

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

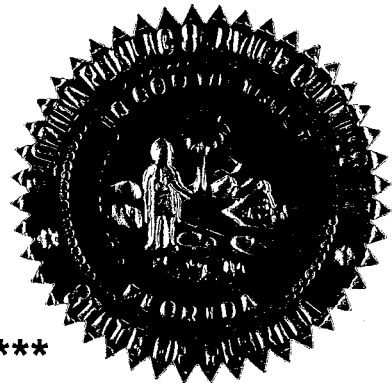
In the Matter of:

PETITION FOR APPROVAL OF NEW DOCKET NO. 050805-EQ
STANDARD OFFER FOR PURCHASE OF
FIRM CAPACITY AND ENERGY FROM
RENEWABLE ENERGY FACILITIES AND
APPROVAL OF TARIFF SCHEDULE REF-1,
BY GULF POWER COMPANY.

PETITION FOR APPROVAL OF RENEWABLE DOCKET NO. 050806-EQ
ENERGY TARIFF AND STANDARD OFFER
CONTRACT, BY FLORIDA POWER & LIGHT
COMPANY.

PETITION FOR APPROVAL OF AMENDED DOCKET NO. 050807-EQ
STANDARD OFFER CONTRACT TARIFF AND
RENEWABLE ENERGY TARIFF, BY PROGRESS
ENERGY FLORIDA, INC.

PETITION FOR APPROVAL OF STANDARD DOCKET NO. 050810-EQ
OFFER CONTRACT FOR SMALL QUALIFYING
FACILITIES AND PRODUCERS OF RENEWABLE
ENERGY, BY TAMPA ELECTRIC COMPANY.



REVISED TITLE PAGE

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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 13

2

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

5

6 DATE: May 16, 2006

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

9 REPORTED BY: LINDA BOLES, RPR, CRR
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1 PARTICIPATING:

2 BRIAN S. ANDERSON, ESQUIRE, appearing on behalf of
3 Florida Power & Light Company.

4 JAMES D. BEASLEY, ESQUIRE appearing on behalf of
5 Tampa Electric Company.

6 JOHN BURNETT, ESQUIRE, appearing on behalf of Tampa
7 Electric Company.

8 ROBERT SCHEFFEL WRIGHT, ESQUIRE, appearing on behalf
9 of Montenay-Dade Ltd.

10 JON MOYLE, ESQUIRE, appearing on behalf of
11 Wheelabrator.

12 KATHRYN G. W. COWDERY, ESQUIRE, appearing on behalf
13 of Covanta Energy Corporation.

14 CHARLES A. GUYTON, ESQUIRE, appearing on behalf of
15 Gulf Power Company.

16 RICHARD MELSON, GENERAL COUNSEL, COCHRAN KEATING,
17 ESQUIRE, JUDY HARLOW and TOM BALLINGER, appearing on behalf of
18 Commission Staff.

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P R O C E E D I N G S

CHAIRMAN EDGAR: We will move to Item 13.

MS. HARLOW: I'm Judy Harlow. I have Tom Ballinger here with me and Cochran Keating.

Item 13 is staff's recommendation on the renewable standard offer contracts proposed by Gulf, TECO, Progress and Florida Power & Light. The issue that was discussed at the December 20th, 2005, agenda conference and the March 6th, 2006, workshop is how best to define avoided cost, while at the same time complying with the requirements of Section 366.91, Florida Statutes, to encourage renewable generation. The investor-owned utilities fall on one end of the spectrum: That is to continue the business-as-usual approach of defining avoided costs for renewable generators by choosing the next unit in the Ten-Year Site Plan. Representatives of the renewable generators propose the other end of the spectrum: A hypothetical statewide coal unit.

Staff is proposing a compromise approach which we call the Fossil Fuel Unit Type Portfolio approach. Under this approach, a utility would offer multiple standard offer contracts with one contract based on each type of fossil fuel generator identified in the utility's Ten-Year Site Plan. This unit type portfolio proposal should encourage renewables beyond the current single unit approach by offering renewables a menu of contracts among which to choose with various pricing, timing

1 and operating characteristics. If a utility has a coal unit in
2 its Ten-Year Site Plan, renewable generators would have access
3 to coal-based pricing without the difficulties associated with
4 using a statewide avoided coal unit. Staff believes that its
5 proposal is consistent with the language of Section 366.91 to
6 encourage the development of renewable generation and will
7 promote a more balanced fuel supply for the utility's
8 ratepayers. Staff is available for any questions.

9 I also believe that we have representatives of the
10 renewable generators here as well as the investor-owned
11 utilities.

12 CHAIRMAN EDGAR: Thank you, Ms. Harlow.

13 You're recognized.

14 MR. ANDERSON: Good morning, Madam Chairman. Brian
15 Anderson appearing for Florida Power & Light Company. Some
16 very brief comments this morning.

17 Florida Power & Light Company warmly supports the
18 development of renewable energy to serve our customers here in
19 Florida. Please let there be no doubt about that. I don't
20 think that there's any dispute about that here in the room
21 today.

22 Very briefly, focusing on what's before the
23 Commission this morning, we have filed with the Commission a
24 standard offer contract which we believe complies fully with
25 the direction of the Legislature and consistent with everything

1 staff has said. You know, our first unit, quite correctly, is
2 a combustion turbine unit. We've changed the terms of the
3 standard offer contract considerably since last October, having
4 listened to the renewable generators. And looking at the staff
5 recommendation, I don't see any words in there suggesting that
6 there's anything incorrect in that standard offer contract. So
7 just to help continue our passage on together and ensure that
8 there is continuously available a standard offer contract, we'd
9 suggest the better course of action at the minimum for the
10 Commission today would be to approve that standard offer of
11 contract as there is no objection to that.

12 Turning to the second set of points concerning
13 whether there should be a portfolio approach or a this or a
14 that, if it is the Commission's direction from a policy
15 perspective to implement that type of portfolio approach, we
16 would just caution to recall that this is a pass-through to
17 customers. In our view, one could easily exceed the true
18 avoided cost, which is the standard given us by the
19 Legislature, if one goes down this path.

