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RICHARD A. ZAMBO, P.A.
ATTORNEYS AND COUNSELLORS
2336 S. East Ocean Blvd. # 309
Stuart, Florida 34996-3310
Telephone (772) 225-5400
FAX (772) 232-0205
Email: richzambo@aol.com

REGISTERED PROFESSIONAL ENGINEER
REGISTERED PATENT ATTORNEY

COGENERATION & RENEWABLE ENERGY
ENERGY REGULATORY LAW

November 3, 2006

Ms. Blanca S. Bayó, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850


Via Hand Delivery

Re: **FPSC Docket No. 060555-EI**
Proposed Amendments To Rule 25-17.0832, F.A.C. Firm Capacity and Energy Contracts

Dear Ms. Bayó:

Enclosed for filing in the referenced proceedings find the original and 15 copies of the following:

- | | | |
|-----|------------|--|
| CMP | _____ | |
| COM | <u>5</u> | • Direct Testimony and Exhibits of Frank Seidman on behalf of the City of Tampa, the Solid Waste Authority of Palm Beach County, the Florida Industrial Cogeneration Association and the Covanta Energy Corporation; |
| CTR | <u>Org</u> | |
| ECR | _____ | • Direct Testimony of Michael D. Bedley on behalf of the City of Tampa, the Solid Waste Authority of Palm Beach County, the Florida Industrial Cogeneration Association and the Covanta Energy Corporation; 10191-06 |
| GCL | <u>1</u> | |
| OPC | _____ | |
| RCA | _____ | • Direct Testimony of Marc C. Bruner on behalf of the Solid Waste Authority of Palm Beach County; and, 10192-06 |
| SCR | _____ | |
| SGA | _____ | • Direct Testimony of David W. McCary on behalf of the City of Tampa. 10193-06 |
| SEC | <u>1</u> | |
| OTH | _____ | |
- We have also enclosed a CD containing the above testimony in MS Word format. If you have any questions or require anything further, please contact this office.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Sincerely,



Richard A. Zambo
Florida Bar No. 312525

RAZ/nb

xc: Parties of record via hand delivery or FedEx
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10190 NOV-3 g

FPSC-COMMISSION CLERK

TESTIMONY AND EXHIBITS OF FRANK SEIDMAN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
IN DOCKET NO. 060555-EI
REGARDING PROPOSED AMENDMENTS
TO RULE 25-17.0832, F.A.C.,
FIRM CAPACITY AND ENERGY CONTRACTS

ON BEHALF OF

THE CITY OF TAMPA
THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION
And
COVANTA ENERGY CORPORATION

NOVEMBER, 2006

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8 THE CITY OF TAMPA
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10 THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION
11 And
12 COVANTA ENERGY CORPORATION

13 **Q. Please state your name, profession and address.**

14 A. My name is Frank Seidman. I am President of Management and
15 Regulatory Consultants, Inc., consultants in the utility regulatory
16 field. My mailing address is P.O. Box 13427, Tallahassee, FL
17 32317-3427.

18
19 **Q. State briefly your educational background and experience.**

20 A. I hold the degree of Bachelor of Science in Electrical Engineering
21 from the University of Miami. I have also completed several
22 graduate level courses in economics at Florida State University,
23 including public utility economics. I am a Professional Engineer,
24 registered to practice in the state of Florida. I have over 40 years
25 experience in utility regulation, management and consulting. This
26 experience includes nine years as a staff member of the Florida
27 Public Service Commission, two years as a planning engineer for a
28 Florida telephone company, four years as Manager of Rates and

1 Research for a water and sewer holding company with operations
2 in six states, and three years as Director of Technical Affairs for a
3 national association of industrial users of electricity. I have been
4 providing rate and regulatory consulting services in Florida for over
5 25 years. Specifically, with regard to Commission rules affecting
6 cogenerators and small power producers, I have participated in the
7 development of those rules on behalf of cogenerators and small
8 power producers, and presented testimony or comments before this
9 Commission on their behalf, in nearly every rulemaking proceeding
10 since 1982.

11

12 **Q. On whose behalf are you presenting this testimony?**

13 A. I am presenting this testimony and appearing on behalf of the City
14 of Tampa, Florida ("Tampa"), the Solid Waste Authority of Palm
15 Beach County, Florida ("the Authority") the Florida Industrial
16 Cogeneration Association (FICA) and Covanta Energy Corporation
17 ("Covanta") who may be collectively referred to herein as the
18 "Renewables Group".

19

20 **Q. What is the interest of Tampa, the Authority, FICA and Covanta
21 in this proceeding?**

22 A. The presumed basis for this rulemaking is compliance with Section
23 Section 366.91, Florida Statutes, the purpose of which is to
24 promote the development of renewable energy resources in
25 Florida. Tampa, the Authority, FICA and Covanta currently operate
26 facilities that meet the definition of renewable energy resources and
27 may expand such facilities in the future if there is sufficient

1 incentive. Accordingly, they have a direct interest in the rule
2 amendments proposed in this proceeding.

3
4 **Q. What is the position of Tampa, the Authority FICA and Covanta
5 with regard to the proposed rule amendments?**

6 A. It is the position of Tampa, the Authority FICA and Covanta 1) that
7 the proposed amendments do not comply with the intent of Section
8 Section 366.91, Florida Statutes and that compliance requires a
9 separate and distinct rule applicable to renewable energy
10 resources, 2) that they are simply a slight modification of an
11 existing rule that applies to qualifying facilities, in general, and 3)
12 that such modifications will be ineffective in promoting the
13 development of renewable energy resources.

14
15 **Q. You state that the proposed amendments do not comply with
16 the intent of Section Section 366.91, Florida Statutes and that
17 compliance requires a separate and distinct rule applicable to
18 renewable energy resources. What is the basis for your
19 position?**

20 A. To understand our position, you must have an understanding of the
21 history of the existing rule as it compares to the mandate of the
22 Florida legislature regarding renewable energy resources.

23
24 The basis for the existing rules pertaining to cogeneration and small
25 power production is in federal law, the Public Utility Regulatory
26 Policies Act (PURPA) of 1978. That legislation – passed nearly 30
27 years ago - was in response to a different set of circumstances and
28 concerns. Namely, a world oil shortage resulting from an embargo

1 and our nation's growing dependency on foreign fuel supplies, as
2 well as other concerns. PURPA was designed to, among other
3 things reduce our dependency on foreign oil, increase the efficiency
4 of use of conventional fuel and encourage the use of alternative
5 energy resources. The encouragement of cogeneration and small
6 power production was a part of that design – cogeneration by virtue
7 of its greatly enhanced efficiency and small power production by
8 virtue of its use of non-traditional fuel/energy sources.

9
10 **Q. Does the intent of Section 366.91, Florida Statutes, differ from**
11 **that of PURPA?**

12 **A.** Yes. It differs substantially. The primary goals of the Florida
13 Legislation are to diversify fuel mix and decrease Florida's
14 dependence on natural gas for the production of electricity. In
15 addition, the Legislation seeks to minimize the volatility of fuel
16 costs, encourage investment within the state and make Florida a
17 leader in new and innovative technologies.

18
19 Clearly, the main focus of Florida law is fuel diversity and fuel price
20 stability by promoting the development of renewable energy
21 resources.

22
23 **Q. Are the differences sufficient reason to require a separate rule**
24 **or rules to implement Section 366.91 Florida Statutes?**

25 **A.** Yes they are. The Florida legislature is not unaware of the existing
26 Commission rules implementing PURPA. They are not unaware
27 that these rules depend on PURPA for their enablement. And they
28 are not unaware that recent modifications have been made to

1 PURPA through the Energy Policy Act of 2005 that weakens it
2 substantially. If they thought the existing rules only needed
3 tweaking, they would not have bothered with enacting specific
4 legislation. Whereas the modifications to PURPA weaken the
5 obligations of a utility to purchase and sell energy to a qualifying
6 facility (or "QF"), and identify circumstances under which a utility's
7 PURPA obligations may be suspended or waived, the provisions of
8 Section 366.91, Florida Statutes strengthen the obligations with
9 regard to renewable energy resources.

10
11 The existing rules are based on a waning federal mandate. The
12 development of rules applicable to renewable energy facilities
13 ("REFs") is based on a fresh mandate of State energy policy with
14 distinctly different purposes that is building momentum. The two
15 situations need and deserve separate rules.

16
17 **Q. Has the Renewables Group prepared a proposal for rules**
18 **specifically applicable to renewable energy facilities?**

19 Yes. The Renewables Group has prepared what we have
20 designated PART IV PUBLIC UTILITIES' OBLIGATIONS WITH
21 REGARD TO RENEWABLE ENERGY PRODUCERS of Section
22 25-17 of the Commission rules. It parallels PART III UTILITIES'
23 OBLIGATIONS WITH REGARD TO COGENERATORS AND
24 SMALL POWER PRODUCERS. This keeps Part III, which
25 implements PURPA separate from PART IV which implements
26 Section 366.91, Florida Statutes. PART IV is attached to my
27 testimony as Exhibits (FS-1) and (FS-2). Exhibit (FS-1) shows
28 additions and deletions from the rule proposed by the Commission.

1 Exhibit (FS-2) is a clean, unmarked version. Although Part IV
2 incorporates the format of Part III, and even includes some of the
3 general language, there are distinct differences meant to
4 encourage the development of renewable energy resources as
5 intended by Section 366.91, Florida Statutes.

6

7 **Q. What are the major differences that distinguish Part IV from**
8 **Part III?**

9 There are five major differences: the designation of the avoided
10 unit, the available contract term, the handling of subscription limits,
11 the application of the avoided cost standard, and terms and
12 conditions of the standard offer contract.

13

14 **Q. Please explain the designation of the avoided unit and the**
15 **basis for that designation.**

16 **A.** The avoided unit is designated as a statewide avoided unit and
17 specifically a generic, state-of-the-art 600 MW pulverized coal-fired
18 generating unit with a useful life of 25 years that is designed and
19 equipped to comply with all applicable environmental requirements.

20

21 This unit was chosen because it best fulfills the intent of Section
22 366.91, Florida Statutes to displace electric generation by natural
23 gas. In addition, such a unit exhibits the high capacity factor, base
24 load operating characteristics that are similar to those of many of
25 the renewable energy facilities currently operated by or under
26 consideration by the sponsors of this testimony. Using such a high
27 capacity factor unit as a proxy for developing payments for
28 electricity generated by renewable energy facilities allows the best

1 opportunity to diversify the fuel mix by displacing larger kWh blocks
2 of electric energy. Moreover, designating it as a "statewide" unit
3 provides a uniform and equal opportunity for all renewable energy
4 producers on a statewide basis regardless of their location within
5 the state.

6
7 Importantly, the designation of a statewide, rather than a utility unit
8 is not without precedent. In implementing its initial cogeneration
9 rules, this Commission stated that designating a statewide unit
10 "reflects the Commission's long standing policy that the need for
11 additional capacity by Florida utilities should be determined from a
12 statewide perspective rather than simply focusing on the isolated
13 needs of the individual Florida utility systems." (Order No. 13247,
14 5/1/84, page 1). In this case, it is not the need for capacity but the
15 need for diversification of fuel mix and reduction of the dependency
16 on natural gas for electricity production on a statewide basis that
17 Section 366.91, Florida Statutes has pre-determined and directs
18 the Commission to address. Generation by renewable energy
19 facilities anywhere in the state will thus benefit consumers
20 everywhere in the state.

21

22 **Q. What is being proposed by the Renewables Group for the**
23 **contract length/term?**

24 **A.** It is proposed that the contract length/term be for a minimum of ten
25 years and a maximum of 25 years, the useful life of the designated
26 statewide avoided unit. The selection of the length of the contract is
27 at the sole discretion of the renewable energy facility in order to
28 allow the renewable energy producer to choose a contract term

1 compatible with its financial needs. The minimum term is long
2 enough to assure a fuel diversity benefit from the renewable energy
3 facility. The maximum term provides the security of a long term
4 revenue stream to attract investors and lenders in order to
5 encourage growth in the renewable energy industry.

6

7 **Q. Is there a proposal for subscription limits?**

8 A. Yes, in a sense. But, unlike the limits of the existing rule which are
9 tied to the construction or capacity of the avoided unit, the
10 Renewables Group's proposed subscription limit is tied to a
11 requirement that 25% of capacity and energy be provided by
12 renewable energy facilities on a statewide basis. After all, the intent
13 of Section 366.91, Florida Statutes is not the avoidance of
14 capacity, but the diversification of the fuel mix and minimization of
15 fuel cost volatility. The Legislature's commitment to this policy of
16 fuel mix diversification was reinforced by Section 366.92, Florida
17 Statutes, enacted in 2006, which authorizes the commission to
18 adopt goals for increasing the use of existing, expanded, and new
19 Florida renewable energy resources.

20

21 **Q. What is being proposed by the Renewables Group with regard**
22 **to the application of the avoided cost standard?**

23 A. The proposed rules provide that payments for energy and capacity
24 be "based upon" full avoided costs, as is required by Section
25 366.91, Florida Statutes. (This differs substantially from the
26 provisions of Section 366.051, Florida Statutes applicable to QFs
27 which state that the payments shall be "equal to" full avoided cost).
28 Essentially the Legislature has given the Commission significant

1 discretion and flexibility in determining the payments to renewable
2 energy facility. Whereas PURPA would continue to prohibit
3 payments of less than avoided cost, the Commission may authorize
4 higher payments that are "based on" avoided costs. What
5 differentiates the application of this principle in our proposed rule
6 from the existing rule is the elimination of the use of the value-of-
7 deferral method for calculating payments to renewable energy
8 facilities. Payments based on value-of-deferral never did result in
9 the payment of full avoided cost. Rather than paying the cost of
10 avoiding a unit, they pay the cost of "deferring" construction of a
11 unit that may eventually be built. It is an inexpensive way for a utility
12 to buy time before committing to major construction expenditures at
13 the expense of the alternative producer which must commit those
14 funds in lieu of the utility, but without receiving the recovery of those
15 funds commensurate with how the utility would have received them.
16 Quite frankly, I doubt any utility would ever commit to constructing a
17 plant if it had to look forward to the revenue recovery stream
18 determined by the value-of-deferral methodology. But, by
19 Legislative mandate, rather than being interested in deferring
20 construction, we are now interested in promoting construction of
21 renewable energy facilities. The value-of-deferral methodology
22 does not provide the appropriate analytic means.

