BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of negotiated power purchase contract for purchase of firm capacity and energy with Horizon Energy Group, LLC, by Progress Energy Florida, Inc.	DOCKET NO. 080533-EQ ORDER NO. PSC-09-0108-PAA-EQ ISSUED: February 24, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING CONTRACT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

On August 11, 2008, Progress Energy Florida, Inc. (PEF) filed a Petition requesting approval of a negotiated contract for the purchase of firm capacity and energy between Horizon Energy Group, LLC (Horizon) and PEF, dated August 5, 2008.

The contract is based on Horizon constructing and owning a combined cycle generating facility fueled by gasified municipal solid waste located in Florida, which will operate as a Qualifying Facility (QF) pursuant to Rule 25-17.080, F.A.C. Horizon will sell 30 to 60 megawatts (MW) of capacity and energy from the facility to PEF for a term from January 1, 2013, through December 31, 2037.

This Order addresses PEF's petition for approval of the contract with Horizon. To preserve its ability to negotiate, PEF has requested confidentiality on some aspects of the contract, as noted in this Order. We have jurisdiction over this matter pursuant to Sections 366.051 and 366.81, Florida Statutes (F.S.).

Decision

Pursuant to the terms of the negotiated contract, Horizon will sell firm capacity and energy from its combined cycle generating facility to PEF for a term from January 1, 2013, through December 31, 2037. The facility will be fueled by gasified municipal solid waste. The committed capacity of the facility will range between 30 and 60 MW, with the exact capacity to be determined upon testing of the facility. For the comparative avoided unit, the contract uses a nominal 1,161 MW Combined Cycle gas-fired plant, Suwannee River No. 4 (the Suwannee Unit), with an estimated in-service date of June 2013, as reflected in PEF's 2008 Ten-Year Site Plan.[1]

The terms of the negotiated contract require that Horizon have knowledge of all laws and business practices that must be followed in performing its obligations under the agreement, and that they are in compliance with all laws, except to the extent that failure to comply therewith would not have a material adverse effect on Horizon or PEF. Horizon Energy Group, LLC filed an "Application by a Foreign Limited Liability Company for Authorization to Transact Business in Florida" with the Division of Corporations, Florida Department of State, on December 29, 2008.

As required by Rule 25-17.0832(3), F.A.C., in the review of a negotiated firm capacity contract, we must 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.

Need for Power

After serving internal loads, the Horizon facility will provide firm capacity of approximately 30 to 60 MW to PEF. The petition indicates that 60 MW is expected to be generated, with an annual energy production of 467,787 MWh. Horizon's generating facility is expected to be in-service by January 1, 2013; however, the location of the facility has not yet been determined. We note that the addition of 60 MW of firm capacity and energy from Horizon to PEF will not completely defer or avoid the need for additional capacity in order to meet a 20 percent reserve margin. However, the Horizon facility will displace energy generated by fossil fuels, thus reducing the state's dependence on these resources and promoting fuel diversity.

[1] PEF's 2008 Standard Offer Contract, filed on April 1, 2008, in Docket No. 080187-EQ, designated the Suwannee Unit as the avoided unit, In re: Petition for approval of amended standard offer contract and COG-2 rate schedule, by Progress Energy Florida. On July 15, 2008, PEF filed a petition for rule waiver and approval of a revised standard offer contract in 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. We approved PEF's revised standard offer contract by Order No. PSC-08-0706-TRF-EI, issued October 23, 2008. The energy and capacity payments in the Horizon contract are updated and in accord with PEF's revised standard offer contract.

We questioned PEF as to why it chose to negotiate a contract with Horizon outside the request for proposal process (RFP) described in Rule 25-22.082, F.A.C. PEF indicated that it began negotiations with Horizon in August 2007. PEF did not issue a RFP for its next planned generating unit, Suwannee River 4, until June 12, 2008. Rule 25-17.240, F.A.C., encourages investor-owned utilities and renewable generating facilities to negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units. It appears reasonable for PEF to have continued negotiations with Horizon rather than requiring Horizon to respond to the RFP.

