

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-

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**DATE:** May 23, 2007

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

**FROM:** Division of Economic Regulation (Kummer)  
Office of the General Counsel (Brubaker)

**RE:** Docket No. 070291-EI – Petition for permanent approval of a performance guaranty agreement, including approval of first revised Tariff Sheet No. 9.946 by Florida Power & Light Company.

**AGENDA:** 06/5/07 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 07/01/07 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\070291.RCM.DOC

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### Case Background

Order No. PSC 04-0406-EI-TRF-EI issued April 19, 2004, in Docket No. 031074-EI<sup>1</sup> approved a new Performance Guaranty Agreement (PGA) for Florida Power & Light Company (FPL). The PGA tariff applies to customers who request electric facilities that would not likely be required by other customers within five years following the date of the requested system expansion. The agreement requires a customer requesting specialized equipment to post a deposit to cover the cost of the facilities, either in cash or by letter of credit. If the projected usage materializes, the deposit is returned after three years. The program was approved for a

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<sup>1</sup> In re: Petition for approval of changes to existing performance guaranty agreement and for approval of a second performance guaranty agreement, by Florida Power & Light

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three year pilot program in 2004 so that the Commission could monitor the application of the performance guaranty. The initial period has now expired and FPL is requesting that the Agreement be made permanent. The Commission has jurisdiction pursuant to sections 366.03, 366.04, 366.06, 366.07, and 366.075, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve FPL's petition to make the pilot PGA a permanent offering?

**Recommendation:** Yes, the Commission should make the pilot Performance Guaranty Agreement (PGA) a permanent offering and discontinue the annual reporting requirements specified in Order No. PSC 04-0406-EI-TRF-EI .

**Staff Analysis:** FPL's PGA is essentially another form of a deposit. However, it only applies to customers who request specialized electric facilities that would not likely be used by other customers within five years following the date of the requested system expansion, should the initial customer cease operations. This includes non-standard voltages or configurations, or service to facilities located in areas not considered attractive for other development in the near future. Rule 25-6.064, Florida Administrative Code, allows a utility to require upfront payment (Contribution in Aid of Construction or CIAC) for facilities necessary to provide service to a specific customer where those facilities exceed standard design. The projected costs are reduced by four times the expected annual revenue generated by the customer to determine the nonrefundable payment.

Expected revenues, however, are heavily dependent on the customer's projection of load, especially if the business involves a new technology or product about which the utility has little or no historical knowledge. The customer has an incentive to maximize load projections to minimize the CIAC. The estimated CIAC may not cover the actual cost of the facilities installed if the projected load does not materialize. The purpose of the PGA is to protect the general body of ratepayers from stranded investment by requiring a three year deposit which is netted against actual revenues over that period. Unlike the traditional CIAC, the PGA allows the applicant for service to receive a full or partial refund of the performance guaranty if the projected load and revenues are realized.

**PGA Requirements.** Under the PGA, an applicant is required to post a three year performance guaranty in the form of cash, a surety bond, or a bank letter of credit. FPL determines the amount of the performance guaranty by estimating the cost of the requested system expansion less any CIAC paid by the customer. That amount is multiplied by a carrying cost factor of 1.51. The carrying cost factor represents the carrying cost (return, depreciation, property taxes, and insurance) to FPL over the 30-year life of the investment.

During the three-year term of the agreement, FPL compares the base revenues received from the customer to the performance guaranty amount. Base revenues include the applicable demand and non-fuel energy charges, and facilities rental charges, if applicable. If, during the three-year period, the total base revenues received equal or exceed the performance guaranty amount posted, and the customer has posted a surety bond or letter of credit, the bond or letter of credit will be released or canceled. If the customer pays the performance guaranty in cash, FPL will reduce the cash balance on a monthly basis by the amount of the previous month's base revenue charges and credit the same amount to the applicant's previous monthly bill.

