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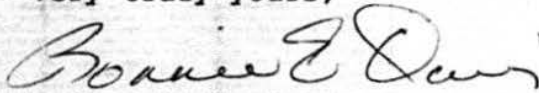
Mr. Steve Tribble
Director of Records and Reporting
Florida Public Service Commission
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RE: Docket No. 900004-EU

Dear Mr. Tribble:

Enclosed please find the original and 15 copies of Florida Power & Light Company's Brief in the above-captioned docket.

Very truly yours,



Bonnie E. Davis

BED:do
Enclosures

cc: All Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Planning hearing on load fore-) Docket No. 900004-EU
casts, generation expansion plans,)
and cogeneration prices for Peninsular) Filed: Sept. 25, 1990
Florida's electric utilities)
_____)

BRIEF ON IMPLEMENTATION OF THE SUBSCRIPTION LIMIT

This brief is submitted in response to the Commission's request for briefs at the September 11, 1990 agenda conference. It explains FPL's position on the use of a subscription limit without regard to the procedural posture of the case, that is the issuance of a Proposed Agency Action order on July 23, 1990. FPL understood that all parties were permitted to submit their position on what the Commission's policy on subscription ought to be by the request for briefs made by the Commission at the agenda conference.

FPL's position is that a subscription limit, properly administered, may be helpful to the achievement of the Commission's cogeneration policy objectives. All contracts, for the purchase of QF power, negotiated or standard offer, that defer or avoid the generating capacity addition on which the subscription limit is based, and are cost effective to the utility with the need for that additional capacity, should be counted towards the subscription limit. The order of priority for contracts that meet these criteria should be determined according to their relative value through a comparison of factors that are of value to the purchasing utility and its

ratepayers. The order of priority or queue, should not be based solely on the date of execution of the contracts. The Commission should adopt this approach to implementation of the subscription limit because it is consistent with the Commission's overall goal of encouraging the development of cogeneration that is needed and cost effective from the perspective of the state as a whole and the purchasing utility.

This memorandum explains and supports FPL's position on subscription. A brief review of the previous Commission orders on this topic shows that although the Commission has adopted a subscription limit in the past, the rationale for doing so has not been evaluated in the context of broader Commission policies. Additionally, the Commission has not previously had to decide the issues concerning implementation of the subscription limit with which it is now faced. Thus FPL urges the Commission not to be bound by the previous Proposed Agency Action order but instead to take a fresh and thorough look at the subject.

Background

1. On three occasions the Commission has designated a state wide avoided unit on which standard offer prices have been based. Immediately following adoption of the 1982 cogeneration rules, the Commission opened a docket for their implementation with the express purpose of designating a state-wide avoided unit. Two generic 700 MW base load coal units with an

in-service date of 1992 were eventually settled on as the statewide avoided unit. The cost factors for these units used to develop standard offer prices were taken from FPL's testimony concerning its own avoided costs. The standard offer was effective April 1, 1984.

2. Subsequent decisions concerning the purchase of QF power have been made as a part of the "Annual" Planning Hearing process. The first such APH began in 1985 and was completed in March of 1987. As a result of that process the Commission designated a 1995 coal unit as the state-wide avoided unit.

Before the 1995 coal unit was selected, the Commission staff had recommended designation of smaller units with staggered in-service dates, with a limited offering corresponding to the MW size of each succeeding unit. Though rejecting Staff's proposed units, the Commission did, without discussion, adopt the concept of a limited offering:

We approve the concept of a subscription process. Subscription to standard offer contracts would be limited to the number of megawatts of the unit upon which the offers are based. Since we have selected a 500 MW coal unit as the statewide avoided unit, the subscription limit associated with the new standard offer contracts will be set at 500 MW (Order No. 17480, page 13).

The standard offer associated with this avoided unit initially had an effective date of March 27, 1987; the previous standard offer was closed as of that date also.

3. The Commission closed the standard offer based on the 1995 coal unit effective August 29, 1989. It did so on the finding that the 500 MW subscription limit had been reached through a combination of standard offer and negotiated contracts. The

major issue considered by the Commission in reaching this decision was whether negotiated as well as standard offer contracts should count as part of the subscribed amount. The Commission concluded that since only those negotiated contracts that would defer construction of additional capacity from a state wide perspective and whose cost was less than or equal to the avoided costs of the state wide unit would be approved for cost recovery purposes, they should be included in the subscribed amount.

The other point decided by the Commission at that time was that a QF in the midst of negotiations based on the 1995 coal unit was not entitled to a continuation of the 1995 unit as the basis of its negotiations past the closure of the standard offer. The QF's contention that it had detrimentally relied on the continued availability of the standard offer was dismissed with the observation that it was incumbent upon all interested parties to keep abreast of the rate at which the subscription limit was filling up and the further finding that the QF was aware that the "the basic rule of contract prioritization was 'first in time, first in line'". The order does not indicate whether this "rule" of "contract prioritization" was based on an unstated Commission finding to that effect or was drawn from a more general body of knowledge. (Order No.22061, p.4).

