BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for approval of a standard offer contract and revised COG-2 tariff.	DOCKET NO. 990249-EG ORDER NO. PSC-99-1713-TRF-EG ISSUED: September 2, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER DENYING FLORIDA POWER & LIGHT COMPANY'S PETITION FOR APPROVAL OF STANDARD OFFER CONTRACT AND GRANTING REQUEST FOR VARIANCE

BY THE COMMISSION:

On March 3, 1999, Florida Power & Light Company (FPL) filed a Petition for Approval of a Standard Offer Contract (Petition) for qualifying cogeneration and small power production facilities. The proposed contract is based on a 5 MW subscription limit of a 209 MW combustion turbine generating unit with an in-service date of 2001. In determining the appropriate payment amounts, FPL accounted for an offsetting equity adjustment to compensate for costs imposed on its customers due to a risk adjusting practice of the Standard and Poor's rating agency. The proposed standard offer contract also includes a "Regulatory Disallowance" section which permits FPL to adjust payments to a signatory to compensate for any unforeseen regulatory action.

Along with its March 3, 1999, Petition, FPL filed a Petition for a Variance from Rule 25-17.0832(4)(e), Florida Administrative Code (Petition for Variance). FPL seeks a variance from the 10 year minimum contract term required by the rule and instead proposes a fixed five-year contract term.

The 60-day suspension date of May 3, 1999, has been waived by FPL pursuant to correspondence dated April 14, and 16, 1999. Order No. PSC-99-1053-TRF-EG, issued May 24, 1999, suspended FPL's proposed standard offer contract and COG-2 tariff revision until

final review. By letter dated May 12, 1999, FPL agreed to waive its right to a decision on the Petition for Variance within 90 days after receipt pursuant to Section 120.542(8), Florida Statutes.

On May 6, 1999, the Florida Industrial Cogeneration Association (FICA) filed comments requesting denial of both FPL's Petition and Petition for Variance. In its comments, FICA asks the Commission to enter an order: (1) denying FPL's petition and variance request; (2) instructing FPL to file a standard offer contract based on its next proposed generating plant; and (3), directing FPL to open a solicitation period on its standard offer contract ending July 1, 2000. On June 11, 1999, FPL filed a Response to Comments of the Florida Industrial Cogeneration Association.

This order addresses both the petition for approval of the proposed standard offer contract and the requested variance. The merits and conformity of FPL's proposed standard offer contract with our rules is discussed first. Next the order addresses FPL's use of an Equity adjustment when determining capacity payments under the proposed contract and FPL's Petition for Variance.

I. Proposed Standard Offer Contract

FPL's Petition For Approval of a Standard Offer Contract based on a combustion turbine unit with an in-service date of 2001 and revised COG-2 tariff is denied for two reasons. Contrary to our rule requirements, the proposed standard offer contract is not based on FPL's next avoided unit. In addition, consistent with the decision set forth in Order No. 24989, issued August 29, 1991, a "Regulatory Out Clause" is not appropriate in a standard offer contract. FPL should revise its standard offer contract to reflect the recommended changes and provide no less than a two week availability. FPL is directed to submit a revised standard offer contract and associated tariffs no later than 60 days from the date of the our vote.

Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities (QFs) less than or equal to 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 15 U.S.C. 791 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR 292.304. Florida law requires the Commission to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. The Commission is further directed to "establish a funding program

to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

These federal and state regulations are implemented in part through the standard offer contract rules. Pursuant to Rule 25-17.0832(4)(a), Florida Administrative Code, each investor-owned electric utility must file a tariff and a standard offer contract with this Commission. These provisions effectuate the requirements of the Public Utilities Regulatory Policies Act (PURPA) and promote renewables and solid waste facilities by providing a straightforward contract. Larger QFs and other non-utility generators may participate in a utility's Request For Proposal process, referred to as the bidding rule.

