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March 7, 2003

VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Proposed Amendments to Rule 25-17.0832, Firm Capacity and Energy Contracts - Docket No.: 001574-EQ

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company in the above docket are the original and seven (7) copies of the Comments of Florida Power & Light Company. At Staff's February 25, 2003 workshop, Staff requested these comments and an indication of whether parties were adopting their prior comments. FPL requests that all its prior comments in this proceeding, in addition to the enclosed comments, be included in the record.

At the February 25th Staff Workshop, Staff also requested the names of persons who would be presenting on behalf of parties at the March 19, 2003 hearing. I will be presenting FPL's comments at the rule making hearing, and Delia Perez-Alonso may also present comments or answer questions from the Commission.

If you or your staff have any questions regarding this transmittal, please contact me at (850) 222-2300.

Very truly yours,

Charles A. Guyton

CAG:gcm
Enclosure
Copy to: Judy Harlow
Tom Ballinger
Counsel for All Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to Rule 25-17.0832, Firm Capacity And Energy Contracts	)))	Docket No. 001574-EQ Filed: March 7, 2003

Comments of Florida Power & Light Company

Cogeneration Rule Amendment Proceeding

Docket No. 001574

3/07/03

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Introduction

There are four fundamental changes to the cogeneration rules before the Commission. There is the change the Commission proposed, to reduce the minimum term of the standard offer contract from 10 years to 5 years. This change is consistent with Commission policy that is evidenced by the Commission granting seven rule waiver requests and allowing utilities to employ a five year minimum term in their standard offer contracts. There are also three rule amendments proposed by Lee County, Miami-Dade County and Montenay-Dade, Ltd. that FPL strongly opposes. These amendments are at odds with twenty years of Commission cogeneration policy, are unnecessary, and, most importantly, will result in the unjust enrichment of cogenerators at the expense of utility customers.

Place The Cogenerators' Proposed Amendments in Context

It is important to place the cogenerators' amendments before the Commission in context. There are two critical contexts: one is practical, the other is historical.

Practical Context

Initially, it appears there are three groups interested in the proposed rule changes: (a) cogenerators who stand to profit if their proposed changes are adopted, (b) utility customers who stand to pay more for Standard Offer cogenerated power if the cogenerators' proposed rule amendments are adopted, and (c) investor-owned public utilities who are concerned about their customers having to pay too much for cogenerated power. However, in this proceeding the interests of utilities and their customers are closely aligned. So, really there are only two competing interests here: (a) cogenerators, who want utility customers to pay more for their power, and (b) utilities and utility customers who reasonably expect the Commission to protect them from paying too much for cogenerated power.

Undoubtedly, the Commission has seen in comments catch phrases like "encouraging cogeneration" or "fostering congeneration" or "encouraging the development of solid waste facilities." Some of these phrases are even used in statutes. However, those very same statues also place the Commission in the role of protecting utility customers. There is no statutory mandate to foster or encourage cogeneration through customers paying in excess of avoided cost. So when the Commission sees these catch phrases, remember there are two sides to this coin. If you increase payments to cogenerators to "encourage cogeneration," you increase costs paid by utility customers. Those are the interests in conflict. That is the practical context.

Historical Context

The historical context is also important. There is both a long-term and a short-term historical context. FPL's comments address both, the long-term context first.

In 1978 Congress passed the Public Utility Regulatory Policies Act ("PURPA"). Among other things PURPA required utilities to purchase power from qualifying facilities ("QFs") at the utility's avoided cost (the cost the utility would have incurred but for the purchase of the QF power). PURPA's avoided cost utility purchase requirement was appealed to the United States Supreme Court and affirmed in *American Paper Institute, Inc. v. American Electric Power Service,* 461 U.S. 402, 76 L.Ed.2d 22, 103 S.Ct. 1921 (1983).

PURPA required the Federal Energy Regulatory Commission (FERC) to adopt implementing rules, which it did. The rules regarding purchases of power from cogenerators are found today at 18 CFR Part 292. PURPA also required state regulatory commissions to adopt rules implementing PURPA and the relations between utilities and QFs.

Although PURPA and the FERC rules implementing PURPA established avoided cost as the maximum to be paid for cogenerated power, they left to the states the specific means of

quantifying avoided costs. There have been a myriad of means employed by the states to quantify avoided costs. In Florida, avoided costs associated with firm capacity and energy purchases from QFs consistently have been quantified using the Value of Deferral methodology.

