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Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: September 21, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Harris)
Division of Economic Regulation (Harlow, Haff, Hewitt, McRoy)

RE: Docket No. 060555-EI – Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.

AGENDA: 10/3/06 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060555.RCM.DOC

Case Background

In its 2005 session, the Florida Legislature enacted Section 366.91, Florida Statutes, regarding renewable energy. The statute became effective October 1, 2005. Section 366.91(1) states:

> 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.

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Section 366.91(3), Florida Statutes, provides for the requirements to meet these objectives. In summary:

a) By January 1, 2006, each investor-owned electric utility (IOU), and municipal utility subject to the Florida Energy Efficiency and Conservation Act (FEECA) of 1980 must continuously offer to purchase capacity and energy from specific types of renewable resources.

b) The contract shall be based on the utility's full avoided costs, as defined in Section 366.051, Florida Statutes; and,

c) Each contract must provide a term of at least ten years.

Staff held a workshop on September 12, 2005, to discuss the implementation of the statute. At the workshop, staff suggested that the statute's requirements could be implemented initially under the Commission's existing rules pertaining to standard offer contracts, Rule 25-17.0832(4) and (5), Florida Administrative Code. Staff suggested this approach in an effort to meet the January 1, 2006, implementation date required by the statute. All of the workshop participants agreed that the Commission's existing standard offer rules could be used to initially implement the statute.

Gulf Power Company (Gulf), Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Florida Public Utilities Company (FPUC) and Tampa Electric Company (TECO) filed petitions for approval of their proposed standard offer contracts on October 14, 2005. Section 366.91(4), Florida Statutes, does not require the Commission's approval of renewable standard offer tariffs for covered municipal and cooperative utilities. However, JEA and the Orlando Utilities Commission filed their tariffs for informational purposes on January 1, 2006.

In its December 8, 2005, recommendation on the petitions, staff proposed two methodologies for setting avoided cost: (1) a continuation of the single unit approach based on the next avoidable unit in each utility's Ten-Year Site Plan (TYSP) and (2) a portfolio approach with multiple standard offers based on all units in each utility's TYSP. The staff also raised issues regarding the appropriate methodology to establish the contract term and subscription limit for renewable standard offer contracts. On December 27, 2005, the Commission issued Order No. PSC-05-1260-TRF-EQ approving FPUC's proposed contract.[1] The Commission also approved the remaining four contracts with modifications through June 1, 2006, to allow time for additional discussion on policy issues associated with implementing Section 366.91, Florida Statutes. On January 17, 2006, the Florida Industrial Cogeneration Association (FICA) and Bay County each filed a protest of Order No. PSC-05-1260-TRF-EQ and requested a formal hearing.

[1] Order No PSC-05-1260-TRF-EQ was issued in Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, 050809-EQ and 050810-EQ, In Re: Petition for approval of new 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 standard offer contract by Florida Power & Light Company, Petition for approval of amended standard offer contract tariff and renewable energy tariff by Progress Energy Florida, Petition for approval of renewable energy tariff by Florida Public Utilities Company, and Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy by Tampa Electric Company, respectively.

Both parties, however, requested that any hearing be deferred until after the Commission's additional workshop was held.[2]

Staff held an additional workshop to obtain further information on implementing the statute on March 6, 2006. Prior to this workshop, staff had continued to negotiate with the IOUs regarding staff's concerns. The IOUs agreed with staff's recommendations that: (1) the ten-year minimum contract terms should begin on the in-service date of the avoided unit, (2) the subscription limit should be set at the size of the avoided unit, and (3) the contracts should include qualifying facilities with capacities less than 100 kilowatts as required by Rule 25-17.0832(4)(a)3., Florida Administrative Code. At the workshop, there appeared to be general agreement among the representatives of renewable generators on these issues. However, one of the issues that remained unresolved as of the workshop date was the methodology to be used to set avoided cost for the standard offer contracts.

