

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy
Florida for approval of a standard
offer contract based on a 2007
combined cycle avoided unit.

Docket No. 030866-EQ

Submitted for filing:
August 27, 2003

**PETITION FOR WAIVER OF RULE 25-17.0832(4)(e)5
REQUIRING CLOSURE OF STANDARD OFFER CONTRACT**

Progress Energy Florida, Inc., formerly Florida Power Corporation (“Progress Energy”), pursuant to Section 366.051, F.S., and Rules 25-22.036(4), 25-17.0832(4), and 28-104.002, F.A.C., hereby petitions the Florida Public Service Commission (“the Commission”) for a waiver of the requirement in Rule 25-17.0832(4)(e)5, F.A.C., that the open solicitation period for a utility’s standard offer contract must terminate prior to its issuance of a notice of Request for Proposals (RFP) based on the standard offer contract’s avoided unit. The waiver is sought in order to allow the proposed standard offer contract that is the subject matter of this docket to continue in effect concurrent with Progress Energy’s RFP process based on Hines 4, the proposed standard offer contract’s avoided unit. In support of this petition, Progress Energy submits the following:

1. Progress Energy is a public utility subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S. The Company’s principal place of business is located at 100 Central Avenue, St. Petersburg, Florida 33701.

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2. All notices, pleadings and correspondence required to be served on the petitioner should be directed to:

James A. McGee, Esquire
Post Office Box 14042
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For express deliveries by private carrier, please use the address in paragraph 1 above.

Background

3. By Order No. PSC-99-2507-S-EU, issued December 22, 1999 in Docket No. 981890-EU, the Commission accepted the proposal of the three Peninsular Florida IOUs to voluntarily adopt a 20% reserve margin planning criterion, effective with the summer of 2004. The Company's initial response to this increased reserve margin planning criterion was to accelerate the planned in-service date of its 500 MW Hines 2 combined cycle unit by one year to December 2004. As a part of the planned acceleration of Hines 2, the Company filed a standard offer contract based on Hines 2 as the avoided unit and requested a waiver of Rule 25-17.0832(4)(e)5 to allow the standard offer contract's open solicitation period to run concurrent with the RFP process for Hines 2 and thereby avoid adversely impacting the unit's in-service schedule. The Commission approved the requested waiver in Order No. PSC-00-0504-PAA-EQ, issued March 7, 2000 in Docket No. 991973-EQ. Thereafter, by Order No. PSC-02-0909-PAA-EQ, issued July 9, 2002 in Docket No. 020295-EQ, the Commission approved a substantially similar waiver requested by the Company for a standard offer contract based on Hines 3.

4. To maintain compliance with the 20% reserve margin planning criterion, Progress Energy's next planned capacity addition, based on a 530 MW Hines 4 self-

build option, is now scheduled for December, 2007. In conjunction with this planned addition, the Company has this day filed a proposed standard offer contract based on Hines 4 as the avoided unit, as well as this petition for a waiver of Rule 25-17.0832(4)(e)5, F.A.C. As with the waivers requested in conjunction with the Hines 2 and 3 standard offer contracts, the instant waiver request is intended to allow the Hines 4 contract's two-week open solicitation period and the RFP process based on the Hines 4 self-build option to run concurrently in order to avoid an adverse effect on the in-service schedule for Progress Energy's next capacity addition.

Criteria for Waiver of Rule 25-17.0832(4)(e)5

5. The subject of this waiver request is Rule 25-17.0832(4)(e)5, F.A.C., which states that:

“Each standard offer contract shall, at minimum, specify:

* * *

5. A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the issuance of timely notice of a Request for Proposals (RFP) pursuant to Rule 25-22.082(3), the utility shall end the open solicitation period.” (Emphasis supplied.)

6. Section 120.542 (2), F.S., provides the following two-prong standard for granting waivers or variances to the requirements of an agency rule:

“Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.” (Emphasis supplied.)

7. Progress Energy submits that the purpose of the underlying statute, Section 366.051, F.S., -- to encourage cogeneration while at the same time protecting ratepayers from potential adverse effects -- will not only be achieved but enhanced by the requested waiver of the rule's standard offer closure provision. Progress Energy further submits that strict adherence to the closure provision would create a substantial hardship on the Company and its customers.

8. The purpose of the underlying statute will be enhanced because the requested waiver will eliminate a limitation on the availability of a standard offer contract to cogenerators. The waiver will enable the standard offer to remain in effect and available to cogenerators while the RFP process is underway, a situation that would be impermissible under the rule sought to be waived. The effect of the waiver on the opportunities otherwise available to cogenerators under literal application of the Commission's rules is therefore expansive rather than restrictive.

9. This favorable effect of the requested waiver on the opportunities of cogenerators is unsurprising when one considers that the rule's standard offer closure provision serves to protect the utilities' interest in conducting the RFP process without the complications and uncertainty associated with an outstanding standard offer.¹ Progress Energy is willing to forego the benefit of the closure provision given the urgency of the current circumstances which, through no fault of the cogenerators, do not permit the opportunity to make the standard offer available to them in advance

¹ The problems associated with an outstanding standard offer were more significant when the closure provision was adopted, before the eligibility for standard offer contracts was limited to small qualifying facilities, as the Commission's rules currently provide.

of the RFP process. The requested waiver fairly accommodates the interests of cogenerators, as well as the broader interest in the timely addition of new generation capacity, since the proposed standard offer contract will be every bit as available to the cogenerators as it would have been if the standard offer had preceded issuance of the RFP.

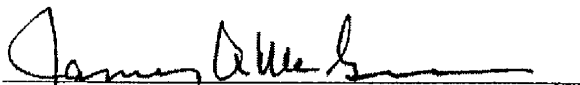
10. To the extent that a literal application of the rule's standard offer closure provision would require a delay in the RFP process until completion of the standard offer's open solicitation period, the rule would create a substantial hardship on Progress Energy and its customers. The timely completion of the RFP process is a key milestone in the schedule to place this major 530 MW capacity addition in service by December, 2007 and available to meet the ensuing 2007/2008 winter peak demand period. Delaying the completion of the RFP process until after the standard offer has been approved and the open solicitation period has expired would significantly impair Progress Energy's ability to satisfy its 20% reserve margin responsibilities within this important reliability time frame. Such an impairment to the reliability of Progress Energy's generation resources would create a real and substantial hardship on the Company and its customers.

11. As noted earlier, in considering the standard offer contracts filed by the Company for Hines 2 and 3, the Commission granted the requested waivers of the rule's standard offer closure requirement and approved an open solicitation period for each of the contracts that ran concurrent with the RFP process conducted for the Hines 2 and 3 self-build options. The factual circumstances in those two cases are substantially the same as those in the present case and, likewise, the policy reasons

and reliability considerations relied on by the Commission in granting the requested waivers there are equally applicable to the waiver requested by this petition.

WHEREFORE, for the above-stated reasons, Progress Energy respectfully requests that the Commission grant this petition for a waiver of the requirement in Rule 25-17.0832(4)(e)5, F.A.C., that would preclude the standard offer contract's open solicitation period occurring concurrently with the RFP process conducted pursuant to Rule 25-22.082(2), F.A.C.

Respectfully submitted,



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