

COMMISSIONERS:
LISA POLAK EDGAR
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

STATE OF FLORIDA



ORIGINAL

OFFICE OF THE GENERAL COUNSEL
MICHAEL G. GOSKE
GENERAL COUNSEL
(850) 413-6199

RECEIVED FPSC
06 OCT -6 AM 10:41

COMMISSION
CLERK

Public Service Commission

October 7, 2006

Mr. Scott Boyd, Executive Director
Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

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

Dear Mr. Boyd:

Enclosed is the following material concerning the above referenced proposed rule:

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC _____
- OTH _____

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. A statement of estimated regulatory costs.

If there are any questions with respect to this rule, please do not hesitate to call me.

Sincerely,

Larry D. Harris
Associate General Counsel

060555 JAPC.ldh.doc

Enclosures

cc: Division of the Commission Clerk
and Administrative Services

DOCUMENT NUMBER-DAT

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

An Affirmative Action / Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

09236 OCT -6 8
FPSC-COMMISSION CLERK

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

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

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

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

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

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

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

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

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

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

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

1 of capacity, provided that the contract is designed to avoid such costs;

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

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

13 (4) Standard Offer Contracts.

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

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

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

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

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

1 (b) By April 1 of each year, concurrent with filing a Ten-Year Site Plan, each public
2 utility shall submit standard offer contract(s) based on the next avoidable fossil fueled
3 generating unit of each technology type identified in its Ten-Year Site Plan. Each public utility
4 with no identified planned generating units shall submit a standard offer contract based on a
5 planned purchase.

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

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

23 (ee) The utility shall evaluate, select, and enter into standard offer contracts with
24 eligible qualifying facilities based on the benefits to the ratepayers. Within 60 days of receipt
25 of a signed standard offer contract, the utility shall either: 1. Accept and sign the contract and

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

1 return it within five days to the qualifying facility; or 2. Petition the Commission not to accept
2 the contract and provide justification for the refusal. Such petitions may be based on: a. A
3 reasonable allegation by the utility that acceptance of the standard offer will exceed the
4 subscription limit of the avoided unit or units; or b. Material evidence showing that because
5 the qualifying facility is not financially or technically viable, it is unlikely that the committed
6 capacity and energy would be made available to the utility by the date specified in the
7 standard offer.

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

13 (ge) Minimum Specifications. Each standard offer contract shall, at minimum, specify:

14 1. The avoided unit or units on which the contract is based;
15 2. The total amount of committed capacity, in megawatts, needed to fully subscribe the
16 avoided unit specified in the contract;

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

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

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

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

1 solicitation period;

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

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

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

16 89. The description of the proposed facility including the location, steam host,
17 generation technology, and fuel sources;

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

25 (hf) The utility may include the following provisions:

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

1 1. Provisions to protect the purchasing utility's ratepayers in the event the qualifying
2 facility fails to deliver firm capacity and energy in the amount and times specified in the
3 contract which may be in the form of an up-front payment, surety bond, or equivalent
4 assurance of payment. Payment or surety shall be refunded upon completion of the facility and
5 demonstration that the facility can deliver the amount of capacity and energy specified in the
6 contract; and

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

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

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

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

21 2. Early capacity payments. Each standard offer contract shall specify the earliest date
22 prior to the anticipated in-service date of the avoided unit when early capacity payments may
23 commence. The early capacity payment date shall be an approximation of the lead time
24 required to site and construct the avoided unit. Early capacity payments shall consist of
25 monthly payments escalating annually of the avoided capital and fixed operation and

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

1 maintenance expense associated with the avoided unit, calculated in conformance with
2 paragraph (6)(b) of the rule. At the option of the qualifying facility, early capacity payments
3 may commence at any time after the specified early capacity payment date and before the
4 anticipated in-service date of the avoided unit provided that the qualifying facility is delivering
5 firm capacity and energy to the utility. Where early capacity payments are elected, the
6 cumulative present value of the capacity payments made to the qualifying facility over the
7 term of the contract shall not exceed the cumulative present value of the capacity payments
8 which would have been made to the qualifying facility had such payments been made pursuant
9 to subparagraph (4)(ig)1. of this rule.

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

21 4. Early levelized capacity payments. Each standard offer contract shall specify the
22 earliest date prior to the anticipated in-service date of the avoided unit when early levelized
23 capacity payments may commence. The early capacity payment date shall be an
24 approximation of the lead time required to site and construct the avoided unit. The capital
25 portion of capacity payments under this option shall consist of equal monthly payments over

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

1 the term of the contract, calculated in conformance with paragraph (6)(c) of this rule. The
2 fixed operation and maintenance expense shall be calculated in conformance with paragraph
3 (6)(b) of this rule. At the option of the qualifying facility, early levelized capacity payments
4 shall commence at any time after the specified early capacity date and before the anticipated
5 in-service date of the avoided unit provided that the qualifying facility is delivering firm
6 capacity and energy to the utility. Where early levelized capacity payments are elected, the
7 cumulative present value of the capacity payments made to the qualifying facility over the
8 term of the contract shall not exceed the cumulative present value of the capacity payments
9 which would have been made to the qualifying facility had such payments been made pursuant
10 to subparagraph (4)(i)1. of this rule.