23

24 **Q. What were the Commission's reasons for instituting the value-**
25 **of-deferral methodology?**

26 **A.** The Commission's reasons were due to uncertainty and a desire for
27 security. When the Commission first adopted the value-of-deferral
28 methodology in 1983, qualifying facilities were an unknown

1 quantity and considered to be risky. The Commission was
2 concerned that insufficient QF capacity would be available to avoid
3 a unit and that the QF might not be around to perform or deliver
4 over the long term. The value-of-deferral methodology, which
5 provides payments that start low but escalate over time was for
6 protection of the ratepayers from unknown risks. The concern for
7 risk was apparently so great that in addition to the low front end
8 payments, a Commission Staff witness also recommended
9 discounting these payments by 40% and if early payments were to
10 be received, discounted those payments by another 20% . I guess
11 QFs were lucky that in the end, they didn't end up having to pay the
12 utilities for the privilege of providing capacity. In the end, the
13 Commission approved payments based on the value-of-deferral
14 methodology with a 20% discount along with provisions for
15 performance guarantees and overpayment refunds.

16
17 **Q. Since the value-of-deferral methodology was adopted what**
18 **has been the risk experience with regard to QFs, especially**
19 **those that would qualify today as renewable energy**
20 **resources?**

21 **A.** To my knowledge, only a few that would qualify as renewable
22 energy facilities have failed to deliver as contracted in Florida. Most
23 have been operating reliably and providing capacity for
24 approximately ten to twenty years. It is time for the Commission to
25 acknowledge that the risks presented by renewable energy facilities
26 are no greater than, and in fact appear to less than, those
27 presented by utilities and that renewable energy facilities and are
28 entitled to the same revenue requirement payment stream enjoyed

1 by utilities. What more appropriate opportunity to recognize the
2 reality of the situation than in a rulemaking whose specific purpose
3 is to promote the development of renewable energy resource in
4 accordance with Section 366.91, Florida Statutes.

5

6 **Q. What is the Renewables Group's proposal for payments to**
7 **REFs?**

8 A. The Renewables Group's (or "RG") proposal is to develop
9 payments based on the same revenue recovery stream permitted
10 for a utility. As an alternative, the proposal retains the levelized
11 payment stream as an option. Payments received in excess of the
12 revenue requirements for an annual period would be subject to
13 repayment.

14

15 **Q. Are there provisions in the Renewables Group proposed rules**
16 **vs. the Commission's proposed rules to develop the cost of**
17 **the avoided unit and the associated payment streams?**

18 A. Yes. The Renewables Group's rules set out the procedure for
19 developing costs and payment streams. They require annual unit
20 specifications, cost estimates, payment stream calculations and
21 supporting data, all coincident with the filing of the annual Ten Year
22 Site Plan.

23

24 **Q. Are there provisions in the RG's proposed rules to keep track**
25 **of the progress in developing renewable energy development?**

26 A. Yes. There is a provision for an annual report to be filed with
27 sufficient information to determine the progress of renewable
28 energy development and the progress in meeting the requirement

1 that 25% of capacity and energy be provided by renewable energy
2 resources.

3

4 **Q. Are there provisions in the RGs proposed rules for the**
5 **development of a standard offer contract?**

6 **A. Yes. There are provisions for a uniform statewide standard offer**
7 **contract form to be developed in an evidentiary proceeding before**
8 **this Commission within 60 days of the effective date of Part IV.**

9

10 **DETAILED EXPLANATION AND COMPARISON OF THE**
11 **RENEWABLES GROUP PROPOSED PART IV RULE TO THE**
12 **COMMISSION PROPOSED MODIFICATION OF RULE 25-**
13 **17.0832**

14

15 **Q. In the Notice of Rulemaking, the Commission proposed to**
16 **amend Rule 25-17.0832. Would you please explain how the**
17 **rule modifications proposed by the Renewables Group differ**
18 **from the Commission's proposal to amend Rule 25-17.0832?**

19 **A. Yes. Rule 25-17.0832 is but one of several rules, numbered 25-**
20 **17.08 xx, that fall under PART III UTILITIES' OBLIGATIONS WITH**
21 **REGARD TO COGENERATORS AND SMALL POWER**
22 **PRODUCERS of Chapter 25-17, F.A.C. For reasons discussed**
23 **earlier in my testimony, the Renewables Group believes that Part III**
24 **should remain unchanged and still remain applicable to**
25 **cogenerators and small power producers as defined in 25-17.080,**
26 **F.A.C. A completely new section – as proposed by the**
27 **Renewables Group - should be added to 25-17, F.A.C. identified**
28 **as PART IV UTILITIES' OBLIGATIONS WITH REGARD TO**

1 RENEWABLE ENERGY PRODUCERS that will be applicable to
2 renewable energy facilities in compliance with 366.91. The rules in
3 Part IV would be numbered 25-17.09xx. In general, Part IV parallels
4 Part III, but not entirely. Therefore, the Renewables Group
5 proposal is to (1) leave 25-17.0832 as it now exists intact, (2) reject
6 the modifications to 25-17.0832 proposed by the Commission in
7 this docket, and (3) adopt a new Part IV to Chapter 25-17, F.A.C.
8 applicable only to REFs, as proposed in Renewables Group
9 Exhibits (FS-1) and (FS-2).

10
11 **Q. In the Order Establishing Procedures, the Commission asked**
12 **for explanations of changes or additions to the Commission**
13 **proposed rule text with cross referencing to the testimony or**
14 **comments. Since you are recommending that the entire**
15 **Commission proposal be rejected and replaced with an**
16 **entirely new Part IV to Chapter 25-17, F.A.C., how will you**
17 **arrange your explanations and cross referencing?**

18 **A.** The proposed Part IV fairly well parallels Part III in rule titles and
19 substance. I will, therefore explain differences between similar
20 rules in Part IV and Part III to which the Commission is not
21 proposing any changes. When I get to the Renewable Group's
22 proposal for Firm Capacity and Energy Contracts, in rule numbered
23 25-17.0932, I will compare it to 25-17.0832 as proposed by the
24 Commission in this docket.

25
26 **Q. Would you now please compare, rule by rule, each of the Part**
27 **IV rules to the Part III rules and provide an explanation, as**
28 **necessary?**

1 A. Yes. I will make my references to Exhibit (FS-1). The first new rule
2 proposed for REFs is **25-17.092 Definitions** (Exhibit (FS-1) at p.
3 1). It is somewhat comparable to existing Rule 25-17-080. Existing
4 Rule 25-17.080 provides the definitions and criteria for
5 cogenerators and small power producers adopted from the Federal
6 Energy Regulatory Commission (FERC). However, because those
7 definitions are not applicable to REFs under Section 366.91, Florida
8 Statutes they are not used in the Renewables Group proposed
9 Rule 25-17.092. Instead proposed Rule 25-17.092 includes
10 definitions applicable to REFs. The proposed rule defines
11 Renewable Energy, Biomass, Renewable Energy Facility and
12 Statewide Avoided Unit.

13
14 **Q. Why did you include a definition of a Statewide Avoided Unit?**

15 A. As previously explained in my testimony, the intent of Section
16 366.91, Florida Statutes is to carry out its objectives for Florida as a
17 whole and not on a utility by utility basis. Therefore, it is important
18 to define a generic statewide unit up front as the basis for pricing,
19 so that all utilities and REFs are on notice of the basis for pricing
20 decisions.

21
22 **Q. What is the second new rule proposed for REFs?**

23 A. The second new rule proposed for REFs is **25-17.093 The Utility's**
24 **Obligation to Purchase; Customer's Selection of Billing**
25 **Method** (Exhibit (FS-1) at pages 2 through 5). It is comparable to
26 existing Rule 25-17-082. It is nearly the same in all respects except
27 for additional conditions under which the billing methodology may
28 be changed. For example, those additional conditions, 25-

1 17.093(3)(a)3 and 6 are when a utility declares a renewable energy
2 facility to be in default pursuant to a contract for firm energy and
3 capacity or when the utility defaults on a contract with a renewable
4 energy facility.

5
6 **Q. What is the reason for adding these conditions?**

7 **A.** Because the basic purpose of Section 366.91, Florida Statutes is to
8 promote renewable energy, it is important that the rules not impose
9 unnecessary restrictions on economic decisions of the REF. If
10 changing from one billing methodology to the other will provide
11 additional incentive to produce renewable energy, the Commission
12 should assure that a change can be made easily, timely and
13 expeditiously.

14
15 In addition, based on the experience of some QFs, sometimes a
16 problem occurs wherein they cannot meet the sales obligation
17 under a simultaneous buy/sell arrangement but could continue to
18 serve their own load at a low cost if released from that
19 arrangement. This would allow them to continue to operate,
20 strengthen their financial position and once again meet its
21 contractual obligations. In the past without this provision, QFs have
22 resorted to the courts to arrange such a change. It is not something
23 that happened frequently, and is not anticipated to be a problem,
24 but this provision is precautionary. But again, it provides an
25 opportunity for the REF to continue to produce renewable energy.

26
27 Finally, when the utility defaults, the opportunity to change billing
28 methodologies should not be restricted .

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Q. Would you please address the next new rule proposed for REFs?

A. The next new rule proposed for REFs is 25-17.0935 As-Available Energy (Exhibit (FS-1) at pages 6-8). This proposed rule parallels existing Rule 25-17.0825 in its structure, although some changes have been made to better reflect the part intended to be played by REFs in increasing fuel diversity.

Whereas existing Rule 25-17.0825(1) defines the rate to be paid QFs as not to exceed the utility's avoided energy cost, proposed Rule 25-17.0925 (1) defines the rate as not less than the utility's avoided energy cost.

Another difference is that existing Rule 25-17.0825(1) does not allow capacity payments for as-available energy because of lack of assurance for availability. This prohibition is deleted from the Renewable Group's proposed rule 25-17.0935(1) because REFs are providing fuel diversity, not deferral of specific utility capacity.

Some of the provisions in existing Rule 25-17.0825(1) (a) regarding tariffs are moved and addressed in proposed new Rule 25-17.0935(2) (a).

There is a substantive difference between proposed new Rule 25-17.0935(2) (a) and existing Rule 25-17.0825(2) (a) regarding the definition of avoided costs. The existing rule defines avoided cost as the utility's actual avoided energy cost before interchange sales.

1 The proposed new rule defines avoided cost as the utility's highest
2 cost generation including interchange energy that could be avoided
3 by purchases from REFs. The difference again reflects the intent of
4 Section 366.91, Florida Statutes to diversify fuel types. If fossil
5 generation or purchases could be avoided by REFs, regardless of
6 whether for retail or wholesale, the avoided cost should be
7 recognized.

8
9 **Q. What is the next new rule proposed for REFs?**

10 **A.** The next new rule proposed for REFs is **25-17.094 Firm Capacity**
11 **and Energy Contracts** (Exhibit (FS-1) at pages 9-32). This
12 proposed rule parallels Rule 25-17.0832 as proposed by the
13 Commission. The rule has been renumbered to fit in the numerical
14 sequence of the RG's proposal for a new PART IV. The
15 Renewables Group proposes some moderate language changes to
16 paragraph (1) of Commission proposed Rule 25-17.0832 (Exhibit
17 (FS-1) at page 9). In paragraph (1), the term qualifying facility is
18 changed to renewable energy facility. The term qualifying facility is
19 inappropriate. In subparagraph (1) (a), the information to be
20 provided to the Commission upon contract execution is revised to
21 better reflect REF characteristics and the intent to diversify fuel
22 rather than avoid or defer capacity. The same is true of
23 subparagraphs (1) (b) 2, 4, 5 and 6. 1 through 6..6. Subparagraph
24 (1) (b) 1 contains minor revisions applicable to REFs.

25
26 **Q. What changes are you proposing to paragraph (2) of**
27 **Commission proposed Rule 25-17.0832?**

1 A. Paragraph (2) relates to negotiated contracts. The language is
2 changed (Exhibit (FS-1) at page 10) to encourage utilities to
3 negotiate with REFs and the reasons why are spelled out as they
4 are stated in Section 366.91, Florida Statutes. In addition, the basis
5 for considering an REF negotiated contract prudent is changed to
6 also reflect the intent of Section 366.91, Florida Statutes. Finally,
7 any references to negotiated contracts contributing toward a
8 capacity subscription limit are deleted. They are inappropriate for
9 the purposes of REFs. Instead, reference is made to negotiated
10 contracts contributing toward a statewide requirement that 25% of
11 generating capacity and 25% of electric energy be provided by
12 renewable energy facilities.

