REQUEST TO ESTABLISH DOCKET
(Please Type)

Date:	9/16/2006	Docket No.:	060555 - EI

1. Division Name/Staff Name:	GCL - L. Harris
2. OPR:	GCL - L. Harris
3. OCR:	ECR - J. Harlow, M. Haff, J. McRoy
4. Suggested Docket Title:	Proposed Amendments to Rule 25-17.0832 - Firm Capacity and Energy Contracts

5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Provide NAMES OR ACRONYMS ONLY if a regulated company.

B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)

1. Parties and their representatives (if any):

All IOUs (EI) mailing list	

2. Interested persons and their representatives (if any):

Jeff Cooper, Lake County, Florida -	P.O. Box 7800, Tavares, Fl 32778
Robert Scheffel Wright, Young Van Assenderp, Pa	225 S. Adams St, Suite 200, Tallahassee, Fl 32301

6. Check one:

☒ **Documentation is attached.**

☐ **Documentation will be provided with recommendation.**

DOCUMENT NUMBER-DATE

07394 AUG 17 06

Agenda

Staff Rulemaking Workshop
Implementation of Section 366.91, Florida Statutes
Renewable Standard Offer Contracts
August 23, 2006, 9:30 AM
Easley Building, Room 148

I. Notice – Larry Harris, Staff Counsel

II. Opening Remarks - Staff

III. Discussion of the Proposed Rule - Staff

IV. Comments by Interested Parties

V. Schedule for Filing Written Comments

VI. Adjourn

25-17.0832 Firm Capacity and Energy Contracts.

(1) Firm capacity and energy are capacity and energy produced and sold by a qualifying facility and purchased by a utility pursuant to a negotiated contract or a standard offer contract subject to certain contractual provisions as to the quantity, time, and reliability of delivery.

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

(b) Within 10 working days of the execution of a negotiated contract or receipt of a signed standard offer contract for the purchase of firm capacity and energy, the purchasing utility shall file with the Commission a copy of the signed contract and a summary of its terms and conditions. At a minimum, the summary shall include: 1. The name of the utility and the owner and operator of the qualifying facility, who are signatories of the contract; 2. The amount of committed capacity specified in the contract, the size of the facility, the type of facility, its location, and its interconnection and transmission requirements; 3. The amount of annual and on-peak and off-peak energy expected to be delivered to the utility; 4. The type of unit being avoided, its size, and its in-service year; 5. The in-service date of the qualifying facility; and 6. The date by which the delivery of firm capacity and energy is expected to commence.

(2) Negotiated Contracts. Utilities and qualifying facilities are encouraged to negotiate contracts for the purchase of firm capacity and energy to avoid or defer the construction of all planned utility generating units which are not subject to the requirements of Rule 25-22.082, F.A.C. If a utility is required to issue a Request for Proposals (RFP) pursuant to Rule 25-22.082, F.A.C., negotiations with qualifying facilities shall be governed by the utility's RFP process. Negotiated contracts will be considered prudent for cost recovery purposes if it is

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demonstrated by the utility that the purchase of firm capacity and energy from the qualifying facility pursuant to the rates, terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility at a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the qualifying facility under the contract. Negotiated contracts with small qualifying facilities and renewable generators, as defined by Section 366.91, F.S., shall ~~not~~ be counted towards the subscription limit of the avoided unit in a standard offer contract~~, thus preserving the standard offer for small qualifying facilities as described in subsection (4)~~.

(3) Cost Recovery for Negotiated Contracts. In reviewing negotiated firm capacity and energy contracts for the purpose of cost recovery, the Commission shall consider factors relating to the contract that would impact the utility's general body of retail and wholesale customers including:

(a) Whether additional firm capacity and energy is needed by the purchasing utility and by Florida utilities from a statewide perspective;

(b) Whether the cumulative present worth of firm capacity and energy payments made to the qualifying facility over the term of the contract are projected to be no greater than: 1. The cumulative present worth of the value of a year-by-year deferral of the construction and operation of generation or parts thereof by the purchasing utility over the term of the contract, calculated in accordance with subsection (5) and paragraph (6)(a) of this rule, provided that the contract is designed to contribute towards the deferral or avoidance of such capacity; or 2. The cumulative present worth of other capacity and energy related costs that the contract is designed to avoid such as fuel, operation, and maintenance expenses or alternative purchases of capacity, provided that the contract is designed to avoid such costs;

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(c) To the extent that annual firm capacity and energy payments made to the qualifying facility in any year exceed that year's annual value of deferring the construction and operation of generation by the purchasing utility or other capacity and energy related costs, whether the contract contains provisions to ensure repayment of such payments exceeding that year's value of deferring that capacity in the event that the qualifying facility fails to deliver firm capacity and energy pursuant to the terms and conditions of the contract, provided, however, that provisions to ensure repayment may be based on forecasted data; and

(d) Considering the technical reliability, viability, and financial stability of the qualifying facility, whether the contract contains provisions to protect the purchasing utility's ratepayers in the event the qualifying facility fails to deliver firm capacity and energy in the amount and times specified in the contract.