The Florida Commission's first attempt to adopt cogeneration rules was in 1981 (Docket No. 780235-EU, Order No. 9970). Those rules were challenged, and a preliminary Florida Supreme Court decision, that was later withdrawn, questioned the Commission's authority to adopt cogeneration rules. While that case was pending, the Commission was given explicit statutory authority to address utility dealings with cogenerators, and in 1983 the Commission, once again, initiated cogeneration rulemaking in Docket No. 820406-EU.

It was in Docket No. 820406-EU in 1983 that the Commission first adopted most of the cogeneration policies the cogenerators in this case now seek to change. The case had extensive hearings attended by numerous parties. In addition to FPL, FPC, TECO, Gulf and the Florida Electric Coordinating Group, there were numerous cogenerators or potential cogenerators: St. Regis Paper, IMC, Florida Crushed Stone, W.R. Grace, U.S. Steel, Royster, Occidental Chemical, U.S. Sugar, ITT Rayonier, Metropolitan Dade County, Nicholas Production Company and Thermo Electron, Inc. Twenty-three witnesses testified.

After the close of the hearing, the Commission issued two orders, Order No. 12443 adopting new rules and Order No. 12634, its "Final Order" explaining its adopted rules and underlying policy. Both orders shed light on the issues raised by the cogenerators. Order No. 12443 discusses the fundamental contest between Staff, who advocated use of the Value of Deferral methodology to quantify avoided costs, and cogenerators, who advocated use of the Revenue Requirements methodology to calculate avoided cost. In Order No. 12634 the Commission explained why it chose the Value of Deferral approach.

After adopting its new cogeneration rules, the Commission had another extensive hearing to address the implementation of those rules, Docket No. 830377-EU. In the final order in that docket, Order No. 13247, the Commission first addressed its policy regarding the proper treatment of conservation when calculating avoided costs. It found that logic as well as prior interpretation of the Florida Energy Efficiency Conservation Act ("FEECA") compelled the recognition of conservation when determining avoided costs.

In these and other early orders issued in the early 1980s, the Commission established cogeneration policies that have been followed for 20 years. For the most part, the Commission's cogeneration policy has been unwavering.

FPL sets forth this long-term history because not one of the Commissioners currently serving was on the Commission when the Value of Deferral methodology, the methodology for pricing firm energy, and the methodology for treating conservation when identifying the avoided unit were settled by the Commission almost 20 years ago. Over those years other aspects of the cogeneration rules have changed, but not these principles, even though cogenerators have tried. The Commission needs to be aware that the changes being requested by cogenerators here fly in the face of almost 20 years of cogeneration policy, and not one of the arguments is new. They have all previously been rejected, sometimes on numerous occasions.

There are instances where change is necessary and warranted. At other times, attempting to change what has served customers well is unwarranted. Every change advanced by the cogenerators in this proceeding has been heard and appropriately rejected before by prior Commissions. The case for change now is much less compelling.

Twenty years ago, cogeneration was new, and thought was being given as to how it could be encouraged. States like California overpaid, and standard offer contracts quickly became

much too costly. Florida followed a more conservative approach, yet a number of cogeneration contracts in Florida have been bought out. Today the Commission is being asked not by entities that are considering entry but by established cogenerators who have already financed their facilities to take actions that will increase their revenues at utility customers' expense. This does not encourage cogeneration; this merely redistributes wealth from customers to established cogenerators. This needs to be put in context before the Commission acts.

The Commission should also look at this docket in the short-term historical context. The Commission instructed its Staff to initiate this proceeding in 2000 during an FPL rule waiver proceeding in which FPL was seeking a waiver of the rule requiring a ten year minimum term in standard offer contracts. The Commission granted that waiver and in doing so recognized that it had granted four other such waivers. Acknowledging that these repeated rule waivers reflected a change in its cogeneration policy, the Commission instructed its Staff to initiate a rulemaking proceeding to change the rule addressing the minimum term of Standard Offer contracts. That was in 2000, and that is how this docket was initiated. Since that rule waiver, there have been two more waivers of the ten year minimum term. So, the Commission has granted seven waivers of the Standard Offer ten year minimum term. In each instance it approved a five year minimum term for the Standard Offer.

So, the Commission's intended scope of this proceeding was quite narrow. The Commission did not intend to place at issue any of the rule amendments that have been proposed by the cogenerators.

