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Public Service Commission

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

DATE: March 10, 2004

TO: Kay B. Flynn, Chief of Records and Hearing Services, Division of the Commission Clerk & Administrative Services

FROM: Elisabeth J. Draper, Economic Analyst, Division of Economic Regulation EJD

RE: Docket No. 031074-EI – Petition for approval of changes to existing performance guaranty agreement and for approval of a second performance guaranty agreement, by Florida Power & Light Company.

Please add the following documents to the above docket file.

1. FPL responses to Staff Questions received January 28, 2004
2. FPL responses to Staff Qustions received February 28, 2004

Please let me know if you have questions, thanks.

EJD:kb

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Docket 031074-EI
FPL - Performance Guaranty
Staff's Data Request, January 8, 2004

1.

Q.) FPL's third Performance Guaranty Agreement (PGA) monitoring report shows that PGA customer No. 1 chose to pay a non-refundable contribution in aid of construction (CIAC) in lieu of a PGA. Please explain why the customer chose to pay a CIAC.

A.) The customer described as PGA 1 pursued this course of action because it was expected to be less costly to them than executing the PGA, i.e., the CIAC amount was less than the difference between the Performance Guaranty Amount less the customer's anticipated Incremental Base Revenues. In this case, incurring the non-refundable $1,435,047 Incremental Cost was expected to be less than the risk of incurring the cost of the $2,166,921 Performance Guaranty Amount ($1,435,047 CIAC X 1.51 carrying factor) less Incremental Base Revenues. It may have been that the customer did not anticipate adequate Incremental Base Revenues.

2.

Q.) FPL's third PGA report shows that PGA customer No. 2 did not pursue the project. Please explain why the customer did not pursue the project.

A.) The customer did not inform FPL of a reason for not pursuing the project.

3.

Q.) FPL's third PGA report indicates that PGA customer No. 6 did not sign an agreement. Please explain why the customer did not sign an agreement.

A.) The customer did not sign the agreement because the customer did not pursue the project. The customer did not inform FPL of a reason for not pursuing the project.

4.

Q.) Please provide a monitoring report for the period April 2003 to the present. Include the same information as was provided in the third PGA report FPL filed on March 4, 2003.

A.) Please see attached.

5\.
Q.) Please provide a revised calculation of FPL's proposed carrying cost factor for the new PGA that includes FPL's current cost of debt.

A.) Please see attached.

6\.
Q.) The final PGA report shows that three customers signed a PGA. Please indicate the type of business each customer is engaged in.

A.) Each was a developer trying to provide a facility to telecommunications service providers. The facilities in question were buildings whose primary function was to house support equipment (servers, telecommunications equipment) for internet service providers. These facilities are typically referred to as "internet hotels".

7\.
Q.) FPL's petition on page 5 states "Specially-sized and/or type of transformers that cannot generally be used by other customers are one such example." Please explain in detail how FPL currently recovers the cost of the installation of a specially-sized and/or type of transformers.

A.) Such transformers are included as reserve items and would be capitalized in plant account 368 when purchased. Transformers are specifically excluded from determination of the amount due as contributions in aid of construction from customers who require overhead line extensions of distribution facilities pursuant to FAC Section 25-6.064. Barring implementation of a Performance Guaranty to assure recovery from the specific customer requiring the specially-sized and/or type transformer, the cost would be recovered from the general body of customers.

8\.
Q.) Another situation FPL cites as requiring a PGA is a system expansion at a previously undeveloped site where the new facilities are likely to be required by only the requesting customer. Please explain in detail how FPL currently recovers the cost of the installation of new facilities as described above.

