

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of  
standard offer contract based on  
2005 combined cycle avoided unit  
and accompanying Rate Schedule  
COG-2, by Florida Power  
Corporation.

DOCKET NO. 020295-EQ  
ORDER NO. PSC-02-0909-PAA-EQ  
ISSUED: July 8, 2002

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING RULE WAIVER AND APPROVING PETITION  
FOR STANDARD OFFER CONTRACT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On April 2, 2002, Florida Power Corporation (FPC) filed a  
Petition for Approval of a Standard Offer Contract and associated  
tariffs. The proposed contract subject to this petition is based  
on a 20 Megawatt (MW) portion of FPC's next planned capacity  
addition, Hines 3, a 530 MW combined cycle unit with a scheduled  
in-service date of December 1, 2005.

Concurrent with the filing of this petition, FPC also filed  
petitions for waiver of the requirements of Rule 25-17.0832(4)(e)7,

DOCUMENT NUMBER 020295-EQ

06933 JUL-8 2002

FPSC-COMMISSIONER CLERK

and Rule 25-17.0832(4)(e)5, Florida Administrative Code. Rule 25-17.0832(4)(e)7, Florida Administrative Code, requires standard offer contracts to have a minimum term of ten years. The term of FPC's proposed standard offer contract is five years. Rule 25-17.0832(4)(e)5, Florida Administrative Code, requires that a standard offer contract's open solicitation period must end prior to the issuance of a request for proposal (RFP) pursuant to Rule 25-22.082, Florida Administrative Code. This rule is often referred to as the Commission's "bidding rule."

Pursuant to Section 120.542(6), Florida Statutes, notice of FPC's Petitions was submitted to the Secretary of State for publication in the April 19, 2002, Florida Administrative Weekly. The 14-day comment period provided by Rule 28-104.003, Florida Administrative Code, expired on May 3, 2002. No comments concerning these petitions for waiver were filed.

This Order addresses both the petition for approval of the proposed standard offer contract and the requested rule waivers. We are vested with jurisdiction over these matters by Section 120.542, Florida Statutes, as well as by several provisions of Chapter 366.06, Florida Statutes, including Sections 366.04, 366.05, 366.051, 366.06, and 366.80-.82, Florida Statutes.

I. Waiver of Rule 25-17.0832(4)(e)7, Florida Administrative Code

A. Standard for Approval

Section 120.542, Florida Statutes, 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.

B. FPC's Petition for Waiver

The waiver requested by FPC is to allow for a standard offer contract term limited to five years instead of the ten year minimum contract term required by rule 25-17.0832(4)(e), Florida Administrative Code.

1. Purpose of the Underlying Statute

In its Petition For Waiver, FPC identifies the underlying statute implemented by the rule as Section 366.051, Florida Statutes. According to FPC, the purposes of the statute, and the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA), are to promote the growth of alternative generating facilities, with the express limitation that electric customers should not pay more for power than they otherwise would.

FPC states that its Petition For Waiver will meet the purpose of the statute. FPC asserts that the standard offer contract will provide economic incentive for the development of the type of projects contemplated by the statute. FPC further asserts that new technologies and other factors may lower FPC's costs over the coming years. Limiting the term of the Standard Offer to five years gives FPC the opportunity to revisit the issue of its avoided cost and take advantage of lower cost for the benefit of its ratepayers prior to passage of a full ten years.

2. Substantial Hardship

FPC states that strict adherence to the ten-year term provided for in the Commission's rules would create a substantial hardship on FPC and its ratepayers by raising the price that would otherwise be paid for electricity.

C. Analysis

The purpose of Section 366.051, Florida Statutes, which is to encourage cogeneration and small power production, is expressed in the Statute as follows: "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.

The above 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 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, we addressed the issue of a ten year minimum contract term. That Order 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 statute underlying Rule 25-17.0832(4)(e), Florida Administrative Code, is to encourage cogeneration. Investor-owned utilities' 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 non-utility generators by 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 waiver request, and because a cogenerator retains the ability to enter into a five year standard offer contract with FPC, FPC's request for a waiver satisfies the underlying purpose of the statute.

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological, or legal hardship. Purchases made by FPC pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of its proposed avoided unit, the 2005 CC. This is due to the subscription limit being 20 MW of a 500 MW unit. Thus, FPC has demonstrated in this case that application of the rule would create an economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred.

