

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of changes to existing performance guaranty agreement and for approval of a second performance guaranty agreement, by Florida Power & Light Company.

DOCKET NO. 031074-EI
ORDER NO. PSC-04-0406-TRF-EI
ISSUED: April 19, 2004

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING CHANGES TO EXISTING PERFORMANCE GUARANTEE
AGREEMENT AND APPROVING AN ADDITIONAL PERFORMANCE GUARANTEE
AGREEMENT

BY THE COMMISSION:

BACKGROUND

On November 25, 2003, Florida Power & Light Company (FPL) filed a petition for approval of changes to its existing Performance Guaranty Agreement tariff and for approval of a new Performance Guaranty Agreement tariff. By Order No. PSC-04-0126-PCO-EI, issued February 9, 2004, we suspended implementation of the proposed tariffs to review the proposals more thoroughly. Based on that review, for the reasons explained below, we approve the changes to FPL's existing agreement, and we approve the new agreement subject to the conditions FPL proposed at our March 30, 2004, Agenda Conference. We have jurisdiction over this matter pursuant to Sections 366.04 and 366.05, Florida Statutes.

DECISION

The existing Performance Guaranty Agreement

We approved FPL's existing Performance Guaranty Agreement tariff in Order No. PSC-01-0031-TRF-EI, issued January 8, 2001, in Docket No. 001579-EI, In re: Petition for Approval

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of a Performance Guaranty Agreement by Florida Power & Light Company (PGA). It applies to applicants for electric service that require a significant expansion of FPL's facilities to meet projected loads that in FPL's opinion are speculative and may not materialize. The purpose of the PGA is to ensure that the general body of ratepayers is held harmless in the event that a customer's load fails to meet projections, and therefore fails to produce revenues sufficient to offset the cost of the system expansion. If revenues materialize as projected, FPL refunds or cancels the guaranty. Under the agreement, the applicant is required to post a performance guaranty in the form of cash, a surety bond, or 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 of 1.51. 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.

During the three-year term of the agreement, FPL compares the incremental base revenues received from the customer to the performance guaranty amount. Incremental base revenues are the difference between the actual revenues received and those revenues FPL would have received from a more typical customer. If during the three-year period the total incremental base revenues received equal or exceed the performance guaranty amount posted, FPL refunds the total cash guaranty amount to the customer. If the customer has posted a surety bond or letter of credit, the bond or letter of credit is released or canceled. If at the end of the three-year period the total incremental base revenues received are less than the performance guaranty amount, the customer receives a refund equal to the amount of incremental base revenues paid, and FPL retains the remaining balance.

We approved the initial PGA tariff with the condition that FPL file status reports for a two-year period. We believed that the PGA was appropriate to insure that the general body of ratepayers would not be burdened with an investment in facilities that were not needed, but we were also concerned that the agreement included no precise mechanism for determining when a performance guaranty would be required from a customer. The status reports were a means to monitor the application of the tariff. FPL filed its final status report on March 4, 2003. The report shows that for the period December 2000 through March 2003, FPL requested agreements from six applicants. Three applicants did not sign the agreement. The remaining three signed an agreement with FPL for a combined PGA amount of \$1.1 million. Of the three applicants, one filed for bankruptcy after signing the agreement and FPL retained the amount of the guaranty (\$687,882). Another fulfilled the terms of the agreement and the guaranty was released. The third applicant still has a few months remaining under the agreement.

FPL has proposed three minor modifications to its existing PGA tariff. First, FPL has proposed to rename the tariff "Performance Guaranty Agreement for Incremental Capacity" to distinguish the existing tariff from the proposed new PGA tariff. Second, FPL has proposed to include in the calculation of incremental base revenues any facilities rental revenues received from the customer. Currently, the calculation of incremental base revenues includes only the applicable base demand and non-fuel energy charges. Facilities rental charges apply to

customers that require FPL to provide and maintain transformers and other facilities beyond the point of delivery. Finally, FPL has included a provision whereby, if a customer elects to post a cash deposit, FPL will reduce the performance guaranty cash balance on a monthly basis and credit the applicant's monthly electric bill by the amount of the incremental base revenues received. Under the current tariff, customers must wait until the end of the three-year period to receive credit for revenues received.

We find that FPL's proposed changes to the existing PGA tariff are reasonable and therefore we approve them.

The new Performance Guaranty Agreement

The proposed new PGA tariff would apply to customers who request electric facilities that would not likely be required by other customers within five years following the date of the requested system expansion. More specifically, FPL has proposed to require the new agreement in cases where applicants for service request transmission or distribution facilities that, in FPL's opinion, due to their location, voltage, or other characteristics, are not likely to be required by other customers. FPL states that an example of such facilities are specially-sized transformers that cannot generally be used by other customers. Another example is a system expansion at a previously undeveloped site where the new facilities are likely to be required only by the applicant for a substantial period of time.

