BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for approval of conditional settlement agreement which terminates standard offer contracts originally entered into between FPL and Okeelanta Corporation and FPL and Osceola Farms, Co.	DOCKET NO. 000982-EI ORDER NO. PSC-00-1913-PAA-EI ISSUED: October 19, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose substantial interests are affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

On August 29, 1991, we issued Order No. 24989, in Docket No. 910004-EU, which required Florida Power & Light Company (FPL) to issue a standard offer contract for up to 125 megawatts (MW) of capacity. The capacity and energy payments for the standard offer contract were based on FPL's next avoided unit, the 1997 stage of an Integrated Coal Gasifier Combined Cycle unit.

On September 20, 1991, Okeelanta Corporation (Okeelanta) and Osceola Farms, Co. (Osceola) (collectively, QFs) submitted signed standard offer contracts to FPL. The Okeelanta contract was to provide FPL with 70 MW of firm energy and capacity starting on January 1, 1997 and continuing through 2026. The Osceola contract was to provide 42 MW of firm energy and capacity (subsequently upgraded to 55.9 MW under a provision of the contract) to FPL from January 1, 1997 through 2026. On March 11, 1992, by Order No. PSC-92-0050-FOF-EQ issued in Docket No. 911140-EQ, both standard offer contracts were approved for cost recovery.

A dispute arose between FPL and the QFs concerning whether the QFs accomplished commercial operation by January 1, 1997, as set forth in Section 2 of the standard offer contract, and the effect, if any, of a failure to do so on the parties' respective rights and obligations under the various provisions of the standard offer contract. FPL reviewed the output of the facilities prior to January 1, 1997, and determined that the facilities had not achieved commercial operation. Therefore, FPL chose not to exercise what it believed to be its option to extend the commercial operation deadline. The QFs disagreed with FPL's interpretation of this option. FPL initiated litigation in state circuit court to determine its rights under the standard offer contract. The QFs subsequently filed a countersuit seeking approximately $490 million in damages for breach of contract.

The QFs filed for bankruptcy in May, 1997. However, the bankruptcy court ruled that the litigation in state circuit court could continue. Operations at both QF locations were shut down in September, 1997. The Okeelanta facility was restarted in February, 1998. FPL is currently purchasing energy from this facility on an as-available basis. The Osceola facility has not been restarted.

On July 28, 2000, FPL filed a petition for approval of a Conditional Settlement Agreement (Agreement) to buy out the QF standard offer contracts. The Agreement calls for the following:

(1) termination of the QF standard offer contracts;

(2) settlement of all claims by and/or against FPL; and,

(3) settlement of the pending judicial proceedings relating to the QF contracts.

In return, FPL would make a one-time payment of $222.5 million to the QFs. FPL stated in its petition that, "Approval of the Agreement will not only resolve the pending disputes and claims, it will eliminate the risk and uncertainty of litigation, and will enable FPL to reduce the cost exposure of FPL customers under the Okeelanta and Osceola Standard Offer Contracts."

FPL's petition further requests approval for recovery of the $222.5 million settlement payment through FPL's Capacity Cost Recovery Clause (capacity clause) and/or Fuel and Purchased Power Cost Recovery Clause (fuel adjustment clause).

FPL also requests expedited approval of its petition in order to meet timing requirements of the Agreement. These timing requirements were established in order to resolve this matter prior to the scheduled April 9, 2001, hearing in state circuit court. The Agreement provides that all conditions precedent to its effectiveness, including our approval, should be completed four months prior to this trial date.

We are vested with jurisdiction over this matter by several provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, 366.051, 366.06, and 366.80-82, Florida Statutes.

II. APPROVAL OF SETTLEMENT AGREEMENT

The Agreement requires FPL to make a one-time payment of $222.5 million to the QFs in return for termination of FPL's responsibilities under its standard offer contracts and settlement of all claims arising from its litigation with the QFs. Even after accounting for the lump-sum payment, FPL expects that the termination of these contracts will save its ratepayers approximately $412 million on a net present value (NPV) basis. The $412 million savings is the net result of comparing the total cost of capacity and energy payments that would have been paid under the contracts ($1.1092 billion) to the sum of the settlement payment($222.5 million) and the replacement capacity and energy cost ($474.7 million).

