

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: NOVEMBER 19, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF SAFETY & ELECTRIC RELIABILITY (FUTRELL) *MF*  
DIVISION OF ECONOMIC REGULATION (SPRINGER) *MSB*  
DIVISION OF LEGAL SERVICES (ECHTERNACHT) *RUE KNE JBJ*

RE: DOCKET NO. 011200-EQ - PETITION FOR APPROVAL OF STANDARD  
OFFER CONTRACT AND REVISED COG-2 TARIFF, AND FOR RULING  
THAT WAIVER OF A PORTION OF RULE 25-17.0832(4), F.A.C., IS  
UNNECESSARY, BY FLORIDA POWER & LIGHT COMPANY.

AGENDA: 12/04/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60-DAY SUSPENSION DATE: DECEMBER 31, 2001

SPECIAL INSTRUCTIONS: SHOULD BE CONSIDERED WITH DOCKET NO.  
011199-EQ

FILE NAME AND LOCATION: S:\PSC\SER\WP\011200.RCM

CASE BACKGROUND

On September 14, 2001, Florida Power and Light Company (FPL) filed a Petition for Approval of a Standard Offer Contract (Petition) for qualifying cogeneration and small power production facilities (QFs). The proposed contract was based on a 165 megawatt (MW) combustion turbine (CT), with an in-service date of January 1, 2002, like the two units FPL planned to add at its Martin site. In fact, the Martin CTs went into service in June 2001. FPL subsequently amended its petition on November 1, 2001. The amended contract is based on FPL's next planned generating units, two CTs at the Fort Myers site. The contract provides a 5 MW subscription limit of a 165 MW CT with an in-service date of January 1, 2003.

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FPL also petitioned for a ruling that a waiver of a portion of Rule 25-17.0832(4)(e)5, Florida Administrative Code is unnecessary, or, in the alternative, grant a waiver of the rule. This rule provides the minimum specifications for a standard offer contract.

This recommendation addresses both the petition for approval of the proposed standard offer contract and the requested ruling that a waiver is unnecessary. The Commission is vested with jurisdiction over this matter through several provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, 366.051, 366.06, and 366.80-.82, Florida Statutes. The Commission is vested with jurisdiction to address FPL's petition for a ruling that a waiver of a portion of Rule 25-17.0832(4)(e)5, Florida Administrative Code is unnecessary through Section 120.542, Florida Statutes.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission find that Florida Power and Light's petition that a waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code is unnecessary?

**RECOMMENDATION:** Yes. FPL's proposed standard offer contract can be processed during its Request for Proposals process. The RFP requested proposals to deliver firm capacity and energy in 2005 and 2006. The standard offer is designed to defer or avoid up to 5 MW's of a 2003 CT at Fort Myers. If a party signs the proposed standard offer contract, the capacity and energy sold to FPL will not significantly affect FPL's need for capacity in 2005 and 2006. (ECHTERNACHT, FUTRELL, SPRINGER)

**STAFF ANALYSIS:** The Commission's rules regarding utilities' obligations with regard to cogenerators and small power producers includes minimum specifications for standard offer contracts. Rule 25-17.0832(4)(e)5, Florida Administrative Code states:

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;

This rule clearly gives QFs and small power producers the first opportunity at new capacity offerings. The issue of timing of standard offer contracts was discussed at length during the rule hearing that resulted in Rule 25-17.0832(4)(e)5, Florida Administrative Code.

FPL and staff met on August 2, 2001 to discuss the pending RFP. Staff inquired as to whether a standard offer contract would be made available prior to the issuance of the RFP. On August 13, 2001, FPL issued its RFP for 1,750 megawatts of capacity in 2005 and 2006. On September 14, 2001, FPL filed its petition, and subsequently filed its amended petition, as discussed in the case background.

FPL contends in its petition that since it did not have a standard offer solicitation period open when it issued its RFP, it was in compliance with Rule 25-17.0832(4)(e)5, Florida Administrative Code. FPL also contends that it may offer a standard offer contract while it is conducting an RFP without seeking a waiver of the rule. FPL states that a waiver of the rule is unnecessary because the rule only addresses the closing of a standard offer before the issuance of an RFP, and not whether a standard offer may be opened after issuing an RFP.

If just prior to the issuance of its RFP FPL had conducted an open solicitation period for a new standard offer, this issue would not be before the Commission. FPL is concerned that if a waiver of the rule is required, but not granted, it may have to suspend its RFP activities in order to conduct the standard offer solicitation.

The proposed standard offer may be issued during the evaluation of the RFP responses. Rule 25-17.0832(4)(e)5, Florida Administrative Code, provides for open solicitation periods, the closing of those periods prior to the issuance of an RFP. It is silent as to the conduct of a standard offer solicitation during the RFP evaluation period. In Order No. PSC-99-1091-PAA-EI issued May 28, 1999 in Docket No. 990172-EI, the Commission denied Gulf Power Company's petition for waiver of Rule 25-17.0832(4), Florida Administrative Code. Gulf Power contended that its next unit, a 2002 combined cycle (CC), was unsuitable for designation as an avoided unit for purposes of a standard offer because it had

already begun activities to construct the unit. This included issuing an RFP pursuant to Commission rules. The Commission disagreed stating:

Gulf's argument appears to be based on the notion that if it is required to issue a standard offer contract based on the 2002 CC unit, it will be required to restart the process for approval and construction of this unit set forth in our rules. Gulf has already issued and received responses to a Request for Proposals (RFP) for supply-side alternatives to the 2002 CC unit and is currently seeking a determination of need for the unit from this Commission, as required by our rules. By requiring Gulf to issue a standard offer contract based on the 2002 CC unit, however, we do not intend for Gulf to restart the process set forth in our rules. We intend for Gulf to seek our approval of and issue a standard offer contract concurrent with its ongoing activities for approval and construction of the 2002 CC unit. This course of action will not cause Gulf to delay construction of its next unit.

