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ORIGINAL

From: Pam Keillor [pkeillor@radeylaw.com]
Sent: Monday, May 22, 2006 4:08 PM
To: Filings@psc.state.fl.us
Cc: Susan Clark; Lisa Scoles
Subject: Electronic Filing for FPL, Gulf, Progress and TECO for Approval of Stipulation Regarding Interconnection
Attachments: Pet.forStipulation.pdf

060410-E1

<<Pet.forStipulation.pdf>>

Electronic Filing

a. Person responsible for this electronic filing:

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b. Undocketed – Petition of Florida Power & Light Co., Gulf Power Co., Progress Energy Florida and Tampa Electric Co. for Approval of Stipulation Regarding Interconnection.

c. Document being filed on behalf of Florida Power & Light Company, Gulf Power Company, Progress Energy Florida and Tampa Electric Company.

d. There are a total of 15 pages.

e. The document attached for electronic filing is Florida Power & Light Company, Gulf Power Company, Progress Energy Florida and Tampa Electric Co.'s Petition for Approval of Stipulation Regarding the Interconnection of Distributed Resources to the Electric Power System.

(See attached file: Pet.stipulation.pdf)

Thank you for your assistance with this matter.

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DOCUMENT NUMBER-DA

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FPSC-COMMISSION CLE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Co., Gulf Power Co., Progress Energy Florida and Tampa Electric Co. for Approval of Stipulation Regarding Interconnection)
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DOCKET NO.: _____

FILED: May 22, 2006

PETITION FOR APPROVAL OF STIPULATION REGARDING THE INTERCONNECTION OF DISTRIBUTED RESOURCES TO THE ELECTRIC POWER SYSTEM

Florida Power & Light Company, Gulf Power Company, Progress Energy Florida and Tampa Electric Company (the “investor-owned utilities” or “IOUs”) hereby request that the Florida Public Service Commission (the “FPSC” or the “Commission”) approve the attached Stipulation Regarding the Interconnection of Distributed Resources to the Electric Power System (“Stipulation”). Under the Stipulation, the IOUs would agree to adopt, on a voluntary basis, the Institute of Electrical and Electronics Engineers (“IEEE”) Standard 1547 for Interconnection of Distributed Resources to the Electric Power System.

By approving the attached Stipulation, the FPSC will be complying with the provisions of the Energy Policy Act of 2005, requiring the FPSC to consider adopting a standard for such interconnection based on the IEEE Standard 1547. Further, the approval of the Stipulation is consistent with procedures previously employed by this Commission in consideration of other standards embodied in the federal Public Utilities Regulatory Policies Act (“PURPA”).

Jurisdiction

1. Florida Power & Light Company, Gulf Power Company, Progress Energy Florida and Tampa Electric Company are public utilities subject to the regulatory jurisdiction of the FPSC pursuant to Chapter 366, Florida Statutes.

Preliminary Information

2. All notices, pleadings, motions, orders or other documents required to be served upon the petitioner or filed by any party to this proceeding should be served upon the following individuals:

For Florida Power & Light Co.:

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For Gulf Power Co.:

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For Progress Energy Florida:

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For Tampa Electric Co.:

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3. This Petition is not filed in response to a prior agency decision and does not seek reversal or modification of any proposed agency action. The IOUs are not aware of any disputed issues of material fact with respect to the matters stated in this Petition.

Background

4. Under the amendments to the PURPA contained in the Energy Policy Act of 2005, the FPSC is required by Section 111(d)(15) [16 U.S.C.S. § 2621(d)(15)(2005)] to consider implementation of a standard requiring electric utilities to provide interconnection service to customers who request it, based upon the IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power System. Specifically, paragraph (15) sets forth the standard the FPSC is to consider:

(15) Interconnection. Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term “interconnection service” means service to an electric consumer under which an on-site generating facility on the consumer’s premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

5. The FPSC is not required to adopt the federal standard in order to comply with the Energy Policy Act of 2005. Section 2621 of 16 U.S.C. provides that “[e]ach State regulatory authority . . . shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard” 16 U.S.C. § 2621(a)(2005). Under this language, a state regulatory commission is required only to “consider” a standard and is *not* required to accept or adopt the standard. *See Fed. Energy*

Regulatory Comm'n v. Miss., 456 U.S. 742, 765 (1982) (finding that PURPA requires only that the States “consider the suggested federal standards” and stating that “[t]here is nothing in PURPA ‘directly compelling’ the States to enact a legislative program.”)(emphasis in original); *La. Pub. Serv. Comm'n v. Fed. Energy Regulatory Comm'n*, 184 F.3d 892, 899 (D.C. Cir. 1999) (“The Public Utilities Regulatory Policy Act of 1992 requires states to consider – but not to adopt – economically efficient practices”).

