

120012 - EI

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Sent: Friday, January 06, 2012 2:46 PM
To: Filings@psc.state.fl.us
Cc: Triplett, Dianne; Lewis Jr, Paul
Subject: E-Filing: PEF's Petition for Emergency Variance or Waiver of Rule 25-6.065 - Dkt# TBD
Attachments: PEF's Petition for ~~Emergency~~ Variance or Waiver of Rule 25-6.065.pdf
This electronic filing is made by: *per Lisa Stright/PEF by phone
mas*

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TO BE DOCKETED**On Behalf of Progress Energy Florida, Inc.****Consisting of 11 Pages.**

**The attached document for filing is PEF's
Petition for ~~Emergency~~ Variance or Waiver
of Rule 25-6.065, F.A.C..**

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DOCUMENT NUMBER - DATE

00119 JAN-6 2012

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1/6/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Progress Energy Florida, Inc.
For Variance and Waiver of Certain
Contractual Requirements in Rule 25-6.065,
F.A.C.

Docket No. 120012-E1

**PETITION FOR VARIANCE AND WAIVER OF CERTAIN
CONTRACTUAL REQUIREMENTS IN RULE 25-6.065, F.A.C.**

Progress Energy Florida (“PEF” or the “Company”) respectfully petitions the Florida Public Service Commission (“PSC” or the “Commission”) for a variance and waiver of certain contractual requirements in Rule 25-6.065, F.A.C. pursuant to Rule 28-104.002, F.A.C. and Section 120.542, Florida Statutes. Specifically, PEF is requesting that the requirements contained in Rule 25-6.065(5) (d) and (e) be waived and varied so that it is allowed to execute a Standard Interconnection Agreement for Tier 2 Customer-Owned Renewable Generation Systems (hereinafter “Standard Interconnection Agreement”) with the University of Central Florida (“UCF”), a state agency. PEF also respectfully requests that the Commission consider its petition in an expedited manner.

SUMMARY OF PETITION

PEF filed its Standard Interconnection Agreement, prepared in accordance with Rule 25-6.065, FAC, with the Commission as part of its tariff. Rule 25-6.065(5) provides that a utility’s Standard Interconnection Agreement “shall, at a minimum, contain the following...” provisions. Two of those required provisions are the subject of this Petition. Subsection (d) requires, in relevant part: “A provision that the customer shall hold harmless and indemnify the investor-owned utility for all loss to third parties resulting from the operation of the customer-owned renewable generation, except when the loss occurs due to the negligent actions of the investor-owned utility.” For ease of

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reference, this subsection is hereinafter referred to as the “indemnity provision.” Subsection (e) requires, in relevant part: “A requirement for general liability insurance for personal and property damage, or sufficient guarantee and proof of self-insurance, in the amount of no more than \$1 million for Tier 2 . . .” For ease of reference, this subsection is hereinafter referred to as the “insurance provision.” PEF’s Standard Interconnection Agreement contains these two required provisions. See Attachment A, paragraphs 8 and 11. UCF is a PEF customer and seeks to install a Tier 2 customer-owned renewable generation system. UCF is a state agency for purposes of Section 768.28, Fla. Stat., which provides for a limited waiver of state sovereign immunity. As a state agency, UCF asserts that it is not legally permitted to agree to the indemnity provision contained in PEF’s Standard Interconnection Agreement. Further, as a state agency, UCF asserts that it can only agree to a lesser amount of the insurance provision, not the full \$1 million required by Rule 25-6.065(5)(e). PEF thus respectfully requests a waiver and variance of these two requirements of the rule, so that PEF can execute the Standard Interconnection Agreement without the indemnity provision to which UCF states it legally cannot agree and with a modification to the insurance provision, consistent with Section 768.28. PEF further requests that the Commission consider this petition on an expedited basis so that UCF may interconnect its renewable generation system on its planned schedule.

