

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for expansion of electrical cogeneration power plant in Palm Beach County by Florida Power & Light Company and New Hope Power Partnership.

DOCKET NO. 040766-EI

In re: Petition for approval of as-available energy purchase agreement between Florida Power & Light Company and New Hope Power Partnership.

DOCKET NO. 040767-EI

ORDER NO. PSC-04-1105A-FOF-EI

ISSUED: November 18, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

APPEARANCES

CHARLES A. GUYTON, ESQUIRE, Steel Hector & Davis LLP, 215 S. Monroe St., Suite 601, Tallahassee, FL 32301

ROBERT SCHEFFEL WRIGHT, ESQUIRE, Landers and Parsons, 310 West College Avenue, Tallahassee, FL 32301

JENNIFER S. BRUBAKER, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850

AMENDED FINAL ORDER GRANTING DETERMINATION OF NEED

BY THE COMMISSION:

On November 8, 2004, Final Order No. PSC-04-1105-FOF-EI issued granting both a petition for determination of need for expansion of an electrical cogeneration power plant in Palm Beach County, and a petition for approval of as-available energy purchase agreement by Florida Power & Light Company (FPL) and New Hope Power Partnership (New Hope). Several minor errors were subsequently identified, and the Order is hereby amended and reissued as set forth herein.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On July 21, 2004, pursuant to Section 403.519, Florida Statutes, and Rule 25-22.081, Florida Administrative Code, FPL and New Hope petitioned the Commission to determine the need for a proposed expansion to an existing electrical cogeneration power plant in Palm Beach County. Also on that date, FPL filed a Petition for approval of an as-available energy agreement with New Hope. The two dockets were consolidated by Order No. PSC-04-0748-PCO-EI, issued on August 4, 2004.

The project at issue is a proposed expansion of New Hope's existing, 74.9 megawatt (MW) biomass-fueled Okeelanta cogeneration plant, that generates electricity and steam from the combustion of biomass fuels. The project is expected to generate between 150,000 megawatt-hours (MWH) and 190,000 MWH of net electrical energy per year, which New Hope will sell at wholesale primarily to FPL and to other Florida utilities with responsibility for serving retail customers. New Hope and FPL executed an associated power purchase agreement pursuant to which New Hope will sell seventy percent of the project's energy output to FPL at a one percent discount from FPL's avoided cost, calculated pursuant to Commission Rule 25-17.0825(2), Florida Administrative Code, for an initial period of five years with mutual renewal options for up to an additional fifteen years. The project is projected to achieve commercial operation status by June 2006.

In accordance with Section 403.519, Florida Statutes, Docket 040766-EI was established to determine whether the proposed Okeelanta Cogeneration Expansion meets the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, whether the proposed plant is the most cost-effective alternative available, whether there are any conservation measures that can mitigate the proposed power plant, and any other matters within the Commission's jurisdiction that it deems relevant. Docket 040767-EI was established to consider approval of the contract for sale of as-available energy to FPL, associated with the petition for determination of need. By Order No. PSC-04-0754-PCO-EI, issued August 4, 2004, a procedural schedule was established for this docket and a hearing was set for October 15, 2004.

At the hearing, the parties presented a series of stipulations which serve to address each of the issues that had been identified for hearing. We have reviewed the stipulations proposed by the parties, and find that they are appropriate based on the record development of this docket, and that they provide a reasonable resolution of the outstanding issues regarding FPL and New Hope's petitions. We therefore approve the stipulations, set forth below:

1. Although FPL does not have a reliability need, as this criterion is used in Section 403.519, Florida Statutes, FPL and its customers have an economic need for the New Hope Project. FPL's purchase of as-available energy will provide no reliability benefit from a planning perspective, but the existence of this as-available energy source may, under certain operational circumstances, enhance FPL system reliability by increasing fuel and geographic diversity of generating resources.