(4) Standard Offer Contracts.

(a) Upon petition by a utility or pursuant to a Commission action, each public utility shall submit for Commission approval a tariff or tariffs and a standard offer contract or contracts for the purchase of firm capacity and energy from small qualifying facilities <u>and renewable generators, as defined by Section 366.91, F.S.</u> In lieu of a separately negotiated contract, standard offer contracts are available to the following types of qualifying facilities:

1. A ~~small power producer or other qualifying facility using renewable or non-fossil fuel where the primary energy source in British Thermal Units (BTUs) is at least 75 percent biomass, waste, solar or other renewable resource;~~<u>,renewable generating facility as defined by Section 366.91, F.S.; or</u>

2. A qualifying facility, as defined by subsection 25-17.080(3), F.A.C., with a design capacity of 100 kW or less~~; or.~~<u>.</u>

~~3. A municipal solid waste facility as defined by Rule 25-17.091, F.A.C.~~

(b) <u>By April 1 of each year, concurrent with filing a Ten-Year Site Plan, each public utility</u>

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shall submit standard offer contract(s) based on the next avoidable fossil fueled generating unit of each technology type identified in its Ten-Year Site Plan. Each public utility with no identified planned generating units shall submit a standard offer contract based on a planned purchase.

(c) Individual standard offer contracts shall remain open until either: 1. a request for proposals pursuant to Rule 25-17.082, F.A.C., is issued for the generating unit; 2. the utility files a petition for need determination or commences construction for generating units not subject to Rule 25-17.082, F.A.C.; or 3. the contract's subscription limit, equal to the capacity of the avoided unit, is reached. After a contract is closed, the utility shall file a petition for approval of a new contract based on the next unit of the same generating technology in its Ten-Year Site Plan, if any. If no generating unit of the same technology is in its Ten-Year Site Plan, the utility shall notify the Director of the Division of Economic Regulation when a standard offer contract is closed.

(~~b~~ d) The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction of additional generation capacity or parts thereof by the purchasing utility. Rates for payment of capacity sold by a qualifying facility shall be specified in the contract for the duration of the contract. In reviewing a utility's standard offer contract or contracts, the Commission shall consider the criteria specified in paragraphs (3)(a) through (3)(d) of this rule, as well as any other information relating to the determination of the utility's full avoided costs.

(~~c~~ e) The utility shall evaluate, select, and enter into standard offer contracts with eligible qualifying facilities based on the benefits to the ratepayers. Within 60 days of receipt of a signed standard offer contract, the utility shall either: 1. Accept and sign the contract and return it within five days to the qualifying facility; or 2. Petition the Commission not to accept

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the contract and provide justification for the refusal. Such petitions may be based on: a. A reasonable allegation by the utility that acceptance of the standard offer will exceed the subscription limit of the avoided unit or units; or b. Material evidence showing that because the qualifying facility is not financially or technically viable, it is unlikely that the committed capacity and energy would be made available to the utility by the date specified in the standard offer.

(~~d~~ f) A standard offer contract which has been accepted by a ~~qualifying facility~~ utility shall apply towards the subscription limit of the unit designated in the contract effective the date the utility receives the accepted contract. If the contract is not accepted by the utility, its effect shall be removed from the subscription limit effective the date of the Commission order granting the utility's petition.

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

1. The avoided unit or units on which the contract is based;

2. The total amount of committed capacity, in megawatts, needed to fully subscribe the avoided unit specified in the contract;

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

4. The date on which the standard contract offer expires;

~~5. A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the issuance of timely notice of a Request for Proposals (RFP) pursuant to subsection 25-22.082(3), F.A.C., the utility shall end the open solicitation period;~~

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~~6~~5. The date by which firm capacity and energy deliveries from the qualifying facility to the utility shall commence. This date shall be no later than the anticipated in-service date of the avoided unit specified in the contract;

~~7~~6. The period of time over which firm capacity and energy shall be delivered from the qualifying facility to the utility. Firm capacity and energy shall be delivered, at a minimum, for a period of ~~five~~ ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in-service date of the avoided unit;

~~8~~7. The minimum performance standards for the delivery of firm capacity and energy by the qualifying facility during the utility's daily seasonal peak and off-peak periods. These performance standards shall approximate the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit over the term of the contract;

~~9~~8. The description of the proposed facility including the location, steam host, generation technology, and fuel sources;

~~10~~9. Provisions to ensure repayment of payments to the extent that annual firm capacity and energy payments made to the qualifying facility in any year exceed that year's annual value of deferring the avoided unit specified in the contract in the event that the qualifying facility fails to perform pursuant to the terms and conditions of the contract. Such provisions may be in the form of a surety bond or equivalent assurance of repayment of payments exceeding the year-by-year value of deferring the avoided unit specified in the contract.

