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From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Tuesday, May 02, 2006 1:59 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing - Docket 060367 (Petition)

Attachments: Biomass QF Cert Petition.V4.2.May02.doc



Biomass QF Cert
Petition.V4.2....

a. Person responsible for this electronic filing:

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b. Docket No. _____ (Petition)

In re: Petition for Certification as A Qualifying Facility Pursuant to Rule 25-17.080,
F.A.C., by Florida Biomass Energy Group, L.L.C.

c. Document being filed on behalf of the Florida Biomass Energy Group.

d. There are a total of 15 pages.

e. The document attached for electronic filing is Florida Biomass Energy Group, L.L.C.'s Petition for Certification As A Qualifying Facility.

(see attached file: Biomass QF Cert Petition.V4.2.May02.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
Phone: 850-222-7206
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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Certification as)
A Qualifying Facility Pursuant to) DOCKET NO. 060367 -EQ
Rule 25-17.080, F.A.C., by Florida)
Biomass Energy Group, L.L.C.) FILED: MAY 2, 2006
)

FLORIDA BIOMASS ENERGY GROUP, L.L.C.'S PETITION FOR
CERTIFICATION AS A QUALIFYING FACILITY

Florida Biomass Energy Group, L.L.C. ("Florida Biomass"), pursuant to Rules 28-106.201 and 25-17.080, Florida Administrative Code ("F.A.C."), and consistent with several applicable provisions of the Florida Statutes,¹ hereby petitions the Florida Public Service Commission ("Commission") for certification as a Qualifying Facility ("QF"). In summary, Florida Biomass is developing a 145MW (maximum nominal) closed-loop, biomass-fired, combined cycle electrical power plant ("Project"), the output of which will be sold to Progress Energy Florida, Inc. ("Progress") pursuant to a negotiated Green Energy Power Purchase Agreement ("Agreement") that Progress will file with the Commission in the near future. The Project will meet all of the criteria for certification as a qualifying small power production facility under the rules of the Federal Energy Regulatory Commission ("FERC"), except for the 80MW size limit on qualifying small power production facilities under the FERC's rules, and will serve and promote the purposes of the Florida Energy Efficiency and Conservation Act ("FEECA"), codified as

¹ All references in this petition to the Florida Statutes are to the 2005 edition thereof.

Sections 366.80-.85 & 403.519, Florida Statutes; of Section 366.91, Florida Statutes; of Section 366.051, Florida Statutes; and of Commission Rule 25-17.080(1), F.A.C. Additionally, as the purchaser of the Project's renewable, "green" power output, Progress supports this Petition for Certification. Accordingly, the Commission should grant the requested certification as provided for by the aforementioned Rule. In further support of its Petition for Certification as a Qualifying Facility ("Petition"), Florida Biomass states as follows.

PROCEDURAL BACKGROUND

1. The name, address, and telephone number of the Petitioner are as follows:

Florida Biomass Energy Group, L.L.C.
1198 Gulf Breeze Parkway, Suite 6
Gulf Breeze, Florida 32561
Telephone (850) 916-1300
Telecopier (850) 916-1305.

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
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and

Howard L. Margulis, Attorney at Law
Troutman Sanders LLP
The Chrysler Building
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New York NY 10174
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3. The agency affected by this Petition for Certification as a Qualifying Facility is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

FACTUAL BACKGROUND

4. Petitioner Florida Biomass Energy Group, L.L.C. is a Florida limited liability corporation, authorized to do business in Florida, whose business is the development and operation of closed-loop, biomass-fired electrical generating plants.

Florida Biomass is presently wholly owned by Biomass Investment Group, Inc. Ultimately, other investors may own limited liability corporation interests in Florida Biomass; however, no more than 49.9 percent of the ultimate ownership interests in the Project will be held by utilities, utility holding companies, or subsidiaries of utilities or utility holding companies.

5. Florida Biomass is developing the first commercial-scale, closed-loop, biomass-crop-fired electrical generating plant in the United States, and to the best of Petitioner's knowledge, in the world. This plant will be located in East Central Florida, generally in the area southeast of Orlando and northeast of Brevard County.

