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COGENERATION & ALTERNATIVE ENERGY
ENERGY REGULATORY LAW

VIA FEDERAL EXPRESS
May 4, 1999

Ms. Blanca S. Bayó, Director
Division of Records & Reporting
Florida Public Service Commission
Capitol Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

In Re: **FPSC Docket No.990249-EG**
Petition by Florida Power & Light Company for approval of a standard offer contract and revised COG-2 tariff.

Dear Ms. Bayó:

Enclosed for filing in the above Docket please find an original and 7 copies of Comments of The Florida Industrial Cogeneration Association. Also enclosed is a double-sided high density 3.5 inch floppy disk containing this document in WordPerfect 6.0 format as prepared on a Windows-based computer.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

Richard A. Zambo

AFA 1
APP
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RAZ/jnh
Enclosures

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition Florida Power & Light Company for Approval of A Standard Offer Contract.	))))	Docket No. 990249-EG Submitted for filing: May 4, 1999

COMMENTS

OF

THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION

The Florida Industrial Cogeneration Association (FICA), through its undersigned attorney, submits these comments in opposition to Florida Power & Light Company's petition to the Commission in the captioned proceeding.

1. Florida Power & Light Company (FPL) seeks approval of a standard offer contract (or "standard offer") for the purchase of firm capacity and energy. Pursuant to Commission rule 25-17.082(4), F.A.C, such standard offer must be made available to "small qualifying facilities"[1], and must comply with specific requirements of Commission rules. Acknowledging that its proposed standard offer falls short of those rule requirements on several counts, FPL also seeks a variance (waiver) of Rule 25-17.082(4), F.A.C. FPL's basis for waiver is its allegation that application of the rule would, ". . . create a substantial hardship on the Company and its electric consumers."

2. FICA members own and/or operate small qualifying facilities (SQF) which generate electricity in conjunction with their industrial operations at various locations in Florida. FICA members sell electricity to Florida electric utilities.

[1] A small qualifying facility is defined by Commission rule to be: 1. A small power producer or other qualifying facility using renewable or non-fossil fuel where the primary energy source in British Thermal Units (BTUs) is at least 75 percent biomass, waste, solar or other renewable resource; 2. A qualifying facility, as defined by Rule 25-17.080(3), with a design capacity of 100 kW or less; or, 3. A municipal solid waste facility as defined by Rule 25-17.091.

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3. Under the referenced rule, standard offers are only available to SQFs, which are the types of non-utility generating facilities this Commission specifically sought to encourage when it last revised its rules and significantly restricted access to standard offers. FPL's request if granted, would foreclose access to the standard offer, contrary to law.

4. Frankly, FICA did not initially recognize the breadth and scope of the waiver that FPL seeks. Close scrutiny reveals that FPL's proposed deviations from the rule are so far reaching that its proposed standard offer bears little resemblance to what is envisioned and mandated by the Commission's rules - rules which importantly have been developed over time with the benefit of extensive evidentiary hearings and input from all "stakeholders". FPL's proposal is truly an example of form over substance and should be rejected by the Commission.

5. FPL's request for approval of a standard offer and variance appears to be more properly cast as a request for wholesale amendment of the Commission's standard offer rules. The proposed deviations would render the standard offer a nullity, in the sense that the price, terms and conditions proposed by FPL would offer little incentive to SQF's, and bear little resemblance to the "real" generating capacity FPL actually plans to construct.

6. In the interest of brevity, FICA will not attempt to address each of the myriad issues raised by FPL's request. Rather, FICA will focus on those portions of FPL's request which, if granted, would undermine fundamental tenets of the Commissions standard offer rules, as well as, the Florida Energy Efficiency and Conservation Act (FEECA)[2].

7. A crucial element of the Commission's standard offer rules as set forth at 25-17.0832 (4) (b), F.A.C., is that: *"The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the*

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[2] Commission rule 25-17.001(5)(d) requires that electric utilities "Aggressively integrate nontraditional sources of power generation including cogenerators with high thermal efficiency and small power producers using renewable fuels into the various utility service areas near utility load centers to the extent cost effective and reliable." (emphasis supplied)

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avoided cost of deferring or avoiding the construction of additional generation capacity or parts thereof by the purchasing utility[3]." Although FPL's proposal is lacking in detail, it seems clear that the standard offer fails to comply with this rule provision. Would a utility the size of FPL actually include a 5 mW combustion turbine in its planning[4]?

