State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 4, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Garl, Gilbert)
Division of Economic Regulation (Matlock)
Office of the General Counsel (Williams)

RE: Docket No. 090499-EQ – Petition for approval of letter agreement to negotiated purchase power contract with Pinellas County Resource Recovery by Progress Energy Florida, Inc.

AGENDA: 03/16/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Klement

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RAD\WP\090499.RCM.DOC

Case Background

Progress Energy Florida, Inc. (PEF) currently purchases firm capacity and energy from Pinellas County Resource Recovery (PCRR) under a Purchased Power Agreement (PPA) approved by the Commission in 1989.[1] The contract requires a committed capacity of 54.75

[1] See Order No. 21952, issued September 27, 1989, in Docket No. 890637-EQ, In re: Petition for approval of contracts between Florida Power Corporation and Pinellas County.

megawatts (MW) for a term that expires at the end of 2024. Since original approval, the parties have negotiated agreement modifications in 1993[2], 1994,[3] 1997,[4] 2000,[5] and 2005.[6]

On August 18, 2009, PEF and Pinellas County signed a letter agreement to reduce PCRR's committed capacity from 54.75 MW to 36.5 MW during the period September 15, 2009, through April 30, 2010. The modification was to allow PCRR to make significant capital improvements to the generating facility. Beginning September 15, 2009, PEF began making monthly capacity payments to PCRR under the modified agreement.

On November 2, 2009, PEF filed a petition with the Commission requesting approval of the letter agreement between PEF and Pinellas County. On December 3, 2009, PEF advised staff that PCRR would terminate the curtailment on December 16, 2009. Therefore, the committed capacity of 54.75 MW and all other provisions of the PPA were restored prior to the filing of this recommendation. PEF continued making capacity payments according to the modified agreement for the months of October through mid-December. As in September, the December capacity payment was split between provisions of the modified agreement and the original agreement.

The Commission has jurisdiction over this subject matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes.

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[2] See Order No. PSC-95-0540-FOF-EQ, issued May 2, 1995, in Docket No. 940797-EQ, In re: Petition for approval, to the extent required, of certain actions relating to approved cogeneration contracts by Florida Power Corporation.

[3] Id.

[4] There is no record of Commission action on the 1997 curtailment agreement.

[5] See Order No. PSC-01-1088-PAA-EQ, issued May 7, 2001, in Docket No. 010275-EQ, In re: Petition for approval of amendment to cogeneration contract with Pinellas County Resource Recovery Facility by Florida Power Corporation.

[6] See Order No. PSC-05-0423-PAA-EQ, issued April 20, 2005, in Docket No. 041405-EQ, In Re: Petition of Progress Energy Florida, Inc. for approval of amendment to existing cogeneration contract with Pinellas County.

Discussion of Issues

Issue 1: Should the Commission approve PEF's petition to modify its current agreement with Pinellas County?

Recommendation: No. The proposed change to the PPA would cause PEF customers to pay more than if the parties' original agreement were followed. In addition, PEF made capacity payments to Pinellas County pursuant to the modified agreement prior to Commission approval. Therefore, PEF should be denied recovery of $4,276,461, which includes $7,704 of estimated interest, under the Fuel and Purchased Power Recovery Clause. (Garl, Gilbert)

Staff Analysis: PEF filed a petition on November 2, 2009, requesting Commission approval of a letter of agreement with Pinellas County to modify the existing PPA between the two parties. The letter specified that PCRR's committed capacity to PEF would be reduced from 54.75 MW to 36.5 MW for the period September 15, 2009, through April 30, 2010. The curtailment was for PCRR to replace three boiler unit trains and other components that will improve reliability and efficiency of the facility. The letter of agreement also specified that it "shall be contingent upon the parties receiving a final order from the Florida Public Service Commission approving this agreement."

On November 11, 2009, staff sent PEF a request for clarification and elaboration of various elements of its petition. In its reply on December 3, 2009, PEF explained its rationale for submitting its petition to modify the PPA rather than relying on provisions of the original PPA. PEF stated:

> PEF agrees with Staff that under the existing contract, PEF could simply reduce payments during the period of reduced capacity. In an abundance of caution, however, PEF filed the subject petition due to the fact that PEF is aware of other situations where similar types of curtailments have been provided to the Commission for review. If the Commission agrees that Commission approval is not required under this contract to reduce the payments to PCRR, PEF would withdraw its petition as moot. Additionally, please see Attachment A to this request, wherein PCRR has terminated this curtailment as of December 16, 2009, which may also render PEF's petition moot.

Staff presumes that the mention of "other situations" refers to previous agreement modifications discussed in the Background section above.

PEF also reported in its December 3, 2009, response that PCRR would terminate the curtailment on December 16, 2009, rather than in April 2010. The Committed Capacity of 54.75 MW and all other provisions of the PPA have been restored. PEF's response to the staff data request further stated that PEF did not intend to replace the curtailed capacity from another source, because PEF could maintain its reserve margin above the required 20 percent without the PCRR output.

The data request response also included a table showing monthly capacity factor reduction savings provided by the modified agreement. The total of the monthly amounts indicated that PEF customers would save about $2.6 million in reduced capacity payments. Unfortunately, the response provided nothing to demonstrate how the amount of the monthly savings was derived.