(~~f~~ h) The utility may include the following provisions:

1. Provisions to protect the purchasing utility's ratepayers in the event the qualifying facility fails to deliver firm capacity and energy in the amount and times specified in the contract which may be in the form of an up-front payment, surety bond, or equivalent assurance of

payment. Payment or surety shall be refunded upon completion of the facility and demonstration that the facility can deliver the amount of capacity and energy specified in the contract; and

2. A listing of the parameters, including any impact on electric power transfer capability, associated with the qualifying facility as compared to the avoided unit necessary for the calculation of the avoided cost.

3. Provisions that allow for revisions to the contract based upon changes to the purchasing utility's avoided costs.

(~~g~~ i) Firm Capacity Payment Options. Each standard offer contract shall also contain, at a minimum, the following options for the payment of firm capacity delivered by the qualifying facility:

1. Value of deferral capacity payments. Value of deferral capacity payments shall commence on the anticipated in-service date of the avoided unit. Capacity payments under this option shall consist of monthly payments escalating annually of the avoided capital and fixed operation and maintenance expense associated with the avoided unit and shall be equal to the value of a year-by-year deferral of the avoided unit, calculated in accordance with paragraph (6)(a) of this rule.

2. Early capacity payments. Each standard offer contract shall specify the earliest date prior to the anticipated in-service date of the avoided unit when early capacity payments may commence. The early capacity payment date shall be an approximation of the lead time required to site and construct the avoided unit. Early capacity payments shall consist of monthly payments escalating annually of the avoided capital and fixed operation and maintenance expense associated with the avoided unit, calculated in conformance with paragraph (6)(b) of the rule. At the option of the qualifying facility, early capacity payments may commence at any time after the specified early capacity payment date and before the

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anticipated in-service date of the avoided unit provided that the qualifying facility is delivering firm capacity and energy to the utility. Where early capacity payments are elected, the cumulative present value of the capacity payments made to the qualifying facility over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(~~g~~ i)1. of this rule.

3. Levelized capacity payments. Levelized capacity payments shall commence on the anticipated in-service date of the avoided unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the contract, calculated in conformance with paragraph (6)(c) of this rule. The fixed operation and maintenance portion of capacity payments shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the avoided unit calculated in conformance with paragraph (6)(a) of this rule. Where levelized capacity payments are elected, the cumulative present value of the levelized capacity payments made to the qualifying facility over the term of the contract shall not exceed the cumulative present value of capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(~~g~~ i)1. of this rule, value of deferral capacity payments.

4. Early levelized capacity payments. Each standard offer contract shall specify the earliest date prior to the anticipated in-service date of the avoided unit when early levelized capacity payments may commence. The early capacity payment date shall be an approximation of the lead time required to site and construct the avoided unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the contract, calculated in conformance with paragraph (6)(c) of this rule. The fixed operation and maintenance expense shall be calculated in conformance with paragraph (6)(b) of this rule. At the option of the qualifying facility, early levelized capacity payments shall commence at any

time after the specified early capacity date and before the anticipated in-service date of the avoided unit provided that the qualifying facility is delivering firm capacity and energy to the utility. Where early levelized capacity payments are elected, the cumulative present value of the capacity payments made to the qualifying facility over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(~~g~~ i)1. of this rule.

(5) Avoided Energy Payments for Standard Offer Contracts.

(a) For the purpose of this rule, avoided energy costs associated with firm energy sold to a utility by a qualifying facility pursuant to a utility's standard offer contract shall commence with the in-service date of the avoided unit specified in the contract. Prior to the in-service date of the avoided unit, the qualifying facility may sell as-available energy to any utility pursuant to Rule 25-17.0825, F.A.C.

(b) To the extent that the avoided unit would have been operated, had that unit been installed, avoided energy costs associated with firm energy shall be the energy cost of this unit. To the extent that the avoided unit would not have been operated, the avoided energy costs shall be the as-available avoided energy cost of the purchasing utility. During the periods that the avoided unit would not have been operated, firm energy purchased from qualifying facilities shall be treated as as-available energy for the purposes of determining the megawatt block size in paragraph 25-17.0825(2)(a), F.A.C.