6. The Project will be fueled by a biomass crop grown for that purpose. The crop plant is commonly known as Giant Reed

(scientific name *Arundo donax*), a large and fast-growing member of the grass family. Also referred to as "E-Grass"®, the *Arundo* crop that fuels the Project will be grown on approximately 15,000 to 20,000 acres of existing agricultural land on which the Project will also be located that Florida Biomass, or an affiliate, will lease for this purpose.

7. The Project will utilize combustion turbine-combined cycle technology, consisting of a combustion turbine ("CT") with approximately 85MW of nominal capacity, a matched heat recovery steam generator ("HRSG"), and a matched steam turbine generator ("STG") with approximately 60MW of nominal generating capacity. The Project is expected to be equipped with duct-burners to provide additional energy to Progress at times of greatest need. The Project will satisfy all applicable land use and environmental regulatory requirements, and Florida Biomass will ensure that the Project has, and is operated in accordance with, all applicable permits.

8. The biomass fuel crop will be harvested and processed into a liquid fuel, commonly referred to as "bio-crude," using a pyrolysis process. The thermal fuel input to the CT will also include combustible exhaust gases from the pyrolysis process. On an annual basis, these biomass-derived fuels are expected to provide approximately 95 to 98 percent of the total thermal energy input into the generating equipment. (The balance of the Project's thermal energy input will consist of up to 5 percent,

on a total annual basis, of No. 2 fuel oil, propane, or both, used as start-up fuel.)

9. The entire capacity and energy output of the Project will be sold to Progress pursuant to a negotiated Green Energy Power Purchase Agreement. That Agreement provides for capacity and energy payments and specifies performance criteria. The Agreement has an initial term of 25 years, with an option, subject to Progress's and Florida Biomass's mutual agreement, to extend the term by an additional five years. Progress will be filing a petition for approval of the Agreement pursuant to applicable Commission Rules in the near future. As will be demonstrated in Progress's petition for contract approval, the Agreement is significantly cost-effective as compared to Progress's next avoided unit, under any reasonably foreseeable natural gas price forecast.

10. The Project's operation will provide clean, "green" energy, produced from Florida-grown renewable biomass resources, and will accordingly displace electricity generated from other Florida power plants that would otherwise use natural gas or other fossil fuels to generate the same amount of electricity.

Statement of Affected Interests

11. In this docket, the Commission will determine whether to grant Florida Biomass's Petition for Certification as a Qualifying Facility. This certification is a condition precedent to the Agreement and is critical to the consummation

of the Green Energy Power Purchase Agreement, which in turn is critical to the development of this renewable-energy power project. Accordingly, Florida Biomass's substantial interests will be directly affected by the Commission's decision on this Petition. Additionally, as the purchaser of the Project's renewable, "green" electricity, Progress supports this Petition.

DISCUSSION AND ANALYSIS

12. Florida Biomass requests that the Commission certify the Project as a Qualifying Facility ("QF") under the Commission's rules in order to further the purposes of FEECA, the Commission's rules implementing FEECA, Section 366.91, Florida Statutes, and Section 366.051, Florida Statutes. Additionally, certification of the Project as a QF will satisfy the interests of Florida Biomass's contract partner, Progress, in procuring green, renewable electricity produced from Florida resources for its customers.

13. Specifically, pursuant to Rule 25-17.080(1), F.A.C., Florida Biomass respectfully petitions the Commission to grant the Project "qualifying facility status for the purpose of receiving energy and capacity payments pursuant to [the Commission's cogeneration] rules." As explained fully in the following paragraphs, the Project will "meet the objectives of economically reducing Florida's dependence on oil and the economic deferral of utility power plant expenditures." In

addition, the Project will further the legislatively established and endorsed purposes of:

- a. using renewable energy resources in a small power production facility to meet Florida's electricity demands;
- b. diversifying Florida's electricity generation fuel mix;
- c. reducing Florida's dependence on natural gas as an electric generation fuel;
- d. encouraging new investment in the state; and
- e. making Florida a leader in new and innovative renewable electricity generation technologies.

See Fla. Stat. §§ 366.051 & 366.91(1).

