

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Okeechobee Clean Energy Center Unit 1, by
Florida Power & Light Company.

DOCKET NO. 150196-EI
ORDER NO. PSC-15-0540-PCO-EI
ISSUED: November 20, 2015

ORDER DENYING ADDITIONAL ISSUES
PROPOSED BY THE SOUTHERN ALLIANCE FOR CLEAN
ENERGY AND FLORIDA POWER & LIGHT COMPANY

On September 3, 2015, Florida Power & Light (FPL) filed a Petition and supporting testimony to determine need for the construction of a combined cycle generating unit in Okeechobee County, together with the associated facilities, including transmission lines and substation facilities, pursuant to Sections 366.04 and 403.519, Florida Statutes (F.S.), and Rules 25-22.080, 25-22.081, 25-22.082, and 28-106.201, Florida Administrative Code (F.A.C.). In its Petition, FPL proposed to construct a natural gas combined cycle power plant, with an expected summer peak rating of about 1,622 megawatts (MW), at a greenfield site in northeast Okeechobee County owned by FPL. According to FPL's petition, the Okeechobee Clean Energy Center Unit 1 will enable FPL to meet a projected need for additional generation resources that begins in 2019, continues into 2020, and increases each year thereafter.

On September 16, 2015, Order No. PSC-15-0394-PCO-EI (Order Establishing Procedure) was issued, scheduling the matter for an administrative hearing on December 1-2, 2015. The Order Establishing Procedure included a list of tentative issues for consideration based on Section 403.519(3), F.S., as in prior Commission need determination proceedings. The Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), the Southern Alliance for Clean Energy (SACE) and the Environmental Confederation of Southwest Florida (ECOSWF) have each been granted intervention in this docket.

On September 21, 2015, Commission staff conducted a meeting with the parties to discuss the tentative list of issues for determination by the Commission. FIPUG proposed two additional issues for consideration, which the parties and staff discussed at length at the meeting. The parties and staff, however, could not reach a consensus on the proposed issues. In an effort to work together to reach a consensus on the framing of the issues, staff asked the parties to submit comments in support of or in objection to, the inclusion of FIPUG's additional proposed issues by close of business on September 23, 2015. After reviewing the comments submitted by the parties, staff sent the parties a revised tentative issue list on September 24, 2015. The revised tentative issue list took into account the comments made by the parties and staff at the issue identification meeting and the comments submitted to staff by the parties. Staff also advised the parties that they could request a formal determination by the Prehearing Officer on the proposed issues.

On November 3, 2015, the parties filed their Prehearing Statements. In its Prehearing Statement, ECOSWF proposed five additional issues. On November 6, 2015, SACE filed Proposed Issues, proposing the inclusion of three additional issues.

In order to facilitate a ruling on the proposed issues at the Prehearing Conference on November 17, 2015, staff requested the parties file comments setting forth the rationale for the inclusion or exclusion of the proposed issues. On November 12, 2015, ECOSWF filed comments in support of its proposed issues. SACE also filed Positions and Comments in Support of its Proposed Issues and FPL filed Comments in opposition to the inclusion of SACE and ECOSWF's proposed issues and included an alternative issue.¹

Pursuant to Notice and in accordance with Rule 28-106.209, F.A.C, a Prehearing Conference was held on November 17, 2015. At the Prehearing Conference, the parties were provided an opportunity to present oral arguments regarding the proposed additional issues. I issued a ruling denying the inclusion of ECOSWF's five additional proposed issues at the Prehearing Conference.² With regard to the issues proposed by SACE, I took the parties arguments under advisement and stated a ruling on the issues would be made by separate order.

Ruling

Pursuant to Rule 28-106.211, F.A.C., as Prehearing Officer in this proceeding, I am charged with the duties of issuing orders necessary to effectuate discovery, prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of this case. Part of my duties in this proceeding is the determination of issues to be presented at hearing for the Commission's consideration. The issues proposed by SACE and FPL for consideration are:

SACE PROPOSED ISSUE 1:

Does the Stipulation entered into in Docket No. 981890-EU, and approved by the Commission in Order No. PSC-99-2507-S-EU, require the Commission to review FPL's Petition in this docket based on a 20% reserve margin?

SACE PROPOSED ISSUE 2:

If the Commission does not address the appropriateness of FPL's 20% reserve margin criterion in this docket, should the Commission establish a generic docket to address what the appropriate reserve margin criteria are for FPL and other IOUs?

¹ FPL proposed an alternative Issue 1A to SACE's proposed Issue 3 in its Comments filed in opposition to the additional issues proposed by ECOSWF and SACE.

² My rulings on ECOSWF's proposed issues are set out in the Prehearing Order issued in this docket.

