

Timolyn Henry

From: Nanci_Nesmith@fpl.com
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To: Filings@psc.state.fl.us
Cc: Bryan_Anderson@fpl.com; Sabrina_Spradley@fpl.com; Lynne_Adams@fpl.com
Subject: Electronic Filing for Docket No. 060555-EI - FPL's Renewable SOC Rule Development Post-Workshop Comments

Attachments: 060555-Renewable SOC Rule Development Post-Workshop Comments.doc



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SOC Rule Deve...

Electronic Filing

a. Person responsible for this electronic filing:

Bryan Anderson, Attorney
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
(561) 691-7207
bryan_anderson@fpl.com

b. Docket No. 060555-EI - Proposed amendments to Rule 25-17.032, F.A.C., Firm Capacity and Energy Contracts.

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages.

e. The document attached for electronic filing is FPL's Renewable Standard Offer Contract Rule Development Post-Workshop Comments.

(See attached file: 060555-Renewable SOC Rule Development Post-Workshop Comments.doc)

Thank you for your attention and cooperation to this request.

Nanci NeSmith
Florida Power & Light
CMB 521-3900

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OTH *Ken P - added nfg ✓*

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to)
Rule 15-17.0832, F.A.C.,)
Firm Capacity and Energy Contracts.)
_____)

DOCKET NO. 060555-EI
FILED: September 13, 2006

**FLORIDA POWER & LIGHT COMPANY'S
POST-WORKSHOP COMMENTS**

Introduction

FPL believes that it makes sense on behalf of our customers to have a balanced approach to electricity generation, including energy conservation, renewable energy sources, and nuclear energy in combination with fossil (coal, oil and natural gas) generation.

In 2005, FPL purchased over 1.5 million Megawatt hours of electric energy generated by about 300 MW of renewable sources (about 1/3 of the total renewable capacity in the state according to the U.S. Department of Energy ("DOE") Energy Information Administration) to meet its customers' electrical needs. These renewable sources were dominated by waste to energy facilities, but also included bagasse, landfill gas, and industrial renewable sources.

In 2005, FPL's Green Energy program was recognized by the U.S. Environmental Protection Agency and DOE as a Green Power Leadership Award winner. Through June 2006, more than 25,000 of FPL's customers had signed up for the program. The National Renewable Energy Laboratory ranks FPL's Sunshine Energy Program as the fourth largest such program in the country, in terms of renewable sales. As a result of the success of this program, a 250 kW photovoltaic project is being built at Sarasota County's Rothenbach Park. Additionally, in Docket 060577-EI, FPL has requested that the program become permanent, and be expanded to commercial customers.

In addition to these programs, FPL has expertise in all aspects of renewable energy, through its affiliate, FPL Energy. FPL Energy's renewable projects are mostly sold under contract with utilities at avoided cost or negotiated rates, although some are purely merchant – selling into a market with no contract. FPL Energy currently operates 47 wind farms throughout the United States with a gross capacity of 3,912 megawatts, and is the largest producer of wind powered generation in the world. FPL Energy also operates more solar energy fired generation capacity than anyone else in North America, operates hydropower facilities in the Northeast, and has interests in waste to energy facilities. In the past, FPL Energy has developed, owned and operated both biomass and geothermal facilities. FPL is thus uniquely qualified to understand both the needs of the developers,

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owners, and operators of renewable energy facilities, as well as the needs and requirements of FPL's customers.

Legislative Background

The workshop on August 23rd was conducted to solicit comments from interested parties regarding proposed amendments to Rule 25-1 7.0832 - Firm Capacity and Energy Contracts. These amendments are required as a result of Section 366.91, Florida Statutes, enacted by the Legislature and signed by the Governor in 2005 as a result of HB 77. Many of the comments provided during the workshop were focused on whether the proposed amendments met the intent of the Legislature in enacting the statute.

While HB 77 includes a number of provisions to encourage the development of renewable energy sources in the state, particularly waste to energy facilities, the key provisions of 366.91 under discussion include the following:

366.91 Renewable energy.—

(1) 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.

(3) On or before January 1, 2006, each public utility must continuously offer a purchase contract to producers of renewable energy. The commission shall establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers and may adopt rules to administer this section. The contract shall contain payment provisions for energy and capacity which are based upon the utility's full avoided costs, as defined in s. 366.051; however, capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Each contract must provide a contract term of at least 10 years. Prudent and reasonable costs associated with a renewable energy contract shall be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery clause mechanism administered by the commission.

In attempting to understand the Legislative intent of this language, the history of amendments and staff analysis of the bill do not further the effort, as they concentrate on

the impact of the bill on expanding the potential for waste to energy plants in Florida. To discern the intent, therefore, we must look elsewhere.

In 2006 the Legislature passed additional legislation impacting renewable generation in the state, providing another source of information on the intent of the Legislature. SB 888, "Fla. Renewable Energy Technologies & Energy Efficiency Act"; signed into law June 19, 2006, provides a range of economic incentives for the renewable industry in Florida. In this bill the Legislature stated:

It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and at the same time, minimize the costs of power supply to electric utilities and their customers.

