BEFORE THE PUBLIC SERVICE COMMISSION

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| In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. | DOCKET NO. 050001-EI<br>ORDER NO. PSC-05-0084-FOF-EI<br>ISSUED: January 24, 2005 |

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

APPEARANCES:

JOHN T. BUTLER, ESQUIRE, Steel, Hector & Davis LLP, 200 South Biscayne Blvd., Suite 4000, Miami, Florida 33131-2398 and R. WADE LITCHFIELD, ESQUIRE, and NATALIE F. SMITH, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408
On behalf of Florida Power & Light Company (FPL).

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On behalf of Florida Public Utilities Company (FPUC).

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On behalf of Gulf Power Company (GULF).

JAMES A. MCGEE, ESQUIRE, Progress Energy Florida, Post Office Box 14042 St. Petersburg, Florida 33733 and BONNIE E. DAVIS, ESQUIRE, Progress Energy Florida, 106 East College Avenue, Suite 800, Tallahassee, Florida 32301
On behalf of Progress Energy Florida (PEF).

JAMES D. BEASLEY, ESQUIRE, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO).

JON C. MOYLE, JR., ESQUIRE, and WILLIAM H. HOLLIMON, ESQUIRE, Moyle, Flanigan, Katz, Raymond and Sheehan, P.A., The Perkins House, 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of Thomas K. Churbuck (CHURBUCK).

JOSEPH A. MCGLOTHLIN, ESQUIRE, VICKI GORDON KAUFMAN, ESQUIRE, and TIMOTHY J. PERRY, ESQUIRE, McWhirter, Reeves, McGlothlin, Davidson, Kaufman & Arnold, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Industrial Power Users Group (FIPUG).

PATRICIA A. CHRISTENSEN, ESQUIRE, Associate Public Counsel, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

ADRIENNE E. VINING, ESQUIRE, WM. COCHRAN KEATING, IV, ESQUIRE, and JENNIFER RODAN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission.

## FINAL ORDER APPROVING UNIT POWER SALES AGREEMENTS BETWEEN FLORIDA POWER & LIGHT COMPANY AND SOUTHERN COMPANY FOR COST RECOVERY PURPOSES

BY THE COMMISSION:

### Case Background

Florida Power & Light Company (FPL) currently purchases 955 MW of capacity from Southern Company (Southern) via unit power sales (UPS) agreements set to expire on May 31, 2010. The existing UPS agreements are for coal-fired generation from Southern's Scherer and Miller units in Georgia. After adjusting for losses on Southern's side of the interface, FPL receives 930 MW of capacity. Three new UPS agreements between FPL and Southern are scheduled to take effect on June 1, 2010, and continue to December 31, 2015. The new UPS agreements would also provide 955 MW of firm capacity, with FPL receiving 930 MW at the interface. The new UPS agreements would provide 165 MW of coal-fired capacity from the Scherer unit, with the remaining 790 MW of capacity from Southern's natural gas-fired Harris and Franklin units in Georgia.

FPL requested our approval for cost recovery of the new UPS agreements as part of its annual fuel adjustment filing with the Commission. At the conclusion of the hearing held in this docket on November 8 and 9, 2004, we rendered a bench decision on all issues with the exception of Issue 14C, which addresses approval of the new UPS agreements. We requested a written recommendation on Issue 14C and the parties were provided the opportunity to file briefs supporting their positions on that issue by December 1, 2004. Based on the evidence presented at the hearing and in consideration of the parties' post-hearing briefs, we addressed Issue 14C at our January 4, 2005 Agenda Conference. This Order memorializes our decision regarding FPL's

request for approval of its new UPS agreements with Southern. We have jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes.

FPL's New UPS Agreements

According to FPL, the purpose of the new UPS agreements is to retain as many of the benefits of the existing contracts as possible. While FPL may not have been able to retain all of the benefits of the existing UPS agreements, the new UPS agreements do provide some fuel diversity, enhanced reliability, and opportunities for economy energy purchases. Specifically, the new UPS agreements provide for: (1) the purchase of 165 MW of coal-fired and 790 MW of gas-fired capacity and energy, with the right of first refusal to purchase additional coal-fired energy if made available; (2) a short-term commitment which allows FPL to further explore ownership of new solid fuel generation; (3) enhanced reliability through geographic and fuel supply differences; and, (4) the retention of firm transmission rights within the Southern system.

