

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for determination of need for
Okeechobee Clean Energy Center Unit 1, by
Florida Power & Light Company.

DOCKET NO. 150196-EI

FILED: November 12, 2015

**THE SOUTHERN ALLIANCE FOR CLEAN ENERGY'S POSITIONS AND
COMMENTS IN SUPPORT OF PROPOSED ISSUES**

The Southern Alliance for Clean Energy ("SACE"), by and through its undersigned counsel, respectfully submits its positions and comments in support of the additional issues proposed by SACE on November 5, 2015. SACE further supports inclusion of ECOSWF Proposed Issues 1, 2, and 3 for the reasons outlined in ECOSWF's comments on said issues filed today.

SACE'S PROPOSED ISSUES

LEGAL/POLICY ISSUES

SACE Proposed Issue 1: Does the Stipulation entered into in Docket No. 981890-EU, and approved by the Commission in Order No. PSC-99-2507-S-EU, require the Commission to review FPL's Petition in this docket based on a 20% reserve margin?

SACE Position: No. The plain language of the Stipulation provides that FPL's adoption, and the Commission's approval, of the Stipulation's 20% reserve margin planning criterion: (1) creates no presumption of need with respect to any proposals for adding generating capacity, such as FPL's proposed OCEC Unit 1; and (2) has no effect on need determinations. Therefore, not only is the Commission not required to review FPL's Petition in this docket based on a 20% reserve margin, it would be improper for the Commission to do so absent an affirmative showing by FPL that a 20% reserve margin is appropriate.

COMMENTS

In this docket, FPL has petitioned the Commission for an affirmative determination of need to build a \$1.2 billion dollar power plant, the proposed OCEC Unit 1, based in part on its contention that it needs the proposed OCEC Unit 1 to maintain a 20% reserve margin criterion ("RM") beginning in 2019. FPL's sole justification for its reliance on a 20% RM in this docket

as a basis for the need for the proposed OCEC Unit 1 is a Stipulation the company entered into, and the Commission approved, in Docket No. 981890-EU. *See* Order No. PSC-99-2507-S-EU. However, this Stipulation, by its express language, does not create any presumption of need with respect to proposals for adding generating capacity, such as the OCEC Unit 1, and moreover is not even applicable to need determinations. The Stipulation provides, in pertinent part:

Neither the adoption of by the IOUs of the minimum twenty percent (20%) planning criterion nor the approval of this Stipulation by the Commission shall be deemed to create any presumption with respect to any proposals for adding generating capacity All current and future proceedings under the Electrical Power Plant Siting Act, including those for the consideration of merchant plants, and all statutes, rules, regulations, and policies bearing on the Commission's determination of need for new generation (including the need determination criteria in § 403.519, Florida Statutes) ... are unaffected by this Stipulation and the approval thereof. (emphasis added).

Order No. PSC-99-2507-S-EU, p. 9, at ¶ 8 (emphasis added).

Given the plain language of the Stipulation, the Commission needs to make a finding as to the actual legal effect, if any, of the Stipulation on this need determination. Specifically, the Commission needs to decide whether it is required by the Stipulation to review FPL's Petition pursuant to a 20% RM. Should the Commission find that it is not legally required to review FPL's Petition pursuant to a 20% RM, then it must decide on what basis, i.e., what RM, it will review FPL's Petition, as FPL has proffered no other support for its reliance on the 20% RM other than the Stipulation. Finally, this is not an issue that is somehow 'subsumed' into any other issue in this docket, including Staff's Issue 1; rather, it is a separate and distinct *legal* issue that needs to be addressed in this docket.

SACE Proposed Issue 2: If the Commission does not address the appropriateness of FPL's 20% reserve margin criterion in this docket, should the Commission establish a generic docket to address what the appropriate reserve margin criteria are for FPL and other IOUs?

SACE Position: Yes.

COMMENTS

First and foremost, SACE believes this docket is the appropriate place for the Commission to consider what FPL's appropriate RM is. While SACE understands the Commission has been hesitant to do so in the past, the Commission simply cannot make an informed decision on the need, or lack thereof, for the proposed OCEC Unit 1 without first knowing whether or not the 20% RM relied upon by FPL is appropriate at this point in time.

