitted in exhibit 27 provides the QFs with more flexibility in submitting the requested documents. We instruct FPL to include in its standard offer tariff the language submitted in Exhibit 27, which provides that QFs must submit documents that are "substantially similar" to those required "to the extent the documents are available."

14. FPL'S COMPLETION SECURITY

We support the concept of using security deposits as a means of protecting the purchasing utility's ratepayers from the possibility of a QF project not coming on line (see our previous discussion [*64] on the need for security deposits). However, we believe that FPL's proposed security requirements are too burdensome.

FPL's proposed standard offer contract requires a completion security of $ 20/kW, as well as a $ 20/kW performance security to be submitted at the same time, resulting in a combined security deposit of $ 40/kw. FPL maintains that its proposed security deposit is reasonable and comparable to deposits required

by other utilities. FPL argues that it chose a $ 40/kW deposit because it reflects FPL's assessment of the risks associated with QF facilities signing the standard offer contract. (TR 1585-1586)

Falcon Seaboard and Nassau Power maintain that FPL can gain assurance that the QF will perform using a lower security deposit. (TR 1356) We agree. A combined $ 40/kW security deposit is too burdensome to the QF. Thirty-one utilities listed on Exhibit 45 required security deposits between $ 10/kW and $ 55/kW, with the majority (21 of 31 utilities) requiring deposits in the $ 15/kW to $ 20/kW range. Only three of the 31 utilities listed required security deposits in excess of $ 40/kW. We find that FPL's standard offer contract should require a maximum combined [*65] security deposit of $ 25/kW to be divided equally between completion and performance security.

Nassau Power and Falcon Seaboard propose that the deposit be phased in, since the risk to the ratepayer grows through time. (TR 1356) While we found that FPC's security deposit is too low to be phased in, we believe that a $ 25/kW security deposit is high enough to be phased in. We find that FPL should require a completion security of $ 12.5/kW within 90 days of contract execution and that it require a performance security of $ 12.5/kW on the latter of: 1) eighteen months after contract execution; or 2) three years prior to the date the QF must commence delivery of firm capacity and energy. Phasing in the security would require the QF to re-evaluate the feasibility of its project at least two and a half years prior to submitting performance security, providing FPL with updated information on the feasibility of the project.

An up-front security deposit of $ 12.5/kW with an additional $ 12.5/kW performance deposit required two years prior to in-service is sufficient to deter QFs that are not likely to pursue projects.

Falcon Seaboard and Nassau Power argue that FPL's proposal to retain [*66] 20 percent of the security deposit for each month the QF misses the commercial in-service date is unreasonable because it fails to consider the small size of the cogenerators. They also argue that QFs should be allowed a 60 day cure period. (TR 1358) We do not find Falcon and Nassau's argument to be compelling. A 60 day cure period would have the effect of delaying the in-service date of the contract at the QF's option, possibly leaving FPL without the QF's capacity during peak periods. We therefore reject Falcon and Nassau's argument.

Finally, sections 7.1 and 7.3 of FPL's standard offer do not provide sufficient alternatives for a QF to provide completion security. In addition to allowing QFs to provide cash or an unconditional, irrevocable direct pay letter, section 7.1 should allow a QF to use a surety bond to secure completion of the project. FPL's standard offer contract should also specify that governmental solid waste facilities may use an unsecured promise to pay to secure the completion of their projects pursuant to Rule 25-17.091, Florida Administrative Code.

15. FPL'S PROJECT MANAGEMENT REQUIREMENTS

It is prudent for a utility to monitor the progress of QFs that [*67] have signed the standard offer contract. Progress reports are necessary because they allow the utility to monitor the progress of the QF on an ongoing basis. As Mr. Cepero stated, "[t]he project management requirements are included as an early

warning system to indicate to FPL whether the project is on schedule. . . ." (TR 314) An early warning of potential difficulties will put FPL in a better position to adjust its planning to accommodate a change in the QF's in-service date. This will reduce the probability that FPL will have to purchase high cost replacement power or suffer blackouts if the QF doesn't come on-line as scheduled.

16. FPL'S PERFORMANCE SECURITY

As discussed previously we find that FPL's performance security should be reduced to $ 12.5/kW and that it be submitted to FPL on the latter of: 1) eighteen months after contract execution; or 2) three years prior to the date the QF must commence delivery of firm capacity and energy.

Falcon Seaboard and Nassau Power criticized as vague the standard FPL proposed to use when determining whether FPL would release the performance security. (TR 1359) In response, FPL submitted tariff language specifying the procedure to [*68] determine whether the facility can deliver the amount of capacity and energy contracted. We find that FPL should include the language submitted in Exhibit 28 in its standard offer tariff.

17. FPL'S EARLY OR LEVELIZED CAPACITY PAYMENT SECURITY

Section 9 of FPL's standard offer allows QFs to secure early or levelized capacity payments by a letter of credit, surety bond, or equivalent means of repayment. Governmental solid waste facilities are exempt from securing their promise to repay early or levelized payments pursuant to Rule 25-17.091, Florida Administrative Code. These alternatives provide sufficient guidance to QFs as to what types of security are acceptable.

18. FPL'S DEFAULT PROVISIONS

Under section 11 of FPL's standard offer, a QF is in default if it: a) fails to maintain QF status; b) fails to maintain a capacity factor of 60% for twelve consecutive months (can be extended if major equipment needs replacement); c) fails to maintain a capacity factor of 60% for 24 consecutive months; d) becomes insolvent; e) fails to give proper assurance of adequate performance within 30 days of FPL's request; or f) fails to materially perform under contract, including under sections [*69] 6, 7, 8, 9, and 12.

Except for event (a), the events of default in section 11 are reasonable and similar to the events of default in FPL's previous standard offer contract. These events provide a reasonable means to ensure that the QF complies with the terms of the contract and delivers capacity and energy in the amounts and times required by FPL. No compelling reasons have been presented to change the previous contract terms. As previously discussed, event (a) should be clarified to allow QFs to "self certify" with the FERC or to obtain certification from this Commission.

FPL's contract does not contain language which specifies the consequences if a QF defaults. FPL has agreed to add language which provides that FPL can terminate the contract and retain money owed to FPL by the QF if the QF defaults. We find that such language clarifying the consequences of default should be included in FPL's tariff.

19. FPL'S DEFAULT CURE PERIODS

FPL's contract allows a reasonable cure period if the QF defaults because of operational difficulties. Cure periods are not provided for other default events. If a QF cannot meet a deadline because of events that are beyond its control, it may [*70] claim force majeure. Further cure periods could delay FPL's search for replacement power in a time when the power is critically needed. For these reasons, we will not require FPL to allow cure periods for all events of default.

20. FPL'S LIQUIDATED DAMAGES PROVISIONS

There are two reasons FPL should be able to pursue additional remedies against a QF that does not perform: 1) the damages FPL incurs will likely exceed the amount of the security deposits (TR 1611); and 2) since the security deposit is fully refunded six months after the QF comes on-line, FPL would have no remedy for any breach occurring after a timely completion, and the QF would receive no penalty for non-compliance. (TR 1408-1410) Security deposits are not meant to approximate the damages a utility will incur. If this were the intent, security deposits would be higher, and they would be held by the utility for the life of the contract.

FICA, Falcon Seaboard, and Nassau Power maintain that forfeiture of completion security or performance security should constitute full liquidated damages if the QF defaults. They argue that since a utility can retain the security deposits even if it has no damages, that such [*71] deposit should constitute full liquidated damages. We do not agree. FPL should not be prevented from seeking damages after it refunds the security deposit, or damages that exceed the security deposit.

21. FPL'S FORCE MAJEURE PROVISIONS

Section 12.6 of FPL's proposed standard offer contract defines Force Majeure as, "an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers . . . Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the facility, shall not be considered Force Majeure."

FPL argues that the risk for nonperformance for equipment breakdown should be borne by the QF, not the ratepayers. (TR 318) We agree with FPL in part -- when nonperformance results from the QF's negligence or lack of due diligence, the risk of nonperformance should be borne by the QF. However, when nonperformance results from events that are beyond the control of the QF, and when the QF can conclusively [*72] demonstrate that the events were beyond its reasonable control, the QF should be able to claim Force Majeure. (TR 1367) As written, section 12.6 of FPL's proposed standard offer contract could prevent the QF from making such a claim. We do not believe that this is fair to the QFs. FPL should modify the language excluding equipment breakdown from its definition of Force Majeure, in order to provide that equipment breakdown will only be considered Force Majeure if the QF can conclusively demonstrate that the event was beyond its reasonable control.

22. FPL'S REGULATORY OUT CLAUSE

As discussed below, we have instructed each of the utilities to remove the regulatory out clause of their standard offer contract.

23. FPL'S QF CERTIFICATION PROVISION

Section 1 of FPL's standard offer can be interpreted as prohibiting a QF from self-certifying with FERC, or from obtaining certification from us. Section 1 and section 11 of FPL's standard offer should be clarified to allow the facility to obtain certification from the Florida Public Service Commission as a QF under Rule 25-17.080(1), Florida Administrative Code, or to "self-certify" with FERC.

24. FPL'S COMMITTED CAPACITY ADJUSTMENT [*73]

FPL submitted tariff language in Exhibit 30, defining "small discrepancies" as the lesser of +/- 5% of the committed capacity, or +/- 3MW. FICA, Falcon Seaboard, Nassau Power, and Air Products maintain that QFs should be able to adjust committed capacity by +/- 10% because, according to Witness Waters, it is unlikely that eight megawatts will have a significant impact on FPL's capacity needs. (TR 78) FPL argues that small discrepancies should be limited to +/- 5% since 10% is outside what would be expected in ratings of equipment. (TR 434) We find these arguments to be equally compelling. We therefore find that section 5.2.2 should be revised to define "small discrepancies" as plus or minus 7.5 percent of the QF's committed capacity so long as the QF's committed capacity does not exceed 75 MW.

