

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for approval of a standard offer contract based on a 2003 combined cycle avoided unit.

Docket No. 991973-ETSubmitted for filing:
December 20, 1999

**PETITION FOR WAIVER OF RULE 25-17.0832(4)(e)5
REQUIRING CLOSURE OF STANDARD OFFER CONTRACT**

Florida Power Corporation ("Florida Power"), pursuant to Section 366.051, F.S., and Rules 25-22.036(4), 25-17.0832(4), and 28-104.002, F.A.C., hereby petitions the Florida Public Service Commission ("the Commission") for a waiver of the requirement in Rule 25-17.0832(4)(e)5, F.A.C., that the open solicitation period for a utility's standard offer contract must terminate prior to the issuance of a notice of Request for Proposals (RFP) by the utility. The waiver is sought in order to allow the standard offer contract that is the subject matter of this docket to continue in effect concurrent with an RFP Florida Power intends to issue in January 2000. In support of this petition, Florida Power submits the following:

1. Florida Power is a public utility subject to the jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, F.S.
2. All notices, pleadings and correspondence required to be served on the petitioner should be directed to:

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Post Office Box 14042
St. Petersburg, FL 33733-4042
Facsimile: (727) 820-5519

For express deliveries by private courier, the address is:

One Progress Plaza
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Background

3. At its recent Agenda Conference on November 30, 1999, the Commission voted in Docket No. 981890-EI to accept the proposal of the three Peninsular Florida IOUs to voluntarily adopt a 20% reserve margin planning criterion. The proposal included a transition provision in which the IOUs agreed to satisfy the new planning criterion by the summer of 2004. In response to the Commission's acceptance of this proposal, Florida Power decided to accelerate the planned in-service date of its 500 MW Hines 2 combined cycle unit from November 2004, as shown in the Company's most recent Ten-Year Site Plan, to November 2003.

4. To meet this accelerated schedule for Hines 2, two important initial steps must be undertaken by Florida Power at the earliest possible date: First, a standard offer contract based on Hines 2 has to be made available to small qualifying facilities pursuant to Rule 25-17.0832(4), F.A.C. Florida Power's filing in the instant docket has initiated this step. Second, an RFP soliciting bids for alternatives to Hines 2 must be issued and processed pursuant to Rule 25-22.082, F.A.C. Florida Power plans to initiate this step by issuing the Hines 2 RFP in January 2000.

5. Under this schedule, therefore, the standard offer's two-week open solicitation period will necessarily occur after the RFP and related notice have been issued and while the RFP process is ongoing. This, in turn, calls into question the effect of the standard offer closure provision in Rule 25-17.0832(4)(e)5, which states that:

"Each standard offer contract shall, at minimum, specify:

* * *

5. A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the

issuance of timely notice of a Request for Proposals (RFP) pursuant to Rule 25-22.082(3), the utility shall end the open solicitation period.” (Emphasis supplied.)

6. Although this rule provision appears to contemplate these two steps (*i.e.*, standard offer and RFP) occurring sequentially, under the present circumstances the effect of delaying the issuance of the RFP until after the standard offer has been approved and the open solicitation period has expired would be two fold. First, it would frustrate Florida Power’s attempt to satisfy its new 20% reserve margin responsibilities within the time table just recently approved by the Commission. Second, and more importantly, the delay in the RFP process -- a major critical path activity in Hines 2's November 2003 in-service schedule -- would seriously jeopardize Florida Power’s ability to add 500 MWs of new capacity in time to meet the 2003/2004 winter peak. Given the consequences of delay, Florida Power has filed this request for a waiver of Rule 25-17.0832(4)(e)5 to eliminate the possibility that a literal application of the rule might achieve such a result.

Criteria for Waiver of Rule 25-17.0832(4)(e)5

7. Section 120.542 (2), F.S., provides the following two-prong standard for granting waivers or variances to the requirements of an agency rule:

“Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.” (Emphasis supplied.)

8. Florida Power submits that the purpose of the underlying statute, Section 366.051, F.S., -- to encourage cogeneration while at the same time protecting ratepayers from potential adverse effects -- will not only be achieved but enhanced by the requested waiver of the rule's standard offer closure provision. Florida Power further submits that strict adherence to the closure provision would create a substantial hardship on Florida Power and its ratepayers.

9. The purpose of the underlying statute will be enhanced because the requested waiver will eliminate a limitation on the availability of a standard offer contract to cogenerators. The waiver will enable the standard offer to remain in effect and available to cogenerators after the issuance the RFP and related notice, a situation that would be impermissible under the rule sought to be waived. The effect of the waiver on the opportunities otherwise available to cogenerators under literal application of the Commission's rules is therefore expansive rather than restrictive.

10. This favorable effect of the requested waiver on the opportunities of cogenerators is unsurprising when one considers that the rule's standard offer closure provision serves to protect the utilites's interest in conducting the RFP process without the complications and uncertainty associated with an outstanding standard offer.¹ Florida Power is willing to forego the benefit of the closure provision given the urgency of the current circumstances which, through no fault of the cogenerators, do not permit the opportunity to make the standard offer available to them in advance

¹ The RFP problems associated with an outstanding standard offer have become somewhat less significant since the standard offer rules were revised to focus the availability of standard offer contracts toward small qualifying facilities.

of the RFP process. The requested waiver fairly accommodates the interests of cogenerators, as well as the broader interest in accelerating the addition of new generation capacity, since the proposed standard offer contract will be every bit as available to the cogenerators as it would have been if the standard offer had preceded issuance of the RFP.

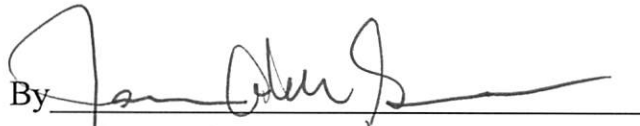
11. To the extent that a literal application of Rule 25-17.0832(4)(e)5's standard offer closure provision would require a delay in the issuance of the RFP for Hines 2 until completion of the standard offer's open solicitation period, the rule would create a substantial hardship on Florida Power and its ratepayers. As noted above, issuance of the RFP at the earliest possible date, *i.e.*, January 2000, is essential to achieve the accelerated in-service date of November 2003 for the 500 MW capacity addition. Delaying the issuance of the RFP until after the standard offer has been approved and the open solicitation period has expired would frustrate Florida Power's attempt to satisfy its new 20% reserve margin responsibilities within the time table just recently approved by the Commission, and more importantly, would seriously jeopardize Florida Power's ability to add new capacity in time to meet the 2003/2004 winter peak. Such an impairment to the reliability of Florida Power's generation resources would create a real and substantial hardship on the Company and its ratepayers.

WHEREFORE, for the above-stated reasons, Florida Power Corporation respectfully requests that the Commission grant this petition for a waiver of the requirement in Rule 25-17.0832(4)(e)5, F.A.C., that a standard offer contract's open

solicitation period end prior to the issuance of an RFP and related notice pursuant to Rule 25-22.082(2), F.A.C.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

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