

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 031074-EI

In the Matter of:

PETITION FOR APPROVAL OF CHANGES  
TO EXISTING PERFORMANCE GUARANTY  
AGREEMENT AND FOR APPROVAL OF A  
SECOND PERFORMANCE GUARANTY  
AGREEMENT, BY FLORIDA POWER & LIGHT  
COMPANY.



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PROCEEDINGS:           AGENDA CONFERENCE  
ITEM NO. 15

BEFORE:               CHAIRMAN BRAULIO L. BAEZ  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE:                 March 30, 2004

PLACE:                Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY:         JANE FAUROT,, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732

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FLORIDA PUBLIC SERVICE COMMISSION

04341 APR-04

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 R. WADE LITCHFIELD, ESQUIRE, Florida Power & Light  
3 Company, 700 Universe Blvd., Juno Beach, Florida 33408-0420,  
4 appearing on behalf of Florida Power & Light Company.

5 MARTHA CARTER BROWN, ESQUIRE, Florida Public Service  
6 Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida  
7 32399-0850, on behalf of the Commission Staff.

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## P R O C E E D I N G S

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2 CHAIRMAN BAEZ: And we are on Item 15.

3 Good morning, Ms. Brown.

4 MS. BROWN: Good morning. Commissioners, in Item 15,  
5 Florida Power and Light has requested some minor revisions to  
6 its existing performance guarantee tariff, and it has also  
7 asked for your approval of a new performance guarantee contract  
8 that will address new unique unusual service.

9 Staff has recommended that you approve the minor  
10 adjustments to the existing tariff, and we have provided an  
11 alternative, a primary and an alternative with respect to the  
12 new tariff. The primary recommends that you approve it subject  
13 to reports filed by the company as you approved the initial  
14 tariff. The alternative recommends that you not approve it at  
15 this time.

16 Since we filed this recommendation, we have met with  
17 the company, and through our discussions, Florida Power and  
18 Light has proposed what we think is a reasonable compromise for  
19 staff's concerns in the alternative, and they are here to  
20 address you on that.

21 CHAIRMAN BAEZ: Mr. Litchfield.

22 MR. LITCHFIELD: Wade Litchfield for Florida Power  
23 and Light. Commissioners, thank you.

24 Obviously we support staff's recommendation with  
25 respect to Issue Number 1, and we have proposed, I guess, a

1 compromise, if you will, that I think removes the concerns  
2 expressed by staff in the alternative recommendation on Issue  
3 Number 2.

4           And those would be as follows: That we would file  
5 annual reports. And this is actually consistent with the  
6 primary staff recommendation, but we would file annual reports  
7 on or before the first, second, and third anniversaries of the  
8 effective date of the new tariff. And then we would agree that  
9 this new performance guarantee agreement would be available for  
10 use and execution as a standard form agreement in the company's  
11 tariff for three years from the effective date. At the end of  
12 that three-year period, absent an extension of the tariff by  
13 the Commission upon application by the company, the agreement  
14 could no longer be executed as a standard form for new  
15 customers.

16           CHAIRMAN BAEZ: Just so I can get it straight, Mr.  
17 Litchfield, you are proposing these modifications -- and, Ms.  
18 Brown, you can stop me if I'm wrong -- onto the primary  
19 recommendation?

20           MS. BROWN: Yes, that's correct. And if I might also  
21 ask permission for staff to administratively approve the new  
22 tariff when FPL files it.

23           COMMISSIONER JABER: Mr. Chairman, I have questions,  
24 but I don't know if there are other presentations.

25           CHAIRMAN BAEZ: I'm not seeing anybody else up here,

1 Commission Jaber, so it is all yours.

2 COMMISSIONER JABER: Okay. Mr. Litchfield, at the  
3 end of the three years you are proposing that the tariff not be  
4 applicable. Is there something you want to propose in lieu of  
5 it at the end of the three years, or --

6 MR. LITCHFIELD: Well, I think, Commissioner Jaber,  
7 we would, prior to the end of the three-year period, determine  
8 as a company whether we thought that the tariff ought to be  
9 extended beyond the three-year period for availability to  
10 subsequent customers. And we would either ask for the tariff  
11 to be extended in the form currently drafted, or as modified,  
12 or some other vehicle. But I think those are our thoughts at  
13 this time.

14 COMMISSIONER JABER: There were three companies under  
15 the current tariff that you offered the guarantee agreement to  
16 and they didn't sign it. Did you end up negotiating something  
17 else with them or they just didn't receive service from FPL?

