ORIGINAL

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November 15, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 000982-EI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Power & Light Company ("FPL") are the following documents:

1. Original and fifteen copies of FPL's Motion for Summary Final Order and Request for Expedited Disposition; and

2. A disk in Word Perfect 6.0 containing a copy of the document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

APP
CAF
CMP
COM 4
CTR
ECR Lester
LEG C. Keating
OPC
PAI
RGO
SEC 1
SER Haff
OTH

KAH/rl
Enclosures
cc: Parties of Record
FPL\Bayo.115

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company for Approval of Agreement to Buy Out Okeelanta Corporation and Osceola Farms, Co. Standard Offer Contracts	Docket No. 000982-EI Filed: November 15, 2000

FLORIDA POWER & LIGHT COMPANY'S MOTION FOR SUMMARY FINAL ORDER AND REQUEST FOR EXPEDITED DISPOSITION

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 28-106.204(4), Florida Administrative Code, hereby moves for a Summary Final Order: (1) dismissing or denying the Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action ("PAA Petition") filed by Michael T. Caldwell; and (2) affirming the Commission's proposed agency action reflected in Order No. PSC-00-1913-PAA-EI issued October 19, 2000 ("PAA Order"). FPL requests expedited disposition of this Motion. In support of this Motion, the FPL states as follows:

I. BACKGROUND

1. On July 28, 2000, FPL filed a Petition with the Commission requesting approval of a Conditional Settlement Agreement and Release ("Agreement") providing for the termination and buy-out of the Standard Offer Contracts originally entered into between FPL and Okeelanta Corporation ("Okeelanta") and FPL and Osceola Farms, Co. ("Osceola"), and settling all claims by and/or against FPL as well as the pending judicial proceedings relating to the Okeelanta and Osceola Standard Offer Contracts.[1] FPL also requested in its Petition that the Commission approve FPL's recovery of payments made pursuant to Article III of the Agreement through FPL's Capacity Cost

[1]The Agreement was attached as Attachment A to FPL's Petition.

Recovery and Fuel and Purchased Power Cost Recovery Clauses as required under the Agreement. FPL subsequently tendered a specific proposal for cost recovery pursuant to which FPL proposed to defer commencement of collection of the buy-out payment, without interest, until January 1, 2002, with recovery to be made over a period of five years, allocated as follows: 79% through the capacity clause and 21% through the fuel adjustment clause. Interest is to accrue, beginning on January 1, 2002, at the commercial paper rate rather than FPL's higher overall rate of return.

2. The Standard Offer Contracts at issue were submitted to FPL on September 20, 1991 by Okeelanta and Osceola, respectively. By Order dated March 11, 1992, the PSC approved the contracts and authorized recovery of FPL's payments made pursuant to the contracts. The Okeelanta Contract provides that Okeelanta would supply 70.0 MW (which could be adjusted pursuant to Section 5.2.2 of the Contract) of firm energy and capacity to FPL in accordance with the contract terms by January 1, 1997 and continuing through the year 2026. The Osceola Standard Offer Contract provides that Osceola would supply 42.0 MW (which could be adjusted pursuant to Section 5.2.2 of the Contract) of firm energy and capacity to FPL in accordance with the contract terms by January 1, 1997 and continuing through the year 2026.

3. The pricing for the Okeelanta and Osceola Standard Offer Contracts was established by the Commission in Order No. 24989, which was entered on August 29, 1991 in Docket No. 910004-EU. The pricing was reflective of the 1997 first stage of an FPL-specific avoided unit, which the Commission found to be a 907 MW coal gas-fired Integrated Gasification Combined Cycle unit. In Order No. 24989, the Commission approved FPL's proposed Standard Offer Contract and subscription, including capacity and energy payments made pursuant to the Standard Offer Contract's incorporated payment provisions. Rates, terms and conditions for FPL's Standard Offer

Contract in Order No. 24989 are reflected in the Okeelanta and Osceola Standard Offer Contracts.

