

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Florida
EnergySecure Pipeline by Florida Power &
Light Company.

DOCKET NO. 090172-EI
ORDER NO. PSC-09-0715-FOF-EI
ISSUED: October 28, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
NANCY ARGENZIANO
NATHAN A. SKOP

APPEARANCES:

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On behalf of Florida Power & Light Company

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On behalf of Florida Gas Transmission

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On behalf of the Florida Public Service Commission (Staff)

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

Advisor to the Florida Public Service Commission

FINAL ORDER DENYING PETITION FOR DETERMINATION OF NEED

BY THE COMMISSION:

BACKGROUND

On April 7, 2009, Florida Power & Light Company (FPL) filed a petition requesting a determination of need for its proposed Florida EnergySecure Pipeline, a 280-mile long, 30-inch diameter, high pressure transmission pipeline that it proposed to own and operate to transport

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natural gas to its electric generating units in Cape Canaveral and Riviera Beach. The pipeline's initial transportation capacity would be 600 MMcf per day, with an ultimate capacity of 1.25 billion cubic feet per day (Bcf/d). FPL indicated that presently it has a need for 400 MMcf/d to serve the Cape Canaveral and Riviera Beach plants. FPL stated that: "[t]he remaining 200 MMcf/d of capacity will be delivered to FPL's Martin Plant for reliability purposes, but will also be offered to other entities within Florida with all resulting revenues to be credited to FPL's electric utility customers through the Fuel and Purchased Power Cost Recovery Clause." FPL estimated that the pipeline would have excess capacity available for for 3 to 7 years. FPL stated that it might also make use of the excess capacity to supply natural gas to its plants and release the capacity it holds by contract on Florida Gas Transmission's (FGT) and Gulfstream's pipelines pursuant to FERC's capacity release rules until the capacity was needed to supply its natural gas plants. FPL proposed to include the approximate \$1.5 billion cost of the project in its electric rate base as electric plant, and it stated that it anticipated filing a petition for a base rate increase in 2014, when the pipeline would be placed in service.

Florida Gas Transmission, LLC (FGT) intervened in the proceeding. We held an administrative hearing July 27-28, 2009, to address FPL's petition.

For the reasons explained below, we deny FPL's petition. Our decision is based upon our analysis of the record evidence, our analysis of the arguments raised, our deliberation at our October 6, 2009, Agenda Conference, and our determination that FPL has not adequately demonstrated that its EnergySecure pipeline is the most cost-effective alternative to provide natural gas transmission capacity. We direct FPL to issue a new Request for Proposals (RFP) to fill FPL's natural gas transmission requirements. The results of the RFP will provide a market proxy against which we will be able to measure the cost-effectiveness of proposed projects to meet FPL's need for transmission capacity. The terms of the RFP shall be reviewed by our staff before it is issued. We have jurisdiction over the subject matter by the provisions of Chapter 366, Chapter 368, and Section 403.9422, Florida Statutes (F.S.).

DECISION

To meet Florida's natural gas energy needs in an orderly and timely fashion, and to ensure natural gas delivery reliability, safety, and integrity for the state, Florida's Pipeline Siting Act establishes a centralized and coordinated permitting process for the siting of intrastate natural gas transmission pipelines. This process balances the need for abundant supply of natural gas with the broad interests of the public in minimizing adverse effects on the environment and the public health, safety, and welfare. Section 403.9402, F.S.

Pursuant to Section 403.9422, F.S., this Commission is the sole forum for the determination of need for a new intrastate natural gas transmission pipeline, and our determination of need is a condition precedent to the conduct of a pipeline siting certification hearing under the Pipeline Siting Act. Section 403.9422(1)(b), F.S., sets out the factors we are to consider in determining the need for an intrastate natural gas transmission pipeline:

In the determination of need, the commission shall take into account the need for natural gas delivery reliability, safety, and integrity; the need for abundant, clean-burning natural gas to assure the economic well-being of the public; the appropriate commencement and terminus of the line; and other matters within its jurisdiction deemed relevant to the determination of need.