The changes advanced by the cogenerators did not arise as a Commission initiated change in policy. They arose at the request of the cogenerators, who petitioned for those rule changes. As a matter of convenience, their petition was incorporated into this docket. Those

requested changes, all of which would increase the risk that the cost of cogenerated power to utility customers would increase, have not been proposed by the Commission and do not reflect current Commission policy. This short-term historical perspective is needed as well.

Summary of Current Cogeneration Rules

Before addressing the specific rule provisions before the Commission, it is helpful to review how the Commission's current cogeneration rules are structured. The Commission's cogeneration rules encourage the negotiation of contracts between cogenerators and utilities. They require utilities to purchase from cogenerators and to provide data to cogenerators to facilitate negotiations. They also require utilities to negotiate in good faith with cogenerators. These rules also contemplate that cogenerators may bid into capacity RFPs that utilities issue to meet their resource needs.

In addition to those rules, there is a cogeneration rule that requires utilities to issue standard offer contracts available to a small subset of cogenerators. The entities eligible for these standard offer contracts are entities that FERC requires to be eligible as well as solid waste facilities. The solid waste facilities were added to the FERC required entities to implement Section 377.709, Florida Statutes. That statute requires the Commission to have a cost-effective funding program in place for solid waste facilities. The important point for the Commission to recall is that the Standard Offer rule already exists as a means of facilitating solid waste facilities under Section 377.709, Florida Statutes. Nothing more is required to comply with Section 377.709. Certainly the rule changes advanced by the Solid Waste Facilities are not necessary to comply with that statute. If they were, then the Commission would have been outside of compliance with that statute for years. It has not been.

Specific Rule Changes Proposed

Having given the Commission both a practical and a historical context, please turn to the four rule amendments before the Commission. FPL will start with the Commission's proposed change in the minimum term of the Standard Offer from 10 to 5 years.

Standard Offer Minimum Term.

When the standard offer contracts were first developed, the Commission settled on a 10 year minimum Standard Offer term. Its rationale appears to have been based on planning considerations. The Commission stated in Order No. 12634:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.

Order No. 12634 at 19. The Commission went on to note that under the Value of Deferral method, a utility "pays the QF only what it earns in any given year, the value of the annual deferral...." So the Value of Deferral method confers on the QF exactly the value he provides to customers whether the term of the contract is 10 years or 5 years. For each year the QF receives the annual Value of Deferral.

The issue that arises from reading this passage is whether a 5 year rather than a 10 year minimum term provides enough time from a planning perspective. The answer is yes. In 1983 the avoided units were coal units with longer construction times and more contentious permitting. Today, avoided units tend to be gas fired and require less advance construction and permitting time. Permitting and construction lead times aside, the Commission has faced this same timing issue in load management tariffs in addressing the minimum notice such customers

may give before leaving the rate. The Commission has decided on a minimum notice of five years. So a five year minimum Standard Offer Contract term is consistent with that as well.

However, planning considerations aside, the real reason the Commission should feel comfortable in moving to a five year minimum term is because the Commission has already effectively made the policy change in granting seven waivers of the 10 year minimum term rule requirement. In each instance the Commission allowed a 5 year minimum term instead. This has become the Commission's policy; that is why a rule amendment is appropriate.

Cogenerators' Proposed Rule Changes

Lee County, Miami-Dade County and Montenay-Dade have proposed three rule amendments. (1) They ask the Commission to change, for standard offer contracts that extend for the life of the avoided unit, the method of calculating avoided costs from the currently approved Value of Deferral method to the Revenue Requirements method. (2) They ask the Commission to change the way avoided energy payments are made such that 80% of the payments would be structured as they currently are and the remaining 20% would be fixed based upon a forecast of fuel prices. (3) They ask the Commission to disregard conservation that it has approved as reasonably achievable and cost-effective when determining the avoided unit.

On all the rule changes now proposed by the cogenerators, the Commission's policy has been steadfast, despite attempts to change the policy. The Commission has always employed Value of Deferral rather than Revenue Requirements to calculate avoided capacity costs. The Commission has always calculated avoided energy costs retrospectively, giving cogenerators the actual costs they avoided. The Commission has always recognized conservation in determining a utility's avoided costs.

More importantly, each of the proposed changes by the cogenerators would likely increase what utility customers pay cogenerators for their power. None of these changes would be insignificant. Collectively, they would be a windfall for the cogenerators at the expense of customers who are looking to the Commission for protection.

