State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: January 29, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Kummer, Lee)
Office of the General Counsel (Bennett)
Office of Strategic Analysis and Governmental Affairs (Graves)

RE: Docket No. 080665-EI – Petition of Florida Power & Light Company for approval of long-term agreement for full requirements electric service with Lee County Electric Cooperative.

AGENDA: 02/10/09 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080665.RCM.DOC

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Case Background

On August 21, 2007, Florida Power & Light (FPL) signed an agreement with Lee County Electric Cooperative (LCEC) for a long term wholesale power sales agreement to provide full requirements electric service to LCEC. On September 2, 2008, FPL filed for Commission approval of the sales agreement in Docket No. 080001-EI.[1] At the Prehearing Conference in

[1] Docket No. 080001-EI, In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor.

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Docket No. 080001-EI on October 20, 2008, FPL agreed to remove this issue from consideration in the fuel docket and file a separate petition, on the understanding that the matter would be heard expeditiously so as to meet the December 31, 2009, deadline for regulatory approval stated in the Agreement. FPL filed the separate petition on November 10, 2008, in Docket No. 080665-EI.

LCEC currently purchases its wholesale power from Seminole Electric Cooperative (Seminole). As LCEC's purchased power contract with Seminole neared its expiration date, LCEC approached FPL, seeking to purchase wholesale power to serve LCEC's retail load. LCEC requested that FPL begin serving up to 300 Megawatts (MWs) of LCEC's load in 2010, but the bulk of the total load of 1,100 MWs would not be required until 2014, when LCEC would become a full requirements wholesale customer. FPL has entered into a short term wholesale agreement for the load between 2010 and 2014, and is not seeking Commission approval of that contract. FPL is seeking Commission approval of the long-term sales agreement (Agreement) beginning in January 2014, when the full 1,100 MWs of load would become FPL's responsibility. The initial term of the Agreement is for twenty years (ending December 31, 2033), and continues for an additional 20 years (ending December 31, 2053), unless either party chooses to terminate it.

Under the Agreement, LCEC's load would be treated on an equal footing with FPL's retail load. It is a system sale, which means LCEC will be assigned costs at system average cost for both capacity and fuel, just as retail ratepayers are. FPL will also include LCEC's load in its Ten Year Site Plan (TYSP) when planning plant additions. FPL states that the rate charged to LCEC is consistent with the Federal Energy Regulatory Commission (FERC) requirements, and that LCEC has secured firm transmission service for the load under FPL's FERC Open Access Transmission Tariff (OATT).

FPL represents that it has performed a system cost analysis, using the same methodology used in its TYSP, both with and without the LCEC load. The benefits to FPL's retail ratepayers, according to the petition, result from netting increased fuel costs against reduced base rate costs to retail customers. The increase in fuel costs results from the need to run higher cost generation to serve the increased total load. The decrease in base rate costs results from a higher jurisdictional separation factor, which removes more generation costs from the revenue requirement used to set retail base rates. FPL also contends that the sale will allow it to leverage its economies of scale to spread costs of new plant over more load, as well as provide a reliable, efficient, cost effective and environmentally friendly source of power to LCEC's retail customers.

FPL is not obligated by law to obtain Commission approval to enter into either a short or long-term wholesale contract with LCEC. However, FPL included a provision in the Agreement which requires Commission approval of the Agreement prior to execution. Wholesale contracts are at the discretion of the utility, subject to review by FERC. The Agreement would only trigger Commission action at the time the utility seeks recovery of any costs in a clause proceeding, or when costs are allocated in a base rate case. FPL stated that it is seeking Commission determination that the Agreement was "prudent and consistent with the interests of

FPL's retail customers."[2] Formal Commission approval of the long-term wholesale Agreement is requested because FPL's model shows that fuel costs will be higher in most years of the Agreement. FPL wishes to have the Commission formally recognize that base rate benefits outweigh the higher fuel costs over time so that they can avoid the need to justify the higher fuel costs each year in the fuel proceeding.

LCEC filed a letter supporting the Agreement and urging approval of FPL's petition for approval as a "win" for both utilities' customers. Representative Gary Aubuchon also filed a letter in support of the Agreement as a means of promoting the availability of diverse energy resources throughout the state. The letters are included as Attachment A. FPL's original petition in this docket is attached as Attachment B.

In this matter, the Commission has jurisdiction over the rates and charges to FPL's retail customers pursuant to Sections 366.05 and 366.06, Florida Statutes, but the terms and conditions of the Agreement for wholesale power are subject to FERC jurisdiction.

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[2] Docket No. 080665-EI, In re: Approval of Long-Term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative, petition at p.1

Discussion of Issues

Issue 1: Should the Commission approve as prudent the proposed wholesale power sale agreement between Florida Power & Light Company and Lee County Electric Cooperative?

Recommendation: No. The Commission should decline to approve FPL's Long-term Agreement For Full Requirements Electric Service with LCEC as prudent and consistent with the interests of FPL's retail customers. (Kummer, Lee, Graves)

Staff Analysis: FPL's request to the Commission to approve the prudence of FPL entering into a wholesale sales agreement is unique. As FPL confirmed in response to staff's data requests, it has not sought Commission approval of the prudence of entering into a wholesale sale agreement before this docket. FERC is the agency having jurisdiction over the terms and conditions of wholesale sales agreements, and FPL is also seeking FERC approval of this Agreement. While jurisdiction over the terms and conditions of this Agreement rests with FERC, the Commission does have jurisdiction through the fuel clause over the inclusion of fuel revenues and expenses associated with separated wholesale sales. The regulatory treatment of those revenues and expenses have been the subject of several Commission orders, which are discussed in Issue 2. The Commission also has jurisdiction to determine the portion of total system cost which is assigned to retail and included in retail rate setting, i.e., the separation factor between wholesale and retail customers.