20 Just thinking from a Florida Power & Light
21 perspective, applying this staff methodology, we'd have to file
22 a contract not only with respect to a fossil unit for 2012 and
23 '13 now, but probably also the combined cycle out in 2014/15.
24 And, frankly, our fuel projections don't even go out that far
25 to serve a unit of that type beginning in '15. And the point

1 of that is just consider all of the uncertainties that are
2 there, consider the fact that we previously had combined cycle
3 units in our plants -- in our plans, which became in our
4 Ten-Year Site Plan coal units. Things change.

5 So those are just things to think about if the
6 Commission wants to take those steps, and, remember, that
7 really is all our customers who are at risk from a, from a
8 pricing perspective.

9 But the last thought I'd leave, and I believe some of
10 our colleagues will be addressing this also, is just
11 pragmatically if the Commission were to go down this path
12 that's been outlined by staff, the timing is a bit restrictive.
13 They would have us be filing standard offer contracts for
14 data -- we just need to pull together. We'd have to have, for
15 example, for that combined cycle unit out there in 2014/15. I
16 think one of our colleagues will have a more specific
17 recommendation for a time to pull information together.

18 But just to sum up, to, to make sure we all remain in
19 compliance with the statute, please approve our standard offer
20 contract as filed, and then we'll respectfully listen to the
21 Commission's direction as to how y'all want to go from there.

22 MR. BEASLEY: Madam Chairman, Commissioners, Jim
23 Beasley for Tampa Electric Company. Tampa Electric likewise
24 shares in the goal of this state and of this Commission to
25 encourage the development of renewable energy sources. The

1 company's commitment in this regard is evidenced by its
2 willingness to negotiate with and enter into agreements with
3 renewable energy resource providers. We've done that; we're
4 doing that. Every new increment of renewable energy in this
5 state holds the promise of lessening our reliance on foreign
6 oil.

7 As far as implementing Section 366.91, Florida
8 Statutes, is concerned, Tampa Electric put forth a proposal
9 that it believes fully implements what the Legislature had in
10 mind. The staff has recommended a slightly different unit type
11 portfolio approach, and we believe that either approach is
12 consistent with the legislative intent embodied in that
13 statute.

14 If you do vote to accept the staff's recommendation,
15 we would encourage you to implement that through a rulemaking
16 process to bring the 1980s vintage rules that are on the books
17 up to, up to speed with what would be current-day Commission
18 policy.

19 We would, we would also request and we do need
20 additional time in order to get a standard offer contract in
21 conformity with what the staff recommends, if you approve that,
22 and we believe that a 90-day period would enable us to do that
23 efficiently and have it right.

24 Also for purposes of stability and to avoid
25 confusion, we would urge you to keep our currently approved,

1 Commission-approved standard offer contract for renewables in
2 place until such time as the rulemaking process is completed
3 and a new methodology has been adopted and implemented through
4 Commission-approved tariffs. So we would urge you to keep the
5 current standard offer in place on an interim basis. I
6 appreciate the opportunity to address you.

7 CHAIRMAN EDGAR: Thank you.

8 MR. BURNETT: Good morning and thank you. John
9 Burnett on behalf of Progress Energy Florida. In the interest
10 of time, I would say that Progress Energy Florida echoes the
11 comments of my colleagues, and especially the ones just made by
12 Mr. Beasley. So I could pretty much adopt those on behalf of
13 my company.

14 CHAIRMAN EDGAR: Thank you.

15 Mr. Wright.

16 MR. WRIGHT: Thank you, Madam Chairman, members of
17 the Commission. Schef Wright appearing this morning on behalf
18 of Montenay-Dade Limited, which operates the Dade County
19 Resource Recovery Facility. An affiliate of Montenay also
20 operates the Bay County Resource Recovery Facility.

21 Generally I'm here to speak in support of the staff's
22 recommendation. We strongly commend the staff's analysis and
23 we support the staff's recommendation as to the Fossil Fuel
24 Unit Type Portfolio approach, and we specifically support
25 staff's recommendation as to approval of Gulf's standard offer

1 contract, which I would note significantly provides renewable
2 qualifying facilities with a choice of the term of the contract
3 of a minimum of ten years, with the QF allowed to fill in the
4 term. I presume that means up to the life of the avoided unit
5 since there is no limit specified.

6 We also agree with the critique of the other IOUs'
7 proposals offered by the staff and support the staff's
8 recommendation, with the exception of our belief that the
9 contracts should have a minimum term of ten years, with the
10 renewable energy provider or the renewable QF having the option
11 to specify the term at ten years up to the life of the avoided
12 unit as represented in the utility's Ten-Year Site Plan. This
13 mirrors the commitment that the utility would otherwise make if
14 it were building its own unit. The fact is that a ten-year
15 term, which FPL and Progress have specifically set ten years,
16 period, in their proposed standard offer contracts, does not
17 adequately encourage renewable energy and would very likely, I
18 would say most likely preclude the development of any new
19 facilities because of the limit of the revenue stream -- excuse
20 me -- the limited revenue stream would not be sufficient to
21 enable them to get financing.

22 As to comments made by my colleague Mr. Anderson,
23 again, I said this before at the workshop, uncertainties cut
24 both ways. As my contracts professor in law school said, "A
25 contract is an allocation of risk." And a contract is an

1 allocation of risk. But a decision by a utility to build a
2 unit is also an allocation of risk on the utility and on its
3 customers. When a utility makes the irrevocable commitment to
4 build a power plant, it necessarily assumes all the risks. If
5 it breaks ground, makes the commitment, turns on that gas-fired
6 power plant, the risks of future fuel price changes are there.
7 If it builds a coal plant, whatever risks are associated with
8 that, whether they're environmental or fuel cost changes or a
9 coal strike or the Ohio River freezing up or whatever else,
10 they're all there. The uncertain -- the point is very simple,
11 the uncertainties cut both ways.

