

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a negotiated power purchase contract for purchase of firm capacity and energy with Vision / FL, LLC, by Progress Energy Florida, Inc.

DOCKET NO. 080512-EQ
ORDER NO. PSC-08-0707-PAA-EQ
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 APPROVING NEGOTIATED POWER PURCHASE CONTRACT

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

On July 25, 2008, Progress Energy Florida (PEF or company) filed a Petition requesting our approval of a contract (contract) for the purchase of firm capacity and energy between Vision / FL, LLC (Vision) and PEF. The contract incorporates the provisions of the standard offer contract that was filed by PEF on July 15, 2008, but has been filed as a negotiated contract since the contract at issue in Docket No. 080501-EQ had not yet been approved.¹

The contract is based on Vision constructing, owning, and operating a closed-loop biomass electric generating facility (Facility) located in Osceola County, Florida. The Facility will include an area greater than 25,000 acres used by Vision for production of sweet sorghum as a biomass fuel crop. The crop will be continuously harvested for conversion into ethanol, and the residual bagasse is to be used as fuel for a steam boiler producing up to 50 megawatts (MW) gross output. Vision proposes to sell 40 MW of firm capacity and associated energy from the Facility to PEF for a term of 25 years beginning January 1, 2010.

¹ See Docket No. 080501-EI, 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.

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FPSC-COMMISSION CLERK,

In addition to the purchase of capacity and energy, the contract provides an option for the purchase by PEF of "Renewable Attributes," such as Renewable Energy Credits (RECs) associated with the generation of electricity from the Facility.

This order addresses PEF's petition for approval of the contract with Vision. We have jurisdiction over this matter pursuant to Sections 366.051 and 366.81, Florida Statutes.

Decision

Vision proposes to sell firm capacity and energy from a biomass facility to PEF for a term from January 1, 2010, through December 31, 2034, with a committed capacity of 40 MW. Negotiations between PEF and Vision were based on the 1,159 MW Combined Cycle plant, Suwannee River No. 4 (the Suwannee Unit), scheduled to be in-service in 2013, as reflected in PEF's 2008 Ten-Year Site Plan. PEF's 2008 Standard Offer Contract filed on April 1, 2008, designated the Suwannee Unit as the avoided unit.² As referenced previously, this was approved by Order No. PSC-08-0706-TRF-EI. On July 15, 2008, PEF filed a petition for rule waiver and approval of standard offer contract.³ In this filing, the company explains that a request for proposals (RFP) has been issued for the Suwannee Unit. Energy and capacity payments in the Vision contract are updated and are generally in accord with the revised standard offer filed on July 15, 2008.

As required by Rule 25-17.0832(3), F.A.C., review of a negotiated firm capacity contract, we considered the following: the need for power, the cost-effectiveness of the contract, security provisions for capacity payments, and performance guarantees. Each of these factors is evaluated below.

Need for Power

The Facility is projected to have a maximum nominal generating capacity of 50 MW. After serving internal loads, the Facility will provide firm capacity of approximately 40 MW to PEF. The expected annual energy amounts to 311,853 MWh. As a renewable energy resource, Vision's projected committed capacity of 40 MW will be independent of the current fossil fuel infrastructure as it uses a separate, distinct supply mechanism for its biomass fuel. It is noted that the addition of 40 MW of firm capacity and energy from Vision in 2010 to PEF pursuant to the contract will not completely defer or avoid the need for additional capacity in order to meet a 20% reserve margin. However, the Facility will displace energy generated by fossil fuels, reducing the state's dependence on these resources and promoting fuel diversity.

² See Docket No. 080187-EQ, In Re: Petition for approval of amended standard offer contract and COG-2 rate schedule, by Progress Energy Florida. PEF withdrew its petition on July 23, 2008. A separate staff recommendation regarding the withdrawal was filed to be heard at the September 29, 2008, Agenda Conference.

³ See Docket No. 080501-EI, 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.

It has been our policy to approve cost-effective contracts, such as Vision's, that use renewable resources as the primary fuel. Rule 25-17.001(5)(d), F.A.C., encourages electric utilities to:

Aggressively integrate nontraditional sources of power generation including cogenerators with high thermal efficiency and small power producers using renewable fuels into the various utility service areas near utility load centers to the extent cost effective and reliable.