13
14 **Q. What changes are you proposing to paragraph (3) of**
15 **Commission proposed Rule 25-17.0832?**

16 A. Paragraph (3) relates to cost recovery for negotiated contracts
17 (Exhibit (FS-1) at pages 11-13). The language in subparagraph
18 (3)(a) is changed to allow recovery when the contract promotes the
19 purposes of Section 366.91, Florida Statutes; i.e., the use of
20 renewable resources, diversification of the State's fuel mix and
21 reduced reliance on natural gas for electricity generation.
22 Subparagraph (3)(b) changes the way the Commission looks at
23 avoided costs for REFs. It breaks away from the year-by-year
24 deferral approach associated with deferring capacity and looks at
25 the revenue requirements associated with the capacity of the state
26 wide avoided unit. Again, the intent of Section 366.91, Florida
27 Statutes is not to avoid or defer capacity, but to encourage existing
28 and new renewable resources in order to diversify fuel mix.

1 Subparagraph (3)(c) addresses whether there are conditions to
2 insure repayment in excess of avoided cost in any year in case of
3 failure to deliver. Again, the year-by-year deferral measure is
4 eliminated and is replaced with the levelized revenue requirement
5 of the state wide avoided unit. Finally, subparagraph (3)(d), which
6 addresses provisions for failure to deliver as specified in the
7 contract, is changed to recognize the specific purposes of REFs. It
8 excludes the provisions from being applicable to municipal solid
9 waste, landfill gas or waste heat. It also limits the provision only to
10 times of failure when the REP capacity is necessary to meet
11 reserve requirements.

12
13 **Q. What changes are you proposing to paragraph (4)(a) of**
14 **Commission proposed Rule 25-17.0832?**

15 **A.** Paragraph (4) relates to standard offer contracts. The language in
16 subparagraph (4)(a) is changed (Exhibit (FS-1) at page 13) to
17 require utilities to submit and continuously maintain tariffs that
18 include standard offer contracts for the purchase of firm energy and
19 capacity from REFs. This differs from the Commission proposal
20 which only requires utilities to act upon petition or pursuant to
21 Commission action. The Commission proposal does not meet the
22 continuity requirements of Section 366.91, Florida Statutes. In
23 addition, the Renewables Group proposal makes these standard
24 offer contracts available to all REFs. It excludes certain QFs which
25 fall under and will continue to fall under existing Rule 25-17.0832.

26
27 **Q. What changes are you proposing to paragraph (4)(b) of**
28 **Commission proposed Rule 25-17.0832?**

1 A. The language in subparagraph (4)(b) is changed (Exhibit (FS-1) at
2 pages 13-15) to require that these standard offer contracts be
3 based upon the statewide avoided unit assumed to commence
4 commercial operation on the date upon which each REF accepting
5 the standard offer elects to commence delivery of firm capacity.
6 This is completely logical because since the REF is providing
7 capacity and energy to diversify fuel mix, any time it comes on line
8 is beneficial for that purpose. Additional language in the
9 Renewables Group proposed subparagraph (4)(b) requires that
10 utilities, concurrent with the filing of their Ten Year Site Plan in April
11 of each year, develop the annual revenue requirement for the
12 statewide avoided unit, over the life of the plant, on a total dollar
13 and per KW basis, including the net present value of the total
14 annual requirements, using their financial data and operating
15 assumptions. The rule requires that this be done for the current
16 year of filing and each of the next nine years in the Ten Year Site
17 Plan horizon. It requires that each utility include all assumptions
18 used, including the cost of the unit, in such detail that the results
19 can be readily verified. The rule provides how this data will be
20 utilized in determining the basis for capacity payments to REFs.

21

22 **Q. What changes are you proposing to paragraph (4)(c) of**
23 **Commission proposed Rule 25-17.0832?**

24 A. The language in subparagraph (4)(c) is changed (Exhibit (FS-1) at
25 page 15) to require standard offer contracts to remain open until the
26 Commission determines that of at least 25% of installed generation
27 and 25% of electric energy production in the State is from
28 renewable energy facilities.

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Q. Would you please address the changes you are proposing to paragraph (4) (d) of Commission proposed Rule 25-17.0832?

A. The Commission proposes no changes to subparagraph (4) (d) [formerly (4) (b) in the existing rule]. This subparagraph addresses the rates, terms and other conditions in a standard offer contract and ties them to the need to defer or avoid a generating unit. The Renewables Group's proposed changes (Exhibit (FS-1) at page 16 and 17) tie the conditions to the need to promote renewable resources, diversify fuel mix and the meet the other requirements of Section 366.91, Florida Statutes. In addition, the Renewable Group's proposed changes require that the rates specified in the contract be based on the avoided cost of the statewide avoided including related fixed and variable costs. The proposed changes also allow for an evidentiary hearing, upon request of an REF, on the accuracy or reasonableness of the utilities' proposed costs.

Q. And would you please discuss the changes are you proposing to paragraph (4) (e) of Commission proposed Rule 25-17.0832?

A. The Commission also proposes no changes to subparagraph (4) (e) [formerly (4) (c) in the existing rule]. This subparagraph addresses provisions for a utility to evaluate a standard offer contract and either accept it or reject it within 60 days. The Renewables Group's proposed changes (Exhibit (FS-1) at page 17) simply require that the utility must accept and sign the contract within 60 days. After all, it is a standard offer contract that is a part of the Commission approved tariff. There is nothing to reject.

1 **Q. What changes are you proposing to paragraph (4)(f) of**
2 **Commission proposed Rule 25-17.0832?**

3 A. Subparagraph (4) (f) relates to whether a standard offer contract
4 applies toward the subscription limit of a utility's designated avoided
5 unit. The Renewables Group's proposed change (Exhibit (FS-1) at
6 pages 17 and 18) eliminates that feature as it is not applicable. The
7 change also indicates that the contract is applicable toward meeting
8 the statewide generating capacity and energy mix requirements of
9 25% from renewable energy facilities .

10

11 **Q. Would you please discuss the changes are you proposing to**
12 **paragraph (4)(g) of Commission proposed Rule 25-17.0832?**

13 A. Subparagraph (4) (g) provides certain minimum specifications to be
14 included in a standard offer contract. The Renewables Group
15 proposes changes (Exhibit (FS-1) at pages 18-21) that make the
16 specifications compatible with the use of a statewide avoided unit,
17 the policy objectives of Section 366.91, Florida Statutes, and the
18 requirement for a continuing standard offer. Thus, subparagraph
19 (4) (g) 1. indicates that the installed cost of the statewide avoided
20 unit be specified. Subparagraph (4) (g) 2. is eliminated as it is no
21 longer applicable. Subparagraph (4) (g) 3, renumbered to 2,
22 provides for illustrative payment options for a ten year term
23 contract. Subparagraph (4)(g)4, which specify when the standard
24 offer expires is eliminated as it is no longer applicable.
25 Subparagraph (4) (g) 5, renumbered to 3, as proposed by the
26 Commission, specifies the date by which firm delivery must
27 commence. We have changed that to indicate the maximum notice
28 period a utility may require of an REF prior to it commencing

1 delivery of firm capacity. Subparagraph (4) (g) 6. renumbered to 4,
2 sets the limits of a contract between a 10 year minimum and the life
3 of the statewide avoided unit, at the option of the REF. As
4 previously discussed in my testimony, the contract option choice
5 must remain with the REF for financial viability. Subparagraph (4)
6 (g) 7, renumbered to 5, regarding performance standards has been
7 changed to tie them to those of the statewide avoided unit as
8 limited by actual experience for the utility's base load coal units.
9 Subparagraph (4) (g) 8.,renumbered to 6 expands somewhat the
10 description of the proposed REF. Subparagraph (4) (g) 9,
11 renumbered to 7, which addresses provisions to ensure repayment
12 has been modified to be consistent with the Renewable Groups
13 revenue requirement approach as opposed to the Commission's
14 year-by-year value-of-deferral approach for QFs.

15
16 Subparagraphs (4)(g)8 through 12, are new in the RG's proposal.
17 They provide for additional minimum standards which the RG
18 believes are necessary and appropriate. Subparagraph (4)(g)8.
19 requires recognition of all non-energy attributes associated with the
20 electric energy and capacity produced by the REF. Subparagraph
21 (4)(g)9. requires recognition of the interconnection requirements for
22 connecting and operating the REF. Subparagraph (4)(g)10.
23 requires a description of the methodology for reducing capacity
24 payments in the event that the capacity requirements are not met.
25 Finally, subparagraph (4)(g)11. requires a description o the
26 methodology to adjust for the difference between the capacity
27 initially designated for sale and the capacity after start up and
28 testing.

1

2 **Q. What changes are you proposing to paragraph (4)(h) of**
3 **Commission proposed Rule 25-17.0832?**

4 A. Subparagraph (4) (h) lists certain additional provisions that a utility
5 may include in a standard offer contract. The Renewable Group
6 proposes changes (Exhibit (FS-1) at page 21) that eliminate all but
7 the provision for performance security as being not applicable. The
8 performance security provision is modified primarily to exclude
9 REFs that use municipal waste, landfill gas or waste heat. It also
10 excludes REFs that did not receive capacity payments in any year
11 in excess of the revenue requirements associated with the
12 statewide avoided unit, with an exception in the case where the
13 levelized payment option is selected.

14

15 **Q. Has the Renewables Group added anything to the rule with**
16 **regard to provisions that a utility may not include in the**
17 **standard offer contract?**

18 A. Yes. The RG has added a new subparagraph (4)(i) (Exhibit (FS-1)
19 at pages 21 and 22) that includes nine such provisions. All of these
20 are provisions that are unnecessary for an REF providing capacity
21 and energy for the purposes of Section 366.91, Florida Statutes or
22 which would be unreasonable restrictions in the contract.

23

24 **Q. Would you now please address the changes you are**
25 **proposing to paragraph (4) (i) of Commission proposed Rule**
26 **25-17.0832, which relates to the firm capacity payment options**
27 **in a standard offer contract?**

1 Renewable Group does propose that subparagraph (8)(c) be
2 eliminated. The Commission language calls for the recovery of
3 payments to an REF for a standard offer contract that the utility
4 rejects, but that the Commission requires. There is no provision in
5 the Renewable Group proposal that allows a utility to reject a
6 standard offer. The subparagraph is not necessary.

7

8 **Q. Has the RG added any additional paragraphs to Commission**
9 **proposed rule 25-17.0832?**

10 A. Yes. It has added a paragraphs (9) and (10) (Exhibit (FS-1) at
11 pages 31 and 32). Paragraph (9) prohibits changes in the statewide
12 standard offer contract except pursuant to a Commission order
13 after evidentiary hearings. This protects the standard contract from
14 manipulation by individual utilities. It is not meant to prohibit
15 mutually agreeable changes to an executed contract. Paragraph
16 (10) sets up a procedure for the Commission to establish a
17 statewide standard offer contract through an evidentiary process.
18 This will allow all parties to participate in the development of a
19 uniform standard offer contract.

20

21 **Q. Has the Renewables Group proposed any other new rules**
22 **under Part IV?**

23 A. Yes. The Renewables Group has proposed several administrative
24 rules. One is new. The rest parallel similar rules in Chapter 25-17,
25 Part III, F.A.C. and have been adapted to fit the conditions affecting
26 REFs.

27

28 **Q. Would you please discuss the new rule?**

1 A. Yes. The RG is proposing Rule 25-17.0945 Annual Florida
2 Renewable Energy Report. (Exhibit (FS-1) at pages 32 and 33).
3 This proposed rule requires an annual report, by March 1st of each
4 year, on the status of the development of renewable energy
5 generating capacity. The rule sets out the information to be
6 included in the report and indicate that it be an aggregate report,
7 jointly prepared by the utilities. The rule also requires an annual
8 docketed inquiry of the report, concluding with a Commission order
9 declaring findings, direction and future actions. The Renewables
10 Group believes that without this annual procedure, there will be no
11 way to measure the success of the Commission's rules in meeting
12 the objectives of Section 366.91, Florida Statutes. The reporting in
13 the Ten Year Site plans is not adequate to fully determine the
14 makeup, status or progress of QF and small power production, let
15 alone renewable resources.

16
17 **Q. Would you please discuss the proposed rules adapted from**
18 **Part III?**

19
20 A. The Renewables Group proposes new rule **25-17.095 Settlement**
21 **of Disputes in Contract Negotiations** (Exhibit (FS-1) at page 33). It
22 parallels existing Rule 25-17.0834 with the same name. It generally
23 follows the language in the existing rule. One difference in
24 subparagraph (1) of the proposed rule is that only the REF may
25 petition the Commission for relief if an agreement cannot be
26 reached. As the utility has all of the leverage in a negotiation, they
27 have no basis for redress. The proposed rule also provides that the
28 Commission may order the utility to sign a contract consistent with

1 the rules rather than at full avoided cost, as the current rule,
2 applicable to QFs, does. In proposed subparagraph (3), if the
3 Commission finds the utility has not negotiated in good faith, in
4 addition to penalties, the Commission shall order the utility to take
5 action to remedy the failure and comply with Part IV. Existing Rule
6 25-17.0834(3) only allows for penalties.

7
8 **Q. Would you please discuss the next proposed rule?**

9 **A. The next new rule proposed is 25-17.0955 Modification to**
10 **Existing Contracts; Explanation of When Approval is Required.**
11 (Exhibit (FS-1) at page 34). It parallels existing Rule 25-17.0836
12 with the same name. It generally follows the language in the
13 existing rule, but is less intrusive. It basically requires a utility to
14 notify the Commission of material modifications that have been
15 mutually agreed upon by the utility and renewable energy facility, to
16 existing contracts. It identifies material changes to include such
17 things as location, prime mover technology type, fuel type and
18 length of contract term. Unlike the existing rule, it does not include
19 as material changes such things as performance requirements, MW
20 output and the timing and amount of capacity payments.
21 Therefore, the proposed rule does not require a description of such
22 factors nor require an analysis of the benefits to the general body of
23 ratepayers. These concepts are not applicable in the REP rules
24 because the benefits are those set out in Section 366.91, Florida
25 Statutes.