FPL, PEF, Gulf and TECO filed their petitions for approval of revised standard offer contracts on April 3, 2006. All four standard offer contracts continued a "business as usual" approach to defining avoided cost based on the utility's next avoided generating unit. On June 6, 2006, the Commission issued Order No. PSC-06-0486-TRF-EQ, in Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ and 050810-EQ. In the Order, the Commission discussed whether it was appropriate to use the single unit, statewide unit, and portfolio methodologies for setting avoided cost. The Commission, however, required utilities to file standard offer contracts based on an alternative methodology for setting avoided cost, the Fossil Fuel Unit Type Portfolio approach. As stated in the Order:

> We find that a different approach – 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. Under this approach, each investor-owned electric utility shall file a portfolio of standard offer contracts comprised of individual contracts based on the next avoidable fossil-fueled generating unit of each technology type in the utility's 2006 Ten-Year Site Plans. Renewable generators may then select a standard offer contract based on the IOU's avoided unit type that best meets the renewable generator's pricing and timing needs and most closely matches the operating characteristics of the renewable technology.

Order No. PSC-06-0486-TRF-EQ approved the IOUs' proposed standard offer contracts, and required FPL, PEF and TECO to file additional contracts within 90 days based on additional planned generating units, to fulfill the requirements of a Fossil Fuel Unit Type Portfolio approach. Since Gulf had only a single planned generating unit in its TYSP, Gulf was not required to file additional contracts. The Commission also directed its staff to initiate

[2] The protests of the initial standard offer contracts approved in Order No. PSC-05-1260-TRF-EQ are now moot because the standard offer contracts of FPL, PEF, Gulf, and TECO expired as of June 1, 2006. Further, although FPUC's initial standard offer contract has not expired, on August 4, 2006, Bay County withdrew its protest.

rulemaking to implement Section 366.91, Florida Statutes. On June 26, 2006, the Florida Industrial Cogeneration Association (FICA) filed a protest of Order No. PSC-06-0486-TRF-EQ and requested a formal hearing. FICA, however, agreed to a reasonable delay of the hearing until after the Commission's rulemaking proceeding was completed. Due to FICA's protest, the standard offer contracts approved by the Commission's order are not in effect, and FPL, PEF and TECO are not required to file additional contracts.

On August 23, 2006, staff held a rule development workshop to discuss changes to the Commission's existing cogeneration rules, Rule 25-17.0832, Florida Administrative Code. The staff based its draft rule language on Order No. PSC-06-0486-TRF-EQ. On September 13, 2006, post-workshop comments were filed by FPL, Gulf, PEF, and TECO. Montenay-Dade Limited and Lee County filed combined comments. The City of Tampa, the Solid Waste Authority of Palm Beach County and the FICA also filed combined comments.

This recommendation will address staff's recommended amendments to Rule 25-17.0832, Florida Administrative Code, included as Attachment A. The Commission has jurisdiction over this matter pursuant to Sections 366.04 through 366.06, Florida Statutes, and Section 366.91, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission propose amendments to Rule 25-17.0832, Florida Administrative Code?

Recommendation: Yes. The recommended amendments will meet the requirements of Section 366.91, Florida Statutes, and encourage the development of renewable generators. This will provide utilities with additional opportunities to maintain a balanced fuel supply. (Harlow, Harris)

Staff Analysis: Staff based the attached draft amendments to Rule 25.17.0832, Florida Administrative Code (F.A.C.), on Order No. PSC-06-0486-TRF-EQ, issued June 6, 2006, along with the comments provided by interested persons. The substantive recommended amendments are discussed below:

Eligible Facilities (Attachment A, page 14, lines 14 through 23; page 15, lines 1 through 2) – Staff's recommended amendments to Rule 25-17.0832(4)(a), F.A.C., establish that renewable facilities, as defined by Section 366.91, Florida Statutes, are eligible to sign standard offer contracts. The recommended amendments also increase administrative efficiency by requiring utilities to offer these contracts to both renewable generators and small qualifying facilities, rather than offering a separate standard offer to small qualifying facilities. Utilities are required to offer to purchase capacity and energy from small qualifying facilities under the federal Public Utility Regulatory Policy Act. Staff deleted the existing rule language on eligible renewable facilities and municipal solid facilities (Attachment A, page 14, lines 19 through 21; page 15, line 2) because this was redundant when the definition of eligible renewable facilities as stated in Section 366.91, Florida Statutes, was added.

Staff disagrees with the comments filed by the City of Tampa, the Solid Waste Authority of Palm Beach County and FICA that there should be separate standard offer rules for qualifying facilities and renewable generators. This comment is based on the argument that renewable generators should have a revised method of calculating avoided cost, compared to the current methodology, with renewable generators receiving higher payments than other qualifying facilities. Staff disagrees. Section 366.91, Florida Statutes, states that utilities should continuously offer to purchase capacity and energy from renewable generators at full avoided cost. It is clear that the Legislature's intent is to encourage renewable generation while holding ratepayers harmless. Staff believes the Fossil Fuel Unit Type Portfolio approach, as discussed below, will accomplish both goals.