Value of Deferral versus Revenue Requirements

PURPA, FERC's rules and applicable Florida Statutes all require utilities to pay no more than avoided cost for cogenerated power. The term "avoided cost" is defined generally in all those statutes and rules, but the fact of the matter is that the mechanics were left to the states.

The general process followed in determining a utility's avoided cost is to look to its planning process, determine the next resource or resources to be added to meet its resource needs and then calculate the cost associated with such resources. The ultimate idea is that by identifying and requiring utilities to pay "avoided cost," the cost that can be avoided by purchasing cogenerated power, utility customers are no worse off than they would have been if the utility had built or bought from its avoided resource.

As one might imagine from that general approach, there are a myriad of ways avoided costs could be calculated. Those decisions have been left largely to the states.

In Florida, the primary conflict or debate has been whether the Commission should use the Value of Deferral or Revenue Requirements methodology to calculate avoided cost. The Commission Staff and the utilities advocated the use of the Value of Deferral methodology. The cogenerators argued for the Revenue Requirements method. The Commission has consistently chosen the Value of Deferral methodology.

To understand Value of Deferral, one must understand the effect the purchase of cogenerated capacity has for a utility. Unless the cogeneration purchase is for the same term and

same amount of capacity as the unit the utility would build, the utility does not avoid the construction of utility generation, it just defers it. The Value of Deferral methodology quantifies the value of such a deferral on a year by year basis.

A simple example will illustrate. Assume that absent a cogeneration purchase a utility would build a 1,000 MW plant for $500 million, but with a one year purchase of 1,000 MW of cogenerated power it can move its planned construction back a year. If the utility makes the one year purchase what has been saved? Advocates of the Revenue Requirements approach would say, the revenue requirements associated with the first year of the plant that was deferred: a year's return on the $500 million investment and a year of depreciation, foregone O&M expenses, taxes, etc.... Advocates of Value of Deferral recognize that the real value is simply deferring or moving back a year the stream of revenue requirements in the plant. Instead of paying revenue requirements for a plant in years 1-30, because of the one year cogeneration purchase and one year deferral, customers will now pay revenue requirements for a plant in years 2-31. Unless the assumed inflation rate that would raise the initial cost of investment due to a one year deferral exceeds the discount rate used to discount both revenue requirements streams to present day dollars, deferral will likely save customers money. It is that difference in the net present value ("NPV") of the two revenue requirements streams that the Value of Deferral quantifies. It does it for each year, and if there is a deferral for the life of the unit, then the NPV of that 30 year stream of Value of Deferral payments equals the NPV of the revenue requirements for that plant.

The difference of the two approaches is that Revenue Requirements are front end loaded, because investment and depreciation, key components in the calculation of Revenue Requirements, are at their highest when the plant begins service. They will be at their lowest

near the end of the life of the unit. The Revenue Requirements cost curve declines over the life of the plant. Value of Deferral is not front end loaded. Each year it captures the annual value of deferring the investment one year. Over the full life of the plant, on a NPV basis, the two payment streams are the same, but the cost curve for Value of Deferral is much flatter. This is illustrated in Attachment A.

So, which stream is more appropriate for a 5 or 10 year contract that does not avoid but only defers the utility unit? Value of Deferral. Value of Deferral assures that utility customers pay only for the value of what they receive - the year by year value of deferring the utility unit. The heavily front end loaded Revenue Requirements for the utility unit are not completely avoided with a 5 or 10 year contract; they are merely deferred, so they should not be fully paid to the cogenerator. Instead, the cogenerator should receive the value of what it provides the customer - the value of deferring that 30 year revenue requirements stream for the life of the contract. Moreover, if the heavily front end loaded Revenue Requirements stream is paid to cogenerators, once cogenerators have earned a sufficient sum to pay off their debt, they have the perverse incentive to walk away from the contract.

The Commission explained this in Order No. 12634, the final order in the 1983 cogeneration rule proceeding. There are several passages from that order that are most instructive. The first passage succinctly summarizes the Commission's policy decision:

> Under the standard offer, the annual price to be paid for QF capacity is geared to the value of deferring the statewide avoided unit one year. We adopt the testimony of Mr. Trapp on this point. We agree with Mr. Trapp that there must be a link between the price paid for QF capacity and the value of other supply side alternatives available to a utility to meet its service obligation. It is this linkage that ensures that cogeneration and small power production will remain a cost effective conservation measure.

Order 12634 at 14, 15.

