



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

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FEB - 3 AM 10:01  
RECORDS AND REPORTING

**DATE:** February 3, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF ELECTRIC AND GAS (BALLINGER) <sup>TJB</sup>  
DIVISION OF LEGAL SERVICES (JAYEW) <sup>RVE</sup> <sup>RJ</sup> <sup>JDS</sup>

**RE:** DOCKET NO. 990249-EQ - FIRST AMENDED PETITION OF FLORIDA POWER AND LIGHT COMPANY FOR APPROVAL OF STANDARD OFFER CONTRACT.

**AGENDA:** 02/15/00 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 60-DAY SUSPENSION DATE: MARCH 20, 2000

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\EAG\WP\990249.RCM

### CASE BACKGROUND

By Order No. PSC-99-1713-TRF-EG, issued September 2, 1999, the Commission denied Florida Power & Light Company's (FPL) petition for approval of a standard offer contract. The Order, however, granted FPL its requested variance from Rule 25-17.0832(4)(e), Florida Administrative Code, which would allow a five year term limit for the Standard Offer Contract. On September 23, 1999, FPL filed an Opposition to Order No PSC-99-1713-TRF-EG Or Petition for Hearing (Petition), requesting that the Commission revisit the Order on several points. Alternatively, FPL requested that the Commission set the matter for hearing. In its Petition, FPL specifically argued that the Order did not reflect the Commission's vote at the July 27, 1999, Agenda Conference. FPL contended that the proper avoided unit was not decided upon by the Commission at the Agenda Conference, though the Order incorporated a ruling on the avoided unit issue. FPL also argued that it was understood by all concerned that the Order would only address FPL's petition for a variance from Rule 25-17.0832(4)(e), Florida Administrative Code.

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FPL asserted that the Commission wanted staff and the company to bring the item back to Agenda once the correct avoided unit was agreed upon. FPL protested the Order to the extent that the Order:

1. Requires FPL to revise its standard offer contract using the Fort Myers repowering project; and
2. Suggests that FPL might have deferred or avoided the Fort Myers repowering project had FPL filed a "proper" standard offer contract.

By its protest of Order No. PSC-99-1713-TRF-EG, FPL rendered a nullity only those portions of that Order dealing with the avoided unit. The Order, however, granted FPL its requested variance from Rule 25-17.0832(4)(e), Florida Administrative Code. This portion of the Order was finalized by Order No. PSC-99-2401-CO-EI, issued December 7, 1999. On January 21, 2000, FPL filed the First Amended Petition of Florida Power and Light Company for Approval of a Standard Offer Contract. This recommendation addresses the Amended Petition and associated tariffs.

**ISSUE 1:** Should the First Amended Petition of Florida Power and Light Company for Approval of a Standard Offer Contract be approved?

**RECOMMENDATION:** Yes, the proposed Standard Offer Contract is consistent with Rule 25-17.0832(4)(a), Florida Administrative Code. The proposed Standard Offer Contract no longer contains a "regulatory out" clause and is based upon a 163 MW combustion turbine unit similar to what is being installed at the Fort Myers site. The proposed contract contains a 5 MW subscription limit. In addition, the amended Standard Offer Contract contains a two week open solicitation period, a 10% equity adjustment, and a five year term.

**STAFF ANALYSIS:** Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR 292.304. Florida law requires the Commission to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Chapter 366.82(2), Florida Statutes. The Commission is further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Chapter 377.709, Florida Statutes.

These federal and state requirements were implemented by the Commission through its adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file a tariff and a Standard Offer Contract with the Commission. These provisions implement the requirements of the Public Utilities Regulatory Policies Act and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger qualifying facilities and other non-utility generators may participate in a utility's Request For Proposal process pursuant to Rule 25-22.082, Florida Administrative Code.

As discussed in the case background, FPL's protest of Order No. PSC-99-1713-TRF-EG rendered a nullity only those portions of the Order dealing with the avoided unit. At the July 27, 1999, Agenda Conference, the Commission clearly authorized FPL to file a Standard Offer Contract with a short solicitation period, a 10% equity adjustment, and a five year term limit. FPL's original Standard Offer Contract contained a "regulatory out clause" which would allow FPL to adjust a QF's payments based upon some

unforeseen regulatory action. At the July 27, 1999, Agenda Conference, staff noted that the Commission had already instructed investor-owned utilities to remove the "regulatory out clause" from Standard Offer Contracts pursuant to Order No. 24989, issued August 29, 1991. FPL has not included a "regulatory out clause" in the Amended Standard Offer Contract. The remaining issue before the Commission is the selection of the avoided unit used to calculate the payments made pursuant to the Standard Offer Contract.

FPL's amended Standard Offer Contract is based upon a 5 MW portion of a 163 MW combustion turbine unit (CT) with an in-service date of January 1, 2001. According to FPL's 1999 Ten-Year Site plan, the next major generation addition for FPL is the repowering project at the Fort Myers site. Over a period of three years (2000 to 2002) FPL intends to add six, 150 MW class CTs and two heat recovery steam generators at the Fort Myers site. The existing steam boilers will be removed from service. The proposed avoided unit is virtually identical to the CTs being installed at the Fort Myers Site. Rule 25-17.0832(4)(b) states that "[T]he rates, terms, and conditions contained in each utility's standard offer contract or contracts shall be based upon 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." (Emphasis added). Since the proposed avoided unit is consistent with a portion of FPL's next planned generation addition, staff believes that the proposed Standard Offer Contract is based upon an appropriate avoided unit.

While the 5 MW subscription limit is not supported by any market analysis, the small limit does mitigate the potential subsidy associated with Standard Offer contracts. As previously stated, construction of the Fort Myers repowering project is currently underway. Staff notes, however, that the potential subsidy could be mitigated, as FPL may have opportunities to sell any surplus capacity to the wholesale market. Because the possibility of avoiding a portion of the Fort Myers repowering project is unlikely, staff believes that the 5 MW subscription limit is reasonable given the specific circumstances.

Ideally, qualifying facilities should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, qualifying facilities are to be given some preferential treatment. The Commission has minimized this unequal footing by requiring Standard Offer Contracts only for qualifying facilities less than 100 kW, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power

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agreement because of their size or timing. Thus, the Commission's rules balance market imperfections while promoting qualifying facilities.

In summary, staff does not expect that FPL's proposed Standard Offer Contract will result in the avoidance of the 2001 CT unit. Nonetheless, FPL's proposed contract and tariffs comply with the Commission's cogeneration rules. For this reason, staff recommends that FPL's amended petition to establish its new Standard Offer Contract and associated tariffs be approved.

**ISSUE 2** : Should this docket be closed?

**RECOMMENDATION**: Yes. If no person shows substantial interests are affected files a request for a Section 120.57(1), Florida Statutes, hearing within 21 days of the order, the order will become final and effective upon the issuance of a consummating order. Because no further action will be required, this docket should be closed.

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