25. FPL'S NOTICE BEFORE REFUSAL TO PURCHASE

18 C.F.R. § 292.304(f)(2) requires that a utility may refuse to purchase energy only when it has provided sufficient notice to the qualifying facility in time to cease generation. While section 6.4.6 of FPL's proposed standard offer contract contains no language which would directly conflict with 18 C.F.R. § 292.304(f)(2), it does not contain [*74] a notice provision. FPL concedes in its brief:

Any contention that Section 6.4.6 does not appear to comply with 18 C.F.R. Section 292.304(f)(2) is easily addressed by adding the introductory phrase, "After providing notice to the QF", to the first sentence of Section 6.4.6.

We find that FPL should so amend section 6.4.6.

26. FPL'S FIRM ENERGY PAYMENTS

Rule 25-17.0832(4)(b), Florida Administrative Code, states, in part:

To the extent that the avoided unit would have been operated, had that unit been installed, avoided energy costs associated with firm energy shall be the energy cost of this unit. To the extent that the avoided unit would not have been operated, the avoided energy costs shall be the as-available avoided energy cost. . . .

Under FPL's standard offer contract, energy payments made after the in-service date will be the lesser of an hour-by-hour comparison of: (1) the utility's as-available energy cost and (2) the utility's actual avoided energy

cost.

FPL's position is that this provision for firm energy payment is consistent with Rule 25-17.0832(4)(b), Florida Administrative Code. FPL asserts that this provision assures that a QF will receive the avoided unit's [*75] energy cost when the avoided unit would have been operated and the utility's as-available energy cost when the avoided unit would not have been operated. Furthermore, the avoided unit would be dispatched, and the QF would receive the actual avoided energy cost, only when the avoided unit's energy cost would be less than FPL's as-available energy cost. The avoided unit would not be dispatched to operate at times when its energy cost exceeds FPL's as-available energy costs.

For example, during a given hour, FPL might need to dispatch only a 25 MW block of its avoided unit. A QF might generate 75 MW during that hour. In this example, the QF's energy payment will be based on FPL's actual avoided energy cost for the first 25 MW, and FPL's as-available energy cost for the remaining 50 MW.

Despite FPL's intent to pay firm energy to a QF only when the avoided unit would operate, FPL's COG-2 tariff does not explicitly state this. Therefore, we find that FPL should refile sheet no. 10.203 of its COG-2 tariff to include explicit language regarding the time a QF would receive firm energy payments, in accordance with Rule 25-17.0832(4)(b), Florida Administrative Code.

27. FPL'S STANDARD [*76] OFFER APPROVAL

We approve FPL's standard offer contract subject to the changes we have delineated in this order. When FPL's standard offer conforms to the mandates of this order, it will be administratively approved in its entirety.

We find that the terms and conditions of FPL's standard offer contract, once modified pursuant to the requirements of this order, constitute a reasonable and prudent expenditure by FPL based on the information submitted to the Commission at this time.

28. FPL'S SUBSCRIPTION

Once FPL's standard offer is fully subscribed FPL should file a petition requesting the closure of its standard offer contract. In its petition, FPL should provide the Commission with an estimate of the date that it will be filing an updated standard offer contract for approval. FPL should then reassess its need for capacity and petition the Commission for approval of a new standard offer contract which reflects its updated need. If FPL's new standard offer contract is based on a different generation expansion plan than its previously approved standard offer contract, FPL should include the generation expansion plan supporting its choice of avoided unit in its petition for [*77] approval of its new standard offer contract.

FPL'S INTERCONNECTION AGREEMENT

1. FPL'S TRANSMISSION SYSTEM INTERNAL IMPROVEMENTS

2. FPL'S INTERCONNECTION INSURANCE REQUIREMENT

3. FPL'S INTERCONNECTION TAX ASSESSMENTS

4. FPL'S INTERCONNECTION CONSTRUCTION TIMING

5. FPL'S INTERCONNECTION COST OBLIGATION

6. FPL'S GOOD FAITH ESTIMATES

7. FPL'S INTERCONNECTION INDEMNITY PROVISION

8. FPL'S INTERCONNECTION AGREEMENT APPROVAL

1. FPL'S TRANSMISSION SYSTEM INTERNAL IMPROVEMENTS (STIPULATED)

All parties to this docket have stipulated to FPL's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the third paragraph of section 2 of FPL's standard interconnection agreement, which obligates QFs to pay for internal improvements to the FPL transmission system, should be approved.

2. FPL'S INTERCONNECTION INSURANCE REQUIREMENT

Rule 25-17.087(6)(c), Florida Administrative Code, which addresses the interconnection insurance requirement, calls for "public liability insurance, including property damage, in an amount not less than $ 300,000 for each occurrence; more insurance [*78] may be required as deemed necessary by the utility." Throughout the course of this docket, most parties, including Staff, have come to the general agreement that $ 1,000,000, for each occurrence, is an appropriate minimum insurance requirement to cover potential public liabilities associated with the interconnection facilities, and that $ 1,000,000 is the current standard adopted by all utilities except FPL. FPL's standard offer still calls for the $ 300,000 minimum requirement in the rule.

With a stated minimum standard of $ 300,000, FPL's Exhibit 25 showed insurance amounts ranging from $ 2,000,000 to $ 30,000,000 for existing facilities. The exhibit did not indicate whether these amounts were voluntary or mandatory. In its position statement, FPL argues that it is necessary to assess QF insurance on a case-by-case basis. At the hearing, FPL submitted Exhibit 24 which adds (to section 12.4.2 of its standard offer and section 10 of its interconnection agreement) the factors which FPL will use to establish case-by-case insurance limits. While we agree that FPL's Exhibit 24 does list factors which impact on relative interconnection risk, it is still not clear how FPL intends to [*79] weight these factors. For instance, it is difficult to understand how a 69 kV facility on Exhibit 25 can be assigned a relative public liability risk of $ 30,000,000 which is 100 times the $ 300,000 amount established as reasonable in rulemaking.

We therefore find that FPL should raise its minimum insurance requirement from $ 300,000 to $ 1,000,000. We also instruct FPL to include a provision which would leave any amount over the minimum insurance requirement of $ 1,000,000 to the discretion of the QF. Said provision would permit the QF to set any additional coverage it may wish over the $ 1,000,000 minimum. These modifications shall be made to FPL's interconnection insurance requirements in

section 12.4.2 of its standard offer contract and should be duplicated in section 10 of FPL's standard interconnection agreement.

3. FPL'S INTERCONNECTION TAX ASSESSMENTS

FPL originally proposed language in its standard interconnection agreement which made the QF liable for any taxes or impositions for which FPL would not have been liable if it had produced the energy and constructed the facility itself. Several intervenors criticized this language as being too vague. We agree that this [*80] language can and should be modified to be more favorable to the QFs while maintaining revenue neutrality for FPL's ratepayers. FPL has agreed to modify the language in section 11 to specify which taxes the QF will be responsible for paying. The proposed language in Exhibit 26, page 1 of 2, is as follows:

In the event that FPL becomes liable, after the execution of this Agreement, for additional taxes, including interest and/or penalties, as a result of failing any of the tests in Internal Revenue Service (IRS) Notice 88-129, 1988-2 CD 541 (identified through an IRS audit or otherwise), thus causing the QF's payment for interconnection facilities to be taxable income for federal and/or state income tax purposes, FPL may bill the QF monthly for such additional costs, including taxes, interest and/or penalties, or may offset them against amounts due the QF under any FPL/QF power purchase agreement. These costs would be calculated so as to place FPL in the same economic position as it would have been in if the payment for interconnection facilities has not been deemed to be taxable income. If FPL decides to appeal the IRS' determination, the decision as to whether the appeal should [*81] be made through the administrative or judicial process or both, and all subsequent decisions pertaining to the appeal (both substantive and procedural) shall rest exclusively with FPL. In the event that IRS Notice 88-129 is modified, clarified, explained or changed in any manner, all recognized IRS authority on this issue shall be used to determine if any additional costs are due under this section.

We agree that the modified language in Exhibit 26 is appropriate and instruct FPL to substitute the language for the current language in Section 11 of the standard interconnection agreement.

FICA argued that the Commission should require utilities to seek an IRS ruling prior to assessing any possible tax effects on QFs. We expect that FPL will take reasonable and prudent steps to identify, clarify, and minimize the effects of such taxes. One such step may be seeking an IRS ruling; however, we will not require FPL to seek an IRS ruling in all cases. FPL should assess QF's for the tax effects they cause, subject to refund if the IRS should make a refund to FPL.

4. FPL'S INTERCONNECTION CONSTRUCTION TIMING

Rule 25-17.087(10), Florida Administrative Code, requires utilities, prior [*82] to any work being done, to supply the QF with a written cost estimate of all its required materials and labor, and an estimate of the date by which construction of the interconnection will be complete. The intent of this provision was to give QFs an up-front opportunity to challenge estimates they feel are unreasonable. Section 2 of FPL's proposed standard interconnection agreement should be modified to comply with the "written estimate" provision of

Commission Rules.

We therefore instruct FPL to add to section 2 of its proposed standard interconnection agreement the requirement that FPL, within 60 days of receiving instructions to commence construction, supply the QF with a written estimate of cost for materials and labor as well as an estimate of the expected completion date.

5. FPL'S INTERCONNECTION COST OBLIGATION

Rule 25-17.087(10), Florida Administrative Code, requires the QF to bear all costs associated with the construction of the interconnection beyond those which would be required to provide normal service to the qualifying facility, if the qualifying facility were a non-generating customer.

We have previously required FPL to incorporate the "written estimate" language [*83] of the rule into section 2 of its proposed standard interconnection agreement. This should let prospective QFs know they have an up-front right to review cost estimates, and, therefore, question any costs they feel are more appropriately borne by FPL. With this modification, we feel that section 2 of FPL's standard interconnection agreement, which sets forth the interconnection costs of QF is obligated to pay, conforms to Rule 25-17.087(10), Florida Administrative Code, and that it is reasonable.

6. FPL'S GOOD FAITH ESTIMATES

We instruct FPL to include language in both section 3 of its proposed standard interconnection agreement and Appendix A to that agreement which provides that estimates for the cost of interconnection construction work are FPL's good faith estimates.

