

State of Florida



Public Service Commission  
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**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** July 1, 2009

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of Strategic Analysis and Governmental Affairs (Lewis, Brown)  
Division of Economic Regulation (Lester)  
Office of the General Counsel (Hartman)

*Handwritten initials: RL, SAA, LCT, and others.*

**RE:** Docket No. 090150-EQ – Petition for approval of a modification to existing negotiated renewable energy contract with Solid Waste Authority of Palm Beach County, by Florida Power & Light Company.

**AGENDA:** 07/14/09 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\SGA\WP\090150.RCM.DOC

**Case Background**

Florida Power & Light Company (“FPL” or “the Company”) has an existing contract for the purchase of firm capacity and energy from the Solid Waste Authority of Palm Beach County (SWA or “the Authority”), which was executed in January 1987 (“Original Contract”) and approved by the Commission for cost recovery purposes by Order No. 17753, issued June 26, 1987, in Docket No. 870173-EI, In re: Petition of Florida Power & Light Company for approval of separately negotiated contract for purchase of firm capacity and energy with the Palm Beach County Solid Waste Authority. The Original Contract provided for 47.5 MW of firm capacity to

DOCUMENT NUMBER-DATE

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FPL. Deliveries of capacity and energy under the Original Contract began on April 1, 1992. The Original Contract expires on March 31, 2010.

On March 25, 2009, FPL filed a petition requesting approval of a modification to the existing negotiated renewable energy contract ("Modified Contract") for purchase of firm capacity and energy with SWA. The modified contract also contains a right of first refusal with respect to defined Green Attributes. Under the terms of the Modified Contract, FPL would purchase 40 – 55 MW of firm capacity and energy produced by the SWA from a refurbished renewable energy facility using municipal solid waste as fuel. The term of the Modified Contract is 20 years beginning on the earlier of the date the refurbished facility commences commercial operation or April 1, 2010. FPL requests that the Commission find that the Modified Contract will be considered prudent for capacity and fuel clause recovery purposes.

This recommendation addresses FPL's petition for approval of the Modified Contract with the SWA. The Commission has jurisdiction over this matter pursuant to Sections 366.051 and 366.81, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the modified negotiated renewable energy contract between Florida Power & Light Company and the Solid Waste Authority of Palm Beach County for the purchase of firm capacity and energy?

**Recommendation:** Yes. Payments for energy are expected to produce savings of between \$60.2 and \$72.4 million over the term of the contract. Upon a showing by FPL that expenses for purchased power under the negotiated renewable energy contract were reasonable and prudently incurred, FPL should be permitted to recover those costs through the fuel clause. (Lewis, Brown)

**Staff Analysis:** SWA generates electricity from the combustion of solid municipal waste, which is considered a renewable fuel. The SWA is a renewable generating facility as defined by Rule 25-17.210, Florida Administrative Code (F.A.C.).

Rule 25-17.0832(3), F.A.C., provides, in its review of a negotiated contract, the Commission must consider the following: the need for power, the cost-effectiveness of the contract, security provisions for capacity payments, and performance guarantees. Each of these factors is evaluated below.

#### **A. Need for Power**

Rule 25-17.001(5)(d), F.A.C., encourages electric utilities to:

Aggressively integrate nontraditional sources of power generation including cogenerators with high thermal efficiency and small power producers using renewable fuels into the various utility service areas near utility load centers to the extent cost effective and reliable.

According to FPL's 2009 Ten-Year Site Plan, the Company will not need any new generating units to meet capacity needs through 2018. FPL projects a lower need for generation resources than originally projected based on its most recent lower load forecasts. FPL is also temporarily removing some of its existing, older, less efficient generating units from active service. In addition, FPL states that it is continually evaluating its resource needs, generating fleet, and potential new laws or regulations related to renewable energy or greenhouse gas emissions that could cause the Company to change its resource plan.