The second passage from Order 12634 succinctly summarizes the Value of Deferral methodology:

> The value of deferral is, in essence, a calculation of the value of deferring the revenue requirements of a new generating plant by one year. Essentially, it compares the difference in annual revenue requirements if the revenue requirements stream begins in year X as compared to beginning in year X+1.

Order 12634 at 16.

The third instructive passage from Order No. 12634 makes it unequivocally clear that the Commission would not permit payments in excess of the Value of Deferral: "We will not consider supply side alternatives more costly than the Value of Deferral because it would not benefit the ratepayers to pursue them, regardless of the source." Order 12634 at 17.

The final instructive passage from Order No. 12634 is longer, but it is shared for several reasons. First, it shows that the Value of Deferral versus Revenue Requirements debate was raised and resolved 19 years ago. Second, it clearly articulates why Value of Deferral is the superior approach:

> IMC, et al, urged us to adopt a capacity payment rule that would set a maximum cap on the level of permissible payments equal to the revenue requirements of a generic base load coal unit. We believe that the value-of-deferral methodology is superior to a revenue requirements methodology for a couple of reasons. First, revenue requirements are based on a thirty-year depreciation life for a power plant. The payments are relatively high in the early years and relatively low in the later years; if ratepayers receive service from the plant for thirty years, the disadvantage of high payments in the early years is offset by the benefit of low payments in the later years. That symmetry is missing if a QF makes only a ten-year commitment; a QF would receive the high end of the deferred revenue requirements stream without a concomitant obligation to provide service in exchange for relatively low deferred revenue requirements in later years. Second, capacity payments based on deferred revenue requirements would overpay the QF in early years, thus getting into the thorny problem of securing all capacity payments for a

> number of years, not just those made pursuant to the early payment option.
>
> The value-of-deferral methodology overcomes these problems. First, the deferral method pays the QF only what it earns in any given year, the value of an annual deferral, thus eliminating the security question in ordinary circumstances. Second, the value-of-deferral method will, over the thirty-year depreciation life of the avoided unit, pay a QF the same amount it would have received if its capacity payments had been based on deferred revenue requirements. That is, at the end of thirty years, a QF would have received the same total amount on a present value basis, under either methodology; the difference between the two methods lies in the level of payment in any given year in that thirty year period. Levelizing capacity payments based on avoided revenue requirements mitigates but does not cure the problem; using the value of annual deferral as the benchmark, levelized capacity payments based on deferred revenue requirements still overpay a QF in the early years.

Order No. 12634 at 19.

So, do not just take FPL's word for it. Listen to prior Commissions who had the benefit of a full record and multiple witnesses. The Value of Deferral method of computing avoided costs is the superior approach, particularly for cogeneration contracts for less than the life of the planned utility unit.

The approach has been successfully used for almost 20 years. Extensive cogeneration has been encouraged. FPL alone has over 800 MW of firm cogenerated power; but most importantly, utility customers have not paid too much. When Section 377.709, Florida Statutes, was adopted, the Commission decided it did not have to change from Value of Deferral to Revenue Requirements to satisfy the statute, and it did not. Not once in those twenty years of Commission cogeneration policy has the Value of Deferral method been challenged with either a rule challenge or an appeal. There is no legitimate reason to abandon the proven Value of Deferral approach and unjustly enrich cogenerators at the expense of utility customers.

A Partially Guaranteed Firm Energy Payment Stream.

The second change urged upon the Commission by established cogenerators is to change the method of payment for firm energy in firm Standard Offer contracts. Instead of the current method, which is a 100% retrospective determination of what energy generated by the avoided unit would have cost, the cogenerators want that payment stream to be 80% retrospective based on actual costs and 20% prospective based on forecasted fuel costs at the time the Standard Offer contract is entered. They want part of their energy payment stream guaranteed.

Twenty years ago in Order No. 12634 the Commission also established its method for calculating avoided energy costs under firm Standard Offer contracts. The Commission decided that cogenerators would be paid the lesser of system incremental energy costs or the energy costs that would have been incurred if the energy had been generated by the avoided unit. Essentially, this approach recognizes that utility units are economically dispatched. If the avoided unit would have been dispatched because it would have been economic to commit it, then a cogenerator providing firm energy that allowed the utility to avoid the energy that would have been generated by the avoided unit would receive the avoided unit's energy cost. However, if the avoided unit would not have been economically dispatched because system incremental energy costs were below the energy cost associated with the avoided unit, then the cogenerator should receive that lower price.