18 MR. LITCHFIELD: I think you are referring to three  
19 customers that eventually executed the original performance  
20 guarantee agreement. That is the agreement that we have asked  
21 to have renamed the performance guarantee agreement for  
22 incremental capacity, the subject of Issue Number 1.

23 COMMISSIONER JABER: I don't know if we are talking  
24 about the same thing or not. I'm referring to Page 2 of  
25 staff's recommendation. They say that you requested agreements

1 from six applicants, three signed the performance agreement and  
2 three did not.

3 MR. LITCHFIELD: Yes, that is accurate.

4 COMMISSIONER JABER: Okay. For the ones that did  
5 not, what was the result of that?

6 MR. LITCHFIELD: Oh, I'm sorry. Okay. My  
7 recollection is that at least two of those three simply didn't  
8 go through with their business plans. I don't recall  
9 specifically the situation regarding the third customer, but I  
10 think we can safely assume that their business plans just did  
11 not materialize.

12 COMMISSIONER JABER: Okay. Let me tell you what my  
13 concern was, and it won't be a surprise to you. You may recall  
14 originally I dissented on the original request to have this  
15 tariff because I was concerned about the company having sole  
16 discretion to deny the request for service, and I thought --  
17 and I continue to see this as an economic development issue.

18 We want new companies into Florida, and we want to  
19 facilitate that. On the other hand, I have to balance the  
20 interest of your ratepayers and you as a company. I don't want  
21 you or the general body of ratepayers to bear the cost of a  
22 company that clearly has overly optimistic goals in terms of  
23 capacity and demand.

24 And what I'm trying to reach is a comfort level that  
25 discontinuing this tariff is not making that situation worse

1 off, number one. And, number two, I'm trying to understand why  
2 even general terms in the tariff are still not reachable. I  
3 know that you can't have specific conditions. I know you can't  
4 guess, none of us can, what kind of company will come and  
5 request service from you and what their specific needs will be.  
6 But can we say that, generally speaking, a company that will  
7 require a voltage that FPL normally would not have constructed  
8 a facility to meet can request this tariff?

9 MR. LITCHFIELD: Well, I think that is the intent of  
10 this new performance guarantee agreement. That is at least one  
11 of the factors that would be considered by the company in  
12 determining whether to ask the customer to sign a guarantee  
13 agreement. A request for nonstandard voltage, which basically  
14 was the request of a customer that caused us to bring this  
15 agreement forward for Commission approval.

16 COMMISSIONER JABER: And if you think the new  
17 modified agreement meets that concern, why would you want to  
18 discontinue it in three years?

19 MR. LITCHFIELD: Well, I don't know that we will. I  
20 think our proposal is simply by way of accommodation to staff's  
21 concerns that underlie the alternative staff recommendation. I  
22 think in fairness we are willing to go forward on a three-year  
23 basis, file the reports with the staff, and then be prepared to  
24 reurge extension of the tariff at that time or propose  
25 something in the alternative.

1           COMMISSIONER JABER: Okay. And in the last three  
2 years, how many companies have requested to come under this  
3 agreement?

4           MR. LITCHFIELD: Under the agreement that was  
5 approved in 2001 or the new agreement that we are proposing?

6           COMMISSIONER JABER: Under 2001.

7           MR. LITCHFIELD: My recollection is that we had  
8 around 50 potential applicants initially express interest.  
9 This was at the height of the telecommunications furor.

10          COMMISSIONER JABER: Right. This started because of  
11 the Map of the Americas (phonetic), right?

12          MR. LITCHFIELD: Pardon me?

13          COMMISSIONER JABER: This was at the request of the  
14 telecommunications companies, the Map of Americas, is that  
15 correct?

16          MR. LITCHFIELD: It included the Map of the Americas,  
17 but it went well beyond that, as well.

18          COMMISSIONER JABER: Okay.

19          MR. LITCHFIELD: And so we had a number of companies  
20 who were looking for us to build-out. I think we had  
21 calculated at one point that the amount of infrastructure cost  
22 was in the order of \$30 million to accommodate these build-outs  
23 where people were asking for multiples in terms of capacity  
24 available to provide service at a particular warehouse or  
25 location. You know, eight and ten times what ordinarily would



1 have been required or was already in existence at the facility.  
2 And as it happens, as is well documented, the  
3 telecommunications industry experienced a significant downturn  
4 and most of those projects never came to fruition.

5 We had six that actually came close to -- well,  
6 actually requested a copy of the agreement and were working  
7 toward signing it, and I think three ultimately signed it. And  
8 three, as I indicated earlier, for whatever reason did not  
9 pursue it.

