

ORIGINAL

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September 14, 2001

Charles A. Guyton  
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Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
4075 Esplanade Way, Room 110  
Tallahassee, FL 32399

**By Hand Delivery**

**In Re: Petition For Florida Power & Light Company  
Waiver Of Rule 25-17.0832(4)(e)7, F.A.C. Requiring  
Ten Year Minimum Contract Term  
Docket No.**

011198-ED

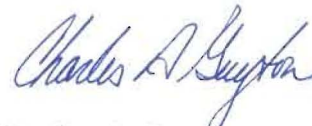
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COMMISSION  
CLERK

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and fifteen (15) copies of FPL's Petition For Waiver of Rule 25-17.0832(4)(e), F.A.C. Requiring Ten Year Minimum Contract Term.

If you or your Staff have any questions regarding this transmittal, please contact me.

Very truly yours,



Charles A. Guyton

Enclosure  
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DOCUMENT NUMBER-DATE  
11489 SEP 14 2001

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition of Florida Power & Light Company For Approval of Standard Offer** ) **Docket No.**  
 ) **Filed: September 14, 2001**

**PETITION OF FLORIDA POWER & LIGHT COMPANY  
FOR WAIVER OF RULE 25-17.0832(4)(e)7, F.A.C.  
REQUIRING TEN YEAR MINIMUM CONTRACT TERM**

Florida Power & Light Company ("FPL"), pursuant to Section 120.542, Florida Statutes (2000) and Florida Administrative Code Rules 25-17.0832(4), 25-22.036(4), and 28-104.002, hereby petitions the Florida Public Service Commission ("Commission") for waiver of the requirement of Rule 25-17.0832(4)(e)7, Florida Administrative Code, that standard offer contracts have a minimum ten-year term. The grounds for this Petition are:

1. The name and the address of the affected agency are:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

2. FPL's address is 9250 West Flagler Street, Miami, FL 33174. Correspondence, notices, orders and other documents concerning this Petition should be sent to:

Charles A. Guyton  
Steel Hector & Davis LLP  
Suite 601  
215 S. Monroe St.  
Tallahassee, FL 32301  
(850) 222-2300

William G. Walker, III  
Vice President, Regulatory Affairs  
Florida Power & Light Company  
9250 W. Flagler Street  
Miami, FL 33174  
(305) 552-4981

3. FPL is a public utility subject to Commission jurisdiction pursuant to Chapter 366, Florida Statutes. The Commission has jurisdiction pursuant to Chapter 366.051, Florida

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FPSC-COMMISSION CLERK

Statutes (2000) to establish rates at which a public utility shall purchase capacity or energy from a cogenerator or small power producer. The Commission has exercised that authority by promulgating Rule 25-17.0832(4), Florida Administrative Code, which addresses the terms of standard offer contracts public utilities may offer. FPL seeks a waiver of one of the terms required by Rule 25-17.0832(4), Florida Administrative Code. FPL has a substantial interest in the rates and other terms of contracts it enters with cogenerators and small power producers.

4. FPL has submitted on this same day a petition for approval of a standard offer contract in accordance with Rule 25-17.0832(4), Florida Administrative Code. The term of the proposed standard offer contract is five years. Rule 25-17.0832(4)(e)7, Florida Administrative Code provides that firm capacity and energy purchased pursuant to a standard offer contract be provided for a minimum period of ten years. FPL seeks a waiver of this rule so that its standard offer contract will be limited to five years.

5. The Commission may grant a waiver of the ten-year minimum term requirement upon a showing that the purpose of the statute has been achieved by other means and when the application of the rule would create a substantial hardship or would violate principles of fairness. Section 120.542, Florida Statutes (2000). The statute underlying Rule 25-17.0832, Florida Administrative Code, is Section 366.051, Florida Statutes (2000). Its purpose and the purpose of the Public Utility Regulatory Policies Act (“PURPA”), which Section 366.051, Florida Statutes, implements in part, is to encourage cogeneration and small power production while at the same time protecting customers from paying costs in excess of avoided costs. Neither Section 366.051, Florida Statutes nor PURPA establishes a minimum term for standard offer contracts.

6. Waiver of the ten-year minimum term for standard offer contracts and allowing a five-year term will still achieve the purpose of the underlying statute. A five-year standard offer contract will still foster the development of cogeneration and small power production projects. In addition, the shorter term will better protect customers who will be subsidizing cogenerators and small power producers through the standard offer because the amount of capacity contracted for will not avoid or defer a capacity addition on FPL's system. Therefore, the shorter the period customers are asked to provide such a subsidy, the better protected customers will be.