26
27 **Q. What is the next new proposed rule?**

1 A. The next new rule proposed is **25-17.096 The Utility's Obligation**
2 **to Sell** (Exhibit (FS-1) at page 35). It parallels existing Rule 25-
3 17.084 with the same name. It generally follows the language in the
4 existing rule, but is not conditional upon the Interconnection rule as
5 is the existing rule.

6

7 **Q. What is the next new proposed rule?**

8 A. The next new rule proposed is **25-17.097 Periods During Which**
9 **Purchases Are Not Required** (Exhibit (FS-1) at page 35). It
10 parallels existing Rule 25-17.086 with the same name. It generally
11 follows the language in the existing rule. There are some minimal
12 word changes providing additional clarification, and there is
13 emphasis on the fact that any condition warranting the utility's relief
14 from purchasing is to be considered temporary and that the utility
15 shall use its best efforts to minimize the period involved.

16

17 **Q. Would you please describe the next new proposed rule?**

18 A. The next new rule proposed is **25-17.098 Conditions Requiring**
19 **Transmission Service for Self-Service for Renewable Energy**
20 **Facilities** (Exhibit (FS-1) at page 36). It parallels existing Rule 25-
21 17.0883 with the same name, except for the reference to renewable
22 energy facilities. It follows the language in the existing rule only to
23 the extent of requiring utilities to provide transmission and
24 distribution services generated by an REF from one of its locations
25 to another, when doing so will not adversely affect the adequacy or
26 liability of the utility's service to all customers. The proposed rule
27 differs from the existing rule in that it does not require some cost
28 effectiveness evaluation of whether providing such service may

1 allegedly result in higher costs to the general ratepayer. This
2 change is in keeping with the policy of encouraging renewable
3 energy within the State.

4

5 **Q. What is the next new proposed rule?**

6 A. The next new rule proposed is **25-17.099 Transmission Service**
7 **for Renewable Energy Facilities** (Exhibit (FS-1) at page 36). It
8 parallels existing Rule 25-17.0889 with the same name, except for
9 the reference to renewable energy facilities. It is substantively the
10 same, except for the reference to renewable energy facilities
11 instead of qualifying facilities.

12

13 **Q. Does this conclude your detailed explanation and comparison**
14 **of the rules proposed by the Renewables Group to the**
15 **Commission proposed modification of Rule 25-17.0832?**

16 A. Yes it does. I would like to once again make clear that the Florida
17 legislature, through Section 366.91, Florida Statutes, has set out a
18 special situation for the development of renewable energy
19 resources; that this special situation sets it apart from other
20 cogenerators and small power producers; and that this special
21 situation warrants separate rules that promote the development of
22 renewable energy resources, diversification of fuel types, less
23 dependency on natural gas for electric generation, encouragement
24 of investment in renewable energy resources, improvement of
25 environmental conditions and making Florida a leader in new and
26 innovative technology.

27

28 **Q. Do you have any concluding remarks?**

1 A. Yes. I would like to emphasize the importance of the Renewables
2 Group rule proposal in stimulating the development of REFs. Earlier
3 in my testimony, I indicated that the Commission proposal would be
4 ineffective in promoting the development of renewable energy
5 resources. This is not conjecture, but based on a review of the
6 development of QFs and small power producers (SPP) under
7 existing rules. The majority of QF and SPP development took
8 place in the late 1980's and early 1990's when the basis for firm
9 capacity and energy contracts was a near term coal plant – either
10 statewide or for an individual utility. When the Commission began
11 allowing any type of unit to be the avoided unit, with those units
12 fueled primarily by gas, the number of new firm contracts came to a
13 near stand still.

14
15 This is evident from the Regional Load and Resouce Plan filed
16 annually with the Commission by the Florida Reliability
17 Coordination Council (FRCC). I have compared 2005 firm non-
18 utility, QG and SPP capacity with that in 1996, when the contracts
19 signed in the early 1990's were at the height of production:

20
21

	<u>1996</u>	<u>2005</u>
22 FPL	881 MW	738 MW
23 PEF	1021	820
24 TEC	57	62
25 GPC	<u>21</u>	<u>0</u>
26 Total	1980	1620

27
28

1 The current rules have done nothing to stimulate development of
2 any kind of alternative generation, much less renewable resources.
3 In fact, nearly 80% of FPL's capacity (or 36% of the total capacity)
4 is generated by "PURPA machines"; i.e. plants whose primary
5 purpose is to generate electricity with traditional, non-renewable
6 resources and whose secondary purpose is to sell the
7 steam. Based on the forecast of energy sources for in-state kwh
8 production, under current rules, it is projected that generation by
9 natural gas will increase from 35% today to 46% by 2015. At the
10 same time, production by non-utility and other energy sources will
11 drop from almost 10% today to 7.5% in 2015.

12

13 Something needs to be done to stimulate growth in REFs. It is
14 evident, from a historical perspective, that the most effective means
15 is through the use of a statewide coal unit as the basis for pricing to
16 REFs.

17

18 **Q. Does that conclude your testimony?**

19 **A. Yes it does.**

DOCKET NO. 060555-EI

EXHIBIT FS-1
OF FRANK SEIDMAN

PROPOSED RULE
SHOWING ADDITIONS & DELETIONS

1 **PART IV -- PUBLIC UTILITIES' OBLIGATIONS WITH REGARD TO**
2 **RENEWABLE ENERGY PRODUCERS**

3
4 25-17.092 Definitions

5 25-17.093 Utility's Obligation to Purchase; Customer's Selection of Billing Method

6 25-17.0935 As-Available Energy

7 25-17.094 Firm Capacity and Energy Contracts

8 25-17.0945 Annual Florida Renewable Energy Report

9 25-17.095 Settlement of Disputes in Contract Negotiations

10 25-17.0955 Modification to Existing Contracts; When Approval is Required

11 25-17.096 The Utility's Obligation to Sell

12 25-17.097 Periods During Which Purchases are Not Required

13 25-17.098 Transmission for Self-service for Renewable Energy Facilities

14 25-17.099 Transmission Service for Renewable Energy Facilities

15
16 **25-17.092 Definitions.** [See Seidman at pages 6, 7, 14]

17 For the purpose of these rules the Commission adopts the following definitions:

18 (1) "Renewable energy", as defined in Section 366.91, F.S., means electrical energy

19 produced from a method that uses one or more of the following fuels or energy sources:

20 hydrogen produced from sources other than fossil fuels, biomass, solar energy,

21 geothermal energy, wind energy, ocean energy, and hydroelectric power. The term

22 includes the alternative energy resource, waste heat, from sulfuric acid manufacturing

23 operations.

1 (2) "Biomass", as defined in Section 366.91, F.S., means a power source that is
2 comprised of, but not limited to, combustible residues or gases from forest products
3 manufacturing, agricultural and orchard crops, waste products from livestock and
4 poultry operations and food processing, urban wood waste, municipal solid waste,
5 municipal liquid waste treatment operations, and landfill gas.

6 (3) "Renewable energy facility" means a facility that produces renewable energy.

7 (4) "Statewide avoided unit" means a generic, state-of-the-art, proven technology,
8 600 megawatt pulverized coal-fired electric utility generating plant with a useful life of
9 twenty-five years that is designed and equipped to comply with all applicable
10 environmental requirements.

11
12 **25-17.093 Utility's Obligation to Purchase; Customer's Selection of Billing**

13 **Method.** [See Seidman at pages 14,15]

14 (1) Each public utility shall purchase electricity from the owner or operator, if
15 authorized by the owner, of renewable energy facilities at rates contained in the utility's
16 standard offer tariff or pursuant to a negotiated contract between the renewable energy
17 facility and the utility. Each public utility shall file a tariff or tariffs and a standard offer
18 contract or contracts and shall continuously maintain a standard offer contract or
19 contracts for the purchase of energy and capacity from renewable energy facilities
20 which complies with the provisions of these rules.

21 (2) Unless the Commission determines that alternative metering requirements cause no
22 adverse effect on the cost or reliability of electric service to the utility's general body of

1 customers, each tariff and standard offer contract shall specify the following metering
2 requirements for billing purposes:

3 (a) Hourly recording meters shall be required for renewable energy facilities with an
4 installed capacity of 100 kilowatts or more.

5 (b) For renewable energy facilities with an installed capacity of less than 100 kilowatts,
6 at the option of the renewable energy facility, either hourly recording meters, dual
7 kilowatt-hour register time-of-day meters, or standard kilowatt-hour meters shall be
8 installed. Unless special circumstances warrant, meters shall be read at monthly
9 intervals on the approximate corresponding day of each meter reading period.

10 (3)(a) A renewable energy facility, upon entering into a contract for the sale of firm
11 capacity and energy or prior to delivery of as-available energy to a utility, shall elect to
12 make either simultaneous purchases from and sales to the interconnected utility or net
13 sales to the purchasing utility. Once made, the selection of a billing methodology may
14 only be changed:

15 1. When a renewable energy facility selling as-available energy enters into a negotiated
16 contract or standard offer contract for the sale of firm capacity and energy; or

17 2. When a firm capacity and energy contract expires or is lawfully terminated by either
18 the renewable energy facility or the purchasing utility; or

19 3. When a utility declares a renewable energy facility to be in default pursuant to a
20 contract for firm energy and capacity; or,

21 4. When the renewable energy facility is selling as-available energy and has not
22 changed billing methods within the last two months; and

1 5. When the election to change billing methods will not contravene the provisions of
2 Rule 25-17.094, F.A.C.; or

3 6. When a utility defaults on a contract for firm energy and capacity with a renewable
4 energy facility.

5 (b) If a renewable energy facility elects to change billing methods in accordance with
6 this rule, such change shall be subject to the following provisions:

7 1. Upon at least thirty days advance written notice;

8 2. Upon the installation by the utility of any additional metering equipment reasonably
9 required to effect the change in billing and upon payment by the renewable energy
10 facility of the reasonable cost of such metering equipment and its installation; and

11 3. Upon completion and approval by the utility of any alterations to the interconnection
12 reasonably required to effect the change in billing and upon payment by the renewable
13 energy facility of the reasonable cost for such alterations.

14 (c) Should a renewable energy facility elect to make simultaneous purchases and sales,
15 purchases of electric service by the renewable energy facility from the interconnecting
16 utility shall be billed at the retail rate schedule under which the renewable energy
17 facility load would receive service as a non-generating customer of the utility; sales of
18 electricity delivered by the renewable energy facility to the purchasing utility shall be
19 purchased at the energy and capacity rates, where applicable, in accordance with Rules
20 25-17.0935 and 25-17.094, F.A.C.

21 (d) Should a renewable energy facility elect a net billing arrangement, the hourly energy
22 and capacity sold and delivered to the purchasing utility shall be purchased at the
23 energy and capacity rates, where applicable, in accordance with Rules 25-17.0935 and

1 25-17.094, F.A.C.; and, purchases from the interconnected utility shall be billed
2 pursuant to the utility's applicable rate schedule, including but not limited to standby
3 service or supplemental service.

4 (4)(a) Payments for energy and capacity sold by a renewable energy facility shall be
5 rendered monthly by the purchasing utility and as promptly as possible, normally by the
6 twentieth business day following the day the meter is read. The kilowatt-hours sold by
7 the renewable energy facility, the applicable energy rate at which payments were made,
8 and the rate and amount of the applicable capacity payment shall accompany the
9 payment by the utility to the renewable energy facility. Payments that are not received
10 by the renewable energy facility by the thirtieth day following the day the meter is read
11 shall accrue interest at the prime rate plus five percent until the outstanding amount due,
12 including interest, is paid in full by the purchasing utility.

13 (b) Where simultaneous purchases and sales are made by a renewable energy facility
14 from and to a single utility, energy and capacity payments to the renewable energy
15 facility may, at the option of the renewable energy facility, be shown as a credit to the
16 renewable energy facility's bill; the kilowatt-hours produced by the renewable energy
17 facility, the energy rate at which payments were made, and the rate and amount of the
18 capacity payment shall accompany the bill to the renewable energy facility. A credit
19 shall not exceed the amount of the renewable energy facility's bill from the utility and
20 the excess, if any, shall be paid directly to the renewable energy facility in accordance
21 with this rule.

22 (5) Each utility shall keep separate accounts for sales to renewable energy and
23 purchases from renewable energy facilities.

1 25-17.0935 As-Available Energy. [See Seidman at pages 16,17]

2 (1) As-available energy is energy produced and sold by a renewable energy facility on
3 an hour-by-hour basis for which contractual commitments as to the quantity or time of
4 delivery are not required. Each public utility shall purchase as-available energy from
5 any renewable energy facility. As-available energy shall be sold by a renewable
6 energy facility and purchased by a public utility pursuant to the terms and conditions of
7 a published tariff or a separately negotiated contract. As-available energy sold by a
8 renewable energy facility shall be purchased by the utility at a rate, in cents per
9 kilowatt-hour, not less than the utility's avoided energy cost.

10 (a) Tariff Rates: Each public utility shall publish a tariff for the purchase of as-available
11 energy from renewable energy facilities. Each utility's published tariff shall state that
12 the rate of payment for as-available energy is not less than the utility's avoided energy
13 cost as defined in subsection (2)(a) of this rule.

14 (b) Contract Rates: Each utility may enter into a separately negotiated contract for the
15 purchase of as-available energy from a renewable energy facility. Renewable energy
16 facilities desiring to negotiate a contract for the sale of firm capacity and energy with
17 terms different from those in a utility's standard offer contract may do so pursuant to
18 subsection 25-17.094(2), F.A.C. Contracts for the purchase of as-available energy
19 between a renewable energy facility and a utility shall be filed with the Commission
20 within 10 working days of execution. When a renewable energy facility and a utility
21 cannot agree on the terms and conditions of a negotiated contract, the renewable energy
22 facility may apply to the Commission for relief pursuant to Rule 25-17.095, F.A.C.

