



Public Service Commission

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DATE: OCTOBER 25, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF SAFETY & ELECTRIC RELIABILITY (HAFF) *WHA*
DIVISION OF LEGAL SERVICES (ELIAS) *RUE* *RT* *JDJ*

RE: DOCKET NO. 991780-EI - DETERMINATION OF APPROPRIATE COST RECOVERY AMOUNTS FOR THE PURCHASED POWER CONTRACT BETWEEN AES CEDAR BAY AND FLORIDA POWER & LIGHT COMPANY

AGENDA: 11/06/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\SER\WP\991780.RCM

CASE BACKGROUND

Florida Power & Light Company (FPL) and Cedar Bay Generating Company, L.P. (Cedar Bay), a qualifying facility (QF), entered into a Standard Offer Contract (Contract) on November 7, 1988. The 30-year Contract began on January 1, 1995 and expires on December 31, 2024. Capacity payments under the Contract are based on a 1995 pulverized coal-fired avoided unit. The Contract was approved for cost recovery by the Commission in Order No. 21468, issued on June 28, 1989 in Docket No. 881570-EQ. A subsequent Contract amendment, dated July 2, 1990, was approved by the Commission in Order No. 23907, issued on December 20, 1990 in Docket No. 900686-EQ. Under the amended Contract, FPL has dispatch rights over Cedar Bay's facility, a 250 MW coal unit located in Jacksonville, Florida.

Cedar Bay began to dispute the manner in which its facility was being dispatched by FPL. FPL's dispatch resulted in a reduction in Cedar Bay's capacity and energy payments. In

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response, Cedar Bay filed suit claiming breach of contract in the Fourth Judicial Circuit Court in Duval County, Florida (Circuit Court). On September 7, 1999, the Circuit Court ruled that FPL had breached the Contract with Cedar Bay by failing to make proper capacity and energy payments as a result of FPL's dispatch decisions. The Circuit Court awarded Cedar Bay approximately \$18.5 million in damages, consisting of approximately \$13.4 million in lost capacity payments and approximately \$5.1 million in lost energy payments. In October, 1999, FPL appealed the Circuit Court's decision to the First District Court of Appeal (First DCA).

In Docket No. 990001-EI, FPL sought to recover these damages through the fuel and purchased power cost recovery clause. The three-member panel of Commissioners stated in Order No. PSC-99-2512-FOF-EI, issued on December 22, 1999:

We believe that FPL's request raises a policy issue that would more appropriately be decided by the full Commission in a separate proceeding, rather than the three-Commissioner panel assigned to this proceeding. The full Commission previously considered the policy implications of related issues involving FPC and Lake Cogen, Ltd. in other dockets, and should consider the policy implications of this issue as well.

We note that the majority of these payments appear to be the type of costs that this Commission would routinely allow to be recovered through the fuel clause. We also note that these payments reflect a small percentage of FPL's total fuel costs. Therefore, pending resolution of this issue by the full Commission, we approve recovery of these payments as proposed through FPL's fuel cost recovery factors. If the full Commission determines that any portion of these payments should not be recovered through the fuel clause, that portion shall be subject to refund with interest.

The instant docket was thus opened to monitor the ongoing litigation and ultimately determine, if necessary, the appropriate amount to be recovered by FPL's ratepayers resulting from the litigation. No Commission action has been taken while the civil litigation has been pending.

After determining that it would not be successful in appealing the \$5.1 energy payment claim, FPL dropped the appeal and paid Cedar Bay the energy payment portion of the judgment, with statutory interest, in April, 2000. In October, 2000, the First DCA denied FPL's capacity payment appeal without opinion. FPL's motion for a rehearing was denied in December, 2000, thus making the capacity payment judgment final and non-appealable. FPL paid Cedar Bay the \$13.4 million capacity payment claim, with statutory interest, on January 19, 2001.

DISCUSSION OF ISSUES

ISSUE 1: Should this docket be closed?

RECOMMENDATION: Yes. The issues which caused this docket to be opened may be considered in Docket No. 010001-EI.

STAFF ANALYSIS: The instant docket was opened by order of a three-Commissioner panel in Docket No. 990001-EI so that the full Commission could consider the appropriateness of court-ordered payments made by FPL to Cedar Bay. The full Commission will preside over the upcoming fuel hearing in Docket No. 010001-EI. It is therefore appropriate and administratively efficient for the Commission to also consider whether the payments made by FPL to Cedar Bay are reasonable and prudent. The issues to be considered in this docket can be decided in Docket No. 010001-EI, and this docket should be closed.