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Public Service Commission

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

DATE: November 21, 2006

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

FROM: Division of Economic Regulation (Baxter)
Office of the General Counsel (Brown)

RE: Docket No. 060480-EI – Petition by Progress Energy Florida, Inc. for approval of modification and extension of experimental Premier Power Service Rider, Rate Schedule PPS-1, and for approval of revised Premier Power Service Contract.

AGENDA: 12/05/06 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 02/26/07 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060480.RCM.DOC

Case Background

On April 12, 2006, Progress Energy Florida (PEF) filed a petition for approval of modifications and extension of an optional Premier Power Service Rider (PPS), rate schedule PPS-1. On September 1, 2006, the Commission in Order No. PSC-06-0739-PCO-EI, suspended the proposed changes to PEF's Premier Power Service tariff.

The Premier Power Service tariff is an optional experimental pilot program currently being offered to PEF general service customers (GS-1, GST-1, GSD-1, GSDT-1, and GSLM-1) under which PEF owns, operates and maintains back-up generation with a minimum installed capacity of 200 kW on the customer's premise. The Rider is designed for customers such as hospitals, municipal water and waste-water facilities, and financial institutions that require

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improved service reliability but wish to avoid ownership and maintenance of back-up generation. The Premier Power Service Rider was approved by the Commission in Order No. PSC-01-1648-TRF-EI, issued on August 13, 2001, in Docket No. 010373-EI, In Re: Petition for Approval to Provide Optional Premier Power Service Ricer, Rate Schedule PPS-1, for General Service Customers by Florida Power Corporation.

The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.03, 366.04, 366.05, and 366.06.

Discussion of Issues

Issue 1: Should the Commission approve Progress Energy Florida, Inc.'s proposed modifications and revisions to its Premier Power Service Rider (PPS-1) tariff?

Recommendation: Yes. (Baxter, Brown)

Staff Analysis: On June 28, 2006, Progress Energy Florida, Inc. (PEF) filed a petition for Commission approval of modifications and revisions to its experimental Premier Power Service Rider (PPS-1) tariff. The Commission approved the Premier Power Service Rider on an experimental basis in Docket 010373-EI.

Under the PPS-1 Rider, a customer who requires or desires an uninterrupted supply of electricity has the option of contracting with PEF to install, operate, and maintain backup generation on the customer's premises. Alternatively, the customer could purchase, install, operate, and maintain backup generation on its own. Customers who request service under the rider are required to execute a Premier Power Service contract (contract) with a minimum term of 10 years. The contract contains a customer-specific monthly charge that reflects the total cost incurred by PEF to provide the generator. Specifically, the charge reflects PEF's installed cost of the generator plus expenses, including fuel, O&M, and depreciation. The costs are levelized to provide for equal monthly payments over the term of the contract.

Extension of availability. PEF proposes to extend the initial 5-year experimental period during which customers can request service under the PPS-1 rider by another 5 years. This change would make the option available into 2011. PEF will continue to submit annual reports to the Commission regarding participation levels and the amount of generation installed. At least 60 days prior to the expiration of the rider, PEF will submit a petition to the Commission to extend or modify the rider.

There are two customers currently taking service under the rider. The annual administrative cost to the company of offering the PPS-1 rider is $18,800. PEF also proposes lowering the minimum installed kW threshold in an attempt to increase the number of customers to fifteen, which PEF asserts will make the program more cost effective. Previously, a customer wishing to take service under the PPS-1 rider would have been required to install a minimum of 200 kW of standby generation. PEF, responding to customer inquiries, has proposed to lower the minimum installed capacity to 50 kW. By spreading the $18,800 annual program cost over all PPS-1 installations, the cost to be recovered from each customer goes down as the number of customers increases. In response to staff inquiries, PEF stated that it currently anticipates one extra customer per year signing up with the revised threshold.

Fuel Cost. The cost of fuel in the monthly charge represents the cost to run the generator for a certain number of hours per year. Previously, the fuel charge was based on an estimate of 100 hours of generator run time per year. In response to staff inquiries, PEF provided data showing that the actual run time per year from 2002 through 2006 was an average of 38 hours. Based on the actual run time and the desire to prudently plan for another year similar to 2004 which had multiple major interruptions (and an average of 76 hours of generator run time), PEF has proposed to change the amount of the generator run time embedded within the fuel cost to 50 hours per year, lowering the monthly charge.

In the event that PEF dispatches a generator in excess of 50 hours, PEF states that it will not recover the cost of additional fuel through the Fuel and Purchased Power Cost Recovery clause (fuel clause). Any additional fuel purchased for dispatch will be booked to FERC expense account 587 (customer installation expense) and will not impact other ratepayers.

Contract Modifications. In its petition, PEF has requested that the PPS contract be modified substantially. Many of the proposed modifications specify the customer's responsibility for damage or losses to the PEF-installed generation equipment. For example, paragraph 5 of the revised contract provides that, in addition to being responsible for damage to PEF-owned equipment that is caused by the customer or its agents, customers will also be responsible for damage caused by "any other cause not due to the fault or neglect of the Company . . ." In response to a staff data request, PEF stated that this provision was added to clarify the customer and company's responsibilities regarding issues of maintenance and control. PEF explained that because the customer will have control and access to the site where the facilities are located, it will not only be in a better position to secure and protect the facilities but will be the only entity with the right to do so.

PEF has proposed to add a new "Force Majeure" provision in paragraph 12 of the contract. After delineating the types of events that may trigger this provision, which excuses both parties from liability for failure to perform in the defined force majeure situations (except for payment of sums due from the customer to Progress), the proposed language states that "[t]o the extent the force majeure event causes a delay or an increase in costs or expenses to the Company, the Customer shall be liable to the Company for all increased costs and expenses incurred by the Company as a result of such force majeure event." In response to a staff data request, PEF stated that recent weather history and acts of terrorism have required most force majeure provisions to be revised so that they can be effective as intended by the parties to a contract. Noting that the generating facilities provided under the PPS-1 Rider are optional and not a necessity, PEF asserted that the customer receiving the benefits of the PPS-1 Rider should be responsible for increased costs and expenses that result from a force majeure event.

PEF has requested that the contract include a new dispute resolution provision (paragraph 15) and a provision related to modification of the contract (paragraph 17). After discussions with staff, PEF agreed to modify the language in these provisions to reflect that disputes properly within the Commission's jurisdiction may be brought before the Commission and to reflect that Commission approval would be required for any modification of the contract. With these changes, staff finds these provisions of the proposed contract to be reasonable.

Although the new provisions in PEF's proposed PPS contract place most of the risk of unforeseen, additional costs and expenses on the customer who chooses to take service under the PPS-1 Rider, the customer will incur no more risk in that regard than it would have incurred if it had chosen to supply its own backup generation. The PPS-1 Rider is purely optional to the customer. Many of the changes PEF proposes to the PPS-1 tariff will enable the service to be offered to a larger number of customers. Further, customers eligible for service under the PPS-1

Rider will be commercial and industrial customers, with the means to review and fully understand the costs and expenses for which they may be responsible. Accordingly, staff believes that these new provisions are reasonable and recommends the revisions to PPS-1 tariff be approved effective December 5, 2006.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on December 5, 2006. If a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect with any increase held subject to refund pending resolution of the protest. If no timely protest is filed, this docket should be closed upon issuance of a consummating order. (Brown)

Staff Analysis: If Issue 1 is approved, this tariff should become effective on December 5, 2006. If a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect with any increase held subject to refund pending resolution of the protest. If no timely protest is filed, this docket should be closed upon issuance of a consummating order.