7. FPL'S INTERCONNECTION INDEMNITY PROVISION

We find that Rule 25-17.087(6)(b) and (c), Florida Administrative Code, clearly intended for the utility and the QF to each be responsible separately for its own facility's liabilities and insurance. The specific sections of the rule are:

Regarding Indemnity:

25-17.087(6) (b)1. The utility and the qualifying facility shall each be responsible for its own [*84] facilities.

25-17.087(6) (b)2. The utility and the qualifying facility shall each be responsible for ensuring adequate safeguards for other utility customers, utility and qualifying facility personnel and equipment, and for the protection of its own generating system.

25-17.087(6) (b)3. The utility and the qualifying facility shall each indemnify and save the other harmless from any and all claims.

Regarding Liability Insurance:

25-17.087(6) (c) The (QF) shall deliver to the utility a certificate of insurance naming the (QF) as named insured, and the utility as an additional

named insured.

Section 9 (the indemnification section) of FPL's proposed standard interconnection agreement contains language which is in compliance with Rule 25-17.087(6)(b), Florida Administrative Code. But section 10 (the insurance section) appears to take a departure from the concept of separate insurance liability. It requires the QFs to have insurance which at a minimum contains, "broad form contractual liability endorsement for FPL Entities and QF entities." FPL further requires that the QF's policy "shall be endorsed to be primary to (i) any insurance which may be maintained by, or on [*85] behalf of, FPL Entities, and (ii) any indemnity-related obligation(s) of either party pursuant to section 9 hereof."

FPL is essentially asking the QF to shield it from liability and it has agreed in the revised language of Late-Filed Exhibit 24 to make up any incremental difference in cost the QF would bear under such an arrangement: "FPL will pay the reasonable incremental cost of covering liabilities arising from FPL's negligent acts or omissions, and will assist the QF in obtaining the above policy or policies if requested by the QF."

We find that the insurance requirements of section 10 of FPL's standard interconnection agreement, which require the QF to procure insurance to cover FPL's liabilities, do not conform to Rule 25-17.087(6)(b) and (c), Florida Administrative Code. FPL may require only that it be an additional named insured on the QF's interconnection insurance policy. We also find that FPL's own insurance policies must indemnify the QF and save the QF harmless from FPL's actions.

8. FPL'S INTERCONNECTION AGREEMENT APPROVAL

We approve FPL's standard interconnection agreement subject to the changes we have delineated in this order. When FPL's standard interconnection [*86] agreement conforms to the mandates of this order, it will be administratively approved in its entirety.

GULF'S STANDARD OFFER CONTRACT

1. GULF'S AVOIDED UNIT DETERMINATION

2. GULF'S SUBSCRIPTION LIMIT

3. GULF'S AVOIDED UNIT PARAMETERS

4. GULF'S CAPACITY PAYMENTS

5. GULF'S AVOIDED COST CALCULATION

6. GULF'S LOCATION FACTORS

7. GULF'S CLEAN AIR IMPACT

8. GULF'S STANDARD OFFER TAX PROVISION

9. GULF'S CAPACITY BENEFITS FOR EARLY DELIVERY

10. GULF'S PERFORMANCE REQUIREMENTS

11. GULF'S PERFORMANCE REQUIREMENTS

12. GULF'S PERFORMANCE REQUIREMENTS

13. GULF'S COMPLETION SECURITY

14. GULF'S COMPLETION SECURITY ALTERNATIVES

15. GULF'S CAPACITY ACCOUNT SECURITY

16. GULF'S DEFAULT PROVISIONS

17. GULF'S LIQUIDATED DAMAGES PROVISIONS

18. GULF'S REASSIGNMENT PROVISION

19. GULF'S REGULATORY OUT CLAUSE

20. GULF'S COMMITTED CAPACITY ADJUSTMENT

21. GULF'S FIRM ENERGY PAYMENTS

22. GULF'S STANDARD OFFER APPROVAL

23. GULF'S SUBSCRIPTION

1. GULF'S AVOIDED UNIT DETERMINATION (STIPULATION)

All parties to this docket have stipulated to FPC's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will [*87] accept the stipulation of the parties that the technology, timing, and number of units Gulf has identified as avoided units are reasonable as a means of setting standard offer pricing for the purchase of firm capacity and energy.

2. GULF'S SUBSCRIPTION LIMIT

Gulf has proposed that its standard offer contract be available to 79 MW of QFs. There is no evidence in the record that shows that the subscription limit should be greater than 79 MW. During the past year, no QFs have approached Gulf wishing to sell firm capacity and energy. (TR 1001; Exhibit 74) Gulf's proposal of 79 MW is reasonable because: 1) it is large enough to accommodate a 75 MW QF; 2) it would allow Gulf to fully avoid its combustion turbine through standard offer contracts; and 3) there is no evidence that the subscription limit should be greater than 79 MW.

3. GULF'S AVOIDED UNIT PARAMETERS

We find that the following parameters provided by Gulf for its 1995 combustion turbine unit are appropriate:

GULF 1995 COMBUSTION TURBINE UNIT

a.	Type of Fuel		Natural Gas/#2 oil
b.	Average Annual Heat Rate		12,985 BTU/KWH
c.	Cost of Fuel (cents/KWH)		
	1995	3.88	
	1996	4.36	
	1997	4.91	
	1998	5.52	
	1999	6.21	
	2000	7.02	
	2001	7.65	
	2002	8.35	
	2003	9.13	
	2004	9.97	
d.	Mid-Year 1991 Construction Cost $/kW		$ 345/KW ($ 1991)
e.	Construction Escalation Rate		
	1991	3.7%	
	1992	4.1%	
	1993	4.0%	
	1994	4.2%	
	1995	4.5%	
	1996	4.5%	
	1997	4.5%	
	1998	4.6%	
	1999	4.6%	
	2000	4.7%	
f.	In-Service Cost ($ /kW)		$ 453/KW ($ 1995)
g.	Incremental Capital Structure		
	1. Debt		45%
	2. Preferred Stock		10%
	3. Common Stock		45%
h.	Cost of Capital		9.51%
i.	Book Life		30 years
j.	AFUDC Rate		11.16%
k.	Effective Tax Rate		37.63%
l.	Other Taxes		Ad Valorem - 1.1%
m.	Discount Rate (After Tax)		9.51%
n.	Beginning 1995 Fixed O&M Cost ($/kW-yr)		$ 2.44
o.	Beginning 1995 Variable O&M Costs ($/KW-Mo)		
	1995	0.34	
	1996	0.36	
	1997	0.37	
	1998	0.39	
	1999	0.41	
	2000	0.43	
	2001	0.45	
	2002	0.48	
	2003	0.50	
	2004	0.52	
p.	O&M Escalation Rate		
		fixed	var.
	1991	3.2%	3.8%
	1992	4.9%	4.2%
	1993	3.5%	4.2%
	1994	4.0%	4.7%

1995	4.2%	4.8%
1996	4.1%	5.0%
1997	4.1%	5.3%
1998	4.1%	5.5%
1999	4.1%	5.7%
2000	4.4%	6.0%

q. Value of K 1.4893

[*88]

The parameters proposed by Gulf are required by Rule 25-17.0832, Florida Administrative Code, to calculate the value of QF capacity and energy payments pursuant to a standard offer contract.

The parameters designated by Gulf for its combustion turbine unit are comparable to other units of the same technology type. Gulf's parameters are appropriate for the type of unit chosen.

4. GULF'S CAPACITY PAYMENTS

The capacity payments in Gulf's COG-2 tariff incorrectly include the variable O&M component, which should be included as part of the avoided energy payment. Gulf should refile its COG-2 tariff to reflect this change so that its capacity payments are properly calculated in accordance with the formulas set forth in Rule 25-17.0832(5), Florida Administrative Code.

5. GULF'S AVOIDED COST CALCULATION

FICA's proposal to increase the in-service cost of Gulf's avoided unit by 23% will result in ratepayers paying more than full avoided cost for cogeneration. As previously discussed, we reject FICA's position. We believe that Gulf has included all costs related to the calculation of the construction cost of the avoided unit in Gulf's standard offer contract.

6. GULF'S LOCATION [*89] FACTORS

Gulf should not incorporate any transmission factors into its standard offer because Gulf has no major transmission constraints that would cause the value of QF capacity to depend on its location. However, witness Pope testified that there are several locations within Gulf's system where the siting of a large QF could cause Gulf to accelerate the construction of certain transmission facilities. (TR 1002) Gulf proposes to charge the QF, as part of the interconnection expense, an amount equal to the carrying charge on any accelerated transmission investment caused by the QF. We agree that such limitations are more appropriately dealt with through interconnection costs than through a major transmission adjustment. We therefore find that Gulf may charge QFs for the cost of accelerating local transmission construction if it is required, as part of the interconnection expense.

7. GULF'S CLEAN AIR IMPACT (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that Gulf adequately and fairly incorporated factors relating [*90] to compliance with the Clean Air Act, as amended in 1990, which would affect the price contained in its standard

offer contract.

8. GULF'S STANDARD OFFER TAX PROVISION

Gulf's standard offer contract should be modified to require a QF to be responsible for taxes, assessments, and impositions Gulf incurs by virtue of purchasing power from the QF. It should also refund the QF for any tax savings it causes.

Gulf provided language in Exhibit 76 which would pass any tax savings Gulf obtains by virtue of the purchase power contract on to the QF. This is a reasonable provision and Gulf should modify its contract to reflect the language in Exhibit 76.

FICA argued that the Commission should require utilities to seek an IRS ruling prior to assessing any possible tax effects on QFs. We expect that Gulf will take reasonable and prudent steps to identify, clarify, and minimize the effects of such taxes. One such step may be seeking an IRS ruling; however, we will not make an across-the-board ruling that Gulf must seek an IRS ruling in every circumstance that a tax question arises.

9. GULF'S CAPACITY BENEFITS FOR EARLY DELIVERY

Gulf's standard offer contract should and does recognize [*91] that a QF must deliver firm capacity and energy as a condition of receiving early capacity payments. We therefore approve section 7 of Gulf's standard offer contract which specifies that early payments will be paid for capacity delivered prior to June 1, 1995.