12 The real point of my comments today is that a
13 ten-years only provision in FPL's and Progress's proposed
14 standard offers do not adequately encourage renewables as we
15 believe is required by the statute, and would very likely
16 preclude the development of new facilities altogether.
17 Existing facilities whose contracts are ending who are mostly
18 paid off could, as one of my colleagues said at the rule
19 workshop earlier, could probably take advantage of it. But for
20 new facilities, probably not. Thanks.

21 CHAIRMAN EDGAR: Thank you.

22 Mr. Moyle, would you like to be recognized at this
23 time?

24 MR. MOYLE: Please, Madam Chairman. Thank you. Jon
25 Moyle with the Moyle Flanigan Law Firm. I'm here on behalf of

1 my client Wheelabrator. But also Mr. Zambo asked that my
2 comments be adopted by a couple of his clients, the City of
3 Tampa, the Florida Industrial Cogeneration Association and the
4 Solid Waste Authority of Palm Beach County.

5 Madam Chairman, we've had a number of discussions
6 about renewable energy starting back, I believe, right toward
7 the end of last year, and it's a topic that continues to be
8 discussed with a lot of frequency. And I think we talked about
9 the legislative direction to you, and from my perspective I
10 think they look to the Commission as partners and participants
11 in the development of renewable energy. And clearly, as staff
12 has articulated, the charge is to promote the development of
13 renewable energy resources in the state.

14 There was legislation, I presume as your legislative
15 folks will tell you, that passed, Senate Bill 888, which was an
16 energy bill. And I think it's worth noting that the first two
17 sentences of that bill that, you know, hundred, hundreds of
18 pages, says, "The Legislature finds that advancing the
19 development of renewable energy technologies and energy
20 efficiency is important for the state's future, its energy
21 stability and the protection of its citizens' public health and
22 its environment. The Legislature finds that the development of
23 renewable energy technologies and energy efficiency in the
24 state will help reduce the demand for foreign fuels, promote
25 energy diversity, enhance system reliability, reduce pollution,

1 educate the public on the promise of renewable energy
2 technologies and promote economic growth."

3 That's, that's the intent of this Act that recently
4 passed. And the point is, is that I would urge this Commission
5 to move forward boldly with trying to find ways to develop and
6 promote renewable energy. I think Mr. Ballinger passed out a
7 summary of renewable contracts, which just on a quick review,
8 you know, one utility has, has none, a couple of them have
9 1 percent, and I think one of them is at 2.5 percent.

10 From my perspective, I think the Commission should
11 move forward and to really roll up its sleeves and to do things
12 that are aggressive to promote renewable energy. The staff
13 recommendation that you have, it references Section
14 366.91(3) and has three things, (a), (b) and (c), that they say
15 provide the requirements to meet the objectives. I took a look
16 at that statute before our discussion here today, and it has
17 another sentence that I would draw your attention to, which
18 says, and I quote, "The Commission shall establish requirements
19 relating to the purchase of capacity and energy by public
20 utilities from renewable energy producers and may adopt rules
21 to administer this section."

22 From my perspective, that additional sentence is
23 authority that you have to do things beyond just taking your
24 old set of rules and saying let's take this renewable energy
25 issue and jam it into our old set of rules.

1 I am heartened to hear TECO's comments that -- what I
2 understood them to say is we want to go to rulemaking. I think
3 that makes a lot of sense to go to rulemaking, and we would
4 support going to rulemaking as well. Because candidly, Madam
5 Chairman, there are a lot of issues that need to get fleshed
6 out.

7 And just kind of thinking a little bit about this,
8 the Legislature says you have to continuously offer a contract.
9 I'm not sure how that is done if you're looking at the avoided
10 unit and staff's recommendation based on somebody's Ten-Year
11 Site Plan, you know, that has an avoided unit out there in 2014
12 as the next planned unit. You know, that's a long time for
13 somebody who wants to provide renewable energy now to peg
14 payment to 2014. And if they don't even have that unit, then
15 how do you, how do you continuously offer the contract? We've
16 had conversations with staff and they've said it's the intent
17 that payments not begin until the in-service date or you take
18 less money. But there's a lot of technical issues that need to
19 be talked about.

20 The contract terms, Mr. Wright spent time talking
21 about the ten-year term. I mean, there's a whole host of
22 contract terms. For example, in some states they allow for
23 renewable energy credits, the attributes of renewable energy to
24 be, to be traded maybe like a carbon credit or a wetlands
25 mitigation credit. That has value. How should that be

1 treated? That's something that I think you all ought to look
2 at in rulemaking.

3 And finally -- and I could go on with the issues that
4 we think ought to be considered in rulemaking in terms of
5 issues that would promote renewable energy. I think from, from
6 the Legislature's perspective as seeing you as partners in the
7 advancement of renewable energy, how do you measure whether
8 you're succeeding? I think that a rulemaking ought to look at
9 some kind of criteria to say, okay, here's where we were,
10 here's our baseline and here's what we've done. So at the end
11 of the day they can look and say, all right, are we making
12 strides to promoting renewable energy in Florida? And you'll
13 have a rule hopefully that will give you the ability to measure
14 that and give information to them that they can make policy
15 decisions on.

16 So at the end of the day, I don't mean to be
17 long-winded, but we would urge you to go to rulemaking and
18 develop a comprehensive set of rules rather than relying on
19 stale rules that were put in place not for renewable energy.

20 Probably the suggestion that TECO made with respect
21 to, to keeping the standard offer that's in place in place may
22 make some sense if you're going to rulemaking rather than rush
23 and do another set of rules for a contract that if you do go to
24 rulemaking may not be in effect very long. You know, I think
25 most parties probably could be okay on a standstill until we go

1 to rulemaking and come up with some rules that will, that will
2 truly promote the development of renewable energy in Florida.
3 Thank you for your time.