A.) **The costs for such an expansion would be subject to FAC Section 25-6.064 and a contribution in aid of construction would be determined in order to assure that such customer-specific costs were not recovered from the general body of customers. The contribution determined pursuant to that rule would reflect the actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service. In the case of overhead facilities, however, the costs for transformers as well as service drops and meters would be excluded from the determination of the required contribution from the customer. For the typical installation, it would be anticipated that should the customer for whom such facilities were originally installed no longer purchase electric service, FPL would ultimately be able to make sales over those facilities to another customer. Where a customer is unable to provide sufficient support for a revenue calculation, or where installed facilities could only be utilized to serve the customer requesting electric service, the general body of customers would be at risk for recovery of those costs of the required expansion of facilities. As provided in rule 25-6.064, FPL would rely on "its best judgment in estimating the total amount of revenues and sales which each line extension is expected to produce." Rule 25-6.064, however, does not address when those estimated revenues and sales expected in the utility's "best judgment" to be produced from each line extension do not occur. A Performance Guaranty Agreement would be required from the customer when FPL is exercising such "best judgment" in recognizing a risk that expected load from the customer may not materialize and the costs for the line extension required by the customer for electric service could ultimately be recovered from the general body of customers.**

9.
Q.) Has FPL developed any specific criteria that would be applied to determine whether the proposed new PGA is required? If yes, please state the criteria.

A.) **No specific criteria have been deve**loped. **As stated in paragraph 8 of FPL's petition in the instant Docket No. 031074-EI, the criteria for the determination of the necessity for a Performance Guaranty Agreement would reflect factors such as "the nature, location, voltage or other characteristics of the requested facilities, [where] the risk of unrecovered investment may extend to the entire projected load associated with the installation of the new facilities." The PGA is expected to be used only in rare and unusual circumstances. An internal management review process will be**

put in place to ensure the agreement will only be used as appropriate. Just as rule 25-6.064 outlining the formula for CIAC provides that when FPL and an "applicant are unable to agree in regard to an extension, either party may appeal to the Commission for a review," it would be expected that the result of an FPL review would be appealed to the Commission when there is disagreement concerning the requirement for a Performance Guaranty Agreement.

10.

Q.) Please explain how and when the additional expense of a performance guaranty will be communicated to all applicable customers so they may include these expenses in the calculation of their initial cash outlay under a prospective business plan.

A.) The customer will be notified of the possibility of the requirement of a PGA upon preliminary review of their load plans and site location. The requirement for a PGA will be communicated after a formal review of load plans and site location. The cost of the PGA will be communicated after the appropriate FPL business units have developed cost estimates of the facilities that will be needed to serve the customer.

11.

Q.) Please provide a status report on the customer complaint from Civil & Marine, Inc.

A.) FPL and Civil & Marine have reached agreement on the Performance Guaranty Amount as required in Article II of the proposed PGA. It is expected that Civil & Marine's financial institution will issue the Irrevocable Letter of Credit (LOC), and FPL would have a signed PGA and the LOC in the near future.

12.

Q.) In the event FPL retains a portion of the funds posted pursuant to a PGA because the base revenues from the customer failed to materialize as projected, are those funds included in the revenues that are subject to sharing with FPL's ratepayers pursuant to its existing revenue sharing agreement?

A.) If a portion of the funds posted pursuant to a PGA are retained, the amounts would be allocated between the net cost of the facilities installed to serve the premises (i.e., total cost, less CIAC paid by applicant) and miscellaneous revenues.

The allocation is based on the ratio of the net cost of facilities to the total performance guaranty. The funds retained are allocated to the cost of the facilities installed by FPL to reduce the overall cost of facilities which serve the premises and would therefore reduce the return requirements on future customers (similar to the treatment of funds received pursuant to a CIAC agreement). The allocated portion of the funds retained representing the present value factor calculation would be treated as miscellaneous revenue and would be included in the revenues subject to sharing pursuant to the revenue sharing agreement approved by the Commission in Order No. PSC-02-0501-AS-EI issued April 11, 2002 in Docket No. 001148-EI.

13.

Q.) To support its petition in Docket No. 001579-EI, FPL stated that it had received numerous requests for service from customers in the new and evolving telecommunications market whose loads would require a significant expansion of FPL's facilities. Please explain whether a specific situation has given rise to FPL's petition for a new PGA.

A.) FPL acknowledged in paragraph 6 of the petition in the instant docket that, "given the rapid downturn in the telecommunications industry only three developers executed a performance guaranty," and the load that would require the significant expansion of FPL's facilities did not occur. As stated in response to question 9, above, the PGA is expected to be used only in rare and unusual circumstances. However, projects have been presented to FPL that indicated a need for a mechanism to protect the general body of FPL's customers from the risk of construction projects with unsupported revenue streams. The Civil & Marine project served as an impetus for the instant filing.