1 (2)(a) Avoided energy costs associated with as-available energy are defined as the
2 utility's highest cost generation, including generation for the sale of interchange energy,
3 or purchases from another utility that could be avoided by purchases from the
4 renewable energy facility. Avoided energy costs associated with as-available energy
5 shall be all of the costs the utility avoided or could have avoided by purchasing as-
6 available energy from a renewable energy facility, and shall include but not be limited
7 to: (i) the utility's incremental fuel cost, including fuel storage, handling and
8 transportation; (ii) identifiable variable operating and maintenance expenses including
9 taxes and administration; and (iii) identifiable variable utility purchases. Avoided line
10 losses reflecting the voltage at which generation by the renewable energy facility is
11 received by the utility shall also be included in the determination of avoided energy
12 costs. Each utility shall calculate its avoided energy cost associated with as-available
13 energy deterministically, on an hour-by-hour basis, using the utility's actual avoided or
14 avoidable energy cost for the hour, as affected by the output of the renewable energy
15 facilities delivering energy to the utility's system in such hour. A megawatt block size
16 at no greater than the most recent available estimate of the combined average hourly
17 generation of all renewable energy facilities making energy sales at the utility's as-
18 available energy rate to the utility shall be used to calculate the utility's hourly avoided
19 or avoidable energy costs associated with as-available energy.

20 (b) Each utility's tariff shall include a detailed description of the methodology to be
21 used in the calculation of avoided energy cost implementing subsection (2) of this rule.
22 Each utility's implementation methodology shall specify the method by which the

1 utility's incremental fuel and operating and maintenance costs and line losses are
2 determined.

3 (c) For renewable energy facilities with hourly recording meters, monthly payments for
4 as-available energy shall be made and shall be calculated based on the product of: (1)
5 the utility's actual avoided or avoidable energy rate for each hour during the month; and
6 (2) the quantity of energy sold by the renewable energy facility during that hour.

7 (4) Each public utility shall file with the Commission by the twentieth business day of
8 the following month, a monthly report of its actual hourly avoided energy costs, the
9 average of its actual hourly avoided energy costs for the on-peak and off-peak periods
10 during the month, and the average of its actual hourly avoided energy costs for the
11 month with the Commission. A copy shall be furnished to any individual who requests
12 such information.

13 (5) Upon request by a renewable energy facility or any interested person, each public
14 utility shall provide within 30 days its most current projections of its generation mix,
15 fuel price by type of fuel, and at least a five-year projection of fuel forecasts to estimate
16 future as-available energy prices as well as any other information reasonably requested
17 by the renewable energy facility to project future avoided cost prices including, but not
18 limited to, a one hour advance forecast of hour-by-hour avoided energy costs. The
19 utility may charge an appropriate fee, not to exceed the actual cost of production and
20 copying, for providing such information.

21 (6) Utility payments for as-available energy made to renewable energy facilities shall be
22 recoverable by the utility through the Commission's periodic review of fuel and
23 purchased power.

1 ~~25-17.0832-25-17.094~~ **Firm Capacity and Energy Contracts.** [See Seidman at pages
2 17-28]

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

7 (a) Within one working day of the execution of a negotiated contract or the receipt of a
8 signed standard offer contract, the utility shall notify the Director of the Division of
9 Economic Regulation and provide the amount of ~~committed~~ capacity to be sold, the
10 generating technology to be used, the renewable energy resource, and the anticipated
11 date of commencement of deliveries of capacity from the renewable energy facility and
12 the type of generating unit, if any, which the contracted capacity is intended to avoid or
13 defer. [See Seidman at pages 17]

14 (b) Within 10 working days of the execution of a negotiated contract or receipt of a
15 signed standard offer contract for the purchase of firm capacity and energy, the
16 purchasing utility shall file with the Commission a copy of the signed contract and a
17 summary of its terms and conditions. At a minimum, the summary shall include:

- 18 1. The name of the utility and the owner ~~and~~ or operator of the renewable energy
19 qualifying facility, who are parties signatories of to the contract;
- 20 2. The amount of ~~committed~~ capacity specified in the contract, the size of the facility,
21 the type of facility, its location, and its interconnection and transmission requirements;
- 22 3. The amount of annual and on-peak and off-peak energy expected to be delivered to
23 the utility; and.

1 | shall not be counted apply towards the State's twenty-five percent renewable energy
2 | generating capacity mix requirement and the State's twenty-five percent renewable
3 | energy generation fuel mix requirement upon the date the renewable energy facility
4 | commences delivery of firm capacity to the utility the subscription limit of the avoided
5 | unit in a standard offer contract.

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

10 | (a) Whether additional firm capacity from the renewable energy facility and energy will
11 | promote the use of renewable energy resources, diversify the State's fuel mix and
12 | reduce reliance on electricity generated by use of natural gas is needed by the
13 | purchasing utility and by Florida utilities from a statewide perspective;

14 | (b) Whether the cumulative present worth of firm capacity ~~and energy~~ payments made
15 | to the renewable energy qualifying facility over the term of the contract are projected to
16 | be no greater than:

17 | ~~1. The the estimated~~ cumulative present worth of the value of the revenue requirements
18 | associated with the statewide avoided unit assumed to commence commercial operation
19 | on the date on which the renewable energy facility elects to commence delivery of firm
20 | capacity a year-by-year deferral of the construction and operation of generation or parts
21 | thereof by the purchasing utility over the term of the contract, calculated in accordance
22 | with subsection (5) and paragraph (6)(a) of this rule, provided that the contract is
23 | designed to contribute towards the promoting the use of renewable energy resources.

1 diversifying the State's fuel mix and reducing reliance on electricity generated by use of
2 natural gas. deferral or avoidance of such capacity; or

3 ~~2. The cumulative present worth of other capacity and energy related costs that the~~
4 ~~contract is designed to avoid such as fuel, operation, and maintenance expenses or~~
5 ~~alternative purchases of capacity, provided that the contract is designed to avoid such~~
6 ~~costs; [See Seidman at pages 10]~~

7 (c) To the extent that annual firm capacity ~~and energy~~ payments made to the renewable
8 energy qualifying facility in any year exceed that year's revenue requirements payments
9 associated with the statewide avoided unit annual value of deferring the construction
10 and operation of generation by the purchasing utility or other capacity and energy
11 related costs, whether the contract contains provisions to ensure repayment of such
12 payments exceeding that year's revenue requirements payments associated with the
13 statewide avoided unit value of deferring that capacity in the event that the renewable
14 energy qualifying facility, in the absence of a Force Majeure event, fails to deliver firm
15 capacity and energy pursuant to the terms and conditions of the contract, provided,
16 however, that provisions to ensure repayment shall not be applicable to contracts for
17 firm energy and capacity when the renewable energy facility has selected levelized
18 payments provisions to ensure repayment may be based on forecasted data; and

19 (d) ~~Considering the technical reliability, viability, and financial stability of the~~
20 ~~qualifying facility, whether~~ Whether the contract contains provisions to protect the
21 purchasing utility's ratepayers in the event the renewable energy qualifying facility fails
22 to deliver firm capacity and energy in the amount and times specified in the contract;
23 provided, however, that this factor shall not be applicable unless the capacity from the

1 renewable energy facility is necessary for the utility to meet its reserve requirements
2 and shall not in any event be applicable to contracts with renewable energy facilities
3 that produce electricity from municipal solid waste, landfill gas, or waste heat. [See
4 Seidman at pages 19]

5 (4) Standard Offer Contracts.

6 ~~(a) Upon petition by a utility or pursuant to a Commission action, each~~ Each public
7 utility shall submit for Commission approval, and continuously maintain, a tariff or
8 tariffs that include and a standard offer contract or contracts for the purchase of firm
9 capacity and energy from ~~small qualifying facilities and~~ renewable energy facilities
10 ~~generators, as defined by Section 366.91, F.S.~~ In lieu of a separately negotiated
11 contract, standard offer contracts pursuant to this section are available to the following
12 ~~types of qualifying facilities:~~ [See Seidman at page 19]

13 ~~1. A renewable generating facility~~ energy facilities as defined by Section 366.91, F.S.;

14 or

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

17 ~~(b) By April 1 of each year, concurrent with filing a Ten-Year Site Plan, each~~

18 Immediately upon the effective date of this rule, each public utility shall submit and

19 continuously maintain standard offer contract(s) based the statewide avoided unit

20 assumed to commence commercial operation on the date on which each renewable

21 energy facility accepting such standard offer elects to commence delivery of firm

22 capacity on the next avoidable fossil-fueled generating unit of each technology type

23 identified in its Ten-Year Site Plan. Each public utility with no identified planned

1 ~~generating units shall submit a standard offer contract based on a planned purchase. By~~
2 April 1 of each year, concurrent with filing a Ten Year Site Plan, each utility shall
3 develop: (i) the annual revenue requirement for the statewide avoided unit, over its
4 twenty-five year useful life, on a total dollar and a dollar per KW basis, using its own
5 financial and operating assumptions. This will be done for the current filing year and
6 for each of the following nine years covered in each utility's Ten Year Site Plan
7 horizon. Each utility shall include the assumptions used, including the cost of the
8 statewide avoided unit, in such detail that the results can be readily verified. This
9 information will form the basis for capacity payments to be made to renewable energy
10 facilities. If the cost of such statewide avoided units included in the Ten Year Site
11 Plans of the public utilities vary by five-percent or less, an arithmetic average of those
12 costs shall be used; provided, however, that if the costs vary by more than five-percent,
13 the highest of the costs shall be used. It is anticipated that the statewide avoided unit
14 could change from year-to-year due to technological advancements, changes in
15 environmental standards or other such factors. To the extent practicable, the cost of the
16 statewide avoided unit shall be that forecasted and maintained by recognized industry
17 data bases, adjusted for factors applicable to the installation of such unit in Florida; (ii)
18 the anticipated average heat rate of the statewide avoided unit in btu per kWh for each
19 year of the utility's Ten Year Site Plan horizon, taking into account performance
20 deterioration over time. If the anticipated heat rates of such statewide avoided units
21 include in the Ten Year Site Plans of the public utilities vary by five-percent or less, an
22 arithmetic average of those heat rates shall be used; provided, however, that if the heat
23 rates vary by more than five-percent, the highest of the heat rates shall be used; and, (iii)

1 the anticipated average fixed operation and maintenance expenses associated with the
2 statewide avoided unit for each year of each utility's Ten Year Site Plan horizon, where
3 such expenses are to include but not be limited to the costs of overhauls and capital
4 upgrades, plus all environmental costs including the cost of installing and maintaining
5 emission control systems, and the costs associated with operating such systems. If the
6 anticipated fixed operation and maintenance expenses associated with such statewide
7 avoided units include in the Ten Year Site Plans of the public utilities vary by five-
8 percent or less, an arithmetic average of those expenses shall be used; provided,
9 however, that if such expenses vary by more than five-percent, the highest of the
10 anticipated expenses shall be used. [See Seidman at pages 19,20]

11 (c) Individual standard offer contracts shall remain open until either: ~~1. a request for~~
12 ~~proposals pursuant to Rule 25-17.082, F.A.C., is issued for the generating unit; 2. the~~
13 ~~utility files a petition for need determination or commences construction for generating~~
14 ~~units not subject to Rule 25-17.082, F.A.C.; or 3. the contract's subscription limit, equal~~
15 ~~to the capacity of the avoided unit, is reached. the Commission reasonably determines,~~
16 ~~based on record evidence in an appropriately noticed and conducted evidentiary~~
17 ~~proceeding, that the State's generating capacity mix, measured by megawatts of~~
18 ~~installed generating capacity in the State, contains at least twenty-five percent of~~
19 ~~renewable energy resources, and that the State's generation fuel mix as a percentage of~~
20 ~~statewide annual megawatt hour production, includes at least twenty-five percent from~~
21 ~~renewable energy resources. Before a contract is closed, the utility shall file a petition~~
22 ~~for approval of a new contract based on the next unit of the same generating technology~~
23 ~~in its Ten Year Site Plan, if any. If no generating unit of the same technology is in its~~

1 rate and/or the anticipated fixed operation and maintenance expenses, and the
2 Commission may require the one or more utilities to adjust payments to renewable
3 energy facilities, both prospectively and retroactively, consistent with its findings. [See
4 Seidman at page 21]

5 ~~(e) The utility shall evaluate, select, and enter into standard offer contracts with eligible~~
6 ~~qualifying facilities based on the benefits to the ratepayers. Within 60 days of receipt of~~
7 ~~a signed standard offer contract, the utility shall either:~~

8 ~~1. Accept and sign the contract and return it within five days to the qualifying~~
9 ~~renewable energy facility; or~~

10 ~~2. Petition the Commission not to accept the contract and provide justification for the~~
11 ~~refusal. Such petitions may be based on:~~

12 ~~a. A reasonable allegation by the utility that acceptance of the standard offer will exceed~~
13 ~~the subscription limit of the avoided unit or units; or~~

14 ~~b. Material evidence showing that because the qualifying facility is not financially or~~
15 ~~technically viable, it is unlikely that the committed capacity and energy would be made~~
16 ~~available to the utility by the date specified in the standard offer. [See Seidman at page~~
17 ~~21]~~

18 (f) A standard offer contract which has been executed accepted by a renewable energy
19 qualifying facility shall apply towards the State's twenty-five percent generating
20 capacity mix requirement and the State's twenty-five percent generation fuel mix
21 requirement as set forth in 4.(c) upon the date the renewable energy facility commences
22 delivery of firm capacity to the utility

