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Public Service Commission

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DATE: March 18, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Draper, Springer)
Office of the General Counsel (Brown, Helton)

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.

AGENDA: 03/30/04 – Regular Agenda – Tariff Filing – Interested Persons May Participate

CRITICAL DATES: 8-Month Effective Date: 07/25/04

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\031074.RCM.DOC

Case Background

On November 25, 2003, Florida Power & Light Company (FPL) filed a petition for approval of changes to its existing Performance Guaranty Agreement tariff and for approval of a second new Performance Guaranty Agreement tariff. In Order No. PSC-04-0126-PCO-EI, issued February 9, 2004, the Commission suspended FPL's proposed revisions to its existing tariff and its proposed new tariff.

The Commission approved FPL's existing Performance Guaranty Agreement tariff in Order No. PSC-01-0031-TRF-EI, issued January 8, 2001, in Docket No. 001579-EI, In re: Petition for Approval of a Performance Guaranty Agreement by Florida Power & Light Company.

The Commission has jurisdiction over the subject matter pursuant to Sections 366.04 and 366.05, Florida Statutes.

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Discussion of Issues

Issue 1: Should the Commission approve FPL's proposed changes to its existing Performance Guaranty Agreement tariff?

Recommendation: Yes. (DRAPER)

Staff Analysis: FPL's Performance Guaranty Agreement (PGA or agreement) tariff applies to applicants for electric service that require a significant expansion of FPL's facilities to meet projected loads that, in FPL's opinion, are speculative and may not materialize. The purpose of the PGA is to ensure that the general body of ratepayers is held harmless in the event that a customer's load fails to meet projections, and therefore fails to produce revenues sufficient to offset the cost of the system expansion. If revenues materialize as projected, FPL refunds or cancels the guaranty.

Under the agreement, the applicant is required to post a performance guaranty in the form of cash, a surety bond, or bank letter of credit. The amount of the performance guaranty is determined using FPL's estimate of the incremental costs it will incur to serve the requested capacity, multiplied by a carrying cost factor of 1.51. The incremental cost represents the difference between the cost FPL would ordinarily incur to provide service to the premises and the cost FPL will incur to meet the requested higher level of capacity.

During the three-year term of the agreement, FPL compares the incremental base revenues received from the customer to the performance guaranty amount. Incremental base revenues are the difference between the actual revenues received and those revenues FPL would have received from a more typical customer. If during the three-year period the total incremental base revenues received equal or exceed the performance guaranty amount posted, FPL refunds the total cash guaranty amount to the customer. If the customer has posted a surety bond or letter of credit, the bond or letter of credit is released or canceled. If at the end of the three-year period the total incremental base revenues received are less than the performance guaranty amount, the customer receives a refund equal to the amount of incremental base revenues paid, and FPL retains the remaining balance.

While the Commission agreed that the agreement is appropriate to insure that the general body of ratepayers will not be burdened with an investment in facilities that are not needed, the Commission also expressed concern that the agreement includes no precise mechanism for determining when a performance guaranty will be required from a customer. For this reason, the Commission required FPL to file status reports for a two-year period to allow the Commission to monitor FPL's application of the tariff. See Order No. PSC-01-0031-TRF-EI, Page 4.

FPL filed its final monitoring report on March 4, 2003. The report shows that for the period December 2000 through March 2003, FPL requested agreements from six applicants. Three applicants did not sign the agreement. The remaining three signed an agreement with FPL for a combined PGA amount of $1.1 million. Of the three applicants, one filed for bankruptcy after signing the agreement and FPL retained the amount of the guaranty ($687,882). Another

fulfilled the terms of the agreement and the guaranty was released. The third applicant still has a few months remaining under the agreement.

FPL has proposed three minor modifications to its existing PGA tariff. First, FPL has proposed to rename the tariff "Performance Guaranty Agreement for Incremental Capacity" to distinguish the existing tariff from the proposed new PGA tariff discussed in Issue 2. Second, FPL has proposed to include in the calculation of incremental base revenues any facilities rental revenues received from the customer. Currently, the calculation of incremental base revenues includes only the applicable base demand and non-fuel energy charges. Facilities rental charges apply to customers that require FPL to provide and maintain transformers and other facilities beyond the point of delivery. Finally, FPL has included a provision whereby, if a customer elects to post a cash deposit, FPL will reduce the performance guaranty cash balance on a monthly basis and credit the applicant's monthly electric bill by the amount of the incremental base revenues received. Under the current tariff, customers must wait until the end of the three-year period to receive credit for revenues received.

As discussed above, staff believes that FPL's proposed changes to the existing PGA tariff are reasonable and should be approved.

Issue 2: Should the Commission approve FPL's proposed new Performance Guaranty Agreement tariff?

