

STATE OF FLORIDA

Commissioners:
E. LEON JACOBS, JR., CHAIRMAN
J. TERRY DEASON
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DIVISION OF APPEAL
DAVID SMITH
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Public Service Commission

September 14, 2001

Ms. Monique H. Cheek
Office of Tourism, Trade, and
Economic Development
Executive Office of the Governor
The Capitol
Tallahassee, FL 32399-0001

SUBJECT: Docket No. 001574-EQ - Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts

The Commission has determined that the above rule will affect small business. Accordingly, pursuant to Section 120.54(3)(b), Florida Statutes, enclosed is a copy of the Florida Administrative Weekly (FAW) notice for the proposed rule, which will be published in the September 21, 2001 edition of the FAW. Also enclosed is a copy of the statement of estimated regulatory costs.

If there are any questions with respect to this rule or the Commission's rulemaking procedures, please do not hesitate to call on me.

Sincerely,

Mary Anne Helton
Division of Legal Services
Associate General Counsel

Enclosures
cc: Division of the Commission Clerk
and Administrative Services

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001574-EQ

RULE TITLE:

RULE NO.:

Firm Capacity and Energy Contracts

25-17.0832

PURPOSE AND EFFECT: The purpose of the amendment is to reduce the minimum term for standard offer contracts from 10 to five years. The rule amendment also requires investor-owned electric utilities to specify the term of the standard offer when filing the contract for approval with the Commission. The effect is to reduce the risk that ratepayers will be tied to long-term contracts that are above avoided cost.

SUMMARY: Rule 25-17.0832 requires investor-owned utilities to file a tariff and a standard offer contract for the purchase of firm capacity and energy from specified types of small qualifying facilities. The rule sets forth the minimum specifications and acceptable pricing methodologies for standard offer contracts. The amendment to subparagraphs (4)(e)3. and 7. would reduce the ten year minimum contract term for standard offer contracts to five years. In addition, the amendment to subparagraph (4)(e)7. would require investor-owned utilities to specify the contract term when filing the standard offer for approval by the Commission.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Several

municipal solid waste (MSWs) facilities oppose the rule amendments. However, the impact on these local government entities depends on future firm capacity and energy prices. If these prices increase, a shorter contract term would benefit MSW facility owners because they could enter a new standard offer contract sooner with higher payments. On the other hand, if firm capacity and energy prices decrease, MSW owners would be faced with lower payments. One MSW argued that because MSW facilities are publicly owned, any shortfall or reduction in electrical revenues will require increasing solid waste disposal costs. In addition, at least one MSW argued that adoption of the rule amendments will result in MSWs having to negotiate more contracts, which will increase transaction costs for the MSWs. The MSWs overlook that longer contracts are still possible under the rule. The MSWs also do not acknowledge that the Commission is required to keep IOU rates reasonable and shortening the standard offer contract term is best for IOU ratepayers in an environment in which wholesale generation costs are falling. Keeping the ten year minimum term would continue the possibility that IOUs and their ratepayers would be faced with higher cost capacity and energy costs for an additional five years for new standard offer contracts, even if market costs declined. However, wholesale generation costs may increase and IOUs would lose the benefits of a fixed price contract for an additional

five years. Allowing a qualifying facility to choose the contract term would abrogate the Commission's regulatory responsibility over capacity and energy contracts.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127, 366.05(1), FS

LAW IMPLEMENTED: 366.051, 366.81, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-17.0832 Firm Capacity and Energy Contracts.

(1) Firm capacity and energy are capacity and energy produced and sold by a qualifying facility and purchased by a utility pursuant to a negotiated contract or a standard offer

contract subject to certain contractual provisions as to the quantity, time, and reliability of delivery.

(a) Within one working day of the execution of a negotiated contract or the receipt of a signed standard offer contract, the utility shall notify the Director of the Division of Safety Electric and Electric Reliability Gas and provide the amount of committed capacity and the type of generating unit, if any, which the contracted capacity is intended to avoid or defer.