Here is how the Commission characterized its methodology in Order No. 12634:

> The rule provides for a firm energy price that is also linked to the avoided unit. Commencing with the anticipated in-service date of the avoided unit, the QF will receive the lesser of the as available energy cost of the utility planning the avoided unit or the energy cost associated with the avoided unit itself. The energy cost associated with the avoided unit is defined as the cost of fuel, in cents per KWH, that would have been burned in the avoided unit, calculated by multiplying the average market price of the fuel that

> would have been burned in the statewide avoided unit by the average heat rate associated with it. [Rule 25-17.83(6)]. The rule requires payment of "the lesser of" because in those situations where a utility's incremental fuel costs were less that the fuel cost of the avoided unit, it would not be economical to dispatch it.

Order No. 12634 at 18. Clearly, under this approach the avoided energy payments can only be calculated retrospectively, once one can determine how the avoided unit would have been dispatched.

Although the current methodology for firm energy payments was established in Order 12634 in 1983, a dispute regarding a potential forecast energy payment quite similar to the change proposed by the cogenerators arose and was resolved by the Commission in a 1982 decision, in Order No. 10943. In that case sample cogeneration tariffs provided that energy payments to QFs be made based on estimated or forecast avoided energy costs with a one way true up - if actual costs exceeded forecast, then cogenerators received more money.

In Order No. 10943, the Commission rejected the idea of a guaranteed firm energy payment stream based on a forecast. It abandoned both the forecasted, guaranteed energy payment stream and the one way true up and began payments based on actual energy cost determined after the fact. That is the approach of the current rule that the cogenerators seek to change, in part.

The following is what the Commission said 20 years ago when rejecting another guaranteed payment stream:

> The purpose of the one way true-up was to guarantee a minimum price to QFs to encourage them to come on line; however, an unintended consequence of the one way true up is a subsidization of cogeneration by other ratepayers. **As long as the purchase price is the utility's actual avoided costs, which can only be determined retrospectively, QFs should not be guaranteed any price.** (Emphasis added.)

Order No. 10943 at 3.

Previous Commissioners were right on the mark 20 years ago. There is no need to guarantee energy payments, even in part. QFs have been encouraged to come on line without such guaranteed payments. More importantly, by paying actual rather than forecasted avoided energy costs, utility customers have not subsidized cogenerators. Why change now?

The cogenerators argue that this approach should be changed "to protect customers," to provide a hedge against increasing future fuel prices. FPL urges the Commission to be skeptical of cogenerators' professions that they are acting to "protect the customers' interests" rather than their own interests. Unless the cogenerators are acting against their economic interests, an improbable conclusion, they seek the rule change because they think it will yield them more money. That is more customer money.

Conservation Must Be Recognized In Determining Avoided Cost.

The final rule change the cogenerators seek would also increase customer costs. They ask that the Commission reverse its long standing, often challenged, but never rejected practice of recognizing conservation when calculating avoided cost.

The impact of this proposed change is easy to explain. To calculate avoided cost payments for cogenerators, one identifies the next unit the utility plans to build to meet its need and then calculates the value of deferring or avoiding the unit. Identifying the utility's next planned generating unit requires the use of a load forecast. The issue here is whether that load forecast should include or exclude forecasted demand reductions due to conservation. If it includes forecasted conservation, the capacity need is deferred and cogenerators are paid less by utility customers. If the load forecast excludes forecasted conservation, the capacity need is accelerated and utility customers pay cogenerators more.

FPL takes the position that Commission approved conservation that has already been found by the Commission to be cost-effective (less costly than supply side alternatives) should be recognized in the load forecast used to identify the next planned generating unit. This conservation has already been subject to review, and the Commission has determined it to be cost-effective.[1] It is scheduled to be implemented. Ignoring it would be requiring customers to pay twice for the same capacity deferral. They would pay once through the ECCR clause and again through capacity payments to cogenerators.