Staff believes that it is because of the potentially higher fuel costs to retail ratepayers, that FPL is seeking Commission approval of this wholesale agreement. Staff is of the opinion that this wholesale agreement will require FPL to use more of its higher costing generating units (intermediate and peak load units) resulting in a higher fuel cost recovery factor for both retail ratepayers and the wholesale customers. FPL has stated that it has the ability to go ahead with the Agreement in the absence of Commission approval, and also has the right to terminate the Agreement if the Commission fails to approve the Agreement. However, if the Commission does not approve the prudence of the Agreement, and with it, the recovery of the higher fuel costs, FPL would absorb those higher fuel costs if it cannot collect them from LCEC. If the Agreement is approved by this Commission, the risk associated with the higher fuel costs and any commensurate base rate benefits shifts to the retail ratepayers. Therefore, FPL is seeking approval of the Agreement prior to filing the matter with FERC.

Staff is concerned that, under the proposed Agreement, the higher costs passed through the fuel clause will exceed any base rate reductions realized through shifting a larger proportion of base rate costs to wholesale via a higher separations factor. Although both LCEC and retail ratepayers will pay the same average fuel costs, the fuel costs for retail ratepayers will be higher with the Agreement than without it. FPL's analysis shows that, over the initial term of the Agreement, retail ratepayers pay more in total fuel costs than they receive in base rate benefits. Net benefits only accrue under the assumption that the LCEC Agreement terminates at the end of the initial 20-year term in 2033. Even after the termination of the Agreement, FPL ratepayers do not achieve cumulative net present value (NPV) benefits until the year 2051 under the most optimistic scenario not including solar.

The recommendation addresses three main topics: (1) the stream of costs and benefits as presented by FPL; (2) FPL's alternative to reducing base rates to recognize the separations factor impact; and (3) the impact of a Commission decision that the Agreement is prudent.

Cost and Benefits Stream

FPL justifies approval of its Agreement on three bases: (1) retail customers will benefit by spreading the cost of generation over more kilowatts (kWs) through a higher jurisdictional separations factor; (2) LCEC customers will receive reliable and cost-effective service and benefit from FPL's fuel diversity; and (3) the agreement will enhance FPL's generating resources by building cost-effective and environmentally sound new generation to serve the greater needs of all Floridians, not just FPL's retail customers.[3] Staff does not dispute the potential benefits to LCEC or to the state as a whole. Such societal benefits, however, should not be paid for only through higher rates to FPL's retail ratepayers, which exceed any reasonable expectation of benefits.

To project the costs and benefits associated with the Agreement, FPL used the computerized generation expansion simulation model used to develop Ten-Year Site Plan (TYSP) projections. This model uses inputs on anticipated plant additions, expected load, fuel prices, and other associated operating costs. In all scenarios, FPL performed this analysis twice - both with and without the average LCEC load of approximately 1,100 MWs.

FPL's original analysis filed with the petition was performed when the Agreement was negotiated in 2007. Subsequent to the 2007 analysis, FPL requested and received approval of a revision to its generation expansion plan in Dockets 080203-EI,[4] 080245-EI,[5] and 080246-EI.[6] Staff requested that FPL re-run the retail impact calculations using updated assumptions and a more recent resource plan. The four additional forecasts are: (1) August 2008 load forecast and fuel forecast; (2) August 2008 load forecast and October 2008 fuel forecast; (3) October 2008 load and fuel forecasts; and (4) October 2008 load and fuel forecasts with 100 MWs of solar generation added each year 2010-2040.

The analysis FPL presented with the petition showed net cumulative benefits to retail ratepayers, but that number only looked at costs and benefits over the first 10 years of the Agreement, not the full 20 years of the initial Agreement term. Based on the additional information provided, the NPV of the cumulative retail impact based on the initial 20-year term of the Agreement is negative for all but the last scenario, which assumes significant solar generation additions. The results of FPL's analysis for the initial term through 2033 are illustrated below in Table 1.

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[3]Docket No. 080665-EI, In re: Petition of Florida Power & Light company for Approval of Long-Term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative, petition at p.3.

[4]Docket No. 080203-EI, In re: Petition to determine need for West County Energy Center Unit 3 electrical power plant, by Florida Power & Light Company

[5]Docket No. 080245-EI, In re: Petition for determination of need for conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Company

[6]Docket No. 080246-EI, In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power& Light

Table 1: FPL NPV Retail Impact Analysis through 2033 ($Mil)

	August 2008 Load Forecast and Fuel Forecast	August 2008 Load Forecast and Oct. 2008 Fuel Costs	October 2008 Load and Fuel Forecast	October 2008 Load and Fuel Forecast w/Solar Additions
2033	($434.0)	($288.7)	($298.0)	$75.4

FPL argues that retail ratepayers will receive base rate benefits greater than the incremental fuel cost if the Agreement is evaluated over a longer time horizon. FPL's analysis of the Agreement through 2060 shows positive benefits for retail ratepayers in three of the four scenarios, if FPL terminates the Agreement in 2033. If the Agreement is terminated, FPL argues that, at that point, the load served is strictly retail, so there is no "incremental" fuel cost attributable to wholesale load, and that retail load receives only the benefits of the plants partially paid for by LCEC. Table 2 below shows the positive benefits FPL projects, based on the longer time frame. Although the cumulative NPV is positive in 2060, because of the large negative cumulative impacts during the initial term of the Agreement, ratepayers do not begin to realize positive NPV benefits until 2051. The complete yearly analysis of cost and benefits is shown in Attachment D.

