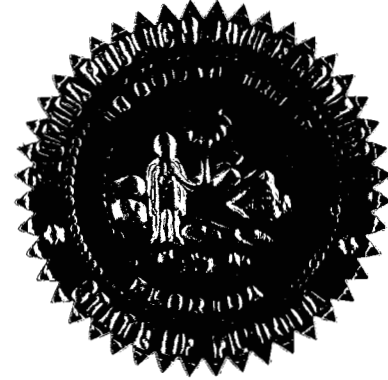


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. UNDOCKETED

In the Matter of

IMPLEMENTATION OF SECTION 366.91,  
FLORIDA STATUTES, CONCERNING  
STANDARD OFFER CONTRACTS FOR  
RENEWABLE ENERGY RESOURCES.



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PROCEEDINGS:                   WORKSHOP

BEFORE:                         CHAIRMAN LISA POLAK EDGAR  
                                  COMMISSIONER J. TERRY DEASON  
                                  COMMISSIONER ISILIO ARRIAGA  
                                  COMMISSIONER MATTHEW M. CARTER, II  
                                  COMMISSIONER KATRINA J. TEW

DATE:                            Monday, March 6, 2006

TIME:                            Commenced at 9:30 a.m.  
                                  Concluded at 1:38 p.m.

PLACE:                          Betty Easley Conference Center  
                                  Room 148  
                                  4075 Esplanade Way  
                                  Tallahassee, Florida

REPORTED BY:                    JANE FAUROT, RPR  
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## P R O C E E D I N G S

1  
2 CHAIRMAN EDGAR: Good morning. I think we are about  
3 ready to get started.

4 Commissioners, as you are aware, last session the  
5 legislature passed House Bill 77 which was sponsored by Senator  
6 Bennett and by Representative Littlefield. As part of that  
7 bill, Section 366.91 was created which requires utilities to  
8 continuously offer purchased power contracts to renewable  
9 generating facilities. The statute requires that these  
10 purchased power agreements be for a term of at least ten years,  
11 and be available beginning January 1st, 2006.

12 As I know you also recall, this past December at an  
13 agenda conference here in this room our staff raised several  
14 issues for us regarding implementation of the new statute and  
15 how it would work with our existing standard offer contract  
16 rules. We had a lengthy discussion, and at that time we  
17 decided that there were a number of these issues that we would  
18 like to flesh out a little more fully, and we requested a  
19 workshop. And it is that workshop that is the reason for us  
20 being here together this morning.

21 This workshop is an opportunity for all of the  
22 interested parties to come together to propose solutions that  
23 go beyond a business as usual approach to purchasing power from  
24 renewable generation resources. It's an opportunity,  
25 Commissioners, to ask questions if you have them. Again, to

1 have discussions. If we can implement solutions without  
2 amending our rules, we will do so. We will move forward that  
3 way. If solutions that are proposed that, Commissioners, we  
4 are interested in pursuing require rule changes, then we will  
5 pursue those amendments as expeditiously as possible. And with  
6 that, I'm going to turn it over to Tom Ballinger on our staff  
7 to get us started.

8 MR. BALLINGER: Thank you, Chairman Edgar.

9 A few preliminary matters before we get started.

10 Commissioners, I have laid on your desk up there --  
11 people brought in presentations this morning. I know we  
12 brought you packages of everyone's presentation earlier, but  
13 these are the ones that arrived today. Let's make sure I've  
14 got everybody's, and that you have everyone's up there.

15 Probably the top one should be comments from the  
16 investor-owned utilities, that is one of the packets. Another  
17 one are some revised comments from Montenay-Dade, and I've been  
18 assured they're not substantive, it's more grammatical in  
19 changing who actually signed the contract, so it is very  
20 similar to what you already have. The third one would be  
21 comments on behalf of the City of Tampa, The Solid Waste  
22 Authority of Palm Beach, and the Florida Industrial  
23 Cogeneration Association. And then the fourth packet would be  
24 from Covanta, and it consists of two documents, the letter from  
25 Senator Bennett and the slide show from Covanta.

1 I think that's everyone. If I missed somebody's that  
2 needed to get a presentation, let me know now. I think that is  
3 everything. And staff had given you their presentation  
4 earlier, that has not changed, we will go through that as we go  
5 through.

6 I have queried everyone about time-wise, and it's a  
7 very good possibility we might be done by lunch, if we go  
8 along. It's looking like we have some brief presentations.  
9 Staff's will take approximately 40 or 45 minutes at most to go  
10 through it. The utilities have told me maybe 30 to 40 minutes.  
11 We will take questions after the presenters are done, first by  
12 the Commissioners, and then by members of the audience. I  
13 would ask you to please come to a microphone if we have a  
14 question, because we are transcribing this and recording it.  
15 With that, I guess we can get started.

16 Should we read the notice?

17 CHAIRMAN EDGAR: Let's read the notice.

18 MR. KEATING: Thank you for making me feel useful  
19 this morning.

20 CHAIRMAN EDGAR: Mr. Keating, please.

21 MR. KEATING: Pursuant to notice, this time and place  
22 have been set for a staff workshop in this undocketed matter.  
23 The notice does indicate that the Commissioners, one or more  
24 Commissioners may attend and participate in the workshop. I  
25 think that should cover it.

1 CHAIRMAN EDGAR: Thank you, Mr. Keating.

2 And, again, Commissioners, just to point out, this is  
3 a workshop, it is for the benefit of staff and each of us for  
4 discussion. No action to be taken today. Staff will take back  
5 the information that comes out of this, and then will come back  
6 to us with any proposed action if, indeed, that is required,  
7 merited, or desired, and there will be the opportunity to ask  
8 questions. Again, we will kind this kind of informal, since it  
9 is a workshop.

10 As Mr. Ballinger pointed out, it looks like we may be  
11 able to be done by lunch time. If we hit that 12:00, 12:15  
12 time and we are almost done, then I'll look to each of you, of  
13 course, but we may push through. If it looks like we have had  
14 a lot of discussion and have presentations to go, then we'll  
15 take a lunch break.

16 Mr. Ballinger.

17 MR. BALLINGER: Thank you.

18 What we have today is staff, it will be the three of  
19 us doing kind of a group presentation. I will lead you into an  
20 introduction, a little bit of history, and Mr. Haff will go  
21 through talking about the topic of avoided costs, and Ms.  
22 Harlow will pick up contract terms and capacity limits.

23 Go to the next slide.

24 This is kind of the introduction. I just want to  
25 briefly remind everyone of our current policy that the

1 Commission has had for many years, which has always been to  
2 encourage renewable generation wherever cost-effective. And,  
3 basically, in staff's mind, we consider we would rather have  
4 renewable generation than any other type of generation, but  
5 that needs to be cost-effective and ratepayer neutral.

6           The new statute that has come out, in staff's mind,  
7 has opened a window of opportunity for both the Commission and  
8 the industry to go beyond a business-as-usual approach. Let's  
9 be creative. Let's look at other ways that we can encourage  
10 renewable generation without giving away the store, so to say.

11           A little reminder, there has been a new upsurge in  
12 the balanced fuel supply approach to planning, and renewables  
13 play a great role in that. However, we must remember that a  
14 balanced fuel supply but also balance ratepayer risk, that  
15 purchased power has to be at or below avoided cost in order to  
16 keep ratepayers neutral and not to oversubsidize renewable  
17 generation.

18           A long-running policy at the Commission has always  
19 been a preference for negotiated contracts. Negotiated  
20 contracts are best worked out between two parties. They have  
21 their individual circumstances, their individual wants and  
22 needs, and the Commission has always encouraged negotiated  
23 contracts over anything. It seems to be the typical win/win  
24 situation.

25           A standard offer contract is a fall back. If parties

1 can't reach agreement in negotiations, a standard offer is  
2 available for certain types of generators, but it also provides  
3 useful information to the market with which to start  
4 negotiations. It allows the competitive market forces to work  
5 as they should to arrive at the best deal for the ratepayers.

6 Now, the whole purpose of this workshop with the  
7 advent of the new legislation is to ask ourselves a question:  
8 Can we do something other than the business-as-usual approach  
9 to encourage renewable generation but without breaking that  
10 ratepayer-neutral philosophy and policy that we have.

11 A little summary of where we are currently in Florida  
12 with renewable generation. Utilities currently purchase about  
13 500 megawatts from renewable generation in various forms. In a  
14 recent assessment that we have done with DEP, I guess it was  
15 two years ago now, showed that approximately the most potential  
16 for new generation in the renewable form was from biomass,  
17 maybe 200 megawatts. But, as you can see, this is still a  
18 small percentage, totally, in the state of regeneration. We  
19 have a regeneration fleet now of probably close to 40,000  
20 megawatts. So renewable generation, while important, it is  
21 still a small role.

22 Most of the existing contracts are negotiated  
23 contracts, they have an average term of about 18 years, and  
24 most of them are from municipal solid waste facilities. So the  
25 bulk of that 500 megawatts is from municipal solid waste



1 facilities whose primary purpose is to dispose of municipal  
2 solid waste, and electricity is a secondary source. So their  
3 primary motive is not to generate electricity.

4 Most of these contracts will expire in the years 2009  
5 through 2011, so we are going to see a time period where the  
6 facilities will be in place, but the contracts will expire, and  
7 they will be wanting, probably, to renegotiate new contracts to  
8 continue to sell capacity and energy to have a revenue stream.

9 The recent rise in natural gas prices has helped to  
10 facilitate negotiations amongst utilities and renewables and  
11 other generators, as well. And a few agendas ago the  
12 Commission was presented with a negotiated contract between  
13 Progress Energy and a company called G2, which used landfill  
14 gas to power small generators, and it's a good example of how  
15 the negotiated market is working.

16 A quick summary of our existing rules, which is  
17 really what we are going to be talking today, to see can the  
18 new statute can be fitted in and implemented under our existing  
19 rules. One of the very first ones we have is each public  
20 utility shall submit tariff or tariffs and a contract or  
21 contracts for purchase of capacity and energy. And that's  
22 going to be very important as we get later on in the avoided  
23 cost discussion with Mr. Haff. That you can have a single  
24 tariff or multiple tariffs or a single contract or multiple  
25 contracts.

1           This next rule reflects our policy of negotiated  
2 contracts, that in lieu of negotiated contracts, standard  
3 offers are reserved for only renewables, municipal solid waste  
4 facilities, and very small, less than 100 kW facilities  
5 pursuant to PURPA, which was a federal law enacted in 1978.  
6 Staff is probably proposing that those very small generators,  
7 less than 100 kilowatts be absorbed, if you will, in the  
8 renewable standard offer contracts, as well. It doesn't make  
9 sense to staff to have two separate standard offer tracks, one  
10 for just renewables, and one for very small generators. So I  
11 think we are proposing, and I believe the utilities agree, it  
12 makes administrative sense to just have one contract for all of  
13 these. Even though the statute didn't mandate a purchased  
14 contract, it makes sense from staff's standpoint to include  
15 those facilities, as well, and there are no changes to our  
16 rules in order to do that.

17           Again, our rules say they must be equal to the  
18 avoided cost of the utility, and avoided cost means what the  
19 utility would have spent absent the purchase, so it keeps the  
20 ratepayers neutral. The standard offers must contain an open  
21 solicitation period which closes prior to issuing an RFP. And  
22 Ms. Harlow will talk about that as far as the continuous offer  
23 and the term. It also comes into play with avoided cost. And  
24 the new statute now said that standard offers must be  
25 continuously available, so an open season may not be applicable

1 anymore.

2           A standard offer must identify the total amount of  
3 committed capacity needed to fully subscribe the avoided unit.  
4 Again, this will be discussed by Ms. Harlow on the cap, if you  
5 will, on standard offers. And our current rules say a minimum  
6 term is five years from the in-service date of the avoided  
7 unit. Again, Ms. Harlow will talk about that in hers on the  
8 term of the contract.

9           Now, let us go to the new statute. And I'm not going  
10 to read this, but it is direct quoted from the statute, and it  
11 would be a good reference as we go through. I'll try to  
12 summarize it as quick as I can. The basic intent was the  
13 legislature found it is in the public interest to encourage  
14 renewables, and I think staff agrees with that. Like I said  
15 earlier, we would rather have a renewable generator than any  
16 other source. It lists the types of renewable generators,  
17 there are several of them, and it comes everything from  
18 municipal solid waste to products from livestock and poultry  
19 operations.

20           Next slide, please.

21           The statute required that on or before January 1st  
22 each utility have a contract in place. We complied with that  
23 on our December 20th agenda. The utilities have contracts in  
24 place that are set to expire by June 1st. So as a follow-up,  
25 we're going to have new contracts filed probably sometime in

1 May that the Commission will have to act on to see if we  
2 continuously offer them again.

3 The statute required that the avoided cost principle  
4 continue. The statute also provided that a minimum term of now  
5 ten years must be applied. So that is a slight change from  
6 what our existing rules say. The statute also recognized that  
7 no capacity payments are required if the renewable generator  
8 does not perform or provide a capacity benefit, so it's not a  
9 mandated right of capacity payments. It is a pay per  
10 performance type of statute, and that the renewable generator  
11 must pay for interconnection.

12 At the December 20th agenda you'll remember we had a  
13 lively discussion on some topics, and I think this workshop is  
14 an extension of that, and I would like to keep it and remind  
15 the presenters that we are trying to stay on these three basic  
16 topic areas. We talked about avoided costs, and staff proposed  
17 two options. One to continue with a sequential single avoided  
18 unit approach, or perhaps think a little bit outside the box  
19 and look at multiple avoided units or a portfolio approach.  
20 Mr. Haff will talk about that in his presentation.

21 The contract term limit. Our existing rule required  
22 a five-year minimum, the statute requires a minimum of ten  
23 years. The question that arose at the December 20th agenda is  
24 what is the starting date. Is it the in-service date of the  
25 avoided unit or is it when contract payments start? I believe

1 this is an issue that had some merit, had some discussion going  
2 on, and I think we have reached an agreement with the  
3 utilities. We will hear about that a little later.

4           Then the subscription limit. This was something that  
5 came about back in the early days of standard offers when they  
6 were available to all types of generators, even large three or  
7 400-megawatt qualifying facilities. The Commission implemented  
8 a subscription limit to put a cap on that, so we didn't get too  
9 much generation. What we're thinking now with the new statute,  
10 it may be time for a change to maybe remove that barrier,  
11 especially since it's limited to just renewable generators.  
12 They're such a small portion of the entire system, that maybe  
13 that artificial barrier doesn't need to be there anymore. And  
14 Mr. Harlow will talk about that more in her presentation.

15           And now I would like to turn it over to Mr. Haff.

16           MR. HAFF: Commissioners, I'm going to talk about  
17 avoided cost. The first slide here is a summary of the history  
18 of, I guess, the topic of avoided cost. As Mr. Ballinger  
19 stated, the statute defines avoided cost as the cost that a  
20 utility would pay to build or buy capacity, absent purchasing  
21 from a qualifying facility.

22           In the 1980s, when the Commission began to implement  
23 cogeneration contracts, the avoided cost was based on what is  
24 known as a theoretical state-wide avoided unit that is allowed  
25 by the Florida Statutes. At that time the statewide avoided

1 unit was based on coal, a coal plant. It was determined that a  
2 coal-fired facility was, if the State of Florida were one  
3 utility, that would be what the one State of Florida utility  
4 would need as the least-cost option.

5 It further helped the development of cogeneration  
6 because of higher capacity payments. Coal-fired plants have  
7 higher fixed costs, and thus the fixed capacity payments  
8 associated with a solid fuel plant would be greater, and thus  
9 better for a qualifying facility for their revenue stream.

10 The Federal Fuel Use Act was repealed in 1987, and  
11 coal capacity payments were offered to facilities that actually  
12 burned gas and other types of fuel. And under cogen contracts,  
13 at the time utilities individual ten-year site plans consisted  
14 mostly of gas-fired units, combined cycles, combustion  
15 turbines, because that was what was least cost for those  
16 individual utilities. Those type of facilities, as the  
17 converse of coal, they would have lower fixed capacity payments  
18 and maybe higher variable payments associated with the fuel.

19 In the early '90s the Commission, we modified our  
20 rule to define the avoided cost based on the individual  
21 utility's ten-year site plans, generation expansion plans. As  
22 a result, because the payments to cogenerators were based on  
23 the actual avoided cost of each utility, it was considered to  
24 be more ratepayer neutral than the statewide avoided coal unit.

25 The staff believes there's two options for satisfying

1 the renewable energy statute's requirement to continuously  
2 offer to purchase at avoided cost. As Mr. Ballinger discussed,  
3 one is the sequential approach which is sort of how we have  
4 been doing it in the past, and that is based on a single  
5 individual avoided generating unit. A standard offer is  
6 available until that unit becomes committed, construction  
7 begins, or a need determination is filed, and then the next  
8 standard offer contract becomes effective with the closure of  
9 the first one.

10 Under the portfolio approach, we would view that as  
11 every unit in the 10-year site plan becomes available for  
12 renewable energy contracts regardless of fuel type until the  
13 construction date or the need determination filing date. Every  
14 year on April 1st when new ten-year site plans would come in, I  
15 guess we would see that the generating units available for the  
16 portfolio of avoided units would be updated every year.

17 The Commission's current rules are silent on whether  
18 we should take a sequential or portfolio approach, it just  
19 didn't contemplate this discussion. We believe that you may  
20 wish to consider the portfolio approach as a way to encourage  
21 renewable generation, because if there happens to be a unit in  
22 the Ten-Year Site Plan, it is not the next unit, but is more  
23 appropriate for a particular qualifying facility or renewable  
24 energy facility, then there would be an opportunity to sign a  
25 contract based on something other than the first unit in the

1 plan.

2 Both approaches, the sequential and portfolio  
3 approach, satisfy the definition of avoided cost because they  
4 are based on the individual utility's plan. There are some  
5 pros and cons to both approaches in our view. The sequential  
6 approach is similar to the current process we have now, which  
7 the utilities and the Commission have been administering for  
8 probably over 20 years. It more closely matches the utility  
9 planning process and there is less forecast uncertainty because  
10 you are dealing with the first unit in a stream of units over a  
11 ten-year planning horizon.

12 Staff views one of the disadvantages of this approach  
13 is that it could lead to possible gaming of the ten-year siting  
14 plan process with only combustion turbine units offered as  
15 avoided units. These units, as I said before, have lower  
16 capacity payments because of lower fixed costs. And what could  
17 happen is on, you know, April 1st, the new ten-year site plans  
18 arrive, we may suddenly see a higher capacity payment type unit  
19 such as coal or combined cycle, but there is not enough time  
20 prior to having to commit to starting that unit to allow for a  
21 standard offer contract.

22 The pros or the advantages of the portfolio approach  
23 in staff's mind is that it allows the renewable facility to  
24 pick any unit in the Ten-Year Site Plan. As I said before, one  
25 of the further off units in the Ten-Year Site Plan may better



1 match the timing and the operating characteristics of the  
2 renewable facility. One disadvantage of the portfolio approach  
3 is there is more forecast uncertainty. And what I mean by that  
4 is if you're a renewable energy facility and you may decide  
5 that a unit in the Ten-Year Site Plan that is offered in, say,  
6 year nine or ten, when the subsequent ten-year site plans come  
7 out, that unit may shift, it may go away and be replaced by  
8 another unit, because it is based on a long-term expansion  
9 plan. And that unit is subject to some uncertainty. A load  
10 forecast may change causing the unit to be needed sooner or  
11 later, and so you may have capacity payments for a unit that  
12 either gets deferred or avoided through those changes, or  
13 through conservation.

14 I'm going to turn it over to Ms. Harlow now to  
15 discuss the contract term.

16 MS. HARLOW: Good morning. I have a quick review of  
17 two issues related to renewable standard offer contracts, and  
18 that is how should the contract term be established and should  
19 there be a capacity limit that is less than the size of the  
20 avoided unit. I will just briefly touch on these and skip part  
21 of the slides, because it's our understanding that we have some  
22 agreement on these issues, and I believe they will also be  
23 covered by the utility presentation.

24 Beginning with the contract term, the question on the  
25 contract term is it is clearly stated in the statute that the

1 minimum term is ten years on the renewable standard offer  
2 contracts. However, there had been some disagreement at the  
3 December 20th agenda on when that ten years should start.  
4 Should it start at the in-service date of the avoided unit or  
5 should it start at the beginning of payments since the  
6 Commission rule allows for early capacity payments.

7 A brief history on contract term. The Commission's  
8 rule originally stated that there was a ten-year minimum term.  
9 This was put in place because at the time the rule was passed  
10 it was a new industry with qualifying facilities and the  
11 Commission wanted to ensure that the capacity from these units  
12 would be there when the ratepayers needed that capacity, so  
13 they wanted a longer term at that time in history.

14 In 2002, after several Commission orders and response  
15 to rule waiver requests from the utilities, the Commission  
16 reduced the minimum term to five years. However, the rule  
17 currently states that while there has to be a minimum term of  
18 five years, the term can go up to the life of the avoided unit.  
19 So there is a range in the rule today on what the term can be.

20 A related issue in the Commission's current rule is  
21 that the rule allows there to be early capacity payments to the  
22 renewable provider or other qualifying facilities. However,  
23 the rule states that the present value of these early capacity  
24 payments cannot exceed the payments which would have otherwise  
25 been paid to the renewable facility. So there's a cap on the

1 present value of these payments, and that is an important  
2 point.

3           The statutory requirement, as I just said, is that  
4 there is a ten-year minimum term for renewable standard offer  
5 contracts, and the statute is silent on the start date of that  
6 term. So staff's concern on this issue was if the term is not  
7 from the in-service date, if it does not start from that, we  
8 were concerned that the utilities could have had the potential  
9 to game the contract term in order to minimize total capacity  
10 payments paid to the renewable generator. And I have a slide  
11 with an example of that. Staff believes there is no rule  
12 change necessary to implement the statute on this issue.

13           Next slide, please.

14           This is an example of the contract term, and I'm  
15 starting it either with option one at the start of early  
16 capacity payments, or option two, which is starting with the  
17 in-service date of the avoided unit. For example, beginning  
18 with a combustion turbine unit. A combustion turbine unit,  
19 gas-fired unit is very quick to site and build. It takes  
20 approximately 18 months to site and build a combustion turbine  
21 unit. So if there were early capacity payments, according to  
22 the Commission rule, those payments could start 18 months prior  
23 to the in-service date of the unit.

24           If this were the case with the renewable standard  
25 offer contract, what would happen is that ten years would start

1 a year and a half before the unit was in-service, and it would  
2 extend, if it were ten years, eight and a half years beyond the  
3 in-service date. If that were the case, the present value of  
4 those payments would be less than the present value of the  
5 payments if the contract payments started with the in-service  
6 date and extended ten years beyond that. So under the  
7 Commission's current rules, if we had that payment stream start  
8 early and the contract term started at that point in time, the  
9 renewable generator would receive a smaller amount present  
10 value of capacity payments.