10. GULF'S PERFORMANCE REQUIREMENTS (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the methodology for calculating equivalent availability proposed in section 4.2.3 of Gulf's standard offer contract is reasonable.

11. GULF'S PERFORMANCE REQUIREMENTS (STIPULATED)

All parties to this docket have stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the provision in section 4.2.3 of Gulf's standard offer which requires a QF to meet the equivalent availability of at least 98% for on-peak periods in order to receive capacity payments is reasonable.

12. GULF'S PERFORMANCE REQUIREMENTS (STIPULATED)

All parties to this docket have [*92] stipulated to Gulf's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that paragraph 6(e) of Gulf's standard offer which requires the QF to notify Gulf six hours prior to peak period of inability to produce committed capacity is reasonable.

13. GULF'S COMPLETION SECURITY

We accept the concept of using security deposits as a means of protecting the purchasing utility's ratepayers from the possibility of a QF project not coming on line. Witness Pope stated the purpose of Gulf's security deposit: "The completion security is intended to provide the utility with additional and immediately available funds to secure replacement and reserve power in the event that the QF fails to complete construction. It can also be viewed as a success incentive for the QF." (TR 1727)

Under section 2 of Gulf's standard offer contract, QFs are required to submit a $ 20/kW security deposit upon execution of the contract. Section 8 specifies that Gulf will refund the QF's security deposit upon achieving commercial in-service status, provided that it is reached prior to June 1, 1995. The level of Gulf's [*93] proposed security deposit is reasonable and comparable to the levels of completion security required by other utilities throughout the country. Therefore, we approve the $ 20/kW level of Gulf's security deposit.

We will, however, require Gulf to phase its completion security. $ 10/kW should be required at the time of contract execution and the other $ 10/kW twelve months after contract execution. If Gulf's standard offer contract is available until June 1, 1992, Gulf will receive the full security deposit at least two years prior to the in-service date of the avoided unit.

Gulf's phase-in schedule is different than that recommended for FPL or TECO because Gulf's avoided unit has an earlier in-service date than FPL or TECO's avoided units. In addition, Gulf's avoided unit is a combustion turbine unit which has a shorter lead-time than a combined cycle or a gasified combined cycle unit.

14. GULF'S COMPLETION SECURITY ALTERNATIVES

Gulf's proposed standard offer contract does not allow for sufficient alternatives for a QF to provide completion security. Gulf's standard offer should specify that QFs may secure completion using a cash deposit, an unconditional, irrevocable direct [*94] pay letter, surety bond, or other means acceptable to Gulf. Gulf should also allow governmental solid waste facilities to use an unsecured promise to pay pursuant to Rule 25-17.091, Florida Administrative Code.

15. GULF'S CAPACITY ACCOUNT SECURITY

Option B of Gulf's standard offer should specify the following alternatives for securing early or levelized payments: 1) a letter of credit; or 2) a surety bond; or 3) other means acceptable to Gulf. In addition, pursuant to Rule 25-17.091, Florida Administrative Code, governmental solid waste facilities should be allowed to secure early or levelized payments using an unsecured promise to pay.

16. GULF'S DEFAULT PROVISIONS

Section 9.3 of Gulf's proposed standard offer provides that the only remedy for default by the QF is termination of the contract and forfeiture to Gulf of the entire Capacity Account including accrued interest. Section 7, which deals with the QF's obligations if it receives early capacity payments, specifies that

upon default, the QF will pay Gulf the credit in its capacity account. Section 9.3 is redundant and could be misinterpreted to limit Gulf's options for remedy under law if a QF defaults. We therefore [*95] find that section 9.3 of Gulf's proposed standard offer contract should be deleted.

17. GULF'S LIQUIDATED DAMAGES PROVISIONS

We find that if repayment of the Capacity Account is required upon default, such repayment should not constitute full liquidated damages to Gulf. The Capacity Account is designed to secure early or levelized payments that are in excess of the value of deferral payments in any given year. These early payments are, in effect, a loan to the QF. If the QF does not perform later in the contract term, it must pay back the money it received for capacity it did not deliver. Thus payment of the Capacity Account constitutes payment of a debt owed to a utility and does not constitute a penalty or damages for non-performance.

If payment of the Capacity Account constituted full liquidated damages, the utility would not be compensated for any damages resulting from having to procure potentially expensive replacement power. Thus, repayment of the Capacity Account should not constitute full liquidated damages to Gulf if the QF defaults.

18. GULF'S REASSIGNMENT PROVISION

It is reasonable for Gulf to retain the right to approve assignment of its contract to another [*96] QF. Rule 25-17.0832(3)(d)2, Florida Administrative Code, allows a utility to petition the Commission to reject a standard offer contract if it believes there is, "material evidence that because the qualifying facility is not financially or technically viable, it is unlikely that the committed capacity and energy would be made available to the utility by the date specified in the standard offer." This language gives Gulf the right to petition to reject a contract if it believes that a QF is not viable. If Gulf does not retain the right to approve the assignment of its contract to another utility, a financially and technically viable QF could assign its contract to a less viable QF, bypassing Gulf's right to review the project. This would result in an increased risk to Gulf and its ratepayers. Therefore, we find section 10.5 of Gulf's standard offer, which gives Gulf approval authority over assignment of the contract, is reasonable.

19. GULF'S REGULATORY OUT CLAUSE

As discussed below, we have instructed each of the utilities to remove the regulatory out clause from their standard offer contracts.

20. GULF'S COMMITTED CAPACITY ADJUSTMENT

The provision in section 4.2.1 of Gulf's [*97] proposed standard offer contract, which provides that the QF may finalize its committed capacity only after initial facility testing and prior to June 1, 1995, is reasonable.

21. GULF'S FIRM ENERGY PAYMENTS

Gulf's proposed COG-2 tariff provides for the QF to receive payment equal to

the avoided energy cost of Gulf's proposed avoided unit during the time the QF operates as if it were Gulf's avoided unit. The QF is paid for delivered energy at Gulf's as-available energy rate at all other times.

We find that sheet 9.10 of Gulf's proposed COG-2 tariff complies with Rule 25-17.0832(4)(b), Florida Administrative Code.

22. GULF'S STANDARD OFFER APPROVAL

We approve Gulf's standard offer contract subject to the changes we have required Gulf to make pursuant to this order. When Gulf's standard offer contract fully conforms to the mandates of this order, it will be administratively approved.

We find that the terms and conditions of Gulf's standard offer contract, when modified pursuant to this order, constitute a reasonable and prudent expenditure by Gulf, based on the information which has been submitted to the Commission at this time.

23. GULF'S SUBSCRIPTION

Once Gulf's standard [*98] offer is fully subscribed, Gulf should file a petition requesting the closure of its standard offer contract. In its petition, Gulf should provide the Commission with an estimate of the date that it will be filing an updated standard offer contract for approval. Gulf should then reassess its need for capacity and petition the Commission for approval of a new standard offer contract which reflects its updated need. If Gulf's new standard offer contract is based on a different generation expansion plan than its previously approved standard offer contract, Gulf should include the generation expansion plan supporting its choice of avoided unit in its petition for approval of its new standard offer contract.

GULF'S INTERCONNECTION AGREEMENT

1. GULF'S INTERCONNECTION CONSTRUCTION TIMING

Rule 25-17.087(10), Florida Administrative Code, requires utilities, prior to any work being done, to supply the QF with a written cost estimate of all its required materials and labor and an estimate of the date by which construction of the interconnection will be complete. The intent of this provision was to give QFs an up-front opportunity to challenge estimates they feel are unreasonable. [*99] Section 2 of Gulf's proposed standard interconnection agreement should be modified to specifically comply with the "written estimate" provision of Commission Rules.

We therefore instruct Gulf to add to section 2 of its proposed standard interconnection agreement the requirement for Gulf, within 60 days of receiving instructions to commence construction, to supply the QF with a written estimate of what cost will be required for materials and labor as well as an estimated completion date.

2. GULF'S GOOD FAITH ESTIMATES

Both section 3 of Gulf's proposed standard interconnection agreement, and

Appendix A to that agreement, should provide that estimates for the cost of interconnection construction work are Gulf's good faith estimates. We direct Gulf to make these changes.

3. GULF'S INTERCONNECTION INDEMNIFICATION PROVISION

Rule 25-17.087(6)(b), Florida Administrative Code, provides that the utility and the qualifying facility shall each be responsible for ensuring adequate safeguards and protection for the other party, and shall indemnify and save the other harmless.

In section 9 of Gulf's proposed standard interconnection agreement, Gulf appears to be holding the QF responsible [*100] for jointly protecting and indemnifying both the QF and the Company, "The QF shall deliver . . . a certificate of insurance . . . jointly protecting and indemnifying the QF and the Company . . . against all liability and expense on account of claims and suits . . . arising out of the performance by the QF or the Company. . . ." Gulf argues that its indemnity language in section 9 is consistent with the requirement that the QF procure insurance with Gulf designated as an "additional named insured." We disagree. The rule intended for both the QF and the utility to have separate policies. Gulf is allowed to benefit from the QF's policy by being an additional named insured.

The insurance requirements of section 9 of Gulf's proposed standard interconnection agreement do not conform to Rule 25-17.087(6)(b) and (c), Florida Administrative Code, regarding liability. Gulf should amend section 9 to require only that it be an additional named insured on the QF's interconnection insurance policy.

4. GULF'S INTERCONNECTION INSURANCE REQUIREMENT

A $ 1,000,000 minimum insurance requirement is in compliance with Rule 25-17.087(6)(c), Florida Administrative Code, which calls [*101] for "public liability insurance, including property damage, in an amount not less than $ 300,000 for each occurrence; more insurance may be required as deemed necessary by the utility." Throughout the course of this docket, most parties, including Staff, have come to the general agreement that $ 1,000,000 for each occurrence is an appropriate minimum insurance requirement to cover potential public liabilities associated with the interconnection facilities. We therefore approve Gulf's $ 1,000,000 minimum interconnection insurance requirement.

We find that Gulf's insurance provision should leave any amount over the minimum insurance requirement of $ 1,000,000 to the discretion of the QF. Said provision should permit the QF to set any additional coverage it may wish over the $ 1,000,000 minimum.

