

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities and approval of tariff schedule REF-1, by Gulf Power Company.

DOCKET NO. 050805-EQ

In re: Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

DOCKET NO. 050806-EQ

In re: Petition for approval of amended standard offer contract tariff and renewable energy tariff, by Progress Energy Florida, Inc.

DOCKET NO. 050807-EQ

In re: Petition for approval of renewable energy tariff by Florida Public Utilities Company.

DOCKET NO. 050809-EQ

In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

DOCKET NO. 050810-EQ
ORDER NO. PSC-05-1260-TRF-EQ
ISSUED: December 27, 2005

The following Commissioners participated in the disposition of this matter:

RUDOLPH "RUDY" BRADLEY, Chairman
J. TERRY DEASON
LISA POLAK EDGAR
ISILIO ARRIAGA

ORDER APPROVING STANDARD OFFER CONTRACTS AND REQUIRING FURTHER
REVIEW OF RELATED POLICY MATTERS

BY THE COMMISSION:

In the 2005 session, the Florida Legislature enacted Section 366.91, Florida Statutes, regarding renewable energy. Section 366.91(1) states:

[T]he Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the

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potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

On September 12, 2005, our staff conducted a workshop to discuss implementation of the statute. At the workshop, the participants agreed that in the interest of complying with the January 1, 2006, deadline contained in the statute, this Commission's existing rule pertaining to standard offer contracts - Rule 25-17.0832, Florida Administrative Code - could be used to implement the statute. The investor-owned electric utilities (IOUs) each agreed to file petitions for approval of renewable standard offer tariffs by October 14, 2005.

Each of the investor-owned electric utilities - Florida Power & Light Company (FPL), Progress Energy Florida (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), and Florida Public Utilities Company (FPUC) - filed its petition on October 14, 2005. The following table summarizes the major characteristics of each standard offer contract, as filed for approval:

Summary of Major Characteristics of Renewable Standard Offer Contracts

	FPL	Gulf	PEF	TECO	FPUC
Avoided Unit	CT	CT	CC	CT	Purchase
In-Service Date	6/08	6/09	12/09	1/09	N/A
Avoided Unit Capacity	157 MW	314 MW	528 MW	180 MW	N/A
Contract Capacity Limit	157 MW	10 MW	20 MW	10 MW	None
First Year's Capacity Payment (\$/KW/month) (incl. O&M)	\$5.97	\$5.39	\$5.06	\$3.12	\$7.10 (Marianna) \$6.00 (Fernandina)
First Year's Energy Payment (¢/KWh) (estimated)	8.93	5.05	4.97	8.64	2.31 (Marianna) 1.92 (Fernandina)
First Year's Total Payment (estimated)	\$6,194,484	\$3,743,460	\$3,654,878	\$5,513,016	\$2,268,492 (Marianna) \$1,897,344 (Fernandina)

Notes: CT = combustion turbine

CC = combined cycle

Energy payments based on data gathered from discussions with utility or from utilities' filings.

Total payment assumes 10 MW contract with 70 percent capacity factor.

At our December 20, 2005, Agenda Conference, we considered our staff's recommendation addressing each utility's proposed tariff and standard offer contract. The recommendation specifically addressed whether each filing satisfied the basic requirements of Section 366.91, Florida Statutes: (1) that the utility must continually offer a purchase contract for producers of renewable energy; (2) that the payment provisions of each standard offer contract be based on the utility's full avoided costs as defined in Section 366.051, Florida Statutes; and (3) that each standard offer contract must provide a term of at least ten years. The recommendation addressed other matters concerning whether the terms of the proposed tariffs and standard offer contracts were consistent with the legislative intent to promote the development of renewable energy resources through such contracts. Our staff recommended approval of FPUC's petition but expressed concern with certain provisions of the remaining utilities' proposed standard offer contracts.