Under either a cash or non-cash deposit, if at the end of the three-year period the base revenues received are less than the performance guaranty amount posted, then an adjustment will be made. Customers who provided a letter of credit or surety bond will be required to pay FPL an amount equal to the difference between the performance guaranty and base revenues paid during the three-year period. If a customer posted a cash guaranty, FPL will retain the remaining balance of the performance guaranty.

Approval of Pilot. In Order No. PSC 04-0406-EI-TRF-EI, the Commission found that the PGA tariff is appropriate because it provides protection for FPL and its general body of ratepayers in the event that the projected revenues of customers requiring specialized facilities do not materialize. However, the Commission limited the availability of the PGA to three years because of concerns that application could result in discriminatory treatment or that the guaranty would be required where revenues were not really at risk, since there was no precise mechanism for determining when a performance guaranty would be required. FPL was ordered to file annual status reports that included an explanation of why the agreement was requested, the amount of the performance guaranty requested, whether the applicant agreed to sign the agreement, and the total achieved base rate revenues.

Summary. FPL stated in its initial petition that it expected to use the new PGA tariff only in rare and unusual circumstances. This has proven to be the case. FPL requested no PGAs in 2004 and 2005 and only one in 2006. The description of the 2006 project appears to fit squarely in the description of at risk projects anticipated when the tariff was approved. (See Attachment A). Further, a customer disputing the need for a PGA may file a complaint with the PSC for review. Therefore, based on the original finding that the PGA is a valuable tool to protect the general body of ratepayers from stranded investment installed to serve at risk load, and the demonstration that FPL has appropriately and judiciously applied the tariff, Staff recommends that the PGA be approved as a permanent offering, as requested by FPL, and that the annual reporting requirement be eliminated. Staff further recommends that the tariff should be effective June 5, 2007.

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

**Recommendation**: Yes, if Issue 1 is approved, the revised tariff should become effective June 5, 2007. If a protest is filed within 21 days of the issuance of the order, this revised tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Brubaker)

**Staff Analysis**: If Issue 1 is approved, the revised tariff should become effective June 5, 2007. If a protest is filed within 21 days of the issuance of the order, this revised tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.



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

April 30, 2007

Ms. Ann Cole, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Docket No. 031074-EI, Petition for approval of changes to existing performance guaranty agreement and for approval of a second performance guaranty agreement, by Florida Power & Light Company

Dear Ms. Cole:

As required by Order PSC-04-0406-TRF-EI in the above referenced docket, the following is FPL's third, and final, Performance Guaranty Agreement ("PGA") Monitoring Report. This report covers the period April 1, 2006 – March 31, 2007.

**Customer Name:** Garden Street Iron and Metal

**Location:** 3350 Metro Parkway, Ft Myers

**Why PGA Requested:** Customer requested 4kV Service which would have required FPL to build three underground, dedicated 4kV feeders. Because the 4kV feeders are considered by FPL to be nonstandard and would have been unable to serve any other customers should the load fail to materialize, FPL advised a Performance Guaranty Agreement would be required to provide the Customer's desired level of service, prior to building the three feeders. The Customer consequently opted for an FPL standard (13 kV) voltage, which required FPL to build only a single 13 kV overhead feeder which, unlike the 4kV feeder, could be used to serve other customers should this Customer's load fail to materialize. Therefore, a PGA was not required.

**Amount of the Performance Guaranty Requested by FPL:** N/A. (Note: A \$2 million - \$2.5 million verbal estimate was provided based on preliminary non-detailed construction estimates.)

**Total Achieved Base Revenues:** N/A.

FPL has previously reported that no PGA's were requested in the periods April 1, 2004 – March 31, 2005 and April 1, 2005 – March 31, 2006. Together, the three reports show that FPL has requested PGA's very infrequently. However, the example above illustrates that the PGA can be an important tool for protecting FPL's general body of customers when appropriate circumstances arise. Given the importance of the continued availability of the PGA, therefore, FPL will be separately filing a petition seeking Commission approval of the PGA on a permanent basis.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'W.H. Feaster'.

W.H. Feaster  
Manager, Regulatory Affairs

cc: Elisabeth Draper

an FPL Group company