We further find that there is a discrepancy between Gulf's current proposed standard interconnection agreement and its tariff. Gulf should remedy this discrepancy upon resubmission of its interconnection agreement and tariff in compliance with the mandates of this order.

5. GULF'S INTERCONNECTION AGREEMENT APPROVAL

We approve Gulf's interconnection agreement subject to the changes we

[*102] have delineated in this order. When Gulf has made the requisite changes to its proposed interconnection agreement pursuant to the mandates of this order, the agreement will be administratively approved.

TECO'S STANDARD OFFER CONTRACT

1. TECO'S AVOIDED UNIT DETERMINATION

TECO is proposing to build two 220 MW CC units that are phased into service over a three year period. In-service dates for the CC units are 1/1997 and 1/2000. As it's avoided unit, TECO has proposed to offer one of the CT's used to make up the CC unit. Even if one CT were fully subscribed, TECO would still build the second CT, and then complete the CC unit. For this reason, we believe that the proper avoided unit would be the 1997 CC unit. To offer a piece of a phased unit does not make sense if the total unit is going to be constructed anyway. By making the in-service date match the in-service date of the last phase, the QF has more time to decide whether to sign a standard offer or to negotiate a contract.

We therefore find that TECO's avoided unit should be a 1997 combined cycle unit.

2. TECO'S SUBSCRIPTION LIMIT

TECO has proposed to make its standard offer contract available to 75 MW of QFs. [*103] We approve TECO's proposed 75 MW subscription limit for the following reasons: 1) seventy-five megawatts represents a full year's requirements of capacity needs for TECO (TR 936); 2) TECO's proposed 75 MW subscription limit is large enough to allow a 75 MW QF to sign TECO's standard offer contract; and 3) a subscription limit larger than 75 MW is not required since TECO forecasts that only 50 MW of QF capacity will be added to its system through 2,000.

3. TECO'S AVOIDED UNIT PARAMETERS

We find that the following parameters associated with a 1997 Combined Cycle unit are appropriate.

TECO 1997 COMBINED CYCLE UNIT

a.	Type of fuel	Natural Gas/#2 Oil
b.	Average annual heat rate	8250 BTU/kWh
c.	Cost of fuel:	Gas/Oil at Hardee Power or Polk site
	Natural Gas ($ 1997)	$ 7.95/MBTU
	Distillate (#2 Oil) ($ 1997)	$ 10.64/MBTU
d.	Construction cost (1991 $/kW)	$ 649.09
e.	Construction escalation rate	5.1%
f.	In-service cost (1997 $/kW)	$ 906.32
g.	Incremental capital structure	
	1. Debt	45%
	2. Preferred Stock	7%
	3. Common Stock	48%
h.	Cost of capital	
	1. Debt	10.1%
	2. Preferred Stock	9.1%
	3. Common Stock	13.5%

i.	Book life	30 years
j.	AFUDC rate	8.51%
k.	Effective tax rate	37.63%
l.	Other taxes	2.15%
m.	Discount rate	9.95%
n.	Fixed O&M costs (1997 $/kW/yr)	$ 6.07
o.	Variable O&M (1997 $/MWh)	$ 5.56
p.	O&M escalation rate	4.8%
q.	Value of K	1.6940

[*104]

The above parameters are required by Rule 25-17.0832, Florida Administrative Code, to calculate the value of QF capacity and energy payments pursuant to a standard offer contract. We have designated a 1997 Combined Cycle unit as TECO's avoided unit. At the hearing, Staff requested TECO to revise its COG-2 tariff to include the cost parameters and payments associated with the 1997 CC unit. The above parameters were taken directly from TECO's Revised COG-2 Tariff.

The above cost and operating parameters for TECO's combined cycle unit are comparable to those parameters of other units of the same technology type. We find that these parameters are appropriate for a combined cycle unit.

4. TECO'S CAPACITY PAYMENTS

The capacity payments in TECO's Revised COG-2 Tariff have been properly calculated using the preceding parameters, in accordance with the formulas set forth in Rule 25-17.0832(5), Florida Administrative Code.

5. TECO'S AVOIDED COST CALCULATION

FICA's proposal to increase the in-service cost of TECO's avoided unit by 23% will result in ratepayer paying more than full avoided cost for cogeneration. We find that TECO has included all costs related to the calculation [*105] of the construction cost of the avoided unit in its standard offer contract.

6. TECO'S LOCATION FACTORS

The parties have stipulated that TECO's standard offer contract should not contain factors related to the QF's location. We accept this stipulation.

7. TECO'S CLEAN AIR IMPACT

TECO has submitted a clause for inclusion in its standard offer contract that would allow for a credit to the QF if a benefit occurs to the company as a result of the purchase of firm capacity and energy from the QF. Under cross examination, Mr. Mestas agreed that "to the extent that we could identify benefits that truly related to QF capacity in that area, we would be inclined to include language to address those benefits." (TR 921) We therefore approve the language submitted by TECO which would allow for credits to the QF, for inclusion in the standard offer contract.

8. TECO'S STANDARD OFFER TAX PROVISION

TECO provided language in Exhibit 62 which would pass any tax savings Gulf

obtains by virtue of the purchase power contract to the QF. This is a reasonable provision and TECO should modify its contract to reflect the language in Exhibit 62.

FICA argued that the Commission should require utilities [*106] to seek an IRS ruling prior to assessing any possible tax effects on QFs. We expect that TECO will take reasonable and prudent steps to identify, clarify, and minimize the effects of such taxes. One such step may be seeking an IRS ruling; however, we will not make an across-the-board ruling that TECO seek such a ruling in every instance.

9. TECO'S EARLY PAYMENT DATE

According to Rule 25-17.0832(3)(g)2, Florida Administrative Code, the earliest date a QF is allowed to receive early capacity payments should be an approximation of the lead-time required to construct the unit. A two-year lead time for a combustion turbine unit and a three-year lead time for a combined cycle unit are reasonable. (TR 935) Therefore, January 1, 1994, is a reasonable date for TECO to offer early capacity payments.

We therefore approve the provision in sheet 1.830 of TECO's COG-2 tariff, which specifies January 1, 1994, as the earliest date a QF can receive early capacity payments.

10. TECO'S CAPACITY BENEFITS FOR EARLY DELIVERY

TECO's standard offer contract should and does recognize that a QF must deliver firm capacity and energy as a condition of receiving early capacity payments. Sheet 8.200 [*107] need not specify this condition because section 6 of TECO's standard offer contract specifies QFs must deliver capacity in order to receive early capacity payments.

11. TECO'S PERFORMANCE REQUIREMENTS

TECO's proposed standard offer requires a 90% monthly availability factor and an 80% monthly capacity factor. At first glance, these performance provisions appear to be very restrictive. However, when one considers that 75 MW represents approximately 1/3 of the total capacity of the CC unit (which is made up of three separate components), the availability and operating characteristics are appropriate. Because a CC is made up of a combination of components, it can be operated in a number of fashions such as a CT alone, a CT with part of the heat recovery unit, 2 CT's alone, or 2 CT's along with the heat recovery unit. Therefore, at any given time, the availability of 75 MW of capacity should be very high.

For these reasons, we find that the performance requirements contained in Late Filed Exhibit No. 68 appropriately reflect the performance of TECO's avoided unit, a 1997 combined cycle.

12. TECO'S COMPLETION SECURITY

We accept the concept of using security deposits as a means [*108] of protecting the purchasing utility's ratepayers from the possibility of a QF project not coming on line.

Under TECO's standard offer contract, QFs would submit their security deposit within 60 days of the effective date of the contract, subject to refund when the QF meets its commercial in-service date. TECO has proposed that the level of completion security be set at $ 20/kW if its avoided unit is a combined cycle unit. This level of completion security is reasonable and consistent with other utilities.

We find, however, that TECO should be required to phase its completion security, that $ 10/kW be required within 60 days of contract execution, and that the other $ 10/kW be required on the latter of: 1) eighteen months after contract execution; or 2) three years prior to the date the QF must commence delivery of firm capacity and energy.

13. TECO'S COMPLETION SECURITY ALTERNATIVES

TECO's standard offer should allow QFs to provide cash, an unconditional and irrevocable direct pay letter of credit, or a performance bond as completion security. In addition, TECO should allow governmental solid waste facilities to use an unsecured promise to pay pursuant to Rule 25-17.091, [*109] Florida Administrative Code.

14. TECO'S PERFORMANCE SECURITY

TECO requires QFs to deposit $ 20/kW as security for the QF's performance within 60 days of the QF's commercial in-service date. This deposit will be refunded after twelve months if the QF meets the minimum performance standards specified in TECO's standard offer contract. TECO requires the QFs to submit performance security after completion security is refunded, so the maximum security the QF will ever have to post is $ 20/kW. We believe that TECO's proposal to require a $ 20/kW performance security is reasonable.

15. TECO'S PERFORMANCE SECURITY ALTERNATIVES

TECO's proposal in section 4.2.4.2 of the standard offer would allow QFs to secure performance in the same manner as it secures completion. We find that TECO's proposal is reasonable.

Section 6 of TECO's standard offer should specify the following alternatives for securing early or levelized payments: 1) a letter of credit; or 2) a surety bond; or 3) other means acceptable to TECO. In addition, pursuant to Rule 25-17.091, Florida Administrative Code, governmental solid waste facilities should be allowed to secure their early or levelized payments using [*110] an unsecured promise to pay.

16. TECO'S DEFAULT PROVISIONS

As previously discussed, forfeiture of completion or performance security should not constitute full liquidated damages if the QF defaults. The utility should be able to seek whatever damages it suffers in the event of default.

17. TECO'S DEFAULT PROVISIONS

Pursuant to section 8.3 of TECO's standard offer, the only remedy for default by the QF is termination of the contract, and forfeiture to TECO of the Capacity

Account, including interest. We approve this provision. For reasons previously discussed, we do not think that TECO should be required to give a QF a time period to cure defaults.