Continuous Offer

First, our staff expressed concern that while FPL, PEF, TECO, Gulf, and FPUC appeared to propose contracts that would be offered on a continuous basis, they did not specify a closure date. Our staff indicated that a closure date was important for two reasons: (1) to provide market information to potential renewable energy providers about the availability and timing of a standard offer contract; and (2) to ensure that standard offer contracts are closed once the commitment to build an avoided unit has been made to avoid subsidization from oversubscription. Because FPUC meets its capacity needs with purchased power agreements rather than self-owned generating units, the potential for subsidization due to oversubscription of a committed avoided unit is eliminated. Thus, our staff recommended that a closure date was not necessary in FPUC's standard offer contract.

Our staff recommended that we consider two options with respect to the filings of FPL, PEF, TECO, and Gulf. Under the first option, we would direct those utilities to include a closure date for their standard offer contracts which coincides with the date on which a need determination is expected for those generating units subject to the Power Plant Siting Act (combined cycle, coal, nuclear), or the construction start date for generating units that are not subject to this requirement (combustion turbines and unit repowerings). To meet the requirements of Section 366.91 under this option, our staff proposed that when a standard offer contract is closed, the utility must make available a new contract based on its next identified generating unit. We note that this option is similar to how all utilities currently administer standard offer contracts.

Under the second option, we would require each utility to file standard offer contracts based on each unit shown in the utility's Ten-Year Site Plan, allowing a renewable energy provider to choose which standard offer best fits its particular needs. The portfolio of contracts would be updated each April 1 to coincide with the filing of each utility's annual Ten-Year Site Plan. Our staff noted that this approach would carry risk, as utilities may commit early to an avoided unit that could be deferred in the future in response to updated utility expansion plans. Our staff indicated that this risk would need to be weighed against the intent of Section 366.91 to promote renewable energy resources.

We agree with our staff's recommendation with respect to FPUC's proposed tariff and standard offer contract. Further, we agree that the contracts proposed by FPL, PEF, TECO, and Gulf appear to be offered on a continuous basis. We do not feel, however, that we have sufficient information or have had the benefit of sufficient discussion to make a policy determination with respect to the two options proposed by our staff concerning the use of the next planned generating unit or a portfolio of multiple planned units in establishing a closure date for these utilities' contracts. Therefore, we direct that a workshop be conducted expeditiously to allow for further discussion of these and related concepts. Further, we direct our staff to bring a recommendation that addresses the need for rulemaking or other proceedings on this subject following the workshop. To ensure compliance with the statutory requirement that standard offer contracts be made available by January 1, 2006, and to allow additional time for consideration of the policy matters discussed above, FPL, PEF, TECO, and Gulf agreed at our December 20 Agenda Conference to refile their proposed tariffs and standard offer contracts with a closure date of June 1, 2006. To comply with Section 366.91, Florida Statutes, new standard offer contracts must be made available coincident with this closure date.

Full Avoided Cost

In its recommendation, our staff indicated that the payment provisions of the standard offer contracts proposed by FPL, PEF, and TECO are based on each utility's next planned generating unit. While our staff determined that the avoided unit cost parameters appeared to be reasonable for the contracts proposed by PEF and TECO, it expressed concern that the cost parameters for FPL's contract were higher than expected. At our December 20 Agenda Conference, FPL stated that it erroneously calculated the capacity charge in its proposed contract and would refile the contract with the corrected charge.

Because FPUC does not own any generation, the payment provisions of FPUC's proposed standard offer contract are based on its next identifiable purchased power agreement.

Our staff noted that the payment provisions of Gulf's standard offer contract were based on a hypothetical unit with an in-service date of June 2009, a unit that is not currently planned for construction. Gulf's current Ten-Year Site Plan identifies a June 2012 combustion turbine unit as its next identified generating unit. Our staff recommended that Gulf refile its proposed tariff and standard offer contract based on this unit. At our December 20 Agenda Conference, Gulf agreed to refile its tariff and contract using the June 2012 unit in its expansion plan as the avoided unit.

