

State of Florida



## Public Service Commission

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COMMISSION  
CLERK

**DATE:** May 4, 2006

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

**FROM:** Division of Economic Regulation (Harlow, Haff, Baxter, Kummer) *9:21 AM JTB*  
Office of the General Counsel (Keating) *12:15 PM*  
*WIC*

**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.

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:** 05/16/06 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:**

- 1) 06/01/06 (Current standard offer contracts expire; new contracts must become available to ensure a “continuous offer” per Section 366.91, Florida Statutes)
- 2) 06/02/06 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\050810.RCM.DOC

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

### Case Background

In its 2005 session, the Florida Legislature enacted Section 366.91, Florida Statutes, regarding renewable energy. The statute became effective October 1, 2005. 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 the requirements to meet these objectives. 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.

(Note: Section 366.91(4), Florida Statutes, does not require the Commission's approval of renewable standard offer tariffs for covered municipal and cooperative utilities. However, JEA and OUC agreed to file their tariffs for informational purposes prior to the implementation date of January 1, 2006.)

- 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 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) and (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.

Gulf Power Company (Gulf), Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Florida Public Utilities Company (FPUC), and Tampa Electric Company (TECO) filed petitions for approval of their proposed standard offer contracts on October 14, 2005. JEA and OUC filed their tariffs for informational purposes on January 1, 2006.

In its December 8, 2005 recommendation on the petitions, staff proposed two methodologies for setting avoided cost: (1) a single unit approach based on the next avoidable unit in each utility's Ten-Year Site Plan (TYSP), and (2) a portfolio approach with multiple

standard offers based on all units in each utility's TYSP. The staff also raised issues regarding the appropriate method to establish the contract term and subscription limit for renewable standard offer contracts. On December 27, 2005, the Commission issued Order No. PSC-05-1260-TRF-EQ approving FPUC's proposed contract. The Commission also approved the remaining four contracts with modifications through June 1, 2006, to allow time for additional discussion on policy issues associated with implementing Section 366.91, Florida Statutes. The Commission directed its staff to hold an additional workshop to obtain further information on implementing the statute.

On January 17, 2006, the Florida Industrial Cogeneration Association and Bay County filed protests of Order No. PSC-05-1260-TRF-EQ and requested a formal hearing. Both parties, however, requested that any hearing be deferred until after the Commission's workshop was held.

A second workshop was held on March 6, 2006. Prior to this workshop, staff had continued to negotiate with the IOUs regarding staff's concerns. The IOUs agreed with staff's recommendations that: (1) the 10-year minimum contract terms should begin on the in-service date of the avoided unit, (2) the subscription limit should be set at the size of the avoided unit, and (3) the contracts should include qualifying facilities with capacities less than 100kW as required by Rule 25-17.0832(4)(a)3, Florida Administrative Code. At the workshop, there appeared to be general agreement among the representatives of renewable generators on these issues. However, one of the issues that remained unresolved as of the workshop date was the methodology to be used to set avoided cost for the standard offer contracts. Representatives of renewable generators also expressed concerns regarding the operating characteristics and other contract provisions in the utilities' renewable standard offer contracts. The staff requested that written comments addressing the appropriate methodology to set avoided cost and other concerns of the workshop participants be filed by March 20, 2006. Florida Crystals Corporation and the Florida Renewable Energy Alliance<sup>1</sup> filed Post-Workshop Comments on March 20 and March 24, 2006, respectively. FPL, PEF, Gulf, and TECO agreed to file revised standard offer contracts on April 3, 2006.

FPL, PEF, Gulf and TECO filed their petitions for approval of revised standard offer contracts on April 3, 2006. This recommendation will address whether the revised standard offer contracts satisfy the requirements of Section 366.91, Florida Statutes. The filing of the revised standard offer contracts has rendered moot the protests of the initial standard offers. When the Commission issues a decision on the revised standard offers, all persons whose substantial interests are affected will have the opportunity to protest that decision and request a hearing.<sup>2</sup> The Commission has jurisdiction over this matter pursuant to Sections 366.04 through 366.06, Florida Statutes, and Section 366.91, Florida Statutes.

