

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of standard offer contract and revised COG-2 tariff, and for ruling that waiver of a portion of Rule 25-17.0832(4), F.A.C., is unnecessary, by Florida Power & Light Company.

DOCKET NO. 011200-EQ
ORDER NO. PSC-01-2512-PAA-EQ
ISSUED: December 24, 2001

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING PETITION FOR STANDARD OFFER CONTRACT

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 interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Case Background

On September 14, 2001, Florida Power & Light Company (FPL) filed a Petition for Approval of a Standard Offer Contract (Petition) for qualifying cogeneration and small power production facilities. The proposed contract is based on a 165 megawatt (MW) combustion turbine (CT), with an in-service date of January 1, 2002, like the two units FPL planned to add at its Martin site. In fact, the Martin CTs went into service in June 2001. FPL subsequently amended its petition on November 1, 2001. The amended

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contract is based on FPL's next planned generating units, two CTs at the Fort Myers site. The contract provides a 5 MW subscription limit of a 165 MW CT with an in-service date of January 1, 2003.

FPL also petitioned for a ruling that a waiver of a portion of Rule 25-17.0832(4)(e)5, Florida Administrative Code is unnecessary, or, in the alternative, grant a waiver of the rule. This rule provides the minimum specifications for a standard offer contract.

In this Order, we rule on both the petition for approval of the proposed standard offer contract and the requested ruling that a waiver is unnecessary. The Commission is vested with jurisdiction over this matter through several provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, 366.051, 366.06, and 366.80-.82, Florida Statutes. The Commission is vested with jurisdiction to address FPL's petition for a ruling that a waiver of a portion of Rule 25-17.0832(4)(e)5, Florida Administrative Code, is unnecessary through Section 120.542, Florida Statutes.

II. Waiver of Rule 25-17.0832(4)(e)5

FPL's proposed standard offer contract can be processed during its Request for Proposals (RFP) process. The RFP requested proposals to deliver firm capacity and energy in 2005 and 2006. The standard offer is designed to defer or avoid up to 5 MW's of a 2003 CT at Fort Myers. If a party signs the proposed standard offer contract, the capacity and energy sold to FPL will not significantly affect FPL's need for capacity in 2005 and 2006.

Our rules regarding utilities' obligations with regard to cogenerators and small power producers includes minimum specifications for standard offer contracts. Rule 25-17.0832(4)(e)5, Florida Administrative Code, states:

A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the issuance of timely notice of a Request for Proposals (RFP) pursuant to Rule 25-22.082(3), the utility shall end the open solicitation period;

This rule clearly gives qualifying facilities (QFs) and small power producers the first opportunity at new capacity offerings. The issue of timing of standard offer contracts was discussed at length during the rule hearing that resulted in Rule 25-17.0832(4)(e)5, Florida Administrative Code.

On August 13, 2001, FPL issued its RFP for 1,750 megawatts of capacity in 2005 and 2006. On September 14, 2001, FPL filed its petition, and subsequently filed its amended petition, as discussed in the case background. FPL contends in its petition that since it did not have a standard offer solicitation period open when it issued its RFP, it was in compliance with Rule 25-17.0832(4)(e)5, Florida Administrative Code. FPL also contends that it may offer a standard offer contract while it is conducting an RFP without seeking a waiver of the rule. FPL states that a waiver of the rule is unnecessary because the rule only addresses the closing of a standard offer before the issuance of an RFP, and not whether a standard offer may be opened after issuing an RFP.

If just prior to the issuance of its RFP, FPL had conducted an open solicitation period for a new standard offer, this issue would not be before the Commission. FPL is concerned that if a waiver of the rule is required, but not granted, it may have to suspend its RFP activities in order to conduct the standard offer solicitation.

The proposed standard offer may be issued during the evaluation of the RFP responses. Rule 25-17.0832(4)(e)5, Florida Administrative Code, provides for open solicitation periods and the closing of those periods prior to the issuance of an RFP. It is silent as to the conduct of a standard offer solicitation during the RFP evaluation period. In Order No. PSC-99-1091-PAA-EI issued May 28, 1999 in Docket No. 990172-EI, the Commission denied Gulf Power Company's petition for waiver of Rule 25-17.0832(4), Florida Administrative Code. Gulf Power contended that its next unit, a 2002 combined cycle (CC), was unsuitable for designation as an avoided unit for purposes of a standard offer because it had already begun activities to construct the unit. This included issuing an RFP pursuant to our rules. The Commission disagreed stating:

Gulf's argument appears to be based on the notion that if it is required to issue a standard offer contract based

on the 2002 CC unit, it will be required to restart the process for approval and construction of this unit set forth in our rules. Gulf has already issued and received responses to a Request for Proposals (RFP) for supply-side alternatives to the 2002 CC unit and is currently seeking a determination of need for the unit from this Commission, as required by our rules. By requiring Gulf to issue a standard offer contract based on the 2002 CC unit, however, we do not intend for Gulf to restart the process set forth in our rules. We intend for Gulf to seek our approval of and issue a standard offer contract concurrent with its ongoing activities for approval and construction of the 2002 CC unit. This course of action will not cause Gulf to delay construction of its next unit.

