## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of amended ) DOCKET NO. 900686-EQ cogeneration agreement between Florida ) Power & Light Company and AES Cedar Bay, ) ORDER NO. 23651 Inc. ) ISSUED: 10-23-90

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

### NOTICE OF PROPOSED AGENCY ACTION

ORDER APROVING SECOND AMENDED COGENERATION AGREEMENT
BETWEEN FLORIDA POWER & LIGHT COMPANY AND
AES CEDAR BAY, INC.

BY THE COMMISSION:

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

#### CASE BACKGROUND

In accordance with Commission rules, AES Cedar Bay, Inc. (AES) and Florida Power & Light Company (FPL) negotiated a contract for the purchase of cogenerated firm energy and capacity dated May 6, 1988. Pursuant to Order No. 21468, issued June 28, 1989, the Commission approved this agreement as amended on November 9, 1988.

On August 10, 1990, Florida Power & Light Company (FPL) filed a petition for approval of Amendment No. 2 to the Agreement for the Purchase of Firm Capacity and Energy between AES Cedar Bay, Inc. and Florida Power & Light Company. FPL contends that this second revision is necessary in order to allow FPL to economically dispatch the AES Cedar Bay facility. In its petition, FPL requests that the Commission make the findings that: (1) the Amended Agreement is reasonable, prudent and in the best interest of FPL's ratepayers; (2) the Amended Agreement contains adequate security

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based on AES Cedar Bay's financial stability; (3) no costs in excess of full avoided costs are likely to be incurred by FPL over the initial term of the Amended Agreement; (4) all payments for energy and capacity made by FPL pursuant to the Amended Agreement may be recovered from FPL's customers; (5) FPL shall not be required to resell the energy and capacity purchased pursuant to the Amended Agreement to another electric utility as long as their retention is the best interest of FPL's ratepayers; and, (6) the Amended Agreement is consistent with the "determination of need" granted by the Commission by Order No. 21491 issued on June 30, 1989.

The Commission's current rules on the approval of negotiated contracts require the comparison of the contract to the applicable standard offer contract. The standard offer contract that was in effect at the time this contract was entered into was based on a 1995 500 MW coal unit. This comparison was provided by AES and the Amended Agreement is shown to be below the cumulative net present value of the standard offer contract. As part of its petition, FPL provided a comparison of the Original and the Amended Agreement to show that the Amended Agreement is projected to be slightly below the Original Agreement on a cumulative present worth basis. The figures provided by AES and FPL coincide and are shown on Attachment A. We find that the amendments to the agreement are virtually revenue neutral and are less than the value of applicable standard offer contract.

The Original Amendment stated that the initial committed capacity of the facility will be "at least 180 MW and not greater than 250 MW." This agreement was considered in concert with the need determination proceeding for this project. The Amended Agreement contains identical language. At the time of the need determination proceeding, it was anticipated that the steam requirements of Seminole Kraft would limit the electrical output of the AES facility to approximately 225 MW. Since the language in the Amended Agreement allows for a range of committed capacity, just like the original agreement, we find that the Amended Agreement is consistent with the determination of need granted by this Commission pursuant to Order No. 21491.

In Docket No. 881570-EQ (the original contract petition) we issued Order No. 21468 approving the contract and finding it

appropriate for cost recovery in accordance with Rule 25-17.083(2), Florida Administrative Code. That rule defines three criteria to be considered in making a determination of prudency for cost recovery purposes. These criteria may be summarized as:

- (a) The purchase can reasonably be expected to result in the economic deferral or avoidance of capacity construction from a statewide perspective;
- (b) The cumulative present worth of the payments for firm energy and capacity are no greater than the cumulative present value of the deferral of the statewide avoided unit; and
- (c) The agreement contains adequate security provisions to protect ratepayers in the event AES Cedar Bay fails to perform pursuant to the terms of the agreement.

As previously stated, this Second Amended Agreement provides for payments for energy and capacity which have cumulative net present value of less than the applicable standard offer contract. The Second Amended Agreement appears to contain greater security provisions for FPL's ratepayers than the original agreement. The record is devoid of evidence suggesting any basis for altering our previous finding that "the purchase...can reasonably be expected to result in the economic deferral or avoidance of additional capacity construction by Florida utilities from a statewide perspective." We therefore find that this amended agreement meets the criteria of Rule 25-17.083(2) and that payments for energy and capacity made by FPL pursuant to the Amended Agreement may be recovered from FPL's customers.

Since the agreement (1) contains adequate security for FPL's ratepayers; (2) has a cumulative net present value of less than the applicable standard offer contract, (3) is consistent with the

determination of need granted by the Commission in Order No. 21491, we find that the Amended Agreement is reasonable, prudent and in the best interest of FPL's ratepayers.

A finding that FPL should not be required to resell the capacity and energy is not necessary or appropriate to make a determination concerning the merits of this contract amendment. As stated in Order No. 22424 "the question of whether FPL is required to resell, and if so, at what price, is best addressed by this body when such a transaction takes place or a substantially affected person alleges that such a transaction should have taken place."

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition filed by Florida Power & Light Company for the approval of the Amended Cogeneration Agreement with AES Cedar Bay, Inc. should be and is hereby granted. It is further

ORDERED that this Order shall become final unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By	ORDER	of	the	Florida	Public	Service	Commission,	this
23rd		day	_		OCTOBER		1990	_•

STEVE TRIBBLE 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 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 13, 1990

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent 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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule

9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

# ATTACHMENT A

# SUMMARY OF PAYMENTS PURSUANT TO FPL/AES AMENDED CONTRACT (\$ 000)

_	YEAR	1995 STANDARD OFFER CONTRACT	ORIGINAL AGREEMENT	AMENDED AGREEMENT
	1990	\$0	\$0	\$0
	1991	\$0	\$0	\$0
	1992	\$0	\$0	\$0
	1993	\$75,936	\$65,831	\$65,720
	1994	\$81,947	\$68,701	\$68,584
	1995	\$74,213	\$71,776	\$71,652
	1996	\$78,770	\$75,038	\$74,906
	1997	\$83,655	\$78,353	\$78,214
	1998	\$88,757	\$81,873	\$81,726
	1999	\$94,228	\$85,465	\$85,310
	2000	\$100,054	\$89,511	\$89,347
	2001	\$106,180	\$93,094	\$92,922
	2002	\$112,715	\$96,498	\$96,320
	2003	\$119,921	\$101,044	\$100,854
	2004	\$127,316	\$105,660	\$105,460
	2005	\$135,081	\$110,500	\$110,288
	2006	\$143,376	\$115,696	\$115,471
	2007	\$152,201	\$121,249	\$121,009
	2008	\$161,588	\$126,890	\$126,637
	2009	\$171,513	\$132,888	\$132,620
	2010	\$182,106	\$139,395	\$139,109
	2011	\$193,235	\$146,124	\$145,820
	2012	\$205,183	\$153,094	\$152,772
	2013	\$217,788	\$143,357	\$143,015
	2014	\$231,168	\$150,720	\$150,355
	2015	\$245,370	\$159,642	\$159,249
	2016	\$260,445	\$167,468	\$167,051
	2017	\$276,447	\$176,586	\$176,140
	PV (1990)	\$805,811	\$670,926	\$669,648