

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of appropriate cost recovery amounts for the purchased power contract between AES Cedar Bay and Florida Power & Light Company.

DOCKET NO. 991780-EI
ORDER NO. PSC-01-2283-FOF-EI
ISSUED: November 20, 2001

The following Commissioners participated in the disposition of this matter:

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

ORDER CLOSING DOCKET

BY THE COMMISSION:

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

Cedar Bay began to dispute the manner in which its facility was being dispatched by FPL. FPL's dispatch resulted in a reduction in Cedar Bay's capacity and energy payments. In response, Cedar Bay filed suit claiming breach of contract in the Fourth Judicial Circuit Court in Duval County, Florida (Circuit Court). On September 7, 1999, the Circuit Court ruled that FPL had

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breached the Contract with Cedar Bay by failing to make proper capacity and energy payments as a result of FPL's dispatch decisions. The Circuit Court awarded Cedar Bay approximately \$18.5 million in damages, consisting of approximately \$13.4 million in lost capacity payments and approximately \$5.1 million in lost energy payments. In October, 1999, FPL appealed the Circuit Court's decision to the First District Court of Appeal (First DCA).

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

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

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

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

After determining that it would not be successful in appealing the \$5.1 energy payment claim, FPL dropped the appeal and paid

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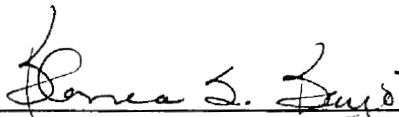
Cedar Bay the energy payment portion of the judgment, with statutory interest, in April, 2000. In October, 2000, the First DCA denied FPL's capacity payment appeal without opinion. FPL's motion for a rehearing was denied in December, 2000, thus making the capacity payment judgment final and non-appealable. FPL paid Cedar Bay the \$13.4 million capacity payment claim, with statutory interest, on January 19, 2001.

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

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this docket be closed.

By ORDER of the Florida Public Service Commission this 20th day of November, 2001.



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

(S E A L)

LHD

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.