As discussed above the existing PGA tariff applies to applicants that require a significant expansion of electric facilities, i.e., a level of capacity that is not typically required for that type of building or premises, to meet projected loads that, in FPL's opinion, are speculative and may not materialize. The performance guaranty amount is based on the incremental cost to serve the requested capacity. The proposed new PGA tariff would apply to applicants requesting facilities that, due to their location, voltage, or other characteristics, are not likely to be required by other customers. In these circumstances, if the projected load does not materialize, FPL may not fully recover its investment.

Like the existing PGA tariff, an applicant will be required to post a performance guaranty in the form of cash, a surety bond, or a bank letter of credit. FPL determines the amount of the performance guaranty by estimating the cost of the requested system expansion that is at risk of not being recovered, minus any Contribution in Aid of Construction (CIAC) paid by the applicant. After subtracting the CIAC amount from the estimated cost of the system expansion, the remaining amount is multiplied by a carrying cost factor of 1.51. The carrying cost factor represents the carrying cost (return, depreciation, property taxes, and insurance) to FPL over the 30-year life of the investment and is identical to the factor in the existing PGA tariff. The CIAC amount is calculated pursuant to Rule 25-6.064, Florida Administrative Code, which applies to customers who require an extension of the utility's facilities in order to receive service. The customers are required to pay a CIAC to help offset the extension cost.

During the three-year term of the agreement, FPL will compare the base revenues received from the customer to the performance guaranty amount. Base revenues include the applicable demand and non-fuel energy charges, and facilities rental charges, if applicable. If during the three-year period the total base revenues received equal or exceed the performance guaranty amount posted, and the customer has posted a surety bond or letter of credit, the bond or letter of credit will be released or canceled. If the customer pays the performance guaranty in cash, FPL will reduce the cash balance on a monthly basis by the amount of the previous month's base revenue charges and credit the same amount to the applicant's previous monthly bill. If at the end of the three-year period the base revenues received are less than the performance guaranty amount posted, then an adjustment will be made. 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 base revenues paid during the three-year period. If a customer posted a cash guaranty, FPL will retain the remaining balance of the performance guaranty.

FPL states that it expects to use the new PGA tariff only in rare and unusual circumstances. FPL further states, however, that projects have been presented to FPL that required a mechanism to protect the general body of ratepayers from the risk of unusual construction projects with unsupported revenue streams. We find that the proposed new PGA tariff is appropriate because it provides protection for FPL and its general body of ratepayers in the event that the projected revenues of customers do not materialize. This protection is similar to that provided pursuant to Rule 25-6.046, Florida Administrative Code, which requires customers to pay a CIAC to offset the cost of new facilities. Unlike the CIAC, however, the proposed new PGA allows the applicant for service to receive a full or partial refund of the performance guaranty if the projected load and revenues are realized.

We do have the same concern that we had with the first PGA; the agreement does not include a precise mechanism for determining when a performance guaranty would be required from a customer. FPL states that an internal management review will be conducted to ensure that the agreement will only be used as appropriate. Since the decision on when to require a performance guaranty is left entirely to FPL's discretion, however, we believe that the Commission should monitor FPL's application of the tariff. We will require FPL to file annual status reports that include the following information; for each agreement requested from an applicant, FPL should provide an explanation of why the agreement was requested, the amount of the performance guaranty requested, whether the applicant agreed to sign the agreement, and the total achieved base rate revenues. The first report should contain data from the first 12-month period that the tariff is effective, and should be submitted 30 days after the end of the 12-month period. At our March 30, 2004, Agenda Conference, FPL also stated it would implement the tariff for a three-year period and the tariff would expire for new customers at the end of that time. This limitation will allow FPL and the Commission to evaluate the need for the new PGA tariff and the criteria for its application.

ORDER NO. PSC-04-0406-TRF-EI
DOCKET NO. 031074-EI
PAGE 5

For the reasons discussed above, and with the conditions discussed above, we approve FPL's proposed new PGA tariff.

It is therefore

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's petition for approval of changes to existing performance guaranty agreement and for approval of a second performance guaranty agreement is granted. It is further

ORDERED that Florida Power & Light Company shall file status reports annually as described in the body of this order. It is further

ORDERED that this Order approving the performance guaranty agreement tariffs shall become final 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

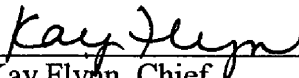
ORDERED that these tariffs shall be effective as of March 30, 2004. If a protest is filed within 21 days of the issuance of this Order, the tariffs shall remain in effect, with any revenues held subject to refund, pending resolution of the protest. It is further

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

By ORDER of the Florida Public Service Commission this 19th day of April, 2004.

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

By:



Kay Flynn, Chief
Bureau of Records

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ORDER NO. PSC-04-0406-TRF-EI
DOCKET NO. 031074-EI
PAGE 6

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 10, 2004.

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.