Docket 031074-EI
FPL - Performance Guaranty
Staff's Data Request, 1/8/2004
Attachment to Question #4

PERFORMANCE GUARANTY AGREEMENT ACTIVITY
1/12/2004

Project Name	PGA Requested?	Amount	Date Submitted to Customer	Agreement Signed?	Revenues Period	Base Revenues Achieved	Incremental Base Revenues Applied to Reduce PGA	PGA Renaining Amount	Status
PGA 1	Yes	$2,166,921	8-May-01	No		$ -			Customer opted to pay a non-refundable contribution in aid of construction of $1,435,047. Construction of those facilities has been completed. No further activity expected.
PGA 2	Yes	$764,999	1-Jun-01	No		$ -			Project not pursued. No further activity
PGA 3	Yes	$687,882	1-Apr-01	Yes	6/2001 - 2/2003	$ 43,049	$ -	$ 687,882	Agreement executed on 6/8/01, which is the start date for tracking revenues. 4/02 - Customer filed for bankruptcy. 6/02 - Customer decided not to renew Letter of Credit. On 7/18/2002, FPL drew $687,882 against the existing Letter of Credit for failure to maintain Performance Guaranty Agreement Letter of Credit. Cash to be held for the term of the Performance Guaranty Agreement. No active Customer accounts at this location currently. No further revenues expected against Performance Guaranty Agreement.
PGA 4	Yes	$311,813	16-Jul-01	Yes	8/01/2001 - 02/2003	$ 28,604	$ -	$ 311,813	Performance Guaranty Agreement signed 7/16/01, Letter of Credit received and tracking revenues. Customer has replaced the Letter of Credit with a Surety Bond. As of 1/14/04, no recovery of funds associated with the PGA has been achieved. Expected failure to meet the terms of the Performance Guaranty Agreement.
PGA 5	Yes	$142,506	22-Feb-01	Yes	5/2001 - 2/2003	$ 393,381	$ 306,294	$ -	Performance Guaranty Agreement terms satisfied. Customer released from agreement terms.
PGA 6	Yes	$36,513	3-Dec-01	No		$ -			Performance Guaranty Agreement submitted to developer. No further activity expected.