Table 2: FPL NPV Retail Impact Analysis through 2060, Assuming Agreement Termination in 2033 ($ Mil)

	August 2008 Load Forecast and Fuel Forecast	August 2008 Load Forecast and Oct. 2008 Fuel Costs	October 2008 Load and Fuel Forecast	October 2008 Load and Fuel Forecast w/Solar Additons
2060	($105.9)	$39.4	$23.0	$380.8

While it is mathematically possible to arrive at positive net benefits, the long lag between cost recovery and benefit realization results in serious intergenerational mismatches. The extended time frame through 2060, together with termination of the Agreement in 2033, necessary to create the positive NPV makes any such benefits speculative at best.

In asserting net benefits to its ratepayers, FPL relies on its ability to renegotiate or terminate the Agreement at the end of the initial term. FPL will recover all of its costs, either through base rates or through fuel. LCEC will receive power at less than incremental cost because FPL's retail ratepayers are sharing the burden of higher fuel costs required to serve LCEC's load. There is little reason to believe either party will desire changes to the Agreement terms later.

Implementation of Separation Factor Impact

Another concern is the timing of costs and benefits to retail ratepayers. The higher fuel costs will be paid each year. The benefits from the proposed sale rest on the sharing of demand related costs through the higher separations factor. Jurisdictional separation studies generally take place in a full rate case. In the absence of a base rate proceeding, the benefits evaporate on an annual basis. If retail customers are to realize the benefits used to justify the Agreement, rates must be adjusted to recognize the removal of the 1,100 MWs from the retail cost responsibility when LCEC becomes a full requirements customer in 2014. This would normally be reflected in a reduction in retail base rates commensurate with the removal of the cost responsibility. If base rates are not adjusted, retail customers see only higher fuel costs with no offsetting benefits.

As an alternative to a base rate reduction in 2014, FPL proposes to credit an amount equivalent to the amount of the base rate reduction through the Capacity Cost Recovery Clause beginning in January 2014, and continuing until FPL's next rate case. In the next rate case, base rate costs would be separated on the full jurisdiction separation factor. FPL states that it "will commit to make an adjustment in the 2013 capacity cost recovery clause proceedings to credit customers, effective January 1, 2014, by the amount of reduced annual cost responsibility resulting from the lower jurisdictional separation factors..."[7]

It is staff's understanding that FPL intends to fix the dollar amount of the credit as of 2014 and that amount would be credited each year to the capacity clause in setting the overall factor. If FPL fixes the dollar amount of the credit, rather than the per kwh reduction, it allows the amount of the credit per kwh to fluctuate each year, depending on the kwhs used to set the cost recovery factors. Under the Capacity Clause credit approach, future ratepayers will likely be shortchanged compared to the base rate reduction used to justify the Agreement.

Effect of Commission Approval of the Prudence of the Agreement

An order approving the prudence of this agreement may have long-term effects (40 years) during which time the Commission will have a more limited ability to review that decision of prudence. A Commission order, once final, becomes subject to the doctrine of administrative finality. In previous decisions, the Commission has acknowledged that administrative finality applies to its decisions.

> We acknowledge that the doctrine of administrative finality applies to our final orders, and parties are entitled to the certainty that finality provides. See Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979) (finding that the Commission could not reopen dormant trucking certificate case after time for reconsideration had passed). See also, Florida Power Corporation v. Garcia, 780 So. 2d 34, 44 (Fla. 2001) (citing with approval Austin Tupler).

Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers $143 million .

There are exceptions to the doctrine of administrative finality that would permit the Commission to review and change a previously made decision. The courts have recognized that administrative finality will not apply if it is shown that some mistake, misrepresentation, or fraud, or a matter of great public interest compels the Commission's review. See Sunshine Utilities v. Florida Public Service Commission, 577 So. 2d 663, 666 (Fla. 1st DCA 1991)

[7] FPL Response to Staff's Second Data Request, dated December 23, 2008, in Docket No. 080665-EI, In re: Petition of Florida Power & Light Company for approval of long-term agreement for full requirements electric service with Lee County Electric Cooperative, at Question No. 3, page 2 of 2.

(review of a five-year-old rate order to correct a mistake); Reedy Creek Utilities v. Florida Public Service Commission, 418 So. 2d 249 (Fla. 1982) (review of a two and a half month order to correct a mistake and public interests were served); Richter v. Florida Power Corporation, 366 So. 2d 798 (Fla 2d DCA 1979) (re-open prior orders when there were issues of misrepresentation and fraud). While courts recognize that the Commission may, under certain circumstances, review its order once final, the Commission should be aware that it will be required to reach an additional finding to reconsider a prior decision.

Recovery of Nuclear Costs

Concerns have been raised in other dockets about whether the pre-payment of nuclear costs will be properly recovered from any wholesale customers who benefit from the lower cost nuclear power. In 2009, retail ratepayers will begin paying part of the total cost of new nuclear plants through the Capacity Cost Recovery Clause, pursuant to Rule 25-6.0423, Florida Administrative Code.[8] Since the wholesale load will benefit from the lower fuel costs, it is only fair that wholesale load contribute equitably to the cost of the plant which will generate that lower fuel costs.

