



William P. Cox
Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
(561) 304-5662
(561) 691-7135 (Facsimile)

November 12, 2015

-VIA ELECTRONIC FILING-

Ms. Carlotta S. Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 150196-EI

Dear Ms. Stauffer:

Attached for filing in the above docket is Comments of Florida Power & Light Company. This letter, the Comments, and certificate of service are being submitted via the Florida Public Service Commission's Electronic Filing Web Form as a single PDF file.

If there are any questions regarding this filing, please contact me at 561-304-5662.

Sincerely,

s/ William P. Cox

William P. Cox
Senior Attorney
Florida Bar No. 0093531

WPC/msw

Enclosure

cc: Counsel for Parties of Record (w/encl.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Okeechobee Clean Energy Center Unit 1,
by Florida Power & Light Company.

Docket No. 150196-EI

Filed: November 12, 2015

**COMMENTS OF
FLORIDA POWER & LIGHT COMPANY**

Pursuant to emails from Florida Public Service Commission Staff (“Staff”) to all parties in this docket on October 26, November 5, and November 6, 2015, Florida Power & Light Company (“FPL” or the “Company”) and other parties were asked to submit comments on additional issues proposed by the Environmental Confederation of Southwest Florida (“ECOSWF”) and Southern Alliance for Clean Energy (“SACE”) as related to the tentative list of issues for this docket. FPL objects to the inclusion of the issues proposed by ECOSWF and SACE as subsumed in the issues included in the tentative list of issues as revised by Commission Staff on September 21, 2015, and unnecessary for inclusion as express separate issues or sub-issues in this docket. FPL submits these comments in response to Staff’s request.

I. Commission Staff’s Revised September 21, 2015 Tentative Issues List

As stated at the Staff informal meeting on September 21, 2015, FPL believes the tentative list of issues provided in the Order Establishing Procedure in this docket (Order No. PSC-15-0394-PCO-EI), including the lone modification to Issue 5 as proposed in Staff’s Issue 5, provide the relevant issues under Section 403.519, Fla. Stat. for the Florida Public Service Commission (“Commission”) to review and issue its order on FPL’s petition for need determination filed in this docket. FPL continues to believe the tentative issues list as revised by Commission Staff on September 21, 2015 remains the appropriate issues list for this need

determination, consistent with the issues lists utilized by the Commission for FPL and other utilities for need determination proceedings under Section 403.519, Fla. Stat. These issues have been included in every need determination proceeding before the Commission, including FPL's 2011 Port Everglades Clean Energy Center (Docket No. 110309-EI) and Duke Energy Florida's ("DEF") 2014 Citrus County Combined Cycle Power Plant (Docket No. 140110-EI) need determination proceedings.

II. ECOSWF Issues 8 -12

ECOSWF has proposed the following additional issues in its prehearing statement:

- ECOSWF PROPOSED ISSUE 8:*** *What reserve margin criterion should be used to determine FPL's need?*
- ECOSWF PROPOSED ISSUE 9:*** *Should the Commission apply reserve margin criterion to FPL that are not applied to other utilities?*
- ECOSWF PROPOSED ISSUE 10:*** *Is demand response significantly cheaper than new power plants?*
- ECOSWF PROPOSED ISSUE 11:*** *Has the reduction in payments by FPL to customers for participation in demand response programs artificially reduced demand for demand response?*
- ECOSWF PROPOSED ISSUE 12:*** *Should FPL follow the 15% reserve margin recommended by the North American Electric Reliability Corporation?*

These additional issues have not been included as separate issues or sub-issues in prior need determination proceedings before the Commission, including the 2011 FPL Port Everglades and 2014 DEF Citrus County need determination proceedings referenced above. Consequently, and for good reason more fully discussed below, these issues were appropriately not included in the Order Establishing Procedure (Order No. PSC-15-0394-PCO-EI) in this proceeding.

First, it would be improper to revisit the Commission approved 20% minimum reserve margin criterion for Peninsular Florida investor-owned electric utilities (“IOUs”) in this need determination proceeding under the Florida Power Plant Siting Act. FPL’s 20% reserve margin criterion was previously approved by this Commission in a generic investigation,¹ which addressed the aggregate electric utility reserve margins planned for Peninsular Florida. Reassessing it in this need determination proceeding is improper as a matter of law.

Specifically, the Commission has looked at this exact issue in terms of a request to change the 20% minimum reserve criterion in a prior need determination case involving the predecessor of DEF, Florida Power Corporation, for the Hines 3 unit. *In re Petition To Determine Need for Hines Unit 3 in Polk County by Florida Power Corp.*, Docket No. 020953-EI, Order No. 03-0175 (issued Feb. 4, 2003) (“*Hines 3*”). In the Commission’s decision in *Hines 3*, an intervenor, Florida Partnership for Affordable Competitive Energy (“PACE”), opposed Florida Power Corporation’s request for a need determination on the ground that it should continue to operate under a 15% reserve margin criterion, rather than 20% as approved in the Commission’s 1999 order cited above. The Commission expressly disagreed, noting that it has “already determined that 20 percent is the correct reserve margin criteria, and the IOUs are required to use these criteria, unless modified in a subsequent proceeding.” *Id.* at 4. The Commission further decided that “the proper forum to address what minimum reserves are necessary is a generic docket, as [the Commission] has done before, not in a particular utility’s power plant need determination docket.” *Id.* at 4-5.