**Statutes and Rules That Entitle Florida Biomass
To the Relief Requested**

14. As described and discussed in detail below, Florida Biomass is specifically entitled to its requested certification as a Qualifying Facility by Rule 25-17.080(1), F.A.C., as supported by the Project's furtherance of the public interest consistent with FEECA, Section 366.91, Florida Statutes, and Section 366.051, Florida Statutes.

15. FEECA provides, in pertinent part, as follows.

Since solutions to our energy problems are complex, the Legislature intends that the use of . . . renewable energy sources . . . be encouraged.

Fla. Stat. § 366.81.

16. Commission Rule 25-17.080(1), F.A.C., which implements FEECA, provides in relevant part as follows.

25-17.080 Definitions and Qualifying Criteria

(1) For the purpose of these rules the Commission adopts the Federal Energy Regulatory Commission Rules 292.101 through 292.207, effective March 20, 1980, regarding definitions and criteria that a small power producer or cogenerator must meet to achieve the status of a qualifying facility. Small power producers and cogenerators which fail to meet the FERC criteria for achieving qualifying facility status but otherwise meet the objectives of economically reducing Florida's dependence on oil and the economic deferral of utility power plant expenditures may petition the Commission to be granted qualifying facility status for the purpose of receiving energy and capacity payments pursuant to these rules.

(2) In general, under the FERC regulations, a small power producer is a qualifying facility if:

(a) the small power producer does not exceed 80MW; and

(b) the primary (at least 50%) energy source of the small power producer is biomass, waste, or another renewable resource; and

(c) the small power production facility is not owned by a person primarily engaged in the generation or sale of electricity. This criterion is met if less than 50% of the equity interest in the facility is owned by a utility, utility holding company, or a subsidiary of them.

17. Section 366.91(1), Florida Statutes, declares the Legislature's intent to promote renewable energy resources in Florida, through the following findings.

The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

18. Section 366.051, Florida Statutes, provides in pertinent part that "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state"

Statement Explaining How the Facts Alleged By Florida Biomass Relate to the Above-Cited Rules and Statutes In Compliance With Section 120.54(5)(b)4.f, Florida Statutes

19. Applying the criteria set forth in the above rules and statutes to Florida Biomass's Project, it is clear that the Project promotes all of the substantive goals of the rules and the statutes. In fact, but for the FERC rule's 80MW size limitation on qualifying small power production facilities, the Project would qualify under the FERC rules. Specifically, the Project will satisfy the criteria in the rules and statutes in the following ways.

a. Relative to Rule 25-17.080(1), F.A.C., as will be demonstrated in Progress's petition for contract approval, the Project will be cost-effective to Progress and Progress's customers. That is, it will meet the objective of economically

deferring utility power plant expenditures, and it will economically reduce Florida's dependence on oil in at least some hours. Consistent with the letter, spirit, and intent of the Rule and FEECA, the Project will also economically reduce Florida's dependence on natural gas, an expensive fossil fuel.

b. Relative to Rule 25-17.080(2), F.A.C., the Project's fuel will be approximately 95-98 percent renewable biomass (as compared to the rule-specified minimum requirement of 50 percent). This biomass will be grown on the Project site, in Florida, in a "closed-loop" process. Moreover, Florida Biomass will ensure that no more than 49.9 percent of the equity interests in the Project are ultimately owned by utilities, utility holding companies, or their subsidiaries.

c. Relative to FEECA, the Project will be fueled by Florida-grown, renewable biomass crops. It is therefore a renewable energy source of exactly the type that the Legislature intended to encourage through FEECA. As noted above, the Project is also cost-effective to Progress and Progress's customers.

d. Relative to Section 366.91, Florida Statutes, the Project will: (1) be a renewable electricity generation resource located in Florida and fired by Florida-grown biomass fuels; (2) reduce Florida's dependency on natural gas as an electric generating fuel; (3) reduce, pursuant to the Green Energy Power Purchase Agreement, the volatility of fuel costs to Progress and

Progress's customers; (4) encourage significant new investment (over \$200 million in capital investment) and create significant additional employment (approximately 100 new permanent jobs in addition to approximately 300 construction jobs) in Florida; (5) improve environmental conditions through the use of a clean, "green," closed-loop, renewable energy power plant; and (6) make Florida the national/international leader in commercial-scale closed-loop, biomass-fueled electricity generation.

e. Relative to Section 366.051, Florida Statutes, as a renewable-fueled small power production facility, the Project will be of benefit to the public as part of the state's total energy supply.