4. Pursuant to Order No. PSC-94-1267-FOF-EQ issued October 13, 1994, the Commission authorized Osceola's successor-in-interest, Osceola Power Limited Partnership ("Osceola Power L.P."), to assume the contractual duties and obligations reflected in a similar September 20, 1991 standard offer contract between FPL and KES Dade, L.P. ("KES"), whereby KES would sell 16.4 MW of firm capacity and energy to FPL; in that Order, the Commission also approved the reduction of the KES committed capacity from 16.4 MW to 10.0 MW. The Order approved the assignment and merger of the 10.0 MW of committed capacity into the Osceola Contract, thereby increasing the committed capacity of the Osceola Standard Offer Contract to 52.0 MW (which could be adjusted pursuant to Section 5.2.2 of the Contract), and authorized cost recovery of FPL's payments for the additional 10.0 MW and total 52.0 MW under Rule 25-17.0832(8)(a), Florida Administrative Code. Osceola subsequently notified FPL of its intent to exercise its right under Section 5.2.2 of the Osceola Standard Offer Contract to increase the committed capacity of the Osceola Facility to 55.9 MW.

5. Okeelanta subsequently assigned its rights and obligations under the Okeelanta Contract to Okeelanta Power Limited Partnership ("Okeelanta Power L.P."). As previously stated, Osceola had assigned its rights and obligations under the Osceola Contract to Osceola Power L. P., who thereafter assigned its rights and obligations under the Osceola Contract to Gator Generating Company, Limited Partnership ("Gator").

6. The Okeelanta and Osceola generating facilities were financed by non-recourse Solid Waste Industrial Development Revenue ("IDR") bonds issued by Palm Beach County. In 1993, the County issued $160 million of Solid Waste IDR bonds with the bond proceeds used to finance

Okeelanta Power L.P.'s development and construction of the Okeelanta facility. In 1994, the County issued $128.5 million in Solid Waste IDR bonds with the bond proceeds used for Gator's development and construction of the Osceola facility. Okeelanta Power L.P. and Gator were the borrowers under the respective issuances. The current holders of the bonds will be referred to herein as the "Bondholders."

7. A dispute arose between FPL and Okeelanta Power L.P. and between FPL, Osceola Power L.P. and Gator concerning whether the Okeelanta Facility and/or Osceola Facility accomplished commercial operation by January 1, 1997, as set forth in Section 2, paragraph 2 of the Standard Offer Contract, and the effect, if any, of a failure to do so on the parties' respective rights and obligations under the various provisions of the Contracts. On January 8, 1997, based on its position that the respective Facilities had not accomplished commercial operation by January 1, 1997, FPL filed a Complaint in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Case No. CL-97-00171-AF, seeking, inter alia, a declaratory judgment determining that FPL had no further or future obligations under the Okeelanta and Osceola Standard Offer Contracts.[2]

8. Prior to filing an Answer to FPL's Complaint, all of the Partnerships (other than Lake Power) filed voluntary Chapter 11 petitions for bankruptcy in the United States Bankruptcy Court, Southern District of Florida (Case No. 97-32228-BKC-PGH and Adv. No. 97-0514-BKC-PGH-A) and a Suggestion of Bankruptcy in the state court proceedings to ensure implementation of the

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[2]The defendants in the state court action currently are Okeelanta Power L.P., Osceola Power L.P., Flo-Energy Corp., Glades Power Partnership, Gator , and Lake Power Leasing Partnership, hereinafter referred to collectively as defendant "Partnerships."

automatic stay in the state court action.

9. On FPL's motion, the bankruptcy court abstained from resolving the dispute and lifted the stay, thereby allowing FPL's state court action to proceed. By order of the Bankruptcy Court entered on December 12, 1997, certain of the Bondholders were granted authority to pursue, control, fund and manage, for and on behalf of the Partnerships, the state court action initiated by FPL. That order also provided that any settlement entered into by the Bondholders is subject to Bankruptcy Court approval.

