

State of Florida



Public Service Commission

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: December 8, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Haff, Harlow, Wheeler) *MWB 9076*
Office of the General Counsel (Keating) *WCL 298*

WCL 198

RE: Docket No. 050805-EQ – 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. 050806-EQ – Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

Docket No. 050807-EQ – Petition for approval of amended standard offer contract tariff and renewable energy tariff, by Progress Energy Florida, Inc.

Docket No. 050809-EQ – Petition for approval of renewable energy tariff by Florida Public Utilities Company.

Docket No. 050810-EQ – Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

AGENDA: 12/20/05 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 12/13/05 (60-Day Suspension Date) - Waived by the Utilities

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050805.RCM.DOC

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Case Background

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 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), Florida Statutes, provides for the requirements to meet these objectives. In summary:

- a) By January 1, 2006, each investor-owned electric utility, 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.

Staff held a workshop on September 12, 2005, to discuss the implementation of the statute. At the workshop, staff suggested that the statute's requirements could be implemented initially under the Commission's existing rules pertaining to standard offer contracts, Rule 25-17.0832(4-5), Florida Administrative Code. Staff suggested this approach in an effort to meet the January 1, 2006, implementation date contained in the statute. All of the workshop participants agreed that the Commission's standard offer rules could be used to implement the statute. The investor-owned electric utilities also agreed to file petitions for approval of renewable standard offer tariffs by October 14, 2005. Section 366.91(4), Florida Statutes, does not require Commission approval of renewable standard offer tariffs for covered municipal and cooperative utilities; however, JEA and OUC have agreed to file their tariffs for informational purposes prior to the implementation date of January 1, 2006.

Each of the investor-owned utilities timely filed their petitions on October 14, 2005. A table summarizing the major characteristics of each standard offer contract for renewables is shown on the next page. This recommendation will address the requirements of Section 366.91, Florida Statutes, regarding each investor-owned utility's proposed standard offer contract. The Commission has jurisdiction over this matter pursuant to Sections 366.04 through 366.06, Florida Statutes, and Section 366.91, Florida Statutes.

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.

Discussion of Issues

Issue 1: Do the standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC satisfy the requirement of Section 366.91(3), Florida Statutes, to “continuously offer to purchase” energy from renewable facilities?

Recommendation: Yes. However, all proposed standard offer contracts, except for that of FPUC, should be denied, because they fail to include the date on which the contract expires, which is one of the minimum requirements of Rule 25-17.0832(4)(e)4, Florida Administrative Code. FPUC’s contract should be approved because a closure date is not necessary if a utility’s capacity and energy needs are completely met through purchased power agreements. (Haff, Harlow, Wheeler)

Staff Analysis: Pursuant to the Commission’s existing rules, standard offer contracts have been made available under an “open season” concept. The rationale behind this approach was to continue the Commission’s preference for negotiated contracts and have the standard offer contract as a fall back position if negotiations were not fruitful. However, in the recent past, the open season for individual standard offer contracts has been as short as two weeks. The newly enacted renewable legislation requires that standard offer contracts for renewable generators be continuously available.

None of the current filings mention an open season; hence, it is presumed that the standard offer contracts will be offered on a continuous basis until the utility petitions for a change. This appears to meet the requirement, under Section 366.91(3), Florida Statutes, that the utilities must continuously offer to purchase energy from renewable facilities. However, with the exception of FPUC, the contracts do not satisfy Rule 25-17.0832(4)(e)4, Florida Administrative Code, which states that “the date on which the standard offer contract expires” must be included as one of the minimum requirements in a standard offer contract. Without a closure date, potential renewable energy providers have no way of knowing if or when a new standard offer contract will be made available that may be more in line with the needs of the renewable generator. Staff believes that a closure date is important for two reasons: 1) it provides valuable market information to potential renewable energy providers about the availability and timing of a standard offer; and 2) from a utility’s perspective, all standard offers should be closed once the commitment to build an avoided unit has been made to avoid subsidization from oversubscription.