6. The federal law sets out broad procedural requirements regarding the consideration of the standard. The procedural requirements set forth in the statute regarding consideration, which have been part of the statute since its original version, are as follows:

- (1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be –
 - (A) in writing,
 - (B) based upon findings included in such determination and upon the evidence presented at the hearing, and
 - (C) available to the public.
- (2) Except as otherwise provided for in paragraph (1), in the second sentence of 112(a) [16 U.S.C. § 2622(a) – allowing participants and intervenors], and in sections 121 and 122 [16 U.S.C. §§ 2631, 2632 – permitting intervenors], the procedures for the consideration and determination referred to in subsection (a) shall be those established by the State regulatory authority

16 U.S.C. § 2621(b)(2005). Apart from these basic requirements, PURPA does not mandate specific processes or procedures. In fact, subsection (2) specifically says that as long as the basic requirements are met, the procedures shall be established by the state regulatory authority.

Approval of the Stipulation complies with the procedural requirements of PURPA and is consistent with the FPSC's handling of other PURPA standards

7. The federal procedural requirements are that the state regulatory commission's determination be: (1) made after public notice and hearing, (2) in writing, (3) based upon findings and evidence presented at the hearing, and (4) available to the public. 16 U.S.C. §

2621(b)(2005). The public notice and hearing would be met by the Commission's agenda conference notice and its consideration of the item at the agenda conference at which the utilities and interested parties could make presentations.¹ The Stipulation and Order Approving the Stipulation would constitute the written memorialization of the Commission's consideration, incorporating the findings made by the Commission. The findings would be based on the Stipulation and presentations made at the agenda conference to consider the Stipulation. Finally, the Commission's order would be available to the public.

8. Approving the Stipulation of the investor-owned utilities is sufficient to comply with the Energy Policy Act of 2005 and is consistent with the process followed by the Commission when addressing paragraph 111(d)(9), a 1992 amendment to Section 111 of PURPA.² In Docket No. 931011-EI, the Commission did not hold a live hearing³ because the parties to the proceeding proposed a stipulation, addressing the items to be considered under paragraph 111(d)(9), which was approved by the Commission.⁴

¹ The federal law does not preclude a "paper hearing." Chapter 120 of the Florida Statutes requires evidentiary hearings only if there are issues of material fact and, therefore, it is *not* necessary to have an evidentiary hearing if there are no issues of material fact. *See* Sections 120.57(1)-(2), Fla. Stat. However, the Commission, in an abundance of caution, may want to issue a Proposed Agency Action ("PAA") order to allow any substantially affected person to protest a proposed action and to have an opportunity for hearing.

² Other methods of handling PURPA amendments have also been used. The Integrated Resource Planning and Investments in Conservation and Demand Management standards (paragraphs 111(d)(7) and (8)) were considered in conjunction with the FPSC dockets setting demand side management goals for the investor-owned utilities and included several days of hearings. *See* Docket Nos. 930548-EG, 930549-EG, 930550-EG, and 930551-EG. The FPSC declined to adopt the standards. *See* Order No. PSC-94-1313-FOF-EG. Consideration of paragraph 111(d)(10) began with an investigative docket (Docket No. 930331-EU) but was quickly rolled into an existing rulemaking docket (Docket No. 921288-EU). The FPSC ultimately adopted an amendment to Rule 25-22.081, F.A.C., which required a petition for determination of need to include information on the impact of a purchased power agreement with a non-utility generator. *See* Docket No. 921288-EU, Order No. PSC-93-1846-FOF-EU.

³ Testimony was prefiled, prehearing statements were filed, and a prehearing conference was held.