Section 403.9422(1)(b) does not specifically direct us to consider the cost-effectiveness of the pipeline in our need determination. The matter of cost-effectiveness is, however, a matter within our jurisdiction that we deem relevant, and an issue of central importance in this case in light of the magnitude of the project, and FPL's stated intent to request inclusion of the pipeline costs in its electric utility ratebase.

Economic Evaluation

On July 17, 2008, FPL sent a Solicitation Letter to seven entities, including incumbent pipeline companies, who had previously expressed an interest in providing FPL's gas transportation needs. Responses to the Solicitation letters were filed with FPL in September 2008. FPL evaluated the seven responses and filed its need determination petition with us in April 2009. FPL requested proposals for additional gas transportation under three alternative scenarios: 1) an interstate pipeline commencing at Transco Station 85 and terminating at its Cape Canaveral and Riviera Beach generating plants; 2) an upstream pipeline commencing at Transco Station 85 and terminating at FGT Station 16; and 3) an intrastate pipeline commencing at FGT Station 16 and terminating at the two plants. FPL analyzed each alternative for capacities of 600 MMcf/d and 400 MMcf/d. FPL determined that a minimum initial capacity of 600 MMcf/d with a pipeline size of 30 inches in diameter would be the most economical due to the lower cost of future expansion.

FPL contended that its own Florida EnergySecure Pipeline combined with the "Company E" Upstream Pipeline segment offered the lowest Cumulative Present Value Revenue Requirement (CPVRR) cost to customers over the 40 year project life, as evaluated under each of three resource plans: the "Base Case," the "RPS (Renewable Portfolio Standard) Scenario," and the "Nuclear Delay Scenario." As evaluated against FGT's latest updated proposal, FPL asserted that the Florida EnergySecure Pipeline is more economical by a range of \$115 million to \$400 million. FPL also stated that these results were confirmed by a third party expert, and that none of the analyses included the additional savings that could be seen by release of excess capacity or short-term gas sales, which would only serve to increase the economic benefits of its proposal.

The current expected cost for the project includes all costs for land acquisition, materials, compressor and metering stations, construction labor and equipment, project management, and so forth. The costs include \$1.0 billion in direct material installation costs, \$325 million in indirect costs for project start-up and development, \$100 million in land costs, and \$106 million for Allowance for Funds Used during Construction, for a total cost of \$1.531 billion.

FGT maintains that the Florida EnergySecure Pipeline is not the most cost-effective and reliable source of natural gas transportation and delivery and is not in the best interest of FPL's

ratepayers. FGT argues that the economic analyses prepared by FPL contain erroneous assumptions and utilize favorable, unsupported load forecasts. FGT contended that FPL's underlying cost assumptions were flawed and designed to skew the analyses in favor of the EnergySecure Line. It asserted that FPL's construction cost estimates lack the detail that was provided by SunShine Pipeline Partners in its Application for a Determination of Need for an Intrastate Natural Gas Pipeline.¹ In that application, 569 pages of detailed cost data were provided, including estimates of mainline, meters, laterals, transformers, and so forth. FGT stated that the data provided by FPL was not close to this level of cost data. The cost detail for the Upstream Pipeline, a huge dollar component of this project, was not provided, nor was the cost or identity of the pipeline construction company with whom FPL is considering contracting. In addition, FGT asserts that the primary FPL witness providing construction information only provided a minimum of materials in his exhibits.

The record demonstrates that the economic benefits of the proposed pipeline are greatly dependent on the amount and timing of need for new generation beyond the Cape Canaveral and Riviera Beach plants. One of the major factors affecting the timing of need is the demand forecast. The population projections used by FPL in its demand forecasts are based on the University of Florida's Bureau of Economic and Demographic Research (UF Bureau) projections, with upward adjustments for a more robust population growth after 2012. The cumulative effect of FPL's adjustments is that by 2018 the population difference between the two forecasts is approximately 500,000 people. Based on its demand forecast, FPL is projecting it will have a need for the excess pipeline capacity by 2021. If the utility's demand projections are overstated, the need for the full 600mmcf/day initial capacity of the pipeline would be pushed out farther into the future. The economic benefits of the proposed pipeline would likewise be pushed out farther than projected by FPL. In fact, a rerun of the economic analyses using a population forecast based on unadjusted data from the UF Bureau indicates that the FGT proposal is the more economic proposal under two scenario analyses (the Base Case and the RPS scenarios).