FPL should continue to process its RFP as a waiver of the rule is unnecessary.

In addition, the capacity which the standard offer is based, a 2003 CT, is not identical to the capacity identified in FPL's RFP. The RFP requested proposals to deliver firm capacity and energy in 2005 and 2006. FPL's identified units in that time frame include the conversion of two CTs at Martin to a CC, conversion of two CTs at Fort Myers to a CC, construction of a new CC at Martin, and construction of a new CC at Midway in 2005, and construction of a CC at Martin in 2006. The standard offer is designed to defer or avoid up to 5 MW's of a 2003 CT at Fort Myers. If a party signs the proposed standard offer contract, the capacity and energy sold to FPL will not significantly affect FPL's need for capacity in 2005 and 2006.

**ISSUE 2:** Should FPL's petition for approval of a new Standard Offer Contract, based upon a combustion turbine unit with an in-service date of 2003, be approved?

**RECOMMENDATION:** Yes. FPL's new Standard Offer Contract complies with Rule 25-17.0832, Florida Administrative Code. Thus, the Standard Offer Contract and associated tariffs should be approved. (FUTRELL, SPRINGER)

**STAFF ANALYSIS:** Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 et seq., 16 U.S.C. 792 et seq., 18 CFR 292.304. Florida law requires the Commission to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. The Commission is further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

These federal and state requirements were implemented by the Commission through its adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file with the Commission a tariff and a Standard Offer Contract for the purchase of firm capacity and energy from small qualifying facilities. These provisions implement the requirements of the Public Utilities Regulatory Policies Act and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger qualifying facilities and other non-utility generators may participate in a utility's Request For Proposal process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, FPL proposed a new Standard Offer Contract based on a combustion turbine (CT) unit with an in-service date of January 1, 2003 as its avoided unit. Specifically, the Contract is based on a 5 MW portion of a 165 MW CT. FPL has also proposed an associated tariff, COG-2 (firm capacity and energy). This tariff would expire on the earlier of the date the subscription limit (5 MW) is fully subscribed, or upon the expiration of the two week open solicitation period which would begin ten days after the issuance

of the Commission's consummating order if staff's recommendation in Issue 3 is approved.

Staff believes that FPL's evaluation criteria will be readily understandable to any developer who signs FPL's Standard Offer Contract. The avoided unit cost parameters appear to be reasonable for a CT unit, and the resulting capacity payments are appropriate. The performance provisions include dispatch and control, and on-peak performance incentives.

Given that the subscription limit of FPL's avoided unit is only a portion of its total capacity, purchases made by FPL pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of the 2003 CT unit. If FPL enters into Standard Offer Contracts, but the need for the 2003 CT unit is not deferred or avoided, FPL will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of state regulations discussed above may result in a subsidy to the qualifying facilities. Staff notes, however, that the potential subsidy could be mitigated, as FPL may have opportunities to sell any surplus capacity to the wholesale market.

Ideally, qualifying facilities should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, qualifying facilities are given some preferential treatment. The Commission has minimized this unequal footing by requiring Standard Offer Contracts only for small qualifying facilities, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement due to their size or timing. Thus, the Commission's rules balance market imperfections with the existing policy of promoting qualifying facilities.

In summary, staff does not expect that FPL's proposed Standard Offer Contract will result in the avoidance of its proposed avoided unit, a 2003 CT. Nonetheless, FPL's proposed contract and tariff comply with the Commission's cogeneration rules. For this reason, staff recommends that FPL's petition to establish its new Standard Offer Contract and associated tariffs be approved.

November 19, 2001

**ISSUE 3:** On what date should FPL's proposed Standard Offer Contract become effective?

**RECOMMENDATION:** FPL's proposed standard offer contract should become effective ten days after the issuance of a consummating order if there is no timely protest filed. (ECHTERNACHT, FUTRELL, SPRINGER)

**STAFF ANALYSIS:** FPL's proposed standard offer contract should become effective ten days after the issuance of a consummating order. FPL's two week open solicitation period will begin ten days after the date of issuance of the consummating order.

**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (ECHTERNACHT, FUTRELL)

**STAFF ANALYSIS:** In order to process both the variance request and the tariff filing simultaneously we recommend that the proposed agency action process be utilized instead of the tariff process. While both processes provide for a point of entry for protest, under the tariff process, if there is a protest, the tariff would go into effect pending the outcome of the hearing; whereas under the proposed agency action process, if protested, the tariff would not go into effect as the proposed agency action order becomes a nullity. Since it would not be reasonable to have this tariff go into effect if the variance portion of the Commission's order were protested, the tariff should be processed as proposed agency action. If there is no timely protest, the docket should be closed.