State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER ● 2540 SHUMARD OAK BOULEVARD
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 Strategic Analysis and Governmental Affairs (Sickel, Crawford, Ellis)
Office of the General Counsel (Hartman)

RE: Docket No. 080512-EQ – Petition for approval of a negotiated power purchase contract for purchase of firm capacity and energy with Vision / FL, LLC, by Progress Energy Florida, Inc.

AGENDA: 09/29/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\SGA\WP\080512.RCM.DOC

Case Background

On July 25, 2008, Progress Energy Florida (PEF or company) filed a Petition requesting approval of a contract (contract) for the purchase of firm capacity and energy between Vision / FL, LLC (Vision) and PEF. The contract incorporates the provisions of the standard offer contract that was filed by PEF on July 15, 2008, but has been filed as a negotiated contract since the contract at issue in Docket No. 080501-EQ has not yet been approved.[1]

[1] See Docket No. 080501-EI, In Re: 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.

The contract is based on Vision constructing, owning, and operating a closed-loop biomass electric generating facility (Facility) located in Osceola County, Florida. The Facility will include an area greater than 25,000 acres used by Vision for production of sweet sorghum as a biomass fuel crop. The crop will be continuously harvested for conversion into ethanol, and the residual bagasse is to be used as fuel for a steam boiler producing up to 50 megawatts (MW) gross output. Vision proposes to sell 40 MW of firm capacity and associated energy from the Facility to PEF for a term of 25 years beginning January 1, 2010.

In addition to the purchase of capacity and energy, the contract provides an option for the purchase by PEF of “Renewable Attributes,” such as Renewable Energy Credits (RECs) associated with the generation of electricity from the Facility.

This recommendation addresses PEF's petition for approval of the contract with Vision. The Commission has jurisdiction over this matter pursuant to Sections 366.051 and 366.81, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve for purposes of cost recovery the proposed contract between Progress Energy Florida (PEF) and Vision / FL, LLC (Vision), for purchase of 40 MW of renewable firm capacity and energy?

Recommendation: Yes. Payments for capacity and energy are not expected to exceed PEF's avoided costs. The performance security required in the contract sufficiently protects ratepayers in the event of default. (Sickel, Ellis)

Staff Analysis: Vision proposes to sell firm capacity and energy from a biomass facility to PEF for a term from January 1, 2010, through December 31, 2034, with a committed capacity of 40 MW. Negotiations between PEF and Vision were based on the 1,159 MW Combined Cycle plant, Suwannee River No. 4, (the Suwannee Unit) scheduled to be in-service in 2013, as reflected in PEF's 2008 Ten-Year Site Plan. PEF's 2008 Standard Offer Contract filed on April 1, 2008, designated the Suwannee Unit as the avoided unit.[2] On July 15, 2008, PEF filed a petition for rule waiver and approval of standard offer contract.[3] In this filing, the company explains that a request for proposals (RFP) has been issued for the Suwannee Unit. Energy and capacity payments in the Vision contract are updated and are generally in accord with the revised standard offer filed on July 15, 2008.

As required by Rule 25-17.0832(3), Florida Administrative Code (F.A.C.), review of a negotiated firm capacity contract, staff is required to consider the following: the need for power, the cost-effectiveness of the contract, security provisions for capacity payments, and performance guarantees. Each of these factors is evaluated below.

A. Need for Power

The Facility is projected to have a maximum nominal generating capacity of 50 MW. After serving internal loads, the Facility will provide firm capacity of approximately 40 MW to PEF. The expected annual energy amounts to 311,853 MWh. As a renewable energy resource, Vision's projected committed capacity of 40 MW will be independent of the current fossil fuel infrastructure as it uses a separate, distinct supply mechanism for its biomass fuel. It should be noted that the addition of 40 MW of firm capacity and energy from Vision in 2010 to PEF pursuant to the contract will not completely defer or avoid the need for additional capacity in order to meet a 20% reserve margin. However, the Facility will displace energy generated by fossil fuels, reducing the state's dependence on these resources and promoting fuel diversity.

It has been the Commission's policy to approve cost-effective contracts, such as Vision's, that use renewable resources as the primary fuel. Rule 25-17.001(5) (d), F.A.C., encourages electric utilities to:

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[2] See Docket No. 080187-EQ, In Re: Petition for approval of amended standard offer contract and COG-2 rate schedule, by Progress Energy Florida. PEF withdrew its petition on July 23, 2008. A separate staff recommendation regarding the withdrawal was filed to be heard at the September 29, 2008, Agenda Conference.

[3] See Docket No. 080501-EI, In Re: 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.