11 The second example is a coal unit. And what we will  
12 see with a coal unit is if it takes longer to site and build a  
13 unit, and coal is kind of an extreme example, because it takes  
14 seven to eight years to site and build a coal unit, then the  
15 problem is exacerbated. So with option one, if we start with  
16 the early capacity payments, then the contract would just  
17 extend three years beyond the in-service date of the unit. And  
18 what we see there is that our capacity payments to the  
19 renewable provider would be much smaller than if the ten years  
20 extended beyond the in-service date.

21 The second issue that we discussed at the December  
22 20th agenda was whether there should be a capacity limit or not  
23 and should this be set at the size of the avoided unit, or  
24 should it be less than the size of the avoided unit, as is the  
25 Commission's policy today. A brief history of this. At the

1 time the Commission's rule was put in place, we had a broad  
2 definition of what a qualifying facility was. And so at that  
3 point we had, perhaps, 4,000 or more megawatts of cogeneration  
4 capacity in the state, and they were each vying for a standard  
5 offer contract. So there had to be a limit on how much  
6 capacity could be available under each contract and the limit  
7 was set at the size of the avoided unit.

8           However, over time the Commission had several rule  
9 waiver requests, and the definition of a QF was reduced, and  
10 there was very little QF capacity available. And over time the  
11 Commission reduced the capacity limit to five to ten megawatt  
12 portion of the avoided unit. And that is the policy that is  
13 currently in place.

14           The statute is silent on whether there should be a  
15 capacity limit or not, but it does strongly state that the  
16 intention of the statute is to promote the development of  
17 renewable energy resources in the state, and that this is in  
18 the public interest. So the staff believes that setting the  
19 capacity limit at the size of the avoided unit has several  
20 advantages. First of all, we believe that it allows existing  
21 renewable facilities to sign one of these contracts for their  
22 full capacity when their current contract expires. And,  
23 secondly, we believe that it encourages the development of  
24 larger scale renewables in the future because they would be  
25 able to sign for the entire size of the unit perhaps, and that

1 would significantly help them in obtaining financing to build  
2 that renewable unit.

3 And, finally, as I just said, we think it's very  
4 important in obtaining financing for the renewable unit. And  
5 it's our belief that the lower capacity limit that's in place  
6 today for all QFs may be an artificial barrier to renewable  
7 development, and we also believe that we could remove this  
8 barrier without a rule change.

9 And staff is available for any questions.

10 CHAIRMAN EDGAR: Commissioners, any questions for  
11 staff before we move into industry presentations?

12 Commissioner Deason.

13 COMMISSIONER DEASON: Explain to me how there is not  
14 a need for a rule change to implement the ten-year statutory  
15 period.

16 MS. HARLOW: The current rule states that the term  
17 has to have a minimum of five years up to the life of the  
18 avoided unit. So the current rule has a range of terms.

19 COMMISSIONER DEASON: The current rule states a  
20 minimum of five. So by having that language in there, that is  
21 compatible with the ten-year minimum in the statute?

22 MS. HARLOW: Yes, sir. We believe it is, at least to  
23 implement these contracts as soon as possible. We believe that  
24 the current language gives us the flexibility on that issue to  
25 move forward under the tight time frame of the statute. And

1 that if that process becomes unwieldily over time, we could  
2 certainly go to rulemaking then.

3 CHAIRMAN EDGAR: Commissioner Arriaga for a question.

4 COMMISSIONER ARRIAGA: Thank you. When we were  
5 talking about the avoided cost you gave us two options. One is  
6 the sequential and one is the portfolio. And you mentioned a  
7 disadvantage to the portfolio option. Could you enhance your  
8 explanation on that, please? Especially what worries me is  
9 what would happen in the case that you mentioned that the unit  
10 is changed in the Ten-Year Site Plan? You have it this year,  
11 and you contract based on that unit this year, but two years  
12 down the line it is taken way from the Ten-Year Site Plan  
13 because of the planning process in the company and it is no  
14 longer there. What happens?

15 MR. HAFF: That's a good point that we discussed  
16 internally, what to do. At the point in time if the contract  
17 were to be signed on a future unit under the portfolio  
18 approach, and that unit were either to disappear or to move  
19 around, the contract, of course, would be honored. It just  
20 would not be based on your avoiding a unit that is no longer in  
21 the Ten-Year Site Plan. We, of course, would honor the  
22 contract, but we see that as the problem with picking a unit in  
23 the future. You know, the forecasts are going to change.

24 MR. BALLINGER: Commissioner Arriaga, I can add a  
25 little bit more. Let's think of this -- let's say the utility

1 files a Ten-Year Site Plan. They have one unit in their  
2 horizon, and it's in year nine, and let's say it is a  
3 combustion turbine. They are nowhere near committing for that  
4 unit, but the statute requires that a contract be continuously  
5 available. So even if they just have the one unit, I think by  
6 statute we're required to put some offering on the table. And  
7 granted, that does incur some additional risk to the ratepayers  
8 of early commitment, as you pointed out, but I think we are  
9 still bound to at least put out one contract. So doing a  
10 portfolio is no different than if you had a single unit that  
11 was out in the future, in my mind. You still have the same  
12 risk, but I think it is a risk imposed on us by the statute  
13 to make these continuously available.

14 COMMISSIONER ARRIAGA: Thank you.

15 CHAIRMAN EDGAR: Commissioner Carter.

16 COMMISSIONER CARTER: Thank you, Madam Chairman. I  
17 just wanted to ask staff, I see where several times you say no  
18 rule change necessary, no rule change necessary, and in one  
19 place you say there is no rule change necessary to implement  
20 the statute. So basically whatever we do, notwithstanding the  
21 provisions of 366.91 that is per Senator Bennett, whatever we  
22 do will be consistent with that, is that what you're saying to  
23 us?

24 MR. BALLINGER: Yes, sir. We tried to approach this,  
25 because of the early implementation date required in the



1 statute, to first look at could the statute be fitted in with  
2 our existing rules, and we think it can. We think we can  
3 accomplish the objectives of the statute under our existing  
4 rules which does two things: It get a product out there for  
5 the renewables quicker, and it avoids lengthy deliberations in  
6 rulemaking that would bring up other side issues that weren't  
7 really addressed by the statute.

8 COMMISSIONER CARTER: Thank you, Madam Chairman.

9 CHAIRMAN EDGAR: Thank you.

10 Mr. Ballinger.

11 MR. BALLINGER: That went quicker than I thought it  
12 would. What we have now is the presentation by the  
13 investor-owned utilities by Mr. Bryan Anderson from Florida  
14 Power and Light Company and Mr. Bill Ashburn of Tampa Electric  
15 Company.

16 MR. ANDERSON: Good morning, Chairman Edgar, how are  
17 you? Good morning, Commissioners. Thank you all very much for  
18 the opportunity to be here today. My name is Bryan Anderson.  
19 I'm an attorney with Florida Power and Light Company. I'm  
20 joined here today with Mr. William Ashburn, who is the Director  
21 of Pricing and Financial Analysis of Tampa Electric Company.

22 We thank the Commissioners and the Commission Staff  
23 for this opportunity to provide some overview comments of  
24 Florida's investor-owned utilities concerning the 2005  
25 renewable energy legislation and its implementation by the

1 Commission and our companies. Mr. Ashburn's and my comments  
2 reflect input from Florida Power and Light Company, Progress  
3 Energy Florida, Tampa Electric Company, and Gulf Power Company.  
4 Representatives of these companies are present and look forward  
5 to participating in the workshop today.

6 My remarks will outline some legal principles that  
7 the utilities believe should be kept in mind as we work  
8 together towards implementing the new renewable energy law.  
9 Mr. Ashburn will then outline some recommendations prepared by  
10 the investor-owned utilities for implementing the renewable  
11 energy law. The recommendations reflect consideration of the  
12 requirements of the new law, and lessons learned from the  
13 utilities' collective history and experience of more than  
14 twenty years involving standard offer contracts.

15 This is a substantial history we all have together.  
16 There are currently more than 1600 megawatts of capacity from  
17 cogenerators and small power producers under firm contract to  
18 the investor-owned utilities in Florida representing  
19 considerable experience in implementing the Commission's policy  
20 direction related to qualified facility negotiated and standard  
21 offer contracts.

22 The utilities have prepared a set of written comments  
23 setting forth our thinking in more detail. These have been  
24 distributed and made available. We offer these and hope they  
25 will be a useful resource. It's not our intention to go

1 through each and every detail point in there, but we wanted to  
2 have all that information.

3           Let's turn to some key legal and regulatory points to  
4 keep in mind as we work on implementing the new renewable  
5 energy law. It is clear that the newly adopted legislation is  
6 intended to encourage the development of renewable resources  
7 and sources of power production here in Florida in order to  
8 decrease dependence on gas and oil and diversify the sources of  
9 fuel. The law creates some new requirements for public  
10 utilities. A requirement to continuously offer a purchased  
11 contract to producers of renewable energy. A requirement to  
12 offer a contract term of at least ten years. These kinds of  
13 new requirements present greater opportunities for renewable  
14 energy producers.

15           Mr. Ashburn will describe some of the utilities'  
16 recommendations for implementing the requirements in a way that  
17 can be expected to benefit renewable energy producers and  
18 utility customers. For example, by providing for many  
19 megawatts of capacity requirements being available for  
20 consideration for renewable standard offer contracts.

21           At the same time, as we consider the changes provided  
22 for a renewable energy law, it is equally important to focus on  
23 what has not changed and is retained from existing law and  
24 regulation in the renewable energy law. The most important  
25 point we would like to communicate is that the renewable energy

1 law is not written on a blank slate. For example, the  
2 renewable energy law, and Mr. Ballinger and others have stated  
3 this very clearly, expressly refers to and incorporates the  
4 legal, economic, and policy concept of avoided cost contained  
5 in a longstanding statute, Section 366.051, and there are many  
6 rules and decisions of this Commission concerning standard  
7 offer contracts that are detailed in our more extended written  
8 comments.

9 I want to take a moment to provide a brief overview  
10 of several key legal rules and decisions that are prominent  
11 features of the legal landscape as the Commission, staff,  
12 utilities, and others think about using avoided costs for  
13 pricing standard offer contracts for renewable energy. Each of  
14 these is a well-established decision, policy, rule of the  
15 Commission reflected in the Commission's rules and orders.

16 One is the comment that Mr. Ballinger and others  
17 referred to, Mr. Haff, also, about using the value of deferral  
18 methodology in relation to avoided costs. It has been  
19 mentioned that the avoided cost definition is a utility's full  
20 avoided cost or the incremental costs to the utility electric  
21 energy or capacity or both, which but for the purchase from  
22 cogenerators and small power producers such utility would  
23 generate itself or purchase from another source.

24 It is useful focussing on those words, such utility  
25 would generate itself or purchase from another source. We

1 believe that pretty firmly reinforces the direction of this  
2 Commission in looking at the specific circumstances of  
3 individual utilities and specific units.

4           The key function of the avoided cost requirement is  
5 to protect electric service customers. By setting an avoided  
6 cost limit in the law promoting renewable sources of energy,  
7 customers are protected from standard offer contracts that  
8 would require payment amounts greater than avoided cost. If  
9 contracts result in payment in excess of avoided costs, then  
10 utility customers would pay more than the legislature has  
11 authorized. And, again, I want to reinforce that statutory  
12 bedrock that these avoided costs are in reference to a utility  
13 that it would generate itself or purchase.

14           The Commission has adopted the value of deferral  
15 methodology for determining the avoided costs that a qualifying  
16 facility may receive for capacity. The Commission's definition  
17 of this, going back to 1983 in its order in Docket 820406-EU,  
18 there are several orders detailed in our written comments. The  
19 value of deferral is, in essence, a calculation of the value of  
20 deferring the revenue requirements of new generating plants by  
21 one year.

22           Essentially, it compares the difference in annual  
23 requirements if the revenue requirement stream begins in Year X  
24 as compared to beginning in Year X plus one. In reaching this  
25 decision, the Commission expressly rejected alternative methods

1 of computation. But based upon very, very extensive records,  
2 extensive discussions, that in the Commission's view  
3 incorrectly inflated prices to be paid as avoided costs. The  
4 Commission stated in that same docket and those orders, we will  
5 not consider supply-side alternatives more costly than the  
6 value of deferral because it would not benefit the ratepayers  
7 to pursue them regardless of the source.

8 I'd like to talk to you about performance  
9 requirements and security requirements for a few moments.  
10 Mr. Ballinger correctly pointed out that pay-for performance is  
11 start of the renewable law that we have before us. And the  
12 Commission has a longstanding set of rules and practices in  
13 relation to this, also. The Commission's QF rules for standard  
14 offer contracts recognizes the importance of parties satisfying  
15 their contractual obligations. This is in order, again, to  
16 protect utility customers.

17 Stepping back, remember as regulated investor-owned  
18 utilities, we are entirely subject to the jurisdiction of this  
19 Commission. In contrast, third-party providers of capacity and  
20 energy, pursuant to standard offer or renewable contracts, are  
21 not directly under this Commission's jurisdiction. Rather, the  
22 key and only means of protecting long-term customer's interest  
23 is in the terms of those contracts. So when we look at  
24 standard offer contracts, sometimes it's tempting to say it  
25 looks like there is a lot of boilerplate, or this or that, but

1 it is really important to slow down and analyze and look at  
2 those elements.

3           For example, if you look about performance  
4 requirements, the idea behind performance requirements is that  
5 when we look at what is being paid for capacity, paid for  
6 energy from a unit, that that be expressly comparable to the  
7 same type of unit that the utility would build. That's how we  
8 know that the avoided cost standard is being met. If a  
9 renewable producer wishes to propose a different type of unit  
10 with different performance characteristics, I think all the  
11 utilities welcome the opportunity for those discussions.  
12 Probably it would be handled in a negotiated contract type of  
13 circumstance. But because of the fallback role of the standard  
14 offer contract, it is very important to keep the alignment  
15 between price, performance requirements, and other performance  
16 security requirements.

17           The Commission's rules recognize this. They say each  
18 standard contract offer contract shall, at a minimum, specify  
19 minimum performance standards for the delivery of firm capacity  
20 and energy during the utility's daily seasonal peak and  
21 off-peak periods. These performance standards, and this goes  
22 for the avoided unit, shall approximate the anticipated peak  
23 and off-peak availability and capacity factor of the utility's  
24 avoided unit over the term of the contract. So that  
25 comparability idea is really built throughout our rules.

1           On the top of the financial security requirements,  
2 the Commission's existing rules state the utility may include  
3 the following provisions: Provisions to protect the purchasing  
4 utility's ratepayers in the event the qualifying facility fails  
5 to deliver firm capacity and energy. For those of us who have  
6 been energy lawyers for awhile, what we are talking about is  
7 circumstances where capacity and energy are not delivered, you  
8 need to make it up, you need the ability to purchase or obtain  
9 that from another source. And a party that is committed to  
10 deliver that to you really needs to be prepared and ready to  
11 make that good to our customers.

12           And that is why the rule goes on to say that these  
13 types of security arrangements may be through the form on an  
14 upfront payment, surety bond, or equivalent assurance of  
15 payment. We are all familiar with letters of credit and things  
16 like that. We go on and note that because renewable energy  
17 providers are not subject to Commission regulation, again, it  
18 is the only way these kinds of protections for customers can be  
19 created and preserved is through the specific terms of the  
20 contracts.

21           I would like to touch on, briefly, avoided unit  
22 selection. This is a terrifically important point. I  
23 anticipate there will be considerable discussion from a variety  
24 of folks. Mr. Ashburn, in particular, will talk a little bit  
25 more about the utility's point of view about this.



1           In our written comments there is a detailed, and I  
2 found very interesting, discourse on the Commission's  
3 development of its rule on avoided unit selection for purposes  
4 of QF standard offer contracts. You can see some of the  
5 discussions, the points raised by individual Commissioners in  
6 years past. The points in the orders and the very, very  
7 careful thinking. All the opportunities for points of view  
8 that are reflected that have come out in what is our existing  
9 policy of this Commission.

10           The bottom line is that the Commission, after a great  
11 deal of consideration, chose to use each individual utility's  
12 next generating unit. Not a portfolio basis, not a statewide  
13 unit, et cetera, not a hypothetical statewide unit, as the  
14 basis for determining avoided costs. The utilities believe  
15 this is the right approach. Because from an economics  
16 perspective, it is the best and most accurate way of ensuring  
17 that avoided costs are correctly computed. You will recall  
18 that is a touchstone in this renewable energy law.

19           More hypothetical approaches, and staff has correctly  
20 noted this, such as trying to figure out a single statewide  
21 unit or a menu means less accurate representations of avoided  
22 costs for a host of reasons which Commissioner Arriaga was  
23 beginning to explore. Keep in mind when people use the words  
24 more ratepayer neutral, what are we talking about? Overall, we  
25 are talking about what costs should be charged to our

1 customers. Costs are either higher or they are lower based  
2 upon the methodology selected. In the view of the utilities,  
3 the methodology which has been adopted by this Commission is  
4 economically sound, has served well, and should be preserved.

5 Thank you for the opportunity to present these legal  
6 points. I would like to turn now to Mr. Ashburn from Tampa  
7 Electric who will outline investor-owned utility  
8 recommendations.

9 COMMISSIONER CARTER: Madam Chair.

10 CHAIRMAN EDGAR: Mr. Ashburn, just a moment.  
11 Commissioner Carter.

12 COMMISSIONER CARTER: If I may.

13 CHAIRMAN EDGAR: Of course.

14 COMMISSIONER CARTER: A question, please. You said  
15 in your presentation that you see that what staff has  
16 recommended can increase the capacity for renewable energy  
17 providers, correct? Did you say that?

18 MR. ANDERSON: I'm sorry, Commissioner Carter. I'm  
19 having difficulty hearing you from here. My fault.

20 COMMISSIONER CARTER: Okay. I'll get closer to the  
21 microphone.

22 You said in your presentation that based upon your  
23 review of what staff had presented is that the results would be  
24 that it would increase the capacity for renewable energy  
25 providers, correct? Did you say that?

1 MR. ANDERSON: I think when we listen to  
2 Mr. Ashburn's comments in a moment, you will see that  
3 utilities' consideration of the new law does result in  
4 substantial increased opportunities for renewable providers.  
5 Is that your question?

6 COMMISSIONER CARTER: So that's what you said, right?

7 MR. ANDERSON: That's what I said. Absolutely right.

8 COMMISSIONER CARTER: Okay. Good. Then do you agree  
9 that there is no rule change necessary to implement the  
10 statute?

11 MR. ANDERSON: What I would like to do is defer on  
12 that type of point. Because for now I'm speaking with respect  
13 to all the agreed-upon points of all the utilities. I will be  
14 happy to answer that question on behalf of Florida Power and  
15 Light at any point, if you choose, but I would really like to  
16 let other utilities and their counsel speak to their view on  
17 that.

18 But I do have a view, and I'm happy to tell you  
19 Florida Power and Light's perspective. Florida Power and  
20 Light's perspective is that we have a statute in hand, it  
21 requires these contracts to be made continuously available. We  
22 believe that these contracts through a tariffed standard offer  
23 contract submitted and approved by the Commission can get to a  
24 proper standard offer contract consistent with the law and that  
25 that can be done without rule changes. That's the position of

1 Florida Power and Light. I would need other investor-owned  
2 utilities to speak to that, sir.

3 CHAIRMAN EDGAR: Mr. Ashburn.

4 MR. ASHBURN: Thank you, Chairman Edgar and  
5 Commissioners. My name is Bill Ashburn with Tampa Electric  
6 Company.

7 Since the December agenda, the four utilities got  
8 together and talked about the three issues that were discussed  
9 by the staff as remaining from that agenda, and we worked quite  
10 hard over the last couple of months trying to craft a common  
11 position that we could present to you and hopefully resolve the  
12 issue. So what I'm going to do is go through the points that  
13 we all agreed to, and we think that resolves the issue, at  
14 least from our perspective, and we would like to present that  
15 for your consideration.

16 The first item is the question about having  
17 continuously on file with the Commission a renewable standard  
18 offer contract, and we talked a lot about the issue as far as  
19 putting it all together. And as Mr. Ballinger was suggesting,  
20 there is really only the one piece left, which is the 100 kW  
21 regular cogenerator standard offer. And so the four utilities  
22 have agreed that for purposes of this, we could have one  
23 standard offer that would cover all of those perspectives, all  
24 the renewables as well as this 100 kW generator.

25 The second item that we all agreed to was that the

1 capacity payments included in that standard offer for renewable  
2 would be based on the capacity costs associated with the  
3 utility's next planned generating unit, which is the generating  
4 unit with the earliest projected in-service date as reflected  
5 in the utility's Ten-Year Site Plan as it might be amended from  
6 time-to-time by the utility. Also that energy payments would  
7 continue as they are now to be based on the lesser of the  
8 system incremental energy costs, or the energy costs that would  
9 have incurred if the energy had been generated by that avoided  
10 unit. So that's the second item.

11           The third item that we agreed on was that the  
12 subscription limit on capacity in any renewable standard offer  
13 contract would equal the total stated megawatts of the capacity  
14 of the avoided unit, minus any megawatts of capacity from  
15 previously executed contracts that the utility entered into  
16 based on that same avoided unit. So this is the 10 and  
17 20-megawatt subscription limit issue. We have all agreed that  
18 we should take the next avoided unit and do the complete  
19 capacity for that unit, minus whatever contracts we enter into  
20 based on that unit.

21           The generating unit utilized for pricing capacity  
22 payments for renewable standard offer would be changed from  
23 that avoided unit to the generating unit next and earliest  
24 projected in-service date in the utility's Ten-Year Site Plan,  
25 upon any of the following, whichever occurs first: The first

1 being the utility fully subscribes to subscription limit on  
2 capacity of its avoided unit as we described above. The second  
3 is if the utility commences construction of its avoided unit,  
4 this is the turning dirt thing that Mr. Ballinger was talking  
5 about, or the utility issues an RFP required by Rule 25-22.082  
6 for the avoided unit. And any change would be recognized via  
7 filing by the utility with the Commission to change the  
8 renewable standard offer contract to the next unit in sequence  
9 in the Ten-Year Site Plan.

