

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of Rule 25-17.250(1) and (2)(a), F.A.C., which requires Progress Energy Florida to have a standard offer contract open until a request for proposal is issued for same avoided unit in standard offer contract, and for approval of standard offer contract.

DOCKET NO. 080501-EI
ORDER NO. PSC-08-0706-TRF-EI
ISSUED: October 23, 2008

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 GRANTING WAIVER OF
RULE 25-17.250(1) and (2)(a), FLORIDA ADMINISTRATIVE CODE
AND
ORDER APPROVING STANDARD OFFER CONTRACT AND ASSOCIATED TARIFFS

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

Since January 1, 2006, each electric investor-owned utility (IOU) has been required to continuously offer to purchase capacity and energy from specific types of renewable sources. Section 366.91(3), Florida Statutes (F.S.), specifies that the contracts for purchase must be based on the utility's full avoided costs as defined in Section 366.051, F.S., and provide a term of at least ten years. Rules 25-17.200 through 25-17.310, F.A.C., implement the statutes.

On April 1, 2008, Progress Energy Florida, Inc. (PEF or Company) filed its petition requesting our approval of a standard offer contract and associated tariffs based on the Ten-Year

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Site Plan for 2008-2017.¹ Pursuant to PEF's expansion plan, a single type of fossil fueled unit was available to serve as an avoided unit: a combined cycle unit to be located at Suwannee which was expected to come into service in June 2013.

On July 17, 2008, Commission staff filed its recommendation for approval of PEF's standard offer contract and associated tariffs in Docket No. 080187-EQ. The recommendation was scheduled to be considered by us at the July 29, 2008, Agenda Conference. On July 15, 2008, PEF filed the petition for rule waiver and approval of standard offer contract which opened this docket. In this filing, the company explains that a request for proposals (RFP) has been issued for the Suwannee combined cycle unit. PEF also indicated that it does not have an upcoming planned purchase in its Ten-Year Site Plan. Citing the requirement of Rule 25-17.250(1) and (2)(a), F.A.C., that each standard offer contract shall remain open until an RFP has been issued for the avoided generating unit, PEF requests that we grant a waiver of rule in order to continue to use the costs associated with the Suwannee unit as the full avoided cost basis for the standard offer contract. Further, the July 15, 2008, filing also includes updated costs aligned with the costs in the RFP.

On July 23, 2008, PEF filed a motion to withdraw its initial standard offer contract and COG-2 rate schedule that had been filed on April 1, 2008, in Docket No. 080187-EQ.² Accordingly, Commission staff withdrew the recommendation that had been filed in that docket.

This Order addresses the petition for waiver of rules, as well as the second standard offer contract and associated tariffs filed for approval by PEF on July 15, 2008. We have jurisdiction over this matter pursuant to Sections 120.542, 366.04 through 366.06, 366.91, and 366.92, F.S.

Decision

Rule Waiver

Rules 25-17.250(1) and (2)(a), F.A.C., require each electric IOU to file with us by April 1 of each year a standard offer contract for the purchase of firm capacity and energy from renewable generating facilities and small qualifying facilities with a design capacity of 100 kW or less. The standard offer contracts reflect each IOU's next avoided unit shown in its most recent Ten-Year Site Plan. The rules further require that "[e]ach investor-owned utility with no planned generating unit identified in its Ten-Year Site Plan shall submit a standard offer based on avoiding or deferring a planned purchase."

Rule 25-17.250(a), F.A.C. directs that, in order to ensure that each IOU continuously offers a contract to producers of renewable energy, each standard offer contract shall remain open until: 1) a request for proposal (RFP) is issued for the utility's planned generating unit, or 2) the IOU files a petition for a need determination or commences construction for generating units, or 3) the generating unit upon which the standard offer contract was based is no longer part

¹ See Docket No. 080187-EQ, In re: Petition for approval of amended standard offer contract and COG-2 rate schedule, by Progress Energy Florida.

² PEF's withdrawal of its initial standard offer contract was acknowledged by Order No. PSC-08-0695-FOF-EQ, issued October 20, 2008.

of the IOU's generation plan, as evidenced by a petition to that effect filed with us or by the utility's most recent Ten-Year Site Plan.

In its petition, PEF asks us for a waiver of the rules because it does not have an avoided unit for purposes of a standard offer contract, nor does it have a planned capacity purchase for purposes of a standard offer contract in its Ten-Year Site Plan. PEF states that it currently does not have an avoided unit for purposes of a standard offer contract because it issued a RFP for the 2013 Suwannee combined cycle unit, and does not have any other units in its ten year site plan that qualify for use as an avoided unit. Instead, PEF requests that we allow it to use the Suwannee unit as a proxy avoided unit, with updated pricing, in connection with its standard offer contract.

Pursuant to 120.542(6), F.S., PEF's request for waiver of rules was submitted to Florida Administrative Weekly for publication. Interested parties had until August 22, 2008, to submit written comments. No public comment was received.

Section 120.542, F.S., authorizes us to grant variances or waivers to the requirements of our rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

The underlying statutory provision pertaining to the above-mentioned rules is Section 366.91, F.S. Section 366.91(1), F.S., states:

The 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 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.