Primary Recommendation: Yes. The proposed tariff should be approved, provided FPL files with the Commission monitoring reports as described in the primary staff analysis. (DRAPER, HELTON)

Alternative Recommendation: No. The proposed tariff should not be approved. (DRAPER, BROWN, SPRINGER)

Primary Staff Analysis:

The Proposed New Tariff

FPL has proposed a new PGA tariff that would apply to applicants requesting electric facilities that, absent the applicant's use, would not likely be required by other customers within five years following the requested date of the system expansion. More specifically, FPL has proposed to require the new agreement in cases where applicants for service request transmission and/or distribution facilities that, in FPL's opinion, due to their location, voltage, or other characteristics, are not likely to be required by other customers. FPL states that an example of such facilities are specially-sized transformers that cannot generally be used by other customers. Another example FPL provides is a system expansion at a previously undeveloped site where the new facilities are likely to be required only by the applicant for a substantial period of time.

As discussed in Issue 1, the existing PGA tariff applies to applicants that require a significant expansion of electric facilities, i.e., a level of capacity that is not typically required for that type of building or premises, to meet projected loads that, in FPL's opinion, are speculative and may not materialize. The performance guaranty amount is based on the incremental cost to serve the requested capacity. The proposed new PGA tariff would apply to applicants requesting facilities that due to their location, voltage, or other characteristics, are not likely to be required by other customers. Therefore, if the projected load does not materialize, FPL may not fully recover its investment.

Like the existing PGA tariff, an applicant will be required to post a performance guaranty in the form of cash, a surety bond, or a bank letter of credit. The amount of the performance guaranty is determined using FPL's estimate of the cost of the required system expansion that is at risk of not being recovered, minus the amount of Contribution in Aid of Construction (CIAC) paid, if any, by the applicant. After subtracting the CIAC amount from the estimated cost of the system expansion, the remaining amount is multiplied by a carrying cost factor of 1.51. The carrying cost factor represents the carrying cost (return, depreciation, property taxes, and insurance) to FPL over the 30-year life of the investment and is identical to the factor in the existing PGA tariff. The CIAC amount is calculated pursuant to Rule 25-6.064, Florida Administrative Code, which applies to customers who require an extension of the utility's facilities in order to receive service. The customers are required to pay a CIAC to help offset the extension cost.

During the three-year term of the agreement, FPL will compare the base revenues received from the customer to the performance guaranty amount. Base revenues include the applicable demand and non-fuel energy charges, and facilities rental charges, if applicable.

If during the three-year period the total base revenues received equal or exceed the performance guaranty amount posted, and the customer has posted a surety bond or letter of credit, the bond or letter of credit will be released or canceled. If the customer pays the performance guaranty in cash, FPL will reduce the cash balance on a monthly basis by the amount of the previous month's base revenue charges and credit the same amount to the applicant's previous monthly bill.

If at the end of the three-year period the base revenues received are less than the performance guaranty amount posted, then an adjustment will be made. Customers who provided a letter of credit or surety bond will be required to pay FPL an amount equal to the difference between the performance guaranty and base revenues paid during the three-year period. If a customer posted a cash guaranty, FPL will retain the remaining balance of the performance guaranty.

FPL states that it expects to use the new PGA tariff only in rare and unusual circumstances. FPL further states, however, that projects have been presented to FPL that required a mechanism to protect the general body of ratepayers from the risk of construction projects with unsupported revenue streams. An example of such a project is Civil & Marine.

Civil & Marine is a British-based company that is currently building a slag processing plant at Port Canaveral. Slag processing involves recycling the by-product from iron and steel industries into construction material. FPL states that when discussions between Civil & Marine and FPL began in April 2002, the customer requested that FPL make a substantial investment in facilities that are not likely to be used by other customers. The existing distribution voltage for the area is 138,000 volts, however, Civil & Marine's motors require 4,000 volts. This voltage is unique to Civil & Marine's operation and is not typically required by other customers. Therefore, FPL would need to provide a dedicated substation with a 138,000 to 4,000 volt transformer, an extension of the existing transmission line to the new substation, and underground electric distribution service from the new substation to the plant. FPL estimated the total cost of the system expansion to be $1.5 million, multiplied by the carrying cost factor of 1.51, resulting in a performance guaranty amount of $2.3 million.

On July 16, 2003, the general manager of Civil & Marine filed an informal complaint with the Commission regarding FPL's determination that the company was required to sign a performance guaranty agreement of $2.3 million. A staff engineer visited the manufacturing site at Port Canaveral on August 13, 2003 to review FPL's extension plans. Staff met with representatives of Civil & Marine and FPL on September 24, 2003.