10           The fifth point we agreed on and present is that the  
11 renewable standard offer would have a closure date of the due  
12 date for the next annual filing of the utility's Ten-Year Site  
13 Plan. When the Ten-Year Site Plan has been filed with the  
14 Commission, which happens annually around April, but sometimes  
15 happens in between, if the avoided unit -- if the same avoided  
16 unit is identified in that next Ten-Year Site Plan, then the  
17 staff would be given the administrative ability to approve an  
18 extension in each utility's then in effect renewable standard  
19 offer contract reflecting a closure date changed to the date of  
20 the next annual filing. This is the sequential approach that  
21 we have talked about that staff brought up.

22           The sixth item we came to some agreement on was that,  
23 as Mr. Anderson was talking about, protections for the  
24 utilities' customers should be retained in the renewable  
25 standard offer contracts. One would be, for example, terms

1 that state how capacity payments would be adjusted if the  
2 supplier's performance does not conform to performance  
3 requirements. Another would be a requirement that any  
4 renewable served offer contract enter to -- that includes  
5 capacity payments, must provide a true capacity benefit to the  
6 utility. Those types of things that currently exist in the  
7 rules would continue.

8           The last item we talked about was that renewable  
9 capacity sign-ups should be reflected prospectively in the  
10 utility's next planning cycle. So as we sign contracts with  
11 the renewable standard offers contracts with customers who are  
12 selling us capacity, we would reflect that in our Ten-Year Site  
13 Plan that we have entered into this capacity, and it might have  
14 an effect on the Ten-Year Site Plan going forward.

15           We think these elements achieve some important  
16 objectives in implementing this legislation. They bring some  
17 organization and order to the planning process of each utility,  
18 which is very important. They allow the standard offer  
19 contract to be based on reasonable assumptions, and they  
20 provide the best opportunity to achieve the result of actually  
21 avoiding and/or deferring the next unit in each utility's plan.

22           Staff teed up the issue that I think is still out  
23 there from our perspective, which is the menu approach or  
24 portfolio approach. This is kind of the choice between the  
25 sequential and portfolio approach. The reason we are thinking

1 that the sequential approach is a better one, I think, was  
2 brought up in the discussion you have already had about risk.  
3 If you look at the whole Ten-Year Site Plan, and if you look at  
4 a series of Ten-Year Site Plans going back over time, they  
5 change. Particularly the outer years change. You have a lot  
6 of time between the next unit coming up and things change. Gas  
7 prices go up, technology changes, environmental rules change,  
8 policy changes occur. The outer years are quite at risk for  
9 really happening. The next unit is very highly to happen,  
10 because it is very often within a few years. It is more likely  
11 that that will happen than the one out in the eight, nine, or  
12 ten-year period.

13           If we put those units out with specific standard  
14 offers that could be taken by a renewable standard offer or  
15 another cogenerator, those are at risk of not actually being an  
16 avoided cost, because that unit may never occur. It's not to  
17 say that those aren't out there already. Ten-Year Site Plans  
18 are published and public documents looked at by cogenerators.  
19 They are talked about by cogenerators. It's an option they can  
20 talk to us about in negotiation.

21           It's important to realize, as well, that the standard  
22 offer contract is, as discussed, a fallback. This is an  
23 opportunity for the cogenerator, the renewable standard offer  
24 contractor is an opportunity for them to just take it without  
25 negotiating, or if negotiations fail. We negotiate with these



1 folks all the time. We enter into many negotiated deals. And  
2 these Ten-Year Site Plans are available for them to look at, to  
3 talk to us about, to see, if, hey, what about this unit out  
4 seven or eight or nine years out from now, that's maybe what  
5 I'm thinking about building, and we can come up with a  
6 negotiated deal that works on that. So we think that is a  
7 better approach than having a series of standard offer  
8 contracts, the outer year ones of which would be much more  
9 risky and less likely to occur. Thank you.

10 CHAIRMAN EDGAR: Commissioner Carter.

11 COMMISSIONER CARTER: Thank you, Madam Chairman.  
12 Thank you for your indulgence. I'm looking here at these seven  
13 items that you have agreed upon and your review of the staff's  
14 menu approach, and I still come back to my same question. Do  
15 you agree with staff that there is no rule change necessary to  
16 implement this statute?

17 MR. ASHBURN: Well, as Mr. Anderson mentioned, we  
18 really never came to -- I don't think the four utilities ever  
19 talked about that issue, that is why you don't see it as one of  
20 the items. But from a Tampa Electric perspective, I can tell  
21 you that we think we can do this without a rule change. But  
22 the things that we have agreed to here, the things that we  
23 would all commit to put into our tariffs -- you approve each  
24 tariff as it comes forward. I think it fits within the scope  
25 of the current rules, so we don't think it's necessary to

1 change rules.

2 COMMISSIONER CARTER: Madam Chairman -- thank you.

3 The reason I'm asking the question is sometimes we  
4 get into the gobbledygook, but we don't get to the bottom line.  
5 And I'm just trying to get to the bottom line. And if there's  
6 no rule change necessary to implement the statute, then I think  
7 we can talk from that standpoint. But if that's not the case,  
8 then we are just kind of spitting off the back of the pick-up.

9 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

10 As I mentioned in my opening comments, at our  
11 discussion at the agenda conference on December 20th when this  
12 came before us, we did have some discussion about did we need  
13 to go into rulemaking, did we not. And my feeling on that, as  
14 I hope I have mentioned, is that if we need to we will, and we  
15 will do it in a manner that is thorough, thoughtful, and  
16 timely. But if, indeed, our procedural mechanisms are in place  
17 now so that we can spend our time on the intent of the law and  
18 the direction that this Commission wants to take, then I would  
19 rather we spend our time and the resources of all interested  
20 parties doing that rather than on a procedural rulemaking. But  
21 if we need to, obviously we will move in that direction.

22 Commissioner Arriaga.

23 COMMISSIONER ARRIAGA: Mr. Ballinger. You just heard  
24 a presentation of seven items in which the IOUs agreed upon.

25 MR. BALLINGER: Yes, sir.

1           COMMISSIONER ARRIAGA: Has that been discussed with  
2 staff, and do you agree with the seven items?

3           MR. BALLINGER: It has been discussed with staff. I  
4 don't know that we are in total agreement of all of them, of  
5 what they're proposing. And I think the remaining issue out  
6 there is the portfolio approach.

7           COMMISSIONER ARRIAGA: Yes. And that was going to be  
8 my next question. So choosing or selecting the portfolio  
9 approach would, of course, have an impact on the seven times.

10          MR. BALLINGER: Yes, sir.

11          COMMISSIONER ARRIAGA: Could you go into the extent  
12 of the impact?

13          MR. BALLINGER: Okay. If possible, can I ask the  
14 utilities some questions, and it might clarify things? I want  
15 to understand their proposal entirely, if you don't mind.

16          CHAIRMAN EDGAR: This is a workshop.

17          MR. BALLINGER: The other thing I would like to ask,  
18 too, I know Commissioner Carter has asked at least two  
19 utilities if rule revisions are necessary, and I would like to  
20 add a clarification to that. Rule revisions aren't necessary  
21 if we adopt the utility sequential avoided unit approach. Are  
22 rule revisions necessary if we adopt a portfolio approach? And  
23 I would also like to hear from Gulf Power and Progress Energy  
24 on that question, I think, to get all four perspectives.

25                 So if we could go down again with Florida Power and

1 Light and TECO, would rule revisions be necessary if a  
2 portfolio approach were proposed?

3 MR. ANDERSON: From a Florida Power and Light  
4 perspective, I can't say I have analyzed that from a legal  
5 perspective.

6 MR. BALLINGER: And TECO?

7 MR. ASHBURN: I, frankly, don't know. I don't think  
8 I looked at that very carefully. I'm not a lawyer, so I'll  
9 have to ask our lawyers that, too.

10 MR. BALLINGER: We've got a lawyer for Progress, so  
11 maybe --

12 MR. BURNETT: John Burnett of Progress Energy  
13 Florida. I'm going to have to give a similarly ambiguous  
14 answer. I have not analyzed that, as well. I can say that as  
15 to the IOU recommended approach, as to Commissioner Carter's  
16 question, I do not think a rule change would be needed to  
17 implement what the utilities propose. However, again,  
18 unfortunately I cannot speak to the portfolio approach.

19 MR. BALLINGER: And Gulf Power.

20 MR. GRIFFIN: Steve Griffin (phonetic) on behalf of  
21 Gulf Power. Again, unfortunately, I would have to echo Mr.  
22 Burnett's statements.

23 COMMISSIONER ARRIAGA: May I make a comment?

24 CHAIRMAN EDGAR: Commissioner Arriaga.

25 COMMISSIONER ARRIAGA: Let me interrupt you for a

1 second. And I'm going to say this with absolute due respect to  
2 all of you and consideration. But you knew that we were having  
3 this workshop today. How can you come here and tell me that  
4 you have not analyzed legally for your clients one of the  
5 approaches that you know that we care about that is within an  
6 interpretation of the statute that the staff has been saying  
7 that you should be able to read into the possibility?

8           So we sit here today for a workshop, and you tell me  
9 that you haven't looked at the issue. I think that you are  
10 making me waste my time, honestly. I mean, I came here to hear  
11 from you about the different issues that you were going to  
12 discuss and avoided -- the portfolio approach is one of them.  
13 So why waste our time here today? Isn't this business as  
14 usual? I mean, I say this with respect, I really mean respect  
15 to all of you, but have some consideration for my time, please.  
16 Thank you.

17           CHAIRMAN EDGAR: Mr. Ballinger.

18           MR. BALLINGER: I had a few more questions. If I  
19 understand the utilities, the approach that you have outlined  
20 here is, one, you would include the 100 kW facilities in the  
21 same standard offer.

22           MR. ASHBURN: Yes.

23           MR. BALLINGER: And we've talked, I have been in  
24 discussions with the utilities throughout this. I just want to  
25 make sure we have got this straightened out. It would be the

1 next unit from an in-service date perspective as far as  
2 standard offer payments. It could be closed I'll call it at  
3 the utility's discretion if you fully subscribe. So if you  
4 negotiate contracts and fill it up, if the unit changes, come  
5 April 1st you can close that contract and reopen a new one. Am  
6 I couching it correctly?

7 MR. ASHBURN: Well, we have to file with you to let  
8 you know it's changing, so that is not exactly our discretion,  
9 but, yes.

10 MR. BALLINGER: Correct. But you are watching your  
11 plan so that when a unit changes or something like that, you  
12 can file a petition with us, close one and do it. It's under  
13 your control.

14 MR. ASHBURN: That's right.

15 MR. BALLINGER: That's what I thought. Which you can  
16 do now at any time? I mean, that's kind of how the current  
17 rules operate.

18 MR. ASHBURN: That's correct.

19 MR. BALLINGER: You would close standard offers when  
20 you issue an RFP for, like I say, a combined cycle or coal  
21 unit, that would be --

22 MR. ASHBURN: For that avoided unit.

23 MR. BALLINGER: Right. If there was a standard offer  
24 on that unit, it would close when you issue the RFP.

25 MR. ASHBURN: That's the proposal, yes.

1 MR. BALLINGER: You've asked for administrative  
2 approval of staff to, if the contract is extended, in other  
3 words, if it is the same unit, the Ten-Year Site Plan comes out  
4 and the unit hasn't changed --

5 MR. ASHBURN: If none of those three things have  
6 occurred, and we come in with a Ten-Year Site Plan and it's the  
7 same avoided unit, we're just saying you could have the  
8 administrative approval to say it's the same unit, so we can  
9 just change the date for the closure date on the current  
10 standard offer.

11 MR. BALLINGER: Another approach to that would be not  
12 have a specific closure date and leave it to the utility's  
13 discretion to close it. So if you saw no change, it just stays  
14 open until you file a new one or something like that.

15 MR. ASHBURN: Right. I thought the discussion back  
16 in December was that the rule said we had to have a closure  
17 date, at least that's what staff said to us.

18 MR. BALLINGER: True. True. All right.

19 If I can, I have one more slide. I was anticipating  
20 this question. I thought we might have worked out our  
21 differences, but we weren't able to, and I'd like to just have  
22 one slide put up.

23 Mike, if you could put up that one of in-service, and  
24 I just want to kind of walk through and see that I understand.  
25 And we're talking about sequential versus portfolio here. And

1 what you have got is -- let's say the utility's plan has a  
2 combined cycle, a combustion turbine, and a coal unit in the  
3 plans, and here's the in-service dates of them. It's two years  
4 out in the future for a combustion turbine, four years for a  
5 combined cycle, and seven years for a coal unit. Those are  
6 pretty typical lead times for those types of facilities, I  
7 think. So if that was the utility's plan today, they would  
8 have to commit to all three of those units basically today,  
9 based on the lead times involved. So which one would be the  
10 standard offer? And if I understand the utilities' proposal,  
11 it would be the combustion turbine unit, because that's the  
12 first one on the in-service date.

13           So on this scenario, we would never get a combined  
14 cycle or a coal unit as a standard offer because you have  
15 issued an RFP for the coal unit in year zero, or the combined  
16 cycle, and therefore the standard offer would be closed. Is  
17 that accurate of how things would work out if this were the --

18           MR. ASHBURN: With respect to the exact standard  
19 offer that was on file?

20           MR. BALLINGER: Yes.

21           MR. ASHBURN: Yes. Because even though the standard  
22 offer was for the next unit, which actually would be the year  
23 before, I assume.

24           MR. BALLINGER: Right.

25           MR. ASHBURN: Which would be outside those periods



1 for those other two units, the standard offer would be open for  
2 the CT up to the time that it was gone for the RFP, or  
3 whatever. But the Ten-Year Site Plan is available, which has  
4 both of those other units on it, so they are available for  
5 negotiation, the utility would make it aware to any one company  
6 for the standard offer, they very regularly ask for what is  
7 your plan, show me your Ten-Year Site Plan, that kind of thing.  
8 So that's available for negotiation.

9 MR. BALLINGER: So it would be available for  
10 negotiation, but not for a standard offer?

11 MR. ASHBURN: Right.

12 MR. BALLINGER: That's all I'm trying to understand.  
13 Now, I had other slides, but I trimmed it down to one, but let  
14 me just talk from this one. Let's say, if we can imagine, that  
15 the only unit in the plan, as I discussed earlier with  
16 Commissioner Arriaga, was a combustion turbine in year seven,  
17 that's the only unit in the plan. Now, under the statute you  
18 have to continuously offer a contract, so you would have to  
19 offer a contract for that combustion turbine starting now?

20 MR. ASHBURN: Yes.

21 MR. BALLINGER: Even though you may not have to  
22 commit to it for five years from now?

23 MR. ASHBURN: Yes.

24 MR. BALLINGER: So you run the same risk, if you  
25 will, of an outer unit. What I'm getting at is don't you think

1 the statute kind of forces that risk on us, since we have to  
2 continuously offer it now?

3 MR. ASHBURN: It forces that risk on you if your unit  
4 is a CT in year seven.

5 MR. BALLINGER: Okay.

6 MR. ASHBURN: But what other option have you got?  
7 What if there is no units at all in the Ten-Year Site Plan?

8 MR. BALLINGER: Then I think you can offer zero as a  
9 unit, in my thinking of it. You're going to have a unit out  
10 there.

11 MR. ASHBURN: Okay.

12 MR. BALLINGER: You can put out purchases, you can  
13 put out as-available, something of that nature.

14 Thank you for your indulgence, Commissioner. I had  
15 to kind of walk through the example a little bit to make sure I  
16 understand and, hopefully, clarify some things.

17 CHAIRMAN EDGAR: Mr. Ballinger, just a moment.

18 Commissioner Arriaga.

19 COMMISSIONER ARRIAGA: Back to the question. After  
20 you had this interchange here, what would be the answer to my  
21 question?

22 MR. BALLINGER: You'll have to refresh me on your  
23 question. I'm sorry.

24 COMMISSIONER ARRIAGA: I said originally you agree  
25 with all seven items presented by the IOUs except that the

1 option of the portfolio approach would impact all of this. So  
2 if we adopt the portfolio approach, tell me the impact of the  
3 seven items.

4 MR. BALLINGER: Let me first say I think that what  
5 the utilities have proposed has come a little bit further than  
6 what they were first proposing in December, that being the term  
7 being from the in-service date in ten years and not just ten  
8 years total, and removing the subscription limit. I think  
9 those two factors go a long way to further encouraging  
10 renewable generation and are a step beyond the business as  
11 usual approach and what we have been doing. What we have left  
12 now is the portfolio.

13 If the portfolio approach is approved, it may add a  
14 little bit more risk to ratepayers. However, on the flip side,  
15 I think, it offers a bit more encouragement to renewables, it  
16 offers a bit more information to them, and truly gives them a  
17 fall back for something.

18 You have to understand, too, if a unit is not planned  
19 for seven or eight years in the future, a renewable generator  
20 may be hesitant to commit to sign a contract to be available in  
21 seven or eight years in the future. So it's not just  
22 one-sided. So even though there's an offer, there may not be  
23 any takers for that as a standard offer, they may wish to  
24 negotiate a contract to allow them some outs, if you will, as  
25 it gets closer and things of that nature. So it may not be as

1 dire as the utilities propose. Does that help?

2 COMMISSIONER ARRIAGA: Thank you.

3 MR. BALLINGER: And I would also offer, I know the  
4 utilities haven't analyzed the rulemaking portfolio, but I  
5 think staff has done it, and we don't believe a rule  
6 requirement is necessary, if you go to the portfolio approach,  
7 mainly from our existing rules, as I said earlier, require a  
8 tariff or tariffs, it has the plural in there for contract or  
9 contracts for standard offers. I believe there's nothing going  
10 along or above avoided costs of having two or three standard  
11 offers as opposed to one. The statute, in my mind, has imposed  
12 that risk of early commitment by making standard offers  
13 continuously available, and we're just doing the best we can  
14 with it. And we think a portfolio may give some other  
15 opportunities out there and better information.

16 CHAIRMAN EDGAR: Mr. Ballinger, I think we are ready  
17 to move along, if you are.

18 MR. BALLINGER: We're going to be done quick. And  
19 thank you, everyone, for being so patient and short.

20 Commissioners, I have given you an outline with  
21 presenters' names. There is going to be a change in order, I  
22 was advised this morning. Mr. Moyle is going to go first and  
23 introduce Mr. Frank Ferraro. He's just kind of going to kick  
24 it off to Mr. Ferraro from Wheelabrator. After that will be  
25 Mr. Schef Wright on behalf of Miami Dade. After that will be

1 Mr. Rich Zambo. And then after that will be Mr. Sami --  
2 Kathryn Cowdery will introduce Mr. Sami Kabbani for Covanta.  
3 I've been told, also, that these presentations are pretty  
4 similar, so there may be a lot cut out from the later ones, so  
5 they may move along quickly. Looking at probably ten to  
6 fifteen minutes per presenter, at most.

7 MR. CEPERO: Excuse me. This is Gus Cepero, I also  
8 signed up for a presentation.

9 MR. BALLINGER: We have you down, Gus, you're number  
10 six.

11 MR. CEPERO: Okay.

12 CHAIRMAN EDGAR: Mr. Moyle.

13 MR. MOYLE: Thank you, Madam Chairman.

14 For the record, Jon Moyle, Jr., with the Moyle  
15 Flanigan Law Firm. I'm here today on behalf of Wheelabrator,  
16 which is a waste-to-energy company that is involved in the  
17 production of renewable energy.

18 And I want to start my comments just by thanking you  
19 for convening this workshop to have this discussion. I think  
20 its a good exchange of ideas. I know when we were together  
21 last at the December agenda there was a lively discussion, and  
22 thank you for getting us together today to, again, give us the  
23 opportunity to talk about an issue that I think is very  
24 important to the state.

25 And you have heard your Staff talk about the

1 legislation that passed the legislature last year that  
2 specifically encouraged the development of renewable energy. I  
3 listened to the comments of the investor-owned utilities. And,  
4 again, I think there is no dispute or debate that the  
5 legislation really is designed to encourage the development of  
6 renewable energy.

7           There is one thing that has happened between the  
8 December meeting of the agenda conference and today that I  
9 thought should be put on the table, which is the release of  
10 Florida's Energy Plan that the Governor by Executive Order  
11 directed that there be a workshop, and I think many of you were  
12 there. That plan has been out there, January 17th was when it  
13 was issued, and it also speaks to renewable energy and  
14 encourages the development of renewable energy. It recognizes  
15 that fuel diversity is important and encourages the development  
16 of additional renewable energy.

17           One of the topics of discussion today, and I'm not  
18 going to take a lot of time, Mr. Ferraro and others are going  
19 to talk about some of the technical aspects of it, but it seems  
20 to me, given the legislative action, and given the energy plan,  
21 and given the letter that Senator Bennett wrote just to the  
22 Commission recently with respect to the bill that had his name  
23 that he sponsored, that there really is a direction to kind of  
24 think outside the box and do some things to encourage renewable  
25 energy.

1 I noted in the Florida's Renewable Energy Plan when  
2 they had the breakdown of all the different types of generation  
3 that renewable energy was one percent. It doesn't seem to me  
4 to be unreasonable to say, hey, as a goal we ought to double  
5 that, we ought to have two percent renewable energy. And I  
6 know costs have been talked about, and what not, but if you go  
7 from one percent to two percent, I'm not sure that the costs  
8 outweigh the policy directive of trying to really move forward  
9 with respect to renewable energy.

10 The comments made by Mr. Anderson on the avoided  
11 cost, you know, the statute says that you have to base  
12 compensation on avoided costs. And everything I heard was  
13 reading that as to say limited to. You know the statute  
14 doesn't say that it has to be limited to. It has to be based  
15 on avoided costs. So I think you could construct an argument  
16 to say, you know, we will pay not more than 10 percent over  
17 your avoided cost. If that was a policy decision that this  
18 Commission wanted to make to encourage renewable energy up  
19 until you got to a two percent, I would think that would be an  
20 interpretation which deference is given to you that could be  
21 made.

22 So I'll wrap up. But I would, again, thank you for  
23 having this forum and for giving us the opportunity to present  
24 some ideas to you. And with that I'll introduce Frank Ferraro  
25 from Wheelabrator.

1           MR. FERRARO: Good morning. My name is Frank  
2 Ferraro. I'm the Vice President of Environmental Management  
3 and Public Policy for Wheelabrator Technologies. But I'm here  
4 today in my role as Chair of the State Legislative and  
5 Regulatory Committee of the Integrated Waste Services  
6 Association or IWSA, as we like to call it.

7           The association appreciates the opportunity to  
8 present our comments to the Commission regarding the  
9 implementation of Section 366.91. IWSA represents the waste  
10 energy industry and the municipalities that rely upon our  
11 facilities for safe, effective trash disposal and the  
12 generation of clean renewable energy.