FPUC does not own generation, but rather meets the capacity needs of its ratepayers with purchased power agreements. Accordingly, FPUC’s proposed standard offer contract is based on the utility’s next identifiable purchased power agreement. Staff believes that a closure date is not necessary if a utility’s capacity and energy needs are completely met through power purchase agreements. In this case, there is no potential for subsidization due to oversubscribing a committed avoided unit. Whatever FPUC contracts for under the standard offer contract will offset its other purchased power requirements, which mitigates the potential for subsidization.

However, FPL, PEF, TECO, and Gulf do not meet their total capacity and energy needs solely through purchased power agreements. Self-owned or affiliated generating units meet most of the needs of these utilities. Contracted capacity under the standard offer contract will not

offset the need for the avoided unit, thus leaving the potential for subsidization due to oversubscribing a committed avoided unit. Therefore, staff believes a closure date for standard offer contracts is necessary.

Staff recommends that all proposed standard offer contracts, except for that of FPUC, should be denied. The Commission has two options in directing the utilities to refile their standard offer contracts for renewable energy providers.

Option 1: The Commission could direct the 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 the statute, staff believes that when one renewable standard offer contract is closed, utilities must make available a new contract based on the next identified generating unit. This option is similar to how all utilities currently administer standard offer contracts. By offering sequential contracts, utilities can avoid committing to a future avoided unit far in advance of the estimated in-service date.

Option 2: The Commission could require the utilities to file standard offer contracts based on each unit shown in the utility's Ten-Year Site Plan. A renewable generator could choose which standard offer best fit its particular needs. Utilities should update the portfolio of contracts each April 1 with the filing of the Ten-Year Site Plan for review. This option would allow renewable energy providers to consider all aspects of a utility's proposed generation expansion plan, including FPL's proposed coal units. The higher capacity payments associated with coal units could benefit renewable energy providers by ensuring them a higher fixed revenue stream. Renewables would be afforded the opportunity to determine what is in their best interests, the higher upfront capital costs of a coal unit and lower ongoing fuel costs, or the lower upfront capital costs of a gas-fired unit with higher ongoing fuel costs. This approach does 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. This risk must be weighed against the Legislature's intent to promote renewable resources.

Issue 2: Are the standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC based on the utility's full avoided cost, pursuant to Section 366.051, Florida Statutes?

Recommendation: Yes, with the exception of Gulf. Gulf's standard offer contract is based on a hypothetical unit that is not currently planned for construction. Gulf should be directed to refile its standard offer contract based on its next identified planned generating unit. (Haff, Harlow, Wheeler)

Staff Analysis: Section 366.051, Florida Statutes, defines avoided costs as:

[t]he incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. The Commission may use a statewide avoided unit when setting full avoided capacity costs.

Initially, the Commission relied on a statewide avoided cost concept. However, difficulties with allocating the costs of the statewide avoided unit to individual utilities caused the Commission to change its procedure in the late 1980's. Under existing Commission rules, avoided costs are defined as the utility's next identified generating unit.

FPL's proposed renewable standard offer contract is priced based on a 157 MW combustion turbine (CT) unit with an in-service date of June 2008. The anticipated construction start date for the unit is June 2006. This unit is not identified in FPL's current Ten-Year Site Plan, which identifies a June 2009 combined cycle (CC) unit as the next identified generating unit. However, FPL identified the need for the 2008 CT during the generation expansion planning process for FPL's upcoming 2006 Ten-Year Site Plan. FPL stated that it now needs the 2008 CT to meet higher than anticipated load growth. FPL's proposed contract has a starting capacity charge of \$5.97 per kW/month. The avoided unit cost parameters appear to be higher than expected for a CT unit, and the resulting capacity payments appear high. FPL's capacity payments for a CT unit are higher than those of PEF's more capital-intensive CC unit.

