

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 090165-EQ
ORDER NO. PSC-09-0524-TRF-EQ
ISSUED: July 29, 2009

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

ORDER DENYING STANDARD OFFER CONTRACTS AND
ASSOCIATED TARIFFS FILED BY TAMPA ELECTRIC COMPANY

BY THE COMMISSION:

Background

Since January 1, 2006, each investor-owned electric utility (IOU), as well as each electric municipal utility subject to the Florida Energy Efficiency and Conservation Act (FEECA),¹ 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 cost 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, Florida Administrative Code (F.A.C.), implement the statutes.

In accord with applicable statutes and rules, on April 1, 2009, Tampa Electric Company (TECO or Company) filed its petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, based on the Ten Year Site Plan for 2009-2018.

Because TECO has two types of fossil-fueled electric generating plants subject to being avoided, TECO has filed two standard offer contracts, pursuant to Rule 25-17.250(1), F.A.C. The standard pricing terms are identical for both units, with the exception of the avoided unit cost performance characteristics. The first avoided unit is a natural gas-fired combustion turbine unit with a capacity of 61 megawatts (MW), scheduled for an in-service date of May 1, 2012. The second avoided unit is a natural gas-fired combined cycle unit with a capacity of 607 MW, scheduled for an in-service date of May 1, 2018.

¹ Sections 366.80-366.85 and 403.519, F.S.

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FPSC-COMMISSION CLERK

We have jurisdiction over this matter pursuant to Sections 366.04 through 366.06, 366.91, and 366.92, F.S.

Decision

Because the utility is an IOU, Rule 25-17.250(1), F.A.C., requires TECO 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 kilowatt (kW) or less. TECO has two types of fossil-fueled generating technologies listed in its 2009 Ten Year Site Plan. The first avoided unit is a natural gas-fired combustion turbine unit with a capacity of 61 MW, scheduled for an in-service date of May 1, 2012. The second avoided unit is a natural gas-fired combined cycle unit with a capacity of 607 MW, scheduled for an in-service date of May 1, 2018.

The petition includes two standard offer contracts substantially similar to the 2008 standard offer contract, previously approved by us.² The minimal modifications proposed by TECO include typographical corrections, default provisions, updates to the timing and size of the avoided units, parameters for avoided cost, and capacity payment estimates. We find that these modifications are prudent, protect ratepayers from the possible default of a contracted party, and accurately reflect the utility's avoided cost.

The Company's ratepayers are protected by changes in the default provisions on Sheet No. 8.242, and the addition of Sheet No. 8.243. These provisions are in compliance with Rule 25-17.0832(4)(f), F.A.C. The new provisions provide protection for situations in which the renewable energy provider is dissolved, becomes insolvent, and other financial situations that may impact the renewable energy provider's ability to fulfill the standard offer contract.

Sheet No. 8.224 is clarified to indicate that a security deposit is required if the renewable energy provider does not qualify for unsecured credit. This completion security provision is in compliance with Rule 25-17.0832(4), F.A.C.

Economic assumptions are updated on several sheets to reflect current conditions and pricings. Specific items modified include the interest rate to be applied to the repayment account, customer charges to the renewable energy provider, and the adjustment factors for delivery voltage, in Sheets No. 8.236, 8.312, and 8.306 respectively. These modifications comply with Rule 25-17.230, F.A.C., by outlining the utility's obligation to purchase renewable energy from the facility, provide upon request transmission service, and sell energy to the facility as needed.

Sheets No. 8.252 through 8.257 incorporate terms that TECO identifies as standard contract language. They include a requirement that the renewable energy provider is not bankrupt nor are there proceedings pending against it, submitting to the exclusive jurisdiction of

² Order No. PSC-08-0547-TRF-EQ, issued August 19, 2008, in Docket No. 080184-EQ, In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

the courts of Florida and the U.S. District Court in Tampa, and waiving a jury trial in any proceedings relating to this contract.

As required by Rule 25-17.0832(4), F.A.C., the standard offer contracts contain the payment options available to the renewable energy provider, including all financial and economic assumptions necessary to calculate, as well as an example of these calculations. These are updated on Sheets No. 8.406 through 8.436 for the 2012 combustion turbine, and to Sheets No. 8.326 and 8.438 through 8.460 for the 2018 combined cycle.

Several minor modifications to the tariff were also submitted in TECO's petition. Scrivener's errors, subsections re-labeled due to additions, and movement of subsections due to space limitations occurred on several sheets. These include Sheets No. 8.215, 8.216, 8.258, 8.262, and 8.282.