On February 19, 2004, FPL filed a final report on the complaint. FPL states in the report that Civil & Marine decided to take service at transmission level and build their own substation, which reduced the required performance guaranty amount. FPL's estimated cost to provide transmission level service is $784,430, multiplied by the carrying cost factor of 1.51, resulting in

a performance guaranty amount of $1.1 million. FPL states that Civil & Marine executed the agreement pursuant to the proposed tariff on December 3, 2003 and that FPL received a letter of credit from the customer's financial institution in January 2004.

Primary staff believes that the proposed new PGA tariff is appropriate because it provides protection for FPL and its general body of ratepayers in the event that the projected revenues of customers do not materialize. Such protections are similar to those provided pursuant to Rule 25-6.046, Florida Administrative Code, which requires customers to pay a CIAC to offset the cost of new facilities. However, unlike the CIAC, the proposed new PGA allows the applicant for service to receive a full or partial refund of the performance guaranty if the projected load and revenues are realized. FPL states that Civil & Marine's projected base rate revenues indicate that they are likely to receive a full refund of the performance guaranty.

While primary staff believes that FPL's proposed new agreement is appropriate, primary staff is concerned that, similar to FPL's current PGA tariff, the agreement includes no precise mechanism for determining when a performance guaranty will be required from customers. FPL states that an internal management review will be conducted to ensure that the agreement will only be used as appropriate. However, since deciding when to require a performance guaranty is left entirely to FPL's discretion, primary staff believes that the proposed tariff should be monitored for a minimum of three years.

To monitor the application of the tariff, primary staff recommends that FPL file with the Commission annual monitoring reports that include the following information: for each agreement requested from an applicant, FPL should provide an explanation of why the agreement was requested, the amount of the performance guaranty requested, whether the applicant agreed to sign the agreement, and the total achieved base rate revenues.

The reports should be submitted once a year for a minimum of three years. The first report should contain data from the first 12-month period that the tariff is effective, and should be submitted 30 days after the end of the 12-month period.

For the reasons discussed above and with the condition discussed above, primary staff recommends that FPL's proposed new PGA tariff should be approved.

Alternative Staff Analysis:

While alternative staff agrees that FPL's objective to protect the general body of ratepayers from investments that are at risk of not being recovered is appropriate, alternative staff believes that the proposed new PGA tariff should be denied on the grounds that its lack of specific criteria could open the door to potential discriminatory application of the tariff requirements, and FPL has not demonstrated a need beyond the one instance cited for such a performance guaranty.

The Commission in its order approving the existing PGA tariff raised concerns that the tariff includes no precise mechanism for determining when a performance guaranty will be required from a customer. FPL has not addressed the Commission's concern. In response to

staff's data request, FPL continues to maintain that no specific criteria have been developed for determining when the proposed new performance guaranty will be required. FPL states that the criteria would reflect factors such as the nature, location, voltage or other characteristics of the requested facilities, where the risk of unrecovered investment in FPL's opinion may extend to the entire projected load associated with the installation of the new facilities. Alternative staff believes that these criteria are vague and could be applied unevenly, resulting in charges of undue discrimination.

Finally, FPL supported its petition for the existing PGA tariff by stating that it had received numerous requests for service from telecommunications service providers who refurbish existing or build new facilities to house the equipment of telecommunication or internet service providers. FPL stated that these facilities have a very high electric usage when compared to similarly situated premises used as office buildings. FPL expressed concern that due to rapid growth in the evolving telecommunications services market, the projected revenues might not materialize in every instance, and therefore FPL's ratepayers would bear the significant cost of investment to serve the load. FPL has not cited a similar concern in its petition for the new PGA tariff. On the contrary, FPL states that the proposed tariff will have limited use and that it was designed to address applicants such as Civil & Marine.

In summary, while alternative staff agrees that ratepayers should not unduly be burdened with expense of facilities that are not fully utilized, FPL's proposed new PGA tariff should be denied until FPL can either refine the criteria for the application of a new PGA tariff, or demonstrate a need beyond the one instance cited for such a performance guaranty.

Issue 3: Should this docket by closed?

Recommendation: Yes. If Issue 1 and staff's primary recommendation in Issue 2 are approved, the tariff should become effective on March 30, 2004. If a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect with any increase held subject to refund pending resolution of the protest. If staff's alternative recommendation in Issue 2 is approved and a protest is timely filed the docket should remain open pending resolution of the protest. If no protest is filed, the docket should be closed upon issuance of a consummating order. (BROWN)

Staff Analysis: If Issue 1 and staff's primary recommendation in Issue 2 are approved, the tariff should become effective on March 30, 2004. If a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect with any increase held subject to refund pending resolution of the protest. If staff's alternative recommendation in Issue 2 is approved and a protest is timely filed the docket should remain open pending resolution of the protest. If no protest is filed, the docket should be closed upon issuance of a consummating order.