10. Certain of the defendant Partnerships in the state court action filed counterclaims for breach of the Okeelanta and Osceola Standard Offer Contracts seeking damages, as well as two counts seeking treble damages for alleged violations by FPL (and others) of state antitrust and deceptive and unfair trade practices laws. FPL moved to dismiss, inter alia, the count in the defendant Partnerships' Amended Counterclaim seeking damages for alleged violations of the Federal Public Utility Regulatory Policies Act, and the two counts seeking treble damages. The Circuit Court granted FPL's Motion to Dismiss. The Court's order was affirmed by the Fourth District Court of Appeal in Okeelanta Power Limited Partnership v. Florida Power & Light Company, Inc., 25 Fla. L. Weekly D428 (Fla. 4th DCA, February 16, 2000). The remainder of the state court action is pending.

11. Since the initiation of the declaratory judgment action in January, 1997, extensive discovery has been conducted by the parties to the litigation. As noted above, the Partnerships have filed counterclaims, which they have vigorously pursued, contending that they had met all requirements necessary to keep the Contracts in force, and that they have and can operate commercially. Following extensive negotiations and a court-ordered mediation, and in an effort to

find a mutually acceptable resolution of their disputes, and eliminate the uncertainty and risk involved in continuing the litigation, FPL and certain of the Bondholders holding a vast majority of the face value of the bonds entered into the Agreement, which, subject to approval by the Commission and the Bankruptcy Court, will resolve all of the pending claims and disputes between the parties. Approval of this Agreement will not only resolve all of the pending disputes and claims, it will eliminate the risk and uncertainty of litigation, and will enable FPL to reduce the cost exposure of FPL customers under the Okeelanta and Osceola Standard Offer Contracts. The Agreement was approved by the Bankruptcy Court by order dated September 6, 2000.

12. At the present time and as projected into the future, FPL can build, generate and/or purchase capacity and energy at prices well below the sum of capacity and energy payments set forth in the Okeelanta and Osceola Standard Offer Contracts. To achieve these savings, FPL and certain of the Bondholders, on behalf of themselves and the Partnerships, and the Trustee, reached an agreement to resolve all pending claims and disputes pursuant to which FPL would pay the Buy-Out Amount which is at a significant discount compared with payments which could be earned under the Okeelanta and Osceola Standard Offer Contracts. The Agreement has been preliminarily approved by the Commission and will result in reduced Capacity Cost Recovery and Fuel and Purchased Power Cost Recovery Payments for FPL's customers over the term of the Okeelanta and Osceola Standard Offer Contracts compared with what the Partnerships assert would have been earned under those Contracts.

13. As reflected in the Agreement, FPL has agreed to pay $222,500,000, with the proceeds being held by the Trustee of the Bondholders pending further order of the Bankruptcy Court. Under the Agreement, FPL's payment is conditioned in pertinent part upon Florida Public

Service Commission approval of (i) the buy-out of the two Standard Offer Contracts; and (ii) recovery of the buy-out amount from FPL's customers.

14. The approval of the Agreement will result in net present value savings of approximately $412,029,980 to FPL customers relative to what they could have paid under the Okeelanta and Osceola Standard Offer Contracts. On a net present value basis as of January 1, 2001, the cost to replace the capacity and energy which Okeelanta and Osceola contracted to provide from January 1, 1997 through December 31, 2026 is $474,692,979. When this sum is added to the settlement payment of $222,500,000, the total of $697,192,979 is $412,029,980 less than the $1,109,222,959 net present value of the energy and capacity payments that Okeelanta Power L.P. and Gator contend would have been earned under the Contracts over the same period. Even if the court determines that the parties have not breached the Contracts and that the Contracts remain in full force and effect, FPL customers have already saved approximately $110 million compared to the payments which could have been earned under the Contracts and would realize additional savings of approximately $300 million, on a net present value basis, over the remaining 26 years of the Contracts pursuant to the terms and conditions of the buy-out. These savings were calculated utilizing the regulatory cost of capital of 8.40% and are reflected in the PAA Order, at 3.

