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# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** September 17, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Hartman) *WKS*  
Division of Economic Regulation (Kummer)  
Office of Strategic Analysis and Governmental Affairs (Sickel) *JLS DS RLH AA*

**RE:** Docket No. 080501-EI – 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. *(hw)*

**AGENDA:** 09/29/08 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** October 13, 2008 (Rule Waiver Deadline)

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\080501.RCM.DOC

### Case Background

Since January 1, 2006, each electric investor-owned utility 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 costs 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.

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On April 1, 2008, Progress Energy Florida, Inc. (PEF) filed its petition requesting approval of a standard offer contract and associated tariffs based on the Ten-Year Site Plan for 2008-2017.<sup>1</sup> Pursuant to PEF's expansion plan, a single type of fossil fueled unit was available to serve as an avoided unit: a combined cycle unit to be located at Suwannee which was expected to come into service in June 2013.

On July 17, 2008, Commission staff filed its recommendation for approval of PEF's standard offer contract and associated tariffs in Docket No. 080187-EQ. The recommendation was scheduled to be considered by the Commission at the July 29, 2008, Agenda Conference. On July 15, 2008, PEF filed the petition for rule waiver and approval of standard offer contract which opened this docket. In this filing, the company explains that a request for proposals (RFP) has been issued for the Suwannee combined cycle unit. PEF also indicated that it does not have an upcoming planned purchase in its Ten-Year Site Plan. Citing the requirement of Rule 25-17.250(1) and (2)(a), F.A.C., that each standard offer contract shall remain open until an RFP has been issued for the avoided generating unit, PEF requests a waiver of rule in order to continue to use the costs associated with the Suwannee unit as the full avoided cost basis for the standard offer contract. Further, the July 15, 2008, filing also includes updated costs aligned with the costs in the RFP.

On July 23, 2008, PEF filed a motion to withdraw its initial standard offer contract and COG-2 rate schedule that had been filed on April 1, 2008, in Docket No. 080187-EQ. Accordingly, staff withdrew the recommendation that had been filed in that docket.<sup>2</sup>

This recommendation will address the petition for waiver of rules, as well as the second standard offer contract and associated tariffs filed for approval by PEF on July 15, 2008. The Commission has jurisdiction over this matter pursuant to Sections 120.542, 366.04 through 366.06, 366.91, and 366.92, F.S.

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<sup>1</sup> See Docket No. 080187-EQ, In re: Petition for approval of amended standard offer contract and COG-2 rate schedule, by Progress Energy Florida.

<sup>2</sup> Staff will file a separate recommendation addressing the withdrawal of PEF's filing in Docket No. 080187-EQ.

### Discussion of Issues

**Issue 1:** Should the Commission grant PEF's petition for a waiver of Rules 25-17.250(1) and (2)(a), F.A.C.?

**Recommendation:** Yes. PEF's petition for a waiver of Rules 25-17.250(1) and (2)(a), F.A.C., should be granted. (Hartman, Sickel)

**Staff Analysis:** Rules 25-17.250(1) and (2)(a), F.A.C., require each electric investor-owned utility (IOU) to file with the Commission by April 1 of each year a standard offer contract for the purchase of firm capacity and energy from renewable generating facilities and small qualifying facilities with a design capacity of 100 kW or less. The standard offer contracts reflect each IOU's next avoided unit shown in its most recent Ten-Year Site Plan. The rules further require that "[e]ach investor-owned utility with no planned generating unit identified in its Ten-Year Site Plan shall submit a standard offer based on avoiding or deferring a planned purchase."

Rule 25-17.250(a), F.A.C. directs that in order to ensure that each IOU continuously offers a contract to producers of renewable energy, each standard offer contract shall remain open until: 1) a request for proposal (RFP) is issued for the utility's planned generating unit, or 2) the IOU files a petition for a need determination or commences construction for generating units, or 3) the generating unit upon which the standard offer contract was based is no longer part of the IOU's generation plan, as evidenced by a petition to that effect filed with the Commission or by the utility's most recent Ten-Year Site Plan.

In its petition, PEF asks for a waiver of the rules because it does not have an avoided unit for purposes of a standard offer contract, nor does it have a planned capacity purchase for purposes of a standard offer contract in its Ten-Year Site Plan. PEF states that it currently does not have an avoided unit for purposes of a standard offer contract because it issued a RFP for the 2013 Suwannee combined cycle unit, and does not have any other units in its ten year site plan that qualify for use as an avoided unit. Instead, PEF requests that the Commission allow it to use the Suwannee unit as a proxy avoided unit, with updated pricing, in connection with its standard offer contract.

Pursuant to 120.542(6), F.S., PEF's request for waiver of rules was submitted to Florida Administrative Weekly for publication. Interested parties had until August 22, 2008, to submit written comments. No public comment was received.

Section 120.542, F.S., authorizes the Commission to grant variances or waivers to the requirements of its rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

The underlying statutory provision pertaining to the above-mentioned rules is Section 366.91, F.S. Section 366.91(1), F.S., states:

The 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), F.S., enumerates requirements to promote the development of renewable energy resources. In summary:

- a) By January 1, 2006, each investor-owned electric utility (IOU) 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 believes a waiver of the rules is necessary for PEF to determine standard offer contract payments for capacity and energy. After a RFP is issued for an avoided unit, the rules direct a utility to base the standard offer contract payments on the *next* avoidable unit or deferred purchase. However, in this case, there are none. Staff believes it is appropriate for PEF to determine standard offer contract payments for capacity and energy based on the Suwannee Unit as it remains an avoidable unit, and there are no next avoidable units or deferred purchases. Staff believes the Suwannee Unit is still an avoidable unit because the RFP for the Suwannee Unit was released June 2008 and is not yet concluded. A waiver of the rules allows the Commission to continue promoting the development of renewable energy resources in Florida because it allows PEF to offer an economically feasible standard offer contract for renewable energy.