8. Another critical component of the Commission's standard offer rules which is pertinent here, is the "value of deferral" pricing mechanism for capacity payments. This mechanism, which was adopted by the Commission in 1983, is a calculation of the value of deferring the revenue requirements associated with a new generating plant. It is very important to understand that the value of deferral payment mechanism only results in full avoided cost payments if the SQF can sell capacity to the utility over the projected useful life of the utility's avoided unit. In its petition, FPL proposes to limit standard offers to a 5 year term, thereby assuring the SQF will receive far less than avoided cost - even if FPL used its actual avoided unit as the basis for capacity pricing.

9. The value of deferral methodology essentially "inverts" the capacity revenue stream in comparison to what the utility would receive if it constructed the avoided unit and added it to rate base. This is best illustrated by example. Assume that FPL constructed a generating unit at a cost of $100 million. Assume further a useful life of 20 years, straight line depreciation, and a 10% rate-of-return. In very simplified terms, ignoring taxes and other factors, the first year the unit is in rate base, FPL would earn (ie increase its revenue requirement as reflected in rates) $10 million, the second year would be $9.5 million, the third

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[3] The rule further provides that" In reviewing a utility's standard offer contract or contracts, the Commission shall consider the criteria specified in paragraphs (3)(a) through (3)(d) of this rule, as well as any other information relating to the determination of the utility's full avoided costs." Although FPL may claim that it has provided the "other information" referenced in the rule, it appears that such information is strictly conjecture or opinion and should not bear on the Commission's specified standard of review.

[4] FICA recognizes that the 5 mWs is a designated portion of a 209 mW unit. However, by limiting subscriptions to 5 mW, FPL is essentially designating a 5 mW avoided unit but using the parameters of the larger 209 mW unit.

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year $9 million, and so on until in the twentieth (final) year FPL would earn $0.5 million. (A characteristic of the "revenue requirements" payment stream is that payments begin high and decline over time.) If that same generating unit were avoided by SQF's entering into standard offers, the revenue stream - and the rate impact on FPL's customers - would be "inverted" by virtue of the value of deferral methodology. The payments to the SQF would initially be very low - perhaps on the order of $1 million in the first year - but would escalate annually so that at the end of the 20 year useful life, the net present value of payments received by the SQF would equal the net present value of revenues earned by the utility had it constructed the unit. (A characteristic of the "value of deferral" is that payments begin low and increase over time[5].)

10. Integral to the value of deferral payment mechanism is the minimum term of the standard offer. Commission rules require that standard offers include *". . .a minimum ten year term contract commencing with the in-service date of the avoided unit*[6]*. . ."* and that *"At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit*[7]*. . ."*. This requirement assures that an SQF willing to contract for a period equal to the anticipated plant life, can receive full avoided cost, and allows all or part of a proposed generating unit to be fully avoided. The ten year minimum term was deemed necessary both from the utility planning perspective, and to be of sufficient length to confer substantial capacity benefit on the utility ratepayers[8]. FPL's arbitrary imposition of

[5] The value of deferral reduces both intergenerational inequities and "rate shock" to the current utility customers. Moreover, as the payment under the value of deferral grow over time, there may be a larger customer base over which to spread the costs, thus further reducing customer impacts.

[6] 25-17.0832(4)(e)3., F.A.C.

[7] 25-17.0832(4)(e)7., F.A.C.

[8] See FPSC Order 12634 at page 19

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a 5 year contract term minimum/maximum clearly defeats the purpose of the rule, assures less than full avoided cost payments to the SQF, prevents capacity deferral, and must be rejected.

11. As a further disincentive to SQF's, FPL proposes to include a "regulatory-out" clause which renders the standard offer a unilateral contract which can be terminated by FPL[9] subject to Commission action. The use of such clauses has been fully debated before this Commission in the past, with FPL then - as now- a proponent of regulatory out provisions. The Commission properly rejected regulatory out provisions for standard offers. This is reflected in the Commission's rules by the absence of regulatory out clauses in the listing of mandatory and permissive provisions of a standard offer[10]. FICA would note that the other standard offer provisions as proposed by FPL obviate any rational need for the regulatory-out clause because there would be no standard offers accepted by SQF's.

