

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for expansion of electrical cogeneration power plant in Palm Beach County by Florida Power & Light Company and New Hope Power Partnership.

DOCKET NO. 040766-EI

In re: Petition for approval of as-available energy purchase agreement between Florida Power & Light Company and New Hope Power Partnership.

DOCKET NO. 040767-EI

ORDER NO. PSC-04-1000-PHO-EI

ISSUED: October 14, 2004

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on Monday, October 4, 2004, in Tallahassee, Florida, before Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer.

APPEARANCES:

CHARLES A. GUYTON, ESQUIRE, Steel Hector & Davis LLP, 215 S. Monroe St., Suite 601, Tallahassee, Florida 32301
On behalf of Florida Power & Light Company (FPL).

ROBERT SCHEFFEL WRIGHT, ESQUIRE
Landers and Parsons, 310 West College Avenue, Tallahassee, Florida 32301
On behalf of New Hope Power Partnership (New Hope).

JENNIFER S. BRUBAKER, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On July 21, 2004, pursuant to Section 403.519, Florida Statutes, and Rule 25-22.081, Florida Administrative Code, Florida Power & Light Company (FPL) and New Hope Power

DOCUMENT NUMBER-DATE

11082 OCT 14 04

FPSC-COMMISSION CLERK

Partnership (New Hope) petitioned the Commission to determine the need for a proposed expansion to an existing electrical cogeneration power plant in Palm Beach County. Also on that date, FPL filed a Petition for approval of an as-available energy agreement with New Hope. The two dockets were consolidated by Order No. PSC-04-0748-PCO-EI, issued on August 4, 2004.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 120, 366 and 403, Florida Statutes. This prehearing conference will be governed by those Statutes and Chapters 25-22 and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any parties intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Service's confidential files.

V. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. As a result of discussions at the Prehearing Conference, the testimony of each witness listed in

Section VII of this Order has been stipulated to by the parties and Staff. Each witness may be excused from the hearing, because no Commissioner assigned to this case seeks to cross-examine the witnesses. The testimony of the excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony, as shown in Section IX of this Prehearing Order, shall be identified and admitted into the record.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Gustavo R. Cepero	FLP/New Hope	1, 2, 3, 4, 5
Steven D. Scroggs	FPL/New Hope	1, 2, 3, 4, 5

VIII. BASIC POSITIONS

FPL/

NEW HOPE: The Commission should grant an affirmative determination of need for New Hope's Project. It meets the requirements of Section 403.519, Florida Statutes. In addition, a determination of need will foster development of renewable energy within Florida, displace fossil fuels, improve fuel diversity and conserve landfill space.

The Commission should also approve the Agreement between FPL and New Hope for the sale and purchase of discounted as-available energy from the Project. In approving the Agreement, the Commission should make the following findings, which are necessary for the Agreement to become effective: (a) the Agreement is reasonable, prudent, and in the best interest of FPL's customers; (b) the payments under the Agreement are not reasonably projected to result in higher cost electric service to FPL's customers or adversely affect the adequacy or reliability of electric service to FPL's customers; and (c) FPL may recover from its customers all payments for energy purchased pursuant to the Agreement.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

IX. ISSUES AND POSITIONS

ISSUE 1: PROPOSED STIPULATION NUMBER 1

ISSUE 2: PROPOSED STIPULATION NUMBER 2

ISSUE 3: PROPOSED STIPULATION NUMBER 3

ISSUE 4: PROPOSED STIPULATION NUMBER 4

ISSUE 5: PROPOSED STIPULATION NUMBER 5

ISSUE 6: PROPOSED STIPULATION NUMBER 6

X. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Cepero	FPL/New Hope	<u> </u> (GRC-1)	Agreement
Scroggs	FPL/New Hope	<u> </u> (SDS-1)	New Hope Agreement Analysis

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

The following are proposed stipulations to which FPL, New Hope, and Staff agree.

1. Although FPL does not have a reliability need, as this criterion is used in Section 403.519, Florida Statutes, FPL and its customers have an economic need for the New Hope Project. FPL's purchase of as-available energy will provide no reliability benefit from a planning perspective, but the existence of this as-available energy source may, under certain operational circumstances, enhance FPL system reliability by increasing fuel and geographic diversity of generating resources.
2. There is a need for the proposed New Hope Project, taking into account the need for adequate electricity as a reasonable cost, as this criterion is used in Section 403.519, .

Florida Statutes. FPL and its customers have an economic need for the energy to be produced by the Project and sold pursuant to the Agreement. Every kWh of energy purchased from the New Hope Project by FPL under the Agreement will be at a discount to the price FPL would otherwise be obligated to pay New Hope for as-available energy, which also provides a discount to FPL and FPL's customers from the cost that FPL would otherwise incur to generate or purchase such energy. Thus, purchases from the Project under the Agreement directly benefit FPL customers by lowering their cost of electricity.

3. The proposed New Hope Project is the most cost-effective alternative available, as this criterion is used in Section 403.519, Florida Statutes. Each kWh provided under the Agreement will be at a discount to FPL's as-available energy rate, which is the cost that FPL would otherwise incur to generate or purchase such energy. Therefore, every kWh purchased under the Agreement is cost-effective. There is no other known source of as-available energy available to FPL at such a discounted price. FPL projects that purchases under the Agreement will save FPL customers almost \$200,000 over the initial five-year term of the contract.
4. There are no conservation measures reasonably available to FPL which might mitigate the need for the proposed new Hope Project. FPL has already captured or identified the reasonably achievable, cost-effective DSM on its system, and FPL's as-available energy tariff assumes the implementation of that cost-effective DSM. Therefore, there is no other DSM available that would mitigate the need for the energy to be purchased from the New Hope Project under the Agreement.
5. The Agreement For The Purchase Of As-Available Energy From New Hope by FPL, filed on January 21, 2004, should be approved. The Agreement satisfies all requirements of Chapter 366, Florida Statutes, relating to the reasonableness and prudence of costs, as well as the requirements of the Commission's Cogeneration Rules, specifically Rule 25-17.0825, F.A.C. In approving the Agreement, the Commission should make the following findings necessary for the contract to become effective: (a) the Agreement is reasonable, prudent, and in the best interest of FPL's customers; (b) the payments under the Agreement are not reasonably projected to result in higher cost electric service to FPL's customers or adversely affect the adequacy or reliability of electric service to FPL's customers; and (c) FPL may recover from its customers all payments for energy purchased pursuant to the Agreement.
6. If there is no timely request for reconsideration or appeal, this docket should be closed.

XII. PENDING MOTIONS

There are no pending motions at this time.

ORDER NO. PSC-04-1000-PHO-EI
DOCKET NOS. 040766-EI, 040767-EI
PAGE 7

XIII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

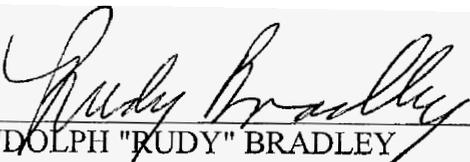
XIV. RULINGS

Opening statements, if any, shall be limited to ten minutes per party.

It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 14th day of October, 2004.


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

JSB

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.