However, if the Commission does not address the appropriateness of FPL's 20% RM in this docket, then it should establish a generic docket to address what FPL's (and potentially other IOUs) appropriate RM is moving forward. As discussed *supra*, FPL's only basis for relying on a 20% RM is a 16 year old Stipulation, which, by its express terms, is not binding on need determinations. Moreover, FPL has not, by its own admission, conducted any recent studies or analyses that demonstrate that a 20% RM is still appropriate and necessary for the Company and moreover its customers. As such, this is an issue that is overdue for Commission consideration and evaluation. In such a docket, the Commission should require FPL to have a Reserve Margin Study performed, and to follow the recommendations of such study, as discussed in the direct testimony of SACE witness John Wilson filed in this docket on October 14, 2015.

Like SACE's Proposed Issue 1, this is simply not an issue that is subsumed into any other issue in this docket. In sharp contrast, it is a separate and distinct legal issue that is overdue for Commission consideration.

OTHER

SACE Proposed Issue 3: Is the generation-only reserve margin created and used by FPL an appropriate reliability criterion for determining the need for the proposed OCEC Unit 1?

SACE Position: No. The generation-only reserve margin is an unnecessary, baseless and skewed criterion that is not generally accepted in the utility industry and is relied on by FPL to create the appearance of need for the OCEC Unit 1.

COMMENTS

In its recent DSM Goals proceeding decision, the Commission expressly stated that if FPL's proposed third reliability criterion, the generation-only reserve margin ("GRM") that it created, became a factor in a determination of need proceeding, such as the instant docket, the Commission would review FPL's use of this criterion.¹ Since FPL relies heavily on the GRM criterion a basis for the purported need for the proposed OCEC Unit 1, the Commission should now review FPL's use of this methodology.

As evidenced by the above, this is the first time the Commission will evaluate FPL's GRM. Moreover, as conceded by FPL, its GRM criterion is not generally accepted in the utility industry when compared to traditional reliability criterion. As such, this is not the 'typical' situation where a separate issue is not needed to address a particular reliability criterion. In sharp contrast, the Commission's decision on FPL's use of this GRM criterion will be precedent setting and has the potential to have far reaching implications throughout the state of Florida and beyond. As such, FPL's use of this criterion not only deserves close scrutiny by the Commission, but moreover warrants that a separate issue be created to address FPL's use of the GRM.

Respectfully submitted this 12th day of November, 2015.

/s/ James S. Whitlock
James S. Whitlock
Gary A. Davis
DAVIS & WHITLOCK, PC
21 Battery Park Avenue, Suite 206
Asheville, NC 28801
(828) 622-0044
jwhitlock@enviroattorney.com
gadavis@enviroattorney.com

¹ See Docket No. 130199-EI, *et al.*, Order No. PSC-14-0696-FOF-EU (issued Dec.16, 2014) at p. 35.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing was served by electronic mail this 12th day of November, 2015, to the following:

Kelly Corbari Lesllie Ames Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 KCorbari@psc.state.fl.us Lames@psc.state.fl.us	William P. Cox 700 Universe Boulevard Juno Beach, FL 33408 Will.Cox@fpl.com
Patricia Christensen, Charles Rehwinkel Office of Public Counsel c/o Florida Legislature 111 West Madison Street, #812 Tallahassee, FL 32399 Christensen.patty@leg.state.fl.us Rehwinkel.charles@leg.state.fl.us	Kenneth Hoffman Florida Power and Light 215 South Monroe Street, Suite 810 Tallahassee, FL 32301-1858 Ken.Hoffman@fpl.com
Jon C. Moyle, Jr. Moyle Law Firm, PA 118 N. Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com	Bradley Marshall Earthjustice 111 S. Martin Luther King Jr. Blvd. Tallahassee, FL 32301 bmarshall@earthjustice.org

/s/ James S. Whitlock
James S. Whitlock