

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a purchase and sale agreement between Florida Power & Light Company and Calypso Energy Holdings, LLC, for the ownership of the Indiantown Cogeneration LP and related power purchase agreement.

DOCKET NO. 160154-EI  
ORDER NO. PSC-16-0506-FOF-EI  
ISSUED: November 2, 2016

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR  
RONALD A. BRISÉ  
JIMMY PATRONIS

APPEARANCES:

BRYAN S. ANDERSON, WILLIAM P. COX, and JOEL BAKER, ESQUIRES,  
700 Universe Boulevard, Juno Beach, Florida 33408  
On behalf of Florida Power & Light Company.

DANIELLE M. ROTH, Associate Public Counsel, PATRICIA A. CHRISTENSEN, Associate Public Counsel, and CHARLES J. REHWINKLE, ESQUIRES, Deputy Public Counsel, on behalf of Office of Public Counsel, c/o the Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida

JON C. MOYLE, JR. and KAREN A. PUTNAM, ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301  
On behalf of Florida Industrial Power Users Groups

WALT L. TRIERWEILER, ESQUIRE, Senior Attorney, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

KEITH HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Florida Public Service Commission General Counsel.

FINAL ORDER APPROVING THE PURCHASE AND SALE AGREEMENT FOR THE  
OWNERSHIP OF THE INDIANTOWN COGENERATION LP AND  
PARTIAL SETTLEMENT AGREEMENT

BY THE COMMISSION:

**BACKGROUND**

Pursuant to Rule 28-106.201, Florida Administrative Code (F.A.C.), the Florida Public Service Commission (Commission) set a hearing in response to Florida Power & Light Company's (FPL) petition for approval of a purchase and sale agreement between FPL and Calypso Energy Holdings, LLC (Calypso), for the ownership of the Indiantown Cogeneration LP and related power purchase agreement (PPA).

FPL filed its petition in this docket on June 20, 2016, for approval of a transaction to acquire the ownership interests in the facility and associated land as well as the acquisition of the purchased power agreement. In this petition, FPL seeks approval to establish a regulatory asset of \$451.5 million for the investment and recover the costs through the Capacity Cost Recovery Clause. FPL intends to retire the facility at the end of 2018. The Office of Public Counsel (OPC) and Florida Industrial Power Users Group (FIPUG) were granted intervention in this docket.

On September, 20, 2016, a joint partial stipulation (Stipulation) between FPL, OPC, and FIPUG was filed to address the conduct of the hearing. The parties agreed to the admissibility of the prefiled testimony and exhibits of the four FPL witnesses, stipulated to staff's comprehensive exhibit list, and waived cross examination and post-hearing briefs. FPL and OPC agreed to the accounting treatment, proper rate of return, and accounting entries of the proposed agreement between FPL and Calypso concerning the Indiantown Cogeneration LP. FIPUG did not oppose the Stipulation. On October 4, 2016, an administrative hearing was held to address the Stipulation and other matters pending in this docket, upon which a bench vote was held. This order addresses our vote on this matter. We have jurisdiction pursuant to Section 366.06, Florida Statutes (F.S.).

**DECISION**

The evidence in the record supports a finding that the transaction is cost-effective and will produce \$129 million in savings for FPL customers on a cumulative net present value revenue requirement basis. These estimated savings are based on using the company's base line fuel projections. FPL proposes to amortize the regulatory asset over the remaining life of the purchased power agreement (9 years). Using the current authorized return on equity for FPL (10.5 percent), the transaction would produce \$148 million in savings, with system savings in the first year.

The current Indiantown Cogeneration Facility L.P. (ICL) transaction would be the best option available for customers after the evaluation of several alternative measures to mitigate the PPA's impacts.

### **Fair Value**

The evidence in the record contains an evaluation by Duff & Phelps which determined the fair value of the PPA was approximately 450 million, representing the value that it would bring to the owner of the facility, who is entitled to continue selling to FPL under the terms of the PPA. This value assumed the unit would perform at historic levels and therefore be eligible for full capacity and energy payments under the existing PPA.