12. FPL's request for waiver[11] falls short of the requirement of Chapter 120.542 (2), F.S. which requires a demonstration that: *"the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness."*.[12] FPL has not identified specific

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[9] See FPL's proposed Second Revised Sheet No. 9.857 under the heading 18. Regulatory Disallowance.

[10] See 25-17.0832(4), F.A.C - sections (e) and (f)

[11] Given the number of substantive rule provisions from which FPL seeks waiver - which if granted would likely be emulated by other utilities - the Commission should either deny FPL's request out-of-hand, or treat it as the request for rulemaking and/or rule amendment, with proper notice as such to assure a full debate of the issues presented.

[12] Chapter 120.542 (2), F.S. further states: "For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.".

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facts sufficient to justify a waiver, and has not demonstrated why the waiver requested would serve the purposes of the underlying statute.[13]

13. The "underlying statute[s]", cited by the Commission in adopting the subject rules are Chapter 366.051, F.S. - relating to cogeneration and small power production - and Chapter 403.503, F.S. - relating to the Florida Electric Power Plant Siting Act (PPSA or Act). Chapter 366.051, F.S., is specifically designed to encourage cogeneration and small power production.[14] It is difficult to discern how the purposes of that statute will be achieved by FPL's proposed standard offer which is not based on its next generating unit, does not result in payment of full avoided costs, and is in many ways substantially non-compliant with Commission rules implementing the statutory requirements.

14. FPL has not affirmatively demonstrated that application of the rule *". . .affects a particular person [FPL] in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule."* as is required by Chapter 120.542, F.S. If FPL's waiver is granted on the basis of its vague allegations and unsubstantiated opinions, any utility subject to the rule could obtain waiver - and thereby fully defeat the underlying statutory and rule objective - by simply opining, as FPL has done, that a standard offer which

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[13] Chapter 120.542 (5), F.S. provides: "A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify: (a) The rule from which a variance or waiver is requested. (b) The type of action requested. (c) The specific facts that would justify a waiver or variance for the petitioner. (d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute." (E.S.)

[14] That section provides in part that: "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state or consumed by a cogenerator or small power producer. The electric utility in whose service area a cogenerator or small power producer is located shall purchase, in accordance with applicable law, all electricity offered for sale by such cogenerator or small power producer; or the cogenerator or small power producer may sell such electricity to any other electric utility in the state. The commission shall establish guidelines relating to the purchase of power or energy by public utilities from cogenerators or small power producers and may set rates at which a public utility must purchase power or energy from a cogenerator or small power producer." In fixing rates for power purchased by public utilities from cogenerators or small power producers, the commission shall authorize a rate equal to the purchasing utility's full avoided costs. A utility's "full avoided costs" are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. (Emphasis supplied)

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complies with the Commission's rules constitute a hardship on the Utility and its electric consumers. Such precedent would render the standard offer rules virtually meaningless and underscores the notion that FPL's petition more closely resembles a request for rulemaking than it does a request for standard offer contract approval.

15. Granting the waiver sought by FPL would deny SQFs the opportunity to provide electric generating capacity to FPL. Such a result would be contrary to both Florida and Federal law which favors QFs as an alternative to the construction of generating capacity by electric utilities. Likewise, granting the waiver would be a departure from longstanding, well established policies of this Commission to encourage efficient, cost-effective alternatives to utility construction of new power plants.

16. In its petition for approval, FPL asserts that its own proposed generating capacity additions provide: ". . . significant system benefits not available from new facilities. . .". Because of the dramatic difference in revenue streams between the revenue requirement method which is applicable to FPL when it constructs new facilities, and the value of deferral method applicable to SQFs, it appears that SQFs can confer benefits not available from FPL's proposed additions. FICA finds no indication that FPL analyzed the benefits related to the value of deferral revenue stream, or considered such potential benefits in reaching its conclusion.