At the September 26, 2000, Agenda Conference, there was a discussion regarding what the cost of the QF contracts would be from the year 2001 forward rather than over the life of the contract, which would have begun in 1997. FPL stated that another possible outcome of the civil court case would be for the jury to order that the QF contracts continue as originally intended but ignore the first four years of payments. The resultant cost of the QF contracts, as presented by counsel for FPL, is approximately $900 million rather than $1.1092 billion. After reviewing the calculations, we believe that the revised $900 million cost is correct if payments for the first four years of the contracts are excluded. This treatment results in savings of approximately $300 million rather than $412 million.

There appear to be four possible outcomes to the pending litigation between FPL and the QFs. These four outcomes, and their potential cost to FPL's ratepayers, are summarized below:

FPL prevails in litigation	FPL's attorney's fees and court costs (approx. $7.6 million)
Agreement APPROVED, litigation ends	Settlement payment ($222.5 million)
QFs prevail in litigation	Breach of contract award to QFs ($490 million)
Court orders performance of QF contracts	Value of QF contract payments ($1.1092 billion NPV from 1997, $900 million if beginning in 2001)

Even though the combined capacity of the QF contracts is about 126 MW, removal of the units from FPL's expansion plan does not cause much change. FPL's base-case generation expansion plan, which for the last three years has not included the QFs, is substantially the same as an expansion plan which incorporates the QFs. Both expansion plans are identical until 2006.

Both QF facilities burn biomass as a generator fuel. Approval of the Agreement by the Commission and the courts will free up these facilities from their standard offer contracts, thus making them the first renewable merchant plants in the state. The facilities could then operate to mitigate potential price spikes in the wholesale electricity market.

From a financial perspective, the Agreement will reduce FPL's off balance sheet liabilities, which, in turn, will increase its adjusted equity ratio. The adjusted equity ratio for FPL was capped at 55.83% in the stipulation approved by Order No. PSC-99-0519-AS-EI, issued March 17, 1999. The off balance sheet liability associated with the QF facilities is $61,721,894 as of June 30, 2000. Removal of the off balance sheet liability, in accordance with the Agreement, will increase FPL's adjusted equity ratio from 56.40% to 56.81% as of June 30, 2000. FPL shall adjust the capital structure in its earnings surveillance reports to comply with the equity ratio cap in the Agreement.

Based on our review of the Agreement and of data provided by FPL, the Agreement appears cost-effective and in the best interests of FPL's ratepayers. Therefore, we find that Florida Power & Light Company's Petition for Approval of the Conditional Settlement Agreement to Buy Out the Okeelanta Corporation and Osceola Farms, Co. Standard Offer Contracts shall be approved.

III. COST RECOVERY

In order to mitigate the impact on customer bills in 2001, FPL proposes to reflect the $222.5 million settlement payment as a base rate regulatory asset from January 1, 2001 until December 31, 2001. On January 1, 2002, FPL proposes to begin collection of the settlement payment over a term of five years as follows: 79% through the capacity clause; and 21% through the fuel adjustment clause. Any unamortized amounts during the five-year term would earn interest at the commercial paper rate rather than a higher overall rate of return.

Treating the $222.5 million settlement payment as a base rate regulatory asset in 2001 will reduce FPL's achieved return on equity by approximately 26 basis points. In other words, FPL is foregoing approximately $23.6 million in revenues for the year 2001. Recovering the settlement payment through both the capacity and fuel adjustment clauses at the proposed percentages reflects how the costs for the original QF contracts would have been recovered. The five-year recovery term is also an appropriate way to mitigate any rate impact associated with the settlement payment. In 2002, charging interest at the commercial paper rate rather than FPL's overall rate of return on the unrecovered portion of the $222.5 million results in a direct savings of approximately $5.4 million to FPL's customers. The amount of savings declines each year as the unrecovered portion of the settlement payment decreases. FPL's proposal results in approximately $29 million dollars less in charges through the adjustment clauses. Therefore, we find that FPL's proposal for cost recovery of the payment made pursuant to the Settlement Agreement shall be approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Petition for Approval of the Conditional Settlement Agreement to Buy Out the Okeelanta Corporation and

Osceola Farms, Co. Standard Offer Contracts is approved. It is further

ORDERED that Florida Power & Light Company's proposal to recover the costs of the Settlement Agreement, over a term of five years beginning in 2002, as discussed more fully in Section II of this Order, is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 19th day of October, 2000.

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BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The actions proposed herein are preliminary in nature. Any person whose substantial interests are affected by either of the actions proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 9, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.