After discussions with FPL, staff is comfortable with FPL's assertion that retail load will pay only its appropriate separated portion of the total plant costs, just as it would have done in the absence of the pre-payment structure. It is staff's understanding that the separation factor will be applied to the total plant costs before any pre-payment credits. Then, the entire amount of credits collected from ratepayers will be credited against only the portion of total costs which would have been borne by retail load in the absence of any pre-payments. As a result, when the plant goes on line, the amount included in retail rate base will be the jurisdictional share of the total costs less the pre-payments. The wholesale share of the costs will continue to reflect the full separation factor multiplied by the unadjusted plant costs, prior to any separation or crediting of pre-payments. Attachment C illustrates the calculations.

Summary

As FPL notes, wholesale contracts are subject only to FERC's rules and procedures. FPL also admits that this is the first time it has sought Commission approval of a large long-term wholesale sales agreement. LCEC and FPL have concluded that the Agreement will be in the best interest of both utilities and their customers, and that it is consistent with Florida's interest in diversifying the access to and utilization of generation resources within the state.

Staff accepts FPL's argument that it will be able to leverage its economies of scale, and that the Agreement is consistent with Florida's interest in diversifying the access and utilization of efficient generation within the state. However, FPL is asking the Commission to approve an Agreement whose term is 40 years with a possible termination after the first 20 years. FPL's analysis shows that the cumulative value of the Agreement to retail ratepayers is negative for the

[8]Order No. PSC-08-0749-FOF-EI, issued Nov. 12, 2008, in Docket No. 080009-EI, In re: Nuclear Cost Recovery Clause; and Order No. PSC-08-0824-FOF-EI, issued Dec. 22, 2008, in Docket No. 080001-EI, In re: Fuel and purchased power cost recovery clause and generating performance incentive factor.

term of the Agreement, and only becomes positive if the Agreement is not renewed and even then doesn't generate positive benefits for an additional 18 years. While staff agrees that allowing LCEC's customers to take advantage of the more efficient and diversified generation mix is desirable from a statewide perspective, we do not believe that this should be accomplished solely at the cost of higher rates to FPL's retail ratepayers.

Therefore, staff recommends that the Commission decline to approve as prudent the proposed Lee County wholesale Agreement, as filed.

Issue 2: Should the Commission approve the regulatory treatment of the costs associated with the wholesale Agreement?

Recommendation: Staff recommends that the Commission approve the regulatory treatment of the revenues and expenses associated with the wholesale agreement only if specific changes to FPL's proposed regulatory treatment are made. Staff recommends the following changes: (1) the fuel cost charged to retail ratepayers should be adjusted on an annual basis so the incremental fuel cost is no greater than the base rate benefit; (2) the credit through the Capacity Cost Recovery Clause recognizing the base rate benefit should be fixed on a per kwh basis, not a dollar basis, as would be done if base rates were adjusted; (3) FPL should provide notice to the Commission if there is a change in circumstance regarding the effect the regulatory treatment has on ratepayers; and (4) FPL should be required to bring this issue back to the Commission at least 12 months prior to the scheduled review by the parties to renew or terminate the Agreement. (Kummer, Bennett)

Staff Analysis: Staff recognizes that certain societal benefits may be realized through this Agreement. Those benefits should not, however, be achieved through increased costs to FPL's retail ratepayers which exceed any benefits they realize from the Agreement. Under FPL's proposal, any risk associated with an increase in fuel prices or changes in future generation additions are shifted from FPL's shareholders to FPL's retail ratepayers. As stated in Issue 1, the Commission does not have jurisdiction over the terms and conditions of the wholesale sales agreement. That is FERC's jurisdiction; the Commission does not have the same resources and perspectives for reviewing wholesale sales agreements that FERC has. Accordingly, it would be better for the Commission to focus its scrutiny on the matters effected by this Agreement over which it has jurisdiction, the regulatory treatment of increased fuel costs resulting from the wholesale sale.

As noted in Issue 1, FPL's proposed regulatory treatment will negatively impact FPL's retail ratepayers. Commission staff has reviewed several prior Commission orders regarding the regulatory treatment of wholesale sales with regard to matching of fuel costs and base rate benefits. Order PSC-97-0262-FOF-EI[9] stated that, as generic policy, long-term wholesale sales were to be separated on average system cost for both base rate and fuel costs. If a utility chose to enter into an agreement which did not recover those average costs, average cost would still be credited to fuel as if the utility had recovered the average cost of fuel from the wholesale customer. The order goes on to say that the utility's shareholders will, in effect, be required to pay for any shortfall associated with fuel revenues on the wholesale side. The order did, however, leave the door open for different treatment of fuel costs on a case-by-case basis if an overall benefit to the retail ratepayers could be demonstrated.

Based on the exemption in Order No. PSC-97-0262-FOF-EI, Tampa Electric Company (TECO), in a later docket, requested the Commission determine the treatment of fuel and non-fuel costs associated with sales to FMPA and Lakeland. For the FMPA/Lakeland sale, the average fuel cost was higher than the incremental fuel to serve the wholesale load. In order not

[9]Issued on March 11, 1997 in Docket No. 970001-EI, In re: Fuel and purchased power cost recovery clause and generating performance incentive factor, at pp. 3-4.

to discourage wholesale sales, the Commission allowed TECO to credit the retail fuel and environmental clauses with the incremental cost of serving the wholesale load.[10] TECO was then allowed to make up the difference between the incremental fuel and the average fuel costs from operating revenues because the Commission determined that retail ratepayers received a net benefit from a sale exceeding the amount necessary to make the cost recovery clauses whole.

