ORIGINAL

FPL

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June 11, 1999

VIA HAND DELIVERY

Ms. Blanca S. Bayó
Director
Division of Records and Reporting
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Boulevard
Room 110
Tallahassee, FL 32399-0850

Re: Petition of Florida Power & Light Company for Approval of a Standard Offer Contract; Docket No. 990249-EG

Dear Ms. Bayó:

I enclose and hand you herewith an original and fifteen (15) copies of Florida Power & Light Company's ("FPL") Response to Comments of the Florida Industrial Cogeneration Association.

A diskette containing FPL's Response in Word Perfect format, version 6/7/8, will be provided under separate cover.

Should you or your staff have any questions regarding this filing, please don't hesitate to contact me.

Sincerely,

R. Wade Litchfield

AFA 1
APP
CAF
CMU
CTR
EAG Dudley
LEG 1
MAS
OPC
RRR
SEC 1
WAW
OTH

RWL/lj
Enclosures

ORIGINAL

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company For Approval of a Standard Offer Contract	)))	DOCKET NO. 990249-EG Filed: June 11, 1999

FPL's RESPONSE TO COMMENTS OF FLORIDA INDUSTRIAL COGENERATION ASSOCIATION

NOW BEFORE THIS COMMISSION, through undersigned Counsel, comes Florida Power & Light Company ("FPL" or the "Company") and, for its response to the comments of the Florida Industrial Cogeneration Association ("FICA") filed in the above-entitled and numbered proceeding, states as follows:

1. On March 3, 1999, FPL submitted for approval of the Florida Public Service Commission ("FPSC" or "Commission") a standard offer contract ("Standard Offer Contract"). In connection with FPL's Petition for Approval of a Standard Offer Contract, FPL also submitted a Petition for a Variance from Rule 25-17.0832(4)(e) of the Florida Administrative Code ("Petition for Variance").

2. On May 4, 1999, FICA filed comments ("FICA Comments") opposing FPL's Petition for Approval of Standard Offer Contract and the Company's Petition for Variance.

3. FICA's comments inaccurately characterize FPL's submissions in this proceeding and incorrectly interpret the operative provisions of the Commission's rules entitled "Utilities' Obligations With Regard to Cogenerators and Small Power Producers," as set forth in Chapter 25-17, Part III, of the Florida Administrative Code

("QF Rules"), and the underlying statutory provisions.

4. FICA's position in this matter is based on either: (i) an implicit assumption that the Standard Offer Contract will actually "defer" or "avoid" construction of a generating unit; or (ii) the belief that the QF Rules require the submission of a standard offer contract based on a generating unit that will not be deferred or avoided and which requires payments representing costs that the utility will not actually avoid. In either case, FICA's position is incorrect and without merit.

5. As discussed, infra, in this instance no standard offer contract will actually defer or avoid the construction of additional generation capacity on the FPL system. Moreover, it is not clear under the QF Rules that a standard offer contract is even required in such a case. FPL submitted its Standard Offer Contract based on representations of the Commission's Staff that a filing was required. However, because a standard offer contract would not actually defer or avoid construction of generation capacity on the FPL system, FPL proposed a contract that minimizes the subsidy paid to FICA's constituents by the Company and its electric consumers. On the other hand, the thrust of FICA's position is to have FPL submit the highest possible cost contract, irrespective of whether capacity costs are actually avoided.

5. FICA launches its criticism of the Standard Offer Contract by quoting Rule 25-17.0832(4)(b), which provides, in pertinent part:

> The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be *based on* the need for and *equal to* the *avoided cost of deferring or avoiding the construction of additional generation capacity* or parts thereof by the purchasing utility.[1]

[1] Emphasis supplied.

FICA complains that the Standard Offer Contract fails to meet this fundamental requirement. However, this provision clearly states that the rates, terms, and other conditions of a standard offer contract must be "based on . . . deferring or avoiding the construction of additional generation capacity or parts thereof" and "equal to" the avoided costs of same. Thus, if the construction of additional generation capacity and the associated capacity costs will not actually be deferred or avoided, what can be the basis of the relevant "rates, terms, and other conditions" in the utility's standard offer contract?[2]

6. Clearly, the QF Rules are predicated on a deferred or avoided unit. For example, in connection with the summary a utility must submit to the Commission pursuant to Rule 25-17.0832(1)(b) relative to a negotiated or signed standard offer contract, the utility must identify "[t]he type of *unit being avoided*, its size, and its in-service year."[3] Further, the minimum specifications for standard offer contracts set forth in Rule 25-17.0832(4)(e) also are based on an "avoided" generating unit, or in other words the "unit being avoided." In fact, no FPL unit could be deferred or avoided in this instance as a result of a standard offer contract.