I. Preliminary Information.

1. The Petitioner’s name and address are:

Progress Energy Florida, Inc.
299 1st Avenue North
St. Petersburg, Florida 33701

2. Any pleading, motion, notice, order, or other document required to be served upon PEF of filed by any party to this proceeding should be served upon the following individuals:

Dianne M. Triplett
dianne.triplett@pgnmail.com
John T. Burnett
john.burnett@pgnmail.com
Progress Energy Service Company, LLC
299 1st Avenue North
St. Petersburg, Florida 33701
(727) 820-4692 / (727) 820-5519 (fax)

Paul Lewis, Jr.
paul.lewisjr@pgnmail.com
Progress Energy Service Company, LLC
106 E. College Avenue, Ste. 800
Tallahassee, FL 32301
(850) 521-1421

II. Waiver and variance of the indemnity and insurance requirements in Rule 25-6.065, F.A.C. is warranted under Section 120.542, Commission Rules, Section 768.28, and applicable Attorney General opinions.

3. Rule 25-6.065, F.A.C. is the Interconnection and Net Metering of Customer-Owned Renewable Generation Commission rule. The rule's purpose is "to promote the development of small customer-owned renewable generation, particularly solar and wind energy systems; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on fossil fuels for the production of electricity; minimize the volatility of fuel costs; encourage investment in the state; improve environmental conditions; and, at the same time, minimize costs of power supply to investor-owned utilities and their customers." Rule 25-6.065(1), F.A.C.

4. Rule 25-6.065, F.A.C. implements Sections 366.81, 366.82(1) and (2), 366.91(1) and (2), and 366.92, Florida Statutes. Each of these sections concern

renewable energy and reflect the Legislature's intent to promote the development of renewable energy. None of these statutory sections dictate the provisions that are to be included in the Standard Interconnection Agreement. Rather, the Legislature left to the Commission's discretion the right to prescribe rules to govern the utility's agreements between the utility and its customers.

5. Section 768.28, Florida Statutes, is entitled "Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs." Pursuant to section (2) of this statute, UCF, as a state university board of trustee, is considered a state agency and thus subject to the limitations contained in Section 768.28. Section 768.28(5) provides, in relevant part, "Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising of the same incident or occurrence, exceeds the sum of \$300,000." The Attorney General has issued opinions interpreting the meaning of Section 768.28, Florida Statutes. Specifically, AG Order 2000-22, issued April 4, 2000, provides that a county may not agree to indemnify another party to a contract or alter the state's waiver of sovereign immunity beyond the limits established in section 768.28. See also Op. Att'y Gen. Fla. 99-56 (1999) (Florida National Guard may not enter into a land use agreement that contains an indemnification agreement); Op. Att'y Gen. Fla. 90-21 (1990) (Department of Corrections cannot alter by contract the state's waiver of sovereign immunity provided in section 768.28).

6. Pursuant to the above statute and Attorney General opinions, UCF, as a state agency, states that it cannot indemnify PEF in its Standard Interconnection Agreement. UCF also states that it cannot obtain general liability insurance in excess of the amounts set forth in section 768.28 (i.e. \$200,000 per person/\$300,000 per occurrence). PEF therefore requests the Commission to waive the indemnity provision and grant a variance of the insurance provision such that the \$1 million is changed to \$200,000/\$300,000. Specifically, with respect to its agreement with UCF, PEF is requesting that the first sentence of paragraph 11 of its Standard Interconnection Agreement be stricken and that the reference to “one million dollars (\$1 million)” in paragraph 8 of its Standard Interconnection Agreement be changed to “\$200,000 per person/\$300,000 per occurrence.”

7. The Commission can grant PEF’s request under Section 120.542 when (1) the purpose of the rule will otherwise be satisfied even though the rule is waived and (2) substantial hardship of a technological, economic, legal, or other type of hardship will result from compliance with the rule. §120.542(2), Fla. Stat. Both requirements are met here and, therefore, PEF’s petition should be granted.

8. First, the purpose of the rule is to encourage renewable energy generation. PEF is only seeking a waiver and variance, in a limited instance, from two requirements to be included in the Standard Interconnection Agreement, so that one of PEF’s customers, a state agency, can execute the agreement and not waive its sovereign immunity. Without this waiver and variance, UCF states that it cannot deploy its renewable energy generation system. As a result, the purpose of Rule 25-6.065, FAC will not be met with respect to this state agency customer unless PEF’s petition for

waiver and variance is granted. Thus, the purpose of the rule is satisfied even with the waiver and variance.