PEF's proposed renewable standard offer contract is priced based on a 528 MW combined cycle unit with an in-service date of December 2009. The anticipated construction start date for the unit is May 2007. This unit is identified in PEF's current Ten-Year Site Plan. PEF's proposed contract has a starting capacity charge of \$5.06 per kW/month. The avoided unit cost parameters appear to be reasonable for a CC unit, and the resulting capacity payments are appropriate.

TECO's proposed renewable standard offer contract is priced based on a 180 MW combustion turbine unit with an in-service date of January 2009. The anticipated construction start date for the unit is July 2007. This unit is identified in TECO's current Ten-Year Site Plan. TECO's proposed contract has a starting capacity charge of \$3.12 per kW/month. The avoided unit cost parameters appear to be reasonable for a CT unit, and the resulting capacity payments are appropriate.

Since FPUC does not own any generation, FPUC's proposed standard offer contract is based upon the utility's next identifiable purchased power agreement. FPUC's proposed contract has starting capacity charges of \$7.10 per kW/month for Marianna customers and \$6.00 per kW/month for Fernandina Beach customers.

Gulf's proposed renewable standard offer contract is priced based on a 314 MW hypothetical combustion turbine unit with an in-service date of June 2009. This unit is not currently planned for construction. If the unit were an actual planned generating addition, the anticipated construction start date for the unit would be December 2007. Gulf's petition states that the 2009 CT is being used for pricing purposes only. Gulf's current Ten-Year Site Plan identifies a June 2012 combustion turbine unit as the next identified generating unit. Gulf's proposed contract has a starting capacity charge of \$5.39 per kW/month. The avoided unit cost

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parameters appear to be higher than expected for a CT unit, and the resulting capacity payments appear high. However, the unit parameters are generic values used by Southern Company to perform generation expansion planning for all its members. Regardless, because Gulf's proposed standard offer contract is not based on the next avoided generating unit in the utility's expansion plan, Gulf should be directed to refile its standard offer contract based on its next identified generating unit.

Issue 3: Do the minimum terms contained in the standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC comply with Section 366.91(3), Florida Statutes?

Recommendation: Yes, with the exception of FPL. FPL's standard offer contract included the period for early capacity payments as part of the minimum ten-year term, which does not comply with Rule 25-17.0832(4)(e)7, Florida Administrative Code. FPL should be directed to refile its standard offer contract based on a ten-year term starting with the in-service date of the avoided unit. (Haff, Harlow, Wheeler)

Staff Analysis: Section 366.91(3), Florida Statutes, states, "[E]ach contract must contain a contract term of at least ten years." Rule 25-17.0832(4)(e), Florida Administrative Code, describes the minimum requirements for standard offer contracts. Subsection (7) states: "Firm capacity and energy shall be delivered, at a minimum, for a period of five years, commencing with the anticipated in-service date of the avoided unit specified in the contract." (Emphasis added.) Since the Rule directs investor-owned utilities to use the in-service date as the starting point for standard offer contracts, staff believes it is appropriate for the term of a renewable standard offer contract to start with the in-service date of the avoided unit. While the Statute requires a longer minimum term than the Rule, the starting point should remain the same. 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. Therefore, the minimum term specified in each utility's standard offer contract should be ten years, per the Statute, and commence with the anticipated in-service date of the avoided unit specified in the contract, per rule. All utilities meet these requirements with the exception of FPL.

FPL's proposed standard offer contract is based upon the utility's next identifiable generating unit, a 2008 CT. Therefore, the minimum term should be from 2008 to 2018. If a renewable generator elects to take early capacity payments, FPL's contract specifies that these payments can begin no sooner than June 1, 2006. FPL's proposed minimum term is ten years, including early capacity payments, which could expire as early as 2016. FPL's proposal would actually reduce the present value of payments to the renewable generator if early capacity payments were elected. Staff recommends that FPL be directed to refile its standard offer contract based on a ten-year term starting with the in-service date of the avoided unit.