⁴ While the Commission did not believe it was required, the order approving the stipulation was issued as a Proposed Agency Action. That PAA became a final order when it was not protested. Regarding the PAA issue, the Commission stated: "While we are satisfied that the procedural requirements of PURPA have been served, in an abundance of caution, this Order is being issued as proposed agency action. In that manner we are assured that

Adoption of IEEE Standard 1547 as a rule would be impractical as the standard is not final

9. The IEEE Standard 1547 will continue to develop. According to the Abstract of IEEE Standard 1547, the standard “establishes criteria and requirements for interconnection of distributed resources (“DR”) with electric power systems (“EPS”).” The IEEE has four status levels for its standards: (1) Developing, (2) Active, (3) Stabilized, and (4) Withdrawn. *IEEE-SA Standards Board Operations Manual* § 1.2, the Institute of Electrical and Electronics Engineers, Inc. (2006), available at: <http://standards.ieee.org/guides/opman/index.html>. The IEEE Standard 1547 was approved by the IEEE Standards Board in June 2003 and as an American National Standard in October 2003. IEEE website, available at: http://grouper.ieee.org/groups/scc21/1547/1547_index.html. Currently, the 1547 Standard is identified as “Recently Published” (or Active) on the IEEE webpage. IEEE website, available at: <http://grouper.ieee.org/groups/scc21/wg.html>. The IEEE also considers Standard 1547.1 “Recently Published,” while Standards 1547.2, 1547.3, 1547.4, 1547.5, and 1547.6 are “Standards Development Ongoing Projects” (or Developing). *Id.* All of these standards are part of the 1547 series.⁵ *Id.* The IEEE standards at the levels of Developing and Active, like the 1547 Standard, are subject to numerous revisions. *IEEE-SA Standards Board Operations Manual* § 8 and § 9. The IEEE Operations Manual states that the Active standards must be revised “whenever any of the material in the standard . . . becomes obsolete or incorrect” and

substantially affected persons have an opportunity to a hearing and that the public and the parties have been afforded due process.” Docket No. 931011-EI, Order No. PSC-94-0601-FOF-EI at 2.

⁵ The 1547 series includes all of the following: 1547.1 – A standard approved in 2005 for conformance test procedures for equipment interconnection DR [Distributed Resources] with electric power systems (“EPS”); 1547.2 – Application guide for IEEE Standard 1547 for interconnecting DR with EPS; 1547.3 – Guide for monitoring, information exchange and control of DR interconnecting with EPS; 1547.4 – Guide for design, operation, and integration of DR island systems with EPS; 1547.5 – Technical guidelines for interconnection of electric power sources greater than 10 MVA to the power transmission grid; and 1547.6 – Recommended practices for interconnecting DR with EPS distribution secondary network. IEEE website, available at: http://grouper.ieee.org/groups/scc21/dr_shared/.

may be revised when “new material becomes available.” *IEEE-SA Standards Board Operations Manual* § 9.2. Further, the IEEE bylaws state “IEEE standards shall be updated as often as new information is available or in accordance with the established cycle set by the IEEE-SA Standard Board.” *IEEE-SA Standards Board Bylaws* § 5.3, the Institute of Electrical and Electronics Engineers, Inc. (2006), available at: <http://standards.ieee.org/guides/bylaws/sb-bylaws.pdf>. A standard will continue to be repeatedly revised until it becomes “stabilized,” which means that a standard “is still in use by industry” but “has reached a state of maturity not warranting continuous maintenance [or revisions].” *IEEE-SA Standards Board Operations Manual* § 9.3. The 1547 standard – which is still in its infancy and which, as acknowledged on the IEEE website, has not stabilized – is subject to ongoing revisions. Thus, IEEE Standard 1547 is not in its final version and can be expected to change, as it continues to evolve and be revised.

10. The Commission’s adoption of a non-final standard, such as IEEE Standard 1547, in a rule would be impractical, as doing so would require new rulemaking with every change of the standard.⁶ Incorporation by reference into an administrative rule is permitted under Florida law, but the material that is incorporated into a rule is limited to the version of the material that existed on the day the rule was adopted. Revisions to the incorporated material would require amendment of the administrative rule in order to incorporate the changes. The relevant section of the Florida Statutes provides:

A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are

⁶ The Commission has previously chosen not to incorporate specific IEEE Standards by reference into a rule. In the development of Rule 25-6.065, F.A.C., Interconnection of Small Photovoltaic Systems, an early draft of the proposed rule by Commission staff included incorporation by reference of IEEE Standard 929 (Recommended Practice for Utility Interface of Photovoltaic (“PV”) Systems) and required certification that the contractor had complied with IEEE Standard 1262-1995 (Recommended Practice for Qualification of Photovoltaic Modules). See Docket No. 010982-EU. The final adopted rule did not incorporate or refer to specific IEEE Standards. See Rule 25-6.065, F.A.C. The Commission’s decision not to include specific IEEE standards in the rule proved to be wise, given that IEEE has since administratively withdrawn both Standard 929 and Standard 1262-1995, in February 2006 and January 2002, respectively.

not effective unless the rule is amended to incorporate the changes. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws. The Department of State may prescribe by rule requirements for incorporating materials by reference pursuant to this paragraph.