(b) Within 10 working days of the execution of a negotiated contract or receipt of a signed standard offer contract for the purchase of firm capacity and energy, the purchasing utility shall file with the Commission a copy of the signed contract and a summary of its terms and conditions. At a minimum, the summary shall include report:

1. The name of the utility and the owner and operator of the qualifying facility, who are signatories of the contract;
2. The amount of committed capacity specified in the contract, the size of the facility, the type of facility, its location, and its interconnection and transmission requirements;
3. The amount of annual and on-peak and off-peak energy expected to be delivered to the utility;
4. The type of unit being avoided, its size, and its

in-service year;

5. The in-service date of the qualifying facility;
and

6. The date by which the delivery of firm capacity
and energy is expected to commence.

(2) No change.

(3) No change.

(4) Standard Offer Contracts.

(a) Upon petition by a utility or pursuant to a Commission action, each public utility shall submit for Commission approval a tariff or tariffs and a standard offer contract or contracts for the purchase of firm capacity and energy from small qualifying facilities. In lieu of a separately ~~seperately~~ negotiated contract, standard offer contracts are available to the following types of qualifying facilities:

1. A small power producer or other qualifying facility using renewable or non-fossil fuel where the primary energy source in British Thermal Units (BTUs) is at least 75 percent biomass, waste, solar or other renewable resource;
2. A qualifying facility, as defined by Rule 25-17.080(3), with a design capacity of 100 kW or less; or
3. A municipal solid waste facility as defined by

Rule 25-17.091.

(b) through (d) No change.

(e) Minimum Specifications. Each standard offer contract shall, at minimum, specify:

1. through 2. No change.

3. The payment options available to the qualifying facility including all financial and economic assumptions necessary to calculate the firm capacity payments available under each payment option and an illustrative calculation of firm capacity payments for a minimum five ~~ten~~ year term contract commencing with the in-service date of the avoided unit for each payment option;

4. through 6. No change.

7. The specific period of time over which firm capacity and energy shall be delivered from the qualifying facility to the utility. Firm capacity and energy shall be delivered, at a minimum, for a period of five ~~ten~~ years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the

anticipated in-service date of the avoided unit;

8. through 10. No change.

(f) through (g) No change.

(5) through (8) No change.

Specific Authority: 350.127, ~~366.04(1)~~, ~~366.051~~, 366.05(1) ~~&~~
(8), F.S.

Law Implemented: 366.051, 366.81 ~~403.503~~, F.S.

History: New 10/25/90, amended 01/07/97, amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Judy Harlow, Division
of Safety and Electric Reliability.

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: September 4, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:
Volume 26, Number 44, November 3, 2000.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at

least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

M E M O R A N D U M

May 31, 2001

TO: DIVISION OF APPEALS (HELTON)

FROM: DIVISION OF ECONOMIC REGULATION (HEWITT) *CBH* *CONF* *192* *Hel*

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR DOCKET NO. 001574-EQ, PROPOSED AMENDMENTS TO RULE 25-17.0832, F.A.C., FIRM CAPACITY AND ENERGY CONTRACTS

SUMMARY OF THE RULES

Currently, Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts, contains the standards and requirements for investor-owned utilities (IOUs) to file a tariff for a standard offer contract for the purchase of firm capacity and energy from specified types of small qualifying facilities (QFs). Section (4)(e)(7) requires a ten year minimum contract term for standard offer contracts with a maximum term being the expected life of the avoided unit. The Commission approves the time period when a standard offer contract tariff is requested.

The proposed amendments would reduce the minimum standard offer contract period for the purchase of QF firm capacity and energy from ten years to five years. The proposed amendments would also update the rule to include a new division name and other editorial changes.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND
GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

There are five investor-owned electric utility companies operating in Florida and there are approximately 60 QFs; 30 with firm capacity contracts. QFs are not limited to selling their output to IOUs and would only be affected by the proposed rule changes if they seek a new standard offer contract with an IOU.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES
FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Public Service Commission and other state entities are not expected to experience implementation costs other than the costs associated with promulgating a proposed rule. Existing Commission staff would continue to handle the monitoring and review of QF contracts.