18. TECO'S LIQUIDATED DAMAGES PROVISIONS

If, pursuant to section 8.3 of TECO's standard offer contract, repayment of the Capacity Account is required upon default, we find that such repayment shall not constitute full liquidated damages.

19. TECO'S REASSIGNMENT PROVISION

We find that section 9.6 of TECO's standard offer, which gives TECO approval authority over assignment by the QF of its obligations and duties, is reasonable.

20. TECO'S QF CERTIFICATION PROVISION

Section 9.6 of TECO's standard offer contract allows QFs [*111] to self-certify with FERC or to certify with the FPSC under Rule 25-17.080(1), Florida Administrative Code. We therefore find that section 9.6 is reasonable.

21. TECO'S REGULATORY OUT CLAUSE

As discussed below, we have instructed each of the utilities to remove the regulatory out clause from standard offer contracts.

22. TECO'S COMMITTED CAPACITY ADJUSTMENT

The provision in section 4.2.1 of TECO's proposed standard offer contract, which provides that the QF may finalize its committed capacity only after initial facility testing and prior to January 1, 1996, is not appropriate for a 1997 combined cycle avoided unit. We find that this provision should be changed to January 1, 1997, to accommodate the change to TECO's in-service date.

23. TECO'S ENERGY PROJECTION PROVISION

TECO begins to schedule the maintenance of its own units each spring. It is reasonable for TECO to require QFs to supply their next year's energy production schedule by April 1st so that TECO can use this information when scheduling its own maintenance. We therefore find that section 5.0 of TECO's proposed standard offer contract, which requires QFs to provide a projection of energy production for the [*112] following year by April 1st, is reasonable.

24. TECO'S OUTAGE SCHEDULE PROVISION

The QF and utility should work together to ensure that the QF's maintenance schedule is acceptable to both parties. However, TECO must have the ultimate ability to reject a QF's maintenance schedule to prevent planned outages when TECO needs the capacity.

The language in section 5.0 of TECO's standard offer contract provides a mechanism for the QF and utility to arrive at a mutually acceptable maintenance schedule, while giving TECO the ultimate ability to approve the schedule. This section allows the QF to perform its maintenance when it wishes, whenever

possible. If the QF requests a maintenance schedule that would reduce TECO's reliability, TECO will advise the QF of an acceptable time period, close to the one requested. This approach is reasonable.

25. TECO'S METER PURCHASE PROVISION

Sheet 8.220 of TECO's proposed COG-2 tariff requires a QF to purchase its metering equipment from TECO. FICA maintains that the QF should be able to purchase its own metering equipment. Rule 25-17.087(9), Florida Administrative Code, states, "[t]he utility will provide, at the qualifying facility's expense, [*113] the necessary additional metering equipment to measure energy deliveries by the qualifying facility to the utility." We find that TECO's provision requiring QFs to purchase metering equipment from the utility is consistent with the FPSC rules.

26. TECO'S STANDARD OFFER APPROVAL

We approve TECO's standard offer contract subject to the changes we have delineated in this order.

When TECO's standard offer conforms to the mandates of this order, it will be administratively approved in its entirety.

We find that the terms and conditions of TECO's standard offer contract, once modified pursuant to the requirements of this order, constitute a reasonable and prudent expenditure by TECO based on the information submitted to the Commission at this time.

28. TECO'S SUBSCRIPTION

Once TECO's standard offer is fully subscribed, TECO should file a petition requesting the closure of its standard offer contract. In its petition, TECO should provide the Commission with an estimate of the date that it will be filing an updated standard offer contract for approval. TECO should then reassess its need for capacity and petition the Commission for approval of a new standard offer contract which [*114] reflects its updated need. If TECO's new standard offer contract is based on a different generation expansion plan than its previously approved standard offer contract, TECO should include the generation expansion plan supporting its choice of avoided unit in its petition for approval of its new standard offer contract.

TECO'S INTERCONNECTION AGREEMENT

1. TECO'S INTERCONNECTION CONSTRUCTION TIMING

Section 2 of TECO's interconnection agreement is in compliance with Rule 25-17.087(10), Florida Administrative Code, which requires utilities, prior to any work being done, to supply the QF with a written cost estimate of required materials and labor and an estimate of the date by which construction of the interconnection will be complete. The intent of this provision was to give QFs an up-front opportunity to challenge estimates they feel are unreasonable.

The 24 month time constraint on construction imposed by section 2 is not required by Commission rules. However, this generally benefits the QF by binding the utility to a maximum time frame. We find that section 2 of TECO's

interconnection agreement is reasonable.

2. TECO'S GOOD FAITH ESTIMATES

We instruct TECO to include [*115] language in both section 3 of its proposed standard interconnection agreement and Appendix B to that agreement which provides that estimates for the cost of interconnection construction work are TECO's good faith estimates.

3. TECO'S INTERCONNECTION INSURANCE REQUIREMENT

A $ 1,000,000 minimum insurance requirement is in compliance with Rule 25-17.087(6)(c), Florida Administrative Code, which calls for "public liability insurance, including property damage, in an amount not less than $ 300,000 for each occurrence; more insurance may be required as deemed necessary by the utility. " Most parties, including Staff, have come to the general agreement that $ 1,000,000, for each occurrence, is an appropriate minimum insurance requirement to cover potential public liabilities associated with the interconnection facilities. We therefore approve TECO's $ 1,000,000 minimum interconnection insurance requirement.

TECO's insurance provision also leaves any amount over the minimum insurance requirement of $ 1,000,000 to the discretion of the QF. We approve this provision which permits the QF to set any additional coverage it may wish over the $ 1,000,000 minimum.

4. TECO'S INTERCONNECTION [*116] AGREEMENT APPROVAL

We approve TECO's standard interconnection agreement subject to the changes we have delineated in this order. When TECO's standard interconnection agreement conforms to the mandates of this order it will be administratively approved in its entirety.

GENERIC POLICY ISSUES

1. CONSISTENCY WITH STATEWIDE NEED

The Florida Electric Power Coordinating Group (FCG) filed with the Commission a compilation of the generation expansion plans of Florida's utilities. After reviewing this compilation we find that the information submitted by the FCG is a reasonable representation of the future needs of Florida.

2. DATE OF FILING AFTER VOTE

Utilities should file standard offer contracts, tariffs, and interconnection agreements which conform to the Commission's vote within 30 days of the Commission's vote, which will be September 6, 1991. This will enable the standard offer contracts to be effective on September 20, 1991.

Utilities are not required to file conforming generation expansion plans since we do not "approve" generation expansion plans; rather, we review them and use them for informational purposes.

3. EFFECTIVE DATE

The effective date for the approved [*117] standard offer contracts, tariffs, and interconnection agreements shall be September 20, 1991, which is two weeks after we receive conforming tariffs, standard offer contracts, and interconnection agreements. This will give the QFs time to read the new standard offers and analyze the feasibility of projects under the various standard offers before a contract is signed.

4. ADMINISTRATIVE APPROVAL

When utilities refile any standard offer contracts, tariffs, or standard interconnection agreements to conform to the mandates of this order, they will be administratively approved by Staff, should they so conform.

The Commission does not approve the utilities' generation expansion plans; therefore, there is no need for Staff to be given the authority to approve such plans.

5. FILING OF SIGNED STANDARD OFFER CONTRACTS

Rule 25-17.0832(1)(b), Florida Administrative Code, requires utilities to submit a copy of the signed contract, and a summary, within 10 working days of receipt of a standard offer contract. The submission shall be to the Director of the Electric and Gas Division of the Florida Public Service Commission.

6. REGULATORY OUT CLAUSE

We find that regulatory out provisions [*118] should not be included in the standard offer contracts submitted by the utilities in this docket. There is no need for a regulatory out provision in standard offer contracts in the State of Florida.

Our decision here applies only to standard offer contracts for the purchase of firm capacity and energy from small qualifying facilities less than 75 MW or from solid waste facilities as defined in Rule 25-17.091, Florida Administrative Code. A significant difference between standard offer and negotiated contracts is that we require utilities to purchase firm capacity and energy pursuant to standard offer contracts. The utilities are given no choice. Therefore, when we approve the standard offer contract, we make a commitment that we will allow cost recovery of payments made to small QFs. Because we have made such a commitment, there is no need for a regulatory out provision in the standard offer. We have no intention of revisiting our decision to allow cost recovery. Therefore, the regulatory out provision has become unnecessary surplusage. Such provisions create a mistaken perception that revenues under a standard offer are not reliable. This is not the case. See our discussion [*119] below at Section 8, "Finality of Commission Approval."

7. EFFECT OF COMMISSION APPROVAL (STIPULATED)

Commission approval of the terms and conditions of each utility's standard offer contract and tariff, and the firm capacity and energy prices stated therein, constitutes a determination by the Commission that any payments made to a QF under the standard offer constitute a reasonable and prudent expenditure by the utility under section 366.06, Florida Statutes, based on information reasonably available to the utility and the Commission at this time.

8. FINALITY OF COMMISSION APPROVAL

We have previously ruled that our approval of a standard offer contract constitutes a determination that payments made by a utility to a QF under the standard offer constitute a prudent expenditure by the utility. We now find that once our determination of prudence becomes final by operation of law, we cannot deny the utility cost recovery of payments made to the QF pursuant to the standard offer contract, absent some extraordinary circumstance, such as where our finding of prudence was induced through perjury, fraud or the intentional withholding of key information.

This Commission has previously [*120] stated that we "cannot bind future Commissions." (Order No. 13846 at p.3) This statement is true, to the extent this Commission cannot dictate the votes of Commissioners who will later sit on the Commission. However, case law indicates that the Commission has only limited power to change its prior decisions. In fact, at some point the Commission loses the power to change its decisions and must live with them.

The Supreme Court of Florida has set the ground rules under which the Commission may correct or amend its orders. If an order has not become final by operation of law, the Commission may, on its own motion or by request, correct or amend any order under its control without notice and hearing if the matters corrected and amended were embraced in the testimony taken at a previous hearing. Alterman Transport Line v. Yarborough, 267 So.2d 34 (Fla. 1973).