In contrast, the incremental cost to add LCEC is higher than average, resulting in higher average system costs to both LCEC and FPL's retail load. To remain consistent with Order No. PSC-97-1273-FOF-EU, the regulatory treatment of the wholesale agreement should reflect LCEC as paying incremental, not average, fuel costs in order to hold the retail ratepayers harmless. At a minimum, the regulatory treatment should allow the fuel costs charged to retail ratepayers to be reduced such that the incremental fuel costs do not exceed the base rate benefits received. This adjustment can be made in the annual fuel filings by calculating the incremental fuel costs and allocating those costs to the wholesale jurisdiction. Under this regulatory mechanism, the incremental fuel may be recovered by FPL charging LCEC the incremental cost of fuel to serve its load, or by FPL absorbing the difference between the average cost with and without LCEC load.

Second, using the Capacity Clause mechanism FPL proposed to apply the base rate credit achieves a result comparable to a base rate reduction only under certain circumstances. A base rate reduction ensures the same reduction on a cents per kwh basis until base rates are changed again. Cost recovery factors are not a fixed charge per kwh, but fluctuate depending on the dollar amount to be recovered and the number of projected kwhs for the time period. If a dollar amount is assigned to the base rate benefit and credited to the Capacity Clause calculations, the cents per kwh will change as the projected kwhs change each year. If FPL's proposal to use the Capacity Clause to reflect the base rate credit is approved, this credit must likewise be fixed. This can be accomplished by calculating the credit separately and applying that credit to the Capacity Clause factor after all other calculations are completed.

Further, the Commission should not approve the regulatory treatment of the Agreement for the entire 40 year term of the Agreement. Too many factors can change over that time period, including general regulatory or legislative policy. The Commission should approve the regulatory treatment of the Agreement, but only under the conditions that FPL notify the Commission of changes in circumstances which affect retail ratepayers, and that FPL bring this issue back to the Commission prior to FPL determining whether to continue with the Agreement for an additional 20 years.

Staff is not recommending that the Commission make a determination of prudence, even if the regulatory treatment is modified as staff proposes. Consistent with the Commission orders as discussed, the Commission should only approve the regulatory treatment of fuel costs and retail base rate benefits, such that retail ratepayers are not harmed during the term of the Agreement.

[10]Issued October 15, 1997, in Docket No. 970171-EU, In re: Determination of appropriate cost allocation and regulatory treatment of total revenues associated with wholesale sales to Florida Municipal Power Agency and City of Lakeland by Tampa Electric, at pp 7-8.

Staff's proposal is designed to be ratepayer neutral. Staff's proposed treatment would be equally applicable if the incremental costs to serve LCEC doesn't increase the average fuel cost to retail load. In that instance, there would be no negative impact on FPL, the retail load would pay no more in fuel than without LCEC load, and the base rate benefits would result in positive overall benefits to retail load. If the increase does increase the average fuel cost, retail ratepayers would not be subsidizing the LCEC load through higher fuel costs.

Issue 3: Should this docket be closed?

Recommendation: Yes. Upon Commission vote on Issues 1 and 2, 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. (Bennett)

Staff Analysis: Upon Commission vote on Issues 1 and 2, 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.

LCEC
PEOPLE. POWER. POSSIBILITIES.

Lee County Electric Coo
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(239) 995-2121 • FAX (2

January 13, 2009

The Honorable Matthew M. Carter II, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Chairman Carter:

SUBJECT: DOCKET NO. 080665-EI - Petition of Florida Power & Light Company for Approval of Long-Term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative

My name is Dennie Hamilton, and I serve as Chief Executive Officer of Lee County Electric Cooperative, Inc. ("LCEC"), which provides electric service to nearly 200,000 member customers in Southwest Florida. Our mission at LCEC is to provide efficient, cost-competitive electric distribution and excellent customer service to our member customers.

On August 21, 2007, LCEC entered into a Long-Term Agreement for Full Requirements Electric Service (the "Agreement") with Florida Power & Light Company ("FPL"). The Agreement contains a condition precedent that gives FPL the right to terminate the Agreement if the Florida Public Service Commission ("FPSC") does not grant approval satisfactory to FPL. FPL filed a petition on November 10, 2008, which was placed on the subject docket asking the FPSC to approve the Agreement as prudent and consistent with the interests of FPL's retail customers (the "FPL Petition"). I am writing to express LCEC's strong support for the Agreement and for the FPSC's approval of it as requested by FPL.

LCEC contacted FPL in 2004 to begin exploring the possibility of FPL's providing full-requirements electric service, with LCEC receiving and paying for electric service from the full range of power supply resources on FPL's electric system. For many years, LCEC has been a member of Seminole Electric Cooperative, Inc., ("Seminole") and purchased its wholesale electric service from Seminole. LCEC has concluded, however, that the interests of the LCEC member customers would be better served by its acquiring wholesale power from a larger, more diverse electric system such as that operated by FPL. LCEC negotiated the terms of the Agreement with FPL over the course of many months. LCEC's goal was to generally replicate the cost-of-service responsibility that determines rates for FPL's retail customers, subject to regulatory accounting differences between the FPSC and the Federal Energy Regulatory Commission ("FERC"), which has authority over wholesale power sales such as this one. Throughout that process, FPL expressed its concern that, whatever arrangement might be reached, FPL needed to be comfortable – and to confirm that the FPSC is comfortable – that FPL's retail customers would not be disadvantaged by its serving LCEC as a full-requirements wholesale customer. The aforementioned condition precedent surfaced to address that concern.

