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: June 18, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of Strategic Analysis and Governmental Affairs (Sickel, Ellis)
Office of the General Counsel (Hartman)

RE: Docket No. 090155-EQ – Petition for approval of revisions to renewable energy tariff by Florida Public Utilities Company.

AGENDA: 06/30/09 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 11/30/09 (8-Month-Effective-Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\SGA\WP\090155.RCM.DOC

Case Background

Since January 1, 2006, each investor-owned electric utility (IOU), as well as each electric municipal utility subject to the Florida Energy Efficiency and Conservation Act (FEECA),[1] 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 cost 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. On March 31, 2009, Florida Public Utilities Company (FPUC or Company) filed its petition for approval of revisions to the Renewable Energy Tariff.

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[1] Sections 366.80-366.85 and 403.519, F.S.

Because FPUC does not own or operate any electric generating plants, this utility does not have any planned generating unit that can be avoided. For such a circumstance, Rule 25-17.250(1), F.A.C., requires the utility to base the standard offer contract on avoiding or deferring a planned purchase.

The Commission has jurisdiction over this matter pursuant to Sections 366.04 through 366.06, 366.91, and 366.92, F.S.

Discussion of Issues

Issue 1: Is the standard offer contract filed by Florida Power Utilities Company in compliance with Rules 25-17.200 through 25-17.310, F.A.C.?

Recommendation: Yes. The Standard Offer Contract proposed by FPUC is in compliance with Rules 25-17.200 through 25-17.310, F.A.C., and therefore should be approved. (Sickel, Ellis)

Staff Analysis: Because the utility is an IOU, Rule 25-17.250(1), F.A.C., requires FPUC 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. Since FPUC does not generate any electric energy for sale to retail customers, FPUC does not file a Ten-Year Site Plan and has no planned unit that can serve as an avoided unit. In such a case, Rule 25-17.250(1), F.A.C., requires that the standard offer be based on avoiding or deferring a planned purchase. The standard offer contract provided by FPUC meets this requirement.

As FPUC has two geographic regions, rate schedules for two different divisions have been submitted, with different characteristics. The first is the Northwest Florida division, which consists of FPUC territories in Jackson, Calhoun, and Liberty Counties. The second is the Northeast Florida division, which consists of FPUC territory in Nassau County. Each division has different pricing for As-Available Energy, identified as rate schedule REN-1, and Firm Power, identified as rate schedule REN-2, which were attached to its petition.

The Northwest division's proposed rate schedule pricing features a significant change in pricing, as the REN-2 rate schedule is estimated at $0.00/kw. This results in renewable energy providers being able to receive energy payments, but no capacity payments. This is the result of the contract methodology used in FPUC's contract with Gulf Power Company for delivery of power to the Northwest division. FPUC's contract contains a ratchet provision, establishing a minimum charge to FPUC based upon the level of peak demand observed when the contract was first initiated. FPUC is projected to be at or below this minimum demand level for 2009, so any further reduction in demand would not reduce contracted payments to Gulf Power Company. In the event of future increases in demand above the minimum set by the contract, a renewable energy provider could contribute to avoiding additional capacity. In this event, FPUC would revise these estimates and reward a capacity payment based upon the avoided cost.

The Northeast division's proposed rate schedule pricing retains a capacity payment, as it receives power through JEA, formerly Jacksonville Electric Authority, under a separate contractual agreement which does not have a similar ratchet provision. Energy payments for both divisions were adjusted to reflect the current avoided contracted cost. Excluding modifications to capacity and energy payments discussed above, no other modifications were made to the Renewable Energy Tariff approved by the Commission last year.

Staff believes that the payments for capacity and energy provided for in the tariff revisions are representative of the Company's avoided cost. The provisions of the standard offer contract, including proposed tariff revisions, are in compliance with Rules 25-17.200 through 25-17.310, F.A.C., and continue to satisfy the intent of the Legislature to encourage renewable energy projects and should therefore be approved.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation to approve the proposed Standard Offer Contract and tariffs filed by FPUC, and no person whose substantial interests are affected requests a hearing to address this matter, then Docket No. 090155-EQ should be closed, and the Standard Offer Contracts and tariffs filed by FPUC should be effective as of the date of the Commission's vote. 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 FPUC's tariffs and standard offer contracts may be subject to a request for hearing, and if a hearing is held, may subsequently be revised. (Hartman)

Staff Analysis: If the Commission approves staff's recommendation to approve the proposed Standard Offer Contract and tariffs filed by FPUC, and no person whose substantial interests are affected requests a hearing to address this matter, then Docket No. 090155-EQ should be closed, and the Standard Offer Contracts and tariffs filed by FPUC should be effective as of the date of the Commission's vote. 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 FPUC's tariffs and standard offer contracts may be subject to a request for hearing, and if a hearing is held, may subsequently be revised.