4 CHAIRMAN EDGAR: Thank you, Mr. Moyle.

5 Commissioners, are there questions for our staff or
6 for -- oh, we have others. I'm sorry. You're recognized.

7 MS. COWDERY: Kathryn Cowdery with Ruden McClosky
8 representing Covanta Energy Corporation. Covanta was involved
9 in the workshop. We were also involved in formulating the
10 comments that the Florida Renewable Energy Alliance submitted
11 as post-workshop comments.

12 I think that Mr. Moyle's comments reflect a lot of
13 our positions, and they're consistent with the comments that
14 were submitted to the Commission for consideration and to
15 staff.

16 I want to just emphasize that it was very important
17 when we drafted up these comments to try to get a cohesive
18 position that we could give to the Commission, and the three
19 things that we focused on besides the three main issues that
20 were raised by staff were, you know, a clear requirement and
21 need for a new avoided cost formula. That is something that we
22 think should be explored in rulemaking. It's something that's
23 out of the box, thinking out of the box. I know there's a lot
24 of controversy about it, but that would be a very good forum.
25 It's not the type of thing that you can, you know, reasonably

1 expect to come out of a forum like this where you just have a
2 workshop and have some workshop comments. You know, you can't
3 get there from here.

4 The critical need for rulemaking, I think, has been
5 addressed by Mr. Moyle, and then what we term the crucially
6 important issue of standard offer contract terms and
7 conditions. Florida Power & Light did change some of their
8 contract provisions, and that was good to see. I think TECO
9 may have changed a contract term or two. There weren't a lot
10 of changes. If you looked at the black line copy of a, I think
11 it was the FPL contract that Florida Sugar submitted as
12 post-comment, there were a lot of changes that they suggested.
13 A lot of those changes weren't made. And one of the points
14 raised in FREA's comments for consideration on rulemaking is
15 how different are the utility standard offer contracts? You
16 know, should we be looking at something a little more standard
17 for the standard offer contracts? So it's something that I
18 think is important to look at and it shouldn't be just a matter
19 of negotiation between parties.

20 So thank you very much.

21 CHAIRMAN EDGAR: Thank you.

22 MR. GUYTON: Commissioners, my name is Charlie
23 Guyton. I'm with the law firm of Squire, Sanders & Dempsey.
24 I'm appearing on behalf of Gulf Power Company today. I'm here
25 simply to answer any questions you might have.

1 CHAIRMAN EDGAR: Thank you. And is there anybody
2 else that I may have missed that wanted to address the
3 Commission at this time? Seeing none, Commissioners?
4 Commissioner Carter.

5 COMMISSIONER CARTER: Thank you, Madam Chairman.
6 Just for staff, for legal staff, is that even if we were to
7 adopt your, staff's recommendation today, there's nothing that
8 would preclude us from going into rulemaking, is there?

9 MR. KEATING: No.

10 COMMISSIONER CARTER: And there's no -- permission to
11 follow up.

12 And there's no reason that we couldn't go to
13 rulemaking on an expedited basis if this Commission so deemed
14 necessary; correct?

15 MR. KEATING: The Commission has the authority to go
16 forward with rulemaking on whatever basis it chooses.

17 COMMISSIONER CARTER: Thank you. Thank you, Madam
18 Chairman.

19 CHAIRMAN EDGAR: Commissioner Arriaga.

20 COMMISSIONER ARRIAGA: I have a few questions for
21 Mr. Ballinger, if I may proceed.

22 If I recall properly, I think it was in December that
23 we started reviewing the standard offer contracts, and we
24 approved to postpone or delay this decision by June 1st. Out
25 of the contracts that you have under analysis right now that

1 you're suggesting we deny to FPL, Progress and I think TECO,
2 are these the same contracts that were approved 'til June 1st?

3 MR. BALLINGER: I don't believe so.

4 COMMISSIONER ARRIAGA: They're different?

5 MR. BALLINGER: Yes.

6 COMMISSIONER ARRIAGA: How do they differ?

7 MR. BALLINGER: The unit types. Their plans have
8 changed in the interim. They're new Ten-Year Site Plans, so
9 units have moved forward or backward and, you know, types,
10 things of that nature.

11 COMMISSIONER ARRIAGA: Do you find that these
12 contracts fulfill the needs of the legislative intent?

13 MR. BALLINGER: The contracts as proposed?

14 COMMISSIONER ARRIAGA: As proposed, the one that
15 you're saying, that you're suggesting we deny today.

16 MR. BALLINGER: I think they do from a minimum
17 standards. And staff is suggesting something to go a little
18 bit beyond that. I think the legislation gives us that
19 latitude if we so choose to go beyond that.

20 COMMISSIONER ARRIAGA: One of the proposals on the
21 table is to give you -- give them a leeway of 90 days in case
22 we approve to go into rulemaking. Do you find that
23 appropriate, to keep the current contracts as they are for
24 another 90 days?

25 MR. BALLINGER: I understand from an administrative

1 standpoint they're looking for some more time. If we order
2 them to file additional contracts based on the next units in
3 their plan, that may seem reasonable. However, I would point
4 out that this is not something new, so I would hope the
5 utilities have a lot of this cost data ready to go that they
6 can put together contracts pretty quickly.

7 COMMISSIONER ARRIAGA: So are you saying 90 days is
8 too much?

9 MR. BALLINGER: I don't really know. I'm willing to
10 go with it if it gets us to where we need to be with the
11 portfolio approach.

12 COMMISSIONER ARRIAGA: May I continue? Another
13 suggestion we're hearing is, even from the utilities and the
14 proponents of renewables, is that we go to rulemaking. Would
15 you agree with that?

16 MR. BALLINGER: I don't think we need to. And the
17 main reason is this is new ground, and I think until we have a
18 better basis of where we want to go, then we can go to
19 rulemaking. What I've heard today is we're going to get two
20 extremes again in rulemaking proposals. You have the utilities
21 who want to propose rulemaking to be very stringent on avoided
22 costs, and you've got the renewables who want to look at
23 everything from performance requirements to terms of contracts
24 and the whole gambit, and basically open up all our rules. So
25 I think until the Commission gets a little better handle on

1 this new approach and they decide which path they want to take,
2 I would hold off on rulemaking.