13           IWSA members with facilities in Florida include  
14 Covanta Energy Corp., Montenay Power Corp, Wheelabrator  
15 Technologies, the City of Tampa, Miami-Dade County, Broward  
16 County, and Pinellas County. There are eleven waste-to-energy  
17 facilities in Florida, the majority of which are owned by the  
18 Florida communities they serve. IWSA members operate ten of  
19 the eleven waste energy facilities in Florida, generating 425  
20 megawatts of electricity from the disposal of more than 15,000  
21 tons per day of municipal solid waste.

22           Florida waste energy facilities are renewable sources  
23 that produce electricity using renewable fuels within the  
24 meaning of applicable Florida law. I have presented our  
25 written testimony, but I will try to summarize that because I



1 don't want to repeat what some other people here may say today.

2           With regard to the choice of avoided unit, IWSA  
3 strongly supports option two relating to the choice of avoided  
4 units for renewable standard offer contracts as described in  
5 staff's December 8th, 2005, memorandum. In enacting 366.91,  
6 the legislature clearly intended to support existing renewable  
7 energy resources as well as foster the development of new  
8 renewable energy resources in Florida. It is also clear that  
9 the direction given by the legislature requires the Commission  
10 to provide appropriate incentives to renewable energy producers  
11 to develop, operate, and maintain their facilities, and that  
12 Florida utilities be required to purchase the energy produced  
13 by these renewable facilities.

14           Given the variety of renewable energy technologies  
15 that are included in 366.91, it is a logical conclusion that  
16 renewable energy producers should be given their choice of any  
17 unit in the utility's Ten-Year Site Plans as the avoided unit  
18 upon which their payments will be based. This will provide  
19 maximum incentives to new renewable producers and support for  
20 existing renewable energy producers. Allowing renewable energy  
21 producers the choice can only offer greater economic incentives  
22 to those producers to develop new plants and continue to make  
23 power available from existing plants.

24           With regard to contract term, and here I'll point out  
25 that there is a typographical error in our written testimony

1 where it lists three of the IWSA members. That should just  
2 read the IWSA. IWSA supports a minimum standard offer contract  
3 term of ten years and a maximum contract term equal to the  
4 physical life of the renewable energy facility. Again, as I  
5 mentioned previously, the purpose of 366.91 was and is to  
6 foster further development, operation, and maintenance of  
7 renewable energy facilities in Florida. Allowing the renewable  
8 energy producers to choose among shorter, i.e., the minimum of  
9 ten-year term, and longer terms up to the physical life of the  
10 renewable energy facility will meet this policy goal. And I  
11 also might point out that limiting contracts to only ten years  
12 may present problems in financing more capital intensive  
13 renewable energy sources like waste energy facilities, which  
14 can cost hundreds of millions of dollars in capital.

15           With regard to subscription limits, IWSA strongly  
16 supports no subscription limits on the amount of energy,  
17 renewable energy facilities operated and/or built in the state.  
18 Three utilities proposed small subscription limits in their  
19 renewable standard offer contracts submitted last fall. Any  
20 subscription limit runs counter to the clear language in  
21 366.91, which states that utilities, and I quote, "Must  
22 continuously offer a purchase contract to producers of  
23 renewable energy." Imposing any subscription limit would be  
24 contrary to this requirement and would provide nearly  
25 meaningless incentives to developers of substantial renewable

1 energy production facilities. Again, as I mentioned  
2 previously, the purpose of 366.91 was and is to foster further  
3 development, operation, and maintenance of renewable energy  
4 facilities. Allowing renewable energy facilities to subscribe  
5 renewable standard offer contracts up to the capacity of the  
6 renewable energy facility will meet this policy goal.

7 I thank you for the opportunity to provide these  
8 comments and I welcome any questions you might have.

9 CHAIRMAN EDGAR: Mr. Ballinger.

10 MR. BALLINGER: I don't think staff has any  
11 questions. We can move on to the next one.

12 CHAIRMAN EDGAR: Commissioners?

13 Commissioner Arriaga.

14 COMMISSIONER ARRIAGA: Ten years minimum. So are you  
15 and staff not on the same page? Staff is saying ten years. Am  
16 I correct, Mr. Ballinger, you're saying ten years? You're  
17 talking a minimum of ten years. Staff is saying maximum of ten  
18 years?

19 MR. BALLINGER: This is another issue. The statute  
20 said a minimum of ten years. Our current rules allow for a  
21 range, a minimum of five, a maximum the life of the unit. The  
22 Commission has gone to setting a fixed term, if you will, on  
23 standard offer contracts to encourage negotiated contracts. In  
24 other words, we would say it is ten years, period. That's it.  
25 If a longer term is desired for financing or something like

1 that, I think it has been the Commission's policy to encourage  
2 negotiated contracts.

3           Again, the standard offer is a fallback. It's not  
4 going to satisfy everyone's needs and everyone's desires. It  
5 is a fallback. It's a one-time option. And I think correctly  
6 the Commission has gone to fixing that term to encourage  
7 negotiated contracts, and term may be one of them.

8           COMMISSIONER ARRIAGA: Good. Thank you.

9           CHAIRMAN EDGAR: Mr. Moyle, Mr. Ferraro, thank you.

10          MR. BALLINGER: Next would be Mr. Wright.

11          MR. WRIGHT: Good morning, Madam Chairman,  
12 Commissioners, Staff, everybody else. I'm Schef Wright. I'm  
13 an attorney here in Tallahassee, and I have the privilege to  
14 speak to you today on behalf of Montenay-Dade Limited and Lee  
15 County.

16                I did distribute some slightly revised comments this  
17 morning that reflect that these are the comments of  
18 Montenay-Dade Limited and Lee County. I do want to mention  
19 that the staff and management of the Miami-Dade County Solid  
20 Waste Division have reviewed these comments and agree with and  
21 support the positions advocated in these comments. The  
22 revision is to reflect that they are not the official comments  
23 of the body politic, Miami-Dade County. They are supported by  
24 the folks who run the Dade County Resources Recovery Facility,  
25 which is owned by Miami-Dade County and operated by

1 Montenay-Dade.

2 Lee County owns the Lee County Resource Recovery  
3 Facility, which is operated by Covanta. Both of these electric  
4 generating facilities produce electricity using renewable fuels  
5 within the meaning of applicable Florida law.

6 We really appreciate the opportunity to address you  
7 this morning. Mr. Ferraro stated many of the things that I  
8 would state, so I'm going to be very quick with those and just  
9 flesh out a couple of things.

10 As I proceed, I do intend to keep in focus what I  
11 think was the key policy question articulated by Mr. Ballinger  
12 in the staff's preliminary comments, and that is can we do  
13 more, can the Commission do more to encourage renewable energy  
14 without violating the ratepayer neutral principle. Our  
15 position is, yes, you can.

16 We believe you can do so by implementing a portfolio  
17 approach as opposed to a sequential approach. The legislature  
18 clearly intends to foster renewables. And giving renewable  
19 energy producers their chose of any unit in the plan can only  
20 provide greater incentives to develop renewable resources.

21 You need to keep in mind that renewables provide  
22 physical fuel diversity de facto. They also will provide  
23 financial fuel diversity to the extent they choose different  
24 avoided units in the plan. The classic example of this would  
25 be a coal plant as an avoided unit which would typically have

1 coal-type pricing attached to it. In today's -- a while back  
2 we kind of wanted to go to gas, maybe, when we had a higher  
3 percentage of coal and oil. Today when we are headed to a  
4 situation where we are looking at, in the near term  
5 projections, at close to half of the electricity produced in  
6 Florida being either produced from natural gas or priced on  
7 natural gas, probably almost all of it is both, it would be  
8 highly desirable, I think, from the perspective of maintaining  
9 and promoting fuel diversity to offer the opportunity to have  
10 coal-based energy pricing out there. Either way, ratepayers  
11 will be protected if payments are no greater than the utility's  
12 avoided cost. This portfolio approach will provide greater  
13 incentives.

14 Now, a sequential set of contracts will not do as  
15 much to encourage renewables, at least not as far as the  
16 standard offers go. Yes, it may add some risk to ratepayers in  
17 that there is some uncertainty in the out years, but it may  
18 provide some protection, as well.

19 There is a flip side to forecast uncertainty.  
20 Whatever you do, there is forecast uncertainty and it can cut  
21 either way. Units don't just get avoided or move out. Units  
22 move up. You will might be sitting here today, and I really  
23 like the staff's slide that showed the commit dates, where  
24 you've got the same commit date today for a CT two years from  
25 now, a combined cycle three and a half to four years from now,

1 and a coal unit seven or eight years from now. That coal unit  
2 could move up. And I'll bet you that if you had looked at  
3 plans going from, say, 2004 to 2005, you would see the coal  
4 plants moved up after the big price run up in natural gas that  
5 started in 2004.

6 The point is that if you go with a sequential  
7 approach as opposed to portfolio, you may not get renewables  
8 that you later wish you had. With regard to contract term,  
9 again, we think that allowing the renewable energy producer or  
10 the renewable QF to choose the contract term, minimum of ten  
11 years, maximum of the life of the unit, will encourage  
12 renewables more than a fixed ten-year contract. We think you  
13 can do more in this regard to encourage renewables without  
14 violating ratepayer neutrality.

15 There is nothing wrong, certainly, with encouraging  
16 negotiated contracts. But the point of these standard offers  
17 that we are here talking about today is to encourage  
18 renewables. I'll concede there is a tension there, but we  
19 think you ought to come out on the side of promoting  
20 renewables.

21 Finally, as to subscription limits, I think we all  
22 seem to now be on the same page in that we should -- that we  
23 would all have subscription limits at least as to any avoided  
24 unit equal to the capacity of that avoided unit, and that is a  
25 good thing. That will also do more to promote renewables than

1 these little bitty subscription limits that were reflected in  
2 three of the utilities standard offers. Not FPL, they did, at  
3 least, have the full capacity of their avoided CT unit as they  
4 were filed.

5           Thanks very much. I did want to answer Commissioner  
6 Arriaga's question, if I might, and that related to do you need  
7 to change the rules to implement the portfolio standard. You  
8 can look at it in two ways. If the utilities were to  
9 voluntarily come forward with portfolio approaches, I believe  
10 that that could be accommodated within the existing rules.  
11 However, I believe that if the Commission wishes to impose, as  
12 we advocate, wishes to impose a portfolio of standard offer  
13 requirements based on any unit within the Ten-Year Site Plan, I  
14 believe that you would have to do that by rule.

15           Otherwise, you could arguably try to do it by forcing  
16 them to file individual tariffs, but in my view and analysis of  
17 rulemaking under the Florida Administrative Procedures Act,  
18 that becomes a forward-looking statement of agency policy to be  
19 applied regularly and routinely, and that is a rule and  
20 rulemaking is required. So if the utilities do it voluntarily,  
21 you don't have to change the rule. If you want to require it,  
22 I believe you do have to change the rule.

23           Thanks again.

24           CHAIRMAN EDGAR: Commissioner Arriaga.

25           COMMISSIONER ARRIAGA: Madam Chairlady, this is one



1 of those days that makes this job so interesting. I'm having  
2 fun, because now I see the utilities so worried and concerned  
3 about the ratepayers, that it's -- I'm joking, I'm only joking.  
4 But, in any case -- and I understand your point of view,  
5 believe me I do. And you have a point, absolutely. But, Mr.  
6 Wright, because I'm also confused, now I see you promoting a  
7 little bit of risk from the ratepayers' point of view, and I've  
8 seen you doing the other job before. But I seriously want to  
9 ask this question.

10 Staff sees it as a risk on the consumer, and I  
11 understand the risk, and I also understand the intent of the  
12 legislature to go ahead and do renewable energy. But staff  
13 sees a clear risk on the consumer. How come you don't see it  
14 that clear?

15 MR. WRIGHT: I see that it's there, and I said as  
16 much in my comments. There is a risk. Because as you move out  
17 in time, the band around what you are looking at gets bigger.  
18 My point is that there are risks both ways. There are risks of  
19 not allowing a portfolio approach that may not get you some  
20 renewable power based on a coal plant that you might wish you  
21 had.

22 The risk cuts both ways. That's the point that I was  
23 trying to make, Commissioner. Yes, there is risk, and there is  
24 more uncertainty, but the uncertainty goes both ways. Because  
25 that coal plant could move up, to the extent it was physically

1 possible to move it up, it could move up from year nine to year  
2 seven. Or even though you couldn't physically move it from  
3 year seven, if you had a big price run up in natural gas, like  
4 we did, you could all of a sudden wish you had it yesterday.

5 In fact, we had exactly that happen in 1991 when some  
6 planning assumptions changed in what was then Florida Power  
7 Corporation's planning process, and they realized they needed  
8 645 megawatts of new capacity almost immediately, and further  
9 realized that the most cost-effective power plant that they  
10 could put into their plan, if they could have done it, was a  
11 coal plant.

12 Now, you can't build a coal plant in two years, but  
13 they were able to sign up a number, a lot, it was 650/700  
14 megawatts, I think, by the time all was said and done and all  
15 the options were exercised. They did sign up a lot of QF  
16 capacity that was based on coal payments. Because QFs could  
17 build their plants in two and a half years. You couldn't get a  
18 coal plant, but you could get a gas plant with coal pricing.

19 COMMISSIONER ARRIAGA: So, Mr. Ballinger, will that  
20 mitigate, will that explanation mitigate the risk that you have  
21 been talking about from the beginning?

22 MR. BALLINGER: I think that, and also the fact that  
23 the legislature told us to make it continuously available. So  
24 I think we are stuck with that risk. I go back, again, to if a  
25 utility just had one unit in its plan and it was eight years in

1 the future, we would have to put a standard offer contract out  
2 on the streets for that unit, and we're facing that same risk  
3 of early commitment.

4 I agree with Mr. Wright, it can go both ways. Units  
5 can move forward and backward, but I think we're stuck with  
6 that risk. So doing a portfolio approach, in my mind, doesn't  
7 add any additional risk than what has already been imposed  
8 because of the continuous offering requirement.

9 COMMISSIONER ARRIAGA: Thank you.

10 CHAIRMAN EDGAR: I think staff had a question or two  
11 for Mr. Wright.

12 MS. HARLOW: Mr. Wright, you said that you believed  
13 that we had an agreement on subscription limits, but Item 3 on  
14 the utilities' list of agreed-upon items says that the  
15 subscription limit would be set at the stated megawatts of  
16 capacity of the awarded unit minus the total megawatts of  
17 capacity from all previously executed contracts that were based  
18 on that unit. And I wanted to ask you your opinion on whether  
19 that should include negotiated contracts that were priced based  
20 on the avoided unit, whether those contracts should be applied  
21 toward the subscription limit capacity.

22 MR. WRIGHT: I think the answer is that, yes, that it  
23 is appropriate. Because you've got one unit. And let's say  
24 it's a 540-megawatt nominal combined cycle unit, and you have  
25 got 200 megawatts of negotiated contracts subscribed against

1 it, you would then totally avoid that unit by subscribing an  
2 additional 340 megawatts of capacity. After the unit is  
3 subscribed, whether it's by negotiated or standard offer  
4 contract, it's subscribed. So I think the answer in this  
5 context has to be yes.

6           There is another body of thought that you shouldn't  
7 have any subscription limits, and I don't think -- I think that  
8 is at least consistent with the intent of the legislature to  
9 really get out there and promote renewables, but that's not my  
10 clients' comment today. But as to your question, yes.

11           MR. BALLINGER: I have one more, Mr. Wright.

12           The utilities propose to update the standard offers,  
13 I guess, every April when they file their Ten-Year Site Plans,  
14 and if nothing changed, staff could administratively extend  
15 them. So, in other words, my understanding the contracts are  
16 available for a year, from April to April, unless nothing  
17 happens. But if something happens in between, load forecasts  
18 change, things like this, and the unit changes, the utilities  
19 are free to come in, close out one standard offer but offer  
20 another one. Are you okay with that approach of it? And I  
21 guess it goes along with what Ms. Harlow was saying with the  
22 negotiated. If they find by the next April that they have  
23 signed up other contracts that their plans change, yes, they  
24 need to update and close one and open another standard offer.  
25 I know it was a long question.

1           MR. WRIGHT: As long as there is a portfolio  
2 approach, and as long as we have our choice of the term, you  
3 know, I guess I would say I think -- I don't think we would  
4 have a problem with that.

5           MR. BALLINGER: Let me back up and have maybe one  
6 more question or make it simpler. Let's say it's sequential  
7 let's say we go with the utility, but they update it every  
8 April. So if I understand it, every April is kind of when we  
9 get a new batch of standard offer contracts from everybody.  
10 And you're okay with the concept that those may change every  
11 April because the units may change. You know, things happen in  
12 the plan. Does that sound like an appropriate way to  
13 administratively go about this, at least having the  
14 April deadline?

15           MR. WRIGHT: Oh, you're really just asking about the  
16 procedure of updating them in April concomitantly with the  
17 Ten-Year Site Plan?

18           MR. BALLINGER: Yes.

19           MR. WRIGHT: That makes real good sense to me. You  
20 know, and if there is a change in the meantime, you know, we  
21 wouldn't want there to be sudden intermittent changes in the  
22 plans that disadvantaged us. But assume that away, that would  
23 not be a problem. You know, we have seen cases, historically,  
24 where we're going along and it looks like the avoided unit is a  
25 combined cycle, and all of a sudden it's a coal plant, you

1 know, and the QFs didn't really get a shot to avoid that coal  
2 plant. With that caveat, you know, procedurally what you  
3 suggested, I think is great.

4 MR. BALLINGER: Okay. Thank you.

5 Next one the list would be Mr. Zambo.

6 MR. ZAMBO: Good morning, Madam Chairman,  
7 Commissioners. My name is Rich Zambo, and I, too, want to  
8 thank you for convening this workshop and giving us an  
9 opportunity to address these important issues.

10 You should have a handout, the slide show in front of  
11 you has the names of the City of Tampa and the Solid Waste  
12 Authority on it. It may seem pretty thick, but I assure you  
13 the printing is very large, so it will go very quickly.

14 I'm here speaking on behalf of the City of Tampa, the  
15 Solid Waste Authority of Palm Beach County, and the Florida  
16 Industrial Cogeneration Association. The City and the  
17 Authority generate electricity using garage or municipal solid  
18 waste. The Industrial Cogeneration Association's members use  
19 waste heat from manufacturing processes. They're both defined  
20 as renewable energy resources under the Florida Renewable  
21 Energy Bill, 366.91.

22 What I wanted to point out from the outset,  
23 Commissioners, and looking at the first slide I've got an  
24 excerpt from your existing rules on standard offers. From our  
25 perspective, the only thing that has changed in the proposals

1 that the utilities have submitted to you is that maybe we'll  
2 now have a standard offer contract that is available  
3 continuously. But other than that, this was already available  
4 to my clients and I dare say most of the renewable energy  
5 facilities that are either represented here today or who are  
6 likely to come into the state.

7 I've got to think the legislature had something more  
8 in mind than changing the name of a contract to include the  
9 words renewable energy. It seems like the approach taken by  
10 the utilities is that we have to base everything we're doing  
11 today on PURPA, the Public Utility Regulatory Policies Act.  
12 That seems to be the basis for the standard offers that you  
13 approved in December and for the avoided costs contained in  
14 those. As you know, PURPA was adopted in 1978, about 28 years  
15 ago, and its primary objectives were two-fold. One was to  
16 reduce our reliance on imported fuels, and the second one that  
17 a lot of people lose sight of that I think has a relationship  
18 to how you view avoided costs is it was also intended to  
19 reduce the utilities need to invest in new power plants.

20 That was a time in our history when interest rates  
21 were so high and the growth rates and electric demand were so  
22 high that there was tremendous pressure being put on the  
23 utility industry to keep pace with the growth. And there was  
24 some concern about their financial ability to keep pace with  
25 that. So what PURPA did, basically, was created a new class of

1 nonutility generators that they called qualifying facilities,  
2 and they did some things to encourage them to come on line,  
3 generate electricity, provide capacity to relieve the burden on  
4 the utilities, but also they defined these qualifying  
5 facilities in a way that they would help reduce our reliance on  
6 foreign fuels.

7           One type of qualifying facility, or QF, as we call  
8 it, was a small power producer. A small power producer  
9 generated electricity using what at the time we called  
10 alternative energy resources, but they were biomass, solar,  
11 geothermal, what we today refer to as renewable fuels.

12           There was another class of QFs called cogeneration  
13 facilities or cogenerators, who used traditional fuels, but  
14 they did it in a way where they produced two useful forms of  
15 energy. One would be steam for process heating, or heating an  
16 apartment complex, and then they would also generate  
17 electricity. So the sequential use of energy resulted in very  
18 high efficiencies that did two things, reduced the consumption  
19 of fuels and it provided electricity to the grid.

20           Before these qualifying facilities could fulfill  
21 their role, however, PURPA had to eliminate certain barriers to  
22 them in the electric industry. And what they did was they  
23 first required utilities to interconnect with QFs. Prior to  
24 that time, nonutility generators were not allowed to connect to  
25 the electrical grid. They exempted QFs from regulation, so



1 they weren't regulated at the state or federal level. They  
2 required utilities to purchase at avoided cost, and they  
3 required utilities to sell electricity back to QFs when they  
4 needed it.

5           Now, Florida implemented PURPA in the early 1980s,  
6 and as luck would have it, we were facing a similar fuel  
7 diversity problem at the time. Florida at that time was very  
8 heavily dependent on oil. Some of the unusual things the  
9 Commission did during that time period is we approved the  
10 advanced cost-recovery of transmission lines between Florida  
11 and Georgia to bring coal capacity into the state in order to  
12 help the diversity and add nonoil-based fuels to our generation  
13 mix. The Commission also during that time approved the need  
14 through the need determination process for several power plants  
15 that were coal-fired but were not needed to meet load or energy  
16 demand, they were needed rather to help diversify the fuel  
17 portfolio.

18           And what the Commission did in the '80s is it  
19 established an avoided unit that was a coal-based power plant,  
20 it was a statewide coal-based power plant, and it  
21 established -- that policy was tremendously successful during  
22 the time it was in effect, from about 1983 to about 1990.  
23 During that time period, I would venture to guess most of the  
24 QF capacity that was developed in the state and committed to  
25 firm capacity contracts came into being.

1           Around 1990, it was '90 or '91, the Commission  
2 abandoned this policy and switched instead to the next  
3 available generating unit on a utility-by-utility basis. When  
4 they made that change, the amount of QF capacity developed and  
5 committed to firm contracts in the state dropped significantly  
6 and continues to that day. I don't recall how many or don't  
7 recall many standard offer contracts having been executed in  
8 the last five or ten years. I think you have a history lesson  
9 here, Commissioners, you kind of know what works and what  
10 didn't work based on your own policies.