II. THE COMMISSION'S PAA ORDER

15. On October 19, 2000, the Commission issued the PAA Order approving FPL's Petition and the attached Agreement to buy out the Okeelanta and Osceola Standard Offer Contracts. The Commission also approved FPL's cost recovery proposal outlined above.

III. THE PROPOSED AGENCY ACTION PETITION

16. On November 9, 2000, Michael T. Caldwell filed the PAA Petition protesting the

PAA Order and requesting the Commission to hold an evidentiary hearing and reverse the Commission's approval of the buy-out of the two Standard Offer Contracts. For the reasons set forth below, FPL maintains that the PAA Petition fails to raise a genuine issue as to any material fact and, therefore, the Petitioner is not entitled to a formal administrative hearing under Section 120.57(1), Florida Statutes. Instead, the PAA Petition raises misstatements of fact, undisputed yet irrelevant statements of fact, and inaccurate characterizations of the Commission's decision. Moreover, the PAA Petition does not allege that the Commission's decision reflects a mistake of law. Accordingly, it is lawful and appropriate for the Commission to resolve the PAA Petition by granting this Motion for Summary Final Order.

17. The PAA Order specifically provides that it shall become final and effective unless an appropriate petition filed in accordance with Rule 28-106.201, Florida Administrative Code, is timely filed with the Commission. Rule 28-106.201 requires a petition to set forth, among other things, a statement of all disputed issues of material fact (or if there are none, the petition must so state) and a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief. The PAA Petition fails to meet these requirements. The PAA Petition fails to allege any issue of disputed material fact, fails to set forth a statement of facts which would entitle the petitioner to relief, and fails to cite the Commission to any statute, rule or order which would entitle the petitioner to relief. For these reasons alone, the PAA Petition must be dismissed or denied and the PAA Order should be deemed final and effective.

18. Rather than disputing the material facts germane to the Commission's approval of the buy-out of the two Standard Offer Contracts, the PAA Petition consists entirely of misstatements of fact, irrelevant statements of facts, and inaccurate characterizations of the Commission's decision.

Simply put, the PAA Petition reflects the Petitioner's disagreement with the Commission's decision but provides no factual or legal basis for the Commission to reverse the PAA Order.

19. The Petitioner begins by alleging that the Commission should not have approved the buy-out of the two Standard Offer Contracts "since the settlement is for damages caused by Florida Power and Light Company as a result of its voluntary actions in terminating its Standard Offer Contracts with Okeelanta Corporation and Osceola Farms, Co."[3] The Petitioner misstates the facts and inaccurately characterizes the Commission's PAA Order. The buy-out of the two Standard Offer Contracts by FPL is not a "settlement for damages" and was not determined to be such by the Commission. Instead, the buy-out reflects a payment made to the bondholders in recognition of the various potential outcomes of the litigation, reflected in the PAA Order, and the risks associated therewith.[4] In any event, there is no factual dispute here, necessitating an evidentiary hearing. The dispute is solely one of characterization, and not material to the Commission's resolution. The characterization of the Commission's decision by the Petitioner, while incorrect, clearly does not require or permit an evidentiary hearing.

20. Moreover, FPL emphasizes that it did not voluntarily terminate the two Standard Offer Contracts. FPL's position in the litigation is that its legal obligations under the Contract ceased effective January 1, 1997. FPL has properly raised that issue in its Second Amended

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[3]PAA Petition, at par. 4. See also PAA Petition, at par. 5(a), (b), (c), (d) and 6.

[4]Although the buy-out amount does not reflect a "damages" payment and was not determined to be a "damages" payment by the Commission, FPL notes that the Commission has authorized recovery of "damages" payments arising from a court's interpretation of energy pricing provisions of a Commission approved contract. See Order No. PSC-99-2512-FOF-EI issued December 22, 1999.