Minimum Term

In its recommendation, our staff indicated that the minimum terms of the standard offer contracts proposed by PEF, TECO, Gulf, and FPUC comply with the requirement in Section 366.91, Florida Statutes, that such contracts provide a term of at least ten years. Because FPL's standard offer contract included a period for early capacity payments as part of the minimum ten-year term, our staff recommended that FPL be required to refile its contract based on a ten-year term starting with the in-service date of the avoided unit. Our staff indicated that if a renewable generator elects to receive early capacity payments, the net present value of the capacity

payments remains the same, so ratepayers do not pay above avoided costs. According to our staff, FPL's proposal would actually reduce the present value of payments to the renewable generator if early capacity payments were elected. At our December 20 Agenda Conference, FPL agreed to refile its standard offer contract based on a ten-year term starting with the capacity delivery date.

Subscription Limit

FPUC's standard offer contract does not contain a subscription limit. Because FPUC does not have an avoided unit since it purchases all of its generation requirements, a subscription limit is not needed by FPUC. The subscription limit contained in the standard offer contract proposed by FPL is equal to the capacity of its avoided unit. The subscription limits contained in the standard offer contracts proposed by PEF, TECO, and Gulf are much smaller than the capacity of the avoided units used in those contracts. In its recommendation, our staff expressed concern that the subscription limits used by PEF, TECO, and Gulf may not be consistent with the intent of Section 366.91 because such small limits may discourage potential developers of renewable energy from signing these standard offer contracts. Our staff recommended that these three utilities be required to refile their proposed tariffs and standard offer contracts with subscription limits equal to the capacity of their avoided units.

We note that Section 366.91 does not direct that subscription limits be set at a particular level. However, we recognize our staff's concern that small limits may frustrate the intent of the statute. At this time, however, we do not feel that we have sufficient information or have had the benefit of sufficient discussion to make a policy determination with respect to the establishment of subscription limits for renewable standard offer contracts. Therefore, we direct that this issue be addressed at the workshop discussed above to allow for further discussion. Following this workshop, our staff shall bring a recommendation that addresses the need for rulemaking or other proceedings on this subject.

Conclusion

With the various amendments discussed above which were agreed to by the utilities, we find that the tariffs and standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC meet the minimum requirements of Section 366.91, Florida Statutes. Therefore, we approve each of the tariffs and standard offer contracts with the agreed changes. Except for FPUC, each utility shall refile its tariff and standard offer contract with the agreed changes no later than December 28, 2005, for administrative approval by our staff. Provided that our staff confirms that the changes were made as agreed, the amended tariffs and standard offer contracts shall be effective as of January 1, 2006, consistent with Section 366.91, Florida Statutes. FPUC's tariff and standard offer contract shall also be effective as of January 1, 2006. Potential signatories to these standard offer contracts should be aware that these tariffs and standard offer contracts may be subject to a request for hearing made within 21 days of the issuance of this Order, and, if a hearing is held, may subsequently be revised.

In light of the significant policy issues that remain for consideration at the workshop directed through this Order, nothing in this Order is intended to establish precedent with respect to this Commission's views on the requirements for approval of subsequent tariffs and standard offer contracts filed for our review under Section 366.91, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the tariffs and standard offer contracts for renewable energy producers proposed by Florida Power & Light Company, Progress Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company, as amended by agreement as set forth in the body of this Order, are approved. It is further

ORDERED that Florida Power & Light Company, Progress Energy Florida, Tampa Electric Company, and Gulf Power Company shall refile their proposed tariffs and standard offer contracts for renewable energy producers with the agreed amendments discussed in this Order no later than December 28, 2005. It is further

ORDERED that our staff shall have authority to administratively approve these refiled tariffs and standard offer contracts upon verification that the agreed amendments have been made. It is further

ORDERED that a workshop shall be conducted expeditiously to allow for further discussion of the policy issues set forth in the body of this Order and other matters related to the development of standard offer contracts for renewable energy producers. It is further

ORDERED that, following the workshop directed herein, our staff shall bring a recommendation that addresses the need for rulemaking or other proceedings to implement the provisions of Section 366.91, Florida Statutes. It is further

ORDERED that if no person whose substantial interests are affected by the actions proposed herein timely requests a hearing on this matter as set forth in the Notice of Further Proceedings, below, these dockets shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 27th day of December, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: 
Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS

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.

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 Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files 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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 17, 2006.

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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 docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.