The Senate Staff analysis and economic impact statement regarding SB888 prepared by the Ways and Means Committee included the following discussion (emphasis added):

The federal Public Utilities Regulatory Policy Act of 1978, Public Law 95-617 (92 Stat. 3117), required electric utilities to purchase any electricity generated by a cogenerator or a small power producer where a small power producer was someone who used renewable fuels. The utility was to pay "incremental cost" for the power. Incremental cost was defined as:

The cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

The Florida Legislature gave the Florida Public Service Commission authority to implement such provisions at 366.051, F.S. The statute adopts the term "avoided cost" but it is defined in the same terms as the incremental cost in the Federal Act. The utility pays the small power producer/cogenerator no more than what it would cost the utility to generate the electricity. In 2005, the Legislature passed 366.91, F.S., to encourage renewable energy and again defined the payment to renewable generators as avoided cost. The notion of avoided cost reflects what it would cost the utility to generate electric energy with the next power plant that must be built to serve load. By equating the payments to cogenerators and small power producers to the utility's actual cost, the utility customers are held harmless.

Thus, such a standard is meant to encourage alternative generation while ensuring that electric rates are not higher due to the purchase of such energy.

In attempting further to ascertain the intent of the Legislature in HB 77, it is also helpful to examine how it differs from HB 1552 introduced in the 2004 Legislature, which was not adopted. Consider items required in HB 1552 which the Florida Legislature chose not to include:

- HB 1552 specified that the renewable contracts may contain financial incentives for the renewable generators, HB 77 does not, it specifies payment at full avoided cost;
- HB 1552 explicitly specified that the Commission base the contract payments on a state-wide avoided unit; HB 77 does not, it only refers to the current rules governing avoided cost (which while they permit the Commission to use a state-wide avoided unit, do not require it);
- HB 1552 mandated a certain percentage of a utility's generation must come from renewable resources, HB 77 does not, it is notably silent on this point.

In summary, many of the suggestions made by renewable developers at the workshop were explicitly considered by the Florida Legislature and rejected. The intent of the Legislature is clear and consistent with the proposed draft rule.

Comments on Staff Proposal

FPL believes the Staff Proposal meets both the statutory obligations of 366.91, as well as the intent of the Legislature. It is consistent with the findings in Docket No. 050806-EQ and the reasoning of the Commission in that docket.

Combining renewables and small cogenerators;

Staff suggests that small qualifying facilities and renewables be combined. FPL agrees with the staff that this provides for administrative efficiency, and hence a cost savings for our customers.

Subscription Limits

Staff also suggests that these units shall count toward the subscription limit for the Standard Offer Contract. FPL believes this change in the rule is both consistent with the regulations and intent of the Legislature as well as needed to protect our customers. 366.91 requires that renewables be paid the full avoided cost, including avoided capacity cost. During the workshop, renewable representatives indicated that potentially 5,000 Megawatts or more of renewable capacity could be made available (Transcript, Wright p 42, line 19). Assuming this figure is valid, without counting the renewable generation against the subscription limit of the Standard Offer Contract FPL's customers would be at risk of paying well above avoided cost for the capacity from the renewables if they exceeded the capacity of the avoided unit. This increased cost to the customer is clearly not in compliance with the law as written, nor the intent of the Legislature.

Fossil Fuel Unit Type Portfolio

The staff proposal requires each utility to file standard offer contracts, concurrent with filing its ten year site plan, based upon the next avoided unit of each fossil technology in

the ten year site plan. In Docket 050806-EQ FPL filed its comments regarding the “Fossil Fuel Unit Type Approach”. In that Docket, the Commission found that “a ‘Fossil Fuel Unit Type Portfolio’ approach - will best meet the intent of Section 366.91, Florida Statutes, to encourage the development of renewable energy resources while balancing ratepayer interests.” While FPL points out that the staff analysis of SB 888 clearly interpreted the rules to refer to “the next power plant that must be built to serve load”, the balancing of the requirements of 366.91 and customer interests is clearly the purview of the Commission. The current staff draft rule is in accord with Commission Order No. PSC-06-0486-TRF-EQ, issued June 6, 2006, and FPL supports the proposal.

Closing of Standard Offer Contracts

Staff proposes that the Standard Offer Contracts remain open until 1) an RFP is issued for the avoided unit, 2) the utility files for a petition for need determination or starts construction if the unit is not subject to the bid rule or 3) the subscription limit is reached. While FPL agrees with these proposals, FPL also believes that, consistent with the previous section of the draft rule, the Standard Offer Contracts should also close upon filing of a new ten year site plan. The technologies, costs and generation capacity requirements change in the ten year site plan due to changing circumstances. Without an automatic expiry of the Standard Offer Contracts the coupling of these contracts with utility plans as provided by section (4)2.(b) of the draft rule would be frustrated.