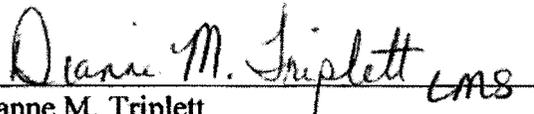
8. Section 120.542 further provides that a rule requirement can be waived when strict compliance creates a hardship that is economic, technological, legal, or some other type of substantial hardship. Because all agency rules necessarily implement a legislative purpose, Section 120.542 establishes this minimum standard to avoid the arbitrary avoidance or subversion of legislative intent while protecting individuals from unfair or unreasonable outcomes if the rule requirements are always strictly enforced. See generally, Florida Dep't. of Business and Professional Regulation, Div. of Paramutuel Wagering v. Investment Corp. of Palm Beach, 747 So. 2d 374, 383 n.7 (Fla. 1999) (“[Section 120.542] is intended to give agencies much-needed flexibility to address unique or unusual situations that are not contemplated by agency rules that, by necessity, are written to address general circumstances.”) (quoting Blanton & Rhodes, Flexibility, Flexibility, Flexibility, The New Variance & Waiver Provision, Fla. Bar Journal, Mar. 1997 at 35, 38-39). In this situation, the Commission did not, in Rule 25-6.065, appear to intend to exclude state agency customers, like UCF, from the possibility of interconnecting their renewable energy generation systems to PEF’s system. According to UCF, however, because UCF is legally barred from executing the indemnity and insurance provisions, strict application of the rule in this circumstance effectively means that UCF cannot participate in the program. The requested waiver and variance can avoid this unintended outcome and legal hardship. Thus, the Commission should grant the waiver and variance.

9. The requested variance and waiver of the indemnity and insurance provisions are permanent as to UCF, because the waiver and variance are required for UCF, as a state agency, to execute the Standard Interconnection Agreement.

IV. Conclusion.

10. In sum, the insurance and indemnity provisions of Rule 25-6.065 should be waived and a variance granted, on an expedited basis, as to PEF's Standard Interconnection Agreement with UCF, because PEF has satisfied the purpose of the rule and there is substantial legal hardship where UCF, a state agency, cannot legally agree to the provisions as contained in the rule.

Respectfully submitted this 6th day of January, 2012.

Handwritten signature of Dianne M. Triplett in cursive, with the initials 'CMS' written at the end of the signature.

Dianne M. Triplett
Associate General Counsel
John T. Burnett
Associate General Counsel
PROGRESS ENERGY FLORIDA, INC.
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-4692
Facsimile: (727) 820-5249

**PROGRESS ENERGY FLORIDA, INC.
STANDARD INTERCONNECTION AGREEMENT
FOR TIER 2 CUSTOMER-OWNED RENEWABLE GENERATION SYSTEMS (>10kw, <= 100kw)**

THIS AGREEMENT is made this ____ day of _____, _____, by and between _____ (hereinafter called the Customer), located at the address shown in the attached Application and Compliance Form, and Progress Energy Florida, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter called the Company).

WITNESSETH:

WHEREAS, the Customer has made a request to interconnect its renewable generation Tier 2 system(s), more than 10 kilowatts or less than or equal to 100 kilowatts in total, which is primarily intended to offset part or all of the customer's electricity requirements, with the Company's electric supply grid at the Customer's presently metered location.

NOW, THEREFORE, in consideration of the mutual covenants and agreements expressed herein, the Company and the Customer agree as follows:

General Responsibilities of Both Parties:

1. The Customer certifies that the system's hardware and its installation, operation and maintenance is in compliance and shall continue to comply with the applicable standards, codes and manufacturer's instructions set forth in the Application and Compliance Form attached hereto and incorporated herein, and that all other information therein provided by the Customer is true and correct. The Customer shall notify the Company in writing of any changes to its system.
2. The Customer shall pay an application fee of \$240 for this Tier 2 Customer-owned renewable generation system interconnection.
3. In order to commence the process for interconnection, the Customer shall provide the Company a completed application. Applications can be downloaded from the Company's website: www.progress-energy.com
4. The Customer is responsible for the protection of its generation equipment, inverters, protection devices, and other system components from damage from the normal and abnormal operations that occur on the Company's utility system in delivering and restoring system power; and is responsible for insuring that the equipment is inspected, maintained, and tested in accordance with the manufacturer's instructions to insure that it is operating correctly and safely.
5. Customer-owned renewable generation shall be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with the applicable codes and standards of IEEE 1547, IEEE 1547.1 and UL 1741.
6. Customer-owned renewable generation shall include a utility-interactive inverter, or other device certified pursuant to item 5 listed above, that performs the function of automatically isolating the Customer-owned generation equipment from the electric grid in the event the electric grid loses power.
7. The Customer agrees to provide Local Building Code Official inspection and certification of installation. The certification shall reflect that the local code official has inspected and certified that the installation was permitted, has been approved, and has met all electrical and mechanical qualifications.
8. The Company requires that the Customer maintain general liability insurance for personal injury and property damage in the amount of not less than one million dollars (\$1,000,000). The Customer shall provide the Company proof of continuing insurance coverage on an annual basis.
9. The total capacity of the Customer generation system(s) does not exceed 90% of the rating of service currently provided to the customer (based on service size, transformer rating, etc.) and has a total gross power rating of greater than 10kw up to 100kw.

10. The Company may isolate the Customer's system from the distribution grid using the manual disconnect switch without prior notice to the Customer. To the extent practical, however, prior notice shall be given. The system will be reconnected as soon as practical once the conditions causing the disconnection cease to exist. Conditions which may require the disconnection of the Customer's system are:
- (a) Company utility system emergencies or maintenance requirements.
 - (b) Hazardous conditions existing on the Company's utility system due to the operation of the Customer's generation or protective equipment as determined by the Company.
 - (c) Adverse electrical effects (such as power quality problems) on the electrical equipment of the company's other electric consumers caused by the Customer's generation as determined by the Company.
 - (d) Failure of the Customer to maintain the required insurance coverage.
- In the event the Company disconnects the Customer's system without prior notice, the Company will leave a door hanger notifying the customer of the disconnection including an explanation of the conditions requiring such action.
11. The Customer shall hold harmless and indemnify the Company for all loss to third parties resulting from the operation of the customer-owned renewable generation, except when the loss occurs due to the negligent actions of the Company. The Company shall hold harmless and indemnify the Customer for all loss to third parties resulting from the operation of the Company's system, except when the loss occurs due to the negligent actions of the Customer.
12. Prior to connection and parallel operation of the Customer's generation system with the Company's electric system, the Customer shall provide 10 days notice and permit the Company, if it should so choose, to inspect the system and its component equipment and the documents necessary to insure compliance with various sections of this Agreement and to have personnel present on the in-service date of the Customer's generation system equipment and protective apparatus.
13. In no event shall any statement, representation, or lack thereof, either express or implied, by the Company, relieve the Customer of exclusive responsibility for the Customer's generation system. Specifically, any company inspection of the Customer's system shall not be construed as confirming or endorsing the Customer's system design or its operating or maintenance procedures nor as a warranty or guarantee as to the safety, reliability, or durability of the Customer's equipment. The Company's inspection, acceptance, or its failure to inspect shall not be deemed an endorsement of any of the Customer's equipment or procedures.
14. The Company will install metering equipment on the Customer's premises capable of measuring any excess kilowatt-hours produced by the Customer's system and delivered to the Company's electric system. The cost of the meter, installation, maintenance, and any costs of reading and billing associated with this meter equipment shall be borne by the Company. The value of such excess generation shall be reflected on the Customer's bill based on the Company's applicable net metering for customer-owned renewable generation tariff approved by the Florida Public Service Commission. This tariff can be found at the Company's website – www.progress-energy.com/florida/connecting-renewable-sources.
15. The Customer must install a manual AC load break disconnect switch at their expense which shall be mounted separate from, but adjacent to the Company's meter socket. The Customer shall ensure that such disconnect switch shall remain readily accessible to the Company and be capable of being locked in the open position with a single Company utility lock.
16. On termination of services pursuant to this Agreement, the Company shall remove any additional metering equipment related to this Agreement. At the Customer's expense, within 10 working days following the termination, the Customer shall permanently isolate the generation system and any associated equipment from the Company's electric supply system, and notify the Company that the isolation is complete.