Accordingly, it would not be appropriate to change the 20% minimum reserve margin criterion in the context of this pending need determination filed under the Florida Power Plant

¹ See Docket No. 981890-EU, Order No. 99-2507-S-EU (issued Dec. 22, 1999).

Siting Act as suggested by ECOSWF Issues 8 and 12, where other affected utilities are not parties to the proceeding and the Commission must render a decision under a statutory time deadline.² However, FPL recognizes that the Commission can and should review FPL's *application* of this 20% minimum reliability criterion in the context of this need determination proceeding, *i.e.*, did FPL properly calculate and apply this criterion in assessing its need for power in 2019.

Second, ECOSWF issues 8, 9, and 12 are clearly subsumed in Staff's Issue 1 to the extent they are relevant and appropriate to address in this proceeding, and it is both unnecessary and inappropriate to make them separate issues. Staff's Issue 1 in this proceeding³ (and similarly in the 2011 FPL and 2014 DEF need determination proceedings) tracks the express need determination criterion that the Commission is required to consider when it evaluates this and any other need determination, which is whether there is a need for the proposed electrical power plant taking into the account the need for electric system reliability and integrity as this criterion is used in Section 403.519(3), Fla. Stat. Implicit in this criterion regarding system reliability and integrity is whether the power is needed to ensure FPL's system reliability.

As FPL has explained in this need determination filing, its 2014 and 2015 Ten Year Site Plan filings, its recent demand side management ("DSM") goals filing, and in the analysis associated with its recent nuclear cost recovery clause filing, FPL determines reliability based on three reliability criteria: reserve margin, generation-only reserve margin, and loss-of-load

² The Office of the Public Counsel acknowledged both in its Prehearing Statement in this proceeding and at the Commission's recent informal meeting on the 2015 Ten Year Site Plans that this need determination proceeding is not the proper Commission proceeding to address a change to the minimum 20% reserve margin for FPL or the other Peninsular Florida electric utilities subject to the Commission-approved stipulation for this reliability criterion.

³ Staff's Issue 1 states as follows: "Is there a need for the proposed Okeechobee Clean Energy Center Unit 1, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(3), Florida Statutes?"

probability. The Commission previously has stated in its recent DSM Goals proceeding decision⁴ that it would review FPL's use of the generation-only reserve margin reliability criterion if it becomes a factor in FPL's next need determination proceeding. Therefore, under Staff's Issue 1, it is clear that ECOSWF and any other party to this proceeding will have the opportunity to weigh in on FPL's use of the generation-only reserve margin as a separate independent reliability criterion in its resource planning process and to support the need for the proposed Okeechobee plant in this proceeding. ECOSWF and the other parties can clearly address whether FPL has satisfied this statutory need criterion for system reliability and integrity per Section 403.519, Fla. Stat., within the framework of Staff Issue 1.

Further, ECOSWF's Issue 9 is practically framed as a position addressing the reliability criteria FPL uses, which the Commission will review under Staff's Issue 1, and ECOSWF or any other party can advocate its position under that issue. To the extent that ECOSWF wants to use its Issue 9 as a basis for asserting that the Commission should not apply any criterion to FPL that is not applied to any other Peninsular Florida IOU, then it is attempting to create a generic reliability criterion. That would be most inappropriate in this Company-specific case where no other IOU is appropriately a party and would not have standing to be a party.

For the reasons discussed above, FPL maintains that a separate issue is not needed to consider a particular reliability criterion, such as the generation-only reserve margin. However, if the Commission determines that it would prefer an express sub-issue to address the generation-only reserve margin reliability criterion, it needs to be properly worded as follows:

⁴ See Docket No. 130199-EI, *et al.*, Order No. PSC-14-0696-FOF-EU (issued Dec. 16, 2014) at page 35.

FPL Issue 1A: *Is the generation-only reserve margin used by FPL an appropriate reliability criterion?*

One other remark made at the Staff informal meeting also needs to be addressed. The Office of the Public Counsel suggested that the use of the new generation-only reserve margin might be a change in or modification of the previously approved 20% minimum reserve margin criterion. That is simply inaccurate. They are two different criteria, either of which might show a need. In fact, in this case there is a need under both criteria, and FPL would have proposed the Okeechobee Clean Energy Center under either criterion as the best self-build generation option to meet its resource need in 2019. The two criteria measure two different levels of resources. The 20% minimum reserve margin criterion accounts for both supply side and demand side resources. The generation-only reserve margin criterion of 10% focuses on supply side resources. The objective of the generation-only reserve margin is to help ensure that FPL does not become too dependent on DSM resources, which are predicated in large part on voluntary customer actions. The 10% minimum generation-only reserve margin criterion ensures that FPL's system has at least a 10% reserve margin when solely considering supply side resources. Conflating these two distinct measures of reliability is not accurate or appropriate. FPL is not attempting to change in this case the 20% minimum reserve margin criterion previously approved by the Commission; it is merely adding another valuable reliability criterion, just as it already has one other reliability criterion – loss-of-load probability.

