

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a modification to existing negotiated renewable energy contract with Solid Waste Authority of Palm Beach County, by Florida Power & Light Company.

DOCKET NO. 090150-EQ
ORDER NO. PSC-09-0562-PAA-EQ
ISSUED: August 14, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING MODIFIED CONTRACT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

Florida Power & Light Company ("FPL" or "the Company") has an existing contract for the purchase of firm capacity and energy from the Solid Waste Authority of Palm Beach County (SWA or "the Authority"), which was executed in January 1987 ("Original Contract") and that we approved for cost recovery purposes in Order No. 17753, issued June 26, 1987, in Docket No. 870173-EI, In re: Petition of Florida Power & Light Company for approval of separately negotiated contract for purchase of firm capacity and energy with the Palm Beach County Solid Waste Authority. The Original Contract provided for 47.5 MW of firm capacity to FPL. Deliveries of capacity and energy under the Original Contract began on April 1, 1992. The Original Contract expires on March 31, 2010.

On March 25, 2009, FPL filed a petition requesting approval of a modification to the existing negotiated renewable energy contract ("Modified Contract") for purchase of firm capacity and energy with the SWA. The modified contract also contains a right of first refusal with respect to defined Green Attributes. Under the terms of the Modified Contract, FPL would purchase 40 – 55 MW of firm capacity and energy produced by the SWA from a refurbished renewable energy facility using municipal solid waste as fuel. The term of the Modified Contract is 20 years beginning on the earlier of the date the refurbished facility commences commercial operation or April 1, 2010. FPL requests that we find the Modified Contract

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considered prudent for capacity and fuel clause recovery purposes. We have jurisdiction over this matter pursuant to Sections 366.051 and 366.81, Florida Statutes (F.S.).

Decision

The SWA generates electricity from the combustion of solid municipal waste, which is considered a renewable fuel. The SWA is a renewable generating facility as defined by Rule 25-17.210, F.A.C.

Rule 25-17.0832(3), F.A.C., provides, in our review of a negotiated contract, that we must consider the following: the need for power, the cost-effectiveness of the contract, security provisions for capacity payments, and performance guarantees. Each of these factors is evaluated below.

Need for Power

Rule 25-17.001(5)(d), F.A.C., encourages electric utilities to:

Aggressively integrate nontraditional sources of power generation including cogenerators with high thermal efficiency and small power producers using renewable fuels into the various utility service areas near utility load centers to the extent cost effective and reliable.

According to FPL's 2009 Ten-Year Site Plan, the Company will not need any new generating units to meet capacity needs through 2018. FPL projects a lower need for generation resources than originally projected based on its most recent lower load forecasts. FPL is also temporarily removing some of its existing, older, less efficient generating units from active service. In addition, FPL states that it is continually evaluating its resource needs, generating fleet, and potential new laws or regulations related to renewable energy or greenhouse gas emissions that could cause the Company to change its resource plan.

The refurbished SWA facility is expected to provide between 40-55 MW of firm capacity, and could help FPL avoid some firm capacity purchases that might otherwise be needed during periods of higher than expected system demand or electric generating constraints. Additionally, purchasing electricity generated by biomass fuel (solid waste incineration) from the SWA contributes to FPL's fuel diversity.

Cost-Effectiveness

FPL and the SWA have agreed upon the following terms and conditions with regard to payment. From April 1, 2010, until refurbishment of the facility is complete, the SWA will be paid as-available energy payments. Refurbishment is expected to be completed by April 1, 2012, and the facility is then expected to go into commercial operation. The terms of the Modified Contract provide for recalculation of the payment schedules to the SWA, should commercial operation not occur by April 1, 2012. After refurbishment, the SWA will be paid a coal-based capacity payment and the lower of as-available energy or coal-based energy payments. In order

for the SWA to receive full capacity payments, the facility must operate above an 85 percent capacity billing factor based on a 12 month rolling average. Capacity payments are based on the cost of a 2012 Glades County coal unit.¹ FPL's Original Contract with the SWA uses a coal plant as the basis for the capacity payments. The figures for the Glades County coal unit represent FPL's most recent cost estimates for a coal fired facility.

A comparison of the projected payments to the SWA versus what the payments would be under FPL's 2008 Standard Offer Contract (effective when the petition was filed) demonstrated a net present value (NPV) savings of \$72.4 million for FPL's ratepayers over the life of the Modified Contract. At our request, FPL recalculated the difference in projected payments to the SWA under the Modified Contract and under its 2009 Standard Offer Contract filed in Docket No. 090166-EQ.² The projected NPV savings to customers based on the 2009 Standard Offer Contract is \$60.2 million.

The table below compares the savings to ratepayers based on FPL's payments to the SWA under the Modified Contract against what payments would have been under the 2008 and 2009 Standard Offer Contract (SOC). In both cases, payments during each year of the Modified Contract would be below FPL's avoided cost. The 2008 SOC bases the avoided cost on a 2014 combined cycle unit whereas the 2009 SOC bases the avoided cost on a 2021 combined cycle unit.