Total $$ Amount: $4,110,634

Performance Guaranty Agreement PVRR Factor

Year	Investment	Tax Dep Rate	Tax Dep	Book Dep Rate	Accum Tax Dep	Accum Book Dep	Beginning Rate Base	Ending Rate Base	Avg Rate Base	Book Dep	Debt Return	Equity Return	Deferred Taxes	Current Taxes	Insurance	Property Taxes	Total Rev Req	PV Rev Req	Cume PV Rev Req
											2.97%	6.05%	38.58%		0.33%	2.06%		7.87%	
1	1,000	3.750%	38	3.03%	38	30	1,000	967	**983**	30.30	29.21	59.50	2.78	34.59	3.30	20.60	**180.28**	**180.28**	**180.28**
2	1,000	7.219%	72	3.03%	110	61	967	920	**944**	30.30	28.03	57.09	16.16	19.70	3.36	19.98	**174.62**	**161.87**	**342.15**
3	1,000	6.677%	67	3.03%	176	91	920	876	**898**	30.30	26.68	54.35	14.07	20.06	3.44	19.35	**168.25**	**144.58**	**486.73**
4	1,000	6.177%	62	3.03%	238	121	876	834	**855**	30.30	25.39	51.72	12.14	20.34	3.52	18.73	**162.14**	**129.16**	**615.89**
5	1,000	5.713%	57	3.03%	295	152	834	793	**813**	30.30	24.16	49.21	10.35	20.55	3.64	18.10	**156.31**	**115.43**	**731.32**
6	1,000	5.285%	53	3.03%	348	182	793	754	**773**	30.30	22.97	46.80	8.70	20.69	3.77	17.48	**150.71**	**103.17**	**834.49**
7	1,000	4.888%	49	3.03%	397	212	754	717	**735**	30.30	21.84	44.48	7.17	20.77	3.90	16.85	**145.32**	**92.22**	**926.71**
8	1,000	4.522%	45	3.03%	442	242	717	680	**698**	30.30	20.75	42.26	5.75	20.78	4.02	16.23	**140.10**	**82.41**	**1,009.12**
9	1,000	4.462%	45	3.03%	487	273	680	645	**663**	30.30	19.68	40.08	5.52	19.65	4.14	15.61	**134.99**	**73.61**	**1,082.74**
10	1,000	4.461%	45	3.03%	532	303	645	609	**627**	30.30	18.61	37.92	5.52	18.29	4.25	14.98	**129.88**	**65.66**	**1,148.39**
11	1,000	4.462%	45	3.03%	576	333	609	573	**591**	30.30	17.55	35.75	5.52	16.93	4.38	14.36	**124.79**	**58.48**	**1,206.87**
12	1,000	4.461%	45	3.03%	621	364	573	537	**555**	30.30	16.49	33.58	5.52	15.57	4.53	13.73	**119.72**	**52.01**	**1,258.88**
13	1,000	4.462%	45	3.03%	665	394	537	501	**519**	30.30	15.42	31.42	5.52	14.21	4.64	13.11	**114.61**	**46.16**	**1,305.03**
14	1,000	4.461%	45	3.03%	710	424	501	466	**483**	30.30	14.36	29.25	5.52	12.85	4.77	12.48	**109.53**	**40.89**	**1,345.92**
15	1,000	4.462%	45	3.03%	755	455	466	430	**448**	30.30	13.29	27.08	5.52	11.48	5.02	11.86	**104.56**	**36.18**	**1,382.11**
16	1,000	4.461%	45	3.03%	799	485	430	394	**412**	30.30	12.23	24.91	5.52	10.13	5.30	11.24	**99.63**	**31.96**	**1,414.07**
17	1,000	4.462%	45	3.03%	844	515	394	358	**376**	30.30	11.17	22.75	5.52	8.76	5.57	10.61	**94.68**	**28.16**	**1,442.22**
18	1,000	4.461%	45	3.03%	888	545	358	322	**340**	30.30	10.10	20.58	5.52	7.40	5.83	9.99	**89.73**	**24.74**	**1,466.96**
19	1,000	4.462%	45	3.03%	933	576	322	286	**304**	30.30	9.04	18.41	5.52	6.04	6.05	9.36	**84.73**	**21.65**	**1,488.61**
20	1,000	4.461%	45	3.03%	978	606	286	251	**268**	30.30	7.97	16.24	5.52	4.68	6.28	8.74	**79.75**	**18.89**	**1,507.50**
21	1,000	2.231%	22	3.03%	1,000	636	251	223	**237**	30.30	7.04	14.34	(3.08)	12.09	6.52	8.12	**75**	**17**	**1,524**
22	1,000		-	3.03%	1,000	667	223	205	**214**	30.30	6.36	12.95	(11.69)	19.82	6.75	7.49	**72**	**15**	**1,539**
23	1,000		-	3.03%	1,000	697	205	186	**195**	30.30	5.80	11.82	(11.69)	19.12	7.04	6.87	**69**	**13**	**1,552**
24	1,000		-	3.03%	1,000	727	186	168	**177**	30.30	5.25	10.70	(11.69)	18.41	7.37	6.24	**67**	**12**	**1,563**
25	1,000		-	3.03%	1,000	758	168	149	**158**	30.30	4.70	9.57	(11.69)	17.70	7.64	5.62	**64**	**10**	**1,574**
26	1,000		-	3.03%	1,000	788	149	130	**140**	30.30	4.15	8.45	(11.69)	16.99	7.91	4.99	**61**	**9**	**1,583**
27	1,000		-	3.03%	1,000	818	130	112	**121**	30.30	3.59	7.32	(11.69)	16.29	8.19	4.37	**58**	**8**	**1,591**
28	1,000		-	3.03%	1,000	848	112	93	**102**	30.30	3.04	6.19	(11.69)	15.58	8.48	3.75	**56**	**7**	**1,598**
29	1,000		-	3.03%	1,000	879	93	74	**84**	30.30	2.49	5.07	(11.69)	14.87	8.78	3.12	**53**	**6**	**1,605**
30	1,000		-	3.03%	1,000	909	74	56	**65**	30.30	1.93	3.94	(11.69)	14.16	9.10	2.50	**50**	**6**	**1,610**
31	1,000		-	3.03%	1,000	939	56	37	**47**	30.30	1.38	2.82	(11.69)	13.46	9.42	1.87	**48**	**5**	**1,615**
32	1,000		-	3.03%	1,000	970	37	19	**28**	30.30	0.83	1.69	(11.69)	12.75	9.75	1.25	**45**	**4**	**1,619**
33	1,000		-	3.03%	1,000	1,000	19	0	**9**	30.30	0.28	0.56	(11.69)	12.04	10.10	0.62	**42**	**4**	**1,623**