Section 120.54(1)(i)1., Fla. Stat. (emphasis added). Rule 1S-1.005,⁷ F.A.C., entitled Incorporation by Reference, was promulgated by the Department of State in accordance with the statute. This rule, in perfect harmony with the statute, reiterates that incorporation of an “ordinance, standard, specification or similar material” is of the then-current version of the material and that updates to the material require amendment of the rule. Currently, the Administration Commission promulgates rules on rulemaking. See Section 14.202, Fla. Stat. (“The [Administration] commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 . . .”). The Administration Commission does not presently have a generic rule incorporating materials by reference, so the general provisions of Section 120.54(1)(i)1. are controlling. Therefore, to adopt the evolving IEEE Standard 1547 would require the FPSC to engage in a new rulemaking proceeding with every change of the standard, since the IEEE standard incorporated into the rule would be the version of the standard in effect on the day the rule was adopted. Future changes to the IEEE Standard 1547 would not be automatically incorporated into the Commission rule, but would have to be implemented by additional rulemaking proceedings. This cumbersome process would hamper the IOUs’ ability to implement the current IEEE Standard 1547, since the

⁷ Rule 1S-1.005, F.A.C., reads, in pertinent part:

(1) Any ordinance, standard, specification or similar material may be incorporated by reference in a rule adopted pursuant to section 120.54, Florida Statutes, and rule 1S-1.002, subject to the following conditions:

- (a) The material shall be generally available to affected persons.
- (b) The material shall be published governmental agency or a generally recognized professional organization.

(2) The agency incorporating material by reference shall file with the Department of State a correct and complete copy of the referenced material with an attached certification page which shall state a description of the reference material and specify the rule to which the referenced material relates.

(3) Any amendments to material incorporated by reference must be promulgated under the rulemaking provisions of section 120.54, Florida Statutes, in order for the amended portions to be valid.

standard incorporated into the rule at any given point in time might or might not be the most current version. Also, this process would clearly not be cost effective, since FPSC resources would be consumed revisiting any rule that was promulgated, in order to keep it updated with the current version of the standard.

11. The Commission's adoption of a developing standard, like IEEE Standard 1547, in a rule is unnecessary since rulemaking is not required when the relevant policies or parameters are still evolving. See *Fla. League of Cities, Inc. v. Admin. Comm'n*, 586 So. 2d 397, 406 (Fla. 1st DCA 1991)(agency policy is "exempt from rulemaking" under chapter 120 while it is developing or evolving). See also *City of Tallahassee v. Fla. Pub. Serv. Comm'n*, 433 So. 2d 505, 507 (Fla. 1983)(finding that the FPSC did not have to engage in rulemaking and could, instead, engage in a case-by-case analysis when its position in a particular area was not yet solidified). In Docket No. 960397-WS, the Commission explicitly recognized that rulemaking was not necessary when a matter was "not sufficiently resolved to enable the agency to address a statement by rulemaking." Order No. PSC-96-0686-FOF-WS at 11. Therefore, chapter 120 does not require the Commission to adopt the evolving IEEE Standard 1547 by means of rulemaking.

12. Therefore, it is not appropriate for the FPSC to adopt the IEEE Standard 1547 as a rule and the FPSC should instead rely upon the utilities' voluntary agreement to amend their tariffs for the interconnection agreements for qualifying facilities ("QFs") to provide for the applicability of such tariffs to distributed resources, as appropriate. The utilities agree to provide that interconnections with distributed resources that are QFs will be based on the then-current IEEE Standard 1547 and to file copies of the executed agreements with the Commission. Additionally, the utilities agree to provide that interconnections with distributed resources that

are not QFs will likewise be based on the then-current IEEE Standard 1547. A similar approach has been used before by the Commission. In considering the Integrated Resource Planning and Investments in Conservation and Demand Management standards from the 1992 PURPA amendments, the FPSC declined to adopt both federal standards because, while embracing the concepts they represented, the FPSC was concerned about some uncertainties associated with the standards. *See* Order No. PSC-94-1313-FOF-EG. Accordingly, the FPSC determined that it would rely on the processes already employed by the utilities, which the Commission determined were consistent with the intent of the Act, rather than to adopt the standards or to enact any rules. *Id.* The FPSC also decided to address any unresolved issues, upon petition from a utility, on a case-by-case basis. *Id.*

