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COGENERATION & ALTERNATIVE ENERGY
ENERGY REGULATORY LAW

VIA FEDERAL EXPRESS

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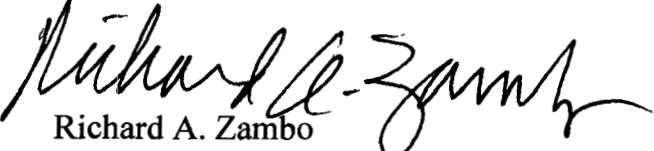
Ms. Blanca S. Bayó, Director
Division of Records & Reporting
Florida Public Service Commission
Capitol Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

In Re: Petition of Florida Power Corporation for approval of standard offer contract
FPSC Docket No. 991526-EI

Dear Ms. Bayó,

Enclosed for filing in the above captioned Docket, please find the original and 10 copies of Preliminary 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 _____
APP _____
CAF _____
CMU _____ RAZ/sn
CTR _____ Enclosures
EAG _____ xc: James A. McGee, Esquire w/enc.
LEG _____
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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition Of Florida Power Corporation for approval of standard offer contract.

Docket No. 991526-EI Submitted for filing: November 12, 1999

PRELIMINARY COMMENTS OF THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION

The Florida Industrial Cogeneration Association (FICA), through its undersigned attorney, and pursuant to Florida Administrative Weekly notice of October 29, 1999, (Volume 25, Number 43), hereby submits these preliminary comments in opposition to Florida Power Corporation's petition in the captioned proceeding.

1. Florida Power Corporation (FPC) seeks approval of a standard offer contract ("standard offer") for the purchase of firm capacity and energy from "small qualifying facilities" (SQFs)1. Commission rule 25-17.082(4), F.A.C requires that such standard offer comply with specific requirements of Commission rules. FPC also seeks waiver of Rule 25-17.0832(4)(e)(7), F.A.C2. FPC's basis for waiver is its allegation that adherence to the rule would "... create a substantial hardship on the Florida Power and its ratepayers."

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.

2 As will be discussed elsewhere herein, FICA notes that FPC's proposed standard offer also fails to comply with rule 25-17.0832 (4) (b), F.A.C. - a rule for which FPC has not sought waiver.

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3. Under current Commission rules, 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. FPC's request if granted, would substantially foreclose meaningful access to the standard offer by SQFs, contrary to law and sound public policy.

4. FICA is seriously concerned, as should be this Commission, that FPC's petition evidences a strategy designed to (i) avoid Commission oversight and (ii) eliminate any opportunity for suppliers - other than FPC - to provide new generating capacity to FPC's system. The standard offer proposed by FPC is for such a small amount and limited to such a short time frame, that its effect would be to deter SQFs from committing much needed capacity to FPC for the benefit of FPC customers and peninsular Florida in general.

5. FICA's concerns are magnified in light of a related earlier filing by FPC in October, 1998. That prior filing in FPSC Docket No. 981360-EI, sought waiver of Rule 25-22.082, F.A.C. - selection of generating capacity - more commonly referred to as the "bidding" rule. At that time, FPC presented argument similar to the argument it now presents in the instant petition. Wisely, this Commission denied FPC's prior petition stating, among other things, that "*we do not believe FPC has demonstrated that the lowest cost alternative will be selected by FPC. . . FPC has not sufficiently demonstrated the unavailability of other equally reliable less costly utility or non-utility options.*"³. FICA asserts that nothing has transpired since that time which would alleviate the concerns expressed by the Commission, and that the Commission should similarly deny FPC's request.

6. The generating unit for which FPC sought waiver in its prior filing was a combined cycle power plant with steam-electric generating capacity of 75 megawatts or greater,

³ Order No. PSC-99-0232-FOF-EI, issued February 9, 1999.

thereby triggering both the applicability of the Florida Electrical Power Plant Siting Act (PPSA), and the Commission's "bidding" rule. After FPC's quest for a rule waiver, which would have allowed it to circumvent the bidding rule, fell short, it simply changed its plans, now claiming a need for a type of generation not subject to the PPSA or the bidding rules.

7. Although rebuffed by the Commission in its attempt to avoid the rigors of the bidding rule, FPC was not deterred in its effort to deny to "other" suppliers the opportunity to provide the needed generating capacity to FPC. FPC simply "replaced" the previously proposed combined cycle generating facility with a simple-cycle peaking facility which is subject to neither the PPSA nor the bidding rules⁴. Apparently FPC has proceeded to commence procurement and installation of the peaking facility without conducting a bidding process, and without first publishing a standard offer. Now after the fact, FPC submits a standard offer which is not based on an actual avoided unit, and which does not comply with other important requirements of this Commission's rules.