Avoided Cost (Attachment A, page 15, lines 3 through 6) – Staff recommends a new subsection (4)(b) to require utilities to file standard offer contracts based on a Fossil Fuel Unit Type Portfolio approach for setting avoided cost. This approach requires investor-owned utilities to submit a standard offer contract or contracts based on the next avoidable unit of each technology type identified in the utility's current Ten-Year Site Plan (TYSP). Utilities with no planned generation are required to file a standard offer based on a planned purchase. Staff believes the Fossil Fuel Unit Type Portfolio approach will encourage the development of renewable generators beyond the current policy of setting avoided cost based on a single unit, the utility's next avoided unit. The Commission recently directed utilities to file contracts based on this

approach for setting avoided cost in Order No. PSC-06-0486-TRF-EQ. As stated in the Order, at page five:

> The Fossil Fuel Unit Type Portfolio approach will promote renewable generation to a greater degree than the single avoided unit approach by offering renewable generators a menu of contracts based on various generating technologies, with different pricing, timing, and operating characteristics.

The IOUs, Montenay-Dade Limited and Lee County filed post-workshop comments in support of the Fossil Fuel Unit Type Portfolio approach for determining avoided cost. Staff disagrees with the comments filed by the City of Tampa, the Solid Waste Authority of Palm Beach County and FICA that avoided costs should be based on a statewide unit, preferably a baseload coal unit. The Unit Type Portfolio approach is more reality based and hence reflects the true economics of each utility's integrated resource plan. Further, the Unit Type Portfolio approach is easier to administer than a statewide avoided unit approach and gives renewable generators access to a coal-based contract if a utility has a coal generating unit in its TYSP. Section 366.91(4), Florida Statutes, clearly states that the contracts should be based on a utility's full avoided cost. Staff believes a statewide unit approach would introduce unnecessary ratepayer risk that contracts would be priced above a utility's true avoided cost if the utility did not have a coal generating unit in its TYSP.

Procedure for Filing and Closing Contracts (Attachment A, page 15, lines 3 through 14) – New subsection (4)(b), discussed above, requires investor-owned utilities to file a new standard offer contract or contracts each April 1, concurrent with the filing of a revised Ten-Year Site Plan. Staff's recommended new subsection (4)(c), requires each contract to remain open until either: (1) a request for proposals is issued for generating units subject to Rule 25-17.082, F.A.C., the Bid Rule; (2) the utility files a need determination or begins construction for units not subject to the Bid Rule; or (3) the contract's subscription limit is reached.

The draft rule discussed at the workshop required utilities to file a new contract after a contract was closed. Several renewable generators expressed concern that this process would leave a time gap between the closing of one contract and the approval of the next contract. These renewable generators stated that staff's draft rule may not meet the intent of the statute that contracts be continuously offered. Staff believes this time gap would not be prolonged, due to the requirement to file contracts each April 1 and to file new contracts when each contract is closed. In its post-workshop comments, PEF stated that it is unlikely that renewable generators will fully subscribe a standard offer contract resulting in a time gap. PEF noted that the size of an IOU's avoided unit is much larger than the typical renewable generator, and if one standard offer contract is fully subscribed, it is probable that under the Fossil Fuel Unit Type Portfolio approach other contracts will remain open. Nonetheless, staff changed the draft rule to require utilities to file a new contract prior to closing a contract, based on the next avoided unit of the same generating technology, if any. This will provide more certainty that the contracts will be continuously offered. Further, staff believes this requirement is more consistent with the intent of the Fossil Fuel Unit Type Portfolio approach that renewable generators should have access to multiple contracts with different pricing, timing and operational characteristics. For

administrative efficiency, utilities with no planned units of the same technology type will notify the Director of Economic Regulation when a contract is closed.

Staff also recommends deletion of subsection (4)(e)5. which required a reasonable open solicitation period for contracts. (Attachment A, page 16, lines 22 through 23; page 17, line 1) In recent history, utilities have included two to four week open solicitation periods in standard offer contracts. This made it difficult for renewable generators to predict when a contract would be offered. The statute's requirement for standard offer contracts to be continuously offered will substantially increase certainty and the access to these contracts for renewable generators.