WHEREFORE, Florida Power & Light Company, Gulf Power Company, Progress Energy Florida and Tampa Electric Company respectfully request that the FPSC grant this petition and approve the Stipulation contained in Exhibit A hereto.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC
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EXHIBIT A

STIPULATION REGARDING THE INTERCONNECTION OF DISTRIBUTED RESOURCES TO THE ELECTRIC POWER SYSTEM

WHEREAS, Section 111(d)(15) of the Energy Policy Act of 2005 [16 U.S.C.S. § 2621(d)(15)(2005)] enacted on August 8, 2005, directs state regulatory authorities, such as the Florida Public Service Commission (“FPSC”), to consider implementation of a standard that requires utilities to provide interconnection service to customers who request it, based on the Institute of Electrical and Electronics Engineers (“IEEE”) Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems; and

WHEREAS, Florida Power & Light Company, Gulf Power Company, Progress Energy Florida, Tampa Electric Company (“the Investor-Owned Utilities” or “IOUs”) are utilities that would provide such interconnection service; and

WHEREAS, the term “interconnection service” is defined as service to an electric consumer under which an on-site generating facility on the consumer’s premises is connected to the local distribution facilities; and

WHEREAS, the utilities have filed with the Commission, as part of their Electric Retail Tariffs, a standard Interconnection Agreement for Qualifying Facilities, as required by Commission Rule 25-17.087, F.A.C.; and

WHEREAS, at this point, it is not possible to realistically anticipate the types of distributed resources (i.e., wind energy, fuel cells, solar energy micro turbines and combustion engines) for which customers will request interconnection; and

WHEREAS, the necessary interconnection equipment, safety and electrical requirements, administrative costs and liability insurance requirements will vary depending on the type of distributed resource; and

WHEREAS, given the uncertainty regarding the types of distributed resources for which interconnection is likely to be requested, it is premature at this time to adopt either a rule or standard interconnection agreement for specific types of distributed resources; and

WHEREAS, the IEEE Standard 1547 and attendant guidelines are continuing to evolve and if a rule is adopted, revisions to the rule would continually be required; and

WHEREAS, it is consistent with the intent embodied in the federal standard for the Commission to accept and approve a voluntary agreement by the IOUs to establish interconnection with distributed resources based on the then-current IEEE Standard 1547; and

WHEREAS, approval of this Stipulation and issuance of an order would comply with Section 111(d)(15) of the Energy Policy Act of 2005, that provides that the FPSC consider the issue of

interconnection in accordance with the requirements of Section 111(d)(15) of the Energy Policy Act of 2005; and

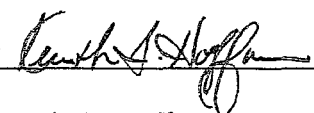
WHEREAS, the FPSC has previously considered various standards established by federal law in a variety of ways, including the approval of stipulations offered by affected utilities.

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

1. The Investor-Owned Utilities hereby voluntarily agree, when and if requested, to make available distributed resources interconnection service to any electric consumer that the utility serves, based upon the then-current IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems;
2. The Investor-Owned Utilities hereby voluntarily agree to amend their tariffs for the interconnection agreements for Qualifying Facilities to provide for the applicability of such tariffs to distributed resources, as appropriate, and to provide that interconnections with distributed resources that are Qualifying Facilities will be based on the then-current IEEE Standard 1547; and the Investor-Owned Utilities hereby voluntarily agree to provide that interconnections with distributed resources that are not Qualifying Facilities will likewise be based on the then-current IEEE Standard 1547;
3. The Investor-Owned Utilities agree that agreements and procedures shall be established whereby the interconnection services offered shall promote current best practices of interconnection for distributed generation, shall be just and reasonable, and not unduly discriminatory or preferential; and
4. The Investor-Owned Utilities agree to file any and all executed Distributed Resources interconnection agreements with the FPSC.

Respectfully submitted,

Florida Power & Light Company

By  _____

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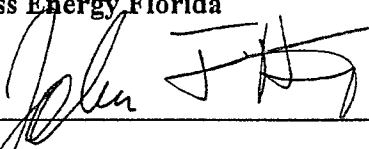
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