The curtailment, therefore, benefited PCRR by allowing it to take action to improve the capacity factor of the generating facility, and thereby, the revenue stream. The curtailment provided no benefit to PEF's customers, first because the PPA protects customers by reducing payments as power production declines, and second because the output from PCRR was not needed to maintain PEF's reserve margin.

A common thread between purchased power agreements is the inclusion of performance measures designed to protect ratepayers and to provide the cogenerator an incentive to produce power at an agreed level. It is also very common among PPAs that two or more tiers of performance are specified, as in the PEF-PCRR agreement, with payments stepped lower for lower threshold levels of power produced, until reduction to a zero payment threshold.

Staff's review of the original PPA revealed that capacity payments are based on the facility's committed capacity and are calculated using a 12-month rolling average for both the total and on-peak capacity factors. The agreement specifies a first tier reduction in the capacity payment rate when the average total capacity factor falls below 70 percent but the average on-peak capacity factor remains above 70 percent. The second payment reduction tier occurs when the average on-peak capacity factor falls below 70 to 60 percent or greater. No capacity payment is due if the average on-peak capacity factor falls below 60 percent. The following table illustrates the payment tiers:

Capacity Factor Rate Criteria	Monthly Rates for 2009 ($/kW of Committed Capacity)
Total and Peak > 70%	$47.40
Total < 70%, On-Peak > 70%	$19.96
Total < 70%, On-Peak > 60%	$15.99
Total < 70%, On-Peak < 60%	$0.00

Staff compared capacity payments resulting from the modified agreement with capacity payments as specified in the PPA. In response to a fourth staff data request, PEF provided the actual data used to determine total and on-peak capacity factors. Staff verified PEF's calculated capacity payments during the curtailment period as shown in the following chart:

Capacity Payment Comparison
(with 12-Month Rolling Average Capacity Factor)

	(1) 2009 Month	(2) Total Capacity Factor (%)	(3) On-Peak Capacity Factor (%)	(4) Rate $/kW/Mo.	(5) Committed Capacity (MW)	(6) Capacity Payment (4)x(5)x1000	(7) Cumulative Total
Modified Agreement	Sep	70.68%	70.15%	$47.40	45.02*	$2,133,790	$2,133,790
	Oct	70.75%	70.26%	$47.40	36.50	$1,730,100	$3,863,890
	Nov	73.60%	73.06%	$47.40	36.50	$1,730,100	$5,593,990
	Dec	75.20%	74.56%	$47.40	45.92*	$2,176,577	**$7,770,567**

*Approximately ½ month at 54.75 MW and ½ month at 36.50 MW

Original Agreement	Sep	69.31%	68.67%	$15.99	54.75	$875,453	$875,453
	Oct	68.35%	67.74%	$15.99	54.75	$875,453	$1,750,905
	Nov	69.02%	68.47%	$15.99	54.75	$875,453	$2,626,358
	Dec	69.53%	68.97%	$15.99	54.75	$875,453	**$3,501,810**
						Difference	**$4,268,757**

As shown, payments under the modified agreement would cost PEF's customers over $4 million more, via the cost recovery process, versus payments for the same period without the curtailment agreement. Had the original agreement been followed, the 12-month rolling average total and on-peak capacity factors degraded enough to reduce capacity payments to their lowest rate. PEF customers would realize a reduction in payments, via the Fuel and Purchased Power Cost Recovery Clause, as compared to the modified agreement. Since the curtailment was so short, PCRR's performance did not degrade the 12-month rolling average total and on-peak capacity factors enough to trigger lower capacity payments under the modified agreement.

In attempting to reconcile PEF's claim of a $2.6 million customer savings, staff came to realize the savings claim was an estimate based on PCRR maintaining capacity factors above 70 percent for both the modified and original agreement scenarios. If that had been the case, the estimate would have been accurate. Since the curtailment has ended, however, the actual numbers are available, and the results portray the contrasting picture shown above. The modified agreement is more costly than the original agreement because the capacity factors fall below 70 percent under provisions of the original agreement, thereby driving the capacity payment rate to its third tier level of $15.99 per kilowatt of committed capacity. In sum, the letter agreement appears to staff to have been crafted to preclude PCRR from losing too much money in capacity payments during the planned maintenance activity rather than providing any customer savings.

Staff also notes that PEF exceeded the 30-day criteria for notifying the Commission that a PPA had been modified, as required by Rule 25-17.0836, Florida Administrative Code. In addition, staff's multiple attempts to obtain payment comparisons from PEF provided only small bits of the overall picture each time.

Since the letter of agreement was contingent on Commission approval, PEF made capacity payments under the modified agreement to PCRR, prior to Commission approval, at its own risk. The costs have not yet gone through the 2010 cost recovery proceeding, so PEF has not yet billed customers for purchased power from PCRR during the curtailment period. Staff, therefore, believes it is appropriate to deny PEF cost recovery for the difference, plus interest, between capacity payments under the modified agreement and as specified by the original agreement.

Conclusion

The modified agreement reduced committed capacity to 36.5 MW from the normal committed capacity of 54.75 MW. The resulting capacity payment, however, was increased over what would be paid under the original agreement. Staff recommends disapproval of the modified agreement and denial of purchased power cost recovery by PEF for $4,276,461, which includes $7,704 of estimated interest, during the cost recovery process.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Williams)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.