8. To add insult to injury, FPC now seeks waiver of rule provisions which, if granted, would render the standard offer a "non-offer" in the financial sense⁵, thereby assuring that no SQF is likely to offer needed capacity to FPC. This process is occurring even as the Commission is investigating reserve margins in peninsular Florida, and after FPC has proposed to voluntarily increase its reserve margin planning criteria from 15% to 20%.

⁴ FICA suspects that at some time in the near future, FPC will announce that it is undertaking to "convert" the peaking facilities to combined cycle (as originally planned) by adding heat recovery boilers and steam turbine-generators. Depending on the size of steam turbine generators, the converted facility may or may not be subject to the PPSA and the bidding rule. However, even if it were subject to the bidding rule, because the bulk of the investment would have already been made by FPC in the form of the peaking facilities, and because the peaking facilities would provide essentially "free" exhaust heat/thermal energy to the steam electric portion of the facility, no one could realistically be expected to compete with FPC's avoided cost of the "conversion". This would allow FPC to circumvent the bidding rule and effectively preclude competitors from supplying capacity to FPC. (Such calculated action raises serious issues well beyond the question of rule waiver or compliance.)

⁵ The economic benefit of FPC's proposed standard offer to an SQF would be so low as to effectively assure that no one would sign up, thereby achieving FPC's objective while denying to FPC's customers and the state as a whole, the substantial efficiency, reliability, capacity and other benefits of having SQFs on the system.

9. It is a fundamental requirement of the Commission's rules that standard offer avoided capacity prices be based on the utility's actual avoided unit. As set forth in rule 25-17.0832 (4) (b), F.A.C.: *"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 avoided cost of deferring or avoiding the construction of additional generation capacity or parts thereof by the purchasing utility."* Although FPC's proposal is lacking in detail, it seems clear that the standard offer fails to comply with this rule provision. Clearly the 20 megawatt peaking facility on which FPC bases its standard offer pricing is not a unit that FPC would have constructed⁶.

10. Another critical element of the Commission's standard offer rules is rule 25-17.0832(4)(e)(7), F.A.C. - the rule from which FPC seeks waiver. FICA characterizes this rule as critical because of its relationship with, and impact upon, the "value of deferral" avoided capacity pricing methodology employed by this Commission. The value of deferral capacity pricing methodology, as the term implies, determines the value of "deferring" the revenue requirements associated with a new generating plant. It is pivotal to understand that the value of deferral payment mechanism will only result 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, FPC proposes to limit standard offers to a 5 year term, thereby assuring that SQFs will never receive actual avoided cost - in direct contravention of Florida and federal law⁷. The 10 year term specified by rule 25-17.0832(4)(e)(7) is a minimum term which, at the option of the SQF, may be for any term between 10 years and the expected useful life of the avoided unit⁸.

⁶ Importantly, FPC did not seek waiver of rule 25-17.0832 (4) (b), F.A.C. and for that reason alone the Commission must reject FPC's proposed standard offer.

⁷ §366.051, Florida Statutes, and Section 210 of the Public Utility Regulatory Policies Act (PURPA)

⁸ In this case, FPC's proposed standard offer specifies an avoided unit useful life of 30 years.

11. 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 FPC 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, FPC would earn (ie increase its revenue requirement as reflected in rates) \$10 million, the second year would be \$9.5 million, the third year \$9 million, and so on until in the twentieth (final) year FPC 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 FPC’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 time⁹.)

12. 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 unit¹⁰. . .” and that “At a maximum, firm capacity and energy shall be delivered for a period of time equal to the

⁹ 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 grows over time, there may be a larger customer base over which to spread the costs, thus further reducing customer impacts.

¹⁰ 25-17.0832(4)(e)3., F.A.C.

*anticipated plant life of the avoided unit*¹¹. . .”. 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 ratepayers¹². FPC’s arbitrary imposition of 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.

13. FPC’s attempts to justify its request for waiver on the basis of the self-serving observation that: *“New technologies and other factors may lower Florida Power’s costs over the coming years. Limiting the term of the Standard Offer to five years gives Florida Power the opportunity to revisit the issues of its avoided cost and take advantage of lower costs for the benefit of ratepayers. . .”*. This same logic can also be applied to any facilities constructed by FPC. The Commission must ask itself, if FPC actually constructed the unit is it reasonable to expect that FPC would - after only five years - volunteer to benefit its ratepayers by removing the unit from rate base and replacing it with a more economical unit? - of course not. If that were truly the case, FPC would be actively engaged in pursuing purchases from SQFs and merchant plants, and installing state-of-the-art combined cycle power plants to replace the many old, high cost, inefficient plants in its rate base and remove them from rate base.