Cost-Effectiveness

Traditionally, payments to QFs have been divided into two parts, capacity and energy, and are based on the cost of capacity and energy from the designated avoided unit. The traditional payment for avoided capacity is a monthly payment in $/kilowatt-month. The traditional payment for energy costs is based on the current forecasted energy price of the avoided unit in $/megawatt hours (MWh), but is adjusted as actual fuel costs are known. The terms of the contract calculate payments for the avoided energy and capacity based on a projected committed capacity of 60 MW. In the contract, Horizon's energy payment has been fixed and combined with the capacity payment; therefore the contract payment rate includes both capacity and energy payments. This type of payment will encourage the development of a renewable generation resource and benefit Horizon because it provides a predictable revenue stream that removes the risk of fuel cost fluctuations. However, if fuel costs decline in the future, PEF remains obligated to pay the contracted amount and may seek to recover the costs from ratepayers through the fuel costs recovery clause, subject to our review.

PEF will pay a set amount (confidential) for each MWh of net energy delivered to the delivery point. Since Horizon will receive a monthly payment based only on the MWh generated, the contract requires that the qualifying facility must generate in order for Horizon to be paid.

Both Horizon's projected committed capacity of 60 MW and PEF's avoided unit were modeled at an 89 percent capacity factor to compare the capacity and energy payments contained in the contract. Projected payments to Horizon when compared to the capacity and energy costs of the avoided unit are expected to result in an estimated net present value savings of more than $91 million to PEF's ratepayers over the twenty-five year term of the contract. Savings are projected to be $1.9 million in the first year of the contract and increase to $91.8 million by the twenty-fifth year of the contract. The 25 year average fuel forecast is $12.23/MMBTU for this scenario. These estimated savings show the contract to be cost-effective.

As a result of recent energy price volatility, sensitivity analyses of the contract were requested to judge the adequacy of its fixed price. PEF provided its 2008 Ten Year Site Plan fuel forecasts, including a base, low, and high forecast for the 2013 through 2037 period. These forecasts show net present value savings of $25 million for the low case and $184 million for the high case. While these fuel forecasts were timely when the contract was signed, they had since become outdated. Therefore, the most recent fuel price forecast was requested, which showed a net present value savings of $152 million. The 25 year average fuel forecast is $14.85/MMBTU in this scenario. PEF estimates that the 25 year average fuel forecast would have to drop to $6.40/MMBTU to make the Horizon contract a break-even deal. We find that these analyses show that the contract, while a form of hedging, appears reasonable given current fuel forecasts provided by PEF, with a high likelihood of benefits accruing to PEF's ratepayers.

Security for Capacity Payments

Rule 25-17.0832(3)(c), F.A.C., requires the QF to post some form of security to repay the utility for dollars exceeding avoided cost in the event of QF default. The contract requires Horizon to maintain performance security in a set amount (confidential) based upon the committed capacity and Horizon's credit rating. In the event of default, PEF would be eligible to collect this amount in full.

We find that the provisions contained in the contract are sufficient to protect PEF's ratepayers in the event that Horizon defaults on its obligations.

Performance Guarantees

The expected annual energy from the facility is 467,787 MWh at an 89 percent capacity factor. The energy payment has been fixed and combined with the capacity payment. Under the performance provision of the contract, the total payment rate will be reduced by 10 percent if the facility's twelve-month rolling capacity factor drops below a set amount (confidential). Unlike a traditional purchased power contract, which includes capacity payments, Horizon's payments are based only on the time that the plant is generating. If Horizon fails to maintain a capacity factor of a set amount (confidential) for twelve consecutive months, it will be considered an event of default and PEF will receive the full performance security discussed above.

We find that the provisions contained in the contract are sufficient to protect PEF's ratepayers if Horizon fails to deliver firm capacity and energy as specified by the contract.

Conclusion

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

> 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.

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

The contract between PEF and Horizon provides PEF with a viable source of electric capacity and energy that meets all requirements and rules governing QFs 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, we approve the contract.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition submitted by Progress Energy Florida, Inc., requesting approval of a negotiated contract with a qualifying facility, Horizon Energy Group, LLC, is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of February, 2009.

Ann Cole

ANN COLE
Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 17, 2009.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.