11           Another thing I wanted to mention was -- Mike, if you  
12 will move up to slide eight -- the Commission, when it adopted  
13 its rules in the early 1980s, we have to remember that QFs were  
14 kind of a new commodity. We really had no experience working  
15 with them, and there was some concern about whether they would  
16 be reliable, whether they would be there for the longhaul. And  
17 the concept of value of deferral, I believe, arose out of that  
18 concern. Value of deferral sort of inverts the payment stream  
19 so that payments to a QF would begin at a very low level and  
20 they would increase over time. There would be an incentive for  
21 the QF to continue on its contract over the longhaul. I'm not  
22 sure that mechanism is any longer required, since the industry  
23 has pretty much proven its reliability and longevity over the  
24 last 20-plus years.

25           So turn now to the Florida Renewable Energy Bill and

1 just sort of contrast that in some ways with PURPA. And, also,  
2 raise some of the issues that I see as having been raised by  
3 the bill, some issues that haven't been addressed yet today.  
4 Basically, if you boil it down to what does the Renewable  
5 Energy Bill do, it establishes three goals. One is to promote  
6 the development of Florida renewable energy resources. The  
7 next is to diversify our fuel mix to reduce the dependence on  
8 natural gas and, three, is to minimize the volatility of fuel  
9 costs.

10 Now, the Renewable Energy Bill does address avoided  
11 cost, and I have a different interpretation of what that law  
12 means. In my view, avoided costs now can be determined under  
13 Florida law rather than previously determined under federal  
14 law. The federal law applied to cogenerators and small power  
15 producers, they identified those entities and they came up with  
16 very strict guidelines that all the states were required to  
17 implement. Well, I submit to you that you now have a new law,  
18 a Florida law that is encouraging renewable energy for reasons  
19 different than the reasons PURPA was adopted.

20 So, in my opinion, and for your consideration, I  
21 think you have an opportunity here, not to use an overworn  
22 expression, but to think outside the box and maybe look at  
23 avoided cost methodologies that are a little different than  
24 what we have looked at in the past.

25 And it was noted earlier that the definition of

1 avoided cost in 366.051 does give the Commission the ability to  
2 use the statewide avoided unit. So the concept that I'm going  
3 to address a little later and also the one that the Commission  
4 used in the 1980s where it used the statewide avoided unit is  
5 now codified in the Florida law.

6 And, Commissioners, what I would like to do is just  
7 go through a couple of issues that are raised when you look at  
8 the renewable energy law and you look at the contracts that  
9 were filed in response to those laws. And one thing I noticed  
10 is that all the renewable energy standard offers used natural  
11 gas-fired combustion turbines for determining avoided cost.  
12 Well, one of the goals of the law is to reduce the volatility  
13 of fuel prices. So if your avoided unit is a natural gas-fired  
14 plant, and the pricing is based on natural gas, you're not  
15 going to have any reduction in fuel price volatility because  
16 the renewable energy facility's price is going to be tied to  
17 the price of gas.

18 And, basically, that is inconsistent with what I  
19 believe is one of the primary purposes of 366.91. And I think  
20 why this occurs is because the utility planning process is  
21 conducted sort of in a vacuum. They only look at three types  
22 of units, and maybe now four. They look at combustion turbine  
23 simple cycle, they look at combustion turbine combined cycle,  
24 they look at coal plants, and maybe some of them are now  
25 starting to look at nuclear plants. But they don't look at

1 what renewable energy plants could be available to them, and  
2 they don't put those units and those characteristics into the  
3 plans.

4 Now, when you talk about avoided cost, one of the  
5 things that concerned me over the years is that the utilities  
6 may be building these simple cycle gas-fired turbines as sort  
7 of a stop-gap measure while they can plan and procure, engineer  
8 and design coal plants for use in the future. Well, if they  
9 had a technology that was similar to coal plants in operating  
10 characteristics that they could put in sooner than the coal  
11 plant, maybe the costs that the customers are being asked to  
12 pay for in terms of high energy prices on those gas plants,  
13 maybe those should be captured and calculated in the avoided  
14 cost.

15 Fuel risk. You talked about risk with Mr. Wright and  
16 some of the other witnesses. One of the biggest risks we face  
17 with those combustion turbines, of course, is fuel costs. I  
18 dare say if you look back at utility forecasts of natural gas  
19 prices four or five years ago, those prices we are seeing today  
20 are probably two, three, four times higher than they ever  
21 forecasted them to be. So who bears that risk? So I think  
22 there is offsetting risks, if you look at generation that has  
23 attributes that can help you avoid that.

24 Which brings me to my next concept, and that is that  
25 the Commission policy should recognize and optimize the use of

1 the unique characteristics of renewable energy facilities in  
2 meeting the goals of 366.91. Frankly, renewable energy  
3 facilities don't operate like a gas turbine. Most of them run  
4 24 hours a day, seven days a week, with very high capacity  
5 factors and they are capable of producing energy over a long  
6 term, kind of like a coal plant would.

7           So what are some of the attributes of renewable  
8 energy. There's a lot of them, but I think the three most  
9 important ones are that renewable energy facilities, at least  
10 in my experience, and what I see developing in Florida, is they  
11 are dissimilar to utility plants in that their design,  
12 permitting, and construction cycles can be significantly  
13 shorter. They are also dissimilar in that their fuel source is  
14 not subject to price fluctuation or supply interruptions like  
15 you might typically have with traditional fuels.

16           But they are similar in the sense that they operate  
17 like base load coal plants. They have high capacity factors,  
18 they displace natural gas and oil fuels, they reduce average  
19 energy costs, and they reduce risk on the customer.

20           The question of whether or not we should have a  
21 rulemaking is a pretty big one in this proceeding, and I'm a  
22 firm believer that we should have a rulemaking. It's not a  
23 question of do we need to have one, the question is should we  
24 have one to address the issues. You know, for example, why are  
25 so few utilities including base load coal plants in their

1 generation plans even though we know that that would add  
2 diversity and fuel price stability to the state's fuel mix? Is  
3 it because growth is proceeding so rapidly that they don't have  
4 time to bring enough on-line, so they fall back to a quicker  
5 technology. And with fuel adjustment, the risk of fuel cost  
6 flows through to the ratepayers, so there may be some  
7 incentives to use a cheaper shorter lead time facility.

8 My question, would the utilities if they had  
9 available to them a technology that was similar to a coal plant  
10 but could come on-line quicker, say two or three or four years,  
11 would that affect their generation plan? Would you look at a  
12 Ten-Year Site Plan that shows three years from now that you  
13 have got 500 megawatts of renewable instead of 500 megawatts of  
14 gas-fired combined cycle.

15 I wonder is it prudent that utility planning ignores  
16 the potential availability of renewable energy resources? Can  
17 planning be improved to include renewable energy resources in  
18 the planning options? Should the Commission reinstitute the  
19 annual planning hearings? Back in the '80s, every year the  
20 Commission would convene a hearing, they called it an annual  
21 planning hearing, and it was used primarily to set the avoided  
22 unit and the avoided cost for cogenerators. And during that  
23 process the Commission considered other alternatives, including  
24 conservation programs. The planning hearing concept was  
25 abandoned sometime in the early '90s, but maybe it's time to

1 bring that back, at least to sort of jump start the renewable  
2 energy process to get a sense of what might be out there in  
3 terms of renewable energy capacity that can be plugged into the  
4 utilities plans.

5           So bottom line, my clients support a number of  
6 things. One is we believe that the avoided unit should be a  
7 base load coal plant because it very closely resembles the  
8 operating characteristics of the renewable energy facilities.  
9 We also believe that the Commission should use a statewide  
10 avoided unit, again to offer optimum encouragement to renewable  
11 energy facilities. If you had a statewide unit, you would have  
12 the same price statewide so that you wouldn't have a utility up  
13 in the panhandle whose avoided cost is too low, but you have  
14 got a potential for a large renewable energy facility up there.  
15 I think it optimizes the development opportunities and  
16 opportunity to benefit the state.

17           I also think it's time to look at replacing the value  
18 of deferral pricing methodology. The avoided cost payments  
19 should be, perhaps, equal to the revenue requirements formula  
20 that would replicate more closely how a utility recovers its  
21 cost. It recovers the bulk of its cost in the early years, and  
22 it decreases over time as the plan is depreciated.

23           Not to spend all my time talking about energy and  
24 capacity payments and those sort of issues, but it is also  
25 important that contract terms and conditions must be fair and



1 reasonable and not act as a disincentive. A few of the  
2 potential problem areas I've seen in looking through the  
3 contracts, I have listed here one is some utilities require  
4 that the plants be dispatchable. Well, a garage burning plant  
5 may not be dispatchable. A plant that uses energy from a  
6 manufacturing process may be dispatchable. So that  
7 automatically would disqualify those plants.

8           There is some unreasonable performance requirements.  
9 You may have a combustion turbine as your avoided unit that is  
10 designed to operate 10 percent of the time, but the requirement  
11 in the standard offer is that the renewable energy facility has  
12 to operate under an 80 percent capacity factor in order to meet  
13 the capacity payments. There's not an apples-and-apples  
14 comparison there.

15           There's questions over ownership of renewable energy  
16 attributes. There are questions over who is liable for income  
17 taxes: One of the renewable contracts has a provision that is  
18 so broad that says the renewable facility is responsible for  
19 any taxes paid by the utility. So if the utility makes a  
20 profit on the sale of the electricity it buys from the  
21 renewable facility, can they come back to the renewable  
22 facility and ask to be reimbursed. I'm sure that is not their  
23 intent, but that is what the language says. There are several  
24 other issues like that.

25           And, Commissioners, as I mentioned earlier, I don't

1 think it's a question of whether we need to have a rulemaking,  
2 it's a question of whether we should have a rulemaking. And  
3 I've got an excerpt here from the Commission in September of  
4 1983 where they talked about the hearings that they held on  
5 rulemaking to implement PURPA. And it was just interesting to  
6 me to see, to be reminded of the fact that the Commission  
7 actually not only conducted rulemaking, but it conducted them  
8 under the auspices of 120.57, which was like an adjudicatory  
9 proceeding, because they realized the importance and complexity  
10 of the factors they were dealing with.

11           Now, turning to the positions on the three staff  
12 issues. The choice of avoided unit. As I said earlier, we  
13 would support a statewide baseload coal plant, and we would  
14 make an assumption that it goes into operation in the year that  
15 the renewable energy facility wants to commence delivery of  
16 energy and capacity. If we had to choose just between the two  
17 options provided by Staff, we would choose the menu option,  
18 option two.

19           The contract term, we believe, should be at the  
20 option of the renewable energy facility. It should be for a  
21 minimum of ten years and a maximum of 30 years. And we believe  
22 the subscription limit should be equal to a typical megawatt  
23 size of a baseload coal plant that would be built in Florida.  
24 And the last page is a summary of my comments, which I will  
25 skip, and I appreciate the opportunity. Thank you.

1 CHAIRMAN EDGAR: Thank you. Commissioner Carter.

2 COMMISSIONER CARTER: Thank you, Madam Chairman.

3 Just two questions, please.

4 What is the potential capacity of renewables in terms  
5 of the amount of -- I heard somebody say one percent to two  
6 percent. What is the real capacity, in your opinion, for  
7 generating power from renewable sources?

8 MR. ZAMBO: Commissioner, I really have no idea. But  
9 I think it is a lot more than the two or 300 that somebody  
10 mentioned earlier. I would just say that I don't have any  
11 idea, but what history showed is that in the early '80s, after  
12 the Commission implemented its cogeneration rules, I think the  
13 utilities in pretty short time signed up for three or 4,000  
14 megawatts worth of capacity. And that was more than renewable,  
15 that was cogeneration, which also -- some of it burned coal,  
16 some of it burned oil and gas, but it was a tremendous amount.  
17 I've heard estimates of perhaps another thousand. But that is  
18 just based on indigenous, you know, Florida industry; the pulp  
19 and paper industry, the sugar industry, the citrus industry,  
20 the fertilizer and chemical industries, if they all optimized  
21 or maximized their generating potential, you could, perhaps,  
22 have another thousand.

23 That doesn't even take into account, I guess, the  
24 e-grass or the biofarms that they talk about that are being  
25 encouraged under the Energy Policy Act of 2005 creates some

1 incentives for people to basically come in and grow acres and  
2 acres of fuel that they chop down and put in a boiler and burn  
3 and make electricity. So I don't know, but I imagine it is in  
4 the thousands.

5 COMMISSIONER CARTER: Madam Chair.

6 CHAIRMAN EDGAR: Commissioner Carter.

7 COMMISSIONER CARTER: I have a follow-up question,  
8 but I think Mr. Wright wanted to answer that, too, is that  
9 right?

10 MR. WRIGHT: Yes, sir.

11 COMMISSIONER CARTER: There is a follow-up question  
12 to where I'm headed here.

13 CHAIRMAN EDGAR: Mr. Wright.

14 MR. WRIGHT: Thank you, Madam Chairman.

15 One quick conceptual point, and that is it depends on  
16 what the price of natural gas and oil do. And, of course, what  
17 the price of coal does. The higher the prices of fossil fuels,  
18 the more renewable energy is going to be feasible. The number  
19 that Mr. Zambo suggested based on indigenous Florida industry  
20 of another thousand megawatts is probably about right. I think  
21 that might or might not include another 500 megawatts of waste  
22 to energy, which I think is entirely viable in our  
23 extraordinarily growing state. I think that there is at least  
24 a thousand megawatts of capacity available from biomass crops  
25 that can be developed over, say, the next six to eight years in

1 Florida. There is an opportunity to develop small scale Gulf  
2 current ocean hydro. They're small scale units, but you put a  
3 bunch of them out in the Gulfstream and they'll make  
4 electricity..

5 I think with natural gas prices staying in the eight  
6 to ten dollar range, I think you are probably looking at at  
7 least 3,000 megawatts of additional capacity that could be  
8 developed within the next ten years, probably more.

9 COMMISSIONER CARTER: What would that cost? That's  
10 my follow-up question. What would it cost for those 3,000  
11 megawatts; what would that cost? Because the bottom line is  
12 that there is a person at the end of the economic system there,  
13 there is a ratepayer. What would that cost in order to  
14 generate that capacity?

15 MR. WRIGHT: I don't think -- I can give you a  
16 conceptual answer. I don't think I can give you dollars as a  
17 total pot. I'll get back to you on that soon. But I think the  
18 answer is that if you were to make available a portfolio  
19 approach or a statewide coal unit as the avoided cost basis  
20 which provides -- back up one step. The renewable facilities  
21 generally have high capital costs and significantly lower  
22 operating costs than, say, peakers or combined cycle units. So  
23 if you make available a pricing regime that offers high fixed  
24 capacity payments with no or very, very low equity penalties  
25 and lower coal type energy costs, I believe you would see a

1 whole lot of that development occur within what the utility's  
2 avoided costs would otherwise be.

3 I can get back to you with some better estimates of  
4 what the total investment would be, but remember this is  
5 private sector investment. And I think the more important  
6 point from your perspective is can we do it cost-effectively  
7 versus the utility's avoided cost? And if you're using a coal  
8 plant, I think the answer is you can get a whole lot of it,  
9 yes, sir.

10 CHAIRMAN EDGAR: Thank you, Madam Chair.

11 MR. ZAMBO: Can I follow up on that, Commissioner?

12 CHAIRMAN EDGAR: Mr. Zambo, yes.

13 MR. ZAMBO: Yes. I was going to say, I guess the  
14 answer depends on how you set your prices. If you did like the  
15 Commission did in the early '80s and used the baseload coal  
16 plant statewide availability, I think you will get a lot of  
17 capacity. And what that costs, you know, I'm curious if the  
18 utility industry could take a coal plant, say we can bring a  
19 coal plant on line in, say, three years, which is about what it  
20 takes some renewable facilities to come on line, would that  
21 show up as the next unit in their generation plan? And if it  
22 did, it's not costing anything, it is just basically equal to  
23 what costs the utility would have otherwise incurred. A lot of  
24 it -- you know, it's hard to answer the question without some  
25 assumptions, but if you have very, very costs in your standard

1 offer contract, you're not going to get much. If you have  
2 reasonable costs, you are going to get a lot more.

3 COMMISSIONER CARTER: Thank you, Madam Chair.

4 CHAIRMAN EDGAR: Thank you. Commissioner Arriaga.

5 COMMISSIONER ARRIAGA: Mr. Zambo, on Page 23 of your  
6 presentation, Slide 23 caught my attention, and you were  
7 talking about contract issues. I would like to point out  
8 that -- take Mr. Ballinger's recommendation of always pursuing  
9 a negotiated contract. The issues that I see on Page 23 are  
10 something that you should be able, or whoever you represent  
11 should be able to negotiate on a one-to-one basis and not to  
12 expect the Commission, I hope, to get involved in those issues.  
13 I think market negotiation is always a good thing to do.

14 But there is one specifically that caught my  
15 attention, which is unreasonable performance requirements.  
16 Unreasonable in what sense? Or are you expecting to have less  
17 than performance requirements, optimum performance  
18 requirements?

19 MR. ZAMBO: No, my issue there is that the  
20 performance requirements don't match the performance of the  
21 avoided unit on which the payments would be based. For  
22 example, one of the contracts, I don't recall whose it was, had  
23 an avoided unit, was a combustion turbine fired on natural gas.  
24 Those units are typically what they call peaking plants and  
25 they run for maybe five percent of the year during peak load

1 periods. This particular contract is requiring this plant to  
2 run like 80 percent of the time. If you wanted a standard  
3 offer based on -- and get that avoided cost, you have got to  
4 perform at a much, much higher standard than the utility plant  
5 on which the costs are based.

6 COMMISSIONER ARRIAGA: I would the ask the  
7 representatives of the utilities, how would you view that? Is  
8 that unreasonable?

9 MR. ASHBURN: Well, I don't know which one he is  
10 talking about. I sort of know ours a little bit. You know, I  
11 think theoretically the performance requirements should match  
12 what the avoided unit is.

13 COMMISSIONER ARRIAGA: Okay.

14 CHAIRMAN EDGAR: Commissioner Deason.

15 COMMISSIONER DEASON: Mr. Zambo, to follow up on  
16 that. It's an interesting example, but I guess the question  
17 is, if there were not a requirement to operate at 80 percent  
18 capacity factor, would you be willing to commit your unit to  
19 guarantee that it would be able to provide the peaking capacity  
20 that the avoided unit otherwise would be providing, i.e., your  
21 plant would be dispatchable at the time that the demand is  
22 needed. I mean, that the capacity is needed to meet the  
23 demand.

24 MR. ZAMBO: Let me answer that question this way:  
25 The part I left out is there was also an availability



1 requirement, so, yes, we would meet that availability  
2 requirement which would mean we could meet the on-peak  
3 requirement but would not necessarily have to be dispatched.  
4 If we weren't available during peak periods, we wouldn't get  
5 our capacity payment.

6 CHAIRMAN EDGAR: Staff.

7 MR. HAFF: I had a question for Mr. Zambo. You were  
8 discussing the statewide avoided unit as your recommendation,  
9 and I guess my question would be how would you propose that the  
10 allocation of that unit amongst the investor-owned utilities,  
11 you know, which utility gets which piece of that avoided unit?

12 MR. ZAMBO: I hadn't gotten that far, to be honest  
13 with you. But what the Commission did -- again, I hate to keep  
14 harkening back to the '80s, that wasn't exactly my favorite  
15 decade, but the Commission in that case just said we're going  
16 to leave it to the utilities and make it the utilities'  
17 responsibility to make sure that that capacity gets to the  
18 utility who most needs it, regardless of who buys it in the  
19 first instance. I think that was called the policy of amiable  
20 terrorism, as I recall.

21 MR. HAFF: And I guess the reason for my question is  
22 if you are having this unit for a utility that doesn't need  
23 that capacity, then, you know, what is your recommendation as  
24 to administering that type of contract?

25 MR. ZAMBO: Well, again, I'm not sure how you define

1 need. The legislature has said we have a need to diversify our  
2 fuel resources. That tells me that all the utilities have a  
3 need to diversify their fuel resources. So it's a question of  
4 how you want to look at need. I think we get hung up on the  
5 capacity to serve new load. But, like I said, in the '80s the  
6 Commission ignored that. We built coal plants, we built  
7 transmission lines, we did things to diversify our fuel mix.

8 So we have a need, the legislature has told us we  
9 have a need to diversify. And I guess the utilities who have  
10 the highest percentage of natural gas, maybe that's the ones  
11 who out to be -- that is where it all ought to be funnelled to.

12 MR. BALLINGER: I have one question. I understand  
13 your response to Commissioner Carter's question about if the  
14 prices are more reasonable, or based on a baseload unit you  
15 will get capacity, if we continue to price them on combustion  
16 turbines we will get less capacity. Do you think, though, if  
17 that was the real intention of the legislature, to get as much  
18 renewable as possible, that they would have told us to go ahead  
19 and price it as a baseload unit or price it as a statewide  
20 hypothetical unit rather than referring back to the existing  
21 statute of avoided cost?

22 MR. ZAMBO: You know, not necessarily. The  
23 legislature delegates an awful lot of responsibility to the  
24 Commission. They have a lot of confidence in the Commission's  
25 expertise, I think, with the idea that they established the

1 three goals to encourage -- to reduce fuel price fluctuations  
2 and to reduce our reliance on natural gas. I think you then  
3 have to make the decision as to how to best do that. That may  
4 change over time. So rather than having it in a statute, I  
5 think it is better for the legislature to give you those  
6 general directives and then you implement that from time to  
7 time as is most appropriate.

8 MR. BALLINGER: Okay. So that may require a balance  
9 between what do we pay to encourage renewables versus how do we  
10 keep ratepayers from paying too much, if you will, and try to  
11 keep those two perspectives in line.

12 MR. ZAMBO: And in regard to that, one of the things  
13 I would point out is that one of the costs that is not included  
14 in avoided cost today is the risk that the ratepayer assumes  
15 when the utility builds a natural gas-fired power plant. If  
16 those avoided costs had been included from the onset, it's  
17 unlikely that a lot of those plants would have been built. So,  
18 if you are going to use a gas-fired unit as the proxy for  
19 avoided cost, maybe what you need to do is add into that  
20 avoided cost the price of hedging your fuel so you can  
21 guarantee that your fuel price will never exceed what you based  
22 your projections and your planning on.

23 MR. BALLINGER: That's all I have. Chairman, I would  
24 let you know we have one more that is in the same group, I  
25 believe, with the waste energy folks, Sami Kabbani. I guess we

1 could take that up and then we could decide if you want to take  
2 a break for lunch or continue on.