7. FPL and its customers will suffer substantial hardship if the rule waiver is not granted and the term of the contract is not shortened. The standard offer contract will not defer or avoid capacity on FPL's system, as the amount of capacity available to be solicited is too small to defer or avoid a generating unit. FPL and FPL's customers will be prejudiced by making standard offer contract payments for capacity and energy that will not avoid or defer a FPL unit. Shortening the period of this subsidy from ten to five years will reduce the hardship faced by FPL and its customers.

8. Moreover, the cost structure of the electric utility industry has been changing, with emerging technologies and declining costs. Limiting the term of the standard offer contract to five years gives FPL the opportunity to revisit the issue of its avoided costs and take advantage of lower costs for the benefit of customers prior to the passage of ten years. FPL and customers face substantial hardship in having to commit to payment streams for ten years when avoided costs may well decline over time. Shortening the term of the standard offer contract to five years would alleviate some of that hardship and allow FPL and its customers to enjoy any intervening decline in costs.

9. The Commission has previously considered and granted six requests to waive the ten year minimum term requirement in Rule 25-17.0832, Florida Administrative Code and approved an alternative five year term. See, *In Re: Petition by Florida Power & Light Company for approval of a standard offer contract and revised COG-2 tariff*, 99: FPSC 9:23 (Order No. PSC-99-1713-TRF-EG); *In re: Petition of Florida Power Corporation for Approval of Standard Offer Contract and Accompanying Rate Schedule COG-2*, 00 FPSC 2:203 (Order No. PSC-00-0265-PAA-EG); *In re: Petition of Florida Power Corporation for Approval of Standard Offer Contract Based on a 2003 Combined Cycle Unit and Accompanying Rate Schedule Schedule COG-2 Pursuant to Section 366.051, F.S., and Rules 22.036(4) and 25-17.0832(4), F.A.C.*, 00 FPSC 3:206 (Order No. PSC-00-0504-PAA-EQ); *In re: Petition for approval of standard offer contract for qualifying cogeneration and small power production facilities by Tampa Electric Company*, 00 FPSC 9:499 (Order No. PSC-00-1773-PAA-EQ); *In re: Petition of Florida Power & Light Company for approval of standard offer contract*, 00 FPSC 9:458 (Order No. PSC-00-1748-PAA-EI); *In re: Petition for approval of new standard offer contract for qualifying cogeneration and small power production facilities by Tampa Electric Company*, Order No. PSC-01-1418-TRF-EQ. In each instance the utility pled the same grounds that FPL is alleging in this petition.

10. The Commission has previously ordered its staff to initiate a rule making to change the minimum term requirement for standard offer contracts from ten years to five years. See, *In re: Petition of Florida Power Corporation for Approval of Standard Offer Contract and Accompanying Rate Schedule COG-2*, 00 FPSC 2:203 (Order No. PSC-00-0265-PAA-EG).

Staff has initiated that docket, but the rule has not, as yet, been changed. Therefore, FPL has filed this rule waiver request.

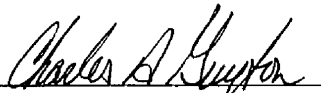
11. The Commission should grant FPL's request that the ten-year minimum contract term requirement in Rule 25-17.0832(4)(e)7, Florida Administrative Code, be waived, and FPL's minimum five-year standard offer contract term should be approved.

WHEREFORE, FPL respectfully petitions the Commission to grant FPL a waiver of the ten year minimum term requirement of Rule 25-17.0832(4)(e)7, Florida Administrative Code and allow FPL to offer a standard offer contract with a five year minimum term.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP  
215 S. Monroe St., Suite 601  
Tallahassee, Florida 32301-1804

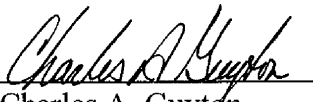
Attorneys for Florida Power  
& Light Company

By:   
Charles A. Guyton

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Petition For Waiver of Rule 25-17.0832(4)(e), F.A.C. Requiring Ten Year Minimum Contract Term was mailed this 14th day of September, 2001 to the following:

Jack Shreve, Esquire  
Office of Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400

  
Charles A. Guyton

TAL39655