Inspection and On-going Compliance:

17. The Company will provide the Customer with as much notice as reasonably possible, either in writing, e-mail, facsimile or by phone as to when the Company may conduct inspections and/or document review. Upon reasonable notice, the Company shall have access to the Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed by this Interconnection Agreement or, if necessary, to meet the Company's legal obligation to provide service to its Customers. At any time without notice in the event of emergency or hazardous conditions, the Company shall have access to the customers premise to operate the manual disconnect switch.

Modifications/Additions to Customer-owned Renewable Generation:

18. If the Customer-owned renewable generation system is subsequently modified in order to increase its Gross power rating, the Customer must notify the Company by submitting a new application specifying the modification at least thirty days prior to making the modification.

19. If the Customer adds another Customer-owned renewable generator system which i.) utilizes the same utility inter-active inverter for both systems; or ii.) utilizes a separate utility inter-active inverter for each system the Customer shall provide thirty days notice prior to installation.
20. In the event any Customer modifications or additions result in the input to any Company meter so as to qualify as a Tier 3 system, then all terms and condition, including appropriate notice, of the Interconnection Agreement for Tier 3 systems shall apply.
21. The Interconnection Agreement which applies in instances described in sections 18-20 above shall be determined by the maximum output of the generation system(s) which is connected to the Company's meter. In all instances described in this section, the Customer shall submit a new application to the Company and shall enter into a new Interconnection Agreement.

Renewable Energy Credits:

22. The Customer shall retain any Renewable Energy Certificates produced by the Customer-owned renewable generation equipment; and any additional meters necessary for measuring the total renewable electricity generated for the purposes of receiving Renewable Energy Certificates shall be installed at the Customer's expense, unless otherwise determined during negotiations for the sale of the Customer's Renewable Energy Certificates to the Company.

Lease Agreements:

23. The Customer shall provide the Company a copy of the lease agreement, as applicable, for any and all leased interconnection equipment.
24. The Customer shall not enter into any lease agreement that results in the retail sale of electricity. Notwithstanding this restriction, in the event the Customer so enters such an agreement, the Customer may become subject to the Florida Public Service Commission's jurisdiction and may be subject to various fines and penalties.

Assignment:

25. The Customer shall not have the right to assign its benefits or obligations under this Agreement without the Company's prior written consent and such consent shall not be unreasonably withheld. The Company may require the assignee to sign a new copy of this Agreement, agreeing to all its requirements. The Customer shall notify the Company in writing prior to any such anticipated assignment.
26. An assignee to this Interconnection Agreement shall have the same rights, responsibilities and obligations as the assigning Party.

Entire Agreement:

27. In executing this Agreement, the Company does not, nor should it be construed to extend its credit or financial support for the benefit or any third parties lending money to or having other transactions with Customer or any assignee of this Agreement.
28. Disputes between the Parties shall be handled in accordance with subsection 11 of Florida Public Service Commission Rule 25-6.065 F.A.C. – Interconnection and Net Metering of Customer-owned Renewable Generation.
29. The Customer must execute this Interconnection Agreement and the Customer's subsequent application submitted there under and return it to the Company at least thirty calendar days prior to beginning parallel operations.
30. This Agreement shall be governed by and construed and enforced in accordance with the laws, rules and regulations of the State of Florida and the Company's Tariff as may be modified, changed, or amended from time to time.
31. The Company's tariff and associated technical terms and abbreviations, general rules and regulations and standard electric service requirements, as may be applicable, are incorporated by reference.

31. The Company's tariff and associated technical terms and abbreviations, general rules and regulations and standard electric service requirements, as may be applicable, are incorporated by reference.
32. This Interconnection Agreement supersedes all previous agreements or representations, either written or oral, heretofore in effect between the Company and the Customer, made in respect to matters herein contained, and when duly executed, this Interconnection Agreement constitutes the entire agreement between Parties hereto.

IN WITNESS WHEREOF, the Customer has executed this Agreement the day and year first written above.

CUSTOMER

COMPANY

Signature of Customer or Authorized Representative_____
Signature of Company Representative_____
Title of Authorized Representative_____
Title of Company Representative

Customer Account Number _____