Orders of administrative agencies must eventually pass out of the agency's control and become final, and, therefore, no longer subject to modification. There must be in every proceeding a terminal point at which the parties and the public may rely on a decision of an administrative agency as final and dispositive of the [*121] rights and issues involved therein. Peoples Gas Systems, Inc. v. Mason, 187 So.2d 335 (Fla. 1966); also, Austin Tupler Trucking, Inc. v. Hawkins, 377 So.2d 679 (Fla. 1979). However, the Supreme Court of Florida has recognized the rule that "[o]rders, decrees, or judgments, made through fraud, collusion, deceit, or mistake, may be opened, vacated, or modified at any time, on the proper showing made by the parties injured." Davis v. Combination Awning & Shutter Co., 62 So.2d 742, 745 (Fla. 1953).

The Court has acknowledged that the Commission has some inherent power to modify its orders. Peoples Gas System v. Mason, 187 So.2d 335, 339 (Fla. 1966); Reedy Creek Utilities Company v. Florida Public Service Commission, 418, So.2d 249, 253 (Fla. 1982). However, the Supreme Court has determined that our inherent power to modify is not without limitation. As stated in Reedy Creek, "an underlying purpose of the doctrine of finality is to protect those who rely on a judgment or ruling." In this respect, we believe that the parties to approved standard offer contracts should be entitled to rely on our decision to approve cost recovery of payments made pursuant to [*122] those contracts.

The doctrine of administrative finality is one of fairness. It is based on the premise that the parties, as well as the public, may rely on Commission decisions. We therefore find that a utility and a QF should be able to rely on the finality of a Commission ruling approving cost recovery under a standard offer contract.

DISSENTBY:
DEASON (In Part)

DISSENT:
Commissioner Deason Dissents in Part as Follows:

I dissent only from the Commission's decision not to require a regulatory out clause. I believe such a clause may be necessary for the protection of the utility's ratepayers.

It is therefore,

ORDERED by the Florida Public Service Commission that **Florida Power Corporation,** Florida Power & Light Company, Gulf Power Company, and Tampa Electric Company shall each submit tariffs in compliance with this order on or before September 6, 1991. It is further

ORDERED that **Florida Power Corporation,** Florida Power & Light Company, Gulf Power Company, and Tampa Electric Company shall each submit standard offer contracts in compliance with this order on or before September 6, 1991. It is further

ORDERED that **Florida Power Corporation,** Florida Power & Light Company, Gulf Power Company, and [*123] Tampa Electric Company shall each submit standard interconnection agreements in compliance with this order on or before September 6, 1991. It is further

ORDERED that each utility's tariff, standard offer contract, and standard interconnection agreement shall have an effective date of September 20, 1991.

By ORDER of the Florida Public Service Commission, this 29th day of AUGUST, 1991.

EXHIBIT 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited approval of agreement with Tiger Bay Limited Partnership to purchase Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida Power Corporation.	DOCKET NO. 970096-EQ ORDER NO. PSC-97-0652-S-EQ ISSUED: JUNE 9, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER APPROVING STIPULATION AND SUPPLEMENTAL STIPULATION

BY THE COMMISSION:

CASE BACKGROUND

On January 22, 1997, Florida Power Corporation (FPC) filed a Petition for Expedited Approval of an Agreement, dated January 20, 1997, with Tiger Bay Limited Partnership (Tiger Bay) to purchase the Tiger Bay cogeneration facility (Facility) and terminate the five related purchased power agreements: three with General Peat, one with Ecopeat, and one with Timber2 (the PPAs). The petition further requested recovery of the purchase cost, approximately $445 million, through the Capacity Cost Recovery Clause (CCRC) over a period not to exceed five years. In addition, FPC requested that the fuel expense associated with the operation of the Facility be approved for recovery through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause). The matter was scheduled for hearing on April 17-18, 1997.

On April 14, 1997, all the parties to the docket, FPC, the Office of Public Counsel (OPC), and the Florida Industrial Power Users Group (FIPUG) filed a Joint Motion for Approval of Stipulation (Stipulation). The Stipulation resolved all disputed

issues among the parties. On April 16, 1997, FPC submitted a supplement to the Stipulation (Supplemental Stipulation) concerning the accounting treatment of the transaction. At the April 17, 1997, hearing, we were presented with both the Stipulation and the Supplemental Stipulation. The Stipulation and Supplemental Stipulation are attached to the order as Attachments 1 and 2, respectively.

DECISION

Stipulation:

There are advantages and disadvantages with the Stipulation. Taken as a whole, however, we believe that the Stipulation reduces FPC's ratepayers' liability throughout the remaining term of the PPAs. Furthermore, the Stipulation represents a reasonable balance between potential ratepayer neutrality to the transaction and encouragement of company contributions. The advantages and disadvantages are discussed below.

A. Advantages: Absent a rate proceeding, FPC's customers are not projected to incur any cost above that which they are currently committed to pay under the existing PPAs. Therefore, approving the proposed Stipulation provides the potential for FPC's ratepayers to be unaffected by the cost of the transaction. In other words, though they would not receive a benefit until the regulatory asset has been fully amortized, FPC's ratepayers also would not incur any additional cost. Furthermore, though FPC may be unable to buy-out or buy-down the current Vastar Gas contract, its ratepayers are projected to receive an additional benefit in the form of reduced fuel costs once the contract terminates in 2010.

Pursuant to the Stipulation, FPC will place $75 million of the purchase cost in existing rate base. This treatment reduces FPC's ratepayers' responsibility, namely for the amount of the Tiger Bay Regulatory Asset, which will be amortized through recovery of the PPA revenues. Reducing the amount of the regulatory asset by $75 million is projected to shorten the recovery period by approximately two years.

Section 2(e) of the Stipulation provides FPC the discretionary ability to contribute dollar amounts from its earnings to accelerate the amortization of the Tiger Bay Regulatory Asset. There are currently no assurances nor any requirements that FPC will exercise this provision of the Stipulation. However, such

contributions would be to the advantage of both FPC and its ratepayers in the form of reduced liability.

According to FPC's projections, the method for amortizing the Tiger Bay Regulatory Asset proposed in the Stipulation, using PPA revenues minus fuel expense, results in the asset being fully amortized by January 2008. However, if FPC is able to contribute revenues to accelerate the amortization as permitted under Section 2(e) of the Stipulation, the asset could be fully amortized as early as October 2005.

FPC projects that approving the Stipulation and its proposal to purchase the Facility and terminate the five related PPAs will produce savings for its ratepayers in amounts ranging from $238 to $516 million on net present value basis. These savings are based on the cumulative interaction of assumptions ranging from FPC's projection of Medium-Term note financing costs, the timing of FPC's next rate proceeding, fuel price projections, and the potential that FPC will be able to accelerate the amortization of the Tiger Bay Regulatory Asset using revenues as compared to the PPA costs.

B. Disadvantages: Approving the Stipulation provides no assurances that FPC will not petition for a rate increase prior to the regulatory asset being fully amortized. A rate proceeding would potentially reduce the overall savings of the transaction as customers' base rates would be adjusted to support the Facility's non-fuel operating costs as well as a return on any undepreciated amount of the $75 million net plant investment.

Under the Stipulation, FPC, OPC, and FIPUG have agreed that the PPA revenues will continue to be recovered through the CCRC and the Fuel Clause until the Tiger Bay Regulatory Asset is fully amortized or as long as the current Vastar contract remains in effect. FPC currently projects that the Tiger Bay Regulatory Asset will be fully amortized in the year 2008. Absent a buy-out or buy-down, the Vastar Gas contract will not terminate until 2010. High load factor customers stand to lose the benefit of lower cost coal based energy pricing under the existing PPAs while also incurring the currently projected higher cost Vastar Gas contract during years 2008 to 2010. The continuance of the recovery of the capacity revenues through the CCRC to compensate for the increased cost in the Fuel Clause, once the regulatory asset has been fully amortized, will offset this impact. Consequently, low load factor residential customers will be adversly impacted. Recovering capacity revenues through the CCRC from all rate classes is a clear

example of cross-class subsidization. Absent a buy-down or buy-out of the Vastar contract, cross-class subsidization will occur. If the Tiger Bay Regulatory Asset is fully amortized prior to the termination of the current Vastar Gas contract, FPC will recover the appropriate energy payment pursuant to the PPAs and a reduced capacity payment through the CCRC to minimize the impact of this subsidization.

C. Other Matters: Within paragraph 2(e) of the Stipulation, the parties have agreed to the following:

> On a going forward basis, FPC may, at its option, increase the amortization of the retail portion of the Tiger Bay Regulatory Asset, and each year's increased amount of amortization shall be deemed a prudent regulatory expense in calculating FPC's regulatory earnings for purposes of surveillance reporting, pursuant to Rule 25-6.024, F.A.C.

FPC, OPC, and FIPUG agreed that the intent of this language was directed at the parties; and, that a determination of prudence for the amortization amounts in future reviews remained with us.

The Stipulation contemplates that FPC will seek to buy-out or buy-down the current Vastar Gas contract. Fuel prices under this contract are projected to be greater than forecasted market prices. We encourage FPC to take all necessary steps to buy-out or buy-down fuel contracts when those actions are projected to produce ratepayer savings.

The Supplemental Stipulation

Following is a discussion of the items in the Supplemental Stipulation.

A. Materials and Supplies

As part of the Stipulation, Materials and Supplies for the Facility included in the purchase cost shall constitute a regulatory asset and shall be recorded in Account 182.3, Other Regulatory Assets. According to the Uniform System of Accounts (USOA), Materials and Supplies should be recorded in Account 154, Plant Materials and Operating Supplies. Since the Stipulation provides substantial benefits to both FPC and its ratepayers, we approve the accounting treatment proposed in the Stipulation. On a prospective basis, however, Materials and Supplies will be

accounted for in accordance with the USOA. In the Supplemental Stipulation, the parties have agreed that all future purchases of Materials and Supplies for the Facility by FPC shall be recorded in Account 154 and will be included in working capital for surveillance purposes.