PVRR-Factor = 1.6231

Weighted Average COC:

	Ratio	Cost	WACC Pre-Tax	WACC Aft-Tax
Debt	45.0%	6.6%	2.97%	1.82%
Equity	55.0%	11.0%	6.05%	6.05%
	100%		9.02%	7.87%

P.O. Box 029100, Miami, FL, 33102-9100

February 27, 2004

Ms. Elisabeth Draper
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

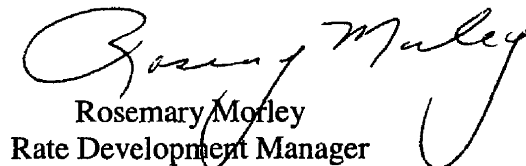
Re: Responses to Staff Questions
Docket No. 031074-EI Performance Guaranty Agreement

Dear Ms. Draper,

Enclosed are responses to your questions of February 13 and February 16, 2004. For your convenience I will also be forwarding these responses via email.

Please call me at (305) 552-2365 should you have any questions, or if I can be of any further assistance in this matter.

Sincerely,



Rosemary Morley
Rate Development Manager

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RM/jf
Enclosures

Copy:
W.H. Feaster

RESPONSES TO STAFF QUESTIONS OF February 13, 2004

Q1. I need clarification to your response to Question 12 and believe that a numerical example would help me. Let's assume the incremental cost are $100. Applying the carrying cost factor to this amount gives $100 * 1.51 = $151 for a PGA amount the customer will pay FPL. Finally, assume that after the 3-year agreement period, incremental base revenues are $121, therefore FPL retains $30. Given these numbers, please tell me who the amount retained would be allocated.

QA. Allocations would be based on the ratios of the net cost of facilities ($100 in your example) and the carrying factor cost ($51 in your example) to the total performance guaranty ($151 in your example). Of the $30 amount retained in your example, therefore, approximately $20 would be credited to plant in service to reduce the cost of the investment used to provide the service to the customer based on the net cost of the facilities divided by the total performance guaranty times the amount retained ($30X100/151). Approximately $10 would be credited to miscellaneous revenues based on the cost of carrying factor divided by the total performance guaranty times the amount retained ($30X51/151).

Q2. The response to Question 7 states that transformers are excluded from determination of a CIAC amount. Do you believe that the language in 25-6.046(9), FAC, which addresses line extensions to serve customers at the primary and transmission voltage level, also specifically excludes transformers from the CIAC calculation?

A2. First, as a matter of clarification, transformer costs are excluded from the "Extension of Facilities" CIAC amount only in *overhead* extensions. In underground extensions, there could be a differential cost component attributed to an increased cost of the transformer(s) served from an underground extension (in accordance with 25-6.049(5)).

Since 25-6.064(9) does not specifically address the transformer issue, and similarly does not address the amount of estimated revenue to be considered, we would apply the same principles set forth in 25-6.064(4) and (5) in the absence of any requirement to the contrary. Accordingly, we would not include the cost of the transformer in the determination of CIAC(oh) for standard electric service.

RESPONSE TO STAFF QUESTION OF February 16, 2004

Q1. Staff question No. 4 in Docket No. 031074-EI asked for an updated monitoring report. It's my understanding that FPL requested a performance guaranty from Civil & Marine, however, the customer is not included in the attachment to question #4. Why?

A1. The monitoring report referenced in staff question #4 is the report resulting from specific PSC instructions given at the time the original PGA was approved (Docket No. 001579-EI, Order No. PSC-01-0031-TRF-EI, Issued January 8, 2001). When staff requested an update, FPL included only those types of customers included in the report previously, namely those who executed (or did not execute) the agreement form approved in that Order.