In its post-workshop comments, FPL stated that the rule should be revised to close a contract automatically when a utility files its new TYSP. Staff does not believe this change is necessary. Staff believes it is clear under the recommended rule amendments that new contracts must be filed concurrent with the filing of each utility's TYSP.

Subscription Limit (Attachment A, page 15, lines 10 through 11) – Staff's recommended new subsection (4)(c) sets the subscription limit for each contract equal to the capacity of the avoided unit. In recent history, standard offer contracts have been issued with relatively small subscription limits of five to ten megawatts (MW). Staff's recommended rule change vastly expands the size of the contracts available to renewable generators. For example, just as in the recommended rule amendments, Order No. PSC-06-0486-TRF-EQ, required contracts based on the Fossil Fuel Unit Type Portfolio approach with subscription limits for each contract set equal to the size of the avoided unit. The Order gave renewable generators access to contracts for up to 2,205 MW priced on avoided coal-fired capacity and 2,730 MW priced on natural gas-fired capacity. Montenay-Dade Limited, Lee County and the IOUs support a subscription limit equal to the size of the avoided unit. The City of Tampa, the Solid Waste Authority of Palm Beach County and FICA believe that any subscription limit is inconsistent with the requirement for utilities to continuously offer to purchase capacity and energy from renewable generators, and "will do nothing more than chill development of such facilities. . .." Staff disagrees. As stated above, under the Commission's recent Order, renewable generators would enjoy standard offer contracts with a total capacity limit of 4,935 MW from the state's four major IOUs alone. FPUC, JEA and the Orlando Utilities Commission are offering additional standard offer contracts. Further, much of this capacity is baseload coal capacity, with operating characteristics similar to many renewable facilities. Staff disagrees that such an increase in opportunity to sign standard offer contracts based on several types of avoided capacity compared to current policy can have a chilling effect on the development of renewable generators.

The utilities expressed a concern that under the existing rule, negotiated contracts can not be applied toward the subscription limit of standard offer contracts. Staff agrees that this could dampen utility efforts to negotiate agreements with renewable generators. The Commission has encouraged negotiated contracts due to the potential cost-saving benefits for ratepayers. In order to limit ratepayer risk and encourage negotiated contracts, staff recommends amendments to section (2), to require the capacity from negotiated contracts to be applied toward the subscription limit for standard offers. (Attachment A, page 13, lines 7 through 10)

Contract Term (Attachment A, page 16, line 19; page 17, lines 5 through 10) – Section 366.91, Florida Statutes, requires a minimum ten-year term. Staff's recommended amendments to

subsections (g)(3) and (g)(6) increase the minimum term for a standard offer contract from five to ten years. Staff retained the existing rule language that allows a maximum term up to the life of the avoided unit.

There was extensive discussion on the contract term at the August 23, 2006, rule development workshop and in the post-workshop comments. The IOUs agree with a contract term with a minimum of ten years up to the life of the avoided unit, and believe the term should be set by the utility in the standard offer contract. As stated by FPL, "[s]tandard offer contracts by their very nature require some fixed duration." Utilities have included a fixed contract term in recent standard offers. The consensus of the renewable generators is that the renewable generator should have the flexibility to select the desired term. The City of Tampa, the Solid Waste Authority of Palm Beach County and FICA believe the maximum contract term should be at least 30 years, while Montenay-Dade Limited and Lee County agree with a maximum term equal to the life of the avoided unit.

Staff is concerned that allowing the renewable generator to set the contract term will expose ratepayers to the risk associated with long-term contracts. Over time, technological advancements or economic factors could change, resulting in opportunities for utilities to generate or purchase capacity at reduced costs. Under the current rule, however, standard offer contracts are priced with fixed escalation factors based on current conditions. Long-term contracts may therefore result in above market costs for ratepayers. At the August 23, 2006, workshop, Wheelabrator Technologies Incorporated's representative agreed that there is risk in long-term contracts, but stated that there is also risk associated with a utility building a unit with a useful life of 25 to 40 years. Several renewable generators also expressed concern that they may be unable to obtain financing for a new project with only a ten-year contract in hand. Staff does not believe that there is enough evidence at this time to change the Commission's existing policy of allowing utilities to set the contract term in standard offer contracts. Staff notes that if a renewable generator is unable to obtain financing under the conditions of a standard offer contract, that renewable generator is free to negotiate a longer term contract with the utility. If a utility is unwilling to negotiate, the renewable generator has recourse to petition the Commission for relief. In its post-workshop comments, PEF stated that the Commission's rules require a utility to negotiate in good faith. If this does not occur, PEF agreed that a renewable generator can petition for relief.