In addition, the capacity which the standard offer is based, a 2003 CT, is not identical to the capacity identified in FPL's RFP. The RFP requested proposals to deliver firm capacity and energy in 2005 and 2006. FPL's identified units in that time frame include the conversion of two CTs at Martin to a CC, conversion of two CTs at Fort Myers to a CC, construction of a new CC at Martin, construction of a new CC at Midway in 2005, and construction of a CC at Martin in 2006. The standard offer is designed to defer or avoid up to 5 MW's of a 2003 CT at Fort Myers. If a party signs the proposed standard offer contract, the capacity and energy sold to FPL will not significantly affect FPL's need for capacity in 2005 and 2006.

For these reasons, we find that a waiver of Rule 25-17.0832(4)(e)(5) is unnecessary and FPL should continue to process its RFP.

III. Petition for Approval of New Standard Offer Contract

Pursuant to federal law, the availability of standard rates is required for fossil-fueled Qfs less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR 292.304. Florida law requires the Commission to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. The Commission is further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

These federal and state requirements were implemented by the Commission through its adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file with the Commission a tariff and a Standard Offer Contract for the purchase of firm capacity and energy from small QFs. These provisions implement the requirements of the Public Utilities Regulatory Policies Act (PURPA) and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger QFs and other non-utility generators may participate in a utility's RFP process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, FPL proposed a new Standard Offer Contract based on a CT unit with an in-service date of January 1, 2003, as its avoided unit. Specifically, the Contract is based on a 5 MW portion of a 165 MW CT. FPL has also proposed an associated tariff, COG-2 (firm capacity and energy). This tariff would expire on the earlier of the date the subscription limit (5 MW) is fully subscribed, or upon the expiration of the two week open solicitation period which would begin ten days after the issuance of a Consummating Order in this docket.

We believe that FPL's evaluation criteria will be readily understandable to any developer who signs FPL's Standard Offer Contract. The avoided unit cost parameters appear to be reasonable for a CT unit, and the resulting capacity payments are appropriate.

The performance provisions include dispatch and control, and on-peak performance incentives.

Given that the subscription limit of FPL's avoided unit is only a portion of its total capacity, purchases made by FPL pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of the 2003 CT unit. If FPL enters into Standard Offer Contracts, but the need for the 2003 CT unit is not deferred or avoided, FPL will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of state regulations discussed above may result in a subsidy to the qualifying facilities. The Commission notes, however, that the potential subsidy could be mitigated, as FPL may have opportunities to sell any surplus capacity to the wholesale market.

Ideally, QFs should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, QFs are given some preferential treatment. We have minimized this unequal footing by requiring Standard Offer Contracts only for small QFs, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement due to their size and the time and resources required for negotiations. Thus, our rules balance market imperfections with the existing policy of promoting QFs.

In summary, we do not expect that FPL's proposed Standard Offer Contract will result in the avoidance of its proposed avoided unit, a 2003 CT. Nonetheless, FPL's proposed contract and tariff comply with the our cogeneration rules. For this reason, we approve FPL's petition to establish its new Standard Offer Contract and associated tariffs.

Because it would not be reasonable to have this tariff go into effect if the waiver portion of Order No. PSC-01-2488-PAA-EQ is protested, the tariff shall not be effective if any protest is filed. FPL's proposed standard offer contract shall become effective ten days after the issuance of a Consummating Order. The open solicitation period shall begin ten days after the effective date.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a Waiver of Rule 25-17.0832(4)(e)5 is unnecessary. It is further

ORDERED that Florida Power & Light Company's Petition for Approval of a Standard Offer Contract is approved. It is further

ORDERED that the tariff for the Standard Offer Contract shall become effective ten days upon the issuance of a Consummating Order. It is further

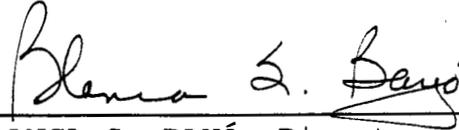
ORDERED that the open solicitation period for the tariff shall begin ten days after the issuance of a Consummating Order. It is further

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 the Commission Clerk and Administrative Services, 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 if no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

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By ORDER of the Florida Public Service Commission this 24th
day of December, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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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 action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 14, 2002.

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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.