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December 21, 2000

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: Docket No. 001574-EQ - Proposed Amendments To Rule 25.17.0832, F.A.C., Firm Capacity and Energy Contracts

Dear Ms. Bayó:

I enclose and hand you herewith an original and fifteen (15) copies of Florida Power & Light Company's ("FPL") Post -Workshop Comments submitted by the same.

Also enclosed is a diskette containing FPL's Response in Word format.

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

Sincerely,

R. Wade Litchfield

RWL/lj
Enclosures

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.	))))	Docket No. 001574-EQ Filed: December 21, 2000

POST-WORKSHOP COMMENTS OF
FLORIDA POWER & LIGHT COMPANY

After reviewing written comments filed in Docket No. 001574-EQ and hearing the comments at the December 12, 2000 workshop (the "Workshop"), Florida Power & Light ("FPL"), through its undersigned counsel, hereby submits the following comments to suggested revisions of Rule 25-17.0832, F.A.C, Firm Capacity and Energy Contracts.

FPL Opposes the Proposed Elimination Of Subscription Limits

1. FPL opposes proposed changes to Rule 25-17.0832 that result in elimination of standard offer contract subscription limits. The Public Utility Regulatory Policy Act ("PURPA") and section 366.051 of the Florida Statutes (1999) require only payment of "avoided" costs. Removing the subscription limits entirely would imply that the Florida Public Service Commission ("FPSC" or the "Commission") at least in principle accepts the proposition that a utility's electric customers are required to bear capacity costs in excess of those actually avoided through deferral or avoidance of a generating unit. While encouraging cogeneration and small power production, the Florida Legislature did not intend that public utilities pay more than their avoided costs for such purchased power. Specifically, Section 366.051 provides in pertinent part: "In fixing rates for power purchased by public utilities from cogenerators or small power producers, the commission shall authorize a rate *equal* to the purchasing utility's full

avoided costs."[1] Section 366.051 clearly defines a utility's "full avoided cost" as ". . . 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." The definition does not envision the utility paying for capacity in excess of that which is actually deferred or avoided.

2. Because eliminating the subscription limit for standard offer contracts would imply the potential for payment of costs in excess of a utility's avoided costs, it also would endorse the concept of ratepayer subsidization of qualifying facilities. Assuming *arguendo* that a unit can be avoided or deferred through the issuance of a standard offer contract, the language of the proposed amendment completely removes the subscription limit altogether, thereby opening up the possibility of requiring investor owned utilities to make capacity payments beyond the planned capacity actually deferred or avoided.[2] Based on comments made at the Workshop, the Commission staff ("Staff") did not intend such a result in proposing an elimination of the subscription limit.

3. Although it is questionable in today's market whether there is sufficient latent qualifying facility capacity such that a standard offer contract would result in subscriptions in excess of the actual avoided unit, FPL does not believe that the Rule should be amended in a way that, even if only in theory, provides the opportunity for ratepayer subsidization of qualifying facilities. FPL submits that such a result is contrary to the intent and letter of both state and federal law and regulation.

3. The Commission's own rules recognize and support this very same principle:

> The rates, terms, and other conditions contained in each utility's standard offer contracts shall be based *on the need*

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[1] Emphasis added.

[2] *See* e.g., Notice of Proposed Rule Development *In Re: Proposed Amendments To Rule 25-17.0832, F.A.C., Firm Capacity And Energy* Contracts, Section 25-17.0832(4)(d)(2), deleting the language "the total amount of committed capacity, in megawatts, needed to fully subscribe the avoided unit specified in the contract."

> *for and equal to* the avoided cost of deferring or avoiding the construction of additional generation capacity or parts thereof by the purchasing utility. [3]

FPL respectfully suggests that eliminating entirely the nexus between the avoided unit (i.e., the identified generation need of the utility) and the subscription limits for standard offer contracts from Rule 25-17.0832, would contravene both state and federal law.

FPL Does Not Oppose Proposed Changes Limiting Standard Offer Contract Terms To A Maximum Of Five Years

4. FPL does not oppose proposed amendments to Rule 25-17.0832 creating a maximum term of five years over which firm capacity and energy may be delivered from the qualifying facility to the utility. On the other hand, FPL is not opposed at this time to the proposal made by counsel for the Florida Industrial Cogeneration Association ("FICA"), the City of Tampa, and the Solid Waste Authority of Palm Beach County ("Authority") that the Rule be amended to lower the minimum contract term from ten to five years but retain the provision that limits the maximum term "to the anticipated plant life of the avoided unit."[4]

5. FPL's non-opposition to this proposal, however, should not be construed as agreement that a standard offer contract for any fixed term that includes capacity payments must be offered in all situations, even where no capacity will be deferred or avoided. FPL maintains the position that unless capacity will be actually deferred or avoided, capacity payments to qualifying facilities represent inappropriate subsidies (at rate payers' expense) that should not occur, let alone be potentially linked to the life of an "un-avoided" unit. Utilities would continue to be free to seek a waiver of the minimum

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[3] Rule 25-17.0832(4)(b). Emphasis added.

[4] Rule 25.17.0832(4)(e)(7). Because FPL is not at this time opposing the alternative amendment proposed by counsel for FICA, the City of Tampa, and the Authority, FPL reserves its comments on the arguments regarding the value of deferral methodology advanced at the Workshop and in preliminary comments. FPL reserves the right to file supplemental comments to the extent requested by Staff or otherwise deemed necessary by FPL.

term for a standard offer contract on a case-by-case basis as circumstances may warrant (e.g., a unit will not actually be deferred or avoided).

6. In summary, FPL does not oppose Staff's proposed amendment to make the maximum term five years. However, FPL would be willing to consider more fully the above-referenced alternative proposed at the Workshop by counsel for FICA, the City of Tampa, and the Authority.

Respectfully submitted, this
21st day of December, 2000

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