The Honorable Matthew M. Carter II, Chairman
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January 13, 2009

LCEC agreed to this condition precedent so long as LCEC can have certainty that FPL will be proceeding with the Agreement by no later than the end of 2009. LCEC needs to ascertain by then that FPL will be serving its load under the Agreement. In the event FPL will not be doing so, LCEC needs sufficient time to make alternative wholesale power arrangements. The Agreement also has a condition precedent for FERC approval, which FPL is not in a position to pursue until the FPSC has reached a decision on the subject FPL Petition. Therefore, a prompt decision on the FPL Petition is important to LCEC.

LCEC strongly supports FPSC approval of the Agreement and respectfully urges the FPSC to view it not as a competition between "us" (the FPL retail customers) and "them" (LCEC's member customers), but rather as a win for both sets of customers. Approving the Agreement will also serve the state of Florida well by showing the FPSC's support for sharing available power resources.

For these reasons, LCEC respectfully urges the FPSC to grant the FPL Petition as promptly as possible. If you have any questions about my letter or about LCEC and its member customers, please do not hesitate to call me.

Sincerely,

Dennie Hamilton

William D. Hamilton
Executive Vice President
& Chief Executive Officer

jv

cc: The Honorable Lisa P. Edgar, Commissioner
The Honorable Nathan A. Skop, Commissioner
The Honorable Katrina J. McMurrian, Commissioner
The Honorable Nancy Argenziano, Commissioner
Dr. Mary Bane, Executive Director, Florida Public Service Commission
Mr. Patrick Booter Imhof, General Counsel, Florida Public Service Commission
J.R. Kelly, Esquire, Office of Public Counsel

Florida House of Representatives
Representative Gary Aubuchon
District 74

Committees & Councils:
Health Care Services, *Chair*
Human Services Appropriations, *Vice Chair*
General Government & Health Care Appropriations
Health and Family Services Policy Council
Energy & Utilities
Roads, Bridges & Ports

January 13, 2009

The Honorable Matthew M. Carter II, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: DOCKET NO. 080665-EI - Petition of Florida Power & Light Company For Approval of Long-Term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative

Dear Chairman Carter:

As the State Representative of District 74, I represent customers of Lee County Electric Cooperative, Inc. (LCEC) and Florida Power and Light (FPL) throughout Southwest Florida. It is my understanding that as a result of many years of study and consultation with industry experts, LCEC has determined it is in the best interest of its customers to begin receiving wholesale power from a larger, more diverse power supplier such as FPL. LCEC subsequently reached an agreement with their current power supplier, Seminole Electric Cooperative, for early termination of their all-requirements contract and has entered into a long-term agreement for full power requirements with Florida Power and Light (FPL).

District Office: 3501 Del Prado Boulevard, Suite 305, Cape Coral, Florida 33904
Phone: (239) 344-4900 Fax: (239) 344-4901
Capitol Office: 402 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
Phone: (850) 488-7433

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In an effort to validate that FPL retail customers would not be disadvantaged by adding LCEC as a wholesale customer, a condition was placed on the agreement that led FPL to petition the FPSC for approval of the agreement prior to its commencement.

I support the FPL request for approval from the FPSC and believe your review will ensure the proposed agreement is in the best interests of both FPL and LCEC customers. As a member of the House Committee on Energy, I have a continued interest in ensuring diverse energy resources are available to customers throughout the state. This agreement takes a step in the right direction toward promoting energy security and affordability by encouraging diversification. As you know, a prompt decision allowing FPL to serve LCEC customers is critical to ensuring a continued reliable source of energy at a competitive price for all customers. Thank you in advance for your timely consideration in this matter.

Sincerely,

Gary Aubuchon

cc: The Honorable Lisa P. Edgar, Commissioner
cc: The Honorable Nathan A. Skop, Commissioner
cc: The Honorable Katrina J. McMurrian, Commissioner
cc: The Honorable Nancy Argenziano, Commissioner
cc: Dr. Mary Bane, Executive Director, Florida Public Service Commission
cc: Patrick Booter Imhof, General Counsel, Florida Public Service Commission
cc: J.R. Kelly, Esquire, Office of Public Counsel

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FPL

Florida Power & Light Company, 215 S. Monroe St., Suite 810, Tallahassee, FL 32301

080665

John T. Butler
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Florida Power & Light Company
700 Universe Boulevard
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E-mail: john_butler@fpl.com

November 10, 2008

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COMMISSION CLERK

-VIA HAND DELIVERY -

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Petition of Florida Power & Light Company For Approval of Long-Term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative

Dear Ms. Cole:

I am enclosing for filing in the above docket the original and fifteen (15) copies of Florida Power & Light Company's ("FPL") Petition for Approval of Long-Term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software in which the document appears is Word 2003. Also enclosed for filing are the original and fifteen (15) copies of the prepared written testimony and supporting exhibits for FPL witness, Timothy Gerrish.

If there are any questions regarding this transmittal, please contact me at 561-304-5639.