A. Avoided Unit

To comply with our rules, FPL proposed a standard offer contract based on a hypothetical combustion turbine (CT) unit with an in-service date of January 1, 2001. This is the same unit FPL used to evaluate Demand-side management programs in the on-going Conservation Goals proceedings. FPL's April, 1998, and its April, 1999, *Ten Year Site Plan* identifies the Ft. Myers Repowering project as its next planned generation addition.[1] This project entails replacing the existing steam boilers with six 150 MW GE-7FA combustion turbines and Heat Recovery steam generators (HRSG) at the Ft. Myers site by January, 2002. The contract-based hypothetical CT has no relationship to the repowering project nor any of the proposed additions identified in FPL's current *Ten Year Site Plan*. Our Rules require that standard offer contracts be based on a utility's "avoided unit" which is its next planned generating unit addition. More specifically, Rule 25-22.082(2), and Rule 25-17.0832(4)(e)5, Florida Administrative Code, require that:

> Prior to filing a petition for determination of need for an electrical power plant pursuant to Section 403.519, Florida Statutes, each investor-owned electrical utility shall evaluate supply-side alternatives to its <u>next planned generating unit</u> by issuing a request for proposals. (Emphasis added)

[1]See Schedule 9 of FPL's 1998 and 1999 *Ten Year Site Plan* filings.

> A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the issuance of timely notice of a Request for Proposals (RFP) pursuant to Rule 25-22.082(3), the utility shall end the open solicitation period;

Though these Rules pertain to those planned additions that are subject to the Florida Electric Power Plant Siting Act (PPSA), Rule 25-17.0832(2), Florida Administrative Code, encourages utilities and QFs to:

> ...negotiate contracts for the purchase of firm capacity and energy to avoid or defer the construction of all planned utility generating units which are not subject to the requirements of Rule 25-22.082. (Emphasis added)

In lieu of a separately negotiated contract, standard offer contracts are available to QFs as defined in Rule 25-17.0832(4)(a)1-3, Florida Administrative Code.

We believe these rules collectively require investor-owned utilities to pursue construction deferring alternatives for their next planned resource additions, whether they are PPSA affected or unaffected. Basing a standard offer contract on something other than the next generating unit addition would render the intended construction deferring purpose of such an option meaningless. Moreover, it is likely that subsequent planned additions may indeed be delayed or modified from an original proposal, depending on load growth, the effect of demand-side management measures, and technological changes. In Order No. PSC-94-1008-FOF-EQ, issued August 22, 1994, we held that it was important that Tampa Electric Company (TECO) not purchase standard offer capacity too far in advance of the avoided unit's in-service date.

Our position with respect to the correctness of basing a standard offer contract on a utility's next planned unit is consistent with precedent recently affirmed in Docket Nos. 990172-EI and 981893-EQ[2]. In resolving each of these matters, we found it

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[2]DOCKET NO. 990172-EI - Petition by Gulf Power Company for waiver of Rule 25-17.0832(4), F.A.C., which sets forth requirements for filing of a standard offer contract, Order No. PSC-99-1091-PAA-EI, issued May 28, 1999.

appropriate to base both Gulf Power Company's (Gulf) and TECO's proposed standard offer contracts on their next planned generating unit. Gulf's next planned unit addition is required to go through the PPSA process whereas TECO's next planned unit addition is not.

B. Regulatory Out Clause

Within its proposed standard offer contract, FPL has included a section entitled "Regulatory Disallowance", Section 18, Second Revised Sheet No. 9.857. This type of provision, more commonly referred to as a "Regulatory Out Clause", permits FPL to adjust a QF's scheduled payments based on some unforeseen regulatory action. Staff recommends that FPL be directed to remove this section from its proposed standard offer contract. In Order No. 24989, we instructed FPL and the other three large investor-owned electric utilities to remove the "Regulatory Out Clause" from standard offer contracts. In that decision, we concluded that utilities would not be allowed to include a "Regulatory Out Clause" in their standard offer contracts citing them as "unnecessary surplusage" given the our commitment to allow recovery of the mandated payments. FPL appealed Order No. 24989 to the Florida Supreme Court alleging that "the Commission's decision to eliminate the regulatory out clause was based on a misrepresentation of the doctrine of 'administrative finality' and the faulty legal conclusion that the finality of the Commission's decision rendered regulatory out clauses unnecessary." Florida Power & Light Co. v. Beard, 626 So.2d 660, 662 (Fla. 1993). The Supreme Court held that "the Commission's decision to remove regulatory out clauses from standard offer contracts with small QFs is supported by substantial competent evidence and consistent with the doctrine of administrative finality." Id. at 663. FPL did not present any arguments which persuade us that a different result is appropriate in this case. Therefore, we find that FPL shall submit revised tariff sheets that reflect removal of Section 18, "Regulatory Disallowance".