1 ~~subscription limit of the unit designated in the contract effective the date the utility~~
2 ~~receives the accepted contract. If the contract is not accepted by the utility, its effect~~
3 ~~shall be removed from the subscription limit effective the date of the Commission order~~
4 ~~granting the utility's petition. [See Seidman at page 22]~~

5 (g) Minimum Specifications. ~~[See Seidman at page 22]~~ Each standard offer contract
6 shall, at minimum, specify:

7 1. ~~The installed cost of the statewide avoided unit or units on which the contract is~~
8 ~~based;~~

9 2. ~~The total amount of committed capacity, in megawatts, needed to meet the State's~~
10 ~~twenty-five percent renewable energy generating capacity requirement fully subscribe~~
11 ~~the avoided unit specified in the contract;~~

12 23. ~~The payment options available to the renewable energy qualifying facility including~~
13 ~~all financial and economic assumptions necessary to calculate the firm capacity~~
14 ~~payments available under each payment option and an illustrative calculation of firm~~
15 ~~capacity payments for a minimum ten year term contract commencing on January 1 of~~
16 ~~each year covered by the utility's most recent Ten Year Site Plan, with such illustrative~~
17 ~~calculation being updated each year with the in-service date of the avoided unit for each~~
18 ~~payment option;~~

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

20 35. ~~The amount of prior notice, which may not exceed 90 days. The date that the~~
21 ~~renewable energy facility shall provide to the utility prior to commencing deliveries of~~
22 ~~by which firm capacity and energy deliveries from the qualifying facility to the utility~~

1 ~~shall commence. This date shall be no later than the anticipated in-service date of the~~
2 ~~avoided unit specified in the contract;~~

3 46. The period of time over which firm capacity and energy shall be delivered from the
4 qualifying renewable energy facility to the utility. Firm capacity and energy shall be
5 delivered, at a minimum, for a period of ten years, and, at a maximum for a period equal
6 to the life of the statewide avoided unit, the precise period to be selected at the sole and
7 exclusive discretion of the renewable energy facility and such period shall commence
8 on the date on which the renewable energy facility first commences delivery of firm
9 capacity to the utility anticipated in-service date of the avoided unit specified in the
10 contract. At a maximum, firm capacity and energy shall be delivered for a period of
11 time equal to the anticipated plant life of the avoided unit, commencing with the
12 anticipated in-service date of the avoided unit; [See Seidman at pages 7,8]

13 57. The minimum performance standards for the delivery of firm capacity and energy
14 by the renewable energy qualifying facility during the utility's daily seasonal peak and
15 off-peak periods. These performance standards shall approximate the anticipated peak
16 and off-peak availability and capacity factor of the statewide utility's avoided unit over
17 the term of the contract; provided, however, that the performance standards shall be no
18 higher than the average of the utility's base load coal plants as measured over the
19 immediately preceding 10 years.

20 68. The description of the proposed renewable energy facility including the location,
21 steam host, if applicable, generation technology, and renewable fuel sources;

22 79. Provisions to ensure repayment of payments to the extent that annual firm capacity
23 and energy payments made to the renewable energy qualifying facility in any year

1 | exceed that year's revenue requirement associated with annual value of deferring the
2 | statewide avoided unit specified in the contract in the event that the renewable energy
3 | qualifying facility fails to perform pursuant to the terms and conditions of the contract.

4 | Such provisions may be in the form of a surety bond or equivalent assurance of
5 | repayment of payments exceeding the revenue requirement associated with year-by-
6 | year value of deferring the statewide avoided unit specified in the contract.

7 | 8. Recognition that all non-energy attributes associated with the electric energy and
8 | capacity produced by the renewable energy facility, including but not limited to
9 | renewable energy credits, green tags, environmental attributes, etc., shall remain the
10 | sole and exclusive property of the renewable energy facility, unless the renewable
11 | energy facility agrees in its sole and absolute discretion to sell such attributes to the
12 | utility pursuant to a separate agreement.

13 | 9. The interconnection requirements for connecting and operating the renewable energy
14 | facility in parallel with the utility's system, including applicable interconnection
15 | standards, agreements and applications for large and small renewable energy facilities,
16 | and the expected time required from application to completion of interconnection.

17 | 10. A description of the methodology to be applied for reducing the capacity payments
18 | in the event the renewable energy facility fails to meet the capacity factor requirements
19 | applicable to the standard offer, provided however that such methodology shall reduce
20 | capacity payments proportionately and linearly to a minimum capacity factor of fifty-
21 | percent, below which such payments may be reduced to zero.

22 | 11. A description of the methodology to be applied for adjusting the initial amount of
23 | firm capacity designated for sale by the renewable energy facility, subsequent to the

1 ~~the qualifying facility is delivering firm capacity and energy to the utility. Where early~~
2 ~~levelized capacity payments are elected, the cumulative present value of the capacity~~
3 ~~payments made to the qualifying facility over the term of the contract shall not exceed~~
4 ~~the cumulative present value of the capacity payments which would have been made to~~
5 ~~the qualifying facility had such payments been made pursuant to subparagraph (4)(g)1.~~
6 ~~of this rule. [See Seidman at page 25]~~

7 (5) Avoided Energy Payments for Standard Offer Contracts. [See Seidman at pages
8 25, 26]

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

15 ~~(b) To the extent that the avoided unit would have been operated, had that unit been~~
16 ~~installed, avoided energy costs associated with firm energy shall be the energy cost of~~
17 ~~this unit. To the extent that the avoided unit would not have been operated, the avoided~~
18 ~~energy costs shall be the as-available avoided energy cost of the purchasing utility.~~

19 ~~During the periods that the avoided unit would not have been operated, firm energy~~
20 ~~purchased from qualifying facilities shall be treated as as-available energy for the~~
21 ~~purposes of determining the megawatt block size in paragraph 25-17.0825(2)(a), F.A.C.~~

22 ~~(b e) The energy payments cost of associated with the statewide avoided unit and~~
23 ~~specified in the utilities' the standard offer contracts contract shall be defined as the cost~~

1 of coal fuel, in cents per kilowatt-hour, ~~which would have been burned at the avoided~~
2 unit plus all delivery, storage and management costs, plus all variable operation and
3 maintenance expense costs, plus avoided line losses, for each monthly payment period.
4 The cost of coal fuel for each monthly payment period shall be calculated defined as the
5 average market price of the appropriate quality of coal fuel delivered to each of the
6 utilities subject to these rules, in cents per million Btu, associated with the statewide
7 avoided unit multiplied by the average heat rate associated with the statewide avoided
8 unit. The variable operating and maintenance expense costs shall be estimated based on
9 a the unit fuel type and state-of-the-art, proven technology of the statewide avoided
10 unit and shall include, but not be limited to, costs associated with emission control
11 devices and the cost of maintaining and administering such devices.

12 (6) Calculation of standard offer contract firm capacity payment options. [See Seidman
13 at page 26,27]

14 (a) Calculation of the revenue requirement capacity payment option year-by-year value
15 of deferral. The year-by-year value of deferral of an avoided unit shall be the difference
16 in revenue requirements associated with deferring the avoided unit one year and shall be
17 calculated as follows:

18 The monthly revenue requirement payment is:

19
$$VAC_m = 1/12[KIn(1-R)/(1-RL) + On] \quad 1/12[RR_n + O_o(1+i)^n]$$

20 Where, for a one year deferral:

21 VAC_m = the monthly capacity payment of avoided capacity, \$/KW/month, for each
22 month of year n

1 ~~Where: G = The cumulative present value in the year that the contractual payments will~~
2 ~~begin, of the avoided fixed operation and maintenance expense component of capacity~~
3 ~~payments which would have been made had capacity payments commenced with the~~
4 ~~anticipated in-service date of the avoided unit; and~~

5 $R = (1 + io)/(1 + r).$

6 $PL = F/12 \{ r/[1 - (1 + r)^{-t}] \} + \Theta$

7 ~~Where: PL = the monthly levelized capacity payment, starting on or prior to the in-~~
8 ~~service date of the avoided unit;~~

9 ~~F = the cumulative present value, in the year that the contractual payments will begin,~~
10 ~~of the avoided capital cost component of the capacity payments which would have been~~
11 ~~made had the capacity payments not been levelized;~~

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

14 ~~t = the term, in years, of the contract for the purchase of firm capacity.~~

15 ~~Θ = the monthly fixed operation and maintenance component of the capacity payments,~~
16 ~~calculated in accordance with paragraph (5)(a) for levelized capacity payments or with~~
17 ~~paragraph (5)(b) for early levelized capacity payments.~~

18 (7) Upon request by a qualifying renewable energy facility or any interested person,
19 each utility shall provide within 30 days its most current projections of its future
20 generation mix including type and timing of anticipated generation additions, and at
21 least a 20-year projection of fuel forecasts, as well as any other information reasonably
22 required by the qualifying renewable energy facility to project future avoided cost

1 | ~~prices. The utility may charge an appropriate fee, not to exceed the actual cost of~~
2 | ~~production and copying, for providing such information. [See Seidman at page 27]~~

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

7 | (b) Upon execution acceptance of the contract by the renewable energy facility and
8 | delivery to the utility by both parties, firm energy and capacity payments made to a
9 | qualifying renewable energy facility pursuant to a standard offer contract shall be
10 | recoverable by a utility through the Commission's periodic review of fuel and
11 | purchased power costs. [See Seidman at page 27,28]

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

17 | (9) Changes or modifications to, or approvals of, standard offer contracts shall not be
18 | valid except pursuant to an order of the Commission following an appropriately noticed
19 | evidentiary proceeding with opportunity for full and fair participation by any affected
20 | party. [See Seidman at page 28]

21 | (10) Within 60 days of the effective date of this Part IV, the Commission shall initiate
22 | and properly notice evidentiary proceedings for the purpose of developing and
23 | approving a uniform standard offer contract for firm energy and capacity that must be

1 used by each public utility subject to this rule. The standard offer contracts of each
2 utility shall be identical, with the exception of minor differences relating to utility
3 specific provisions such as line losses, contact persons, and similar such matters. Once
4 approved, such standard offer contract may not be modified except upon order of the
5 Commission following further evidentiary proceedings before the Commission upon
6 petition of a renewable energy facility or a utility subject to these rules. [See Seidman
7 at page 28]

8
9 **25-17.0945 Annual Florida Renewable Energy Report. [See Seidman at page 29]**

10 (1) By March, 1st of each year, the State's electric utilities shall jointly prepare and file
11 an aggregated, comprehensive Florida Renewable Energy Report containing accurate,
12 complete and detailed information regarding existing and planned Florida renewable
13 energy facilities for the immediately preceding calendar year.

14 (2)The information contained in the report shall include, but not be limited to:

15 (a) the current installed renewable energy generating capacity,

16 (b) the planned renewable energy generating capacity in mW,

17 (c) the annual renewable energy electrical production in mWhs,

18 (d) the number of on-going negotiations for the purchase of renewable energy,

19 (e) the number of failed negotiations for the purchase of renewable energy, and

20 (f) all other such information that may assist the Commission in determining

21 1. the rate of renewable energy development in the State,

22 2. the success of the Commission's rules in encouraging renewable energy, and

1 3. the extent to which the State is meeting the policy objectives articulated in Section
2 366.91, Florida Statutes.

3 (3) Not later than 60 days following submittal of the Florida Renewable Energy Report
4 by the electric utilities, the Commission shall conduct a docketed inquiry and
5 evidentiary hearing with respect to each annual Florida Renewable Energy Report and
6 issue an order declaring with specificity its findings, directions to the State's electric
7 utilities, and plans for future actions regarding renewable energy facilities.

8
9 **25-17.095 Settlement of Disputes in Contract Negotiations.** [See Seidman at pages
10 29,30]

11 (1) Public utilities shall negotiate in good faith for the purchase of capacity and energy
12 from renewable energy facilities and interconnection with renewable energy facilities.

13 In the event that a utility and a renewable energy facility cannot agree on the rates,
14 terms, and other conditions for the purchase of capacity and energy, or the cost, terms or
15 other conditions for interconnection, the renewable energy facility may petition the
16 Commission for relief, and may request that the Commission order the utility to sign a
17 contract for the purchase of capacity and energy at rates, terms and conditions that are
18 consistent with this rule or to interconnect with the renewable energy facility for a
19 reasonable cost and in accord with other reasonable terms and conditions.

20 (2) To the extent possible, the Commission will dispose of an application for relief
21 pursuant to this rule within 90 days of the filing of a petition.

22 (3) If the renewable energy facility presents credible evidence that a utility has failed to
23 negotiate or deal in good faith with the renewable energy facility, the Commission shall

1 order the utility to immediately take action to remedy such failure, including actions
2 deemed necessary by the Commission to comply with this Part IV, and shall impose an
3 appropriate penalty on the utility including, but not limited to those approved by Section
4 350.127, F.S.

5
6 **25-17.0955 Modification to Existing Contracts; When Approval Is Required.** [See
7 Seidman at page 30]

8 (1) Each public utility shall notify the Commission of material modifications that have
9 been mutually agreed upon by the utility and the renewable energy facility who are
10 parties to an existing contract for the purchase of firm capacity and energy, the costs of
11 which are reviewed through the Commission's periodic review of fuel and purchased
12 power costs, within 30 days of the modification. At a minimum, the following
13 information shall be submitted:

14 (a) A description of the modification and a statement indicating why the utility believes
15 that the modification is a material change;

16 (b) A copy of the documents that evidence the modification;

17 (c) A detailed statement explaining whether the existing contract would be viable if no
18 modification is made; and,

19 (d) A statement indicating whether the date of delivery of capacity and energy by the
20 project will change because of the modification.