4. At the conclusion of the next APH cycle, by vote on October 16, 1989 the Commission designated three state-wide avoided units, each a 385 MW combined cycle unit, with in-service dates

of 1993, 1994, and 1995, and corresponding subscription limits. For the first time the Commission stated its rationale for adopting a subscription limit:

One of the problems inherent in the selection of a statewide rather than an individual utility avoided unit is that of misallocation of cogenerated power. That is, the potential for uneconomic duplication of capacity unless cogenerated power can be channeled to the utility which actually has the need for the power. A subscription limit associated with the total amount of capacity of the statewide avoided unit is the first, and simplest, step toward correcting this potential problem. (Order No. 22341, page 20).

The order envisioned standard offer and negotiated contracts counting toward each of the designated units in succession. Thus the subscription limit was intended to help effectuate the Commission's goal of encouraging the development of QF power that was needed and cost effective to the purchasing utility. It should also be noted that the subscription limit was developed based on a projection of need at a particular point in the future. It was not intended to establish an entitlement to fulfill an immutable need for additional power.

Having adopted the concept of subscription the Commission set the questions concerning its implementation for hearing in August, 1989.

5. In the same order the Commission made a critical decision that it would no longer rely on information on avoided cost developed on a state wide basis in the APH as definitive on the

issue of cost effectiveness in future QF determination of need proceedings. That is, a QF armed with a standard offer contract (or an approved negotiated contract) could no longer enter a need determination hearing clothed with the presumption that construction of its facility was the most cost effective measure available to the utility who would be purchasing its power. Henceforth a QF would have to prove that the purchasing utility had a need for the QF's capacity and that its contract did not exceed the purchasing utility's own avoided costs. The rationale expressed for this change in policy was to prevent a mismatch between the price paid to a QF which was keyed to statewide avoided costs and a utility's individual avoided costs.

6. In May, 1990 the Commission reconsidered its earlier findings and designated a 1996 500 MW coal unit as the statewide avoided unit. No individual utility was designated for pricing purposes; instead standard offer prices were based on generic cost factors taken from the FCG study. The Commission retained the subscription limit with this comment:

Although we are concerned that the standard offer contract is limited to 500 MW, we will not designate a subsequent avoided unit at this time, but instead will deal with that issue at such time as the standard offer is fully subscribed. (Order No. 22341, page 2).

7. Before the hearing on implementation of the subscription limit was scheduled, the Commission staff and parties to the APH docket met to discuss the issues. The Commission then

issued a Proposed Agency Action Notice setting forth its' intended policy on implementing the subscription limit. This PAA order sparked a flurry of comments from both the utilities and potential QFs, which prompted the Commission to grant this opportunity for additional briefing.

Cogeneration Policy Objectives

8. Before turning to the specific issues on subscription, it is helpful to review the Commission's principal cogeneration policy objectives, which can be extracted from these prior APH orders. They are:

1. To ascertain that the generating capacity additions planned by individual utilities are of a type, and size, and have an in service date that is in the long term best interest of the state as a whole, as well as the individual utility;

2. To encourage the development of cost-effective cogeneration by pricing based on avoided costs, through negotiated contracts, and through the availability of standard offer contracts;

3. To prevent any mismatch between the state wide avoided costs and individual utility avoided costs that would cause an individual utility to purchase QF power at a price that exceeds its own avoided costs;

4. To prevent any mismatch between the amount of capacity purchased and the amount needed;

5. To channel QF power to the utility that would actually build the avoided unit so that its construction can in fact be avoided or deferred.

The revisions to the cogeneration rules considered by the Commission at its Sept.18, 1990 agenda do not appear to change these basic policy objectives, except that the standard offer is now limited to QFs less than 75 MW and is no longer based on state-wide avoided costs.

Any subscription limit ought to be administered so as to achieve these broad policy goals.

9. The subscription concept is a means to achieving the Commission's goals with respect to cogeneration; it is not an objective in and of itself. Subscription simply defines the amount of capacity purchase necessary to defer the unit on which it is based. It is important to note however, that the present subscription limit was based on a generic unit taken from the FCG study; it is not a unit that appears in any of the generation expansion plans of the individual utilities. Therefore to determine whether a particular capacity purchase counts toward the subscription limit, the underlying need of the utility making the purchase must be examined.

10. Any purchase of QF capacity that defers the need for the unit on which the subscription is based and is cost effective to the purchasing utility should be eligible for counting toward the subscription limit.. If contracts that meet the need of the

individual utility are not counted towards the statewide subscription limit, the individual utility runs the risk of having to buy too much capacity. Whether the contract is a standard offer or negotiated contract is irrelevant, as is what the contract was "negotiated against". The attempt to fashion a requirement that a contract be "negotiated against" a particular unit is a compression of two separate issues, does the timing and amount of the QF purchase defer the subscription unit, and does the purchase meet a need of the individual utility. These questions can and should remain separate.