The 20% reserve margin criterion was approved by this Commission by Order No. PSC-99-2507-S-EU, in a generic investigation, in which all of the Florida Investor-Owned Utilities (IOUs) participated, to address the aggregate electric utility reserve margins planned for Peninsular Florida.³ In contrast, this need determination proceeding concerns only FPL and no other IOU is participating. It would not be appropriate to revisit and/or change the applicability of the 20% reserve margin as criterion in a specific utility's proceeding where no other affected IOU is a party to the proceeding.

Moreover, in a prior need determination proceeding, the Commission found that consideration of the 20% reserve margin was not a proper issue for consideration in an individual utility's need determination proceeding. In Order No. PSC-03-0175-FOF-EI, issued on February 4, 2003, in Docket No. 020953-EI, In re Petition To Determine Need for Hines Unit 3 in Polk County by Florida Power Corp., the Commission stated:

Order No. PSC-99-2507-S-EU, issued December 22, 1999, in Docket No. 981890-EU, requires Florida's investor owned utilities (IOUs) to increase minimum planning reserve margins to a 20% reserve margin by the summer of 2004. By approving the stipulation proposed by the IOUs and issuing the above Order, we have already determined that 20% is the appropriate reserve margin criteria, and the IOUs are required to utilize this criteria, unless modified in a subsequent proceeding . . . The proper forum to address what minimum reserves are necessary should be a generic docket, as was previously done, and not in a particular utility's power plant need determination docket.

Id. at 4-5.

Thus, I find that this is not the proper proceeding to revisit and/or change the applicability of the 20% reserve margin as a criterion in a specific utility's proceeding where no other affected IOU is a party to the proceeding. I note, however, that the Commission has the opportunity to review FPL's application of the 20% minimum reliability criterion in the context of this need determination proceeding to determine whether FPL properly calculated and applied this criterion in assessing its need for power in 2019 in previously identified Issue 1. Issue 1 tracks the express need determination criterion that the Commission is required to consider when it evaluates any need determination.⁴ Included in the criterion regarding system reliability and integrity is whether the power is needed to ensure the utility's system reliability. It is FPL's burden to demonstrate the power is needed using whatever criterion FPL bases its need.

³ Order No. PSC-99-2507-S-EU, issued December 22, 1999, in Docket No. 981890-EU, In Re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida.

⁴ Staff's Issue 1 states as follows: "Is there a need for the proposed Okeechobee Clean Energy Center Unit 1, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(3), Florida Statutes?"

Lastly, while the appropriate minimum planning reserve margin Florida Peninsular IOUs should seek to meet is certainly an important question, whether or not the Commission should establish a generic docket to review the matter is not an appropriate question for the Commission to consider in this specific proceeding for the reasons outlined above.

SACE PROPOSED ISSUE 3:

Is the generation-only reserve margin created and used by FPL an appropriate reliability criterion for determining the need for the proposed OCEC Unit 1?

FPL PROPOSED ISSUE 1A:

Is the generation-only reserve margin used by FPL an appropriate reliability criterion?

As stated above, Issue 1 tracks the express need determination criterion that the Commission is required to consider when it evaluates any need determination. Included in the criterion regarding system reliability and integrity is whether or not the power is needed to ensure the utility's system reliability. It is FPL's burden to demonstrate the power is needed using whatever criterion FPL bases its need as stated in its Petition and pre-filed testimony.

The Commission will have the opportunity to review FPL's application of this 10% generation-only reserve margin reliability criterion in the context of this need determination proceeding to determine whether FPL properly calculated and applied this criterion in assessing its need for power in 2019 in previously identified Issue 1. In addition, the parties to this proceeding will have the opportunity to weigh in on FPL's use of the generation-only reserve margin as a criterion in its resource planning process and to support the need for the proposed OCEC Unit 1 in this proceeding within the framework of Issue 1, including whether or not FPL has met its burden to show a need for system reliability and integrity pursuant to Section 403.519, F.S.

Therefore, upon consideration of the comments and the arguments presented by the parties at the Prehearing Conference, I find that the issues proposed by SACE and the alternative issue proposed by FPL can either be addressed in another issue or are not appropriate for inclusion in this proceeding. Accordingly, for the reasons outlined above, SACE proposed Issues 1-3 and FPL proposed Issue 1A shall not be included in Section VIII of the Prehearing Order:

Finally, with regard to the issues determined not appropriate for consideration this proceeding, I would remind the parties that, any cross-examination questions pertaining to these issues are also inappropriate and the parties should govern themselves accordingly.

Based on the foregoing, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that SACE's proposed issues 1 and 2 are inappropriate for inclusion in this proceeding. It is further,

ORDERED that SACE's proposed Issue 3 and FPL's proposed alternative Issue 1A are subsumed in Issue 1.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 20th day of November, 2015.



RONALD A. BRISÉ

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.