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<sup>1</sup> The Florida Renewable Energy Alliance consists of the City of Tampa, Covanta Energy Corporation, Florida Industrial Cogeneration Association, Lee County, Montenay Power Corp, National Public Energy, the Solid Waste Authority of Palm Beach, and Wheelabrator Technologies, Inc.

<sup>2</sup> Since FPUC's initial standard offer contract was approved by the Commission, the protest of that approval is still pending. Bay County's attorney has represented to staff, however, that Bay County does not intend to pursue its protest of FPUC's standard offer contract. FICA's protest did not address FPUC's standard offer contract.

### Discussion of Issues

**Issue 1:** Should the Commission approve the renewable standard offer contracts as filed on April 3, 2006, by Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Gulf Power Company (Gulf), and Tampa Electric Company (TECO)?

**Recommendation:** Gulf's proposed standard offer contract should be approved. Gulf's proposed standard offer contract is based on the only avoidable unit in Gulf's 2006 Ten-Year Site Plan. The standard offer contracts filed by FPL, PEF, and TECO should be denied. These companies should be directed to amend their tariffs to include multiple standard offer contracts based on each of the fossil fuel units shown in Table 1. The resulting Fossil Fuel Unit Type Portfolio approach with the renewable generator selecting the avoided unit will best meet the intent of the statute to encourage the development of renewable energy resources in Florida, provide continuously available standard offers to renewable generators, and encourage utilities to negotiate contracts with avoided cost and operating characteristics which better match the needs of renewable generators. (Haff, Harlow)

TABLE 1 - SUMMARY OF PROPOSED AVOIDED UNITS				
	FPL	PEF	TECO	Gulf
Utilities' Proposals	2008 CT (160 MW)	2009 CC (1,159 MW repowering)	2009 CT (97 MW)	2014 CC (600 MW)
Staff's Recommendation (Summer Ratings - Based on 4/1/06 TYSPs)	2008 CT (160 MW)	2010 CT (161 MW)	2009 CT (97 MW)	No CTs in TYSP
	2015 CC (553 MW)	2009 CC (1,159 MW repowering)	No CCs in TYSP	2014 CC (600 MW)
	2012 Coal (850 MW)	2013 Coal (750 MW)	2013 IGCC (605 MW)	No coal in TYSP

Notes: CT = Combustion turbine  
CC = Combined cycle  
IGCC = Integrated coal-gasification combined cycle

**Staff Analysis:** As a result of the workshops, discussions with parties, and post-workshop comments, staff believes a Fossil Fuel Unit Type Portfolio approach will best meet the intent of the statute to encourage renewables and balance the interests of the ratepayers. Under this approach, each investor-owned utility (IOU) should be required to file standard offer contracts based on the next avoidable fossil fueled generating unit of each technology type in their 2006 Ten-Year Site Plans (TYSP). Renewable generators can then select a standard offer contract based on the IOU's avoided unit type that best meets the renewable generator's pricing and timing needs, and most closely matches the operating characteristics of the renewable technology. Individual contracts should remain open until: (1) a request for proposals (RFP) is issued for generating units subject to the Siting Act, (2) the utility breaks ground for non-Siting

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Act units, or (3) the contract's subscription limit is reached. After a contract is closed, the utility should be required to file a new contract based on the next unit of the same technology in its TYSP, if any. Table 1 above is a summary of proposed avoided units for which standard offer tariffs should be filed based on the IOUs' 2006 TYSPs.

In their filings, the utilities alleviated many of the concerns expressed by staff at the December 20, 2005 Agenda Conference and at the March 6, 2006 workshop. Each utility appropriately starts the minimum ten-year term required by Section 366.91, Florida Statutes, on the in-service date of the avoided unit. Further, each utility appropriately set the subscription limit equal to the capacity of the avoided unit. Staff believes that these revisions are positive steps towards promoting the development of renewable generating technologies. As requested by staff, each utility also included small qualifying facilities with a capacity of 100kW or less in its revised standard offer contract. While this is not required by Section 366.91, Florida Statutes, qualifying facilities with capacities less than 100kW are eligible for standard offer contracts pursuant to Rule 25-17.0832(4)(a)3, Florida Administrative Code. Staff believes it will increase administrative efficiency for small qualifying facilities to be eligible for the utilities' renewable standard offers, rather than a separate standard offer.