3 COMMISSIONER ARRIAGA: Don't you think the process of
4 rulemaking will actually let us see the differences that we
5 have on the table, or is it that we know what the differences
6 are already?

7 MR. BALLINGER: What I'm afraid of is what do we do
8 while we're doing rulemaking? Do we continue with a single
9 unit approach which really isn't doing anything in my mind for
10 the renewables, or do we go with the portfolio approach which
11 may help? In any case, we're kind of waiting to see maybe that
12 portfolio approach will be enough to get us moving.

13 COMMISSIONER ARRIAGA: But 45 days, 90 days in the
14 process of rulemaking --

15 MR. BALLINGER: That's, that's okay.

16 COMMISSIONER ARRIAGA: So you're not completely
17 opposed to rulemaking?

18 MR. BALLINGER: I would wait a while until we start
19 rulemaking.

20 COMMISSIONER ARRIAGA: You would wait until what
21 happens?

22 MR. BALLINGER: A year, a year or two to see how this
23 -- if we go the portfolio approach, to see what comes out of it
24 and see what other problems may arise, or we may find it works
25 okay.

1 COMMISSIONER ARRIAGA: Bear with me a little more,
2 please.

3 CHAIRMAN EDGAR: Commissioner Arriaga.

4 COMMISSIONER ARRIAGA: So if we do go into the
5 portfolio approach for one or two years, aren't these
6 differences going to continue between the renewables and the
7 companies?

8 MR. BALLINGER: It may, it may not. I don't know.

9 COMMISSIONER ARRIAGA: The other thing that I heard
10 when Mr. Wright was speaking here, he said something, that he
11 presumes that in the Gulf contract that you're suggesting we
12 approve today, the contract terms add to the life of the
13 avoided unit. Is that the correct presumption?

14 MR. BALLINGER: I believe so.

15 COMMISSIONER ARRIAGA: It is?

16 MR. BALLINGER: Looking at the contract, it allows
17 the blank space basically of the ending date of the contract
18 and it just says it shall be no earlier than May 31st, 2024,
19 which is no less than ten years beyond the in-service date. It
20 could be longer. That's Gulf's choice to have that in their
21 standard offer.

22 COMMISSIONER ARRIAGA: That's quite a difference
23 between the positions of the companies, isn't it?

24 MR. BALLINGER: Yes. And it's different from what
25 Gulf has done in earlier standard offers where we had a

1 five-year term.

2 COMMISSIONER ARRIAGA: Thank you.

3 CHAIRMAN EDGAR: Commissioner Carter.

4 COMMISSIONER CARTER: Thank you for your forbearance.

5 It just kind of brought to my attention the Governor's energy
6 conference that we had the last of last year, and it was --
7 from my understanding, the intent of that was for the State of
8 Florida to move expeditiously in the use of renewable energies.
9 Is that the way you guys read the report from the Energy
10 Commission that was hosted by DEP? The Commission participated
11 and other entities. Do you remember that?

12 MS. HARLOW: To my knowledge, yes, sir. I wanted to
13 add a point to Mr. Ballinger's comments earlier. One of the
14 concerns we had about the single unit approach that the
15 utilities have been using and that has been the policy lately
16 is that we've seen no takers on these contracts, and that was
17 one of the reasons that we thought that the portfolio approach
18 might move us forward.

19 COMMISSIONER CARTER: Madam Chairman.

20 CHAIRMAN EDGAR: Commissioner Carter.

21 COMMISSIONER CARTER: And I remember talking to the
22 Governor specifically about taking a new approach about
23 renewables. I mean, we've had this perspective here, and then
24 later on in the energy conference that was held the latter part
25 of last year is that there was a lot of talking but the talking

1 was where the Governor was wanting to see some action. I mean,
2 did you guys not get that from the report that they had?

3 MR. BALLINGER: No. I agree with you. I think the
4 message was clear that we needed to go beyond what we've been
5 doing.

6 COMMISSIONER CARTER: Yes. And one final itty-bitty,
7 Madam Chairman. This really is an itty-bitty one.

8 CHAIRMAN EDGAR: With one part?

9 COMMISSIONER CARTER: One part. Yes, ma'am. Just
10 one part.

11 The recommendation that you provided to the
12 Commission today, wouldn't this help us to get moving on our
13 renewables in the State of Florida?

14 MS. HARLOW: I believe it would. I believe it's a
15 new approach. And as I said, it concerns me that the single
16 unit approach, we've had no takers. And I think one of the
17 reasons for that is the pricing that was available in these
18 contracts, because they were all based on the type of units
19 that the utilities are proposing today, and that is CTs,
20 combustion turbines, and occasionally a combined cycle. And we
21 believe that the unit type portfolio approach would also, if a
22 utility has a coal unit in its Ten-Year Site Plan, offer up
23 coal-based pricing. And we believe that would benefit the
24 renewables, and maybe a few more would step forward to take
25 that new offer that wasn't there in the past. And also we

1 believe it could be of benefit to ratepayers because it could
2 provide them with coal stability, coal pricing stability.

3 COMMISSIONER CARTER: Thank you, Madam Chairman.

4 MR. BALLINGER: Commissioners, if I could add one
5 part to that -- I'm sorry --

6 CHAIRMAN EDGAR: Mr. Ballinger.

7 MR. BALLINGER: -- to staff's perspective on that.

8 Yes, I think this does move us forward. However, I
9 want to reiterate staff's belief that we prefer negotiated
10 contracts between parties. I think that's really where you
11 find the benefits for both parties. We've gotten notice of a
12 recently negotiated one with a biomass facility that will be
13 coming through the door shortly. Staff really believes that's
14 the way to go to get all the things different. Standard offers
15 are one part of the puzzle, but we still prefer negotiated
16 contracts. So even this new approach would give information to
17 the market so that people can negotiate better and smarter, if
18 you will, going forward. Thank you.