17. Based on the information provided by FPL, it appears that one of the "benefits" identified by FPL is the need for power in a certain region of the State. Contrary to Commission rules[15], FPL proposes to discount capacity payments in all but a relatively small portion of its service area. This proposal raises a number of potential issues which may require in-depth analysis by the Commission, including but not limited to: (i) whether the need for capacity in a certain area of the state is a symptom of inadequate transmission system planning;

[15] See 25-17.0832(4), F.A.C - sections (e) and (f)

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16. In its petition for approval, FPL asserts that its own proposed generating capacity additions provide: ". . . significant system benefits not available from new facilities. . .". Because of the dramatic difference in revenue streams between the revenue requirement method which is applicable to FPL's new facilities, and the value of deferral method applicable to SQFs, it appears that SQFs can confer economic benefits which are not available if FPL adds facilities. There is no indication that FPL attempted to quantify potential benefits of the value of deferral method on its consumers, or even considered such potential economic benefits.

17. Based on the information provided by FPL, it appears that one of the "benefits" identified by FPL is the need for power in a certain region of the State. Contrary to Commission rules[15], FPL proposes to discount capacity payments in all but a relatively small portion of its service area. This proposal raises a number of potential issues which may require in-depth analysis by the Commission, including but not limited to: (i) whether the need for capacity in a certain area of the state is a symptom of inadequate transmission system planning;

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(ii) whether the need for capacity in a certain area of the state is a symptom of inadequate generation planning/siting; (iii) if so, whether FPL should be permitted to take "credit" for the benefit of solving a problem it created by adding its own generating capacity in lieu of purchasing from SQFs; and (iv), whether the "area" discounts to capacity payments are consistent with Commission rules.

18. In its petition for variance, FPL references as justification for some of its proposal, two bills currently before Congress which would repeal portions of PURPA. FPL urges that these bills represent risks against which the Commission should act as a shield. FICA would observe that the statutes underlying the rules from which FPL seeks waiver do not appear to address the risk of Congressional action as identified by FPL. The risk of adverse legislative or regulatory decisions affects everyone, and is an accepted part of doing business - especially as a regulated monopoly utility. FICA would further observe that other bills before congress would allow SQFs, QFs, EWGs, merchant plants, and other non-traditional utility generators to make sales of electricity at retail. Accordingly, FICA suggests that a reasonable alternative available to the Commission would be to allow retail sales by SQF's in lieu of requiring FPL to submit standard offer contracts which comply with the Commission's rules.

19. There are other aspects of FPL's proposal with which FICA takes issue, but which for the sake of brevity, will not be addressed here. Suffice it to say that FPL's request, if granted, would be inconsistent with longstanding policy of this Commission as well as applicable State and Federal law. It is a bold attempt to undermine the validity of the standard offer concept and the policy of the State to encourage SQF's.

20. FPL proposes that its standard offer be open for subscription until the subscription limit of 5 mW is reached or July 1, 2000 - more than one year from now. This is more than enough time to issue a "real" standard offer consistent with Commission rules and based on FPL's next planned generating unit. This would provide an opportunity to

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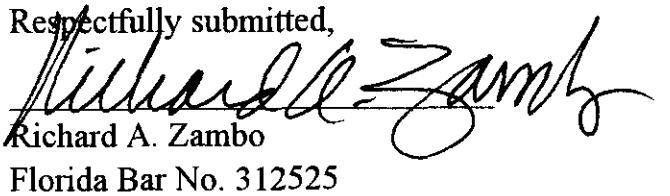
test/verify FPL's assumptions regarding SQF's being unable to confer benefits, or being unable to defer capacity needs. Such an approach would be more logical and sound from a regulatory perspective as compared to relying on FPL's largely unsubstantiated conclusions.

21. As a final note, FICA is also concerned with the fact that FPL's petition is one in a series of similar such petitions by other utilities in the State which have included requests for waiver of the standard offer rules, and requests for waiver of the bidding rules. These events appear to indicate a trend among Florida electric utilities to attempt to avoid purchasing electricity from any source - even the highly efficient or renewable fuel based SQF's specifically encouraged by Commission rules - preferring rather to construct all new generating capacity themselves. Thus far the Commission has denied those requests and FICA encourages it to continue to do so in this case.

WHEREFORE, FICA respectfully requests that the Commission enter an order: 1) denying FPL's petition for approval of a standard offer and accompanying request for variance; 2) directing FPL to file a standard offer tariff/contract based on its next planned generating unit and otherwise in full compliance with Commission rules; and 3), directing FPL to open a solicitation period on such standard offer tariff/contract ending July 1, 2000.

Respectfully submitted,



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