Staff appreciates the utilities' efforts to resolve some of the prior issues. However, a major disputed issue still remains: how should avoided cost be established? Three methodologies have been suggested by staff and the parties: (1) a single unit approach, (2) a full portfolio approach, and (3) a statewide avoided unit approach. Staff's recommendation of a Fossil Fuel Unit Type Portfolio approach represents a compromise to staff's original proposal of a full portfolio approach. The four methodologies are discussed below.

### **Single Unit Approach**

The single avoided unit approach proposed by the utilities is similar to the current method for setting avoided cost for standard offer contracts. Under this approach, each IOU would file a single standard offer contract based on the next avoidable unit in its TYSP. At the December 20, 2005 Agenda Conference and at the March 6, 2006 workshop, staff raised concerns that the single unit approach does not go far enough to meet the statute's intent to promote the development of renewable generators. As witnessed in recent standard offers, avoided cost under this approach will likely be based on natural-gas fired combustion turbine or combined cycle units, rather than coal-fired units. Due to the volatility of natural gas prices, contracts based solely on natural gas-fired units will not provide ratepayers with the rate stability benefit of coal-based pricing. Further, the single unit approach will reduce the likelihood that renewable generators will be able to perform at the specific operating characteristics of that particular generating technology. Few renewable generators will be able to meet the operating requirements of a contract based on a combustion turbine unit because few renewables are able to operate as a peaking unit.

### **Full Portfolio Approach**

Under the full portfolio approach, the utilities would file multiple standard offer contracts, with a separate contract for each generating unit included in their most recent TYSPs. This approach would promote renewables by providing a selection of contracts with various

pricing, timing, and operating characteristics. A renewable generator could choose which standard offer best fits its particular needs. This option would allow renewable energy providers to consider all aspects of a utility's proposed generation expansion plan, including any proposed coal units. The higher capacity payments associated with coal units could benefit renewable energy providers by ensuring them a higher fixed revenue stream. Renewable generators 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. Florida Crystals Corporation stated in its post-workshop comments that it supports the portfolio approach to designating avoided units and "specifically supports designating a coal unit as an avoided unit."

Under the full portfolio approach, renewable generators would also be able to choose a contract based on an avoided unit with operating characteristics similar to their technology's operating characteristics. This would increase the likelihood that various types of renewable generators could meet the requirements of a standard offer contract's operating and performance provisions.

### **Statewide Avoided Unit**

The Florida Renewable Energy Alliance filed Post-Workshop Comments suggesting that avoided cost should be based on a theoretical statewide avoided coal unit with an in-service date concurrent with that of the renewable generator. In the 1980s, the Commission experimented with setting avoided costs based on a statewide coal unit. Since there is no statewide rate base or rates, this system was found to be inequitable because it was impossible to allocate cost responsibility to the individual utilities. The Commission modified its rules in the early 1990s to define avoided cost based on the individual utility's avoided costs. This approach is more ratepayer neutral because it provides a more accurate estimate of a utility's avoided cost.

Staff disagrees with the Florida Renewable Energy Alliance that the in-service date of the avoided unit should be set according to the in-service date of the renewable generator. In order to protect ratepayers, a standard offer to purchase capacity from renewable generators must be based on a utility's need for capacity, rather than on a renewable generator's contract timing need. Under the Commission's existing standard offer rules, renewable generators cannot receive full capacity payments until the anticipated in-service date of the utility's avoided unit. Rule 25-17.0832(4)(g)2, Florida Administrative Code, provides renewable generators with the option to receive reduced capacity payments beginning at the approximate lead time required to site and construct the utility's avoided unit. If a renewable generator elects early capacity payments, the present value of the total payments made to the renewable generator cannot exceed the payments which would have otherwise been paid if the renewable generator had chosen to receive capacity payments commencing with the in-service date of the avoided unit.