2. There is a need for the proposed New Hope Project, taking into account the need for adequate electricity as a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes. FPL and its customers have an economic need for the energy to be produced by the Project and sold pursuant to the Agreement. Every kWh of energy purchased from the New Hope Project by FPL under the Agreement will be at a discount to the price FPL would otherwise be obligated to pay New Hope for as-available energy, which also provides a discount to FPL and FPL's customers from the cost that FPL would otherwise incur to generate or purchase such energy. Thus, purchases from the Project under the Agreement directly benefit FPL customers by lowering their cost of electricity.
3. The proposed New Hope Project is the most cost-effective alternative available, as this criterion is used in Section 403.519, Florida Statutes. Each kWh provided under the Agreement will be at a discount to FPL's as-available energy rate, which is the cost that FPL would otherwise incur to generate or purchase such energy. Therefore, every kWh purchased under the Agreement is cost-effective. There is no other known source of as-available energy available to FPL at such a discounted price. FPL projects that purchases under the Agreement will save FPL customers almost \$200,000 over the initial five-year term of the contract.
4. There are no conservation measures reasonably available to FPL which might mitigate the need for the proposed new Hope Project. FPL has already captured or identified the reasonably achievable, cost-effective DSM on its system, and FPL's as-available energy tariff assumes the implementation of that cost-effective DSM. Therefore, there is no other DSM available that would mitigate the need for the energy to be purchased from the New Hope Project under the Agreement.
5. The Agreement For The Purchase Of As-Available Energy From New Hope by FPL, filed on January 21, 2004, should be approved. The Agreement satisfies all requirements of Chapter 366, Florida Statutes, relating to the reasonableness and prudence of costs, as well as the requirements of the Commission's Cogeneration Rules, specifically Rule 25-17.0825, F.A.C. In approving the Agreement, the Commission should make the following findings necessary for the contract to become effective: (a) the Agreement is reasonable, prudent, and in the best interest of FPL's customers; (b) the payments under the Agreement are not reasonably projected to result in higher cost electric service to FPL's customers or adversely affect the adequacy or reliability of electric service to FPL's customers; and (c) FPL may recover from its customers all payments for energy purchased pursuant to the Agreement.
6. If there is no timely request for reconsideration or appeal, this docket should be closed.

In addition to the stipulations approved above, we note, based upon the record development of this docket, that the proposed generation expansion will provide as-available

energy rather than capacity; therefore it does not offer a reliability benefit from the perspective of meeting system demand. Nonetheless, under certain operational circumstances, the existence of this as-available energy source may enhance the system reliability for FPL. By year 2007, FPL forecasts indicate that peak energy needs will occur in the summer season. As the new Hope Project is planned, the energy would be available in the season when it will be most needed.

Further, this project appears to be a positive response to legislatively recognized needs: to promote the use of renewable resources, to promote use of cogeneration technologies, and to conserve the use of expensive primary energy resources. The proposed project will provide power to FPL and FPL's customers at a cost below what it would otherwise cost FPL to generate or purchase that same power. The cost for each kWh (provided under the contract for sale of energy to be generated by this expansion project) will be at a discount to FPL's as-available energy rate, which is itself the lowest cost that FPL would incur to generate or otherwise purchase that same energy. As-available energy rate is calculated with all reasonably achievable, cost effective demand side management included. Therefore, because a discount is cost effective when compared to the as-available rate, it is even more cost effective than any demand side management beyond that which is already implemented.

The agreement satisfies the requirements of Chapter 366, Florida Statutes, as to reasonableness and prudence of costs, as well as this Commission's Cogeneration Rules, 25-17.0825, Florida Administrative Code. In accordance with the stipulations approved herein, we find that the agreement for the purchase of as-available energy from New Hope by FPL is reasonable, prudent, and in the best interest of FPL's customers; that the payments under the agreement are not reasonably projected to result in higher cost electric service to FPL's customers or adversely affect the adequacy or reliability of electric service to FPL's customers; and that FPL may recover from its customers all payments for energy purchased pursuant to the Agreement.

Based on the resolution of factual issues and our approval of the stipulations, we find it is reasonable and in the public interest to grant the petitions for determination of need for the Okeelanta Expansion and for approval of the Agreement for Purchase of As-Available Energy. This order constitutes our final agency action and report as required by Section 403.507(2)(a)2, Florida Statutes, and as provided for in Section 403.519, Florida Statutes.

We note that our approval of these stipulations is based on the stipulated record in this case, and that our decision herein is not intended to bind future Commissions to follow any particular methodology in evaluating future need applications.

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Based on the foregoing, it is

ORDERED that Order No. PSC-04-1105-FOF-EI is amended and reissued as set forth herein. It is further

ORDERED by the Florida Public Service Commission that the stipulations proposed at the October 15, 2004, hearing are approved as set forth in the body of this Order. It is further

ORDERED that Florida Power & Light Company and New Hope Power Partnership's petition for determination of need for expansion of electrical cogeneration power plant in Palm Beach County, and petition for approval of as-available energy purchase agreement, are hereby granted. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all outstanding issues in these dockets have been addressed as final agency action. With the issuance of this Order, no further action by this Commission is necessary, and these dockets shall therefore be closed.

By ORDER of the Florida Public Service Commission this 28th day of November, 2004.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

JSB

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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.