Complaint which remains pending before the circuit court and only the court can ultimately make a determination regarding FPL's rights and obligations under the Standard Offer Contracts. Indeed, the PAA Order recognized that "FPL initiated litigation in state circuit court to determine its rights under the standard offer contract." PAA Order, at 2.

21. In paragraph 5(a) of the PAA Petition, the Petitioner alleges that the Commission approved both Standard Offer Contracts for cost recovery. FPL agrees. The Petitioner goes on to allege that FPL "never petitioned the Commission for approval to buy out those Standard Offer Contracts on the basis that those contracts were no longer cost-effective." FPL agrees. This is not a disputed fact nor is it material or relevant to the Commission's exercise of its judgment in approving the buy-out of the two Standard Offer Contracts.

22. In paragraph 5(b) of the PAA Petition, Petitioner alleges that FPL "voluntarily chose not to exercise what it believed to be its option to extend the commercial operation deadline of the QFs under the Standard Offer Contracts...." FPL agrees. This is not a disputed fact nor is it material to the Commission's decision. Petitioner also alleges that FPL's choice led to litigation which resulted in damages being incurred by the QFs and caused the QFs to file for bankruptcy. FPL agrees that it exercised what it believed to be its right to seek a declaratory judgement in circuit court to confirm that it no longer had any legal obligations under the contracts as of January 1, 1997 and that due to the lack of capacity payments, the QFs chose to file for bankruptcy. Again, these facts are not in dispute and are not material to the Commission's approval of the buy-out of the two Standard Offer Contracts.

23. The Petitioner also alleges in paragraph 5(b) of the PAA Petition that the buy-out payment of $222.5 million "is to settle those damages incurred as a result of Florida Power and Light

Company's voluntary actions." As previously discussed, this is an inaccurate statement of the facts and an inaccurate characterization of the Commission's decision. There has been no final judgment awarding damages. The buy-out payment reflects a compromise on the part of FPL and the bondholders in recognition of the strengths and weaknesses of their respective positions before the circuit court and the attendant risks of litigation.

24. In paragraphs 5(c) and (d) of the PAA Petition, the Petitioner alleges that the $222.5 million payment under the Agreement approved by the Commission is not a "buy out" of the two Standard Offer Contracts but is instead "to settle the damages incurred by the QFs as a result of FPL's voluntary actions." The Petitioner is wrong. FPL's Petition filed on July 28, 2000 requested the Commission to approve the Agreement which was attached and incorporated into the Petition and which specifically required the Commission to determine "that the terms and conditions of this Agreement are an appropriate buy-out of the Standard Offer Contracts...." See Section 1.15 of Agreement. As previously discussed, the payment by FPL is not for "damages" incurred by the QFs for which a court has found FPL to be liable.

25. In paragraph 5(d) of the PAA Petition, the Petitioner alleges that the buy-out payment resulted from "bad business decisions on the part of FPL's management." The Petitioner alleges no facts in the PAA Petition in support of his conclusion. The facts surrounding FPL's actions in this case were set forth in FPL's original Petition and are reiterated in this Motion for Summary Final Order. The PAA Petition does not contradict any of the material facts alleged in FPL's Petition and this Motion for Summary Final Order. The Petitioner's conclusion that the buy-out payment results from "bad business decisions on the part of FPL" reflects only the Petitioner's disagreement with the Commission and does not present a basis for an evidentiary hearing. Indeed, as Chairman

Deason stated at the September 26, 2000 agenda conference:

> ...the alternative would have been for Florida Power & Light to have not contested the contract, or the contracts for the two entities, simply agreed to make the payments. And in all likelihood, it would never have been questioned, because it was subject to PURPA, it was subject to standard offer contracts, it was approved by the Commission, it was based upon economics at that time, which was based upon replacement power from a coal unit, which we know have high capacity costs. It was a decision at that time. But we know that in the meantime economics changed.
>
> * * *
>
> And I think we need to be careful and not send messages to the utilities that it's safer and less risky for you to simply takes the safe route and not look at situations like this, not challenge them, because Power & Light would have been made whole, They would have just flowed these through the fuel and capacity clauses, and most likely there would never have been an issue, because it was subject to a standard offer contract. I don't think anyone is going to come in and challenge the effectiveness of the standard offer contracts.
>
> So by FPL taking the more aggressive position, customers stand to benefit.