We find that the characteristics of the capacity and energy associated with this contract are sufficiently desirable to encourage the use of renewable fuels in Florida.

Cost-Effectiveness

PEF and Vision have agreed upon payments divided into two parts, capacity and energy. Both Vision's Facility and PEF's Suwannee Unit were modeled at an 89% capacity factor for the capacity and energy payments contained in the contract. If the Vision Facility does not meet the contractual performance requirements, then the capacity payments are reduced for that month. All of the energy from the Vision Facility will displace traditional fossil baseload generation on PEF's system. Vision projects that the Facility will exceed an 89% capacity factor. The analysis provided by the company shows projected payments by PEF to Vision for the capacity and energy costs to be at avoided cost over the 25 year term of the contract. We find that these estimated payments show the contract to be cost-effective.

In addition to savings for the capacity and energy provided by Vision, the contract establishes first right of refusal for PEF to purchase renewable energy credits (RECs) that will be associated with the electric energy produced from the Facility. Our approval of this contract does not in any way guarantee cost recovery of the purchase of renewable attributes or RECs. Any purchase of RECs would be subject to our future review for prudence.

Security for Capacity Payments

Whereas an early capacity payment schedule has been selected, Rule 25-17.0832(3)(c), F.A.C., requires the contract to include some form of security to repay the company for dollars exceeding avoided cost in the event of default. Within 60 days of the contract being executed, Vision must establish, fund, and deliver to PEF performance security in the amount of at least \$45,000 per MW of committed capacity. The required performance security may be more dependent upon Vision's credit rating. Vision is required to maintain the funded amount until the fifth anniversary of the execution date. The amount required for the remainder of the contract is reduced, depending upon Vision's credit rating.

In addition to the Performance Security detailed above, in the event of a termination of the contract after capacity delivery, Vision shall be liable for termination fees. Once capacity has been delivered, PEF will calculate the termination fee monthly and require that Vision have letters of credit sufficient to cover the balance required. Examples of calculations of this fee

provided by PEF show it to be consistently greater than or equal to the present value of the payments to Vision.

We find that the security and termination provisions contained in the contract are sufficient to protect PEF's ratepayers in the event that Vision fails to meet the contracted in-service date or defaults on its future obligations.

Performance Guarantees

The contract lists conditions precedent, which must be met within 12 months after our approval. The conditions precedent include obtaining, at a minimum, firm transmission service, authorization to construct, construction financing, and insurance policies. If these obligations are not met, the contract would be terminated without further liability to both parties.

The contract is based upon the Suwannee Unit, which has a projected in-service date of June 1, 2013. Vision originally had given January 1, 2010, as the estimated in-service date for the Facility. The contract indicates that Vision will be able to begin delivery of firm capacity and energy within 16 to 18 months after our approval. At the latest, the Facility is required to have obtained all permits necessary to initiate construction by June 1, 2012. The Facility is required to begin delivering firm capacity and energy before June 1, 2013. If any of these conditions are not met, PEF will be able to draw upon the completion/performance security, as described above, in full.

The expected annual energy from the Facility is 311,853 MWh based upon an 89% capacity factor. Under the terms of the contract, the capacity payment depends upon the performance of the Facility for each individual month. The calculation of the payment for avoided capacity uses an annually set rate times the capacity produced. For Vision to receive full capacity payments, the Facility must have an Annual Capacity Billing Factor (ACBF) of 89%. Reduced capacity payments are due between 89% and 69%, and no capacity payment is due if the ACBF is less than 69%. If the capacity factor drops below 69% for 12 consecutive months, the contract may be terminated by PEF, and Vision would owe the termination security discussed above.

We find that the terms of the contract are sufficient to protect PEF's ratepayers if Vision fails to deliver firm capacity and energy.

Conclusion

The contract between PEF and Vision provides PEF with a viable source of electric capacity and energy that meets all requirements and rules governing Qualifying Facilities and small power producers. The contract is shown to be cost-effective. If a portion of the planned renewable generation cannot be implemented under the terms of this contract, the security provisions effectively mitigate the risk to the ratepayer. For these reasons, we approve the contract.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Progress Energy Florida's petition for approval of the proposed contract between PEF and Vision / FL, LLC (Vision), for purchase of 40 MW of renewable firm capacity and energy, is approved for purposes of cost recovery. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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 OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 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 action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file 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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.