3 CHAIRMAN EDGAR: Well, I am getting to the point  
4 where I could use a stretch, and I'm thinking perhaps our court  
5 reporter could, as well. So, Commissioners, do you have a  
6 preference as to a short break and then we push through, or a  
7 longer lunch break and then we come back?

8 COMMISSIONER CARTER: It's at your discretion.

9 CHAIRMAN EDGAR: Thank you.

10 COMMISSIONER DEASON: What do we anticipate? I mean,  
11 how many more presentations and what length are they going to  
12 take?

13 MR. BALLINGER: We have four more presenters, each  
14 one ten to fifteen minutes.

15 CHAIRMAN EDGAR: A short break and push through?  
16 Okay. Then I suggest we come back at ten after 12:00 by the  
17 clock on the wall.

18 (Lunch recess.)

19 COMMISSIONER DEASON: I'm going to ask you to please  
20 take your places and we'll go ahead and get started.

21 MR. BALLINGER: Commissioners, the next presenter  
22 will be Ms. Kathryn Cowdery, and then she will be introducing  
23 Mr. Sami Kabbani for Covanta.

24 COMMISSIONER DEASON: Ms. Cowdery.

25 MS. COWDERY: I'm Kathryn Cowdery with Ruden

1 McCluskey law firm in Tallahassee, Florida, representing  
2 Covanta Energy Corporation, which is a waste to energy company,  
3 and with me is Mr. Sami Kabbani. He's the Utilities Director  
4 for Covanta.

5 The sponsor of Section 366.91, State Senator Michael  
6 S. Bennett, has provided us with a brief letter, and I would  
7 like to read this into the record, because it sets the tone for  
8 the presentation that Mr. Kabbani will make, and I think it  
9 sets the tone for this workshop, as well.

10 It is dated March 3rd, 2006, and we do have a handout  
11 of it. "To members of the Florida Public Service Commission,  
12 regarding standard offer contracts for renewable resources."  
13 And it reads, "In anticipation of the upcoming March 6th  
14 workshop on the above matter, I urge the Commission to  
15 implement Section 366.91 according to the intent of the  
16 statute, 'The legislature finds that it is in the public  
17 interest to promote the development of renewable energy  
18 resources in the state.'

19 "This intent is vital to your appropriate  
20 implementation of the subsequent requirement that, 'Each public  
21 utility must continuously offer a purchase contract to  
22 producers of renewable energy.' The contracts for these  
23 valuable resources must yield rates that encourage new  
24 development as well as keeping existing facilities financially  
25 sound. The current standard offer contracts available to these

1 plants do not reflect their value to Florida's energy portfolio  
2 because the avoided cost formula currently in use does not  
3 translate into revenue that encourages renewable energy  
4 generation.

5 "Commissioners, it would be a disservice to the state  
6 of Florida and our eminent energy needs if this statutory  
7 language is not translated appropriately into contracts for  
8 existing and future renewables. As you proceed with  
9 implementing the legislation I sponsored last year, I caution  
10 you not to maintain the status quo. The legislature clearly  
11 intends in Section 366.91 that the purchase of renewable energy  
12 be encouraged, and that means at a price that reflects their  
13 value to our state. Sincerely, Michael S. Bennett, State  
14 Senator, District 21."

15 With that, Mr. Kabbani has a PowerPoint presentation,  
16 and you have a handout on it, also.

17 MR. KABBANI: I appreciate the opportunity to present  
18 the comments for Covanta Energy. I'm Sami Kabbani. I'm the  
19 Director of Energy for Covanta.

20 The purpose of this document is basically to address  
21 some of the specific questions that came in the workshop  
22 regarding the standard offer contracts. More importantly, to  
23 determine if the proposed standard offer contracts meet the  
24 intent of Section 366.91. And I want to leave you with a  
25 couple of thoughts about recommendations as to how we improve

1 this.

2 I was going to go through a little bit of background  
3 on Covanta. The second point I want to address, what is the  
4 role of waste to energy in the state of Florida, and leave you  
5 with some comments for your consideration. Covanta Energy  
6 Corporation is a publicly traded company with about 44 domestic  
7 and international plants. Waste-to-energy represents the  
8 majority of the plants the company owns and operates.  
9 Regarding waste-to-energy, nationally the company has 31  
10 waste-to-energy facilities. These combined facilities, they  
11 dispose about seven percent of the nation's waste, they process  
12 about 15 million tons of waste per year, and produce about  
13 1,200 megawatts of clean renewable energy.

14 In Florida, specifically, Covanta Energy operates  
15 four facilities: Pasco County, Hillsborough County, Lee  
16 County, and Lake County. These provide local disposal services  
17 for these counties. And the second point I would like to make,  
18 the majority of the revenue, especially on the electrical side,  
19 goes to these communities. These facilities process about  
20 1.25 million tons per year of municipal solid waste and  
21 generate about 114 megawatts.

22 The next point I want to touch on is what is the  
23 value of waste-to-energy and why it should be encouraged and  
24 why it should be part of the renewable portfolio of the state.  
25 Basically, one ton of municipal solid waste replaces one barrel

1 of oil, or ten MCFs of natural gas. In the State of Florida,  
2 there is about 31 million tons of waste produced in the state;  
3 6.5 million tons basically represent the current  
4 waste-to-energy that is being generated. The 6.5 million tons,  
5 they eliminate 65 million barrels of oil. I'm sorry,  
6 6.5 million barrels of oil, or 65 million MCFs of natural gas.  
7 In the process they produce about 500 megawatts.

8 The question was asked what is the potential for  
9 renewables in the state. I can't comment regarding other forms  
10 of renewables, but if you take this chart and extrapolate 31  
11 million tons of municipal solid waste, compare it to the  
12 existing, and do the math, that results in about -- if we are  
13 to utilize the remaining waste in the state that is currently  
14 being landfilled, we would be building about 2,000 megawatts of  
15 municipal solid waste facilities, waste-to-energy facilities.

16 Next we want to talk about what is being done today  
17 and what is feasible. It relates to the prior slide. There  
18 are currently talk with each of the counties we work with  
19 regarding expanding the existing facilities. Expanding the  
20 existing facilities is easy because you have the infrastructure  
21 in place. The point -- and it's going to result in raising the  
22 amount of megawatts coming from waste-to-energy in the state to  
23 a total of 591 megawatts, which represents less than 25 percent  
24 of the municipal solid waste produced in the state.

25 The last bullet point is the important point. More



1 is possible, and I calculated the math to about 2,000 more  
2 megawatts. Now, how do we encourage renewables in the state of  
3 Florida. I would like to take a step back and talk about the  
4 Florida energy plan that Mr. Moyle showed. The plan itself has  
5 two pie charts right next to each other.

6           The first one talks about where we are today, and  
7 basically 63 percent of Florida's generation comes from oil and  
8 gas. Yet, basically the waste-to-energy facilities receive  
9 relatively low rates inhibiting development. We are talking  
10 today about whether we need new rules, old rules, and so on.  
11 The way we would comment on this, if the old rules worked, why  
12 we're not seeing new projects? Why we haven't seen new  
13 renewable projects in at least the past five years, if not the  
14 past ten years. Something is wrong and something needs to be  
15 fixed.

16           Regarding the future, 81 of Florida's capacity comes  
17 from oil and gas. We must encourage renewables and we must  
18 include existing and new waste-to-energy facilities and we must  
19 create markets for them. Creating markets for these facilities  
20 entails two points. First, offer standard offer contracts for  
21 long term. We are going to discuss long term in a minute. And  
22 also encourage the development of functional liquid wholesale  
23 markets. Currently we have no option. We can't sell our  
24 energy as in other states into the spot market. We only  
25 have -- the only option we have -- well, I shouldn't say the

1 only option, but the wholesale option is very limited. In  
2 other states we could just go to the spot market and sell to a  
3 third party. It doesn't have to be a utility. This is  
4 nonexistent in Florida.

5           And the last point is to encourage IOUs,  
6 investor-owned utilities, to diversify their portfolio and  
7 include the renewables proactively. I want to direct our  
8 comments now to the three issues that came during the workshop.  
9 Basically, they echo some of the recommendations made by my  
10 colleagues in here, however, I would like to make additional  
11 comments here. The choice of avoided units, we recommend the  
12 staff option number two. We think this would encourage these  
13 facilities and meet the requirements and intent of the law.  
14 I'm not going to go through the details of this slide.

15           The next point on the contract term. If you look at  
16 any facility that is capital intensive, we are basically  
17 amortizing the cost of this facility over 20 years, so offering  
18 a contract of ten years might not be enough to recover all the  
19 capital and be able to invest in such large capital projects.  
20 I think the utilities themselves don't expect to recover the  
21 cost of a coal unit over ten years, and I bet you they wouldn't  
22 even build it. So our recommendation is to go over ten years,  
23 not view the ten years as a max, it should be a minimum. This  
24 is how the legislation is written and we think 20 years might  
25 be appropriate.

1           The next area we want to discuss is the subscription  
2 limits. The bottom line here, we believe there should be no  
3 subscription limits. If the intent of the legislature is to  
4 encourage renewables, that means any renewable contract -- I'm  
5 sorry, facility that is proposed in the state with demonstrated  
6 technology that is capable of generating on a reliable basis  
7 should be purchased because there is no alternate market, so  
8 there should be no subscription limits.

9           I am going to skip Number 10. Everybody can read it  
10 later. I want to go to Number 11. There are more issues. The  
11 number one issue here is we feel this process is being rushed.  
12 It should be considered in more detail. The legislation was  
13 passed in mid-'05, the public process in our view started in  
14 December of '05, we don't feel there is sufficient time or  
15 consideration was given or even conversation was done with  
16 potential renewable developers. All of this stuff you heard  
17 about in the early part of the day was discussed basically in a  
18 vacuum. The utilities having conversation with staff. We were  
19 not included in this process and we feel we need more time.

20           The next point I want to make is we spent some time  
21 looking at the standard offer contracts. I just pulled, for  
22 example, one of the contracts and we looked at it. The first  
23 thing that jumped at me, and I read it twice, it looks like  
24 these contracts required the facility to be a QF under the  
25 PURPA law that was addressed by Rich Zambo. There is no

1 requirement in the new legislation to require a facility to be  
2 QF. We might want to be a QF, but there is no requirement, and  
3 it is a requirement in the contract. And it goes even further.  
4 It says it has to be a new facility under PURPA law.

5 PURPA law is being repealed as we speak. As a matter  
6 of fact, FERC right now has an NOPR in front of them, Notice of  
7 Proposed Rulemaking, that eliminates the requirements for  
8 utilities to purchase QF power. So, theoretically, if this is  
9 applied to Florida and we go and ask for a standard power  
10 contract, we are in violation of the contract already. That is  
11 why we are advocating taking more time and reviewing these  
12 contracts and understanding that the old rules might not fit  
13 the new environment and the new requirements.

14 There are issues that are not clearly understood in  
15 the contracts, including how the avoided unit cost is  
16 calculated. There are terms and conditions that we feel are  
17 unreasonable, such as the availability and performance  
18 requirements. Yes, we intend to perform. Yes, we do have a  
19 history of very good reliable performance, 24 hours seven days  
20 a week. The only time the plant is shut down is when we have  
21 either planned outage or forced outage. We are not trying to  
22 escape from performance, but we think these standards are too  
23 severe.

24 There is also evaluation criteria, subjective  
25 evaluation criteria in the standard offer contracts that a

1 utility could basically go through that process and say we  
2 reject signing a standard offer contract with you. You don't  
3 meet one of these criterias. Well, we should examine all of  
4 those and understand them and make sure they encourage rather  
5 than they discourage renewable project development.

6           There are also on the performance payment, there are  
7 issues around that. And if there is a high availability  
8 requirement, such as the 97 percent availability requirement,  
9 basically that says if your availability is not 70 percent, if  
10 you drop down to 70 percent, you are not going to receive any  
11 capacity payment, zero. We think this might be too severe.  
12 What we recommend here is time and stakeholder process to  
13 address the issues.

14           The last slide is the closing slide, and I want to  
15 summarize our recommendations on the three issues. The avoided  
16 unit is to use the staff option number two at least. On the  
17 term of the contract, they should be at least 20 years. On the  
18 subscription limits, there should be none. And there should be  
19 more review of the standard offer contracts. We should  
20 eliminate all of this old QF regime out of those.

21           The next point to make is if we think we're going to  
22 encourage renewables in the State of Florida, we need to make a  
23 paradigm shift. We need to ask yourself the question: If the  
24 old regime and the old avoided cost and everything is  
25 functional, why we have not seen new development in the state?

1 Obviously there is something broken that needs to be fixed.

2           There were questions regarding developing whether we  
3 need to go into rulemaking process. The way we would suggest  
4 to approach this is the answer most likely is yes, but maybe  
5 there should be a series of workshops and a time period given  
6 to the stakeholders to sit down in an even less formal  
7 environment than this and discuss the details and see if there  
8 is an agreement to be reached. Then the existing rules could  
9 be amended and the new agreement could be introduced to the  
10 existing rule. If all fails, that means we need to go into  
11 rulemaking process. This keeps all the parties involved,  
12 because nobody wants to go to a rulemaking process. It forces  
13 the parties to compromise and work on these issues.

14           Thank you very much.

15           CHAIRMAN EDGAR: Thank you.

16           Commissioner Arriaga.

17           COMMISSIONER ARRIAGA: Mr. Ballinger, this issue of  
18 time has been brought up, and I think it was brought up at the  
19 agenda conference when we were discussing this issue. Are we  
20 pushing too fast? Are we taking all the necessary steps to  
21 guarantee the participation of everyone in the process? And  
22 what about our June 1st deadline?

23           MR. BALLINGER: I was going get to that. If you  
24 recall, the statute required an implementation date of January  
25 1 of '06. Although the statute didn't become effective until,

1 I believe it was October of '05, so it gave us three months to  
2 implement the statute or at least get the contracts out there,  
3 which we did, we met that date. It wasn't perfect, but we did  
4 it. We have contracts in place that expire June 1st of '06, so  
5 we are going to be revisiting the contract issues again.

6 Part of the reason for this workshop was to get  
7 additional information. Do we need to go to rulemaking to  
8 implement the statute? So, no, I don't think we are  
9 progressing too fast. We have been taking comments from  
10 people. We had that agenda in December. We are having this  
11 workshop. We will have another agenda in May, I guess, to  
12 address the new contracts that come up. So we are proceeding  
13 along.

14 A lot of these same arguments were made at the  
15 December agenda. I haven't heard much that has been new, but  
16 we are getting a little bit more information on it.

17 COMMISSIONER ARRIAGA: So, Mr. Kabbani, why would you  
18 feel so strongly that we are going so fast? And why don't you  
19 think that you have the appropriate forum, or you have had the  
20 appropriate forum so far to express your point of view?

21 MR. KABBANI: I'm not criticizing the forum. I feel  
22 time is needed. Because as we look into these standard  
23 contracts, even the ones that were filed, we are finding issues  
24 in them. And we are feeling that in terms of answering the  
25 question whether we need to have a formal rulemaking, that

1 question is still out there. And that is why we need to take  
2 time to address this.

3 COMMISSIONER CARTER: Madam Chairman.

4 CHAIRMAN EDGAR: Commissioner Carter.

5 COMMISSIONER CARTER: I thought it was going to be a  
6 question, but it is really more of a thought is that the  
7 question is can additional steps be taken to cost-effectively  
8 encourage renewable generation through standard offer  
9 contracts, absent a rule change. Our mission in life is to  
10 balance the efficiencies of the market with the rights of the  
11 public so that the public don't pay too much for what is  
12 essentially a necessary service.

13 I mean, if we are going to keep doing the same old  
14 thing then we are going to keep getting the same old results.  
15 And it seems like to me that if those of the investor-owned  
16 utilities, those in renewable energy utilities and the people  
17 in Florida, it seems like to me that we have made the  
18 transition where we are saying bring us some ideas, let's be a  
19 forward-looking state. And what I'm hearing now is that  
20 although I was not party to the -- I was not officially on the  
21 Commission, but I did sit in and listen, it seems more of the  
22 same to me. I mean, where are the new ideas? Where are the  
23 bold new frontiers? Where are the use of all of these great  
24 technologies that we have come up with? Where can we use  
25 efficient resources at the lowest possible cost to our



1 consumers, but to show that we are a leader in the field of  
2 energy? Where is it? I haven't heard anything, not today.

3 CHAIRMAN EDGAR: Mr. Ballinger.

4 MR. BALLINGER: I have one question for Mr. Kabbani.

5 Slide 4, I think it was, of your presentation is  
6 where you had a summary of what is being processed now. And I  
7 think you came up with a number of possibly an additional 2,000  
8 megawatts of generation.

9 MR. KABBANI: Correct.

10 MR. BALLINGER: Okay. Is it correct now that the  
11 waste is being generated, it's just not being processed today?

12 MR. KABBANI: Correct.

13 MR. BALLINGER: So that means that those  
14 municipalities or whatever, it is more cost-effective to  
15 landfill that waste than to burn it?

16 MR. KABBANI: It might be. This is a potential fuel  
17 resource that is not being utilized, and that is the point I'm  
18 making. By utilizing that fuel resource you will be able to  
19 introduce more renewables.

20 MR. BALLINGER: But I guess unlike other renewables,  
21 like the biograss or the e-grass where they plant a crop  
22 specifically for fuel, municipal solid waste relies on the  
23 waste generated by its cities, its county, as the fuel. So it  
24 has the fuel thrust upon it, if you will, and it has to find  
25 something to do with it. It has two choices, either landfill

1 or it can process it and generate electricity.

2 So is it really the same, or is it appropriate to put  
3 them in the same boat as other renewables, like the biograss,  
4 or, I guess, a wind or a solar? Are they slightly different?

5 MR. KABBANI: I think they are the same by law,  
6 federal law and state law. They are renewable. We are not  
7 sitting here and discussing whether they are renewable or not,  
8 I'm assuming.

9 MR. BALLINGER: No, I agree with you there. But the  
10 question is more of in my mind those have a -- their primary  
11 purpose for being developed is to generate electricity. They  
12 are going to invest capital into, let's say, the e-grass. To  
13 plant a crop, have the harvesting equipment, and the sole  
14 purpose is to generate electricity. Whereas a municipality  
15 solid waste facility, its sole purpose is to not put it in a  
16 landfill. It has to get rid of this waste somehow.

17 The municipality has to get rid of this waste. It  
18 has two choices; it can either landfill or it can burn it and  
19 make electricity. And it becomes an economic choice at that  
20 juncture. And that's where I see they are different. So why  
21 would pricing have the same impact on a municipal solid waste  
22 facility as pricing would on a biograss facility?

23 MR. KABBANI: It is the same issue. It affects the  
24 economics of whether you would landfill this waste or build a  
25 facility to process it. The purpose of these municipal

1 waste-to-energy facilities, the dual purpose is basically to  
2 process the waste, get rid of the waste and generate  
3 electricity.

4 MR. BALLINGER: Okay. And on the next slide, Number  
5 5, you pointed out some expansions that are planned for some  
6 facilities in Florida. And I think earlier I had a slide that  
7 showed a lot of the contracts are expiring between 2009 and  
8 2011. Do you know if these four facilities have existing  
9 contracts?

10 MR. KABBANI: Yes, all of them do.

11 MR. BALLINGER: Do you know if they expire in that  
12 time frame?

13 MR. KABBANI: Some in the same time frame.

14 MR. BALLINGER: Okay. Thank you. That's all I have.

15 MS. HARLOW: I have one additional question. Mr.  
16 Kabbani, you suggested a 20-year contract term. Could you  
17 discuss for us, kind of give us some details on the financing  
18 of these units and how the contract term is relevant to your  
19 ability to obtain financing?

20 MR. KABBANI: Financing is basically done in one of  
21 two ways. Sometimes the municipalities themselves finance it  
22 through bonds, other times, not necessarily in Florida, Covanta  
23 Energy or the developer itself would go obtain financing. In  
24 both environments having a long contract term really enables  
25 obtaining better interest rates, better commitments from

1 financial institutions, being able to issue better bonds  
2 without affecting your bond rating for the county. So that is  
3 how financing affects these facilities.

4 MS. HARLOW: And, also, could you tell us your  
5 average contract term in Florida, or give us a feel for the  
6 contract terms that you have currently?

7 MR. KABBANI: I think the shortest term we have is  
8 about 25 years. We have longer terms than this.

9 MR. BALLINGER: Sorry, I had one or two more. On  
10 your Slide 6, your third bullet from the bottom there about  
11 encouraging the development of functional liquid wholesale  
12 markets. Are you really talking about developing a type of RTO  
13 system in Florida?

14 MR. KABBANI: Yes.

15 MR. BALLINGER: I thought that's what you were  
16 saying.

17 MR. KABBANI: Modeled after the traditional or the  
18 new FERC mandated standard market design.

19 MR. BALLINGER: Okay. I thought that's what you were  
20 saying, I just wanted to make sure. And the last bullet  
21 requiring an IOU portfolio, are you talking about like  
22 mandating a percentage be from renewable, or some other  
23 megawatts, or something like that?

24 MR. KABBANI: I'm talking about mandating a  
25 percentage, as in other states, and I'm talking about in the

1 planning process itself to include when they develop their  
2 integrated resource plan or the ten-year site plan to include  
3 some renewables in there.

4 MR. BALLINGER: Okay. Are you aware if when this  
5 legislation was passed, which was in '05, that there was also  
6 legislation proposed that dealt with the portfolio standard  
7 approach, a percentage that was before the legislature?

8 MR. KABBANI: Yes.

9 MR. BALLINGER: Okay. So there was one and the  
10 legislature chose to go with this? Okay.

11 MR. KABBANI: For the time. It might come back.

12 MR. BALLINGER: I understand. Thank you.

13 CHAIRMAN EDGAR: Commissioner Arriaga.

14 COMMISSIONER ARRIAGA: Mr. Kabbani, I'm just going to  
15 take on Commissioner Carter's idea before. Not the last one,  
16 previous to that. And you're talking about mandating a  
17 percentage. Have you calculated the cost of mandating a  
18 percentage, like minimum ten percent, minimum five percent, the  
19 impact that that has on the consumer?

20 MR. KABBANI: Let's separate the issue of mandating  
21 percentage and cost of implementing the current requirements,  
22 the 366.91. Maybe eventually we will combine the two thoughts.

23 COMMISSIONER ARRIAGA: We have to.

24 MR. KABBANI: Regarding the current cost of 366.91,  
25 if it is based on avoided portfolio plants or one plant, that

1 means the consumer is revenue neutral. So there is no  
2 incremental cost to the customer by definition, because we're  
3 using avoided cost units, or avoided cost portfolio of units.  
4 All we are doing is rather than building the combustion  
5 turbine, or the combined cycle, or the coal plants, we are  
6 building renewables.