The refurbished SWA facility is expected to provide between 40-55 MW of firm capacity, and could help FPL avoid some firm capacity purchases that might otherwise be needed during periods of higher than expected system demand or electric generating constraints. Additionally, purchasing electricity generated by biomass fuel (solid waste incineration) from the SWA contributes to FPL's fuel diversity.

## **B. Cost-Effectiveness**

FPL and the SWA have agreed upon the following terms and conditions with regard to payment. From April 1, 2010, until refurbishment of the facility is complete, the SWA will be paid as-available energy payments. Refurbishment is expected to be completed by April 1, 2012, and the facility is then expected to go into commercial operation. The terms of the Modified Contract provide for recalculation of the payment schedules to the SWA, should commercial operation not occur by April 1, 2012. After refurbishment, the SWA will be paid a coal-based capacity payment and the lower of as-available energy or coal-based energy payments. In order for the SWA to receive full capacity payments, the facility must operate above an 85% capacity billing factor based on a 12 month rolling average. Capacity payments are based on the cost of a 2012 Glades County coal unit.<sup>1</sup> FPL's Original Contract with the SWA uses a coal plant as the basis for the capacity payments. The figures for the Glades County coal unit represent FPL's most recent cost estimates for a coal fired facility.

A comparison of the projected payments to the SWA versus what the payments would be under FPL's 2008 Standard Offer Contract (effective when the petition was filed) demonstrated a net present value (NPV) savings of \$72.4 million for FPL's ratepayers over the life of the Modified Contract. At staff's request, FPL recalculated the difference in projected payments to the SWA under the Modified Contract and under its 2009 Standard Offer Contract filed in Docket No. 090166-EQ.<sup>2</sup> The projected NPV savings to customers based on the 2009 Standard Offer Contract is \$60.2 million.

The table below compares the savings to ratepayers based on FPL's payments to the SWA under the Modified Contract against what payments would have been under the 2008 and 2009 Standard Offer Contract (SOC). In both cases, payments during each year of the Modified Contract would be below FPL's avoided cost. The 2008 SOC bases the avoided cost on a 2014 combined cycle unit whereas the 2009 SOC bases the avoided cost on a 2021 combined cycle unit.

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<sup>1</sup> In a data request sent to FPL, staff asked why it is appropriate to base the capacity payment on the cost of a 2012 Glades County coal unit when the Commission denied the need for this unit in Docket No. 070098-EI. In response, FPL stated that this was a negotiated contract and not a Standard Offer Contract. FPL also asserts:

"FPL has agreed to make coal-based capacity payments at the request of SWA in order to facilitate SWA's financing of the refurbishment. While this advantages SWA, FPL's customers also benefit from a low coal-based energy cost and reduced energy cost volatility, as compared to natural gas. Thus, under the SWA contract, FPL's customers will receive many of the economic benefits (including fuel cost diversification) associated with coal based energy without building a coal fired facility."

<sup>2</sup> In re: Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company. This petition has not yet been considered for approval by the Commission.

<b>Comparison of Projected Payments and Savings Under 2008 and 2009 Standard Offer Contracts</b>					
	<b>(1) Modified Contract</b>	<b>(2) 2008 SOC 2014 CC unit</b>	<b>(3) 2009 SOC 2021 CC unit</b>	<b>(1) - (2) Net Savings Negotiated</b>	<b>(1) - (3) Net Savings Negotiated</b>
NPV Total	\$232,750,853	\$305,178,987	\$292,991,129	\$-72,428,134	\$-60,240,276

Rule 25-17.240, F.A.C., encourages investor-owned utilities and renewable generating facilities to:

. . . negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability and energy security.

Staff believes the terms of the Modified Contract will allow FPL's customers to benefit economically from prices that are lower than they would have been under either a SOC or a self-built generating unit. In addition, the Modified Contract will help diversify FPL's fuel mix, and contribute to fuel price stability and energy security.