21 (2) In order for a utility to recover its costs, Commission approval is required for a
22 material modification. Such modifications may include changes to contractual terms
23 such as location, prime mover technology type, fuel type, or length of contract term.

1 (3) Commission approval is not required for any modifications explicitly contemplated
2 by the terms of the contract or for routine administrative changes.

3 (4) In cases where approval of a contract modification is required for utility cost
4 recovery, a utility shall file a petition for contract modification approval that provides
5 the information required by paragraphs (1)(a) through (d) above. The petition shall also
6 comply with the applicable Commission procedural requirements. When a petition is
7 filed, the petition shall serve as the notice required by subsection (1) above.

8
9 **25-17.096 The Utility's Obligation to Sell.** [See Seidman at page 31]

10 Each utility shall sell electricity to renewable energy facilities at rates which are just,
11 reasonable, and non-discriminatory.

12
13 **25-17.097 Periods During Which Purchases Are Not Required.** [See Seidman at
14 page 31]

15 Where purchases from a renewable energy facility will impair the utility's ability to
16 give adequate service to the rest of its customers or, due to operational circumstances
17 directly relating to reasonable minimum loading limitations of a utility unit, purchases
18 from renewable energy facilities will cause the utility to incur excessive costs which the
19 utility would not incur if it did not make such purchases, the utility shall be temporarily
20 relieved of its obligation under these rules to purchase electricity from a renewable
21 energy facility; provided, however, that the utility shall use best efforts to minimize the
22 time period during which it is temporarily relieved from such obligation. If practicable,
23 the utility shall notify the affected renewable energy facility or facilities prior to the

1 instance giving rise to those conditions. If prior notice is not practicable, the utility
2 shall notify the renewable energy facility or facilities as soon as practicable after the
3 fact. In either event the utility shall notify the Commission, and the Commission staff
4 shall, upon request of the affected renewable energy facility or facilities, investigate the
5 utility's claim. Nothing in this section shall operate, or be construed to operate, to
6 relieve the utility of its general obligation to purchase for a renewable energy facility
7 pursuant to Rule 25-17.094, F.A.C

8
9 **25-17.098 Transmission for Self-service for Renewable Energy Facilities. [See**
10 **Seidman at pages 31,32]**

11 Public utilities are required to provide transmission and distribution services to enable a
12 retail customer to transmit electricity generated by a renewable energy facility owned or
13 operated by the customer at one location to the customer's facilities at another location
14 or locations when the provision of such service in not likely to adversely affect the
15 adequacy or reliability of electric service to all customers.

16
17 **25-17.099 Transmission Service for Renewable Energy Facilities. [See Seidman at**
18 **page 32]**

19 (1) Upon request by a renewable energy facility, each electric utility in Florida shall
20 provide, subject to the provisions of subsection (3) of this rule, transmission service to
21 wheel as-available energy or firm energy and capacity produced by a renewable energy
22 facility from the renewable energy facility to another electric utility.

1 (2) The rates, terms, and conditions for transmission services as described in subsection
2 (1) and in Rule 25-17.098, F.A.C., which are provided by a public utility shall be those
3 approved by the Federal Energy Regulatory Commission.

4 (3) A utility may deny, curtail, or discontinue transmission service to a renewable
5 energy facility on a non-discriminatory basis if the provision of such service would
6 adversely affect the safety, adequacy or reliability of electric service to the utility's
7 general body of retail and wholesale customers.

DOCKET NO. 060555-EI

EXHIBIT FS-2
OF FRANK SEIDMAN

PROPOSED RULE
UNMARKED VERSION

1 **PART IV -- PUBLIC UTILITIES' OBLIGATIONS WITH REGARD TO**
2 **RENEWABLE ENERGY PRODUCERS**

3

4 25-17.092 Definitions

5 25-17.093 Utility's Obligation to Purchase; Customer's Selection of Billing Method

6 25-17.0935 As-Available Energy

7 25-17.094 Firm Capacity and Energy Contracts

8 25-17.0945 Annual Florida Renewable Energy Report

9 25-17.095 Settlement of Disputes in Contract Negotiations

10 25-17.0955 Modification to Existing Contracts; When Approval is Required

11 25-17.096 The Utility's Obligation to Sell

12 25-17.097 Periods During Which Purchases are Not Required

13 25-17.098 Transmission for Self-service for Renewable Energy Facilities

14 25-17.099 Transmission Service for Renewable Energy Facilities

15

16 **25-17.092 Definitions.**

17 For the purpose of these rules the Commission adopts the following definitions:

18 (1) "Renewable energy", as defined in Section 366.91, F.S., means electrical energy

19 produced from a method that uses one or more of the following fuels or energy sources:

20 hydrogen produced from sources other than fossil fuels, biomass, solar energy,

21 geothermal energy, wind energy, ocean energy, and hydroelectric power. The term

22 includes the alternative energy resource, waste heat, from sulfuric acid manufacturing

23 operations.

1 (2) "Biomass", as defined in Section 366.91, F.S., means a power source that is
2 comprised of, but not limited to, combustible residues or gases from forest products
3 manufacturing, agricultural and orchard crops, waste products from livestock and
4 poultry operations and food processing, urban wood waste, municipal solid waste,
5 municipal liquid waste treatment operations, and landfill gas.

6 (3) "Renewable energy facility" means a facility that produces renewable energy.

7 (4) "Statewide avoided unit" means a generic, state-of-the-art, proven technology,
8 600 megawatt pulverized coal-fired electric utility generating plant with a useful life of
9 twenty-five years that is designed and equipped to comply with all applicable
10 environmental requirements.

11

12 **25-17.093 Utility's Obligation to Purchase; Customer's Selection of Billing**

13 **Method.**

14 (1) Each public utility shall purchase electricity from the owner or operator, if
15 authorized by the owner, of renewable energy facilities at rates contained in the utility's
16 standard offer tariff or pursuant to a negotiated contract between the renewable energy
17 facility and the utility. Each public utility shall file a tariff or tariffs and a standard offer
18 contract or contracts and shall continuously maintain a standard offer contract or
19 contracts for the purchase of energy and capacity from renewable energy facilities
20 which complies with the provisions of these rules.

21 (2) Unless the Commission determines that alternative metering requirements cause no
22 adverse effect on the cost or reliability of electric service to the utility's general body of

1 customers, each tariff and standard offer contract shall specify the following metering
2 requirements for billing purposes:

3 (a) Hourly recording meters shall be required for renewable energy facilities with an
4 installed capacity of 100 kilowatts or more.

5 (b) For renewable energy facilities with an installed capacity of less than 100 kilowatts,
6 at the option of the renewable energy facility, either hourly recording meters, dual
7 kilowatt-hour register time-of-day meters, or standard kilowatt-hour meters shall be
8 installed. Unless special circumstances warrant, meters shall be read at monthly
9 intervals on the approximate corresponding day of each meter reading period.

10 (3)(a) A renewable energy facility, upon entering into a contract for the sale of firm
11 capacity and energy or prior to delivery of as-available energy to a utility, shall elect to
12 make either simultaneous purchases from and sales to the interconnected utility or net
13 sales to the purchasing utility. Once made, the selection of a billing methodology may
14 only be changed:

15 1. When a renewable energy facility selling as-available energy enters into a negotiated
16 contract or standard offer contract for the sale of firm capacity and energy; or

17 2. When a firm capacity and energy contract expires or is lawfully terminated by either
18 the renewable energy facility or the purchasing utility; or

19 3. When a utility declares a renewable energy facility to be in default pursuant to a
20 contract for firm energy and capacity; or,

21 4. When the renewable energy facility is selling as-available energy and has not
22 changed billing methods within the last two months; and

1 5. When the election to change billing methods will not contravene the provisions of
2 Rule 25-17.094, F.A.C.; or

3 6. When a utility defaults on a contract for firm energy and capacity with a renewable
4 energy facility.

5 (b) If a renewable energy facility elects to change billing methods in accordance with
6 this rule, such change shall be subject to the following provisions:

7 1. Upon at least thirty days advance written notice;

8 2. Upon the installation by the utility of any additional metering equipment reasonably
9 required to effect the change in billing and upon payment by the renewable energy
10 facility of the reasonable cost of such metering equipment and its installation; and

11 3. Upon completion and approval by the utility of any alterations to the interconnection
12 reasonably required to effect the change in billing and upon payment by the renewable
13 energy facility of the reasonable cost for such alterations.

14 (c) Should a renewable energy facility elect to make simultaneous purchases and sales,
15 purchases of electric service by the renewable energy facility from the interconnecting
16 utility shall be billed at the retail rate schedule under which the renewable energy
17 facility load would receive service as a non-generating customer of the utility; sales of
18 electricity delivered by the renewable energy facility to the purchasing utility shall be
19 purchased at the energy and capacity rates, where applicable, in accordance with Rules
20 25-17.0935 and 25-17.094, F.A.C.

21 (d) Should a renewable energy facility elect a net billing arrangement, the hourly energy
22 and capacity sold and delivered to the purchasing utility shall be purchased at the
23 energy and capacity rates, where applicable, in accordance with Rules 25-17.0935 and

1 25-17.094, F.A.C.; and, purchases from the interconnected utility shall be billed
2 pursuant to the utility's applicable rate schedule, including but not limited to standby
3 service or supplemental service.

4 (4)(a) Payments for energy and capacity sold by a renewable energy facility shall be
5 rendered monthly by the purchasing utility and as promptly as possible, normally by the
6 twentieth business day following the day the meter is read. The kilowatt-hours sold by
7 the renewable energy facility, the applicable energy rate at which payments were made,
8 and the rate and amount of the applicable capacity payment shall accompany the
9 payment by the utility to the renewable energy facility. Payments that are not received
10 by the renewable energy facility by the thirtieth day following the day the meter is read
11 shall accrue interest at the prime rate plus five percent until the outstanding amount due,
12 including interest, is paid in full by the purchasing utility.

13 (b) Where simultaneous purchases and sales are made by a renewable energy facility
14 from and to a single utility, energy and capacity payments to the renewable energy
15 facility may, at the option of the renewable energy facility, be shown as a credit to the
16 renewable energy facility's bill; the kilowatt-hours produced by the renewable energy
17 facility, the energy rate at which payments were made, and the rate and amount of the
18 capacity payment shall accompany the bill to the renewable energy facility. A credit
19 shall not exceed the amount of the renewable energy facility's bill from the utility and
20 the excess, if any, shall be paid directly to the renewable energy facility in accordance
21 with this rule.

22 (5) Each utility shall keep separate accounts for sales to renewable energy and
23 purchases from renewable energy facilities.

1 **25-17.0935 As-Available Energy.**

2 (1) As-available energy is energy produced and sold by a renewable energy facility on
3 an hour-by-hour basis for which contractual commitments as to the quantity or time of
4 delivery are not required. Each public utility shall purchase as-available energy from
5 any renewable energy facility. As-available energy shall be sold by a renewable
6 energy facility and purchased by a public utility pursuant to the terms and conditions of
7 a published tariff or a separately negotiated contract. As-available energy sold by a
8 renewable energy facility shall be purchased by the utility at a rate, in cents per
9 kilowatt-hour, not less than the utility's avoided energy cost.

10 (a) Tariff Rates: Each public utility shall publish a tariff for the purchase of as-available
11 energy from renewable energy facilities. Each utility's published tariff shall state that
12 the rate of payment for as-available energy is not less than the utility's avoided energy
13 cost as defined in subsection (2)(a) of this rule.

14 (b) Contract Rates: Each utility may enter into a separately negotiated contract for the
15 purchase of as-available energy from a renewable energy facility. Renewable energy
16 facilities desiring to negotiate a contract for the sale of firm capacity and energy with
17 terms different from those in a utility's standard offer contract may do so pursuant to
18 subsection 25-17.094(2), F.A.C. Contracts for the purchase of as-available energy
19 between a renewable energy facility and a utility shall be filed with the Commission
20 within 10 working days of execution. When a renewable energy facility and a utility
21 cannot agree on the terms and conditions of a negotiated contract, the renewable energy
22 facility may apply to the Commission for relief pursuant to Rule 25-17.095, F.A.C.

1 (2)(a) Avoided energy costs associated with as-available energy are defined as the
2 utility's highest cost generation, including generation for the sale of interchange energy,
3 or purchases from another utility that could be avoided by purchases from the
4 renewable energy facility. Avoided energy costs associated with as-available energy
5 shall be all of the costs the utility avoided or could have avoided by purchasing as-
6 available energy from a renewable energy facility, and shall include but not be limited
7 to: (i) the utility's incremental fuel cost, including fuel storage, handling and
8 transportation; (ii) identifiable variable operating and maintenance expenses including
9 taxes and administration; and (iii) identifiable variable utility purchases. Avoided line
10 losses reflecting the voltage at which generation by the renewable energy facility is
11 received by the utility shall also be included in the determination of avoided energy
12 costs. Each utility shall calculate its avoided energy cost associated with as-available
13 energy deterministically, on an hour-by-hour basis, using the utility's actual avoided or
14 avoidable energy cost for the hour, as affected by the output of the renewable energy
15 facilities delivering energy to the utility's system in such hour. A megawatt block size
16 at no greater than the most recent available estimate of the combined average hourly
17 generation of all renewable energy facilities making energy sales at the utility's as-
18 available energy rate to the utility shall be used to calculate the utility's hourly avoided
19 or avoidable energy costs associated with as-available energy.

20 (b) Each utility's tariff shall include a detailed description of the methodology to be
21 used in the calculation of avoided energy cost implementing subsection (2) of this rule.
22 Each utility's implementation methodology shall specify the method by which the

1 utility's incremental fuel and operating and maintenance costs and line losses are
2 determined.