19 CHAIRMAN EDGAR: Commissioner Deason.

20 COMMISSIONER DEASON: I have a question for
21 Mr. Wright. Mr. Wright, what's your position on the need for
22 rulemaking?

23 MR. WRIGHT: I think that you should go to
24 rulemaking, Commissioner Deason. I think it's appropriate. I
25 think the decisions you're making are of the nature -- just

1 back up for five seconds. I took Florida Administrative Law
2 from Pat Dore, and she was a big believer in this. And I think
3 that's the way the Florida APA is supposed to work. Even with
4 the amendments that were enacted after Professor Dore passed, I
5 think makes even more clear rulemaking is not a matter of
6 agency discretion. If you're adopting a rule which is a
7 statement of prospective policy that is to be applied
8 relatively uniformly, then you are required to go to
9 rulemaking. I think you ought to go to rulemaking. But having
10 said that, I have to say I've got some sympathy for
11 Mr. Ballinger's position because things are, things are
12 somewhat in flux.

13 But I, I -- personally I would lean more toward, one,
14 the strict legal position, and, two, what I believe
15 Commissioner Arriaga was suggesting, and that is that getting
16 into the rulemaking docket, which is going to take a few months
17 anyway, would enable us to flesh out the issues and get there.
18 My position is you ought to do it.

19 COMMISSIONER DEASON: And may I follow up?

20 CHAIRMAN EDGAR: Commissioner Deason.

21 COMMISSIONER DEASON: The suggestion of 90 days in
22 order to comply with the portfolio approach, do you have a
23 position on whether the 90 days is reasonable?

24 MR. WRIGHT: I --

25 COMMISSIONER DEASON: Let me --

1 MR. WRIGHT: One of two answers, if I may. I don't
2 think Montenay-Dade has a position on that. They're not in
3 dire need of having to have a standard offer. They just want
4 their concerns considered by the Commission in its
5 deliberations today.

6 My second answer is, I'll give you my own personal
7 belief, my own personal answer, Chef Wright, who's been doing
8 this stuff for 25 years, I think 90 days is entirely
9 reasonable.

10 CHAIRMAN EDGAR: Commissioner Arriaga.

11 COMMISSIONER ARRIAGA: The same question Commissioner
12 Deason was asking Mr. Wright, I will ask the utilities. And
13 one of you could answer on behalf of all of you if you're all
14 in accordance. Do you think we should go to rulemaking, all
15 the utilities? Do you have one spokesperson or each one of
16 you, what would you prefer?

17 MR. BEASLEY: Since I suggested it, Commissioner, I
18 would reaffirm our belief that rulemaking is appropriate. The
19 rules that we have now on the books are, are 1980 vintage, and
20 I think it would be good for going forward to have the rules
21 reflect what your policy is. And if you're adopting a new
22 policy, then I think it should be reflected in your rules.

23 COMMISSIONER ARRIAGA: Continue?

24 CHAIRMAN EDGAR: Yes.

25 COMMISSIONER ARRIAGA: Mr. Ballinger, you just said

1 that you preferred a negotiated approach, and I can understand
2 that because we have a tradition of encouraging that kind of
3 issue. But don't you realize also that there's no
4 understanding here -- for the last six months I've been hearing
5 two differing sides of the table and there's no in-between.
6 Shouldn't we -- isn't this a time, an appropriate time for us
7 to intervene and say stop the nonsense, these are the rules?

8 MR. BALLINGER: Possibly. I don't think your rules
9 are going to solve all the differences though.

10 COMMISSIONER ARRIAGA: But it would at least put them
11 on the table.

12 MR. BALLINGER: Yes. Yes. And it's going to take
13 more than a few months. When you see this kind of disparity,
14 it's going to take more than a few months to come together to
15 get rules that, that people can live with.

16 COMMISSIONER ARRIAGA: Madam Chair, this is a comment
17 for us here. In my previous life when I used to be a
18 congressman, every time that we wanted to delay something, we'd
19 send it to committee. And it looks like every time we want to
20 delay something, we send it to rulemaking, you know. So that's
21 a concern that we do have to consider also. Thank you.

22 COMMISSIONER CARTER: Madam Chairman.

23 CHAIRMAN EDGAR: Commissioner Carter.

24 COMMISSIONER CARTER: If I'm in order, I'm going to
25 move staff's recommendation on this issue.

1 CHAIRMAN EDGAR: Commissioners, are there further
2 questions before we move into motion discussion?

3 Commissioner Tew.

4 COMMISSIONER TEW: I have one. I just want to be
5 clear. For those of you suggesting rulemaking, do you have a
6 position on whether or not the Commission adopts something to
7 move us off of where we are now first and then follow up with
8 rulemaking, or are you saying that we should go to rulemaking
9 to change that policy? And that's for anyone that would like
10 to comment on that.

11 CHAIRMAN EDGAR: Mr. Wright?

12 MR. WRIGHT: I think you can do both. I think if --
13 I think -- one, we recommend that you require FPL and Progress
14 to change the minimum term provisions of their standard offers.
15 That's thing one.

16 Now beyond that, I think you can -- you know, you're
17 the Commissioners and you can go along with that proposal or
18 not. You can make decisions today to approve further standard
19 offer contracts to remain in effect during the pendency of
20 rulemaking and go to rulemaking.

21 MR. MOYLE: From, from my perspective, Commissioner
22 Tew, in terms of, you know, the rulemaking, I think, I think
23 part of what you're seeing with the single units not being
24 accepted, I don't know that anybody on the renewable side is,
25 is doing, that they're doing back somersaults about the

1 portfolio approach. And I don't know that, you know, if you
2 adopted that without the rulemaking and waited two years, you
3 know, then we're three years from the time the law passed to
4 promote the renewable energy.

5 I mean, I think what we're urging is we have a
6 rulemaking and it'll be a lot of issues that we'll need to
7 flush out. And ultimately you're going to have to make
8 decisions. You know, this one is the utility's position, this
9 is the renewable position. You're going to have to, you know,
10 make the call on some of that stuff.