14. FICA suggests that if the Commission accepts FPC’s argument for a 5 year limit, it would only be fair that the Commission also apply that same logic to FPC’s rate base power plants to assure that FPC has taken full advantage of new technologies and other factors by removing from rate base - well before the end of their useful life - less beneficial power plants.

¹¹ 25-17.0832(4)(e)7., F.A.C.

¹² See FPSC Order 12634 at page 19

In that way, the Commission and FPC's customers will be assured that Florida Power has truly taken the opportunity to revisit the issues of its generating costs and take advantage of lower costs for the benefit of ratepayers, and is not simply using its concerns about its ratepayers as a pretense for attempting to justify a standard offer which so clearly violates the law.

15. FPC's request for waiver¹³ 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.*"¹⁴ FPC has not identified specific facts sufficient to justify a waiver, and has not demonstrated why the waiver requested would serve the purposes of the underlying statute.¹⁵

16. 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.¹⁶

¹³ Given the substantive rule provisions from which FPC seeks waiver - which if granted would likely be emulated by other utilities - the Commission should either deny FPC'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. (In fact FPC is emulating the actions of Florida Power & Light Co. in Docket No. 990249-EG on which hearing is currently pending.)

¹⁴ 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."

¹⁵ 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.)

¹⁶ 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

It is difficult to discern how the purposes of that statute will be achieved by FPC's proposed standard offer which is not based on its next generating unit and does not result in payment of full avoided costs to SQFs. FICA notes also that although FPC has presented a conclusory, albeit groundless argument as to how the purposes of 366.051 will be met, it completely fails to address how the purposes of the other underlying statute 403.503 (the PPSA) will be served. For that reason, as well as others, FPC's petition for approval standard offer contract and the accompanying request for waiver must be summarily denied.

17. FPC has not affirmatively demonstrated that application of the rule ". . . *affects a particular person [FPC] 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 FPC'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 FPC has done, that a standard offer which 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 FPC's petition more closely resembles a request for rulemaking than it does a request for standard offer contract approval.

18. In referring to the currently pending FPL request for waiver case cited herein at footnote 13/, FPC is taking the approach which FICA warned the Commission of in comments filed in the FPL case - the "me too" approach, although FPC appears to have a differing interpretation of the Commission's PAA order in that case. FICA notes that the FPL case is not final agency action and that a request for hearing or further agency action remains pending.

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)

Moreover, FICA does not interpret the Commission's PAA order in that case as limiting the term of the standard offer to five years - simply to a five year minimum.

19. Granting the waiver sought by FPC would deny SQFs the opportunity to provide electric generating capacity to FPC. 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. Furthermore, given the Commission's current concerns regarding the adequacy of generating capacity in peninsular Florida, and FPC's voluntary proposal to increase its reserve margin planning criteria from 15% to 20%, several hundred megawatts of SQF capacity would be a welcome addition to the state's generating fleet.

20. There are other aspects of FPC's proposal with which FICA takes issue, but which for the sake of brevity, will not be addressed here. Suffice it to say that FPC'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. FICA reserves the right to raise the issues presented herein as well as other issues at hearings to be held by the Commission at a later date.

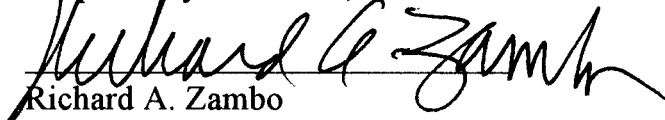
21. FICA is concerned that FPC's petition is one in a series of similar such petitions by FPC and other utilities - including FPC in Docket No. 981360-EI; Florida Power & Light Company in Docket 990249-EI; Gulf Power Company in Docket Nos. 980783-EI; and, Gulf Power Company in Docket No.990172-EI. These petitions have included requests for waiver of the standard offer rules, and requests for waiver of the bidding rules. The number and frequency of these petitions are clearly indicative of a concerted effort on the part of the utilities to avoid purchasing electricity from any source - even the highly efficient

or renewable fuel based SQF's specifically encouraged by Commission rules. Simply put, the utility industry prefers to construct all new generating capacity themselves, and appear to be willing to forego new generating capacity by others even when the state sorely needs additional generating reserves.

22. FICA urges the Commission to take decisive action to put an end to utility efforts to circumvent its rules by denying FPC's petition and ordering FPC to refile a standard offer which is in full compliance with the Commission's rule.

WHEREFORE, FICA respectfully requests that the Commission enter an order: 1) denying FPC's petition for approval of a standard offer - including the accompanying petition for waiver; 2) directing FPC to file a standard offer tariff/contract based on an appropriate avoided unit in full compliance with Commission rules; and 3), directing FPC to open a solicitation period on such standard offer tariff/contract ending October 1, 2000.

Respectfully submitted,



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