Issue 4: Do the subscription limits contained in the standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC comply with Section 366.91(1), Florida Statutes?

Recommendation: Only the subscription limits proposed by FPL and FPUC comply with the intent of Section 366.91(1), Florida Statutes, to encourage the development of renewable resources. The standard offer contracts proposed by PEF, TECO, and Gulf do not appear to be consistent with the intent of the statute, because they have subscription limits of only 10 to 20 MW. Such small subscription limits may discourage potential developers of renewable energy projects from signing these standard offer contracts. PEF, TECO, and Gulf should be directed to refile standard offer contracts with subscription limits equal to the capacity of their next planned avoided units. (Haff, Harlow, Wheeler)

Staff Analysis: In recent years, the Commission has approved standard offer contracts with subscription limits because there traditionally has been insufficient response to the contracts to fully avoid or defer construction of the avoided unit. In approving these lower subscription limits, the Commission's aim was to limit the "subsidy" that it determined would be paid to cogenerators for their capacity and energy while the utility simultaneously built the avoided unit on which these payments were based.

With the passing of Section 366.91, Florida Statutes, in 2005, the Legislature placed special emphasis on encouraging the development of renewable energy in Florida. It is inconsistent with the Legislature's intent to place a small subscription limit of 10 MW or 20 MW on a contract that is based on avoided units ranging in size from 157 MW to 528 MW. Such a small subscription limit may hinder opportunities for potential developers of renewable energy projects to sign the standard offer contract. Therefore, staff recommends that the subscription limit of each utility's standard offer contract for renewable generators should equal the size of the avoided unit.

FPL's avoided unit is a 157 MW combustion turbine unit with an in-service date of June 2008. The subscription limit of FPL's standard offer contract is also 157 MW. As such, staff believes that FPL's standard offer contract satisfies the Legislature's intent to encourage renewable energy projects.

FPUC's standard offer contract does not have a subscription limit. FPUC does not have an avoided unit because FPUC does not currently, or plan to, own any of its own generation. As a result, FPUC's proposed standard offer contract is based upon the utility's next identifiable purchased power agreement. Staff believes FPUC's standard offer contract satisfies the Legislature's intent to encourage renewable energy projects.

PEF's avoided unit is a 528 MW combined cycle unit with an in-service date of December 2009. PEF proposed a subscription limit of 20 MW on its standard offer. Staff believes that PEF's standard offer contract does not satisfy the Legislature's intent to encourage renewable energy projects. PEF should be directed to eliminate the 20 MW subscription limit, and refile its standard offer contract with a subscription limit equal to the 528 MW capacity of its next planned avoided unit.

TECO's avoided unit is a 180 MW combustion turbine unit with an in-service date of January 2009. TECO proposed a subscription limit of 10 MW on its standard offer. Staff believes that TECO's standard offer contract does not satisfy the Legislature's intent to encourage renewable energy projects. TECO should be directed to eliminate the 10 MW subscription limit, and refile its standard offer contract with a subscription limit equal to the 180 MW capacity of its next planned avoided unit.

Gulf's avoided unit is a hypothetical 314 MW combustion turbine unit with an in-service date of June 2009. Gulf proposed a subscription limit of 10 MW on its standard offer. Staff believes that Gulf's standard offer contract does not satisfy the Legislature's intent to encourage renewable energy projects. Gulf should be directed to eliminate the 10 MW subscription limit, and refile its standard offer contract with a subscription limit equal to the capacity of its next planned avoided unit.

Issue 5: Should PEF's separate petition for approval of a standard offer contract be approved?