7 As in the percentage of, requiring a percentage as in  
8 other markets, I don't have statistics or analysis done as to  
9 what would be the cost of that.

10 COMMISSIONER ARRIAGA: Well, you may want to look  
11 into that because that is something we need to consider.

12 MR. KABBANI: Sure.

13 COMMISSIONER ARRIAGA: Thank you.

14 CHAIRMAN EDGAR: Mr. Ballinger.

15 MR. BALLINGER: Next I have on the list Mr. William  
16 Henry for Bay County. I believe he is here.

17 MR. HENRY: Good afternoon, Commissioners. My name  
18 is Bill Henry. I am with the Burke, Blue, Hutchison and  
19 Walters law firm in Panama City, Florida. We are the county  
20 attorneys for Bay County.

21 What I have to say puts more of the perspective on  
22 one individual renewable energy source. Bay County owns a 10  
23 to 13-megawatt municipal solid waste plant that has been  
24 operational since the mid-1980s. We have just completed a  
25 major retrofit, over \$20 million, that should extend the life

1 of the plant another 30 years.

2 Bay County and its plant are located with Gulf  
3 Power's franchise service territory and Bay County is a retail  
4 customer of Gulf Power. Currently the power generated at our  
5 plant is wheeled by Gulf Power to Progress Energy under an old  
6 1980s contract. That contract is due to expire at the end of  
7 this year. And one of the major problems with that contract  
8 was that not only were we paying wheeling fees and interconnect  
9 fees, we were suffering a 7 percent line loss in the revenues  
10 that we received from Progress Energy.

11 Now, Mr. Ballinger talked about, you know, either you  
12 landfill or you burn it, and you have got to decide where the  
13 costs are. Well, the cost to the consumer is also premised on  
14 the tipping fees. The main value of the revenues from energy  
15 production to Bay County is holding the tipping fees down. If  
16 you can hold the tipping fees down and make the plant close to  
17 self-supporting you avoid more landfills and things of that  
18 nature, or hauling the refuse further. All of those things can  
19 add to the cost. It's not just an incremental cost to the user  
20 of electricity. That same ratepayer is also paying ad valorem  
21 taxes and through his garbage contract is paying if the tipping  
22 fees go up. So everything is interrelated. All of these  
23 different costs are interrelated.

24 Bay County intervened in this case back in January,  
25 because as a small stand-alone facility we don't belong to any

1 of the organizations that have made presentations today, and we  
2 thought we were on our own. We needed a new purchased power  
3 agreement. But when we looked at the standard offer contract  
4 for Gulf Power that was approved back in December, the  
5 availability rate of 94 percent is totally unrealistic for a  
6 plant of our type.

7           Historically, our plant before the retrofits was in  
8 the high 70s, was the availability rate. But under the  
9 standard offer contract we would have to guarantee 94 percent  
10 or pay damages or penalties. Also in that standard offer  
11 contract the avoided cost was pushed back to 2012, but we need  
12 to maximize our revenues now. Other than that, I'm not going  
13 to waste the Commission's time reiterating what other  
14 presenters have said or will say today, but I would ask the  
15 Commission one thing, and that's as Mr. Ballinger started out,  
16 let's think outside the box.

17           Our legislature in Florida is trying to promote  
18 renewable energy. The federal government is doing the same  
19 thing. In fact, it has mandated all the federal executive  
20 agencies increase their use of what they call green power,  
21 renewable energy. The United States Air Force is the lead  
22 agency so far of all the federal agencies in getting there. We  
23 have a big air base in Bay County, Tyndall Air Force Base. And  
24 the folks out there, which is not only the fighter wing that is  
25 there, but also the Air Force Engineering Services Agency,



1 which purchases utilities worldwide, is also headquartered  
2 there. They would love to be able to get our renewable energy.  
3 It helps them in meeting their goals in the federal government.

4           Something to bring in thinking outside the box. We  
5 just finished the latest round of BRACC, the Base Realignment  
6 and Closure Commission. It scares local communities that they  
7 may lose their military bases. The State of Florida and a  
8 large number of local governments put in a great deal of time  
9 and effort to show that we in Florida want those bases to stay  
10 here, that we want them to be part of our community.

11           If we can work out -- or if the Commission allows us  
12 and encourages flexible negotiating with Gulf Power, we would  
13 like to have our power, at least on paper, going to Tyndall Air  
14 Force Base. We all win. We will get a reasonable revenue from  
15 our power generated, the Air Force will be helped in meeting  
16 its standards, and Gulf Power will show that it is interested  
17 in helping both the county and the Air Force as part of this  
18 community effort.

19           Because we are already getting ready for the next  
20 round of BRACC. Our chamber of commerce is working hard on it.  
21 The military affairs committee of the chamber of commerce is  
22 constantly working on it and so is the State of Florida. So  
23 what we would like the Commission to consider is allowing us  
24 flexibility, but giving us the encouragement. Because we, as a  
25 small plant, are not in a very good bargaining position with

1 Gulf Power, and especially under the standard offer contract  
2 that was okayed back in December. And that's all that I want  
3 to ask the Commission today. Just think outside the box and  
4 give us a little bit of flexibility and a little bit of  
5 encouragement to both us and Gulf Power to work out something  
6 between us and not lock us into the standard offer contract.

7 Thank you.

8 CHAIRMAN EDGAR: Thank you, Mr. Henry.

9 Commissioner Deason.

10 COMMISSIONER DEASON: Mr. Henry, has Bay County  
11 attempted to negotiate these matters with Gulf?

12 MR. HENRY: We have. And we're starting to move  
13 closer together, but we need more encouragement, sir.

14 COMMISSIONER DEASON: What do you really mean by  
15 encouragement? I mean, do you want us to just say we encourage  
16 you, or do you want to see something like a five-point plan  
17 that says --

18 MR. HENRY: Rather than lock us into -- as far as I  
19 know, there is only one other renewable energy plant in Gulf  
20 Power's service territory. And what they're doing, I have no  
21 idea. But we're the issue. That standard offer contract  
22 really only applies to us and that one other plant.

23 We would like the Commission to say, Gulf Power, hey,  
24 there's reasons to do things beyond the standard offer  
25 contract. Now, I have heard earlier today encouraging

1 negotiations. But when you are negotiating from a bad  
2 bargaining position, like you have nothing to offer except run  
3 the electricity into the ground, we need the other side, Gulf  
4 Power, to have the okay from the Commission to say this is the  
5 type of agreement that benefits Florida in several different  
6 ways, renewable energy and BRACC at the same time. And that's  
7 what I'm asking, sir.

8 COMMISSIONER DEASON: Under the BRACC process, an Air  
9 Force Base, such as Tyndall, do they get extra credit if they  
10 can show somehow that they are utilizing a renewable energy  
11 source?

12 MR. HENRY: Well, they get credit under the mandated  
13 program that they are getting some of what they call green  
14 power. But from the BRACC process, what you really want to  
15 show is community involvement and cooperation with the local  
16 military base. And that's things from promoting affordable  
17 housing to improving education in certain areas of, in our  
18 case, the county, which Tyndall is at the east end of the  
19 county. This is just one more weight to put on that scale if  
20 it gets close of are they going to start cutting missions out  
21 of Tyndall or shutting it down.

22 COMMISSIONER DEASON: May I follow up?

23 CHAIRMAN EDGAR: Commissioner Deason.

24 COMMISSIONER DEASON: Under the energy procurement  
25 requirements of the Air Force, do they have the flexibility or

1 the ability to pay a premium for green energy?

2 MR. HENRY: That I don't know, sir. They would not  
3 like to pay a premium, I know that. A lot of their green  
4 energy that they've gotten so far is federal hydropower out  
5 west. When the transmission grids finally opened up in the  
6 '90s, they were able to get some very inexpensive federal  
7 hydropower in. We're not talking about that. We're talking  
8 about 10 to 13 megawatts of municipal solid waste renewable  
9 energy.

10 CHAIRMAN EDGAR: Commissioner Carter.

11 COMMISSIONER CARTER: Commissioner Deason asked my  
12 question. I was going to ask what are some of the things we  
13 could do to assist in that process. Thank you.

14 COMMISSIONER DEASON: Just one follow-up, if I may.  
15 The BRACC process I know was of interest to all communities in  
16 the State of Florida, particularly those in northwest Florida  
17 where there is Tyndall and Eglin, I believe. And I know, of  
18 course, Northwest Florida is the service territory of Gulf, as  
19 you indicated. I know that President Story of Gulf Power, she  
20 is very involved in the community's response to the BRACC  
21 process. I would think that there would be the potential for  
22 some common ground if you think you could proverbially kill two  
23 birds with one stone, if you could promote renewable energy and  
24 somehow enhance Tyndall's standing in the BRACC process. I  
25 think there may be common ground there. So at this point not

1 knowing more, I would just encourage the negotiation process  
2 that apparently you are already engaged in.

3 MR. HENRY: Yes, sir. And, obviously we're  
4 interested in Tyndall and the Naval Coastal Systems Lab, but  
5 MacDill, we have had people representing the City of Tampa and  
6 Hillsborough County. MacDill is sitting right there in Tampa  
7 Bay. That's a big air base, too. And if this could carry  
8 forward to others, I think it would benefit the whole state.

9 COMMISSIONER DEASON: Maybe you could come up with a  
10 model that would demonstrate that.

11 MR. HENRY: I hope so, sir.

12 CHAIRMAN EDGAR: Commissioner Arriaga.

13 COMMISSIONER ARRIAGA: Commissioner Deason, just to  
14 add a little bit of information too about President Story. She  
15 happens to be the Vice Chair of Enterprise Florida, the agency  
16 by choice that takes care of economic development in the state.  
17 So there you have another little more of encouragement that  
18 Gulf Power will need, because, I mean, who else but her.  
19 Economic development, Enterprise Florida, Gulf Power, you guys.  
20 It's there. Twist the arms appropriately.

21 MR. HENRY: Yes, sir.

22 CHAIRMAN EDGAR: Mr. Ballinger.

23 MR. BALLINGER: I don't think staff has any questions  
24 and we can move on to our next presenter.

25 CHAIRMAN EDGAR: Thank you, Mr. Henry.

1 MR. HENRY: Thank you.

2 MR. BALLINGER: Mr. Gus Cepero.

3 MR. CEPERO: Thank you. My name is Gus Cepero. I'm  
4 with Florida Crystals Corporation. We are the owners and  
5 operators of a biomass facility in Palm Beach County. I think  
6 it's the largest biomass facility in the country. And we have  
7 been generating power and selling it to the market for probably  
8 about eight or nine years now. We appreciate the opportunity  
9 to present our thoughts to you.

10 I would like to first give you sort of a bottom line  
11 impression. I have heard that phrase used a couple of times by  
12 the Commissioners, and then I would like to get into some of  
13 the specifics. I think that we can all agree that the  
14 legislature intended to encourage the development of renewable  
15 energy. We have read one of the standard offer contracts  
16 pretty carefully, and we have scanned the others, and our  
17 experience has been that in order for contracts to be  
18 successful you really need to have a willing buyer and a  
19 willing seller. When you really do not have two willing  
20 parties coming together to do a contract, you run the risk of  
21 having problems pretty early on.

22 I read the standard offer contract, and I must tell  
23 you that in our view the buyer of that contract is not a real  
24 happy fellow, is not a willing buyer that is coming voluntarily  
25 into this process eager to buy renewable energy. In fact, I

1 would say that the buyer under that contract is being dragged  
2 into this process kicking and screaming and has come up with a  
3 series of obligations and standards for performance, some of  
4 which are impossible to meet by any generating technology, and  
5 I will get into some specifics in a couple of minutes. And  
6 then has wired this whole process with hairthin triggers that  
7 will go off as soon as there is any misstep or just a bad step  
8 by the seller of power, and that will give them the right to  
9 declare default, and default will give them the right to  
10 terminate the contract, which is the death penalty.

11           So from our perspective as a biomass producer who has  
12 been in business for nearly ten years, I can tell you without  
13 hesitation that we would not sign this contract and it would  
14 not take us very long to make that decision. So if we are  
15 trying to encourage renewable energy, this contract,  
16 Commissioners, does not do that.

17           Let me try to be a little more positive now and say  
18 that we have done business with most of the utilities in this  
19 room, and I think we have developed successful relationships  
20 with at least some of them. I will single out Tampa Electric  
21 as being particularly helpful, particularly supportive of our  
22 plant, and we have done a lot of business with them. And  
23 collectively under bilateral contracts we have probably sold  
24 tens of millions of dollars, perhaps approaching \$100 million  
25 worth of power over the last few years. So I think there's

1 hope. I think there is a willingness to do something, but this  
2 standard offer contract is just -- it certainly doesn't do it.  
3 It doesn't do it for us. And it's not that it needs a little  
4 tweaking, I think it just needs major surgery or replacement  
5 with a different form of contract altogether.

6 I would like to cover three or four specifics, not as  
7 an all-inclusive list, but as an illustration of some of the  
8 major problems that we see with the contract. First, I would  
9 like to talk about the delivery obligation, and let me preface  
10 that by saying that I think three out of the four standard  
11 offer contracts by IOUs specify a combustion turbine as the  
12 avoided unit. And they also specified, under the energy rate,  
13 that the utility or the buyer would pay the lower of the unit  
14 energy cost or the as-available cost.

15 Now, in one of the standard offer contracts, I think  
16 it was FPL's, under Section 8.4.7, the buyer has the right to  
17 schedule the seller basically without limitations at all times.  
18 The only thing the buyer has to do is give the seller ten  
19 minutes of notice. So, theoretically, the buyer can schedule  
20 this resource at a 97 percent capacity factor, which is  
21 probably 8500 hours or so during the year. They would pay the  
22 unit energy cost, which is the cost that really would be  
23 incurred by the avoided unit, 500 hours a year, 1,000 hours a  
24 year. The rest of the time, the vast majority of the time, 90  
25 or 95 percent of the time they would pay the as-available



1 energy rate.

2           Now, I would ask if there is any generating  
3 technology out there, coal, nuclear, combined cycle, whatever,  
4 that can survive under a regime where you are getting paid  
5 capacity charges on the basis of a combustion turbine. The  
6 lowest possible capacity rate, and you are required to deliver  
7 energy at a 97 percent capacity factor. And most of that  
8 energy is going to be paid well below the cost to generate  
9 energy by a combustion turbine. I don't think there's any  
10 technology out there. And if I'm misreading the contract, I  
11 stand to be corrected.

12           Now, the other alternative is to say, well, we're  
13 really not going to dispatch this unit. Even though we have  
14 the right, even though we have the right, we are not going to  
15 patch this unit as a base load unit. We're going to dispatch  
16 it just the way a combustion turbine would be dispatched,  
17 which, again, I think we could all agree would be somewhere  
18 between 500 and 1,000 hours a year.

19           Then there is another provision, I think it is 4.1,  
20 that requires the seller to sell all of its energy from that  
21 facility to the buyer. So the seller does not have the ability  
22 to go into the market and sell to third parties. So the other  
23 possible scenario under this delivery obligation is the buyer  
24 will schedule the seller 5 or 10 percent of the time. The  
25 other 90 percent of the time the seller sits there and cannot

1 generate power. You're a waste-to-energy facility, like most  
2 of the folks that are presented here, and the material is  
3 coming in and is piling up, and you are not able to generate  
4 because you are not being scheduled by the buyer. Or you are a  
5 biomass facility, like we are, where the material is coming in,  
6 where we have obligations to deliver steam to a sugarmill next  
7 door, and we can't operate because we are not being scheduled  
8 and we don't have the right to sell to third parties.

9           So this delivery obligation puts the seller in a box  
10 which, in my view, is impossible to exist. So put aside  
11 pricing, put aside prescription limits, put aside term, the  
12 delivery obligation as it stands today does not work, in my  
13 view. That's one example.

14           The second example, the pricing mechanism. Let's  
15 accept in arguendo that 97 percent availability rate is a  
16 reasonable availability rate. I'm not going to argue that it  
17 is not reasonable. If the seller fails to meet the 97 percent  
18 availability rate, for each percentage point below 97 that the  
19 seller delivers, the capacity payment is reduced. The first  
20 one percent I believe is 10 points, the second is five points.  
21 So by the time -- if you deliver at 90 percent, for example,  
22 instead of 97, you're getting 60 percent of the capacity  
23 payment, which was inadequate to begin with. So that pricing  
24 mechanism, in my view, is quite, quite onerous and quite out of  
25 step with anything that I have seen in the industry in the last

1 several years. And certainly quite out of step with the way  
2 that the utilities, the risk that the utilities run or accept  
3 when their resources do not operate as advertised.

4           Beyond that, you've got the capacity test that is  
5 required six times a year for the duration of the contract. I  
6 have never seen such a term before. I imagine it may be in  
7 some older standard offer contracts. Each of these capacity  
8 tests is a bullet to your head. If you miss it or if you don't  
9 meet the full committed capacity, then the capacity, the  
10 committed capacity gets reduced. And the next test is not  
11 scheduled until the utility determines when it gets scheduled.  
12 So I think the capacity commitment section is very onerous, the  
13 maintenance scheduling I think is very onerous, and, finally, I  
14 don't want to forget about the default section, Section 12.

15           I read about 12 or 15 different bases in which the  
16 seller could default. I guess that there is no conception that  
17 the buyer could default. The only way that this section works  
18 is under a seller default. I don't know what would constitute  
19 a buyer default, but it's not conceived by the contract.

20           Moreover, there are no notice or cure provisions. If  
21 there is a default, the utility has a right to terminate. So,  
22 again, commercially I don't think that that is a reasonable  
23 default provision. So I appreciate you guys have a full plate  
24 here with this standard offer contract and with the mandate  
25 that you have from the legislature, and I appreciate that you

1 are trying to balance encouraging renewable energy on the one  
2 hand with the avoided cost standard with no increased price to  
3 the ratepayer, and I'm not advocating at all that we increase  
4 the price or the cost to the ratepayer.

5           So I'm not sitting here just trying to throw rocks,  
6 but I do want to point out that this contract in our opinion  
7 does not work. And I would encourage you to think about a  
8 different form of contract altogether. For example, the Edison  
9 Electric Institute, which I think is primarily an  
10 investor-owned utility organization, there may be other  
11 members, but primarily the majority of the membership of the  
12 Edison Electric Institute, EEI, is investor-owned utilities.

13           They have developed a standard master contract for  
14 the purchase and sale of energy and that contract is pretty  
15 widely used, I think, in industry. We have those contracts  
16 with several utilities in this room as well as in the  
17 southeast. The beauty of that contract is that either party  
18 can be a buyer or a seller. So Party A can buy or sell and  
19 Party B can buy or sell. You would be amazed at the amount of  
20 discipline and rigor and balance that that brings to the  
21 process.

22           Perhaps you guys ought to consider something like an  
23 EEI style format for the standard offer. It's very simple.  
24 It's an enabling agreement. And after that with two or three  
25 pages you can do a transaction. It takes 250 or 300 words. We

1 do it all the time and it works very well. Perhaps it's not  
2 suitable for real long-term contracts and some adjustments may  
3 be necessary, but I would encourage you guys to look at  
4 something like that, because this standard offer contract, for  
5 us at least, I'll speak for my company, doesn't do the trick.

6 And before somebody says go out and negotiate a  
7 contract, we have tried that. Negotiating a contract typically  
8 is tougher than doing a standard offer contract. These become  
9 sort of the beginning point, the starting point, and the  
10 utilities will typically expect discounts or concessions either  
11 in pricing or in terms and conditions from the standard offer  
12 contract. Those are my comments.

13 CHAIRMAN EDGAR: Thank you. Commissioner Carter.

14 COMMISSIONER CARTER: Madam Chairman, to staff, are  
15 you guys familiar with this EEI standard contract he has  
16 mentioned?

17 MR. BALLINGER: No, sir, I have never seen it.

18 CHAIRMAN EDGAR: We'll take a look.

19 MR. CEPERO: I will say this, that it is designed for  
20 a broader range of transactions, including financial forward  
21 transactions, which may not be applicable here. So there's a  
22 lot of financial and collateral type of requirements, which,  
23 again, may not be applicable. But at the core of it, it's a  
24 fairly standard almost simple contract, and then you have a  
25 transaction schedule that says whose a buyer, whose a seller,

1 what's the term, what's the quantity, what's the delivery, the  
2 delivery obligation, what's the price, and that's it. It  
3 defines force majeure, it defines a lot of standard stuff.

4 CHAIRMAN EDGAR: Mr. Ballinger.

5 MR. BALLINGER: I don't think staff has any  
6 questions, but we can see -- I will get with Mr. Cepero and see  
7 if I can find that EEI contract and look it over.

8 CHAIRMAN EDGAR: Commissioner Carter.

9 COMMISSIONER CARTER: Just a follow-up to any of the  
10 panelists. Are you gentlemen and ladies familiar with this  
11 contract that he mentioned, the EEI contract, both from the  
12 industry -- either industry, whomever?

13 MR. ANDERSON: At Florida Power and Light Company, I  
14 know we have attorneys and business people that work with EEI  
15 type of contracts all the time, what is being described is a  
16 wholesale power contract. And in the industry there are  
17 several kind of standard agreements. On the gas side, you have  
18 the North American Energy Standards Board Agreement. Some  
19 people have modified that for large electric agreements like  
20 that. I believe there is also a standard agreement off the  
21 northwest part of the country. I'm forgetting the name of  
22 that. And then I am recalling that there is a -- I am  
23 familiar, but don't use it, as a retail lawyer in Illinois, the  
24 EEI master agreement with transaction confirmations and things.

25 I don't know if it is the right fit for this type of

1 arrangement, but it is correct there are such agreements and  
2 they have use typically for sales between very large utilities  
3 for very large amounts of electricity for different parts of  
4 time. And I think they are more typically used for shorter  
5 time period transactions as opposed to, you know, multi-year,  
6 multi-decade, but that is just a recollection without having  
7 studied more closely. That's the thoughts I have.

8 MR. ASHBURN: That is my general understanding, as  
9 well. It is sort of a standard form that was developed to help  
10 facilitate transactions between utilities, and it is typically  
11 for shorter periods than longer term, decade type contractual  
12 arrangements.

13 MR. KABBANI: If I may. It is an existing EEI.  
14 Traditionally in the early years it is used for trading between  
15 nonregulated arms of different utilities or some regulated  
16 arms. I know that the New York Power Authority has utilized  
17 this type of contract for long-term, and it is adaptable. It  
18 would require some revisions, but it's adaptable for a  
19 long-term contract such as the standard offer.