7. For the period from 1999 through 2008, FPL's total summer demand is projected to grow at approximately 320 MW per year. As FPL stated in its Petition For Approval of a Standard Offer Contract, FPL's proposed generating capacity additions to meet its more immediate needs provide significant benefits not available from new facilities (*e.g.*, improvements in the efficiency of existing generating facilities and the

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[2] In the absence of a near-term unit that could be avoided or deferred, the Standard Offer Contract is predicated on a five MW portion of an "assumed" 209 megawatt ("MW") combustion turbine coming on-line in 2001.

[3] Fla. Admin. Code Ann., Rule 25-17.0832(1)(b)(4) (emphasis supplied).

deferral of specific needs in the Southwest Florida area). In addition, the eligibility pool for any standard offer contract pursuant to Rule 25-17.0832(4) is very limited (generally, facilities less than 100kW, small power production facilities using renewable or non-fossil fuels, and municipal solid waste facilities). Since most of these eligible facilities are either very small or could be resource recovery facilities (the majority of which have already been developed and are, or are soon to be, under contract), it is highly unlikely there will be sufficient capacity available to defer FPL's needs regardless of the term or other conditions of a standard offer contract. Indeed, Tampa Electric Company's recently approved standard offer contract closed without having drawn a single MW in subscriptions. In short, because of the small pool of eligible facilities and the potential loss of the aforementioned benefits not available from other resources, in this instance no standard offer contract will defer or avoid any capacity on FPL's system. Significantly, FICA does not state or even hint that a "properly drawn" standard offer contract would result in actual deferral or avoidance of any generating unit. FICA's objective is simply to obtain a higher cost, more subsidy-laden, standard offer contract for its constituents.

8. It is not clear upon what basis FICA can reasonably assert that its members should be paid for costs that are not actually avoided by the utility, to the detriment of the general body of utility customers.[4] Rule 25-17.0832(3) is instructive in this regard in that it identifies the factors the Commission is to consider in reviewing negotiated contracts as well as standard offer contracts[5] for purposes of cost recovery by utilities. As a general

[4] FPL acknowledges that the proposed Standard Offer Contract, if approved, would offer to pay more than FPL's actual avoided costs. However, FPL has sought to minimize that subsidy through certain terms and conditions, including the term of the agreement and the subscription limit.

[5] Rule 25-17.0832(4)(b) states that the customer-impact criteria set forth in paragraphs (3)(a) through

proposition, the Commission is to consider "factors relating to the contract that would impact the utility general body of retail and wholesale customers."

Such factors include:

> "[w]hether the cumulative present worth of firm capacity and energy payments made to the qualifying facility over the term of the contract are projected to be no greater than: 1.) The cumulative present worth of the value of the a year-by-year deferral of the construction and operation of generation or parts thereof. . . *provided the contract is designed to contribute towards the deferral or avoidance of such capacity*; or 2.) The cumulative present worth of other capacity and energy related costs. . . *provided that the contract is designed to avoid such costs.*"[6]

Rule 25-17.0832(3)(c) requires that the Commission also consider whether the contract contains an adequate mechanism for the repayment of capacity and energy payments made to the qualifying facility in any year that such payments exceed the "annual value of deferring the construction and operation of generation by the purchasing utility or other capacity and energy related costs . . . [and] the qualifying facility fails to deliver firm capacity and energy pursuant to the terms and conditions of the contract."[7]

9. Thus, in approving for recovery the costs paid to qualifying facilities, the Commission must consider whether such contracts would result in payments by the utilities in excess of costs actually avoided. There is no apparent justification for the Commission to allow the payment of "unavoided" costs under either a negotiated or a standard offer contract. Indeed, section 366.051 of the Florida Statutes provides that "the

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(3)(d) of Rule 25-17.0832 also are to be considered by Commission in reviewing a standard offer contract.

[6] Fla. Admin. Code Ann., Rule 25-17.0832(3)(b) (emphasis supplied).

[7] In Docket No. 820406-EU, Order No. 12634, the Commission indicated that Federal Energy Regulatory Commission comments relative to the determination of avoided capacity costs "state or imply that entitlement to a capacity credit is dependent on a utility's actual avoidance or deferral of capacity costs." *In re: Amendment of Rules 25-17.80 through 25-17.89 relation to Cogeneration*, 83 F.P.S.C. 150, 153 (F.P.S.C. 1983).