Sincerely,

Terry J. Keith for
John T. Butler

COM 5+1
ECR +disk
GCL 1
OPC 1
RCP
SSC
SGA 1
ADM
CLK 1

Enclosures

an FPL Group company

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Approval of Long-Term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative.	))))	DOCKET NO. 080665 FILED: November 10, 2008

PETITION OF FLORIDA POWER & LIGHT COMPANY FOR APPROVAL OF LONG-TERM AGREEMENT FOR FULL REQUIREMENTS ELECTRIC SERVICE WITH LEE COUNTY ELECTRIC COOPERATIVE

Florida Power & Light Company ("FPL") hereby petitions the Commission for approval of FPL's Long-term Agreement for Full Requirement Electric Service with Lee County Electric Cooperative ("LCEC"), dated August 21, 2007, (the "Agreement") as prudent and consistent with the interests of FPL's retail customers. In support of this Petition, FPL incorporates the prepared written testimony and exhibits of FPL witness T.W. Gerrish and states as follows:

1. FPL is a public utility subject to the regulatory jurisdiction of the Commission under Chapter 366, Florida Statutes. The Company has offices located at 700 Universe Boulevard, Juno Beach, Florida.

2. All notices, pleadings and other communications required to be served on the petitioner should be directed to:

Jeffrey S. Bartel
Vice President - Regulatory Affairs
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

-and-

R. Wade Litchfield
John T. Butler
Florida Power & Light Company
700 Universe Boulevard

Juno Beach, Florida 33408-0420
Telephone: (561) 691-7101
Facsimile: (561) 691-7135
e-mail: wade_litchfield@fpl.com
john_butler@fpl.com

3. FPL was contacted by LCEC and advised that they were interested in pursuing alternative power supply solutions to meet the needs of their customers. FPL negotiated the Agreement to sell Full Requirements Electric Service to LCEC. Under the Agreement, FPL would supply all of LCEC's electrical energy needs from January 1, 2014 until December 31, 2033. LCEC would pay FPL a monthly capacity and energy payment, both of which are derived through cost-of-service formulas that are tied to actual FPL System Capital and Operating costs. The Agreement has provisions that allow the term to extend an additional 20 years (to 2053) unless one of the parties terminates the agreement prior to December 31, 2026. The Agreement will allow LCEC and its customers to benefit from FPL's reliable and cost effective electrical service, in a manner that is not detrimental to FPL's retail customers.

4. Under the Agreement, FPL would serve the capacity and energy needs of LCEC just as it would serve FPL's retail load. FPL would forecast LCEC's load requirements and incorporate LCEC's load in its total load serving obligations. FPL would plan future generation additions around meeting this total load obligation. FPL would deliver the capacity and energy to LCEC's load through FPL's transmission system pursuant to FPL's Open Access Transmission Tariff. LCEC has requested and subsequently been granted firm Network Transmission Service for the term of the Agreement. LCEC is responsible for paying the Network Transmission Service Tariff Rate and is in the process of entering into Transmission Service Agreements with FPL Transmission.

5. On a monthly basis, LCEC would pay FPL for the capacity and energy that is required to meet LCEC's load. FPL has designed a cost-based formula rate that captures FPL system costs associated with providing the capacity and energy consistent with Federal Energy Regulatory Commission ("FERC") guidelines. These costs include but are not limited to capital, capital recovery, O&M, property taxes, emissions, corporate overhead, purchased power and fuel (nuclear, gas, coal and oil).

6. The Agreement represents a large, long-term, discretionary commitment of FPL's resources to serving load outside its own retail service territory. LCEC and FPL have concluded that the Agreement will be in the best interests of both utilities and their customers, and is consistent with Florida's interest in diversifying the access to and utilization of generating resources within the state. Because of the size and duration of the commitment, however, FPL respectfully requests the Commission to confirm that it concurs with our conclusions.

7. The Agreement offers several important benefits to both FPL and LCEC.

a. FPL will be able to leverage its economies of scale. The LCEC load will represent approximately 1,100 MW of additional capacity and energy to which FPL can allocate certain fixed costs (i.e. overhead) through the cost-of-service rate structure.

b. LCEC will receive reliable and cost effective electrical service from the largest utility in the State with a substantial number of generating resources and significant fuel diversity.

c. In view of the benefits both to LCEC customers and FPL customers, this Agreement will enhance the use of Florida's generating resources. FPL has demonstrated over time that we are an efficient, cost effective and environmentally friendly builder of new generation in Florida. The future generation that FPL builds to meet load growth, including

LCEC load, will leverage those core competencies to serve the greater needs of all Floridians and not just retail customers of FPL.

8. FPL's 2008 Ten Year Site Plan contemplates serving the LCEC load. Entering into the Agreement would be consistent with that plan. FPL also conducted an extensive analysis to determine the impact to FPL's retail customers as a result of serving LCEC load under this Agreement. This analysis showed a favorable impact to FPL's retail customers of approximately $110 million (nominal) through 2020.[1] FPL's analysis was originally conducted in July 2007, as part of FPL's decision to enter into the Agreement. In August 2008, FPL updated the analysis for changes in load, fuel and generation plans. The updated analysis continues to show a favorable impact to FPL's retail customers, with the cumulative benefit increasing to approximately $435 million (nominal) through 2020 from the $110 million cumulative benefit shown in the July 2007 analysis. The results of these analyses are presented in Mr. Gerrish's testimony and exhibits.

9. The Agreement is thus a "win – win" proposition for LCEC, FPL's customers and the state of Florida as a whole. The Commission should confirm that it concurs with these conclusions so that FPL can move forward with implementing the Agreement.