Under the utility-proposed rate base treatment of the pipeline, FPL may be insulated from the risk that the pipeline's excess capacity will not be needed as projected. Rather, the financial risk that these forecasts are accurate would be borne by FPL's ratepayers. Assuming that FPL's forecasts of future need are reasonable, whether, and to what extent, the FPL proposed line is the most cost-effective option is highly dependent on the accuracy of the demand forecasts.

Variables other than the population forecasts also have significant impact on the results of the cost-effectiveness analyses. For instance, FGT claims that FPL based its analyses on the January 2009 rate proposal and not the lower March 2009 proposal. A rerun of the economic analyses using FGT's lower March 2009 rate proposal dropped the base case advantage for FPL from \$208 million to \$26 million. The record evidence contains a different rerun of the analyses using FPL's proposed return on equity of 12.5 percent from its current rate case rather than the equity cost rate of 11.75 percent contained in its original filing. This single change dropped the base case advantage for FPL from \$208 million to approximately \$50 million. This evidence

¹ Order No. PSC-93-0987-FOF-GP, issued 7/2/93, in Docket No. 920807-GP, In re: Application for a Determination of Need for an Intrastate Natural Gas Pipeline by SunShine Pipeline Partners.

demonstrates the sensitivity of the analyses when certain assumptions are replaced with reasonable alternatives.

There are other assumptions used in the cost-effectiveness analyses that are in dispute between the parties. FGT asserts that FPL added 20 cents to the FGT rate proposal to address transportation from Transco Station 85 to Citronelle – the commencement point of the FGT proposal. FGT argues that there is no need for any rate increase, but, if appropriate, the increase would be no more than nine cents. The analyses were not recalculated using the lower transportation rate, but logically a lower transportation rate would lower the cost-effectiveness advantage of FPL's proposal.

Another concern raised by FGT regarding the cost-effectiveness analyses is that FPL escalated the FGT rate 2.5 percent each year in order to establish a future price for additional expansions of the FGT system that may be needed. FGT asserts that there is no basis for that level of increase. Again, logically the effect of this escalation is to increase the cost of the FGT proposal as compared to the FPL EnergySecure pipeline.

A further concern with the cost-effectiveness analyses is that FPL depreciates its proposed pipeline costs over 40 years but fails to depreciate the FGT proposal. Recognizing depreciation in the FGT proposal would increase the cost-effectiveness of its proposal. A related concern expressed by FGT is that FPL assumes instantaneous rate adjustments each year, so the benefits of depreciation of the pipeline are immediately reflected in rates. As FPL witness Forrest admitted upon cross-examination, yearly rate reductions would require yearly rate cases, which are neither anticipated nor practical. Therefore, FPL has overstated the benefits of the EnergySecure project in all of its analyses.

We conclude that FPL has not adequately shown that the proposed Florida EnergySecure Pipeline is the most cost-effective option. As discussed above, the reruns of the cost analyses highlight the sensitivity of the results when a significant variable is changed. If the analyses were rerun changing more than one variable, the variations in the results could be even greater. Further, as discussed above, there were concerns raised with other assumptions used in the cost-effectiveness analyses that were not quantified. The volatility in the results of the analyses under reasonable, alternative assumptions, as well as other non-quantified concerns, leads us to find that the degree to which the proposed pipeline is the most cost-effective option is questionable.

With regard to the need for new gas infrastructure, we agree with the parties that increased gas transportation infrastructure is needed to meet future electricity needs, given the uncertainty surrounding both coal-fired and nuclear generation in the state. However, we do not conclude that the only way this need can be met is with the Florida EnergySecure Pipeline as proposed by FPL. Any new gas pipeline or other gas transportation infrastructure could satisfy this need for additional gas capacity, and perhaps more cost-effectively.