Commission shall authorize a rate *equal to* [not in excess of] the purchasing utility's full avoided costs."[8] Neither does the Public Utility Regulatory Policies Act of 1978 ("PURPA") contemplate that the utility would pay a qualifying facility any more than the utility's avoided cost.[9]

10. Nevertheless, FICA doggedly asserts that the Standard Offer Contract is deficient because it "would not result in payment of full avoided costs"[10] and "would offer little incentive to [small qualifying facilities]."[11] FICA argues that the "value of deferral" pricing mechanism only results in full avoided cost payments if the small qualifying facility receives capacity payments "over the projected useful life of the avoided unit."[12] However, if the unit is not avoided, FICA's position will require that the utility pay the costs to construct the generating unit and also make duplicate payments to small qualifying facilities that subscribe to the "model" standard offer contract proposed by FICA. Further, by suggesting that the subscription limit of the Standard Offer Contract should be higher, perhaps as much as 209 MW,[13] FICA in effect is asking this

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[8] Section 366.051 of the Florida Statutes states:

> A utility's "full avoided costs" are the incremental costs to the utility of the electric energy or capacity, or both, which, *but for* the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. (emphasis added.)

The Federal Energy Regulatory Commission's definition is approximately the same. See 18 C.F.R. §292.01(b)(6).

[9] 18 C.F.R. §292.304(a)(2) states: "Nothing in this subpart requires any utility to pay more than the avoided costs for purchases."

[10] FICA Comments, ¶13.

[11] Id., ¶5.

[12] Id., ¶8.

[13] FICA Comments, ¶7.

Commission simply to increase the opportunity for additional electric consumer subsidies for FICA's constituents. Clearly, the "incentive" FICA that desires for its constituents is the highest possible subsidy paid for by electric consumers in the form of "unavoided" and duplicative costs under a standard offer contract.

11. FICA also argues that small qualifying facilities "can confer substantial economic benefits which are not available if FPL adds facilities."[14] This assertion is based on what FICA characterizes as the "dramatic difference in revenue streams between the revenue requirement method . . . and the value of deferral method applicable to [small qualifying facilities]."[15] FICA's argument is flawed inasmuch as it is premised on: (i) the incorrect notion that a standard offer contract would avoid or defer construction of an additional generating unit; and (ii) the implicit assumption that pushing off dollars for recovery from future electric consumers is in the public interest.[16]

12. FICA asserts that FPL's Petition for Variance does not meet the requirements of section 120.542(2) of the Florida Statutes, but in so doing FICA focuses largely on aspects of the Standard Offer Contract other than the subject of the Petition for Variance. FICA only marginally addresses the actual substance of FPL's variance request (*i.e.*, to permit a five-year, instead of ten-year, contract term), and ultimately offers no legitimate reason why the Commission should adhere to a ten-year term in this instance.

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[14] Id., ¶16.

[15] Id.

[16] FICA suggests that the value of deferral method reduces both intergenerational inequities and "rate shock" to the current utility customers. FICA Comments, note 5. Regardless of the accuracy of FICA's assertion, it is not clear how FICA would propose to address the rate impacts and intergenerational equity issues that result from asking electric consumers to pay twice for the same capacity.

Further, FICA incorrectly asserts that FPL must demonstrate how the Company would be affected "in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." Section 120.542(2) clearly states that such a showing is only required for purposes of demonstrating a violation of "principles of fairness," which is not the basis of FPL's Petition for Variance.

13. Consistent with section 120.542(2), FPL has asserted that under the circumstances the requirement for a minimum ten-year contract term imposes an unreasonable burden and constitutes a substantial hardship on the utility and its consumers by increasing the likelihood that the Company has to pay for "unavoided" costs pursuant to the Standard Offer Contract. By improperly attempting to focus attention on whether FPL has established a violation of the "principles of fairness," FICA hopes to avoid the real issue, to-wit, whether that which amounts to an electric consumer subsidization of FICA's members constitutes a substantial hardship for purposes of section 120.542(2). FPL submits that such a subsidy is neither required nor contemplated by PURPA, Florida law, or the QF Rules, and that utility and consumer subsidization of qualifying facilities does indeed represent a "substantial hardship" for purposes of determining whether a variance should be granted. Indeed, if utility and electric consumer subsidization of qualifying facilities does not represent a substantial hardship for purposes of obtaining a variance from the Commission's QF Rules, it is not clear what showing, if any, might suffice for this purpose, especially given the clear legislative intent to proscribe payments in excess of a utility's actual avoided costs.

14. As the Commission itself has stated, "we believe our rules should encourage cogeneration and small power production *to the maximum extent it is cost*

effective . . . ."[17] If FICA's constituents require subsidization through the payment by FPL of "unavoided costs," those resources are not cost effective. The Commission also has stated: "We must keep in mind that *our goal is to pay avoided costs, not additional costs*, for cogeneration and small power production."[18] The Commission further has stated: "[We] do not believe other ratepayers should experience an increase in the cost to serve them as a result of the presence of QFs."[19] Because section 366.051, the QF Rules and Commission policy discourage, if not prohibit, *any* subsidization of qualifying facilities, one must question whether *any* standard offer contract should be approved in this instance under the present circumstances. Clearly, however, FICA's position calls for the highest subsidy possible in the contract and should not be entertained by this Commission.

