

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: July 1, 2009

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 090338-EI – Request for short term extension of substation rental agreement with Tropicana Products, Inc., 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\ECR\WP\090338.RCM.DOC

Case Background

By Order No. 21855, the Commission approved Florida Power & Light Company's (FPL) proposed new Long-Term Substation Rental Agreement (LTSRA or Rental Agreement) for distribution substation facilities.¹ Some large power users require a dedicated substation to serve their load in the most efficient and economical manner. The customer may build and own his own substation. If the customer does not want to be responsible for building and maintaining an electrical substation, the Rental Agreement provides an option to use a substation owned by the utility. FPL entered into such a Rental Agreement with Tropicana Products, Inc. (Tropicana),

¹ Issued September 8, 2009, in Docket No. 890760-EI, In re: Petition of Florida Power & Light Company for approval of long-term rental agreement for distribution substation facilities.

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pursuant to Tariff Sheets 9.730-32 (Agreement). The current Rental Agreement expires, under the terms of the tariff, on October 4, 2009. The existing tariff language is silent on the renewal of a contract. FPL is requesting permission to extend the term of the Agreement up to one year to address renewing the contract for the existing substation. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should FPL be allowed to extend, for up to one year, the existing substation Rental Agreement with Tropicana Products, Inc.?

Recommendation: Yes. (Kummer, Brubaker)

Staff Analysis: The currently-effective substation Rental Agreement states that the term of the Agreement is for twenty years. FPL is seeking to modify that twenty year time frame by up to 12 months, for the substation Rental Agreement with one customer, Tropicana.

The tariff specifically states how the monthly rental amount is to be calculated for new contracts. It also addresses termination of a contract prior to the twenty-year term. The tariff is silent on what happens at the expiration of the initial contract, if the customer wishes to renew the agreement for the existing facilities.

This oversight in the tariff language came to light when the existing contract with Tropicana came up for renewal. Since the existing tariff does not specifically address renewals, the only option is to sign a new Agreement, which, under the existing tariff language, would require using the current replacement costs for the substation. This increase in costs could be significant, and result in Tropicana choosing to build its own substation, rather than renew the Rental Agreement. FPL believes the tariff should be modified to address contract renewals, to recognize cost differentials inherent in continuing to lease in-place equipment.

There are advantages to both parties to continue the Rental Agreement. Tropicana avoids the cost and maintenance expense of building its own substation. FPL avoids potentially stranding the investment in the existing substation, which may not immediately be needed, or appropriate placed, to serve other loads. Tropicana has maintained that it needs several months to build a new substation, should they decide not to continue the Rental Agreement. FPL has requested that it be allowed to extend the existing twenty-year agreement for up to one year, to allow it to file revised tariffs, and allow Tropicana adequate time to evaluate any changes approved by the Commission to address the renewal issue.

Staff believes the limited extension is appropriate. Agreement renewals are not addressed in the current tariff, and it would be prudent to revise the tariffs to address this issue. It is reasonable to assume that continuation of a lease for in-place equipment would have different cost characteristics than an agreement for completely new facilities. FPL has not indicated that any other substation Rental Agreements are expiring in the proposed time frame. It appears that the issue is customer-specific and has no immediate impact on any other customers. FPL has committed to filing the tariff revisions expeditiously, and the revised tariffs will be brought before the Commission for approval in a new docket.

Issue 2: Should this docket be closed?

Recommendation: Yes, if the Commission approves staff's recommendation to approve the modification to the term of the agreement with Tropicana, as requested by FPL, and no person whose substantial interests are affected requests a hearing to address this matter, then this docket should be closed upon issuance of a consummating order. If a protest is filed within 21 days of the issuance of the Commission's order, the proposed term modification should remain in effect pending resolution of the protest. (Brubaker).

Staff Analysis: If the Commission approves staff's recommendation to approve the modification to the term of the agreement with Tropicana, as requested by FPL, and no person whose substantial interests are affected requests a hearing to address this matter, then this docket should be closed upon issuance of a consummating order. If a protest is filed within 21 days of the issuance of the Commission's order, the proposed term modification should remain in effect pending resolution of the protest.