The Florida Renewable Energy Alliance and Florida Crystals Corporation also expressed concerns about the operating characteristics and other provisions of the utilities' contracts in their Post-Workshop Comments. Staff continues to believe that a standard offer contract should reflect the operating and performance characteristics of the utility's generating unit. If different performance requirements are desired, the renewable generator should negotiate with the utility to address those desires.

### **Staff's Proposal – Unit Type Portfolio Approach**

As a compromise to the single unit, full portfolio, and statewide unit approaches, staff believes a Fossil Fuel Unit Type Portfolio approach will best meet the intent of the statute by promoting renewables while reducing some of the uncertainty associated with a full portfolio approach. Under the Unit Type Portfolio approach, each IOU would be required to file standard offer contracts for the first avoidable generating unit of each technology type in its 2006 TYSP. This differs from the full portfolio approach, under which each IOU would be required to file standard offer contracts for all units in its 2006 TYSP. The Unit Type Portfolio approach will promote renewable generation to a greater degree than the Single Unit approach by offering renewable generators a menu of contracts based on various generating technologies, with different pricing, timing, and operating characteristics. The Unit Type Portfolio approach is easier to administer than an all TYSP unit or statewide avoided coal unit approach, and gives renewables access to a coal-based contract if a utility has a coal generating unit in its TYSP. Coal-based pricing will reduce ratepayer exposure to natural gas price volatility. Further, because renewable generators can be built in less time than a coal unit, a coal-based standard offer contract can provide ratepayers with the rate stability benefits of coal pricing sooner than if a utility had built a coal generator. Finally, a Unit Type Portfolio approach may decrease ratepayer risk compared to a full portfolio approach by reducing the number of contracts offered. Table 2 below compares the avoided units under the Unit Type Portfolio Approach (shown in bold) to those in the full portfolio approach.

<b>TABLE 2 – COMPARISON OF UNIT TYPE PORTFOLIO TO FULL PORTFOLIO</b>				
	<b>FPL</b>	<b>PEF</b>	<b>TECO</b>	<b>GULF</b>
2008	<b>CT - 160 MW</b>			
2009		<b>CC repowering – 1,159 MW</b>	4 – 97 MW CTs <b>1 CT – 97 MW</b>	
2010		<b>CT - 161 MW</b>	2 - 88 MW CTs	
2011	2 – 160 MW CTs	CC - 478 MW	CT - 88 MW	
2012	<b>Coal - 850 MW</b>	CT - 161 MW	2 - 88 MW CTs	
2013	Coal - 850 MW	<b>Coal - 750 MW</b>	<b>IGCC - 605 MW</b>	
2014	CT - 160 MW	Coal - 750 MW	3 – 88 MW CTs	<b>CC - 600 MW</b>
2015	CT - 160 MW <b>CC - 553 MW</b>	CC - 478 MW		

Notes: CT = Combustion turbine  
CC = Combined cycle  
IGCC = Integrated coal-gasification combined cycle

## Utility Filings

### FPL

FPL based its standard offer contract on a 160 MW natural gas-fired CT with a 2008 in-service date. As discussed above, staff recommends a Fossil Fuel Unit Type Portfolio approach in which FPL files standard offer contracts based on the next avoidable unit of each technology type in its 2006 TYSP. Under this approach, the Commission should deny FPL's proposed standard offer tariff and direct FPL to file contracts based on the generating units displayed in Table 1, which would include contracts based on the 2008 CT, a 2012 pulverized coal unit, and a 2015 CC. FPL's TYSP shows CC units in 2009 and 2010, but these units are ineligible for standard offer contracts because an RFP has already been issued for these units. Therefore, the 2009 and 2010 CC units may no longer be avoided.