Disputed Issues of Material Fact

20. Florida Biomass is not aware of any disputed issues of fact relative to this petition. However, Florida Biomass states that the following are issues of material fact that the Commission should determine in granting Florida Biomass's requested QF certification.

- a. Whether the Project will be a small power production facility.
- b. Whether the Project will be a "closed-loop" renewable electricity generation facility.
- c. Whether no more than 49.9 percent of the equity interests in the Project will be owned by utilities, utility holding companies, or their subsidiaries.
- d. Whether the Project's operation will reduce Florida's dependence on oil and natural gas as electric generating fuels.

- e. Whether the Project will provide cost-effective capacity and energy to Progress and Progress's customers.
- f. Whether the Project will reduce the volatility of fuel costs to Progress and Progress's customers.
- g. Whether the Project will encourage new investment in Florida energy production infrastructure.
- h. Whether the Project will improve environmental conditions in Florida.

Statement of Ultimate Facts Alleged

21. Florida Biomass is entitled to the requested certification as a qualifying facility pursuant to Commission Rule 25-17.080(1), F.A.C., by the following facts.

- a. Florida Biomass's Project will be a small power production facility in that it will be fueled by approximately 95-98 percent biomass fuel.
- b. The Project will be a "closed-loop" renewable electricity generation facility in that the Project's biomass fuel will be grown on existing agricultural land in Florida.
- c. The Project will have approximately 145 megawatts of maximum nominal generating capacity.
- d. No more than 49.9 percent of the equity interests in the Project will be owned by utilities, utility holding companies, or their subsidiaries.
- e. The Project's operation will reduce Florida's dependence on oil and natural gas as electric generating fuels.
- f. Pursuant to the Green Energy Power Purchase Agreement between Florida Biomass and Progress, the Project will provide cost-effective capacity and energy to Progress and Progress's customers.
- g. Pursuant to the Green Energy Power Purchase Agreement between Florida Biomass and Progress, the Project will

reduce the volatility of fuel costs to Progress and Progress's customers.

- h. The Project will be constructed with over \$200 million of new investment in Florida electric generation infrastructure.
- i. The Project will create approximately 100 new permanent jobs associated with the integrated farming and power plant operations and approximately 300 construction jobs in Florida.
- j. The Project will improve environmental conditions in Florida by reducing the amount of carbon dioxide emissions that would otherwise be emitted if the same amount of electricity were to be produced from conventional generating resources.

CONCLUSION

Florida Biomass Energy Group, LLC is developing a 145MW closed-loop, biomass-fueled electric generating unit in east central Florida, the output of which will be sold at cost-effective pricing to Progress Energy Florida, Inc. for the benefit of Progress's customers and for the benefit of Florida as a whole. The Project will be the nation's first commercial-scale, closed-loop biomass-fueled generating plant, making Florida the national leader with this technology. As described above, the Project will provide additional benefits, including reducing the volatility of fuel prices and reducing Florida's dependence on oil and natural gas as generating fuels. Because, except for its larger, commercial-scale size of 145MW, the Project satisfies all applicable criteria for certification as a QF, and because the Project will further the energy policy and public interest purposes endorsed by the Florida Legislature,

the Commission should grant Florida Biomass's Petition for Certification as a Qualifying Facility.

RELIEF REQUESTED

WHEREFORE, as explained in the foregoing Petition, Florida Biomass Energy Group, L.L.C. respectfully asks the Commission to issue its order GRANTING this Petition and CERTIFYING the Project as a Qualifying Facility pursuant to Commission Rule 25-17.080(1), F.A.C., and consistent with the public interest and energy policy goals of FEECA, Section 366.91, Florida Statutes, and Section 366.051, Florida Statutes.

Respectfully submitted this 2nd day of May, 2006.

s/Robert Scheffel Wright
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Certification as a Qualifying Facility has been served by electronic mail and by U.S. Mail on the following, this 2nd day of May, 2006.

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R. Alexander Glenn, Esquire
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s/Robert Scheffel Wright
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