Staff disagrees with TECO that standard offer contracts based on a purchase should have a term equal to the expected term of the purchase, even if this term is less than ten years. Under the proposed rule amendments, only IOUs with no planned generation are required to offer a standard offer contract based on a planned purchase. It is clear that standard offer contracts, regardless of how avoided cost is determined, must have a minimum ten-year term in order to meet the requirements of Section 366.91, Florida Statutes.

Additional Issues – Several additional issues were addressed in the post-workshop comments that staff does not believe are appropriate to include in the recommended rule amendments at this time, including:

Tradable Renewable Energy Credits (T-RECs) – These are tradable financial instruments that represent the environmental benefits of renewable energy. There is a developing market for T-

RECs in the United States. The IOUs and renewable generators agree that T-RECs belong to the renewable generators. The credits will provide an additional revenue source for renewable generators. The IOUs and renewable generators agree that it is appropriate for standard offers to provide a right of first refusal for utilities to purchase T-RECs from the renewable generator. The renewable generators expressed concern that IOUs must offer market rates for T-RECs. Staff believes it is premature to address this in a rule because T-RECs are a relatively new concept with a developing market. Utilities can address T-RECs in future standard offer contracts, which can be reviewed by the Commission on a case-by-case basis.

Carbon Taxes – Montenay-Dade Limited and Lee County stated that renewable generators should receive payment for avoided future carbon taxes or carbon allowances. Carbon taxes or allowances are not currently required under federal or state law. Staff believes it is premature to address this issue in the rule amendments. If carbon taxes or allowances are required by law in the future, staff believes this should be reflected in a utility's avoided cost, and that this can initially be reviewed on a case-by-case basis when individual contracts are submitted for approval.

Goals for Renewable Energy – In the 2006 session, the Legislature enacted Section 366.92, Florida Statutes, which states that the Commission may set goals for renewable energy for electric utilities. Several renewable generators expressed a desire to include this topic in the standard offer rulemaking proceeding. Staff believes it is premature to include goals in the current rulemaking proceeding. The recommended rule amendments, along with relatively high avoided cost, recently passed tax incentives for renewable generators, and the developing T-REC market provide significant encouragement for renewable generators. Further, staff is collecting information to get a clearer picture of the status of renewable energy activities by the state's utilities. Staff believes it is appropriate to move forward expeditiously with putting an amended rule in place, so the effect of the rule can be analyzed prior to considering a goal setting proceeding.

Cost Impacts of the Recommended Rule Amendments – Staff prepared a Statement of Estimated Regulatory Costs which is included as Attachment B. In summary, the IOUs would have insignificant transactional costs from the recommended rule amendments and would benefit administratively from having the same standard offer contract for renewable generators and small qualifying facilities. There would be some additional costs for the Commission to review any additional contracts that are required by the recommended rule amendments, but this would not require additional staff. The Commission would benefit because the recommended rule amendments clarify when a new standard offer contract must be filed. The IOUs' customers would benefit from having a more diverse fuel supply and enhanced reliability. The recommended rule amendments would expand the choice of avoidable generation units for renewable generators wishing to enter standard offer contracts to sell their output, as well as increase the size of the capacity offered under these contracts.

Conclusion - Staff recommends that the Commission propose the amendments to Rule 25-17.0832, F.A.C., as shown in Attachment A. The recommended rule amendments meet the intent of Section 366.91, Florida Statutes, to encourage the development of renewable generators while balancing the interests of ratepayers. Staff disagrees with the post-workshop comments of