As previously noted, the Commission has heard and rejected this argument by cogenerators on numerous occasions for well articulated reasons. The Commission's initial rejection of this argument was in Order No. 13247, the 1984 order in the proceeding to implement the cogeneration rules. The issue was whether the load forecast used to determine the avoided unit should include or exclude prospective conservation. Here, as there, the cogenerators ask the Commission to exclude it, to ignore it and to have customer pay twice for it. The Commission's reaction then is equally appropriate now:

> During these proceedings, considerable debate was fostered by the QF intervenors as to which load forecast should be used to determine the in-service date of the statewide avoided unit. The QFs contended that the load forecast should exclude the effects of utility sponsored demand side conservation programs. In our opinion, **these arguments are totally without merit**. (Emphasis added.) Specifically we reject the testimony of Dr. Spann and Mr. Seidman regarding this subject. The Commission's cogeneration rules implicitly require that the effects of utility sponsored conservation programs be reflected in the utilities' load forecasts for the purpose of determining the timing of the statewide avoided

[1] In Order No. PSC-99-1942-FOF-EG, the Commission approved conservation goals of an additional 496 MW for the years 2003 through 2009. This was the amount of conservation the Commission found to be reasonably achievable and cost-effective on FPL's system, and it was based upon a comprehensive analysis conducted pursuant to Commission order. The following year the Commission approved a DSM plan filed by FPL designed to achieve its reasonably achievable, cost-effective level of DSM. *See*, Order No. PSC-00-0915-PAA-EG.

> unit. Rule 25-17.83(4) describes certain evidence and the scope of analysis to be presented to the Commission by each utility to assist the Commission in determining the statewide avoided unit. Rule 25-17.83(4)(a) specifically requires each utility to identify its next planned uncertified generating unit to be added to its system pursuant to its **most current long range generation expansion plan** (emphasis added). The only adjustment to the utility's generation expansion plan is the specified exclusion of anticipated purchases from qualifying facilities which are not currently under contract. Logic, as well as past Commission practice since the adoption of the Florida Energy Efficiency and Conservation Act (FEECA), dictates that a utility's most current long range generation expansion plan must be based on the utility's most current "expected case" load forecast, inclusive of conservation. Had we desired to treat conservation differently, we would have expressly stated so as was done with regard to non-contracted QF capacity.
>
> The fact is, we do not desire to exclude the effects of utility sponsored conservation programs from the load forecasts or generation expansion plans of the Florida utilities in determining the statewide avoided unit. The reason for this was clearly stated in Mr. Jenkins' testimony: conservation in the aggregate is significantly more cost effective than cogeneration (TR 1107-12). As such, **exclusion of the effects of utility sponsored conservation programs from the load forecast in this proceeding would result in payments to qualifying facilities in excess of the utilities' avoided costs and hence, subsidization of cogeneration by the general body of Florida ratepayers. This is clearly contrary to the intent of the Commission's cogeneration rules and policy.** (Emphasis added.)

Undeterred, cogenerators raised the argument again in subsequent hearings. Again the Commission rejected it. For instance, in 1989 in Docket No. 890004-EU, FICA, the Florida Industrial Cogenerators Association, took issue with recognizing conservation in determining the avoided unit. The Commission rejected the argument as it had in the past and should here as well:

> Because of FCG's treatment of these variables, FICA states that the FCG's avoided unit study is not a least-cost generation expansion plan. We disagree. As discussed above, conservation and cogeneration are modeled as integral parts of the generation

> expansion studies. As we have consistently ruled in the past, we consider this to be the appropriate treatment for these alternatives to construction. For conservation this treatment is appropriate since it is less expensive than the construction of new generation and would be pursued first in an optimal generation expansion plan....

Order No. 22341 at 4. The Commission went on to note conservation and load management were already pre-approved by the Commission as cost-effective.

The Cogenerators' "Settlement" Offer.

On the eve of the Staff's February 25, 2003 rule development workshop, several solid waste facilities offered a "settlement" proposal. The "settlement" proposal made no mention of their suggested rule amendments to fix part of the avoided energy payment stream or to ignore conservation in determining avoided cost. Their "settlement" proposal did suggest that Revenue Requirements rather than Value of Deferral be used to calculate avoided costs, and it also allowed solid waste facilities (not all cogenerators) to choose the term of the standard offer contract between 10 and 30 years. In addition, it offered modest "discounts" from Revenue Requirements for longer term contracts chosen by solid waste facilities.

The "settlement" proposal is not a settlement at all. Even with the purported discount associated with longer term contracts, customers would be paying more under this proposal than they are under the current rule, because of the change of the method of calculating avoided cost from Value of Deferral to Revenue Requirements.

The "settlement" proposal suffers from the same infirmities that are associated with the cogenerators' rule proposals. It is inconsistent with established cogeneration policy of using Value of Deferral rather than Revenue Requirements to measure avoided cost. It is unnecessary, because there is no problem that needs to be addressed. Most importantly, it results in customers needlessly paying more for cogenerated power than they would receive in terms of value. In

short, it employs an improper measure of avoided cost resulting in unjust enrichment of solid waste facilities. In addition, there are at least two other problems with the "settlement" proposal.