See transcript of September 26, 2000 agenda conference, pp. 59-61, attached hereto as Exhibit A.

26. The analysis and rationale provided by Chairman Deason goes to the heart of the Commission's approval of the buy-out of the Okeelanta and Osceola Standard Offer Contracts. In the PAA Order, the Commission specifically set forth its findings and rationale for its decision. Specifically, the Commission found that the savings flowing to FPL's customers arising from the buy-out of the two Standard Offer Contracts could amount to approximately $412 million, or at least approximately $300 million, depending on the outcome of the litigation. After analyzing the potential outcomes, the Commission concluded that "the Agreement appears cost-effective and in the best interests of FPL's ratepayers." PAA Order, at 4. In addition, the Commission determined that under FPL's cost recovery proposal, FPL will forego approximately $23.6 million in revenues for the year 2001 and will save its customers approximately $29 million in carrying charges through

the adjustment clauses. These findings and determinations are not challenged in the PAA Petition and are deemed to be stipulated as a matter of law under Section 120.80(13)(b), Florida Statutes. Moreover, it is these stipulated findings and determinations that clearly support the Commission's approval of the buy-out of the two Standard Offer Contracts.

27. Ultimately, the PAA Petition offers nothing more than an unjustified and unsupported disagreement with the Commission's decision.[5]

IV. REQUEST FOR EXPEDITED DISPOSITION

28. As noted in the PAA Order, the Agreement required FPL and the bondholders to secure the necessary Commission and bankruptcy court approvals four months prior to the April 9, 2001 trial date in state circuit court. Due to the filing of the PAA Petition, the parties will need to negotiate an extension of time under the Agreement to secure Commission approval which is one of the conditions precedent to the payment of the buy-out amount and the settlement and dismissal of all pending claims between the parties. FPL respectfully requests that the Commission rule on this Motion on an expedited basis to avoid protracted negotiations between FPL and the bondholders regarding an extension of time to secure Commission approval and so as to not potentially jeopardize the Agreement and buy-out of the two Standard Offer Contracts which this Commission has determined to be cost effective and in the best interests of FPL's customers.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission

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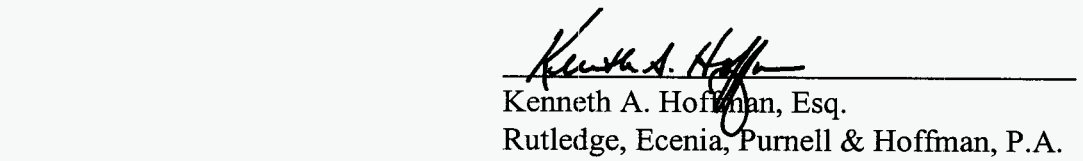
[5]The Petitioner's suggestion and speculation (in paragraphs 5(f) and 6 of the PAA Petition) that FPL's customers would be better off if FPL pursued the litigation (and appeals) and then petitioned for a buy-out if FPL does not prevail ignores the risks and costs associated with this litigation as well as the severely hampered bargaining position of FPL should the QFs prevail.

grant this Motion for Summary Final Order and issue a Final Order dismissing or denying the PAA Petition filed Michael T. Caldwell and that it grant such relief on an expedited basis.

DATED this 15th day of November, 2000.

Respectfully submitted,



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Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following this 15th day of November, 2000, by hand delivery and overnight delivery (*):

Cochran Keating, Esq.
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
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Tallahassee, Florida 32399-0850

Michael T. Caldwell (*)
12540 SW 108th Avenue
Miami, FL 33176

Kenneth A. Hoffman, Esq.