the City of Tampa, the Solid Waste Authority of Palm Beach County and FICA that the proposed rule changes are "minor changes in the status quo. . .." The recommended amendments will encourage renewable generation by expanding the standardized contracts offered to these generators, while maintaining a preference for negotiated contracts. Under the Fossil Fuel Unit Type Portfolio approach, renewable generators may choose among a portfolio of standardized contracts with various pricing, timing and operating characteristics. In recent history, most standard offer contracts have been priced based on a natural gas-fired combustion turbine peaking unit. Staff notes that under the Commission's recent order, contracts would be available priced on baseload coal-fired capacity, baseload natural gas-fired capacity and natural gas-fired peaking capacity. Renewable generators will also have the opportunity to sign contracts for much greater levels of capacity, totaling 4,935 MW for the four major IOUs alone. This will allow existing and planned renewable generators to sign standard offers for a generating unit's full capacity. This compares to recent history, in which standard offer contracts have been issued with subscription limits of five to ten MW. Further, the Commission has encouraged Florida's electric utilities to maintain a balanced fuel supply. If utilities sign contracts with renewable generators as a result of the rule, utilities and ratepayers will benefit due to enhanced fuel diversity and reliability.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission proposes amendments to Rule 25-17.0832, F.A.C., and no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. The Commission has held a hearing date of November 9, 2006, to address any request for hearing or filed comments. (Harris)

Staff Analysis: If the Commission proposes amendments to Rule 25-17.0832, F.A.C., staff will publish a notice of rule proposal in the Florida Administrative Weekly. Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State for adoption and the docket may then be closed. If comments or a request for hearing are timely filed, then staff recommends a rule hearing be held on November 9, 2006.

1 **25-17.0832 Firm Capacity and Energy Contracts.**

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

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

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

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

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25 existing law.

contracts will be considered prudent for cost recovery purposes if it is 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,

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provided that the contract is designed to avoid such costs;

(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 and renewable generators, as defined by Section 366.91, F.S. 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;~~ renewable generating facility as defined by Section 366.91, F.S.; or

2. A qualifying facility, as defined by subsection 25-17.080(3), F.A.C., with a design capacity of

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100 kW or less~~; or~~.

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

(b) By April 1 of each year, concurrent with filing a Ten-Year Site Plan, each public utility 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. Before 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

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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 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)~~

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~~pursuant to subsection 25-22.082(3), F.A.C., the utility shall end the open solicitation period;~~

~~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, and, at a maximum, the life of the avoided unit, 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:

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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 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.

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1 (c) The energy cost of the avoided unit specified in the contract shall be defined as the cost of
2 fuel, in cents per kilowatt-hour, which would have been burned at the avoided unit plus variable
3 operation and maintenance expense plus avoided line losses. The cost of fuel shall be calculated
4 as the average market price of fuel, in cents per million Btu, associated with the avoided unit
5 multiplied by the average heat rate associated with the avoided unit. The variable operating and
6 maintenance expense shall be estimated based on the unit fuel type and technology of the
7 avoided unit.
8 (6) Calculation of standard offer contract firm capacity payment options.
9 (a) Calculation of year-by-year value of deferral. The year-by-year value of deferral of an
10 avoided unit shall be the difference in revenue requirements associated with deferring the
11 avoided unit one year and shall be calculated as follows:
12 VAC m = 1/12[KIn (1 - R)/(1 - R L) + On]
13 Where, for a one year deferral:
14 (b) Calculation of early capacity payments. Monthly early capacity payments shall be calculated
15 as follows:
16 Am = [Ac (1 + ip)(m - 1)) + Ao (1 + io) (m - 1)] /12 for m = 1 to t
17 Ao = G[(1 - R) (1 - Rt)]
18 (c) Levelized and early levelized capacity payments. Monthly levelized and early levelized
19 capacity payments shall be calculated as follows:
20 VACm = utility's monthly value of avoided capacity, in dollars per kilowatt per month, for each
21 month of year n;
22 K = present value of carrying charges for one dollar of investment over L years with carrying
23 charges computed using average annual rate base and assumed to be paid at the middle of each
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1 year and present value to the middle of the first year;
2 R = (1 + ip)/(1 + r);
3 In = total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but
4 excluding CWIP, of the avoided unit with an in-service date of year n, including all identifiable
5 and quantifiable costs relating to the construction of the avoided unit that would have been paid
6 had the avoided unit been constructed;
7 On = total fixed operation and maintenance expense for the year n, in mid-year dollars per
8 kilowatt per year, of the avoided unit;
9 ip = annual escalation rate associated with the plant cost of the avoided unit(s);
10 io = annual escalation rate associated with the operation and maintenance expense of the avoided
11 unit(s);
12 r = annual discount rate, defined as the utility's incremental after tax cost of capital;
13 L = expected life of the avoided unit; and
14 n = year for which the avoided unit is deferred starting with its original anticipated in-service
15 date and ending with the termination of the contract for the purchase of firm energy and capacity.
16 Where: Am = monthly early capacity payments to be made to the qualifying facility for each
17 month of the contract year n, in dollars per kilowatt per month;
18 ip = annual escalation rate associated with the plant cost of the avoided unit;
19 io = annual escalation note associated with the operation and maintenance expense of the
20 avoided unit(s);
21 m = year for which early capacity payments to a qualifying facility are made, starting in year one
22 and ending in the year t;
23 t = the term, in years, of the contract for the purchase of firm capacity;
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25 existing law.