### PEF

PEF's proposed contract is based on the repowering of existing oil-fired steam capacity at the Bartow site into 1,159 MW of natural gas-fired CC capacity with a 2009 in-service date. As discussed above, staff recommends a Fossil Fuel Unit Type Portfolio approach in which PEF files standard offer contracts based on the next avoidable unit of each technology type in its 2006 TYSP. Under this approach, the Commission should deny PEF's proposed standard offer tariff and direct PEF to file contracts based on the generating units displayed in Table 1, including contracts based on the 2009 repowering, a 2010 CT, and a 2013 pulverized coal unit.

### TECO

TECO based its standard offer contract on a 97 MW CT with an in-service date of 2009. TECO does not have any natural gas-fired CCs in its TYSP, and its next avoided unit type is a 2013 integrated coal gasification combined cycle (IGCC) unit. As discussed above, staff recommends a Fossil Fuel Unit Type Portfolio approach in which TECO files standard offer contracts based on the next avoidable unit of each technology type in its 2006 TYSP. Under this approach, the Commission should deny TECO's proposed standard offer tariff and direct TECO to file contracts based on the generating units displayed in Table 1, including contracts based on the 2009 CT and a 2013 IGCC unit.

### Gulf

Gulf based its standard offer contract on the only generating unit in its 2006 TYSP, a 600 MW CC with a 2014 in-service date. Therefore, under the Fossil Fuel Unit Type Portfolio approach proposed by staff, Gulf's proposed contract is appropriate and should be approved. Gulf's proposed avoided unit, with an in-service date of 2014, involves some risk that Gulf's ratepayers may prematurely commit to capacity that may change over time. However, staff believes that this risk is unavoidable due to the statutory requirement to continuously offer purchase power contracts to renewable generators.



### **Conclusion**

In conclusion, staff recommends that a Fossil Fuel Unit Type Portfolio approach will best meet the intent of Section 366.91, Florida Statutes, to encourage renewable energy resources while balancing the interests of the ratepayers. The contracts proposed by FPL, PEF, and TECO do not fully comply with the intent of the statute. The Commission should deny the standard offer contracts proposed by FPL, PEF, and TECO and require these utilities to file contracts based on the generating units indicated in Table 1. Gulf's proposed standard offer contract should be approved, since Gulf's contract is based on the only avoidable unit in Gulf's 2006 TYSP. Individual contracts should remain open until: (1) an RFP is issued for generating units subject to the Siting Act, (2) the utility breaks ground for non-Siting Act units, or (3) the contract's subscription limit is reached. After a contract is closed, the utility should file a new contract based on the next unit of the same technology if identified in its then applicable TYSP.

**Issue 2:** Should these dockets be closed?

**Recommendation:** If the Commission approves staff's recommendation to approve Gulf's revised standard offer contract and no person whose substantial interests are affected requests a hearing to address this matter, then Docket No. 050805-EQ should be closed, and Gulf's revised tariff and standard offer contract should become effective June 2, 2006.

If the Commission approves staff's recommendation to deny FPL's, PEF's, and TECO's revised standard offer contracts, Docket Nos. 050806-EQ, 050807-EQ, and 050810-EQ should remain open to allow FPL, PEF, and TECO to file revised tariffs no later than May 24, 2006, consistent with the Commission's vote. Staff would administratively approve these contracts prior to June 2, 2006, if consistent with the Commission's vote. (C. Keating)

**Staff Analysis:** If the Commission approves Gulf's revised 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. 050805-EQ should be closed. Gulf's proposed tariff and standard offer contract should become effective June 2, 2006. Potential signatories to the standard offer contract should be aware that Gulf'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. 050806-EQ, 050807-EQ, and 050810-EQ should remain open to allow FPL, PEF, and TECO to refile their standard offer contracts and associated tariffs. FPL, PEF, and TECO should be required to file revised tariffs and standard offer contracts consistent with the Commission's vote no later than May 24, 2006, so that staff may review and administratively approve the revised filings prior to June 2, 2006. Provided that FPL, PEF, and TECO file revised tariffs and standard offer contracts and staff determines that the revisions are consistent with the Commission's vote prior to June 2, 2006, those utilities' revised tariffs and standard offer contracts should become effective June 2, 2006. 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.