FPL has employed three distinct measures of reliability in assessing its resource need, and each and all of those criteria fall within the scope of Staff's Issue 1, where reliability criteria have historically been considered for decades. Accordingly, FPL does not recommend that the Commission add the additional unnecessary issues ECOSWF 8, 9, and 12 supported

by ECOSWF, but instead move forward in this proceeding with the issues contained in Staff's issues list, consistent with Commission precedent in prior need determinations and Section 403.519(3), Fla. Stat.

ECOSWF Issues 10 and 11 essentially present arguments that ECOSWF witnesses have presented in this proceeding regarding the claimed costs and cost effectiveness of demand response measures as conservation measures to mitigate the need for FPL's proposed power plant, OCEC Unit 1, in this proceeding. The issues are unequivocally subsumed in "Staff Issue 2: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Florida Power & Light, which might mitigate the need for the proposed Okeechobee Clean Energy Center Unit 1?" FPL has no objection to ECOSWF advocating its positions on demand response and demand response programs under Staff Issue 2 and sees no need for the proposed additional ECOSWF Issues 10 and 11.

III. SACE Issues 1- 3

After the filing of its prehearing statement, SACE proposed three additional issues for this proceeding as follows:

LEGAL/POLICY ISSUES

SACE Issue 1: *Does the Stipulation entered into in Docket No. 981890-EU, and approved by the Commission in Order No. PSC-99-2507-S-EU, require the Commission to review FPL's Petition in this docket based on a 20% reserve margin?*

SACE Issue 2: *If the Commission does not address the appropriateness of FPL's 20% reserve margin criterion in this docket, should the Commission establish a generic docket to address what the appropriate reserve margin criteria are for FPL and other IOUs?*

OTHER

SACE Issue 3 *Is the generation-only reserve margin created and used by FPL an appropriate reliability criterion for determining the need for the proposed OCEC Unit 1?*

For the reasons discussed above addressing ECOSWF's Issues 8, 9, and 12 addressing the 20% total reserve margin and the generation-only reserve margin as reliability criteria for FPL, FPL does not recommend that SACE Issues 1 - 3 be included as separate issues or sub-issues in this proceeding. For the reasons discussed above, FPL maintains that a separate issue is not needed to consider a utility's particular reliability criterion, such as the generation-only reserve margin. However, if the Commission determines that it would prefer an express sub-issue to address FPL's generation-only reserve margin reliability criterion, it needs to be properly worded as noted above (FPL Issue 1A) or alternatively, as proposed by SACE Issue 3.

Respectfully submitted this 12th day of November, 2015.

Charles A. Guyton, Esquire
Gunster Law Firm
215 South Monroe Street
Suite 601
Tallahassee, Florida 32101-1804
Telephone: (850) 521-1722
Facsimile: (850) 671-2505
cguyton@gunster.com

William P. Cox, Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
Telephone: (561) 304-5662
Facsimile: (561) 691-7135
will.cox@fpl.com

By s/ William P. Cox
William P. Cox
Florida Bar No. 0093531

CERTIFICATE OF SERVICE
Docket No. 150196-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 12th day of November, 2015 to the following:

Kelly Corbari, Esq.
Leslie Ames, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
kcorbari@psc.state.fl.us
lames@psc.state.fl.us

Jon C. Moyle, Jr., Esq.
Karen A. Putnal, Esq.
Moyle Law Firm, P.A.
Attorneys for FIPUG
118 N. Gadsden St.
Tallahassee, Florida 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com

Charles Rehwinkel, Esq.
Patricia Christensen, Esq.
J.R. Kelly, Esq.
Office of Public Counsel
The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399
christensen.patty@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us
kelly.jr@leg.state.fl.us

James Whitlock, Esq.
Gary A. Davis, Esq.
Davis & Whitlock, PC
21 Battery Park Avenue, Suite 206
Asheville, NC 28801
jwhitlock@enviroattorney.com
gadavis@enviroattorney.com

Bradley Marshall, Esq.
Alisa Coe, Esq.
David Guest, Esq.
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301
bmarshall@earthjustice.org
acoe@earthjustice.org
dguest@earthjustice.org

George Cavros
Southern Alliance for Clean Energy
120 E. Oakland Park Blvd., Suite 105
Fort Lauderdale, FL 33334
george@cavros-law.com

By: s/ William P. Cox
William P. Cox
Florida Bar No. 0093531