

State of Florida



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-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)

JSB *POE* *RH* *NA*

RE: Docket No. 090165-EQ – Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

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

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 12/01/09 (8-Month-Effective-Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\SGA\WP\090165.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.

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

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In accord with applicable statutes and rules, on April 1, 2009, Tampa Electric Company (TECO or Company) filed its petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, based on the Ten Year Site Plan for 2009-2018.

Because TECO has two types of fossil-fueled electric generating plants subject to being avoided, TECO has filed two standard offer contracts, pursuant to Rule 25-17.250(1), F.A.C. The standard pricing terms are identical for both units, with the exception of the avoided unit cost performance characteristics. The first avoided unit is a natural gas-fired combustion turbine unit with a capacity of 61 megawatts (MW), scheduled for an in-service date of May 1, 2012. The second avoided unit is a natural gas-fired combined cycle unit with a capacity of 607 MW, scheduled for an in-service date of May 1, 2018.

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: Are the standard offer contracts filed by TECO in compliance with Rules 25-17.200 through 25-17.310, F.A.C.?

Recommendation: Yes, with the exception of Section 18 of TECO's Standard Offer Contract. TECO should file within 30 days revised standard offer contracts, which contain no right of first refusal for renewable energy credits. If the revised tariffs comply with the Commission's decision, staff should be granted the administrative authority to approve the revised tariffs. (Sickel, Ellis)

Staff Analysis: Because the utility is an IOU, Rule 25-17.250(1), F.A.C., requires TECO 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 kilowatt (kW) or less. TECO has two types of fossil-fueled generating technologies listed in its 2009 Ten Year Site Plan. The first avoided unit is a natural gas-fired combustion turbine unit with a capacity of 61 MW, scheduled for an in-service date of May 1, 2012. The second avoided unit is a natural gas-fired combined cycle unit with a capacity of 607 MW, scheduled for an in-service date of May 1, 2018.

Modified Standard Offer Provisions

The petition includes two standard offer contracts substantially similar to the 2008 standard offer contract, previously approved by the Commission.² The minimal modifications proposed by TECO include typographical corrections, default provisions, updates to the timing and size of the avoided units, parameters for avoided cost, and capacity payment estimates. Staff believes that these modifications are prudent, protect ratepayers from the possible default of a contracted party, and accurately reflect the utility's avoided cost.

The company's ratepayers are protected by changes in the default provisions on Sheet No. 8.242, and the addition of Sheet No. 8.243. These provisions are in compliance with Rule 25-17.0832(4)(f), F.A.C. The new provisions provide protection for situations in which the renewable energy provider is dissolved, becomes insolvent, and other financial situations that may impact the renewable energy provider's ability to fulfill the standard offer contract.

Sheet No. 8.224 is clarified to indicate that a security deposit is required if the renewable energy provider does not qualify for unsecured credit. This completion security provision is in compliance with Rule 25-17.0832(4), F.A.C.

Economic assumptions are updated on several sheets to reflect current conditions and pricings. Specific items modified include the interest rate to be applied to the repayment account, customer charges to the renewable energy provider, and the adjustment factors for delivery voltage, in Sheets No. 8.236, 8.312, and 8.306 respectively. These modifications

² Order No. PSC-08-0547-TRF-EQ, issued August 19, 2008, in Docket No. 080184-EQ, In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

comply with Rule 25-17.230, F.A.C., by outlining the utility's obligation to purchase renewable energy from the facility, provide upon request transmission service, and sell energy to the facility as needed.

Sheets No. 8.252 through 8.257 incorporate terms that TECO identifies as standard contract language. They include a requirement that the renewable energy provider is not bankrupt nor are there proceedings pending against it, submitting to the exclusive jurisdiction of the courts of Florida and the U.S. District Court in Tampa, and waiving a jury trial in any proceedings relating to this contract.

As required by Rule 25-17.0832(4), F.A.C., the standard offer contracts contain the payment options available to the renewable energy provider, including all financial and economic assumptions necessary to calculate, as well as an example of these calculations. These are updated on Sheets No. 8.406 through 8.436 for the 2012 combustion turbine, and to Sheets No. 8.326 and 8.438 through 8.460 for the 2018 combined cycle.

Several minor modifications to the tariff were also submitted in TECO's petition. Scrivener's errors, subsections re-labeled due to additions, and movement of subsections due to space limitations occurred on several sheets. These include Sheets No. 8.215, 8.216, 8.258, 8.262, and 8.282.

Right of First Refusal

The proposed 2009 standard offer contract contains a provision giving TECO right of first refusal of tradable renewable energy credits (TRECs). This provision allows TECO to review any bona-fide offers for purchases of TRECs that the renewable generator may receive. TECO is allowed up to five days after its notice of the offer to exercise its right to purchase the TRECs. The renewable provider is unable to finalize any purchase during this timeframe without written consent from TECO.

Rule 25-17.280, F.A.C., provides that all TRECs are the exclusive property of the renewable generator. Given current market conditions, staff believes that the continuation of the right of first refusal has a negative impact upon the interests of renewable providers. Staff believes that any conditions relating to TRECs would be more appropriately handled through a separately negotiated contract, and not a requirement in a standard offer contract.

Previously the Commission has approved the right of first refusal, and the provision is a component of TECO's previously approved 2008 standard offer.³ However, in a recent case, the Commission has found that the interests of the renewable energy provider are negatively impacted by the right of first refusal. The Commission issued an order to this effect, and denied Florida Power & Light Company's tariff with respect to the right of first refusal.⁴ In order to

³ Order No. PSC-08-0547-TRF-EQ, issued August 19, 2008, in Docket No. 080184-EQ, In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

⁴ Order No. PSC-09-0394-FOF-EQ, issued June 2, 2009, in Docket No. 080193-EQ, In re: Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

consistently apply this standard to all IOUs, staff believes that TECO's standard offer contracts must also be denied as they contain the provision as well.

Conclusion

TECO's Standard Offer Contract is in compliance with Rules 25-17.200 through 25-17.310, F.A.C., with the exception of Section 18, the right of first refusal. In order to comply with Rule 25-17.280, F.A.C., TECO should file within 30 days revised standard offer contracts that excludes the first right of refusal. If the revised tariffs comply with the Commission's decision, staff should be granted the administrative authority to approve the revised tariffs.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation, TECO should file revised standard offer contracts within 30 days of the Commission's vote, in accordance with the Commission's decision. This docket should be administratively closed by staff after review and approval of the revised contracts, if no person whose substantial interests are affected has filed a protest within 21 days of the Commission order. If the standard offer contract is administratively approved and 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 TECO'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, TECO should file revised standard offer contracts within 30 days of the Commission's vote, in accordance with the Commission's decision. This docket should be administratively closed by staff after review and approval of the revised contracts, if no person whose substantial interests are affected has filed a protest within 21 days of the Commission order. If the standard offer contract is administratively approved and 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 TECO's tariffs and standard offer contracts may be subject to a request for hearing, and if a hearing is held, may subsequently be revised.