### **C. Security for Capacity Payments**

When considering how a negotiated contract would impact a utility company's general body of customers, the Commission must evaluate the contract in accordance with Rule 25-17.0832(3)(c), F.A.C., which states:

To the extent that annual firm capacity and energy payments made to the qualifying facility in any year exceed that year's annual value of deferring the construction and operation of generation by the purchasing utility or other capacity and energy related costs, whether the contract contains provisions to ensure repayment of such payments exceeding that year's value of deferring that capacity in the event that the qualifying facility fails to deliver firm capacity and energy pursuant to the terms and conditions of the contract, provided, however, that provisions to ensure repayment may be based on forecasted data.

The Modified Contract is projected to be below FPL's avoided cost during each year of the contract term. Therefore, there is no need for a security deposit.

Following the execution of the Modified Contract, FPL may incur costs in preparing to receive Energy and Capacity, which would be reimbursed. Section 3 of the Modified Contract provides for the SWA to reimburse FPL for all costs, including interest at the rate of 10.5% per annum in the event the contract is terminated, provided, however, such costs shall not exceed \$85,000. FPL customers would receive the benefit of such reimbursed costs and applicable interest, should termination occur.

#### **D. Performance Guarantees**

The Modified Contract takes into consideration the refurbishment of the facility and provides for terms of payment until the facility is refurbished. Under the terms of the Modified Contract, if the SWA does not complete refurbishment of its facility by June 1, 2014, FPL has the option to terminate the agreement. As discussed in Section C above, the Modified Contract requires the SWA to reimburse FPL for costs and interest (up to \$85,000) incurred in the event of termination.

The terms of the Modified Contract also require the SWA to procure a liability insurance policy to cover interruption or curtailment of power supply and generally all liabilities which might arise in the performance or nonperformance of the contract at a minimum limit of \$10 million per occurrence.

#### **Conclusion**

The Modified Contract between FPL and the SWA provides FPL with a viable source of electrical energy from a renewable fuel source that meets all requirements and rules governing Qualifying Facilities and small power producers. The Modified Contract is projected to result in NPV savings between \$60.2 and \$72.4 million to FPL's ratepayers. If the planned renewable generation cannot be delivered under the terms of this contract, the security provisions and the performance guarantees effectively mitigate the risk to ratepayers. For these reasons, staff recommends that the Modified Contract be approved. Furthermore, upon a showing by FPL that expenses for purchased power under the Modified Contract were reasonable and prudently incurred, FPL should be permitted to recover those costs through the fuel clause.

The Modified Contract agreed to by FPL and the SWA also provides FPL with a right of first refusal option to purchase Green Attributes associated with the renewable energy produced by the facility. However, the provisions of the Modified Contract do not place FPL, or its customers, under any obligation to purchase Green Attributes or tradable renewable energy credits (TRECS). Because this is a negotiated contract, the parties are free to include such a provision as specified in Rule 25-17.280, F.A.C., which states:

Tradable renewable energy credits and tax credits shall remain the exclusive property of the renewable generating facility. A utility shall not reduce its payment of full avoided costs or place any other conditions upon such government incentives in a negotiated or standard offer contract, unless agreed to by the renewable generating facility.

This docket does not contemplate any cost recovery for the purchase of renewable attributes or TRECs. Therefore, any purchase of TRECs would be subject to Commission review for prudence as an issue separate from the purchased power contract.

As such, staff recommends the Commission approve FPL's petition for approval of modification to its existing renewable energy contract with SWA. Payments for energy are expected to produce savings of between \$60.2 and \$72.4 million over the term of the contract. In addition, upon a showing by FPL that expenses for purchased power under the negotiated

Docket No. 090150-EQ

Date: July 1, 2009

renewable energy contract were reasonable and prudently incurred, FPL should be permitted to recover those costs through the fuel clause.

Docket No. 090150-EQ

Date: July 1, 2009

**Issue 2:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected files a protest within 21 days of the issuance of the Commission's order approving the petition and contract, this docket should be closed upon the issuance of a consummating order. (Hartman)

**Staff Analysis:** If no person whose substantial interests are affected files a protest within 21 days of the issuance of the Commission's order approving the petition and contract, this docket should be closed upon the issuance of a consummating order.