20 COMMISSIONER CARTER: Thank you, Madam Chair. It  
21 just seemed like to me, if something is that simple, although  
22 according to the statutory guidelines from 366.91, thinking  
23 outside of the box, to use a worn-out phrase, if there is  
24 something simple out there that will bring the parties to the  
25 table to make a decision faster so we can move on and do

1 something in the best interest of the consumers as well as  
2 generating a viable market and diversity of fuel mix, then  
3 maybe we should look at those things.

4 CHAIRMAN EDGAR: I certainly always urge striving for  
5 simplicity where appropriate and clarity almost always. And  
6 one of the things I know I was going to talk with our staff  
7 about also is seeing if there is some model language or  
8 language from standard operating contracts or other vehicles  
9 from other states that are also looking at renewables. Now,  
10 often Florida is in the lead, but clearly if there are some  
11 good ideas out there that we could use, as well, I know we are  
12 interested in doing that.

13 Quickly. It's time to move on.

14 MR. ANDERSON: Okay, great. On the EEI point,  
15 though, one important point to keep in mind is our standard  
16 offer contracts in Florida are specifically drafted to  
17 implement the Commission's regulations, which are very, very  
18 particular. And as I think about it, the EEI agreement really  
19 don't have any of those obligations, so that is probably one of  
20 the key reasons they're so different.

21 CHAIRMAN EDGAR: Understood. Mr. Ballinger.

22 MR. BALLINGER: We don't have any more questions. I  
23 would ask Mr. Cepero, though, if he has an example of this,  
24 we're going to solicit post-workshop comments, and we would be  
25 glad to take those if somebody has them and we can look them



1 over. We would appreciate that.

2 MR. CEPERO: We will be happy to cooperate.

3 MR. BALLINGER: Our next presenter is Mr. Gregory  
4 Blair. I haven't -- he may not even be -- oh, there he is.

5 Okay. Thank you, Mr. Blair.

6 CHAIRMAN EDGAR: Mr. Blair.

7 MR. BLAIR: Thanks for inviting me here today. This  
8 has been a very interesting session thus far. We come to it  
9 from a slightly different perspective. We're little guys. We  
10 operate a 25-megawatt wood-fired project in Southern Oregon.  
11 You might ask what are we doing in Florida? We would like to  
12 develop other projects. I have actually been in the  
13 development and operations business for 15 years, and for 10  
14 years prior to that I founded the Project Finance Department at  
15 National Westminster Bank USA, where we financed about 600  
16 megawatts in renewable projects during the heydays of the  
17 1980s.

18 So I know a little bit about what is financeable. I  
19 know a lot more about what is operational and what works from a  
20 business standpoint. And we have a pretty good database on  
21 what is involved in making a biomass project work. And I can't  
22 say that I know specifically everything I would want to know  
23 about developing a project in Florida, but the starting point  
24 is what kind of a deal is out there in order to determine what  
25 type of project might be feasible.

1           The deal that is presented in the standard offer is  
2 100 percent nonfinanceable. I might sign up for it if I had an  
3 existing facility that I was otherwise looking to shut down or  
4 continue operating. And I might give it a go at continuing to  
5 operate, with the caveat that I would not want to make a  
6 terribly large investment given some of the draconian measures  
7 that are in the contract that could basically take the contract  
8 away from me in very short order. And those are some of the  
9 primary weaknesses in the contract, putting price aside for the  
10 moment.

11           I'd like to begin just by commenting for a moment.  
12 Tom Ballinger said something earlier on that I think, you know,  
13 made a lot of sense. It would be great to be able to do a  
14 negotiated contract for these types of projects. It's a very  
15 complicated process; it's a very complicated business. Every  
16 plant is different; every location is different. And every  
17 plant in the development time line is going to be different.  
18 Earlier plants will have lower fuel costs, and as you proceed  
19 in development down the road, five years from now you may find  
20 that you have burned through, theoretically, or committed all  
21 of the cheaper fuel that is most readily available and is a  
22 true waste, and now you are moving into other types of fuel.

23           But just to stay on the negotiated contract subject  
24 for a moment, the issue, in my mind, is absent the renewable  
25 portfolio standard in the state, which the legislature did not

1 approve, you don't have an even field of negotiation for a  
2 negotiated agreement. There is no inducement, basically, for  
3 the utility to sign. And, in fact, I would suggest that there  
4 is an inherent conflict of interest for the people who would be  
5 looking to negotiate those contracts.

6 The alternatives are, basically, well, let's go with  
7 the renewable project, it's great for the ratepayers, and we  
8 are revenue neutral because the price of the contract gets  
9 passed on to the ratepayer. Unfortunately, it's not  
10 shareholder neutral because the avoided unit that's not built  
11 doesn't bring earnings per share down to the bottom line. The  
12 utilities are in the business of growing their business. And  
13 if they can't grow their business in-state by adding capital  
14 equipment, then they are not growing their business.

15 So any asset that is built by someone else is an  
16 asset -- is basically an avoided earnings for the shareholders  
17 of the utility. So there is a disincentive, absent some sort  
18 of regulatory push or some sort of mandate or renewable  
19 portfolio standard for there to be a fair bilateral negotiation  
20 in such a process. And if I were working for FPL or Tampa  
21 Electric or Gulf Power or Progress, I would be taking the  
22 position -- and they would be delinquent in their duties if  
23 they didn't take the position -- that a renewable asset is not  
24 a plus it's a minus. It may be a minor minus, just because  
25 there is not going to be a large proliferation of these plants

1 given the limitations of the market. The theoretical limit to  
2 biomass in the state of Florida is probably about 1,000  
3 megawatts. We are probably talking about another 600 to 1,000  
4 megawatts of MSW in terms of maximize penetration, and then we  
5 are getting into other technologies. We are getting into, you  
6 know, putting hydroturbines in the Gulfstream and things of  
7 that nature, and solar, and looking for potential wind sites.

8           But looking at the low-hanging fruit, and biomass is  
9 a low-hanging fruit for the State of Florida, to the extent  
10 that all of the resources are not currently being harvested,  
11 are not currently used in the production, utilized in the  
12 production of electricity, the issue is, and the conundrum for  
13 a regulatory body is where to set the price. If we set it too  
14 high, all the plants get built but we paid too much and we  
15 burdened the ratepayers with too high a cost. If we set the  
16 price too low, or allow for more onerous contract terms, then  
17 no projects get built and we haven't met the requirements of  
18 the statute and people are not able to benefit from a large  
19 proliferation of renewables.

20           I'm going to share with you some information from our  
21 experience that may or may not be relevant for the State of  
22 Florida, but the all-in (phonetic) cost, and this is in  
23 response to Commissioner Carter's question earlier about what  
24 would it cost, it's around 9 cents a kilowatt hour, around \$90  
25 a megawatt hour. And that's what it is for us right now. Our

1 operations, maintenance, property taxes, insurance, salaries,  
2 everything and anything in an area with a median income range  
3 of about \$32,000. So that is the local economy that we operate  
4 in. We are at about \$32 a megawatt hour for all of those fixed  
5 operating costs and some of the variable costs of chemicals.  
6 So this is nonfuel.

7 Our capital cost is about another \$30 a megawatt  
8 hour, and our fuel cost is -- right now our fuel cost is about  
9 \$28, and we have seen it as high as \$36 a megawatt hour,  
10 depending on variations in fuel costs. With recent increases  
11 in diesel fuel prices, there is some correlation, though it's  
12 not tremendous. But it has more to do with market factors,  
13 shortages, with how much waste is coming into the stream, and  
14 those are the things that are a little bit more difficult to  
15 manage. But it's not cheap.

16 Now, when I initially looked at the standard offer  
17 contract, I was encouraged. I said, oh, 8 cents. Five bucks a  
18 kilowatt month is not so great, but 8 cents a kilowatt hour as  
19 a sort of forecasted energy rate is pretty good. And it's a  
20 great starting point, and you might actually be able to make  
21 the dog hunt here.

22 When I got into reading it a little further, though,  
23 I realized that that price is not a price that's going to hold,  
24 it's going to fluctuate with the price of natural gas. So it  
25 would be incumbent upon us, we would necessarily need to lock

1 that in because \$5 a kilowatt month as a capacity payment  
2 doesn't even begin to pay the cost of a solid fuel plant.

3 A biomass plant is as capital intensive as a  
4 coal-fired plant and it suffers from diseconomies of scale. A  
5 biomass plant by its very nature, because it has to gather fuel  
6 from a radius around the plant, really can't be any larger than  
7 50 megawatts, unless you're in an area that is just producing  
8 biomass at an incredible clip. Our fuel area that we pull from  
9 has -- we pull from a radius of about 180 miles, and we pull  
10 from four pulp mills and about a dozen lumber mills, and then  
11 we also go to timber landings and gather culls, tops, limbs.

12 We go to area landfills and gather urban woodwaste  
13 that has been segregated, clean urban woodwaste, pallets and  
14 construction debris. We send out bin boxes to local areas for  
15 clean woodwaste only at a reduced rate to local residents. So  
16 we charge \$100 for our bin, whereas, you know, a Waste  
17 Management or a Wheelbrater might charge \$300, because they  
18 will take everything. We say segregate it into wood, we charge  
19 \$100.

20 So we get material in from a bunch of different  
21 places. We get 30,000 tons a year in by operating a public  
22 woodwaste yard at our plant. And the local community, which is  
23 about 110,000 people, bring their woodwaste to the plant and we  
24 charge them five bucks to dump a pick-up truck, so it's cheaper  
25 than the landfill. So all of these things together, you know,

1 these plants draw from a great many sources. And the fuel  
2 prices, though, can fluctuate. It can fluctuate with temporary  
3 shortages, it can fluctuate with fluctuations in the lumber  
4 industry, in the sugar industry, with respect to Florida, it  
5 can fluctuate with, you know, hurricane debris that might be  
6 showing up in the waste stream. So there's a lot of variables  
7 that come into play, so the fuel cost is not static. And those  
8 are some of the risks that we take.

9           The risks we take are building the plant, that its  
10 going to operate, that we're going to maintain it, it's going  
11 to maintain reliability. Because if we don't produce power we  
12 don't get paid. And we need to be able to source fuel  
13 economically so that we preserve a profit margin and maintain a  
14 coverage ratio on our debt and generate a return for our equity  
15 investors.

16           The issue, I guess, some of the specific issues I  
17 have with the contract is there is a lot of discussion about  
18 avoided cost and not burdening the ratepayer with more costs  
19 than they would otherwise experience from the avoided unit.  
20 The issue is -- the flip-side of that is if the renewable  
21 project is not built, the avoided project does get built. The  
22 avoided project is got going to have a ten-year PPA. The  
23 avoided project is going to have a 25 to 30-year PPA.

24           Because once it goes into rate base, the ratepayer  
25 has signed a 25 to 30-year PPA. He is obligated. He is not

1 only tied to that capacity payment to support that plant for 25  
2 to 30 years, but he is also signed on to that heat rate and  
3 that energy efficiency and that fuel source for 25 to 30 years.  
4 And he is bound to those set -- to those economic parameters.  
5 He is also not hedged, because the utility is not allowed to  
6 hedge its fuel supply. So he is at risk to the vagaries of the  
7 market.

8           So when a hurricane hits the Gulf and New Orleans is  
9 devastated and the refineries are devastated and the gas  
10 delivery infrastructure is devastated, Florida catches a major  
11 cold. Your prices go up, you know, four dollars per MMBtu,  
12 five dollars per MMBtu. Retail in New York, I'm paying \$16  
13 right now per MMBtu, and I'm paying 22 cents a kilowatt hour  
14 all because of a hurricane in New Orleans. Prior to that it  
15 was no bargain, either, but it was probably about 25 to 30  
16 percent less. And that may come down.

17           But right now the ratepayer is not hedged. He is not  
18 hedged for coal, he is not hedged on gas. But he would be  
19 hedged with biomass. And it has been done in other states  
20 where a fixed price, or a fixed price with a minor inflation  
21 escalator has been set, and biomass producers have abided by  
22 that and continued to produce energy in that environment. And  
23 that hedge in and of itself has been determined to be in the  
24 ratepayer interest in those states where that has come into  
25 play.



1           And, you know, it's not always a bargain. Hindsight  
2 is 20/20, and when we look back everybody is an expert. And in  
3 some cases, you know, the seven cent contract didn't look like  
4 such a good deal under the New York long-run avoided cost  
5 structure, the L-rack (phonetic) structure in 1993. So all of  
6 those contracts got bought out. But, boy, in 1999 and '01 and  
7 '05, it would have been nice to have those around.

8           One other thing I would like to mention just about  
9 the nature of biomass plants is our plant has been around for  
10 22 years -- I'm sorry, 19 years, we have got a 25-year  
11 contract, and it will run for another 25 years. And it will  
12 run for another 25 years -- it's a \$36 million facility, it  
13 will run for another 25 years at a cost of about a million and  
14 a half a year. So one of the other conundrums that you face as  
15 a regulatory body is you're trying to encourage the development  
16 of renewables.

17           If you set a standard offer contract and a lot of  
18 existing facilities that are already built and paid for renew  
19 their contracts through this standard offer mechanism, you will  
20 get renewable energy but not at any greater level than you have  
21 been getting it, you will just end up paying more for it than  
22 you might otherwise have paid. As I mentioned right now, when  
23 our contract is up, we could probably make the dog hunt at  
24 about 6.5 cents a kilowatt hour. If I am building a new plant,  
25 I need about 9.1. But if somebody offers me 6.5 or 6.8, I'm

1 going to run, and I'm going to deliver power.

2           And that is the market that we are looking at on the  
3 west coast. At a 6.5 cent rate on the west coast, if I'm  
4 looking at that rate, and I have to decide whether I'm going to  
5 build a new plant, no, I'm not. But I will build a new plant  
6 at 9.1 or 10, because our fuel market is getting a little  
7 tight.

8           The 97 percent availability factor has been discussed  
9 a lot. The impact is on a very de minimis capacity payment. I  
10 don't see it as a big deal, but it's appropriate to the  
11 combustion turbine that only runs for a couple hundred hours a  
12 year that's a peaker, a super peaker. If the capacity payment  
13 was more like California's standard offer contract in 1987 that  
14 resulted in 1,000 megawatts of new biomass projects at \$187 a  
15 kilowatt year, about \$15 or \$16 a kilowatt month, which is  
16 three times your 2005 rate, that rate resulted in a  
17 proliferation of projects in 1986, 1987 dollars.

18           This rate may result in a proliferation of projects  
19 if somebody can tell me that I can lock in 8 cents on the  
20 energy rate. Because my contract right now has a similar  
21 capacity payment in Oregon, but my energy payment is much  
22 larger. So my energy payment, I'm used to getting paid to  
23 produce power, and I can get a plant financed on an energy rate  
24 where I'm servicing capital needs through the sale of  
25 electricity. So the capacity payment doesn't have to be

1 there -- when you build a biomass plant, you expect to run it,  
2 it's a boiler. You don't get any power unless you get up a  
3 head of steam. They are not dispatchable. You can't turn them  
4 on and off. And if you do on a regular basis, and there was an  
5 experience in a plant in Burlington, Vermont, that was cycled  
6 daily for three years and had to have the whole boiler retubed  
7 and had to have the turbine overhauled after three years of  
8 operation, when that normally should have happened after about  
9 20 years. Because they cycled it on a daily basis, and the  
10 thermal shock to the engine, to the boiler and all the  
11 equipment was just too severe. Once you bring it up to  
12 temperature, you want to run it and you want to continue to run  
13 it. And to run it any other way is foolhardy.

14           So the dispatch and control thing doesn't work. What  
15 is of greater concern is the inherent economic dispatch  
16 language, which is what tells me that we don't get eight cents  
17 under this contract. Okay. First, you don't get eight cents  
18 because it's not locked in. I would have to hedge the gas  
19 price in order to be sure that if the price of gas went down  
20 below the forecasted level, that I'd be making money on my  
21 hedge when I'm losing money on power contract, in which case I  
22 might elect to shut down and just make money on my hedge,  
23 because I would be making more money on the hedge than I would  
24 on the power contract.

25           But the dispatchability issue is of grave concern,

1 and it's sort of a hidden issue in the contract. Because the  
2 plant is dispatchable and because it's subject to this economic  
3 dispatch against the estimated unit fuel cost, the way it works  
4 is since this unit is slotted in against the cost of a peaker  
5 that only runs for several hundred hours a year, economically  
6 that plant will never slot in, economically, at night, in the  
7 spring, in the fall, in the winter, and perhaps even at night  
8 sometimes during the summer.

9           It will never be at -- the marginal heat rate in  
10 Florida during those off-peak or shoulder-peak hours is not  
11 10,500, that is not the marginal heat rate of the state. The  
12 marginal heat rate of the state is at that level when it's 90  
13 degrees outside and all the combustion turbines are the last  
14 units that are operating.

15           So inherently what that means is by saying that  
16 Florida Power and Light or Tampa Electric or Gulf or Progress  
17 has the right to turn your unit off because they don't want to  
18 throttle down or turn off a unit that has better economics,  
19 well, during certain times of the day I can tell you I can  
20 guarantee you that their units have better economics. And so,  
21 in that sense, you know in a very strict interpretation of  
22 avoided cost, that's correct, our plant should be shut down.

23           But if we read the contract correctly and it means  
24 that we are going to be shut down, it means that we are not  
25 going to make enough revenue, and it means we are going to be

1 abusing our equipment. And what that means is we're not going  
2 to build it. And if we don't build it, then we are back to the  
3 legislature again with the legislature saying how do we  
4 encourage renewables, it didn't happen the last time.

5 So I'm trying to give you an insight into some of the  
6 other things that we deal with on the business front. You  
7 know, the worst thing you could do is set the price at 20 cents  
8 a kilowatt hour because you will immediately get 1,500  
9 megawatts of renewable energy, but you will have overpaid. The  
10 second worst thing you can do is approve this standard offer,  
11 because you will get no new generation from that. So it's  
12 somewhere in the middle that has to be determined.

13 Gus said earlier, Mr. Cepero, that this contract  
14 looks like the kind of contract that was drafted by someone who  
15 didn't want to do a deal. I agree wholeheartedly. There are  
16 trip wires in this thing every step along the way that say if  
17 you do this, you lose your contract; if you do this, you lose  
18 your contract; if you do this, you lose your contract.

19 Well, when a banker looks at that, and I was a  
20 banker, you say, "You're going to lose your contract, you're  
21 not going to get the loan." Because there are things outside  
22 of your control that will happen in the normal course of  
23 business. Tell me if you don't operate you're not going to get  
24 paid, I'm okay with that, because I know that you're going to  
25 build a plant that's going to run. Tell me if you don't

1 operate not only are you not going to get paid, which should be  
2 economic penalty enough, but you're going to lose your contract  
3 and the right to be paid forever more, I'm not going to build  
4 that asset, and I'm not going to invest in putting something  
5 that is not on wheels in the State of Florida. If it's on  
6 wheels, I might build it, because I can move it somewhere else.  
7 But power plants aren't on wheels, they're not portable assets.

8           So, you know, that's about it. I don't want to take  
9 -- I'm sort of the lunch spoiler here. Everybody is hungry.  
10 So I think I'm done. But if there are any questions, I'd be  
11 happy to answer them.

12           CHAIRMAN EDGAR: Thank you, Mr. Blair.

13           Commissioners?

14           A lot of information. Thank you.

15           Mr. Ballinger.

16           MR. BALLINGER: I don't think staff has any questions  
17 for Mr. Blair. And with that, we can move to, kind of, the  
18 wrap-up here of administrative things.

19           CHAIRMAN EDGAR: Please.

20           MR. BALLINGER: Mike, I think on the very first  
21 presentation, the last slide, there you go, our next steps we  
22 have. And one that is not on here, we didn't think about, is  
23 filing of post-workshop comments. And I know this was noticed  
24 as a staff workshop, and I guess we'll suggest that if we're  
25 going to have any post-workshop comments from any of the

1 presenters or anyone else that we get those by March 20th, that  
2 gives people a couple of weeks to put together their thoughts  
3 and send them in, I guess just to staff. You can send them  
4 to -- I guess I'll pick Judy to get those, to be the organizer  
5 of these things.

6 But then what's going to be coming up next is we have  
7 to address the new standard offer contracts, because the old  
8 ones expire by June 1st. And staff's idea is that the  
9 utilities would file around April the 3rd new standard offer  
10 contracts with petitions for approval. When we see those,  
11 staff will continue mediation as we do with any PAA item, and  
12 talk with other parties. And when other parties see them they  
13 can, you know, call me on the phone and give me your comments  
14 of what you think of the contracts, this kind of thing.

15 That would give staff about a month to put together  
16 recommendation and then be at the May 16th agenda with the  
17 Commission to discuss this, the approval of the new contracts  
18 or what role we go from there. I'm open for feedback from the  
19 Commission if that sounds like a workable schedule. Or if you  
20 have any thoughts on that, I'll be glad to hear them.

21 CHAIRMAN EDGAR: Commissioners, any thoughts?

22 No. But I'm sure as we are thinking it through that  
23 we may have some over the next little while that each  
24 Commissioner can get with you individually or from their  
25 offices.

1           So any additional written comments on these items to  
2 Ms. Harlow by March 20th, that's roughly two weeks from now.

3           MR. BALLINGER: Yes.

4           CHAIRMAN EDGAR: Any other closing thoughts?

5           Mr. Keating, anything else that we need to do  
6 procedurally to conclude our business here today?

7           MR. KEATING: No, Chairman.

8           CHAIRMAN EDGAR: Thank you, Mr. Keating. With  
9 that --

10          COMMISSIONER CARTER: Madam Chairman.

11          CHAIRMAN EDGAR: Mr. Carter.

12          COMMISSIONER CARTER: I just wanted to say to all the  
13 participants, particularly great staff as well as those of you  
14 from the industry, thank you so very much for your  
15 participation and your education. I learned a lot today. And  
16 I've still got a lot more to learn, but I think your thoughts  
17 were -- it seemed like to me everybody was candid, and I  
18 appreciate that.

19          Thank you, Madam Chairman, for your indulgence.

20          CHAIRMAN EDGAR: Absolutely. Interesting issues.  
21 Much more discussion to look forward to, I think.

22          And, yes, on behalf of myself and my colleagues and  
23 our staff, thank you for your participation today. I know  
24 we've run long and everybody is probably hungry, but I  
25 appreciate the opportunity to push through to cover the



1 material. And we are adjourned.

2 (The workshop concluded at 1:38 p.m.)

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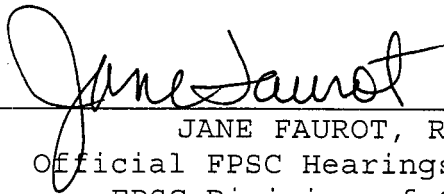
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I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 17th day of March, 2006.



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