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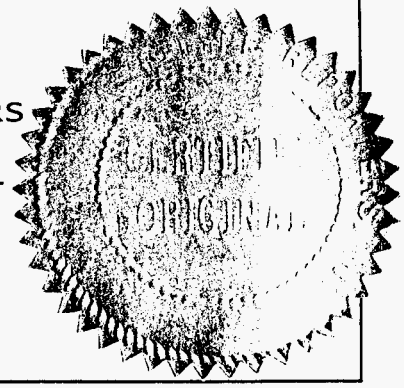
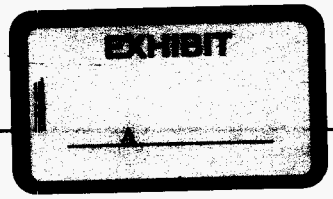
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000982-EI - Petition by Florida Power & Light Company for approval of conditional settlement agreement which terminates standard offer contracts originally entered into between FPL and Okeelanta Corporation and FPL and Osceola Farms, Inc.

BEFORE:	CHAIRMAN J. TERRY DEASON COMMISSIONER E. LEON JACOBS, JR. COMMISSIONER LILA A. JABER COMMISSIONER BRAULIO L. BAEZ
PROCEEDINGS:	AGENDA CONFERENCE
ITEM NUMBER:	47**PAA
DATE:	Tuesday, September 26, 2000
PLACE:	4075 Esplanade Way, Room 148 Tallahassee, Florida
REPORTED BY:	MARY ALLEN NEEL Registered Professional Reporter

ACCURATE STENOTYPE REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850)878-2221





MR. ELIAS: And I stand corrected. We are going to propose to address this issue this November.

COMMISSIONER BAEZ: Well, you would have to, since part of the proposal is whether it's carried or not carried for the first year.

CHAIRMAN DEASON: Commissioners, let me make an observation that I think I'm correct on. While this is a difficult issue and this is an enormous amount of money, ironically, we're fortunate that we have the issue in front us that we can deal with, because what was the alternative?

Well, the alternative would have been for Florida Power & Light to have not contested the contract, or the contracts for the two entities, simply agreed to make the payments. And in all likelihood, it would never have been questioned, because it was subject to PURPA, it was subject to standard offer contracts, it was approved by the Commission, it was based upon economics at that time, which was based upon replacement power from a coal unit, which we know have high capacity costs. It was a decision at that time. But we know that in the meantime

economics changed.

The question arose as to whether performance had been accomplished under the contract. And given the realities of the economics, Power & Light made a management decision to question it. And I think that the customers, the ratepayers are certainly better off that it was questioned, because now we have options in front of us. While it's not an easy answer as to what option we should take, the question is, we're better off that there was a challenge to these contracts, it seems to me.

And I think we need to be careful and not send messages to the utilities that it's safer and less risky for you to simply takes the safe route and not look at situations like this, not challenge them, because Power & Light would have been made whole. They would have just flowed these through the fuel and capacity clauses, and most likely there would never have been an issue, because it was subject to a standard offer contract. I don't think anyone is going to come in and challenge the effectiveness of the standard offer contracts.

So by FPL taking the more aggressive

position, customers stand to benefit. I think I'm analyzing that correctly. And if staff disagrees, let me know, but I think that's the situation we find ourselves in.

COMMISSIONER JACOBS: I think -- this is a really -- I don't want to say distorted, more like a contorted issue. When I step back from this and try to get a perspective of what the public policy here is, this federal energy idea was to bring about efficiency and conservation through the use of alternative fuels, and cogeneration was viewed as that, the idea being that you would bring better economies into the electric industry. And when you think about that, we're at a real crazy place right now, because where we are right now is, in essence, paying a substantial amount for no power, virtually no power that was brought into the grid, and the overall impact is rising, increasing.

Yes, if we were to look at where -- and I think you have to say this. You have to be honest about this. The dollar amount didn't arise by virtue of the court case. The dollar amount here came about because these contracts