Clearly, FPL should have been aware of the decision to remove Regulatory Out Clauses from standard offer contracts. This places us in the position of having to deny FPL's petition and then wait for FPL to refile its standard offer contract further delaying

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DOCKET NO. 981893-EQ - Petition to Establish New Standard Offer Contract for Qualifying Cogeneration and Small Power Production Facilities by Tampa Electric Company, Order No. PSC-99-0748-FOF-EQ, issued April 19, 1999.

achievement of any capacity deferring benefits. As discussed in the following section, this timing problem has been exacerbated, in large part, due to FPL waiting so long to file its Standard Offer Contract.

C. Timing

FPL was questioned regarding its required filing immediately after it identified the Ft. Myers repowering as its next planned generation addition. On July 15, 1998, a letter was sent to FPL questioning when it would be filing a petition seeking approval of a standard offer contract or, in the alternative, a waiver of Rule 25-17.0832(4), Florida Administrative Code. FPL was asked to respond by July 31, 1998. FPL was again contacted by letter on October 1, 1998, requesting that it provide an estimated date of filing and the avoided unit(s) the contract would be based on. This letter asked FPL to respond no later than October 15, 1998. FPL ultimately responded on October 15, 1998, and again on December 22, 1998, indicating that it would be filing a standard offer contract by January 22, 1999, based on a 5 MW portion of a 209 MW CT with an in-service date of January 1, 2002. The instant Petition was not filed until March 3, 1999. Contrary to the intended benefit of standard offer contracts, we believe that FPL has essentially ensured that any signed standard offer contract will have an inadequate opportunity to delay or avoid any portion of FPL's next capacity addition.

D. Conclusion

FPL's proposed standard offer contract does not comply with either Rule 25-17.0832, Florida Administrative Code, or Order No. 24989. The proposed contract is based on a purely hypothetical unit that is not part of FPL's current or previous generation expansion plan. The purpose of a standard offer contract is to offer small QFs, renewable, and municipal solid waste facilities a straightforward contract after all other cost-effective measures have been taken. The dual benefit of these contracts is that, when filed in a timely manner, they encourage energy efficiency while avoiding or deferring the construction of generating plants at a cost no greater than that which would otherwise be incurred by an electric utility. To allow utilities to select avoided units other than their next planned addition as the basis for a standard offer contract renders the intent of our rules regarding these contracts meaningless. It is for these reasons, as more fully discussed within the body of this order, that FPL's Petition is denied. FPL

shall file a revised standard offer contract consistent with this order.

Upon filing revised tariff sheets, the revised standard offer contract should remain available for a period of no less than two weeks from the date of our approval. This approach is consistent with the approach recently taken by Tampa Electric Company in Docket No. 981893-EQ. In that case, TECO's planning process indicated that its next planned generating unit would need to be built sooner than expected. While TECO was not required to issue an RFP for the unit, there was no time to issue a standard offer contract that could effectively defer the necessity to construct the unit. In order to comply with the rule, however, TECO petitioned for approval of a standard offer contract based on that unit. The contract called for a brief open solicitation period of two weeks. By Order No. PSC-99-0748-FOF-EQ, issued April 19, 1999, we approved TECO's petition.

II. Equity Adjustment

We find it is appropriate to include an equity adjustment when determining FPL's proposed standard offer contract payments. However, FPL should recalculate the capacity payments to reflect an equity adjustment based on a 10% risk factor.

A utility can add capacity by buying power with a long-term contract or by building generating plants. Both alternatives have advantages and disadvantages. Regarding financial risk, building capacity can involve adding debt to finance the construction, cost overruns, and regulatory lag. Buying power increases the utility's fixed charges, which, in turn, can reduce financial flexibility. Standard & Poor's (S&P) notes that, "regardless of whether a utility buys or builds, adding capacity means incurring risk."