Contract Duration

Section (4)2.(g) 6 of the draft rule provides that the minimum duration of a standard offer contract shall be ten years, commencing with the in service date of the avoided unit. This is a reasonable balance between the interests of FPL’s customers and the renewable providers, and clearly complies with the provisions of 366.91. FPL agrees with Staff’s statement that “The standard offer has been set as a starting place. It is not meant to fit everything.” (Ballinger, page 65, line 21) and “And, personally, I believe that is where a negotiated contract comes in handy is people have different needs and different wants, and that is what they should do is negotiate. So the standard offer is a benchmark, if you will, out there that is put out there to start the process.” (Ballinger, page 66, line 1) FPL agrees that negotiated contracts are preferable to best meet the needs of customers and renewable providers. In almost all instances where a renewable provider is using some outside financing, a negotiated contract will be required to meet the specific requirements of the financial entity in any instance. Standard Offer Contracts by their very nature require some fixed duration. While the renewable providers at the workshop were of the opinion that longer contracts were needed (at the renewable providers’ option), in California the standard offer renewable contract has a minimum length of ten years, and some renewable providers are now working with the California Public Utilities Commission to structure shorter contracts. FPL therefore agrees with the staff proposal of a fixed ten year contract duration as the Standard Offer Contract.

In summary, FPL supports the staff proposed rule, and believes that not only does the proposed rule meet all the requirements of 366.91, but it positively encourages the development of renewable generation by using the “Fossil Fuel Unit Type Portfolio” as provided for in the Commission’s Order No. PSC-06-0486-TRF-EQ.

Discussion of Issues raised at the Workshop

In addition to issues raised directly in consideration of the proposed rule as discussed above, a number of issues arose in the workshop not directly associated with the language of 366.91 and the rule proposed by staff. While FPL is interested to see the renewable developers' position on these issues in their workshop comments, some comments are appropriate at this time on at least two of the issues.

Avoided Cost Issues

Renewable developers' representatives voiced the opinion at the workshop that modifications should be made to the Commission's currently approved mechanisms for avoided cost calculations (Workshop transcript - Zambo page 10, line 3, Hunter page 15, line 23, Cowdery page 22, line 24, Moyle page 37, line 18).

It is quite clear from the Legislative history that the Legislature clearly and specifically adopted avoided cost as the payment methodology. As stated above, earlier legislation that mandated a state wide avoided coal unit was not adopted. The Ways and Means staff analysis of SB 888 clearly refers back to QF avoided cost requirements as the mechanism for compensating the renewable providers. As the Legislature stated in SB 888; "By equating the payments to cogenerators and small power producers to the utility's actual cost, the utility customers are held harmless." Clearly it is not the intent of the Legislature nor 366.91 to increase the costs to the customer through the addition of renewable generation.

The Commission, through the "Fossil Fuel Unit Portfolio" approach has already encouraged the development of renewable generators by allowing them to choose which future unit they wish to avoid. The Legislature and the utilities have given financial incentives to the renewable generators other than through avoided cost. The utilities have agreed that renewable energy credits are the property of the renewable generator. According to a January 2005 report by the National Renewable Energy Laboratory (NREL/TP-620-37388), RECs in voluntary markets are worth \$2 to \$6 per MWh. In SB 888, the state provided, amongst other benefits, a production tax credit for renewable generators in the amount of \$10/MWh. These are valuable financial incentives which the astute renewable generator can clearly monetize, without directly increasing costs to the customers.

Goals Setting

A number of the renewable developers suggested that this rule making should be combined with rulemaking regarding 366.92 (Cowdery, page 24, line 1; Moyle, page 28, line 9 Wright, page 42, line 9). Some combined this goal setting with considerations for the Commission to set a renewable portfolio standard (Zambo, page 11, line 17; Moyle page 46, line 8).

FPL believes that it is premature to consider 366.92 at this time. First, 366.92 is permissive in nature, the Commission may set goals, it is not required to. Second, the presently high avoided cost is apparently working. The Commission recently approved a biomass energy contract with Progress Energy at prices below avoided cost. TECO is before the Commission in Docket 060573 –EQ to expand an existing contract by 3.5 MW. FPL is in preliminary discussion with a number of potential renewable generators representing up to 200 MW of new renewable generation. These recent filings, approvals, and the contract discussions FPL is currently conducting are approaching 50% of the potential resources identified by FPSC staff in its January 2003 report “An Assessment of Renewable Electric Generating Technologies for Florida”.

Second, combining the existing rulemaking with a rulemaking for 366.92 will significantly complicate the issues, as well as delay any action of the Commission to encourage renewables through the existing process. In its 2003 report the FPSC staff indicated that near term renewable potential was between 640 and 940 MW. At the workshop, representatives of the renewable industry were stating amounts between 2,000 and 10,000 MW. While FPL believes that currently higher projected avoided costs may result in more economic renewable resources than in the 2003 report, it would be logical to update the FPSC Staff’s study of potentially economic renewable resources rather than leap to a higher, totally unsubstantiated, number and set unreasonable goals that would harm the customer.

Finally, FPL believes it is only prudent to implement the revised standard offer contracts reflecting the Commission’s Fossil Fuel Unit Type Portfolio approach and observe their impact before considering additional changes.