Recommendation: No. PEF's regular standard offer contract still contains provisions allowing renewable resources and solid waste facilities to sign the contract. This duplication could cause unnecessary confusion for renewable energy providers in choosing the appropriate standard offer contract. (Haff, Wheeler)

Staff Analysis: Pursuant to the 1978 federal Public Utilities Regulatory Policies Act (PURPA), standard rates must be made available for fossil-fueled qualifying facilities less than 100 kilowatts (0.1 MW) in size. Florida law requires the Commission to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. Both the federal and state requirements were implemented by the Commission through its adoption of the standard offer contract process in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file with the Commission a tariff and a standard offer contract for the purchase of firm capacity and energy from small qualifying facilities. Larger qualifying facilities and other non-utility generators may participate in a utility's Request for Proposal process, pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, PEF proposes a new standard offer contract based on a 20 MW portion of PEF's next identified generating unit, a 528 MW combined cycle unit at the Hines site. The avoided unit is scheduled to enter commercial service by November 2009. The cost parameters for the avoided unit appear to be reasonable for a combined cycle unit, and the resulting capacity payments are appropriate.

The delivery of firm capacity and energy would begin on or before January 1, 2009, and extend for five years. PEF has proposed an associated tariff, COG-2 (firm capacity and energy).

This tariff would expire on the earlier of the date the subscription limit of 20 MW is fully subscribed, or two weeks after approval of this standard offer by the Commission.

Prior to the Florida Legislature's 2005 enactment of Section 366.91, Florida Statutes, to promote the development of renewable energy resources, renewable energy facilities could sign a regular standard offer contract such as the one proposed by PEF. Because staff and the utilities agreed that the Commission's existing rule for standard offer contracts, Rule 25-17.0832(4-5), Florida Administrative Code, could be used to implement Section 366.91, Florida Statutes, staff expected that the new standard offer contracts for renewables would look substantially similar to regular standard offer contracts offered in past years, except that the renewables contracts would contain the additional requirements of Section 366.91, Florida Statutes. However, PEF's regular standard offer contract still contains provisions allowing renewable resources and solid waste facilities to sign the contract. This duplication could cause unnecessary confusion for renewable energy providers in choosing the appropriate standard offer contract. PEF should be required to refile its standard offer contract to remove references to renewable energy providers and solid waste facilities. For this reason, staff recommends that PEF's new standard offer contract and associated tariffs be denied.

Issue 6: Should these dockets be closed?

Recommendation: If the Commission approves staff's recommendation to approve FPUC's proposed standard offer contract and no person whose substantial interests are affected requests a hearing to address this matter, then Docket No. 050809-EQ should be closed. FPUC's tariff should become effective on January 1, 2006. If the Commission approves staff's recommendations to deny the other proposed standard offer contracts, Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, and 050810-EQ should remain open to allow FPL, PEF, Gulf, and TECO to file revised tariffs consistent with the Commission's vote. (C. Keating)

Staff Analysis: If the Commission approves FPUC's proposed standard offer contract, and no protest to that action is filed by a person whose substantial interests are affected within 21 days of the issuance of the order, Docket No. 050809-EQ should be closed. FPUC's proposed tariff and standard offer contract should become effective January 1, 2006. Staff notes that the 21-day time frame for requesting a hearing on this matter, which starts upon issuance of the Commission's order, will not expire until after January 1, 2006. Thus, potential signatories to the standard offer contract should be aware that FPUC's tariff and standard offer contract may be subject to a request for hearing made within 21 days of the issuance of the Commission's order, and, if a hearing is held, may subsequently be revised.

If the Commission approves staff's recommendation to deny the other proposed standard offer contracts, Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, and 050810-EQ should remain open to allow Gulf, FPL, PEF, and TECO to refile their standard offer contracts and

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associated tariffs. FPL, PEF, Gulf, and TECO should be required to file revised tariffs and standard offer contracts consistent with the Commission's vote no later than December 28, 2005, so that staff may review and administratively approve the revised filings prior to January 1, 2006. Provided that FPL, PEF, Gulf, and TECO file revised tariffs and standard offer contracts and staff determines that the revisions are consistent with the Commission's vote prior to January 1, 2006, those utilities' revised tariffs and standard offer contracts should become effective January 1, 2006. For the reasons stated above, 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 the Commission's order and, if a hearing is held, may subsequently be revised.