Furthermore the Commission has in place a process to obtain the answers to both of those questions. It is the determination of need process. The Commission has explicitly stated that it will not grant an affirmative determination of need for any proposed QF project without a showing that the project both defers capacity and is cost effective to the individual utility with a need for additional capacity. Thus questions of what counts toward the subscription limit should be determined during, not before, the determination of need process.

11. The approach just outlined will meet all of the Commission's articulated cogeneration policy objectives. However it is difficult to reconcile this approach with an order of priority for contracts, or establishing the queue, based solely on the principle of first in time, first in line. This principle was suggested in the order closing the 1995

avoided unit standard offer as one reason why a QF should not rely on the indefinite availability of a particular standard offer. It has not heretofore been applied as the sole criterion for selecting a limited number of contracts to fill a subscription when there are several competing offers, and it should not be.

The place to sort out what counts for the subscription limit is the determination of need process. It is in this process that all of the Commission's cogeneration policy objectives are ultimately given effect. The statutory criteria that must be addressed in a determination of need proceeding, whether a proposed capacity addition is needed and whether it is cost effective to the purchasing utility, answer the question of whether the proposed capacity addition defers the utility's need associated with the subscription unit. Competing offers to supply that capacity need should be recognized and evaluated for price, reliability, and other factors of value to the utility and its customers. Many of these factors, such as location, size, technology, and fuel type, are not covered in the standard offer contract. This approach would frankly acknowledge that all potential QFs are not presumptively equal and that the priority of their selection should be based on something more than a race to the mailbox.

14. If the Commission were to adopt a first in time, first in line criterion for establishing a subscription queue, it is reasonably likely that a utility may be forced to purchase QF

capacity at a price that exceeds its own avoided costs. This would be the case if a QF with a standard offer based on state wide avoided costs were given precedence over less expensive capacity available pursuant to a contract negotiated on the basis of a utility's own avoided costs.

FPL does not believe it is necessary or desirable to attempt to establish a queue for the subscription limit independently of the determination of need process. However should the Commission undertake that effort, FPL urges the Commission to look beyond the mere execution of a standard offer contract in assigning places in a queue. The Commission should examine all aspects of a proposed project: its size, location, fuel type, reliability and stability of fuel sources, the steam host, the financial ability and stability of the proposed developer, and so forth. The Commission should also closely examine the depth of the QF's commitment to the proposed project. A potential QF may not regard execution of a standard offer contract as a binding commitment to provide power on the terms stated in the contract.

16. FPL's position on the specific issues raised in the Proposed Agency Action order are as follows:

(1) How should standard offer contracts and negotiated contracts for the purchase of firm capacity and energy be prioritized to determine the current subscription level?

The priority of competing contracts for the supply of capacity should be established based on the value of the proposed contract to the utility and its ratepayers at the time the

contracts are brought to the Commission for evaluation in a determination of need proceeding. The relative merits of competing offers should be determined on the basis of factors of value to the utility and its ratepayers.

(2) How should the utilities who are subject to the Commission designated subscription amounts notify the Commission on the status of capacity signed up against the designated statewide avoided unit? FPL has no objection to promptly notifying the Commission of any standard offer contracts it receives and any contracts it executes but does not believe the notification procedure should have any bearing on the ultimate value accorded the contract.

(3) What happens when a utility reaches its own subscription limit? This issue apparently refers to the allocation process initially adopted and later discarded by the Commission.

(4) Does the subscription limit prohibit any utility from negotiating, and the Commission from subsequently approving, a contract for the purchase of firm capacity and energy from a qualifying facility? No, the Commission may and should approve negotiated contracts for the purchase of additional capacity, from any source, so long as the utility has an identified need and capacity is available at rates competitive with the utility's avoided costs.

(5) Should a negotiated contract whose project has an in-service date which does not match the in-service date of the statewide avoided unit be counted towards that utility's subscription limit? All projects, with an in-service date no later than the in-service date of the avoided unit that can be

shown as a factual matter to defer an identified avoided unit should be counted in any subscription limit for that unit.

WHEREFORE, FPL requests that the Commission make a finding that all contracts, for the purchase of QF power, negotiated or standard offer, that defer or avoid the need for the generating capacity addition on which the subscription limit is based, and are cost effective to the utility with the need for that additional capacity, should be counted toward the subscription limit. FPL requests a further finding that the order of priority for contracts that meet the these criteria should be determined according to their relative value through a comparison of factors that are of value to the purchasing utility and its ratepayers, and should be decided in determination of need or need type hearings. In view of the nature of the relief it has requested, FPL has not made any allegations as to the order of priority that should be established for the presently existing contracts for the current 500 MW subscription limit. Should the Commission decide to conduct a factual hearing to decide the order of priority for contracts for the 500 MW subscription limit in this docket, FPL intends to participate in such a proceeding.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Brief has been furnished to the following individuals by Hand Delivery or U. S. Mail on this 25th day of September, 1990.

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