FPL states that the benefits of the new UPS agreements, such as fuel diversity, enhanced reliability, and opportunities for economy energy purchases, are difficult to quantify. We agree. A pure dollar and cents cost-effectiveness comparison suggests that a self-build option would be more cost-effective by approximately $69-$93 million. Therefore, we are faced with the decision of how much of a premium should be paid for the types of benefits provided by the new UPS agreements. **The concept is similar to that of purchasing car insurance.** You pay a premium for something you hope to never use, but are glad you have it if needed. We estimate that the "premium" would equate to approximately 0.02 cents/kwh, or about 20 cents/month per residential customer over the 5.5 year term of the UPS agreements.

Since the 1990's, the majority of new generation additions in Florida and the nation have been natural gas-fired units. No new coal-fired generating units have been constructed for quite some time, either in Florida or in the Southern system. FPL's reliance on natural gas for future generation additions is the highest of any Florida investor-owned utility. The coal units that support the existing UPS agreements, the Scherer and Miller units, are being retained for use by the original owners for their native load customers. This fact is supported by the testimony of FPL's witness Hartman who stated that going into negotiations, FPL wanted to buy all coal-fired energy, but Southern only wanted to sell gas-fired energy. In essence, while the amount of coal-fired capacity is reduced from 930 MW to 165 MW, some fuel diversity is preserved for FPL at a time when Florida's utilities are highly dependent on natural gas-fired generation. When compared to the self-build alternative, the new UPS agreements increase fuel diversity on FPL's system. In addition, the right of first refusal for additional coal-fired capacity provides additional fuel diversity opportunities. FPL is currently studying the feasibility of adding coal-fired generation to its system and has committed to provide a report on that subject to the Commission by March 2005. The short term nature of the new UPS agreements allows a window of time for FPL to more fully analyze the potential for constructing coal-fired generation during the 2010-2015 timeframe.

Both the existing and the new UPS agreements enhance reliability through geographic and fuel supply differences. FPL has been allocated a share of the Florida/Georgia transmission interface and is currently utilizing this transmission capacity to import power under the existing

UPS agreements. This amount of transmission import capacity will not change with the new UPS agreements. Under the new UPS agreements, 930 MW of power will be imported from the Southern region, just like the existing UPS agreements. If FPL did not extend the contracts, the 500 kV lines would remain in place, but FPL would be required to make its share of the interface capacity available for purchase by third parties. The existing UPS agreements are based entirely on coal-fired energy. As discussed above, fuel diversity is enhanced by the new UPS agreements. While the new UPS agreements have a significant portion of capacity that is gas-fired, the fuel is delivered via a gas transportation network that is outside of Florida, providing enhanced fuel supply reliability.

The benefits associated with the firm transmission rights should improve compared to the existing UPS agreements. According to witness Hartman, the transmission rights associated with the existing UPS agreements are bundled with the capacity payments and are not transferable within the Southern system. The new "roll-over" transmission rights, if approved, would be billed separately pursuant to Southern's Open Access Transmission Tariff (OATT). FPL may request alternate transmission paths that allow additional economy energy transactions. Alternate firm transmission paths could be requested with 24 hours notice and non-firm requests with only a one hour notice. The additional economy purchases are estimated to provide between $36 to $83 million dollars in savings to FPL's ratepayers. Witness Hartman did acknowledge that the maximum level of savings assumed, $83 million, was substantially greater than FPL's recent history of out-of-state economy energy purchases and that the minimum level of $36 million is more in line with FPL's recent historical experience. Witness Hartman used the maximum and the average values of economy energy savings to arrive at the range of $69 to $93 million dollar net cost figures. Using the maximum and the minimum figures for economy energy purchases would result in a range of net cost of $69 to $117 million, respectively, when compared to the self-build option. However, if natural gas prices were to rise significantly during the 2010 to 2015 time frame, the savings from economy energy purchases could surpass the estimated maximum level and possibly mitigate the additional costs of the contracts. The table below summarizes the three scenarios:

