

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of
a performance guaranty agreement
by Florida Power & Light
Company.

DOCKET NO. 001579-EI
ORDER NO. PSC-01-0031-TRF-EI
ISSUED: January 8, 2001

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING TARIFF

BY THE COMMISSION:

On October 20, 2000, Florida Power & Light Company (FPL) filed a Petition for Approval of a Performance Guaranty Agreement. FPL proposes to require the agreement in cases where applicants for service require a significant expansion of FPL's facilities to meet projected loads that, in FPL's estimation, are speculative and may not materialize. The Commission has jurisdiction over the subject matter pursuant to Sections 366.04 and 366.06, Florida Statutes.

Under the proposed agreement, the applicant will be required to provide a performance guaranty. If the revenues materialize as projected, FPL will refund or cancel the guaranty.

To support its petition, FPL states that it has recently received between forty and fifty requests for service from customers whose loads, if they materialize, will require a significant expansion of FPL's distribution and/or transmission facilities. The requests are from telecommunications service providers and property developers who refurbish existing facilities or build new facilities to house the electronic equipment of telecommunications service providers, Internet service providers, and web hosts. The developers prepare the sites with the intent to lease them to the service providers.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

FPL asserts that these facilities require very high electric capacity when compared to similarly situated premises used as office buildings. The proposed facilities are typically about 100,000 square feet and require up to 70 watts of billing demand per square foot. A typical commercial office building requires about 6 watts per square foot. The existing electric system is therefore often not sufficient to satisfy the electric requirements of these types of facilities.

FPL states that it has concerns that the projected load and associated revenues might not materialize in every instance. FPL believes that due to rapid growth and many participants in the evolving telecommunications services market, some of the projects will not be viable. If the projected revenues do not materialize, FPL's ratepayers will bear the cost of the significant investment made to serve the load.

For the above-stated reasons FPL is proposing to require these types of applicants to sign the Performance Guaranty Agreement. The proposed agreement will allow FPL to complete the required upgrades or expansions with assurance that FPL's general body of ratepayers will not bear the incremental costs incurred by FPL in the event the projected load does not materialize. Although FPL's proposal was prompted by the recent activity in the communications field, the agreement will be utilized for any customer that requires a significant investment by FPL and whose projected revenues are uncertain.

Under the agreement, an applicant will be required to post a performance guaranty in the form of cash, a surety bond, or a bank letter of credit. The amount of the performance guaranty is determined using FPL's estimate of the incremental costs it will incur to serve the requested capacity, multiplied by a carrying cost factor. The carrying cost factor represents the carrying cost (return, depreciation, property taxes, and insurance) to FPL over the 30-year life of the investment. We have reviewed the calculation of the carrying cost factor and believe that it is appropriate.

The incremental cost represents the difference between the cost FPL would ordinarily incur to provide service to the premises

and the cost FPL will incur to meet the requested higher level of capacity. Such incremental costs may include the upgrade to or acceleration of the in-service date of both transmission and distribution facilities.

To illustrate, if an existing structure has in place facilities to supply 8 watts per square foot (baseline capacity), and the applicant for service requests 50 watts per square foot, then the performance guaranty will be based only on the cost to provide the incremental capacity of 42 watts per square foot. In the case of a new structure, FPL will determine the amount of capacity that would be typical for a commercial customer in that location. The performance guaranty calculation will be based on the difference between the capacity requested and the typical capacity.

During the 3-year term of the agreement, FPL will compare the "incremental base revenues" collected from the customer to the performance guaranty amount. Incremental base revenues are the difference between the actual revenues received (base revenues) and those revenues FPL would have received from a more typical customer (baseline base revenues).

If during the three-year period the total incremental base revenues received equal or exceed the performance guaranty amount posted, then FPL will refund the total amount of the cash to the customer. If the customer has posted a surety bond or letter of credit, the bond or letter credit will be released or canceled.

At the end of the three-year period, if the total incremental base revenues received are less than the performance guaranty amount posted, then a settlement will be made. At that time, the customer who posted a cash guaranty will receive a refund equal to the amount of the incremental base revenues paid during the three-year period. The remaining balance of the cash performance guaranty is retained by FPL.

Customers who provided a letter of credit or surety bond, will be required to pay FPL an amount equal to the difference between the performance guaranty and incremental base revenues paid during the three-year period.