### **Prudent, Fair and Reasonable Price**

The purchase price was determined by negotiations between independent, unrelated parties. The fairness and reasonableness of the transaction is supported by the record which addressed the fair value based on US generally accepted accounting principles of the assets to be acquired and liabilities assumed by FPL.

### **Reasonable Measures to Mitigate Future PPA Impacts to Ratepayers**

FPL determined that the current ICL transaction would be the best option available for customers after the evaluation of several alternate measures to mitigate the PPA's impacts. According to FPL, it was critical to get out from under the unfavorable PPA. The former owner was not interested in alternatives short of a full buy out. Other options were considered but this was the only option that the owner agreed to pursue.

### **Operational Regulatory Risks**

Historically the ICL facility has been a well-run facility and is currently in compliance with regulatory measures set forth by the DEP and EPA. The record indicates no additional rule regulation compliance programs or projects are anticipated. The transaction allows for FPL to dispatch the facility when economically viable, control the number of starts, and minimize run times. The reduction in dispatch is expected to go from 24 percent a year to 5 percent, which will reduce the amount of CO<sub>2</sub> released from the facility by approximately 657,000 tons per year.

### **Cost Effectiveness**

The transaction is cost effective over a wide range of scenarios and should provide material benefits to FPL's customers over the remaining life of the PPA. FPL's system reliability should not be negatively impacted as FPL will have dispatch control of the ICL facility. We find that the transaction is cost effective with a ROE range of 9.5 to 11.5 percent. Applying FPL's current approved ROE of 10.5 percent, system savings will accrue in year one and total savings of \$148 million over the 9 year life of the regulatory asset.

### **The Proper Accounting Treatment for this Transaction**

According to the Stipulation, the non-fuel costs of operating the ICL Facility shall be recorded in base rate accounts. No amount shall be recorded as plant in service for the ICL Facility because the Facility has no economic value. FPL will record land for \$8.5 million, a rail car lease liability of \$9.0 million, and an asset retirement obligation of \$9.9 million for the future dismantlement of the Facility. FPL shall establish a regulatory asset for the ICL investment of \$451.5 million.

### **The Proper Rate of Return**

According to the Stipulation, the proper rate of return is FPL 's overall WACC approved by this Commission that is used for clause investments. We approved this treatment for the Cedar Bay Transaction, a recent transaction substantially similar to the ICL Transaction, in Order No. PSC-15-0401-AS-EI issued September 23, 2015, in Docket No. 160075-EI, In re: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company.

### **FPL's Requirement to Record the ICL Transaction**

According to the Stipulation, FPL is required to file with this Commission, the actual accounting entries to record the ICL transaction for both FPL and the subsidiary Indiantown within six months of the ICL transaction being consummated.

### **Approval of the Settlement**

Based upon a review of the Stipulation, the evidence on the record and for the reasons stated above, this Commission finds that the Stipulation is a reasonable resolution of this matter for all parties. We find that the Stipulation creates customer savings, includes additional protections for customers, achieves environmental benefits, and avoids the long-term costs of the PPA. Thus, our approval of the Stipulation is in the public interest. Accordingly, we approve the Stipulation which is attached to this Order as Exhibit A and made a part hereof.

### **Conclusion**

The record supports a finding that the purchase and sale agreement entered into by FPL and Calypso avoids the negative impact of the PAA, creates customer savings, includes additional protections for customers, achieves environmental benefits and avoids the long-term costs of the PPA. Those issues not resolved by the Stipulation, as discussed above, are supported by substantial competent evidence and are in the public interest.

Based on the foregoing, it is

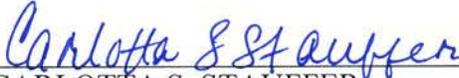
ORDERED by the Florida Public Service Commission that the stipulations, findings, and rulings set forth in the body of this Order are hereby approved. It is further

ORDERED that the Joint Partial Settlement Agreement is approved. It is further

ORDERED that the purchase and sale agreement between Florida Power and Light Company and Calypso Energy Holdings, LLC is approved. It is further

ORDERED that the docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of November, 2016.

  
\_\_\_\_\_  
CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

WLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an

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electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of a purchase and sale agreement between Florida Power & Light Company and Calypso Energy Holdings, LLC, for the ownership of the Indiantown Cogeneration LP and related purchase power agreement.