Particularly since the passage of the National Energy Policy Act of 1992, bond rating agencies have viewed the fixed charges from long-term purchased power contracts in part as off-balance sheet debt equivalents. S&P's method for recognizing off-balance sheet obligations is to discount a utility's future capacity payments under a long-term purchased power contract at a 10% discount rate. Part of the present value of the capacity payments is added to the utility's balance sheet as debt for rating purposes. Financial ratios - including the equity ratio and interest coverage ratio - are adjusted for this off-balance sheet obligation. The risk factor, which is how much of the present

value of capacity payments is treated as debt, depends on S&P's qualitative analysis of market, operating, and regulatory risks. These include the following:

Whether the contract is take-or-pay or take-and-pay, with take-or-pay being riskier;

Whether the power is economic and needed;

Whether there is a recovery clause for capacity payments;

Whether there is a regulatory out clause that passes disallowances to the seller;

Whether there are performance standards;

Whether the utility has a say in maintenance and dispatch; and

Whether the contract has been preapproved by regulators.

In its standard offer contract, FPL has included an "equity adjustment" reflecting the adjustment to the equity ratio that bond rating agencies make. In including this equity adjustment, FPL is reflecting the cost, in the form of less financial flexibility, that is imposed on electric utilities with purchased power contracts. The adjustment to a utility's equity ratio for the effects of purchased power is made only for bond rating purposes. For regulatory and accounting purposes, the amount of equity and debt on the utility's books is the actual amount and is not adjusted to reflect the effect of purchased power contracts.

The discussion of the perceived need for utilities to increase the level of equity in the capital structure to offset the adjustment made to the financial ratios by rating agencies and how this affects the overall cost of capital has not been specifically addressed. We note, however, that there are persuasive arguments on both sides of the issue of who should be responsible for the incremental cost of additional equity to compensate for these contracts. Given the terms of the recently approved Stipulation and Settlement (Stipulation) involving FPL, we believe FPL's current cost of capital includes recognition of this cost.

In Order No. PSC-99-0519-AS-EI issued March 17, 1999, we approved the Stipulation entered into by FPL, the Office of Public

Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and the Coalition for Equitable Rates (the Coalition) to settle the issues raised in Docket No. 990067-EI. Provision 4 of the Stipulation caps FPL's adjusted equity ratio at 55.83% for surveillance purposes. This adjusted ratio equates to an actual ratio of 65.7% as reported in the Company's projected 1998 Rate of Return Report.

We recognize the effect that purchased power contracts have on the utility's financial ratios as calculated by S&P. To be consistent with the terms of the Stipulation approved in Order No. PSC-99-0519-AS-EI which allows for the recovery of the "equity adjustment" through base rates, we approve FPL's adjustment to its standard offer contract to recognize the effect of purchased power contracts and to avoid possible double recovery. However, while we are approving FPL's request in the instant case due to the unique circumstances surrounding FPL's Stipulation, the broader policy issue of who should bear the incremental cost of additional equity to compensate for purchased power contracts has not been addressed.

Although the facts and circumstances in this case persuade us that this adjustment should be included in the Company's standard offer contract, FPL calculated its equity adjustment using a 20% risk factor. FPL subsequently represented that S&P assigns a 10% risk factor to its existing cogeneration contracts. Therefore, we find that a recalculation of the capacity payments to reflect an equity adjustment based on a 10% risk factor to be appropriate.

III. Request For Variance

FPL's request for a variance from the ten-year minimum contract term required by Rule 25-17.0832(4)(e), Florida Administrative Code is granted. FPL has demonstrated that the purpose of the underlying statute will be met and that it will suffer substantial hardship if the variance is not granted.

A. Standard Of Review

Section 120.542, Florida Statutes (1997), mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other

> means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

As previously stated, FPL filed its Petition For A Variance From Rule 25-17.0832(4)(e) on March 3, 1999, in conjunction with its Petition For Approval Of A Standard Offer Contract. The variance requested by FPL is for a fixed standard offer contract term of five years instead of the ten year minimum contract term required by Rule 25-17.0832(4)(e)(7), Florida Administrative Code. Notice of the variance request was published in Florida Administrative Weekly on April 23, 1999. The comment period expired on May 7, 1999. Comments in opposition to the Petition For Variance were received from the Florida Industrial Cogeneration Association on May 6, 1999. This section of the order addresses FPL's Petition For Variance, FICA's Comments on the variance request and FPL's Response To FICA's Comments.