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| Cost above self-build | 153 | 153 | 153 |
| Economy energy purchases | 83 | 60 | 36 |
| **Net total cost*** | **69** | **93** | **117** |

Witness Hartman also stated that he was doubtful that FPL would be able to secure equivalent firm transmission rights if the roll-over rights were not granted because FPL would be at the end of the line behind several other entities requesting transmission access. If this were to happen, even the minimum amount of economy energy purchases would be in jeopardy. The reverse would also be true. Without firm transmission rights, FPL may not be in a position to make economy sales to Southern. Therefore, it appears that the primary benefit of the new UPS agreements is the retention of firm transmission rights within the Southern system. Witness Hartman testified several times that whoever owns the transmission rights receives all of the benefits of economy energy transactions and that "[i]f we own the transmission rights, how much

we share with our customer is a matter of the fact that they get all of it . . . [a]ll of the benefits of the transmission rights."

One additional benefit of the new UPS agreements is the fact that all three contracts are fully dispatchable by FPL. We are unsure if this same provision is contained in the existing UPS agreements. In essence, the generating units defined in the contracts are under the direct control of FPL, as if FPL owned the units. As such, FPL can even make sales from these units when it is economic to do so. FPL stated in response to Staff Interrogatory No. 43 that "[i]f the dispatch cost of the plants under contract is lower than the market price, but higher than our own system marginal costs, we would dispatch the plants under contract to the extent we can sell the output into the market." It is unusual for a purchased power contract to also provide for the opportunity to produce revenues for the original buyer; however, the ability to dispatch the units is worthless unless FPL has the transmission rights to deliver the power.

FPL stated many times that the benefits of the UPS agreements should flow to the customers. Therefore, we find that, as a condition of approval, any gain on sales to third parties that utilize the transmission rights associated with the UPS agreements shall be credited 100% to FPL's ratepayers. If FPL negotiates the purchase of additional coal capacity and energy from either the Miller or Scherer units, the same conditions shall apply. In order to not penalize FPL, the gains on such sales shall not be included in FPL's calculation of a three year rolling average for purposes of establishing the threshold for other economy sales pursuant to Order No. PSC-00-1744-PAA-EI, issued September 26, 2000, in Docket No. 991779-EI, In re: Review of the appropriate application of incentives to wholesale power sales by investor-owned electric utilities. Such a conditional approval will ensure that the value of all of the benefits that are not quantifiable today will flow to FPL's ratepayers in the future.

Other parties to the proceeding, Churbuck, OPC, and FIPUG, contend that FPL did not provide sufficient evidence to justify approval of the new UPS agreements. We disagree and believe that the record is sufficient for us to render such a decision. No matter how long or in what detail one considers the evidence, we are faced with the decision of how much of a premium should be paid for the types of benefits provided by the new UPS agreements. We have the information and expertise needed to make a decision based upon the economic impact of the new UPS agreements and a description of the benefits they will bring to FPL's ratepayers.

In summary, the new UPS agreements continue many of the benefits associated with the current UPS agreements. Access to coal-fired energy via firm transmission rights appears to be the greatest benefit to FPL's ratepayers. Therefore, based upon the evidence presented at the hearing and in consideration of the parties' post-hearing briefs, we find that the new UPS agreements between FPL and Southern shall be approved for cost recovery purposes, subject to the conditions set forth above.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Unit Power Sales Agreements between Florida Power & Light Company and Southern Company, which are scheduled to take effect on June 1, 2010, and continue to December 31, 2015, are hereby

approved for cost recovery purposes, subject to the conditions set forth in the body of this Order. It is further

ORDERED that this is an ongoing docket that shall remain open.

By ORDER of the Florida Public Service Commission this 24th day of January, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.