First, it contains a provision that clearly would result in customers paying twice for the same capacity. Section 4(h)(1) of the proposal has a provision that if a contract does not result in the avoidance of a utility's unit and the unit is built, then the solid waste facility may extend the contract up to the life of the unavoided unit. If the contract does not purchase capacity deferral and the utility has to build the unit, customers would be paying for the unit addition as well as the contract extension. Such a double payment for capacity is unwarranted. If solid waste facility contracts do not allow deferral or avoidance of a utility unit, then they should be denied avoided capacity payments rather than receive the right to extend a contract that has proven to be worthless to customers.

Second, this rule provision goes much further than is necessary for the Commission to comply with Section 377.709, Florida Statutes. Section 377.709, Florida Statutes is not intended to result in customers subsidizing license for solid waste facilities. The Commission has already complied with the statute by making standard offer contracts available to solid waste facilities. The Commission does not have to employ Revenue Requirements for this type of cogenerator and Value of Deferral for others to comply with Section 377.709, Florida Statutes. In fact, such a decision would violate the statute because the statute contemplates that only avoided cost should be paid, and under prior Commission policy the payment of Revenue Requirements instead of Value of Deferral would be a payment in excess of avoided costs. In addition, PURPA, which creates the standard offer requirement, does not extend it to solid waste facilities. The Commission has previously extended the standard offer to solid waste facilities to satisfy

Section 377.709, Florida Statutes, and nothing more is required to comply with that statute than what is currently available under the existing rule.

Conclusions Regarding the Cogenerators' Proposed Rule Changes

The Commission said it best on any number of occasions. None of the rule changes proposed by the cogenerators should be adopted. Each of the proposed changes enhances cogenerator revenue at customer expense. Each of them is a solution in search of a problem. They are contrary to the Commission's intent and well-established cogeneration policy. In contrast, the change of the standard offer minimum term from 10 to 5 years reflects the Commission's policy and should be adopted.

Respectfully submitted,

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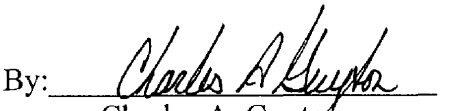
By: 
Charles A. Guyton

Revenue Requirements
vs
Value of Deferral Methodologies

	YEAR	TOTAL REVENUE REQUIREMENT	LEVELIZED REVENUE REQUIREMENT	VALUE OF DEFERRAL
1	2004	7,768.73	5,673.28	4,593.16
2	2005	7,547.25	5,673.28	4,685.02
3	2006	7,295.74	5,673.28	4,778.72
4	2007	7,054.91	5,673.28	4,874.30
5	2008	6,823.98	5,673.28	4,971.78
6	2009	6,602.21	5,673.28	5,071.22
7	2010	6,388.90	5,673.28	5,172.64
8	2011	6,183.41	5,673.28	5,276.10
9	2012	5,982.30	5,673.28	5,381.62
10	2013	5,781.82	5,673.28	5,489.25
11	2014	5,581.33	5,673.28	5,599.04
12	2015	5,380.84	5,673.28	5,711.02
13	2016	5,180.36	5,673.28	5,825.24
14	2017	4,979.87	5,673.28	5,941.74
15	2018	4,779.39	5,673.28	6,060.58
16	2019	4,578.90	5,673.28	6,181.79
17	2020	4,378.42	5,673.28	6,305.43
18	2021	4,177.93	5,673.28	6,431.53
19	2022	3,977.45	5,673.28	6,560.16
20	2023	3,776.96	5,673.28	6,691.37
21	2024	3,599.37	5,673.28	6,825.19
22	2025	3,467.55	5,673.28	6,961.70
23	2026	3,358.62	5,673.28	7,100.93
24	2027	3,249.69	5,673.28	7,242.95
25	2028	3,140.77	5,673.28	7,387.81
26	2029	3,031.84	5,673.28	7,535.57
27	2030	2,922.91	5,673.28	7,686.28
28	2031	2,813.98	5,673.28	7,840.00
29	2032	2,705.06	5,673.28	7,996.80
30	2033	2,596.13	5,673.28	8,156.74
NPV @ 6.54%		78,637	78,637	78,637

Comparison of Payment Streams