11 (5) Avoided Energy Payments for Standard Offer Contracts.

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

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

24 (c) The energy cost of the avoided unit specified in the contract shall be defined as the
25 cost of fuel, in cents per kilowatt-hour, which would have been burned at the avoided unit plus

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

1 variable operation and maintenance expense plus avoided line losses. The cost of fuel shall be
2 calculated as the average market price of fuel, in cents per million Btu, associated with the
3 avoided unit multiplied by the average heat rate associated with the avoided unit. The variable
4 operating and maintenance expense shall be estimated based on the unit fuel type and
5 technology of the avoided unit.

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

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

$$10 \text{ VAC}_m = 1/12[\text{KIn}(1 - R)/(1 - RL) + \text{O}_n]$$

11 Where, for a one year deferral:

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

$$14 \text{ A}_m = [\text{A}_c(1 + ip)^{(m - 1)} + \text{A}_o(1 + io)^{(m - 1)}] / 12 \text{ for } m = 1 \text{ to } t$$

$$15 \text{ A}_o = G[(1 - R)(1 - R_t)]$$

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

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

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

$$23 R = (1 + ip)/(1 + r);$$

24 In = total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but
25 excluding CWIP, of the avoided unit with an in-service date of year n, including all

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

1 identifiable and quantifiable costs relating to the construction of the avoided unit that would
2 have been paid had the avoided unit been constructed;

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

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

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

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

9 L = expected life of the avoided unit; and

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

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

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

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

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

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

21 $A_c = F[(1 - R)/(1 - R^t)]$

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

25 $R = (1 + i_p)/(1 + r)$; and

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

1 r = annual discount rate, defined as the utility's incremental after tax cost of capital; and
2 Where: G = The cumulative present value in the year that the contractual payments will begin,
3 of the avoided fixed operation and maintenance expense component of capacity payments
4 which would have been made had capacity payments commenced with the anticipated in-
5 service date of the avoided unit; and

6 $R = (1 + io)/(1 + r).$

7 $PL = F/12 \{r/[1 - (1 + r)^{-t}]\} + O$

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

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

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

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

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
from existing law.

1 | this rule.
2 | Specific Authority 350.127, 366.05(1), 366.91(3) FS.
3 | Law Implemented 366.051, 366.81, 366.91 FS.
4 | History—New 10-25-90, Amended 1-7-97, 5-18-03, _____.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060555-EI

RULE TITLE:

RULE NO.:

Firm Capacity and Energy Contracts

25-17.0832

PURPOSE AND EFFECT: To expand alternatives for standard offer contracts for renewable generators.

SUMMARY: The proposed amendments implement Section 366.91, F.S., to encourage the development of renewable generators in Florida. The proposed amendments will expand standardized contracts available to renewable generators as well as extending the minimum term of a contract from 5 to 10 years and allowing a renewable generator to select from a portfolio of standardized contracts with varying terms, conditions, operating characteristics and pricing.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The SERC estimates that this rule will impact the state's investor-owned electric utilities with a range of approximately \$500 to \$10,000 per year. There should be no impact on state or local government entities, and a positive impact on small businesses, cities and counties.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127, 366.05(1), 366.91(3), FS

LAW IMPLEMENTED: 366.051, 366.81, 366.91, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND

ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., Thursday, November 9, 2006

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry Harris, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6076.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-17.0832 Firm Capacity and Energy Contracts.

(1) No Change.

(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 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) No Change.

(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 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.

(db) (b) and (c) renumbered as (d) and (e) No Change.

(fd) A standard offer contract which has been accepted by a utility ~~qualifying facility~~ 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.

(ge) No Change.

1. – 2. No Change.

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 ten ~~five~~ year term contract commencing with the in-service date of the avoided unit for each payment option;

4. No Change.

~~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;~~

56. No Change.

67. 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 ten five 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;~~

78. 8. through 10. renumbered as 7. through 9. No Change.

(hf) (f) and (g) renumbered as (h) and (i) No Change.

1. No Change.

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)(ig)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)(ig)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)(ig)1. of this rule.

(5) – (8)(c) No Change.

Specific Authority 350.127, 366.05(1), 366.91(3) FS.

Law Implemented 366.051, 366.81, 366.91 FS.

History–New 10-25-90, Amended 1-7-97, 5-18-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Judy Harlow

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE(S) APPROVED: October 3, 2006.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 32, Number 31, August 4, 2006.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should

contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE

The Commission directed its staff to initiate rulemaking related to the implementation of Section 366.91, F.S., by Order No. PSC-06-0486-TRF-EQ, issued June 6, 2006. Section 366.91, F.S., requires investor-owned electric utilities to continuously offer to purchase capacity and energy from renewable generators. In recent history under the current rules, utilities have not signed standard offer contracts with renewable generators. The intent of Section 366.91, F.S., is to encourage the development of renewable generators. The proposed rule amendments will encourage renewable generation by expanding the standardized contracts offered to these generators. Under the Unit Type Portfolio approach, renewable generators may choose among a portfolio of standardized contracts with various pricing, timing and operating characteristics. 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. The Commission will monitor whether the revised rules result in the utilities purchasing more capacity and energy from renewable generators.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

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) *RA 05 198*
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