The proposed 2009 standard offer contracts contains a provision giving TECO right of first refusal of tradable renewable energy credits (TRECs). This provision allows TECO to review any bona-fide offers for purchases of TRECs that the renewable generator may receive. TECO is allowed up to five days after its notice of the offer to exercise its right to purchase the TRECs. The renewable provider is unable to finalize any purchase during this timeframe without written consent from TECO.

Rule 25-17.280, F.A.C., provides that all TRECs are the exclusive property of the renewable generator. Given current market conditions, we find that the continuation of the right of first refusal has a negative impact upon the interests of renewable providers. We find that any conditions relating to TRECs would be more appropriately handled through a separately negotiated contract, and not a requirement in a standard offer contract.

Previously we have approved the right of first refusal, and the provision is a component of TECO's previously approved 2008 standard offer.³ However, in a recent case, we found that the interests of the renewable energy provider are negatively impacted by the right of first refusal. We issued an order to this effect, and denied Florida Power & Light Company's tariff with respect to the right of first refusal.⁴ In order to consistently apply this standard to all IOUs, we find it appropriate to deny TECO's standard offer contracts as they contain the provision as well.

In conclusion, we find that TECO's standard offer contracts are in compliance with Rules 25-17.200 through 25-17.310, F.A.C., with the exception of Section 18, the right of first refusal. In order to comply with Rule 25-17.280, F.A.C., TECO shall file within 30 days revised standard offer contracts that excludes the first right of refusal. If the revised tariffs comply with the our decision, Commission staff shall be granted the administrative authority to approve the revised tariffs.

³ Order No. PSC-08-0547-TRF-EQ, issued August 19, 2008, in Docket No. 080184-EQ, In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

⁴ Order No. PSC-09-0394-FOF-EQ, issued June 2, 2009, in Docket No. 080193-EQ, In re: Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the standard offer contracts and associated tariffs submitted for approval by Tampa Electric Company are denied. It is further

ORDERED that Tampa Electric Company shall file within 30 days of June 30, 2009, revised standard offer contracts and associated tariffs, which contain no right of first refusal for renewable energy credits. If they comply with the Commission's decision, Commission staff shall be granted the administrative authority to approve the revised standard offer contracts and associated tariffs. It is further

ORDERED that this docket shall be administratively closed by Commission staff after review and approval of the revised contracts and associated tariffs, if no person whose substantial interests are affected has filed a protest within 21 days of our order. If the standard offer contracts and associated tariffs are administratively approved and a protest is filed within 21 days of the issuance of the order, the tariffs shall remain in effect pending resolution of the protest. Potential signatories to the standard offer contracts should be aware that Tampa Electric Company's tariffs and standard offer contracts may be subject to a request for hearing, and if a hearing is held, may subsequently be revised.

By ORDER of the Florida Public Service Commission this 29th day of July, 2009.



ANN COLE
Commission Clerk

(S E A L)

JEH

DISSENT BY: COMMISSIONER SKOP

COMMISSIONER SKOP, dissenting:

I respectfully dissent with the majority view to the extent that I would hold that the Right of First Refusal provision contained within the TECO proposed 2009 standard offer contract was reasonable, consistent with standard industry practice, and would not negatively impact the

renewable energy provider.⁵ Additionally, a plain reading of Rule 25-17.280, F.A.C., clearly supports the legal conclusion that the TECO Right of First Refusal provision is not prohibited by the rule.⁶ Furthermore, the instant case is readily distinguished from a recent Commission panel decision⁷ which found that the interests of the renewable energy provider were negatively impacted by a right of first refusal, to the extent that the TECO Right of First Refusal provision was of significantly shorter duration.⁸

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 August 19, 2009.

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.

⁵ The Right of First Refusal provision granted TECO a five (5) day period to exercise its right to purchase Tradable Renewable Energy Credits (TRECs) from the renewable energy provider upon the receipt of a bona-fide third party offer to purchase the TRECs from the renewable energy provider.

⁶ Under the plain language of the rule, TRECs are the vested property right of the renewable energy provider and not government incentives.

⁷ Order No. PSC-09-0394-FOF-EQ, issued June 2, 2009, in Docket No. 080193-EQ, In re: Petition for Approval of Renewable Energy Tariff and Standard Offer Contract by Florida Power & Light Company.

⁸ The TECO provision contained a five (5) day period to exercise the right to purchase the TRECs rather than a thirty (30) day period.