In addition, we note that there have been other requests for waiver of the ten year minimum contract requirements of Rule 25-17.0832(4)(e), Florida Administrative Code, which we have granted, on substantially the same grounds asserted by FPC in this docket:

1. Order No. PSC-99-1713-TRF-EG, issued on September 2, 1999, in Docket No. 990249-EG granted Florida Power and Light Company (FPL) a variance of this rule.

2. Order No. PSC-00-0265-PAA-EG, issued on February 8, 2000 in Docket No. 991526-EQ granted FPC a waiver of this rule. In this Order, we also directed staff to initiate a rulemaking proceeding to amend Rule 25-17.0832(4)(e)(7), Florida Administrative Code, to amend the contract term provision of the rule. (Hearing currently planned for October, 2002).
3. Order No. PSC-00-0504-PAA-EQ, issued on March 7, 2000, in Docket No. 991973-EQ granted FPC a waiver of this rule.
4. Order No. PSC-00-1748-PAA-EI, issued on September 26, 2000, in Docket No. 000868 granted FPL Company a waiver of this rule.
5. Order No. PSC-00-1773-PAA-EQ, issued on September 27, 2000, in Docket No. 000684 granted Tampa Electric Company (TECO) a waiver of this rule.

FPC's present petition for waiver from the minimum standard offer contract term satisfies the statutory requirements for a rule waiver. FPC has demonstrated that the purpose of the underlying statute will be met if the waiver is granted. This is so because cogeneration will continue to be encouraged through negotiated as well as standard offer contracts. In addition, FPC's Petition for waiver demonstrates that substantial hardship to its ratepayers would result from application of the rule.

For these reasons, we approve FPC's petition for a waiver of Rule 25-17.0832(4)(e)7, Florida Administrative Code.

## II. Waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code

### A. Standard for Approval

FPC also requested a waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code, which requires that the open solicitation period for a utility's standard offer contract must terminate prior to its issuance of a notice of Request for Proposal (RFP) based on the standard offer contract's avoided unit.

As discussed previously, FPC must demonstrate that the purposes of the underlying statute will be met, and that

application of the rule either creates a substantial hardship or violates principles of fairness.

B. FPC's Petition for Waiver

1. Purpose of the Underlying Statute

In its Petition For Waiver, FPC identifies the underlying statute implemented by the rule as Section 366.051, Florida Statutes, the purpose of which is to encourage cogeneration while at the same time protecting ratepayers from potential adverse effects. According to FPC, the purpose of the statute will not only be achieved, but enhanced by the requested waiver of the rule's standard offer closure provision.

2. Substantial Hardship

FPC states that strict adherence to the closure provision would create a substantial hardship on FPC and its ratepayers. FPC's waiver request is intended to protect FPC and its ratepayers from potential adverse effects of the rule.

C. Analysis

Rule 25-17.0832(4)(e)5, Florida Administrative Code, implements Section 366.051, Florida Statutes, the purpose of which is to encourage cogeneration and small power production. Pursuant to the Rule, each standard offer contract shall, at minimum, specify:

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.

We agree that the purpose of the underlying statute will be enhanced by the requested waiver because it will eliminate a limitation on the availability of a standard offer contract to cogenerators. The waiver will enable the standard offer to remain in effect and available to cogenerators while the RFP process is

underway, a situation that would be impermissible under the rule sought to be waived.

Further, we agree that allowing the issuance of the RFP at the same time as the open solicitation period will satisfy the underlying purposes of the statute by encouraging small qualifying facilities (QF). FPC has stated that recent revisions to the cogeneration rules focus the rules more closely upon QFs less than 0.1 MW. Therefore, neither FPC nor its ratepayers will be at a disadvantage if FPC issues a RFP for Hines Unit 3 while the standard offer contract is outstanding.

We also agree with FPC in that the timely completion of the RFP process is a key milestone in the schedule to place this 500 MW capacity addition in service by December, 2005, and be available to meet the ensuing 2005/2006 winter peak demand period. Delaying the completion of the RFP process until after the standard offer has been approved and open solicitation period has expired would significantly impair FPC's ability to satisfy its 20% reserve margin responsibilities within this important reliability time frame. Such an impairment to the reliability of FPC's generation resources would create a real and substantial hardship on FPC and its customers.