The proposed Performance Guaranty Agreement is appropriate because it provides protection for FPL's general body of ratepayers in the event that the projected loads of customers do not materialize. Such protections are similar to those provided for pursuant to Rule 25-6.064, Florida Administrative Code, which applies to customers who require an extension of the utility's distribution facilities in order to receive service. Such customers are required to pay a contribution in aid of construction (CIAC) to help offset the extension cost.

Such situations are addressed in Section 2.2 of FPL's General Rules and Regulations for Electric Service, entitled *Availability of Service*. This Commission-approved tariff provision allows FPL to require an applicant for service who requires an extension of FPL's facilities to provide a guaranty, a CIAC calculated pursuant to Commission rules, and/or advances for construction when in FPL's opinion the potential revenues do not justify the cost of the extension. It also provides for a contract minimum monthly payment by the customer when there is doubt as to the level or length of use of the facilities. The underlying purpose of this provision is to ensure that ratepayers are not unduly burdened with the expense of facilities that are not fully utilized.

Unlike a CIAC, the proposed Performance Guaranty Agreement allows the applicant for service to receive a full or partial refund of the performance guaranty if the projected load and revenues are realized. When meeting with potential customers, it is FPL's intent to provide analyses demonstrating the level of load that must materialize over the three-year period in order to offset the performance guaranty. FPL believes that the agreement provides an incentive to the applicant to correctly identify the level of service needed. Our review of sample analyses provided by FPL indicates that if the projected loads of these types of customers do materialize, they most likely will receive a full refund of the performance guaranty.

While we believe that FPL's proposed agreement is appropriate, we are concerned that the agreement includes no precise mechanism for determining when a performance guaranty will be required from a customer. Deciding when to require a performance guaranty is left entirely to FPL's discretion. For this reason, FPL's use of

the agreement should be monitored for a minimum of two years.

To monitor the application of the tariff, FPL shall file with the Commission monitoring reports that include the following information: 1) for each agreement executed, FPL shall provide the amount of the performance guaranty requested and the total projected and achieved revenues for a 3-year period, and 2) for all telecommunications and internet service providers, or similar customers, who request service which requires a significant upgrade of existing facilities as envisioned under the tariff language, and who were not required to execute an agreement, FPL shall provide an explanation as to why the applicant was not required to sign the agreement. The purpose of the second filing requirement is to ensure that all similarly situated customers are being treated fairly.

The first monitoring report shall contain data from the first 6 month period that the tariff is effective, and the report shall be submitted no later than July 31, 2001. The second monitoring report shall contain data from the second six month period that the tariff is effective, and the second report shall be submitted no later than March 1, 2002. The third monitoring report shall contain data from the second one-year period that the tariff is effective, and the report shall be submitted no later than March 1, 2003.

In summary, the we find that FPL's proposed Performance Guaranty Agreement should assure that the general body of ratepayers will not be burdened with an investment in facilities that are not needed, and will provide incentive to customers to realistically estimate their need for electric service. The Performance Guaranty Agreement is therefore approved. The tariff shall become effective on December 19, 2000.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Performance Guaranty Agreement proposed by Florida Power & Light is approved. It is further

ORDERED that monitoring reports shall be submitted as described in the body of this Order. It is further

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ORDERED that if a protest is filed within 21 days of issuance of the Order, the tariff shall remain in effect with any charges held subject to refund pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 8th Day of January, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

MKS

DISSENT

Commissioner Jaber dissents.

I respectfully dissent from the majority opinion.

I have no argument with the notion that investment advanced by the utility should not become stranded by an overly optimistic commercial customer, who first demands service -- and its attending investment -- only to evaporate when its market fades away or it meets with other economic misfortune. Most importantly, this should not happen at the expense of residential retail customers.

However, I believe that we as regulators also have a responsibility to ensure that service is provided and priced without undue discrimination. I believe that the performance guaranties tendered by Florida Power & Light (FPL), and approved by

the majority, lack criteria which would ensure nondiscriminatory application to similarly situated customers. In fact, it could be argued that the majority has, to an admittedly mild extent, delegated its discretion to FPL to privately decide which of its customers are subject to performance guaranties, and perhaps to what extent.

Moreover, we state regulators are expected by both state and federal authorities to encourage the deployment of advanced telecommunications capability. It is apparent to me that to permit FPL to consult their own unpublished criteria (if any) as to who pays a performance guaranty includes no assurance that FPL's actions will result in competition neutral decisions with respect to that issue.

With appropriate inclusion of criteria ensuring nondiscriminatory application of performance guaranties, I could enthusiastically support the measure, perhaps even to the extent of requiring other electric utilities over which we exercise jurisdiction to follow suit.

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.

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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 January 29, 2001.

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.