Section 366.91(3), F.S., enumerates requirements to promote the development of renewable energy resources. In summary:

- a) By January 1, 2006, each investor-owned electric utility (IOU) and municipal utility subject to the Florida Energy Efficiency and Conservation Act (FEECA) of 1980 must continuously offer to purchase capacity and energy from specific types of renewable resources;
- b) The contract shall be based on the utility's full avoided costs, as defined in Section 366.051, Florida Statutes; and,
- c) Each contract must provide a term of at least ten years.

We find that a waiver of the rules is necessary for PEF to determine standard offer contract payments for capacity and energy. After a RFP is issued for an avoided unit, the rules

direct a utility to base the standard offer contract payments on the *next* avoidable unit or deferred purchase. However, in this case, there are none. We find that it is appropriate for PEF to determine standard offer contract payments for capacity and energy based on the Suwannee Unit as it remains an avoidable unit, and there are no next avoidable units or deferred purchases. We also find that the Suwannee Unit is still an avoidable unit because the RFP for the Suwannee Unit was released June 2008 and is not yet concluded. A waiver of the rules allows us to continue promoting the development of renewable energy resources in Florida because it allows PEF to offer an economically feasible standard offer contract for renewable energy.

We find PEF has demonstrated it will suffer a substantial hardship if the provisions of Rules 25-17.250(1) and (2)(a), F.A.C. are strictly applied; therefore, PEF has provided a basis for a waiver of the rules.

Standard Offer Contract

Rule 25-17.250(1), F.A.C., requires PEF to continuously make available a standard offer contract for purchase of firm capacity and energy from renewable generating facilities and small qualifying facilities with a design capacity of 100 kW or less. In response to this requirement, on April 1, 2008, PEF filed a standard offer contract based on the Suwannee Unit 4, a combined cycle unit planned to begin commercial operation by June 2013. However, the company issued a RFP for Suwannee Unit 4 on June 12, 2008.

PEF explains that this second standard offer contract with associated tariffs is identical to the first standard offer contract and associated tariffs filed on April 1, 2008, in every respect, except that avoided costs for the 2013 Suwannee combined cycle unit have been updated to reflect PEF's most recent calculation. The cost increase from the first contract of April 1, 2008, to the second contract of July 15, 2008, is significantly greater than would have been typically expected over a period of a few months. PEF explains that the revised avoided costs include three major modifications. First, the recent estimate of costs reflects a better defined scope that was utilized in the RFP process, as compared with the process utilized for the estimate in the Ten-Year Site Plan. Second, over the time period since the estimate for the Ten-year Site Plan, the prices for equipment, labor and material have escalated significantly. Third, power projects and other construction projects are straining the capacity of manufacturing and construction facilities on a world-wide scale. This is reflected in an increase in the contingency factor used in the later estimate.

Tariff Sheet No. 9.415 provides for a contract term extending through May, 2023. As required by Rule 25-17.250(3), F.A.C., this term includes ten years of operation by the avoided unit.

The contract offers capacity payments that are in compliance with requirements of Rule 25-17.250(4), F.A.C. Table 3 on Tariff Sheet No. 9.455 shows options that are available to the renewable generator. The choices include payment streams that begin when the renewable capacity is available, or when the avoided unit goes into service.

If energy payments begin prior to the avoided unit in-service date, the rates may be based on PEF's actual hourly avoided energy costs, or the rates may be based on PEF's annual projection of system incremental costs, excluding economy sales. Energy payments made after the in-service date of the avoided unit are calculated using each hour's firm energy rate. These options are described on Tariff Sheet No. 9.456, and meet the requirements of Rule 25-17.250(6), F.A.C.

Tariff Sheet Nos. 9.439 and 9.440 provide for either party to reopen the contract under specific conditions. If revisions to environmental laws or other regulations will result in a change in the cost of the avoided unit beyond a threshold amount, then the impacted party may request the recalculation of avoided cost. The threshold of the incremental change in cost is to be mutually agreed and included as part of the contractual arrangements. This provision satisfies the requirements of Rule 25-17.270, F.A.C.

Ownership of the environmental attributes associated with electric generation under the contract remains with the renewable generator. Tariff Sheet No. 9.417 gives PEF first right of refusal, and sets a threshold for the selling price to any other buyer. The arrangements are in accord with Rule 25-17.280, F.A.C.

The terms and operating provisions of the 2008 Renewable Standard Offer Contract submitted by Progress Energy Florida conform to all requirements of Rules 25-17.200 through 25-17.310, and 25-17.0832(4), F.A.C. The contract provides flexibility in the arrangements for payment so that a developer of renewable generation may select the payment stream best suited to his financial needs. At the same time, security provisions of the contract provide protection for PEF's ratepayers.

In conclusion, we find that PEF's proposed standard offer contract is in compliance with Rules 25-17.200 through 25-17.310, F.A.C., and shall therefore be approved and made effective as of September 29, 2008. The associated tariffs shall be effective September 29, 2008.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Progress Energy Florida's petition for a waiver of Rules 25-17.250(1) and (2)(a), Florida Administrative Code, is granted. It is further

ORDERED by the Florida Public Service Commission that the Standard Offer Contract and associated tariffs proposed by Progress Energy Florida are hereby approved, effective September 29, 2008. It is further

ORDERED that if a protest is filed within 21 days of issuance of this Order, the tariffs shall remain in effect pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 23rd day of October, 2008.



ANN COLE
Commission Clerk

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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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 13, 2008.

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.