We agree that if the waiver is not granted, FPC's efforts to meet the new 20% reserve margin would be frustrated. On November 30, 1999, we approved an agreement between FPC, FPL, and TECO adopting a 20% reserve margin planning criterion starting in the summer of 2004. A delay in the RFP process could seriously jeopardize FPC's ability to bring Hines 3 on line by the December, 2005, in-service date.

Finally, we note that by Order No. PSC-00-0504-PAA-EQ, issued March 7, 2000, in Docket No. 991973-EQ, we granted a requested waiver of the rule's standard offer closure requirement and approved the contract's open solicitation period that ran concurrent with the RFP process conducted for Hines 2 self-build option. The request granted was on substantially the same grounds asserted by FPC in this docket. FPC's petition satisfies the statutory requirements for a rule waiver. FPC has demonstrated that the purpose of the underlying statute will be met if the waiver is granted. This is so because the requested waiver will



eliminate a limitation on the availability of a standard offer contract to cogenerators. In addition, FPC's Petition for waiver will remove the impairment to the reliability of FPC's generation resources, thus eliminating a substantial hardship to its ratepayers that would have result from application of the rule.

For these reasons, we approve FPC's petition for a waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code.

### III. Petition for Approval of New Standard Offer Contract

Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CAR 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. We are 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.

We implemented these federal and state requirements through our adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file with the Commission a tariff and a Standard Offer Contract for the purchase of firm capacity and energy from small QFs. These provisions implement the requirements of the PURPA and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger QFs and other non-utility generators may participate in a utility's RFP process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, FPC proposed a Standard Offer Contract based on a Combine Cycle (CC) unit with an in-service date of December 1, 2005, as its avoided unit. Specifically, the Contract is based on a 20 MW portion of a 530 MW CC unit. FPC has also proposed an associated tariff, COG-2 (firm capacity and energy). This tariff would expire on the earlier of the date the subscription limit (20 MW) is fully

subscribed, or two weeks after approval of this standard offer by this Commission.

We believe that FPC's evaluation criteria will be readily understandable to any developer who signs FPC's Standard Offer Contract. The avoided unit cost parameters appear to be reasonable for a CC unit, and the resulting capacity payments are appropriate. The performance provisions include dispatch and control, and on-peak performance incentives.

Given that the subscription limit of FPC's avoided unit is only a portion of its total capacity, purchases made by FPC pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of the 2005 CC unit. If FPC enters into Standard Offer Contracts, but the need for the 2005 CC unit is not deferred or avoided, FPC will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of state regulations discussed above may result in a subsidy to the QFs. We note, however, that the potential subsidy could be mitigated, as FPC may have opportunities to sell any surplus capacity to the wholesale market.

Ideally, QFs should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, QFs are given some preferential treatment. We have minimized this unequal footing by requiring Standard Offer Contracts only for small fossil fueled QFs, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement due to their size or timing. Thus, our rules balance market imperfections with the existing policy of promoting QFs.

In summary, we do not expect that FPC's proposed Standard Offer Contract will result in the avoidance of its proposed avoided unit, a 2005 CC. Nonetheless, FPC's proposed contract and tariff comply with our cogeneration rules. For this reason, we approve FPC's Petition to Establish its New Standard Offer Contract and associated tariffs.

Since it would not be reasonable to have this tariff go into effect if the waiver portions of this Order were protested, the tariff shall not be effective if a protest is filed. If there is

ORDER NO. PSC-02-0909-PAA-EQ  
DOCKET NO. 020295-EQ  
PAGE 11

no protest by a substantially affected person to the portion of the order approving the contract or the waivers, FPC's proposed Standard Offer Contract shall become effective upon the issuance of a Consummating Order for the waiver portions of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition of Florida Power Corporation for waiver of Rule 25-17.0832(4)(e)7, Florida Administrative Code, is hereby granted. It is further

ORDERED that the Petition of Florida Power Corporation for waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code, is hereby granted. It is further

ORDERED that Florida Power Corporation's Petition for Approval of a Standard Offer Contract is approved. It is further

ORDERED that the tariff for the Standard Offer Contract shall become effective upon the issuance of a Consummating Order in this docket. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

ORDER NO. PSC-02-0909-PAA-EQ  
DOCKET NO. 020295-EQ  
PAGE 12

By ORDER of the Florida Public Service Commission this 8th day  
of July, 2002.



---

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

( S E A L )

LAH

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.

ORDER NO. PSC-02-0909-PAA-EQ

DOCKET NO. 020295-EQ

PAGE 13

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 29, 2002.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.