10. The Agreement makes Commission approval of the Agreement a condition precedent. If the Commission does not grant approval satisfactory to FPL by December 31, 2009, then FPL will have the right to terminate the Agreement. There is also a condition

1 Although the term of the Agreement extends out to 2033, there is considerable uncertainty beyond 2020 as to the amount and type of generation that will be needed to meet FPL's total load obligations. Thus, FPL focused its analysis on the years from 2010 to 2020 as a representative time period: it covers the full duration of the current (2008) Ten Year Site Plan; and it also includes all of FPL's currently identified unit additions (the last being the proposed Turkey Point nuclear generation additions in 2018 and 2020).

precedent relating to approval of the Agreement by the Federal Energy Regulatory Commission ("FERC"), which also gives FPL the right to terminate the Agreement if FERC does not grant satisfactory approval by December 31, 2009. FPL needs to secure this Commission's final approval of the Agreement before seeking approval by FERC and expects that the process of FERC review and approval will take several months. To ensure that there is enough time for FERC's review and approval, FPL respectfully requests that the Commission approve the Agreement as proposed agency action at or before the January 6, 2009 agenda conference and to proceed thereafter on a schedule that will permit the Commission to issue a final order approving the Agreement by no later than April 30, 2009 even in the event that the proposed agency action is protested and a hearing must be held.[2]

WHEREFORE, FPL respectfully requests that this Commission (1) find that FPL's Long-Term Agreement for Full Requirement Electric Service, dated August 21, 2007 with Lee County Electric Cooperative is prudent and consistent with the interests of FPL's retail customers; and (2) propose agency action approving said Agreement on or before January 6, 2009 on a procedural schedule that will permit the Commission to enter a final order approving said Agreement by no later than April 30, 2009.

2 FPL initially petitioned for approval of the Agreement at the annual fuel adjustment clause hearing that will be held on November 4-6, 2008 (Docket No. 080001-EI). At the request of the Commission Staff, FPL withdrew its approval request from Docket No. 080001-EI and is seeking approval of the Agreement via this separate Petition.

Respectfully submitted,

R. Wade Litchfield, Esq.
Vice President and General Counsel
John T. Butler, Esq.
Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
Telephone: (561) 304-5639
Facsimile: (561) 691-7135

By: Terry J. Keith for
John T. Butler
Fla. Bar No. 283479

Hypothetical example of
FPL LCEC wholesale separation example
Showing Impact of FERC accounting

line									
1	**Total nuclear to be recovered**	**$150,000 total plant costs**							
2	Total annual costs eligible to be recovered	2009	2010	2011	2012	2013	2014		
	pursuant to rule 25-6.0423	$5,000	$6,000	$7,000	$8,000	$9,000	$10,000	$45,000	total annual costs
	RETAIL								
3	Retail separation factor for annual pre-payment	0.98	0.98	0.98	0.98	0.98	0.95		
4	Retail dollars collected thru capacity (Pre-pays)								
	(Line 3 times line 2)	$4,900	$5,880	$6,860	$7,840	$8,820	$9,500	$43,800	total retail prepaid
5	Retail responsibility for total plant cost								
	without any prepayment (.95* $150,000)							$142,500	
6	Amount added to retail rate base								
	when plant goes into service ($142,500 - $43,800)							$98,700	
	WHOLESALE								
	Wholesale separations factor	0.02	0.02	0.02	0.02	0.02	0.05		
7	annual accrual method								
8	Wholesale TPIS (.05*150,000) without any pre-pays								
	comparable to line 5 for retail						0.05	$7,500	under FERC separation on unadjusted TPIS

FPL's Annual Projected Net Present Value of Retail Ratepayer Impacts

	August 2008 Load Forecast and High Fuel Forecast Millions $	August 2008 Load Forecast and Base Fuel Costs Millions $	October 2008 Load and Base Fuel Forecast Millions $	October 2008 Load and Base Fuel Forecast w/RPS Millions $
2010	(21)	(1)	4	7
2011	(14)	9	14	22
2012	(6)	20	26	37
2013	6	32	40	54
2014	57	82	92	122
2015	110	133	146	194
2016	151	173	189	255
2017	184	202	229	311
2018	210	225	260	361
2019	228	241	284	400
2020	239	251	299	431
2021	244	256	309	456
2022	193	208	264	475
2023	105	125	181	444
2024	31	56	110	377
2025	(39)	(7)	46	316
2026	(106)	(64)	(13)	263
2027	(170)	(117)	(66)	214
2028	(235)	(171)	(116)	167
2029	(291)	(213)	(159)	129
2030	(338)	(244)	(186)	107
2031	(378)	(267)	(208)	89
2032	(412)	(283)	(266)	77
2033	(434)	(289)	(298)	75
2034	(431)	(286)	(340)	76
2035	(397)	(252)	(331)	108
2036	(367)	(221)	(294)	136
2037	(339)	(194)	(261)	162
2038	(314)	(169)	(230)	185
2039	(292)	(146)	(203)	206
2040	(271)	(126)	(179)	225
2041	(253)	(107)	(156)	243
2042	(236)	(91)	(136)	258
2043	(221)	(76)	(118)	272
2044	(208)	(62)	(102)	285
2045	(196)	(50)	(87)	296
2046	(185)	(40)	(74)	307
2047	(174)	(29)	(61)	315
2048	(163)	(18)	(48)	325
2049	(154)	(8)	(37)	334
2050	(145)	(0)	(27)	342
2051	(138)	7	(19)	349
2052	(132)	13	(11)	356
2053	(127)	19	(5)	361
2054	(122)	23	1	365
2055	(118)	27	6	369
2056	(114)	31	10	373
2057	(111)	34	15	376
2058	(108)	37	19	379
2059	(107)	38	21	380
[illegible]	[illegible]	39	[illegible]	381