15. FICA also asserts that FPL has not demonstrated why the waiver would serve the purposes of the underlying statute. While it is true that section 366.051 was adopted in part to encourage cogeneration and small power production, it is not true that such projects are encouraged or favored at any cost and to the detriment of the electric consumer. Section 366.051 of the Florida Statutes only authorizes "a rate *equal to* [not in excess of] the purchasing utility's full avoided costs." Thus, it can reasonably be said that there is no statutory purpose to encourage cogeneration and small power production if the utility has to pay rates in excess of its full avoided costs. FPL's Petition for Variance simply asks that the ten-year contract term requirement be reduced to five years in order

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[17] Order No. 12634, 83 FPSC 150, 155 (emphasis supplied).

[18] Id. at 159 (emphasis supplied).

[19] Id. at 159-160.

to reduce the risk that electric consumers will be expected to pay twice for the same capacity, --costs in excess of the Company's full avoided costs. If the purpose of the underlying statute is to encourage cogeneration and small power production, but only at rates equal to the utility's avoided costs, then FPL's request better serves the underlying purpose of the statute as compared to the position espoused by FICA. On the other hand, if there is no statutory purpose to encourage cogeneration and small power production at costs in excess of the utility's avoided cost, then there is no basis whatsoever for FICA to assert that FPL has failed to demonstrate that such a purpose will be served by the variance.

16. FICA argues that the term of the contract is crucial in that it "assures that a [small qualifying facility] willing to contract for a period equal to the anticipated plant life, can receive full avoided cost, and allows all or part of a proposed generating unit *to be fully avoided.*"[20] However, if the generating unit will not be avoided, FICA's position would have the utility pay twice for the same capacity. Consistent with the aim of protecting the utility and its electric consumers against the utility making excess payments to small qualifying facilities, the QF Rules establish the projected useful life of the avoided unit as an outside limit to the term of the standard offer contract. Ten years was established as minimum term; however, this too, as FICA notes, was adopted for the benefit of the electric consumers[21] and not, as might be inferred from FICA's position, to make sure that the small qualifying facilities were paid FICA's version of "full avoided

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[20] FICA Comments, ¶10 (emphasis supplied).

[21] Id., ¶10 (citing F.P.S.C. Order No. 12634).

costs." With respect to the ten-year term, the Commission stated:

> 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.[22]

Thus, where there are no capacity related benefits such as in the instant situation, the original purpose that gave rise to the requirement for a minimum ten-year term is of no consequence. The essence of FICA's position is that the utility should be required to pay "full costs at any cost," whether or not actually avoided.

17. If FPL is required by the Commission's QF Rules to "evaluate, select, and enter into standard offer contracts with eligible qualifying facilities *based on the benefits to the ratepayers*,"[23] FPL likewise should be entitled, if not obligated, to design and propose a standard offer contract based on the same fundamental criterion. FPL respectfully submits that *if it is required* to have on file an approved, current standard offer contract, and is required to make capacity payments under that contract even in a situation where no capacity is actually deferred or avoided, in order to minimize the harm to the Company and its customers, among other things the term of the contract should be limited to five years and the subscription limit should be five MW.

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission determine whether a standard offer contract that does not defer or avoid any capacity should be required at all. If the Commission determines that a standard offer contract based on an "avoided unit" is required, regardless of whether the unit is actually deferred or avoided, Florida Power &

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[22] Order No. 12634, 83 FPSC 150, 168.

[23] Fla. Admin. Code Ann., Rule 25-17.0832 (4)(c) (emphasis supplied).

Light Company respectfully requests that the Commission approve the Standard Offer Contract as filed, and grant the Petition for a Variance from Rule 25-17.0832(e)(4), limiting the term of the contract to five years.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I, THE UNDERSIGNED COUNSEL, HEREBY CERTIFY that a copy of Florida Power & Light Company's Response to the Comments of the Florida Cogeneration Association, has been served via first class mail, postage prepaid to the persons or entities listed below, this 11th day of June, 1999:

Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Richard Zambo, Esquire
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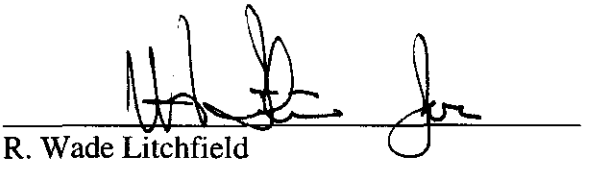
Palm City, FL 34990



R. Wade Litchfield