> Aggressively integrate nontraditional sources of power generation including cogenerators with high thermal efficiency and small power producers using renewable fuels into the various utility service areas near utility load centers to the extent cost effective and reliable.

Staff believes the characteristics of the capacity and energy associated with this contract are sufficiently desirable to encourage the use of renewable fuels in Florida.

B. Cost-Effectiveness

PEF and Vision have agreed upon payments divided into two parts, capacity and energy. Both Vision's Facility and PEF's Suwannee Unit were modeled at an 89% capacity factor for the capacity and energy payments contained in the contract. If the Vision Facility does not meet the contractual performance requirements, then the capacity payments are reduced for that month. All of the energy from the Vision Facility will displace traditional fossil baseload generation on PEF's system. Vision projects that the Facility will exceed an 89% capacity factor. The analysis provided by the company shows projected payments by PEF to Vision for the capacity and energy costs to be at avoided cost over the 25 year term of the contract. These estimated payments show the contract to be cost-effective.

In addition to savings for the capacity and energy provided by Vision, the contract establishes first right of refusal for PEF to purchase renewable energy credits (RECs) that will be associated with the electric energy produced from the Facility. Approval of this contract does not in any way guarantee cost recovery of the purchase of renewable attributes or RECs. Any purchase of RECs would be subject to future Commission review for prudence.

C. Security for Capacity Payments

As an early capacity payment schedule has been selected, Rule 25-17.0832(3)(c), F.A.C., requires the contract to include some form of security to repay the company for dollars exceeding avoided cost in the event of default. Within 60 days of the contract being executed, Vision must establish, fund, and deliver to PEF performance security in the amount of at least $45,000 per MW of committed capacity. The required performance security may be more dependent upon Vision's credit rating. Vision is required to maintain the funded amount until the fifth anniversary of the execution date. The amount required for the remainder of the contract is reduced, depending upon Vision's credit rating.

In addition to the Performance Security detailed above, in the event of a termination of the contract after capacity delivery, Vision shall be liable for termination fees. Once capacity has been delivered, PEF will calculate the termination fee monthly and require that Vision have letters of credit sufficient to cover the balance required. Examples of calculations of this fee provided by PEF show it to be consistently greater than or equal to the present value of the payments to Vision.

Staff believes the security and termination provisions contained in the contract are sufficient to protect PEF's ratepayers in the event that Vision fails to meet the contracted in-service date or defaults on its future obligations.

D. Performance Guarantees

The contract lists conditions precedent, which must be met within 12 months after Commission approval. The conditions precedent include obtaining, at a minimum, firm transmission service, authorization to construct, construction financing, and insurance policies. If these obligations are not met, the contract would be terminated without further liability to both parties.

The contract is based upon the Suwannee Unit, which has a projected in-service date of June 1, 2013. Vision originally had given January 1, 2010, as the estimated in-service date for the Facility. The contract indicates that Vision will be able to begin delivery of firm capacity and energy within 16 to 18 months after Commission approval. At the latest, the Facility is required to have obtained all permits necessary to initiate construction by June 1, 2012. The Facility is required to begin delivering firm capacity and energy before June 1, 2013. If any of these conditions are not met, PEF will be able to draw upon the completion/performance security, as described above, in full.

The expected annual energy from the Facility is 311,853 MWh based upon an 89% capacity factor. Under the terms of the contract, the capacity payment depends upon the performance of the Facility for each individual month. The calculation of the payment for avoided capacity uses an annually set rate times the capacity produced. For Vision to receive full capacity payments, the Facility must have an Annual Capacity Billing Factor (ACBF) of 89%. Reduced capacity payments are due between 89% and 69%, and no capacity payment is due if the ACBF is less than 69%. If the capacity factor drops below 69% for 12 consecutive months, the contract may be terminated by PEF, and Vision would owe the termination security discussed above.

Staff believes the terms of the contract are sufficient to protect PEF's ratepayers if Vision fails to deliver firm capacity and energy.

Conclusion

The contract between PEF and Vision provides PEF with a viable source of electric capacity and energy that meets all requirements and rules governing Qualifying Facilities and small power producers. The contract is shown to be cost-effective. If a portion of the planned renewable generation cannot be implemented under the terms of this contract, the security provisions effectively mitigate the risk to the ratepayer. For these reasons, staff recommends that the contract should be approved.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected files a protest within 21 days of the issuance of the Commission's order approving the petition and contract, this docket should be closed upon the issuance of a consummating order. (Hartman)

Staff Analysis: If no person whose substantial interests are affected files a protest within 21 days of the issuance of the Commission's order approving the petition and contract, this docket should be closed upon the issuance of a consummating order.