B. FPL's Request For Variance

1. Purpose of the Underlying Statute

In its Petition For Variance, FPL identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues. According to FPL, the purpose of the statute with respect to cogeneration and small power production is to "encourage the growth of alternative competitive electrical generating facilities which would use non-traditional fuel sources for power while at the same time ensuring that electric consumers are not harmed through

the imposition of such purchase obligations." (Petition For Variance, pgs. 2-3)(*citing* H.R. Rep. No. 1750, 1978 U.S.C.C.A.N. 7797)

FPL states that its Petition For Variance will meet the underlying purpose of the statute. FPL acknowledges that the ten-year minimum standard offer contract term provides both the purchasing utility and the cogenerator a reasonable planning horizon. Notwithstanding that, FPL's position is that a five-year standard offer contract will provide economic incentive for the development of cogeneration projects and is more likely to ensure that consumers do not pay excessive costs for power purchased under the contracts. FPL opines that the ability of cogenerators to plan must be weighed against consumer protection concerns.

2. Substantial Hardship

FPL argues that a ten year contract term will create an unreasonable risk and burden for its customers. In support of its position, FPL asserts that Congress is currently considering repeal of Section 210 of PURPA and there is thus uncertainty surrounding the statutory foundation for FPL's obligations under Rules 25-17.080 through 25-17.0832, Florida Administrative Code. In addition, FPL states that any cogeneration contracted for under the standard offer contract will not defer or avoid the construction of additional generating capacity. FPL's argument appears to be that a fixed five-year standard offer contract term accomplishes the purpose of the statute to encourage cogeneration but at a lower cost to the ratepayers. With the passage of time, the cost to the ratepayers becomes a substantial hardship.

C. FICA's Comments

Florida Industrial Cogeneration Association members own and operate small qualifying facilities which generate and sell electricity in conjunction with their industrial operations. FICA advances three arguments against the five-year contract term requested by FPL. First, FICA argues that the Rule's minimum ten-year term correlates to the value of deferral pricing mechanism and is, therefore, necessary to effectuate the intent of the rule. Second, FICA opines that the purpose of the underlying statute will not be met if FPL's variance request is granted. Third, FICA states that FPL's basis for a variance request is inadequate.

1. Value Of Deferral

FICA's first argument is that the objective of the value of deferral pricing mechanism for capacity payments, a component of the standard offer rules, will not be met if standard offer contracts are limited to five years. This is so, according to FICA, because value of deferral pricing assumes that a small qualifying facility will sell capacity to the utility over the projected useful life of the utility's avoided unit. The value of deferral methodology inverts the capacity revenue stream in comparison to what the utility would receive if it constructed the avoided unit and added it to rate base. Value of deferral payments begin low and increase over time. Traditional revenue requirements begin high and decrease over time.

2. Purpose of Underlying Statute

FICA's second argument is that the purpose of the underlying statute will not be met if the five year variance is granted. The underlying statute is designed to encourage cogeneration and small power production. FPL's proposed five year fixed term guarantees less than full avoided cost payments to the cogenerator and will discourage, rather than encourage, cogeneration and small power production. "Granting the waiver (sic) sought by FPL would deny SQF's the opportunity to provide electric generating capacity to FPL. Such a result would be contrary to both Florida and Federal law which favors QFs as an alternative to the construction of generating capacity by electric utilities." (Comments, pg. 7)

3. Inadequate Basis

FICA's third argument is that FPL has not adequately pled a basis for a variance. Citing the uniqueness requirement of Section 120.542, Florida Statutes, FICA states that FPL's request is based on "vague allegations and unsubstantiated opinions". (Comments, pg. 6) If granted, FICA asserts, FPL's request would defeat the underlying statutory objective and render the standard offer rules meaningless. FICA states that FPL's petition is more in the nature of rulemaking insofar as it undermines the purpose of the rule. In sum, FICA argues that FPL's Petition For Variance should be denied because the request defeats the purpose of the statute and does not satisfy the burden of proof.

D. Analysis

1. Purpose Of The Underlying Statute

The purpose of Section 366.051, Florida Statutes, to encourage cogeneration and small power production, is express. "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state...." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Subsection 25-17.0832(4)(e)7, requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit;
>
> Rule 25-17.0832(4)(e)7, Florida Administrative Code.