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

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 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

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1 a qualifying facility pursuant to a standard offer contract shall be recoverable by a utility through
2 the Commission's periodic review of fuel and purchased power costs.
3 (c) Firm energy and capacity payments made pursuant to a standard offer contract signed by the
4 qualifying facility, for which the utility has petitioned the Commission to reject, is recoverable
5 through the Commission's periodic review of fuel and purchased power costs if the Commission
6 requires the utility to accept the contract because it satisfies subsection (4) of this rule.
7 Specific Authority 350.127, 366.05(1), 366.91(3) FS.
8 Law Implemented 366.051, 366.81, 366.91 FS.
9 History–New 10-25-90, Amended 1-7-97, 5-18-03, ________.
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State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 21, 2006

TO: Office of General Counsel (Harris)

FROM: Division of Economic Regulation (Hewitt)

RE: Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts

SUMMARY OF THE RULE

The above rule contains the requirements for investor-owned electric utilities (IOUs) to offer a standard purchase contract to qualifying producers of energy. The rule requires that each contract contain payment provisions for capacity and energy that does not exceed a utility's full avoided costs. The rule also contains the requirements for negotiated contracts and conditions for Commission approval and specifies that contracts must be for a minimum five year term.

The proposed rule amendments would clarify and broaden the process for entities seeking to enter into a contract to provide energy pursuant to Section 366.91, Florida Statutes. Each IOU would have to offer contracts to renewable generators in addition to small qualifying facilities rather than a separate standard offer to small qualifying facilities and the contracts would run for a minimum of ten years and a maximum of the life of the avoided unit. Also, the proposed changes would base the standard offer contract on a fuel portfolio approach where the next avoidable unit of each technology type identified in the utility's current ten-year site plan (TYSP) would be available. The rule changes would require a new standard offer contract to be filed each April 1, concurrent with the filing of the TYSP. Capacity payments would not be required if there are no capacity benefits to the utility.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The five investor owned electric utilities (IOUs) would be affected by the proposed rule changes. The IOUs sell electricity to industrial, commercial, and residential customers throughout the state. Other entities possibly affected would be any qualifying facility that wanted to sell energy to an IOU.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

There would be some minor costs for the Commission to review any additional contracts that are encouraged by the proposed rule changes. The Commission would benefit with the proposed rule amendments from the reduced amount of staff time needed to inform utilities when

a new contract must be filed. There should be no impact on agency revenues and the costs of administering the rule changes would be covered by existing staff.

There should be no negative impact on other state and local government entities. Those county or local governmental entities that may own renewable generators, such as a municipal solid waste facility, should benefit by having a portfolio of contracts to choose among with various pricing, timing, and operational characteristics. Larger capacity size contracts would also be available with a longer contract period. As an IOU customer, state and local government entities would in general benefit from the increased fuel diversity.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Electric Utilities' Costs

IOUs would have low transactional costs from the proposed rule changes. Tampa Electric Company (TECO) estimates that to create a new standard offer contract to reflect a new unit technology type would cost approximately $2,850. The incremental costs of updating and maintaining existing standard offer contracts would be about $500 annually. Gulf Power Company (GULF) adopts TECO's comments filed in this docket. Florida Power & Light (FPL) estimates that ongoing costs related to the proposed rule changes would be approximately $10,000 per year.

Benefits

The IOUs would benefit from the administrative efficiency of combining small qualifying facilities and renewables. Ratepayers would benefit from the increased fuel diversity and renewable energy generation.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a net positive impact on small businesses, cities, and counties with improved fuel diversity and reliability from the qualifying energy generating facilities. Those small entities that own a renewable facility or want to develop a facility would be eligible to sign a standard offer contract with utilities to sell capacity and energy from renewable fuel. They would have a portfolio of avoided generation units to choose among and a capacity limit up to the size of the avoided unit.

CH:kb

cc: Mary Andrews Bane
Chuck Hill
Judy Harlow
Hurd Reeves