B. Deferred Income Taxes

FPC's original filing in this proceeding contemplated recovery of the carrying costs of debit balance deferred income taxes related to the buy-out of the Tiger Bay contracts through existing base rates. These debit balance deferred income taxes will be created if FPC cannot take a current deduction for the Tiger Bay buy-out costs, not related to depreciable plant, on its income tax return. The filing contemplated this worst case scenario since the Internal Revenue Service (IRS) had not issued a private letter ruling on deductibility. FPC estimates that the maximum amount of debit balance deferred taxes will be approximately $42 million, which will reverse to a zero balance over 15 years. FPC's Supplemental Stipulation states that the deferred taxes will be reported in the capital structure for surveillance purposes.

The premise behind FPC's request is that the costs of buying-out unfavorable contracts are deductible if the result of the buy-out is to reduce expenses into the future. FPC cited cases and rulings dating back to the 1920's in support of its position. The request was filed with the IRS on April 30, 1997. FPC anticipates a response by late fall. FPC shall notify our Division of Auditing and Financial Analysis of the IRS's actions.

If FPC is successful in obtaining a favorable letter ruling, the deferred taxes will carry a credit balance of approximately $100 million, which will reverse to a zero balance. FPC believes that the effect of these credit balance deferred taxes should also flow through existing base rates and be reported in the capital structure for surveillance purposes. By doing so, additional dollars will be provided which FPC may use to write-down the regulatory asset more rapidly. Further, FPC plans to issue intermediate term debt which will have an established payment schedule not necessarily tied to the actual write-down of the regulatory asset.

FPC requested that it have flexibility to establish the amount of the regulatory asset to be written-off each year. All other things being equal, the additional dollars provided by the reversing credit balance deferred taxes may allow a write-off over a shorter period of time. If FPC receives a favorable letter ruling and the write-off of the regulatory asset is not

accelerated, we will still have the ability to review the prudence and reasonableness of FPC's actions during surveillance reviews.

We find it is reasonable for FPC to report either debit or credit balance deferred taxes in the capital structure for surveillance purposes and to allow the effect to flow through existing base rates. Therefore, we approve FPC's proposed accounting treatment.

C. Fossil Dismantlement

FPC has estimated a $4.1 million (1997 dollars) fossil dismantlement provision for the Facility. A more detailed site specific estimate will be submitted with FPC's regular depreciation and fossil dismantlement study due in November, 1997. Utilizing the same assumptions used in FPC's 1993 study, the dismantlement accrual for the Facility for 1995 and 1996 should have been $241,000 and $253,000, respectively. The estimated 1997 accrual is $266,000. These accrual amounts appear reasonable at this time. A site specific dismantlement study to be filed later this year will determine the appropriate amount of the final dismantlement provision for the Facility. Since Tiger Bay has made no provision for future dismantlement, FPC will record the accrual amount for 1995 - 1997 during 1997 subsequent to closing the purchase.

D. Depreciation Rate

FPC has proposed a 5.5% depreciation rate (20 year service life, 18 year average remaining life, negative 10% net salvage) for the Facility to be implemented upon the purchase closing which is currently estimated to be July 1, 1997. The life and salvage factors are predicated on the currently prescribed factors for the University of Florida co-generation plant which FPC asserts is similar to the Facility. A site specific study will be filed as part of its next comprehensive depreciation and fossil dismantlement study no later than November 27, 1997 at which time the appropriate remaining life, net salvage, and the depreciation rate will be determined.

E. Non-Fuel Expenses

Pursuant to the Stipulation, FPC, OPC, and FIPUG have agreed that all non-fuel expenses associated with the operation of the Facility will be included in FPC's base rates and recovered accordingly. These non-fuel expenses are defined to include operation and maintenance expenses, taxes, site lease payments, insurance, rate base investment, and the carrying costs of the

deferred taxes. These amounts appear reasonable at this time. However, we may review the prudence of these expenses at any time.

The Supplemental Stipulation clarifies certain parts of the Stipulation and resolves outstanding accounting issues in this proceeding. Therefore, we approve the Supplemental Stipulation.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Stipulation between Florida Power Corporation, the Florida Power Industrial Users Group, and the Office of Public Counsel relating to FPC's purchase of the Tiger Bay cogeneration facility and to terminate related purchased power agreements, as discussed within the body of this order, is approved. It is further

ORDERED that Florida Power Corporation's proposed accounting treatment relating to the purchase of the Tiger Bay cogeneration facility and to terminate related purchased power agreements as specified in the Stipulation and the Supplemental Stipulation, as discussed within the body of this order, is approved. It is further

By ORDER of the Florida Public Service Commission, this 9th day of June, 1997.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

(S E A L)

SOME (OR ALL) ATTACHMENT PAGES ARE NOT ON ELECTRONIC DOCUMENT.

LW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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.

EXHIBIT 4

PROMOD CASE COMPARISON

BASE CASE - PN-970158
CHANGE - PN-970164

(DELTAS = CHANGE CASE - BASE CASE)

($000)

	FPC UNITS				PURCHASE POWER						SALES					
	O&M				COGENERATION			OTHER								
YEAR	FUEL	FIXED	VAR.	TOTAL	FUEL	FIXED	TOTAL	FUEL	FIXED	TOTAL	FUEL	FIXED	TOTAL	DELTA SYSTEM COST	PRESENT WORTH	PWF
1997	-1,084	0	0	-1,084	-22	0	-22	-98	0	-98	0	0	0	-1,203	-1,203	1.00
1998	-1,306	0	0	-1,306	-153	0	-153	-242	0	-242	0	0	0	-1,701	-1,565	.920
1999	2,515	0	0	2,515	93	0	93	-2,990	0	-2,990	0	0	0	-382	-323	.846
2000	-1,149	0	0	-1,149	-242	0	-242	-47	0	-47	0	0	0	-1,438	-1,120	.779
2001	-1,345	0	0	-1,345	-222	0	-222	-43	0	-43	0	0	0	-1,610	-1,154	.717
2002	-1,214	0	0	-1,214	-222	0	-222	-28	0	-28	0	0	0	-1,464	-966	.659
2003	-1,313	0	0	-1,313	-192	0	-192	-34	0	-34	0	0	0	-1,539	-935	.607
2004	-1,390	0	0	-1,390	-181	0	-181	-44	0	-44	0	0	0	-1,615	-902	.558
2005	-1,395	0	0	-1,395	-158	0	-158	22	0	22	0	0	0	-1,531	-787	.514
2006	-1,531	0	0	-1,531	-143	0	-143	-45	0	-45	0	0	0	*-1,719	-813	.473
															-9,769	
															8.95%	

* Sum = 14,256,000

Savings for 10 MW load increase at Tiger Bay:

10MW for 7 months/year (October - April)

6 MW for 5 months/year (May - September)

PROMOD PRODUCTION COST

BASE CASE - PW-970158
CHANGE - PW-970164

($000)

	********** FPC UNITS **********				********** PURCHASE POWER **********						******** SALES ********			
BASE CASE		----- O&M ----			------ COGENERATION ------			--------- OTHER ----------						TOTAL SYSTEM
YEAR	FUEL	FIXED	VAR.	TOTAL	FUEL	FIXED	TOTAL	FUEL	FIXED	TOTAL	FUEL	FIXED	TOTAL	COST
1997	571,215	12,534	0	583,749	119,575	217,517	337,092	61,145	64,463	125,607	0	0	0	1,046,449
1998	470,304	29,312	0	499,616	126,173	228,758	354,931	32,047	56,923	88,971	0	0	0	943,517
1999	505,694	34,700	0	540,395	134,571	240,420	374,991	31,823	58,160	89,983	0	0	0	1,005,369
2000	486,486	34,697	0	521,182	136,192	250,404	386,596	43,747	56,356	100,103	1,000	4,800	5,800	1,002,081
2001	531,378	34,901	0	566,279	140,129	256,368	396,497	44,339	56,550	100,889	1,000	4,800	5,800	1,057,865
2002	510,873	34,670	0	545,543	138,541	250,583	389,123	44,061	56,745	100,806	1,000	4,800	5,800	1,029,672
2003	547,733	34,628	0	582,361	142,882	260,323	403,206	46,893	57,358	104,251	1,000	4,800	5,800	1,084,017
2004	565,384	36,946	0	602,329	145,101	272,113	417,213	50,330	57,552	107,881	1,000	4,800	5,800	1,121,624
2005	581,129	46,649	0	627,778	143,510	285,038	428,548	53,216	59,123	112,339	0	0	0	1,168,665
2006	607,955	47,102	0	655,056	149,202	297,816	447,019	56,304	59,888	116,192	0	0	0	1,218,266
CHANGE CASE														
1997	570,132	12,534	0	582,666	119,554	217,517	337,070	61,047	64,463	125,510	0	0	0	1,045,246
1998	468,998	29,312	0	498,309	126,020	228,758	354,778	31,805	56,923	88,729	0	0	0	941,816
1999	508,210	34,700	0	542,910	134,664	240,420	375,084	28,834	58,160	86,993	0	0	0	1,004,987
2000	485,337	34,697	0	520,034	135,950	250,404	386,354	43,699	56,356	100,055	1,000	4,800	5,800	1,000,643
2001	530,033	34,901	0	564,934	139,906	256,368	396,275	44,296	56,550	100,846	1,000	4,800	5,800	1,056,255
2002	509,659	34,670	0	544,329	138,319	250,583	388,902	44,033	56,745	100,778	1,000	4,800	5,800	1,028,208
2003	546,420	34,628	0	581,048	142,691	260,323	403,014	46,859	57,358	104,217	1,000	4,800	5,800	1,082,478
2004	563,994	36,946	0	600,939	144,919	272,113	417,032	50,286	57,552	107,838	1,000	4,800	5,800	1,120,009
2005	579,734	46,649	0	626,383	143,352	285,038	428,390	53,238	59,123	112,361	0	0	0	1,167,134
2006	606,424	47,102	0	653,526	149,060	297,816	446,876	56,259	59,888	116,146	0	0	0	1,216,548

BASE DESCRIPTION : TIGER BAY BASE

CASE DESCRIPTION : TIGER BAY CAPACITY INCREASE AND HR IMPROVEMENT

BASE
236/206 MW

CHANGE CASE
246/212

HRDF
.9537