Rebidding the Project

FPL makes compelling arguments in support of another major natural gas pipeline into Florida. As FPL witness Forrest stated: "This request is as much about the future of gas supply in Florida as it is for the immediate need to supply gas to the modernizations at Cape Canaveral and Riviera Beach." The advantages of a new major pipeline into Florida identified by FPL include: enhancement of the delivery and reliability of natural gas transmission in Florida, access to adequate and diverse natural gas supplies and upstream pipeline capacity, and the unique opportunity Florida has at this time to expand the existing pipeline infrastructure into and within Florida. Unfortunately, based on the record, it is difficult to conclude that all of the stated advantages of a new pipeline can be realized under FPL's proposal. While FPL argues that the pipeline will serve to improve the delivery and reliability of gas transmission in the state, FGT maintains that by being a single pipeline to three existing plants, FPL's pipeline would lack the looping, interconnects, and other redundancies found on the FGT system, making it less reliable in the event of system failures. Further, FPL states that the primary purpose of the pipeline is to provide gas to FPL's generating units and not as an open-access natural gas transportation pipeline. Under this scenario, the line will essentially serve as a "private driveway" for FPL. As such, the benefits associated with a true open-access pipeline will be lost for Florida.

Given the wide variations in the cost-effectiveness analyses, the risk to FPL ratepayers associated with a significant increase in rate base, and the importance of acquiring additional gas transportation into Florida, we direct FPL to renew its request for proposals to fulfill its gas transportation capacity needs. A renewed RFP process would also address concerns with the initial RFP that FPL conducted. In its July 2008 solicitation letter, FPL stated that it was currently evaluating the development of a new intrastate pipeline. FPL invited interested parties to work with FPL to provide pricing for gas deliveries into this new intrastate pipeline. In its solicitation, FPL did not preclude parties from using new or existing facilities for delivery to the Cape Canaveral and Riviera Beach plants. However, the solicitation specifically stated that "any perceived economic advantages of such proposals will be weighed against their more limited role in meeting FPL's long-term needs." This language could have had a chilling effect on potential bidders in that it appears FPL was already convinced of the need for the EnergySecure Pipeline. A clear and specific solicitation will allow and encourage other potential bidders to provide proposals for a new pipeline that can be evaluated by FPL. The results of the RFP will provide a market proxy against which we will be able to measure the cost-effectiveness of proposed projects to meet FPL's need for transmission capacity.

FPL's new RFP shall contain a specific, detailed request for proposals for a new pipeline, and specifications of the long term natural gas needs of FPL. The RFP shall be provided to our staff for review prior to its issuance to ensure it is clear and complete.

There is sufficient time in which to conduct a new solicitation. In this case, FPL issued the solicitation letter in July 2008. According to the letter: "We are requesting all parties provide firm pricing in the attached format by September 2, 2008, in order for us to have sufficient time to evaluate the alternatives and make a selection in November." Thus, the entire process from solicitation to selection was approximately four to five months. We believe that FPL can repeat

the process in roughly the same amount of time. We note that the Upstream Pipeline (Company E) will require certification by FERC pursuant to the provisions of the Natural Gas Act. Company E currently plans to file its application in the fall of 2011 to meet the January 2014 in-service date. Given this timeline for construction of the Upstream Pipeline, a necessary precursor to the construction of the intrastate pipeline, we believe there is sufficient time to complete a new solicitation process and obtain our approval of a revised project.

Based on the foregoing, it is

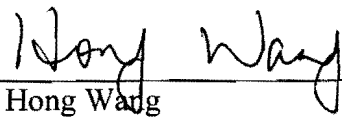
ORDERED by the Florida Public Service Commission that Florida Power & Light Company's petition to determine the need for the Florida EnergySecure Pipeline is denied. It is further

ORDERED that Florida Power & Light Company shall renew its request for proposals to fulfill its identified gas transportation needs, and provide a copy of the request for our staff's review prior to its issuance. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 28th day of October, 2009.

ANN COLE
Commission Clerk

By: 

Hong Wang
Management Review Specialist

(S E A L)

MCB

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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.