Local government entities that have an interest in solid waste facilities could be impacted. There are various cities in Florida that have interests in municipal solid waste (MSWs) facilities which are covered by this rule change. The City of Tampa and Miami-Dade responded to a data request and objected to the shortening of the possible minimum time period for a standard offer contract from ten years to five years. Tampa predicated its response on the rule limiting the maximum contract length to a five year term. However, the maximum contract term, the anticipated life of the avoided unit, would not change. Moreover, the Commission determines the period of time when a standard offer contract is approved and has granted requests for a rule waiver for a five year term limit in several recent standard offer contracts.

Although the existing MSW facility contracts would not be affected by the proposed rule changes, future contracts could be affected. Whether the effects of the proposed rule changes would be positive or negative for local governments depends on the future price for firm capacity and energy. If energy and capacity prices are increasing in the future, a shorter contract would benefit MSW facility owners and their ratepayers since they could enter a new standard offer contract sooner with higher payments. If energy and capacity prices are decreasing in the future, a shorter contract would cost MSW facility owners and their ratepayers because a new standard offer contract would have lower payments. Longer contracts would still be possible up to the anticipated life of the avoided unit if approved by the Commission. The Commission is required to keep IOU rates reasonable and shortening the term for standard offer contracts is best for IOU ratepayers in a falling electricity price environment.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

All the IOUs that responded stated that there should not be additional costs to comply with the proposed rule changes. One IOU stated that the proposed rule amendment would give it more flexibility in tailoring the terms of the contract to specific needs.

Montenay Power Corporation (MPC), which operates the Miami-Dade County Resources Recovery Facility and the Bay County Resources Recovery Facility, responded to the data request with its opposition to the proposed rule changes. MPC particularly objected to the reduction in the duration of power purchase agreements as they may apply to standard offer contracts. MPC pointed out that since these MSW facilities are publicly owned, any shortfall or reduction in electrical revenues would require increasing of solid waste disposal costs to the residents and businesses of the respective counties.

The existing minimum contract term limit of ten years does not remove the uncertainties that surround future prices and costs and the viability of contract renewability. The reduction of

the minimum contract term to five years would have the same uncertainties, the value would be “marked to market” sooner rather than later, if the contract is for the minimum term. As noted above, the costs or benefits accruing to an existing or planned facility’s value when a contract is renewed depends upon the price of firm capacity and energy at that future time. Whether conditions will benefit the owner of the MSW facility and its ratepayers or an IOU and its ratepayers is unknown at present.

MPC further contends that because the proposed rule changes would reduce the attractiveness of utilities’ standard offer contracts, it would be more necessary for MPC and other QFs to negotiate power purchase agreements rather than accepting a standard offer. This situation would significantly increase MPC’s transaction costs in obtaining a purchase power agreement pursuant to the Public Utility Regulatory Policies Act of 1978, section 366.051, Florida Statutes, and the Commission’s rules. MPC estimates that the increase in transaction costs could easily well exceed \$100,000, including the engagement of attorneys to participate in negotiations and review draft contracts offered by utilities and the engagement of consultants to evaluate the utility’s avoided costs estimates. If negotiations were difficult and took six months or more, MPC estimates that the transaction costs could run well over \$250,000.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

Small businesses, small cities, and small counties that may have interests in MSW facilities would face the same situation as the larger cities stated above. The shorter minimum contract term may benefit or cost these entities depending on price conditions in five years.

Small businesses, small cities, and small counties that are customers of IOUs would have lower electricity costs if rates fall because IOUs can obtain capacity and energy for shorter contract periods in a falling price environment.

ALTERNATIVE METHODS

Maintaining the current rule would continue the possibility that IOUs and their ratepayers would be saddled with higher cost capacity and energy costs for an additional five years for new small standard offer contracts if market prices declined. However, prices may increase and IOUs would lose the benefits of a fixed price contract for an additional five years. MPC suggests that an eligible QF be allowed to choose to accept a standard offer contract for any period between five years and the life of the avoided unit designated in the contract. However, the Commission can not give up its responsibility to regulate the IOUs and their capacity and energy contracts.

qfserc.cbh