Staff believes PEF has demonstrated it will suffer a substantial hardship if the provisions of Rules 25-17.250(1) and (2)(a), F.A.C. are strictly applied, and therefore, has provided a basis for a waiver of the rules.

**Issue 2:** If the waiver of rules is granted, are the standard offer contract and its associated tariffs filed by Progress Energy Florida, Inc. (PEF) on July 15, 2008, in compliance with Rules 25-17.200 through 25-17.310, F.A.C.?

**Recommendation:** Yes. Assuming the waiver of rules is granted, the standard offer contract and its associated tariffs proposed by PEF are in compliance with Rules 25-17.200 through 25-17.310, F.A.C., and therefore should be approved and made effective as of the date of the Commission's vote. (Kummer, Sickel)

**Staff Analysis:** Rule 25-17.250(1), F.A.C., requires PEF 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 kW or less. In response to this requirement, on April 1, 2008, PEF filed a standard offer contract based on the Suwannee Unit 4, a combined cycle unit planned to begin commercial operation by June 2013. However, the company issued a RFP for Suwannee Unit 4 on June 12, 2008.

PEF explains that this second standard offer contract with associated tariffs is identical to the first standard offer contract and associated tariffs filed on April 1, 2008, in every respect except that avoided costs for the 2013 Suwannee combined cycle unit have been updated to reflect PEF's most recent calculation. The cost increase from the first contract of April 1, 2008, to the second contract of July 15, 2008, is significantly greater than would have been typically expected over a period of a few months. PEF explains that the revised avoided costs include three major modifications. First, the recent estimate of costs reflects a better defined scope that was utilized in the RFP process, as compared with the process utilized for the estimate in the Ten-Year Site Plan. Second, over the time period since the estimate for the Ten-year Site Plan, the prices for equipment, labor and material have escalated significantly. Third, power projects and other construction projects are straining the capacity of manufacturing and construction facilities on a world-wide scale. This is reflected in an increase in the contingency factor used in the later estimate.

Tariff Sheet No. 9.415 provides for a contract term extending through May, 2023. As required by Rule 25-17.250(3), F.A.C., this term includes ten years of operation by the avoided unit.

The contract offers capacity payments that are in compliance with requirements of Rule 25-17.250(4), F.A.C. Table 3 on Tariff Sheet No. 9.455 shows options that are available to the renewable generator. The choices include payment streams that begin when the renewable capacity is available, or when the avoided unit goes into service.

If energy payments begin prior to the avoided unit in-service date, the rates may be based on PEF's actual hourly avoided energy costs, or the rates may be based on PEF's annual projection of system incremental costs, excluding economy sales. Energy payments made after the in-service date of the avoided unit are calculated using each hour's firm energy rate. These options are described on Tariff Sheet No. 9.456, and meet the requirements of Rule 25-17.250(6), F.A.C.

Tariff Sheet Nos. 9.439 and 9.440 provide for either party to reopen the contract under specific conditions. If revisions to environmental laws or other regulations will result in a change in the cost of the avoided unit beyond a threshold amount, then the impacted party may request the recalculation of avoided cost. The threshold of the incremental change in cost is to be mutually agreed and included as part of the contractual arrangements. This provision satisfies the requirements of Rule 25-17.270, F.A.C.

Ownership of the environmental attributes associated with electric generation under the contract remains with the renewable generator. Tariff Sheet No. 9.417 gives PEF first right of refusal, and sets a threshold for the selling price to any other buyer. The arrangements are in accord with Rule 25-17.280, F.A.C.

The terms and operating provisions of the 2008 Renewable Standard Offer Contract submitted by Progress Energy Florida conform to all requirements of Rules 25-17.200 through 25-17.310, and 25-17.0832(4), F.A.C. The contract provides flexibility in the arrangements for payment so that a developer of renewable generation may select the payment stream best suited to his financial needs. At the same time, security provisions of the contract provide protection for PEF's ratepayers.

In conclusion, staff believes that PEF's proposed standard offer contract is in compliance with Rules 25-17.200 through 25-17.310, F.A.C. [with the exception of the waiver of Rule 25-17.250(1) and (2)(a), F.A.C., discussed in Issue 1], and should therefore be approved and made effective as of the date of the Commission's vote.

**Issue 3:** Should this docket be closed?

**Recommendation:** If the Commission approves staff's recommendation to approve the proposed Standard Offer Contract and tariffs filed by PEF, the tariffs should be made effective September 29, 2008. If no person whose substantial interests are affected requests a hearing to address this matter, then Docket No. 080501-EI should be closed. If a protest is filed within 21 days of the issuance of the Commission's order, the tariffs should remain in effect pending resolution of the protest. Potential signatories to the standard offer contract should be aware that PEF's tariffs and standard offer contracts may be subject to a request for hearing, and if a hearing is held, may subsequently be revised. (Kummer, Hartman)

**Staff Analysis:** If the Commission approves staff's recommendation to approve the proposed Standard Offer Contract and tariffs filed by PEF, the tariffs should be made effective September 29, 2008. If no person whose substantial interests are affected requests a hearing to address this matter, then Docket No. 080501-EI should be closed. If a protest is filed within 21 days of the issuance of the Commission's order, the tariffs should remain in effect pending resolution of the protest. Potential signatories to the standard offer contract should be aware that PEF's tariffs and standard offer contracts may be subject to a request for hearing, and if a hearing is held, may subsequently be revised.