11 But we're, we're promoting it because we hope it will
12 give us the ability and the incentives to sit down and really
13 pursue some of these things aggressively. And I don't think, I
14 don't think it matters greatly whether you adopt the staff
15 recommendation for the time being or stay with the status quo.

16 CHAIRMAN EDGAR: Commissioner Tew, did you --

17 COMMISSIONER TEW: I just want to know if anyone else
18 wanted to --

19 MR. BEASLEY: Commissioner Tew, Jim Beasley for Tampa
20 Electric. We're flexible. I mean, we have a proposal on the
21 table and staff has a recommendation on the table, either of
22 which we believe advances the legislative intent.

23 If you, if you adopt our proposal or the staff's, we
24 could go forward. We, we do believe though that commensurate
25 with that there should be a rulemaking to get the rules in

1 compliance with what your policy is. And I would say that as
2 far as foot dragging or anything like that, we have, we have a
3 contract coming down the runway right now with Waste Energy
4 Resources, and we're not letting rulemaking or not rulemaking
5 hold us up. We're negotiating in good faith and will be
6 presenting you a contract here shortly.

7 MR. WRIGHT: Madam Chairman, if I could just --

8 CHAIRMAN EDGAR: Mr. Wright.

9 MR. WRIGHT: Real quickly. You can do whatever you
10 do with the standard offers today. You can -- I want to just
11 clarify, you can give the utilities 45 days or 90 days or
12 whatever to file standard offers, assuming you go with the
13 staff recommendation, to file standard offers that comply with
14 the Fossil Fuel Unit Type Portfolio approach advocated by the
15 staff and then go to rulemaking after that. Thanks.

16 CHAIRMAN EDGAR: Commissioner Carter.

17 COMMISSIONER CARTER: I just wanted to say, you know,
18 to do nothing is that -- we're just talking loud and saying
19 nothing, is that we've studied this thing to death. The
20 Governor's Energy Commission brought in disparate entities from
21 industry, from the government, from all over the place.
22 Florida is, you know, we have the advantage and misfortune of
23 being at the end of the runway here in terms of our continent.
24 And as such, we need to start preparing and providing necessary
25 and alternative sources of energy. And I just think it's time

1 for us to move off the dime. There's nothing that I've heard
2 here today that says if we accept staff's position, that the
3 people won't move forward. And I think that by virtue of
4 knowing that we're going to do something, that may encourage
5 some negotiation. But to do nothing is to let's just sit
6 around and twirl our thumbs. But I think now is the time for
7 us to make a move.

8 And as Commissioner Arriaga asked, I believe it was
9 two sessions ago, about the precedential value of our
10 decisions, and I believe that legal told us that we could make
11 a decision on a case-by-case basis so if another situation
12 evolves, we can deal with that in the interim while we may be
13 doing rulemaking. But the time to act is now. We have a
14 recommendation here by staff, and I think it's time for us to
15 do this. This will encourage the industry and encourage all of
16 the disparate entities to make a move. It's time to move now,
17 y'all. We've talked this thing to death. So, again, I move
18 staff's recommendation.

19 CHAIRMAN EDGAR: Commissioners, we have a motion. Is
20 there a second?

21 COMMISSIONER ARRIAGA: If Commissioner Carter will
22 allow me, I have a tendency to go along with the motion, but
23 with a little modification. And I like what Mr. Wright was
24 just saying just before. We can approve or we could approve
25 staff's recommendation, implement a period of time of 45 days

1 to get the contract in order, and then authorize rulemaking and
2 set a time. I understand that we're doing it in the other
3 dockets of hardening and undergrounding, we're going,
4 expediting our rulemaking process and it's working. It doesn't
5 have to drag on forever.

6 So would you, would you accept that modification to
7 the motion? Approve staff's recommendation, setting a time to,
8 45 days to put the contract in order, and then going to
9 rulemaking with a specified time frame?

10 COMMISSIONER CARTER: Madam Chair, if I could ask
11 Mr. Melson --

12 CHAIRMAN EDGAR: Commissioner Carter for a question
13 to our legal staff.

14 COMMISSIONER CARTER: Does that put us in a process
15 of dealing with different issues on one docket? Can we
16 legitimately do that? Do you understand what he's saying,
17 putting a rider on that to attach a provision for rulemaking on
18 the motion?

19 MR. MELSON: I don't see any reason you can't do
20 that. Rulemaking is a matter of discretion -- well, the
21 decision to initiate rulemaking is a decision you all can make.
22 I don't see any reason you cannot do it in the context of this,
23 this docket and this motion.

24 COMMISSIONER CARTER: I'm comfortable with that,
25 Madam Chair. I'm comfortable with it.

1 COMMISSIONER ARRIAGA: I second the motion.

2 CHAIRMAN EDGAR: Okay. We have a motion, we have a
3 second. Is everyone clear on the motion or is there further
4 discussion?

5 Commissioner Deason.

6 COMMISSIONER DEASON: I have a question on the
7 motion. 45 days, we've had discussion here of 90. I mean, I
8 certainly want to expedite. But if 45 days is not doable and
9 then we're just going to get motions to extend the time -- you
10 know, if it can be done in 45, I'm all for it. If 90 is a more
11 reasonable time period, I would -- and Mr. Wright indicated he
12 thought 90 days was reasonable. I don't know if staff has a
13 viewpoint on that or not. But I just want to make sure that
14 whatever time frame we set seems to be realistic.

15 CHAIRMAN EDGAR: Commissioner Deason, I appreciate
16 the question. I was also going to point out that I know that
17 we have our staff working under a number of rulemaking dockets,
18 all of which are important and all of which are highly
19 technical and take a lot of time, and that we've asked them to
20 move forward with, with all due diligence.

21 I do think we're -- I'm very comfortable with the
22 direction that we're moving in. But, yes, let's take a moment
23 to see if we can get in the posture that everybody is the most
24 comfortable.