Docket No: 160154-EI

Date: September 20, 2016

**JOINT PARTIAL STIPULATION**

WHEREAS, Florida Power & Light Company ("FPL" or the "Company"), the Florida Industrial Power Users Group ("FIPUG"), and the Office of Public Counsel ("OPC") have signed this Joint Partial Stipulation (the "Joint Partial Stipulation" or "Agreement"; unless the context clearly requires otherwise, the term "Party" or "Parties" means a signatory to this Agreement); and

WHEREAS, the Parties have undertaken to resolve the issues expeditiously and to agree to a streamlined hearing process in this docket;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree as follows:

1. The Parties agree to the following streamlined hearing process in this docket in lieu of conducting a formal evidentiary hearing under Section 120.57(1), Fla. Stat., as noticed by the Commission for October 3-4, 2016:

A. The Parties agree to waive opening statements;

B. FIPUG and OPC agree to waive their rights to cross-examination of the four FPL witnesses who pre-filed direct testimony in this docket;

C. The Parties stipulate to the admissibility of the pre-filed testimony and exhibits of the four FPL witnesses who pre-filed direct testimony on June 20, 2016 in this docket and the Comprehensive Exhibit List to be presented by the Commission Staff at the prehearing conference on September 20, 2016;

D. The Parties stipulate to the excusal of the four FPL witnesses who pre-filed direct testimony from the October 3-4, 2016 evidentiary hearing in this docket;

E. The Parties agree to waive the right to file post hearing briefs in this docket;

F. The Parties do not object to the excusal of FIPUG from the October 3-4, 2016 hearing in this docket; and

G. The Parties do not object to a bench decision by the Commission with an oral recommendation from Commission Staff at the October 3-4, 2016 hearing in this docket, based on the evidentiary record developed up to the date of the hearing.

2. FPL and OPC agree to stipulated positions on Issues 6, 7, and 9 in this docket as follows:

**ISSUE 6:** If the Commission approves FPL's proposed ICL Transaction, what is the proper accounting treatment for the transaction?

**STIPULATED POSITION:**

*FPL has demonstrated that the proper accounting treatment for the ICL Transaction should be as follows:*

- (1) The non-fuel costs of operating the ICL Facility should be recorded in base rate accounts.*
- (2) FPL should not record any amount as plant in service for the ICL Facility because the Facility has no economic value. However, FPL will record land for \$8.5 million, a rail car lease liability of \$9.0 million, and an asset retirement obligation of \$9.9 million for the future dismantlement of the Facility.*

*(3) FPL should establish a regulatory asset for the ICL investment of \$451.5 million.*

**ISSUE 7:** If the Commission approves FPL's proposed ICL Transaction, what is the proper rate of return?

**STIPULATED POSITION:**

*If the Commission approves the ICL Transaction, then the proper rate of return is FPL's overall WACC approved by the Commission that is used for clause investments. The Commission approved this treatment for the Cedar Bay Transaction, a recent transaction substantially similar to the ICL Transaction, in Order No. PSC-15-0401-AS-EI.*

**ISSUE 9:** Should FPL be required to file, with the Commission, the actual accounting entries to record the ICL transaction for both FPL and the subsidiary Indiantown within six months of the ICL transaction being consummated?

**STIPULATED POSITION:**

*Yes. Such a requirement is reasonable and appropriate.*

3. This Agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document.
4. This Agreement will become effective on the date the Commission Order approving this Agreement is final.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408

By:   
Kenneth A. Hoffman

Florida Industrial Power Users Group  
118 North Gadsden Street  
Tallahassee, Florida 32301

By: \_\_\_\_\_  
Jon C. Moyle, Jr.

The Office of Public Counsel  
J.R. Kelly, Esquire  
The Florida Legislature  
111 West Madison Street, Room 812  
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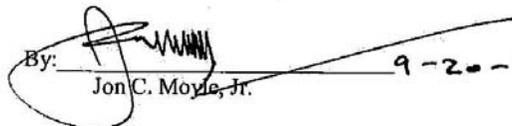
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By:  \_\_\_\_\_ 9-20-16  
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By: \_\_\_\_\_  
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J.R. Kelly