10 COMMISSIONER JABER: Okay. So, since 2001 you are  
11 really talking about three applicants that signed the  
12 agreement?

13 MR. LITCHFIELD: That's correct.

14 COMMISSIONER JABER: Okay. Thank you.

15 COMMISSIONER BRADLEY: Mr. Chairman.

16 CHAIRMAN BAEZ: Commissioner Bradley.

17 COMMISSIONER BRADLEY: That was a somewhat lengthy  
18 question, and I lost my train of -- well, I have a question of  
19 Florida Power and Light. Due to the length of the question,  
20 things got a little muddled in my mind. Exactly what are you  
21 proposing?

22 MR. LITCHFIELD: We are proposing two things; one, we  
23 are proposing to make some slight modifications to the existing  
24 performance guarantee agreement. The biggest change is simply  
25 to rename it performance guarantee agreement for incremental

1 capacity to reflect its true nature and purpose, and then to  
2 have the Commission approve a second performance guarantee  
3 agreement form as part of our tariff that would address  
4 situations that are not captured under the old performance  
5 guarantee agreement, where as opposed to just the incremental  
6 capacity and revenue associated with that capacity being at  
7 risk, perhaps the entire amount of revenue, the entire amount  
8 of infrastructure build-out is at risk. Those are the  
9 essential differences.

10 COMMISSIONER BRADLEY: I would like the staff to  
11 respond to that proposal.

12 CHAIRMAN BAEZ: Ms. Brown.

13 MS. BROWN: Yes, Commissioner Bradley. And then in  
14 addition, Florida Power and Light in the interest of compromise  
15 has proposed that the new tariff will only be in effect for  
16 three years in order to give staff and the company time to see  
17 how it is implemented and to gather some more information about  
18 whether it's needed and what the criteria would be for offering  
19 it to customers.

20 COMMISSIONER BRADLEY: Is that your understanding?

21 MR. LITCHFIELD: Yes, Commissioner.

22 COMMISSIONER BRADLEY: So, basically what we have  
23 here is some additional requirements that would make this a  
24 fairer agreement. And I think what I'm hearing is that we are  
25 going to establish a pilot program that would allow us to study

1 this issue and determine if, in fact, this proposal is workable  
2 for all parties concerned and fair to the ratepayers and fair  
3 to the companies that are interested in moving into Florida  
4 Power and Light's LATA.

5 MS. BROWN: Yes, Commissioner. I think I need to  
6 point out to you that the primary recommendation with respect  
7 to Florida Power and Light's proposed new contract is to  
8 approve it. It is the alternative recommendation to disapprove  
9 it, that staff feels more comfortable with the proposal now  
10 that it will be limited in time and we will have the  
11 opportunity to go back and see how it is used over that time  
12 period.

13 COMMISSIONER BRADLEY: So staff and Florida Power  
14 both agree that the amended language is more workable and more  
15 acceptable?

16 MR. LITCHFIELD: Florida Power and Light has agreed  
17 to that accommodation, yes.

18 MS. BROWN: And staff does believe that, yes,  
19 Commissioner.

20 COMMISSIONER BRADLEY: With that having been said,  
21 Mr. Chairman, I would like to move the recommendation as  
22 amended.

23 COMMISSIONER JABER: Second.

24 CHAIRMAN BAEZ: There is a second. And just to be  
25 clear, Commissioner, we are moving approval of Issue 1, and on

1 Issue 2 we are moving approval of the primary recommendation  
2 with the modifications as discussed by the company.

3 MS. BROWN: Yes, Mr. Chairman. And if you would  
4 allow us to administratively approve the tariff when Power and  
5 Light files it.

6 CHAIRMAN BAEZ: Commissioner, is the administrative  
7 approval of the filed tariff part of the motion, as well?

8 Commissioner Bradley, does it include administrative  
9 approval of the tariff?

10 COMMISSIONER BRADLEY: Oh, yes.

11 CHAIRMAN BAEZ: Okay. Very well. Commissioner  
12 Jaber, you are clear on that?

13 COMMISSIONER JABER: Absolutely, yes.

14 CHAIRMAN BAEZ: All right. Motion and a second.

15 All those in favor say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN BAEZ: Show it approved unanimously. Thank  
18 you very much.

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STATE OF FLORIDA )

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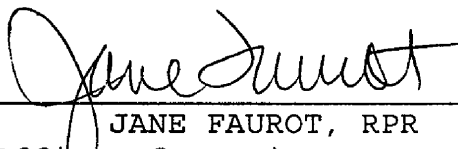
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 6th day of April, 2004.



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JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732