25 Mr. Ballinger, do you have a response to Commissioner

1 Deason's comment and question?

2 MR. BALLINGER: No. Ninety days is fine with staff.
3 I think the issue came up though, what do you do in the
4 interim? Do you approve the single contract that they filed
5 today and then basically we're approving the other ones, or do
6 you leave the old ones in place for 90 days until they file all
7 new ones? I hate to throw a monkey wrench in it, but they
8 started it down there.

9 CHAIRMAN EDGAR: Well, you know, my standard response
10 in these sorts of situations is and will continue to be, while
11 we're all here together in one room, let's ask those questions
12 and see if we can come as close to clarity as possible. Yes,
13 sir.

14 MR. BEASLEY: Madam Chairman, it would seem to make
15 sense to us to leave the current, or at least ours, I'm
16 speaking for Tampa Electric, leave our contract that's been
17 approved by the Commission in place until such time as a new
18 contract, a new standard offer contract is approved by the
19 Commission. And that would have stability, avoid confusion
20 and, and status quo at least until you approve whatever comes
21 out.

22 COMMISSIONER CARTER: Madam Chair.

23 CHAIRMAN EDGAR: Commissioner Carter.

24 COMMISSIONER CARTER: I don't read staff's
25 recommendation as that.

1 MR. BALLINGER: No. We basically said deny it and
2 tell them to refile again. But basically they would refile the
3 one that they've filed already plus a couple of others as one
4 package. You can get the same result -- I think it was -- it
5 might have been TECO that said put the one we filed in place
6 and we'll file the next one 90 days from now. That's another
7 approach to it. I'm fine with that too. You get to the same
8 result.

9 I think basically what staff is saying is we're okay
10 with the contracts that they filed, but we want the other ones
11 in the plan as well to fill out the portfolio approach. So
12 whether you deny the contracts and they file a whole new
13 package or you approve the first unit today and then the next
14 two or three units down the road, either way is fine. We get
15 to the same place.

16 CHAIRMAN EDGAR: Commissioner Carter.

17 COMMISSIONER CARTER: Madam Chair, could we back up
18 for a moment? Commissioner Arriaga, if you would just withhold
19 your second for a moment because I think there are two issues
20 that have evolved here. One is the time limits, the 45 days.
21 Maybe we need to go to the 90 days in the motion. And,
22 secondly, I mean, with this modified recommendation from staff,
23 we need to have -- Mr. Melson, maybe we need to have that
24 clarified so we can just -- I guess would there be an oral
25 modification of staff's recommendation?

1 MR. MELSON: Yes, sir. And I'm not sure Tampa
2 Electric and Mr. Ballinger weren't talking past each other.

3 COMMISSIONER CARTER: Okay.

4 MR. MELSON: I understand you, you intend to approve
5 staff's recommendation in that the utility should file
6 something with a portfolio approach, and the question of
7 whether to give them 45 or 90 days to do that.

8 The second question is what standard offer contract
9 is in effect until that filing takes place? And as I
10 understand, the two choices are the one that is in place today
11 or the new ones that the utilities filed in this docket that
12 staff is recommending you reject. I heard the utilities to say
13 leave the ones that are in place today in effect for another
14 90 days. I heard Mr. Ballinger to say you could allow the new
15 ones they filed to go into effect for that short 90-day period.
16 And the motion just needs to be clear on which you, which you
17 intend to do.

18 MR. BEASLEY: And from Tampa Electric's perspective,
19 we're okay with either one, so.

20 MR. BALLINGER: Hopefully I won't add confusion. The
21 reason I say you can approve the contracts today that they
22 filed is because of Gulf. They just have the one contract and
23 we can get them out the door and done. So that's why it's
24 another option for you to approve the contracts that they filed
25 in these dockets today; have them file the additional contracts

1 to make up the portfolio within 90 days.

2 COMMISSIONER CARTER: I'm glad I don't have to write
3 this up, Madam Chairman, but I think that's the genesis of the
4 motion.

5 Commissioner Arriaga, would you still second that?

6 COMMISSIONER ARRIAGA: Yeah. The second continues.
7 I'm okay with the 90 days also.

8 CHAIRMAN EDGAR: Commissioners --

9 COMMISSIONER DEASON: Just so we're clear --

10 CHAIRMAN EDGAR: Commissioner Deason.

11 COMMISSIONER DEASON: -- if we go ahead and approve
12 the contracts as they're filed with the requirement that the
13 additional offers be filed, standard offers be filed within
14 90 days to comply with the portfolio approach, that in Gulf's
15 case there's just -- we would be approving their one standard
16 offer and there's no requirement for additional standard offers
17 from that one company.

18 MR. BALLINGER: That's correct.

19 Also, I would point out that the new contracts filed
20 have a little bit more favorable terms and conditions as
21 pointed out by the renewables. They did make some changes in
22 their new filings, so I think to get those in place as soon as
23 we can would make some sense.

24 COMMISSIONER ARRIAGA: I wanted to remind the
25 Commissioners that my second included a modification to the

1 original motion that we go into rulemaking.

2 COMMISSIONER CARTER: Okay. I think -- Madam
3 Chairman, excuse me.

4 CHAIRMAN EDGAR: Commissioner Carter.

5 COMMISSIONER CARTER: I think that was a question
6 that I asked Mr. Melson. He said there was no problem with the
7 jurisdictional perspective on doing that, and that would be
8 included in the motion.

9 MR. MELSON: And, Commissioner Arriaga, simply on a
10 schedule to be worked out by the Chairman's office?

11 COMMISSIONER ARRIAGA: Absolutely.

12 MR. MELSON: Okay.

13 COMMISSIONER ARRIAGA: I always yield to the
14 Chairman.

15 CHAIRMAN EDGAR: Commissioners, I think we are coming
16 close to a meeting of the minds. We have a motion. We have a
17 second per the discussion that we have had here at the bench.
18 All in favor, say aye. Opposed?

19 (Unanimous affirmative vote.)

20 Show it approved. Thank you. Thank you all.

21 (Agenda Item 13 concluded at 10:29 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER


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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 22ND DAY OF MAY, 2006.


LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
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