The rule provides a range for the contract period tied to the plant life of the utilities' avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten year minimum contract term, while not a requirement of PURPA, was mandated by the Commission in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, the Commission addressed the issue of a ten year minimum contract term. The Commission stated:

> 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, pg. 19.

The purpose of the underlying statute is to encourage cogeneration. To promote cogeneration, investor owned utility's planned generation units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and nonutility generators. Rule 25-17.0837(1), Florida Administrative Code. The alternative provision is standard offer contracts. Insofar as cogenerators' ability to enter into negotiated contracts is unaffected by the variance request, and a cogenerator retains the ability to enter into a five year minimum standard offer contract with FPL, FPL's request for a variance appears to satisfy the underlying purpose of the statute.

2. Substantial Hardship

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological or legal hardship. The hardship demonstrated by FPL is economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred. We disagree with FICA's argument that the value of deferral payment methodology compels a minimum ten year contract term. First, value of deferral is but one of four payment methodologies provided for in Rule 25-17.0832(g), Florida Administrative Code. Second, the value of deferral payments compensates the cogenerator for the service provided. For example, if a cogenerator signed a 12 year contract, it would be paid the value of deferring construction of an avoided unit for 12 years. The cogenerator would not be paid the entire cost of the unit because of the finite term of the contract. Our current rules specify the maximum term as an option to the cogenerator with a cap on the avoided unit.

3. Inadequate Basis

FICA's argument that FPL has not demonstrated uniqueness, incorrectly applies the law of waivers and variances. Section 120.542, Florida Statutes states that when 'principles of fairness' are alleged to be violated, the petitioner must demonstrate application of the rule affects it differently than similarly situated persons subject to the rule. FPL did not allege that

principles of fairness were violated, therefore, the standard does not apply.

In sum, FPL's Petition For Variance from the minimum standard offer contract term is granted because it satisfies the mandatory, statutory requirements. FPL has demonstrated that the purpose of the underlying statute will be met if the variance is granted. This is so because cogeneration will continue to be encouraged through negotiated as well as standard offer contracts. In addition, FPL's Petition For Variance demonstrates substantial hardship to its ratepayers.

4. Conclusion

FPL's Petition For Approval of a Standard Offer Contract based on a combustion turbine unit with an in service date of 2001 is denied. The proposed Contract is not based on FPL's next avoided unit, the regulatory out clause is inappropriate. FPL is directed to revise its proposed Standard Offer Contract within 60 days of the date of our vote consistent with this order and provide a minimum two-week availability. FPL's requests for an equity adjustment and variance are granted as set forth herein. This docket shall remain open for final resolution of matters considered in sections I and II of this order. With respect to section III, this docket shall be closed if no protest is filed in accordance with the requirements set forth below.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Petition For Approval of Proposed Standard Offer Contract is denied. It is further

ORDERED that Florida Power & Light Company's Request For An Equity Adjustment is approved as set forth in the body of this order. It is further

ORDERED that Florida Power & Light Company's Request For a Variance is approved. It is further

ORDERED that Florida Power & Light Company shall submit a revised proposed standard offer contract and revised tariff sheets in accordance with this order on or before September 27, 1999. It is further

ORDERED that this docket shall remain open for final resolution of sections I and II of this order and that with respect to section III of this order, if no protest is filed in accordance with the requirements set forth below, that portion of this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of September, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RVE

SECTIONS I AND II:

NOTICE OF FURTHER PROCEEDINGS

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida

Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 23, 1999.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating 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.

SECTION III:

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 23, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating 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.

M E M O R A N D U M

SEPTEMBER 1, 1999

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (ELIAS) RVE

RE: DOCKET NO. 990249-EG - PETITION BY FLORIDA POWER & LIGHT COMPANY FOR APPROVAL OF A STANDARD OFFER CONTRACT AND REVISED COG-2 TARIFF

1713-TRN

Attached is an ORDER DENYING FLORIDA POWER & LIGHT COMPANY'S PETITION FOR APPROVAL OF STANDARD OFFER CONTRACT AND GRANTING REQUEST FOR VARIANCE to be issued in the above-referenced docket. (Number of pages in order - 18)

RVE/js
Attachment
cc: Division of Electric and Gas (Dudley, Draper)
Division of Auditing and Financial Analysis (Lester, Maurey)
I:990249or.rve

pg 1, 2, 15

2/11