Comparison of Projected Payments and Savings Under 2008 and 2009 Standard Offer Contracts					
	(1) Modified Contract	(2) 2008 SOC 2014 CC unit	(3) 2009 SOC 2021 CC unit	(1) - (2) Net Savings Negotiated	(1) - (3) Net Savings Negotiated
NPV Total	\$232,750,853	\$305,178,987	\$292,991,129	\$-72,428,134	\$-60,240,276

¹ In a data request sent to FPL, our staff asked why it is appropriate to base the capacity payment on the cost of a 2012 Glades County coal unit when we denied the need for this unit in Docket No. 070098-EI. In response, FPL stated that this was a negotiated contract and not a Standard Offer Contract. FPL also asserts:

FPL has agreed to make coal-based capacity payments at the request of SWA in order to facilitate SWA's financing of the refurbishment. While this advantages SWA, FPL's customers also benefit from a low coal-based energy cost and reduced energy cost volatility, as compared to natural gas. Thus, under the SWA contract, FPL's customers will receive many of the economic benefits (including fuel cost diversification) associated with coal based energy without building a coal fired facility.

² In re: Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company. We note that this petition is scheduled to be considered at our August 18, 2009, Agenda Conference.

Rule 25-17.240, F.A.C., encourages investor-owned utilities and renewable generating facilities to:

. . . negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability and energy security.

We believe that the terms of the Modified Contract will allow FPL's customers to benefit economically from prices that are lower than they would have been under either a SOC or a self-built generating unit. In addition, the Modified Contract will help diversify FPL's fuel mix, and contribute to fuel price stability and energy security.

Security for Capacity Payments

When considering how a negotiated contract would impact a utility's general body of customers, we must evaluate the contract in accordance with Rule 25-17.0832(3)(c), F.A.C., which states:

To the extent that annual firm capacity and energy payments made to the qualifying facility in any year exceed that year's annual value of deferring the construction and operation of generation by the purchasing utility or other capacity and energy related costs, whether the contract contains provisions to ensure repayment of such payments exceeding that year's value of deferring that capacity in the event that the qualifying facility fails to deliver firm capacity and energy pursuant to the terms and conditions of the contract, provided, however, that provisions to ensure repayment may be based on forecasted data.

The Modified Contract is projected to be below FPL's avoided cost during each year of the contract term. Therefore, there is no need for a security deposit.

Following the execution of the Modified Contract, FPL may incur costs in preparing to receive Energy and Capacity, which would be reimbursed. Section 3 of the Modified Contract provides for the SWA to reimburse FPL for all costs, including interest at the rate of 10.5 percent per annum in the event the contract is terminated. However, such costs shall not exceed \$85,000. FPL customers would receive the benefit of such reimbursed costs and applicable interest, should termination occur.

Performance Guarantees

The Modified Contract takes into consideration the refurbishment of the facility and provides for terms of payment until the facility is refurbished. Under the terms of the Modified Contract, if the SWA does not complete refurbishment of its facility by June 1, 2014, FPL has the option to terminate the agreement. As discussed above, the Modified Contract requires the SWA to reimburse FPL for costs and interest (up to \$85,000) incurred in the event of termination.

The terms of the Modified Contract also require the SWA to procure a liability insurance policy to cover interruption or curtailment of power supply and generally all liabilities which might arise in the performance or nonperformance of the contract at a minimum limit of \$10 million per occurrence.

Conclusion

The Modified Contract between FPL and the SWA provides FPL with a viable source of electrical energy from a renewable fuel source that meets all requirements and rules governing Qualifying Facilities and small power producers. The Modified Contract is projected to result in NPV savings between \$60.2 and \$72.4 million to FPL's ratepayers. If the planned renewable generation cannot be delivered under the terms of this contract, the security provisions and the performance guarantees effectively mitigate the risk to ratepayers. For these reasons, we approve the Modified Contract. Furthermore, upon a showing by FPL that expenses for purchased power under the Modified Contract were reasonable and prudently incurred, FPL shall be permitted to recover those costs through the fuel clause.

The Modified Contract agreed to by FPL and the SWA also provides FPL with a right of first refusal option to purchase Green Attributes associated with the renewable energy produced by the facility. However, the provisions of the Modified Contract do not place FPL, or its customers, under any obligation to purchase Green Attributes or tradable renewable energy credits (TRECS). Because this is a negotiated contract, the parties are free to include such a provision as specified in Rule 25-17.280, F.A.C., which states:

Tradable renewable energy credits and tax credits shall remain the exclusive property of the renewable generating facility. A utility shall not reduce its payment of full avoided costs or place any other conditions upon such government incentives in a negotiated or standard offer contract, unless agreed to by the renewable generating facility.

This docket does not contemplate any cost recovery for the purchase of renewable attributes or TRECs. Therefore, any purchase of TRECs would be subject to our review for prudence as an issue separate from the purchased power contract.

As set forth herein, we approve FPL's petition for approval of modification to its existing renewable energy contract with the SWA. Payments for energy are expected to produce savings of between \$60.2 and \$72.4 million over the term of the contract. In addition, upon a showing by FPL that expenses for purchased power under the negotiated renewable energy contract were reasonable and prudently incurred, FPL shall be permitted to recover those costs through the fuel clause.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's request for approval of a modification to the existing negotiated renewable energy


contract for purchase of firm capacity and energy with Solid Waste Authority of Palm Beach County is hereby approved as set forth herein. It is further

ORDERED that upon a showing by Florida Power & Light Company that expenses for purchased power under the negotiated renewable energy contract were reasonable and prudently incurred, Florida Power & Light Company shall be permitted to recover those costs through the fuel clause. It is further

ORDERED by the Florida Public Service Commission that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no person whose substantial interests are affected files a protest within 21 days of the issuance of this order approving the petition and contract, this docket shall be closed upon the issuance of a consummating order.

By ORDER of the Florida Public Service Commission this 14th day of August, 2009.



ANN COLE
Commission Clerk

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 4, 2009.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.