(c) The energy cost of the avoided unit specified in the contract shall be defined as the cost of fuel, in cents per kilowatt-hour, which would have been burned at the avoided unit plus variable operation and maintenance expense plus avoided line losses. The cost of fuel shall be calculated as the average market price of fuel, in cents per million Btu, associated with the avoided unit multiplied by the average heat rate associated with the avoided unit. The variable

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operating and maintenance expense shall be estimated based on the unit fuel type and technology of the avoided unit.

(6) Calculation of standard offer contract firm capacity payment options.

(a) Calculation of year-by-year value of deferral. The year-by-year value of deferral of an avoided unit shall be the difference in revenue requirements associated with deferring the avoided unit one year and shall be calculated as follows:

$VAC_m = 1/12[KI_n (1 - R)/(1 - R^L) + O_n]$

Where, for a one year deferral:

(b) Calculation of early capacity payments. Monthly early capacity payments shall be calculated as follows:

$A_m = [A_c (1 + i_p)^{(m - 1)}) + A_o (1 + i_o)^{(m - 1)}] /12$ for $m = 1$ to t

$A_o = G[(1 - R) (1 - R^t)]$

(c) Levelized and early levelized capacity payments. Monthly levelized and early levelized capacity payments shall be calculated as follows:

VAC_m = utility's monthly value of avoided capacity, in dollars per kilowatt per month, for each month of year n;

K = present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present value to the middle of the first year;

$R = (1 + i_p)/(1 + r)$;

I_n = total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the avoided unit with an in-service date of year n, including all identifiable and quantifiable costs relating to the construction of the avoided unit that would have been paid had the avoided unit been constructed;

O_n = total fixed operation and maintenance expense for the year n, in mid-year dollars per kilowatt per year, of the avoided unit;

ip = annual escalation rate associated with the plant cost of the avoided unit(s);

io = annual escalation rate associated with the operation and maintenance expense of the avoided unit(s);

r = annual discount rate, defined as the utility's incremental after tax cost of capital;

L = expected life of the avoided unit; and

n = year for which the avoided unit is deferred starting with its original anticipated in-service date and ending with the termination of the contract for the purchase of firm energy and capacity.

Where: Am = monthly early capacity payments to be made to the qualifying facility for each month of the contract year n, in dollars per kilowatt per month;

ip = annual escalation rate associated with the plant cost of the avoided unit;

io = annual escalation note associated with the operation and maintenance expense of the avoided unit(s);

m = year for which early capacity payments to a qualifying facility are made, starting in year one and ending in the year t;

t = the term, in years, of the contract for the purchase of firm capacity;

Ac = F[(1 - R)/(1 - Rt)]

Where: F = the cumulative present value in the year that the contractual payments will begin, of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the avoided unit(s);

R = (1 + ip)/(1 + r); and

r = annual discount rate, defined as the utility's incremental after tax cost of capital; and

Where: G = The cumulative present value in the year that the contractual payments will begin, of the avoided fixed operation and maintenance expense component of capacity payments

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which would have been made had capacity payments commenced with the anticipated in-service date of the avoided unit; and

$R = (1 + io)/(1 + r)$.

$PL = F/12\{r/[1 - (1 + r)-t\ ]\} + O$

(7) Upon request by a qualifying facility or any interested person, each utility shall provide within 30 days its most current projections of its future generation mix including type and timing of anticipated generation additions, and at least a 20-year projection of fuel forecasts, as well as any other information reasonably required by the qualifying facility to project future avoided cost prices. The utility may charge an appropriate fee, not to exceed the actual cost of production and copying, for providing such information.

(8)(a) Firm energy and capacity payments made to a qualifying facility pursuant to a separately negotiated contract shall be recoverable by a utility through the Commission's periodic review of fuel and purchased power costs if the contract is found to be prudent in accordance with subsection (2) of this rule.

(b) Upon acceptance of the contract by both parties, firm energy and capacity payments made to a qualifying facility pursuant to a standard offer contract shall be recoverable by a utility through the Commission's periodic review of fuel and purchased power costs.

(c) Firm energy and capacity payments made pursuant to a standard offer contract signed by the qualifying facility, for which the utility has petitioned the Commission to reject, is recoverable through the Commission's periodic review of fuel and purchased power costs if the Commission requires the utility to accept the contract because it satisfies subsection (4) of this rule.

Specific Authority 350.127, 366.05(1), 366.91 FS. Law Implemented 366.051, 366.81 FS. History–New 10-25-90, Amended 1-7-97, 5-18-03.

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