3 (c) For renewable energy facilities with hourly recording meters, monthly payments for
4 as-available energy shall be made and shall be calculated based on the product of: (1)
5 the utility's actual avoided or avoidable energy rate for each hour during the month; and
6 (2) the quantity of energy sold by the renewable energy facility during that hour.

7 (4) Each public utility shall file with the Commission by the twentieth business day of
8 the following month, a monthly report of its actual hourly avoided energy costs, the
9 average of its actual hourly avoided energy costs for the on-peak and off-peak periods
10 during the month, and the average of its actual hourly avoided energy costs for the
11 month with the Commission. A copy shall be furnished to any individual who requests
12 such information.

13 (5) Upon request by a renewable energy facility or any interested person, each public
14 utility shall provide within 30 days its most current projections of its generation mix,
15 fuel price by type of fuel, and at least a five-year projection of fuel forecasts to estimate
16 future as-available energy prices as well as any other information reasonably requested
17 by the renewable energy facility to project future avoided cost prices including, but not
18 limited to, a one hour advance forecast of hour-by-hour avoided energy costs. The
19 utility may charge an appropriate fee, not to exceed the actual cost of production and
20 copying, for providing such information.

21 (6) Utility payments for as-available energy made to renewable energy facilities shall be
22 recoverable by the utility through the Commission's periodic review of fuel and
23 purchased power.

1 **25-17.094 Firm Capacity and Energy Contracts.**

2 (1) Firm capacity and energy are capacity and energy produced and sold by a
3 renewable energy facility and purchased by a utility pursuant to a negotiated contract or
4 a standard offer contract subject to certain contractual provisions as to the quantity,
5 time, and reliability of delivery. (a) Within one working day of the execution of a
6 negotiated contract or the receipt of a signed standard offer contract, the utility shall
7 notify the Director of the Division of Economic Regulation and provide the amount of
8 capacity to be sold, the generating technology to be used, the renewable energy
9 resource, and the anticipated date of commencement of deliveries of capacity from the
10 renewable energy facility.

11 (b) Within 10 working days of the execution of a negotiated contract or receipt of a
12 signed standard offer contract for the purchase of firm capacity and energy, the
13 purchasing utility shall file with the Commission a copy of the signed contract and a
14 summary of its terms and conditions. At a minimum, the summary shall include:

- 15 1. The name of the utility and the owner or operator of the renewable energy facility,
16 who are parties to the contract;
- 17 2. The amount of capacity specified in the contract, the size of the facility, the type of
18 facility, its location, and its interconnection and transmission requirements;
- 19 3. The amount of annual and on-peak and off-peak energy expected to be delivered to
20 the utility; and,
- 21 4. The anticipated date the renewable energy facility will deliver firm energy and
22 capacity to the grid.

1 (2) Negotiated Contracts. Utilities are encouraged to negotiate contracts with renewable
2 energy facilities for the purchase of firm capacity and energy in order to promote the
3 use of renewable energy resources, diversify the State's fuel mix and reduce reliance on
4 electricity generated by use of natural gas. Negotiated contracts will be considered
5 prudent for cost recovery purposes if it is demonstrated by the utility that the purchase
6 of firm capacity and energy from the renewable energy facility pursuant to the rates,
7 terms, and other conditions of the contract can reasonably be expected to promote the
8 use of renewable energy resources, diversify the State's fuel mix and reduce reliance on
9 electricity generated by use of natural gas. Negotiated contracts with renewable energy
10 facilities shall apply towards the State's twenty-five percent renewable energy
11 generating capacity mix requirement and the State's twenty-five percent renewable
12 energy generation fuel mix requirement upon the date the renewable energy facility
13 commences delivery of firm capacity to the utility.

14 (3) Cost Recovery for Negotiated Contracts. In reviewing negotiated firm capacity and
15 energy contracts for the purpose of cost recovery, the Commission shall consider factors
16 relating to the contract including:

17 (a) Whether firm capacity from the renewable energy facility will promote the use of
18 renewable energy resources, diversify the State's fuel mix and reduce reliance on
19 electricity generated by use of natural gas from a statewide perspective;

20 (b) Whether the cumulative present worth of firm capacity payments made to the
21 renewable energy facility over the term of the contract are projected to be no greater
22 than the estimated cumulative present worth of the value of the revenue requirements
23 associated with the statewide avoided unit assumed to commence commercial operation

1 on the date on which the renewable energy facility elects to commence delivery of firm
2 capacity , calculated in accordance with subsection (5) and paragraph (6)(a) of this rule,
3 provided that the contract is designed to contribute towards promoting the use of
4 renewable energy resources, diversifying the State's fuel mix and reducing reliance on
5 electricity generated by use of natural gas.

6 (c) To the extent that annual firm capacity payments made to the renewable energy
7 facility in any year exceed that year's revenue requirements payments associated with
8 the statewide avoided unit , whether the contract contains provisions to ensure
9 repayment of such payments exceeding that year's revenue requirements payments
10 associated with the statewide avoided unit in the event that the renewable energy
11 facility, in the absence of a Force Majeure event, fails to deliver firm capacity pursuant
12 to the terms and conditions of the contract, provided, however, that provisions to ensure
13 repayment shall not be applicable to contracts for firm energy and capacity when the
14 renewable energy facility has selected levelized payments ; and

15 (d) Whether the contract contains provisions to protect the purchasing utility's
16 ratepayers in the event the renewable energy facility fails to deliver firm capacity and
17 energy in the amount and times specified in the contract; provided, however, that this
18 factor shall not be applicable unless the capacity from the renewable energy facility is
19 necessary for the utility to meet its reserve requirements and shall not in any event be
20 applicable to contracts with renewable energy facilities that produce electricity from
21 municipal solid waste, landfill gas, or waste heat.

22

23

1 (4) Standard Offer Contracts.

2 (a) Each public utility shall submit for Commission approval, and continuously
3 maintain, a tariff or tariffs that include a standard offer contract or contracts for the
4 purchase of firm capacity and energy from renewable energy facilities . In lieu of a
5 separately negotiated contract, standard offer contracts pursuant to this section are
6 available to renewable energy facilities .

7 (b) Immediately upon the effective date of this rule, each public utility shall submit and
8 continuously maintain standard offer contracts based the statewide avoided unit
9 assumed to commence commercial operation on the date on which each renewable
10 energy facility accepting such standard offer elects to commence delivery of firm
11 capacity . By April 1 of each year, concurrent with filing a Ten Year Site Plan, each
12 utility shall develop: (i) the annual revenue requirement for the statewide avoided unit,
13 over its twenty-five year useful life, on a total dollar and a dollar per KW basis, using
14 its own financial and operating assumptions. This will be done for the current filing
15 year and for each of the following nine years covered in each utility's Ten Year Site
16 Plan horizon. Each utility shall include the assumptions used, including the cost of the
17 statewide avoided unit, in such detail that the results can be readily verified. This
18 information will form the basis for capacity payments to be made to renewable energy
19 facilities. If the cost of such statewide avoided units included in the Ten Year Site
20 Plans of the public utilities vary by five-percent or less, an arithmetic average of those
21 costs shall be used; provided, however, that if the costs vary by more than five-percent,
22 the highest of the costs shall be used. It is anticipated that the statewide avoided unit
23 could change from year-to-year due to technological advancements, changes in

1 environmental standards or other such factors. To the extent practicable, the cost of the
2 statewide avoided unit shall be that forecasted and maintained by recognized industry
3 data bases, adjusted for factors applicable to the installation of such unit in Florida; (ii)
4 the anticipated average heat rate of the statewide avoided unit in btu per kWh for each
5 year of the utility's Ten Year Site Plan horizon, taking into account performance
6 deterioration over time. If the anticipated heat rates of such statewide avoided units
7 include in the Ten Year Site Plans of the public utilities vary by five-percent or less, an
8 arithmetic average of those heat rates shall be used; provided, however, that if the heat
9 rates vary by more than five-percent, the highest of the heat rates shall be used; and, (iii)
10 the anticipated average fixed operation and maintenance expenses associated with the
11 statewide avoided unit for each year of each utility's Ten Year Site Plan horizon, where
12 such expenses are to include but not be limited to the costs of overhauls and capital
13 upgrades, plus all environmental costs including the cost of installing and maintaining
14 emission control systems, and the costs associated with operating such systems. If the
15 anticipated fixed operation and maintenance expenses associated with such statewide
16 avoided units include in the Ten Year Site Plans of the public utilities vary by five-
17 percent or less, an arithmetic average of those expenses shall be used; provided,
18 however, that if such expenses vary by more than five-percent, the highest of the
19 anticipated expenses shall be used.

20 (c) Individual standard offer contracts shall remain open until the Commission
21 reasonably determines, based on record evidence in an appropriately noticed and
22 conducted evidentiary proceeding, that the State's generating capacity mix, measured
23 by megawatts of installed generating capacity in the State, contains at least twenty-five

1 percent of renewable energy resources, and that the State's generation fuel mix as a
2 percentage of statewide annual megawatt hour production, includes at least twenty-five
3 percent from renewable energy resources. Before a contract is closed, the utility shall
4 file a petition for approval of a new contract.

5 (d) The rates, terms, and other conditions contained in each utility's standard offer
6 contract or contracts shall be based on the policy of Florida to promote the use of
7 renewable energy resources, diversify the State's fuel mix and reduce reliance on
8 electricity generated by use of natural gas. Rates for payment of capacity sold by a
9 renewable energy facility shall be specified in the contract for the duration of the
10 contract and shall be based on the avoided cost of the statewide avoided unit assumed to
11 commence commercial operation on the date on which the renewable energy facility
12 accepting such standard offer elects to commence delivery of firm capacity, and shall
13 include all fixed and variable costs that would have been incurred or booked by the
14 utility, had the utility financed, installed and operated such unit. In reviewing a utility's
15 standard offer contract or contracts, the Commission shall consider the criteria specified
16 in paragraphs (3)(a) through (3)(d) of this rule, as well as any other information
17 necessary to reasonably determine that the payments to the renewable energy facility
18 are no less than the avoided cost of the statewide avoided unit assumed to commence
19 commercial operation on the date on which each renewable energy facility accepting
20 such standard offer elects to commence delivery of firm capacity. Upon request of a
21 renewable energy facility, the Commission shall conduct an evidentiary hearing on the
22 accuracy or reasonableness of one or more utilities' proposed costs for the statewide
23 avoided unit, the anticipated heat rate and/or the anticipated fixed operation and

1 maintenance expenses, and the Commission may require the one or more utilities to
2 adjust payments to renewable energy facilities, both prospectively and retroactively,
3 consistent with its findings.

4 (e) Within 60 days of receipt of a signed standard offer contract, the utility shall accept
5 and sign the contract and return it within five days to the renewable energy facility.

6 (f) A standard offer contract which has been executed by a renewable energy facility
7 shall apply towards the State's twenty-five percent generating capacity mix requirement
8 and the State's twenty-five percent generation fuel mix requirement as set forth in 4.(c)
9 upon the date the renewable energy facility commences delivery of firm capacity to the
10 utility.

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

12 1. The installed cost of the statewide avoided unit;
13 meet the State's twenty-five percent renewable energy generating capacity requirement;

14 2. The payment options available to the renewable energy facility including all
15 financial and economic assumptions necessary to calculate the firm capacity payments
16 available under each payment option and an illustrative calculation of firm capacity
17 payments for a ten year term contract commencing on January 1 of each year covered
18 by the utility's most recent Ten Year Site Plan, with such illustrative calculation being
19 updated each year ;

20 3. The amount of prior notice, which may not exceed 90 days, that the renewable energy
21 facility shall provide to the utility prior to commencing deliveries of firm capacity ;

22 4. The period of time over which firm capacity shall be delivered from the renewable
23 energy facility to the utility. Firm capacity shall be delivered, at a minimum, for a

1 sole and exclusive property of the renewable energy facility, unless the renewable
2 energy facility agrees in its sole and absolute discretion to sell such attributes to the
3 utility pursuant to a separate agreement.

4 9. The interconnection requirements for connecting and operating the renewable energy
5 facility in parallel with the utility's system, including applicable interconnection
6 standards, agreements and applications for large and small renewable energy facilities,
7 and the expected time required from application to completion of interconnection.

8 10. A description of the methodology to be applied for reducing the capacity payments
9 in the event the renewable energy facility fails to meet the capacity factor requirements
10 applicable to the standard offer, provided however that such methodology shall reduce
11 capacity payments proportionately and linearly to a minimum capacity factor of fifty-
12 percent, below which such payments may be reduced to zero.

13 11. A description of the methodology to be applied for adjusting the initial amount of
14 firm capacity designated for sale by the renewable energy facility, subsequent to the
15 initial start-up and testing of the facility, provided however, that such methodology shall
16 allow, at a minimum, adjustment of the capacity by the renewable energy facility at
17 anytime during the first year of operation and by up to 20% of the initial capacity.

18 (h) The utility may include the following provisions:

19 1. Performance security in the event the renewable energy facility receives payment in
20 excess of the revenue requirement associated with the statewide avoided unit and fails
21 to deliver firm capacity and energy in the amount and times specified in the contract. ;
22 provided, however, that such security shall not be required for any renewable energy
23 facility that uses municipal solid waste, landfill gas or waste heat, or that did not receive

1 capacity payments in any year that are in excess of the revenue requirements associated
2 with the statewide avoided unit.

3 (i) The utility may not include the following provisions:

4 1. Requirements for capacity testing of a renewable energy facility more frequently
5 than every other year.

6 2. Limitations on the period or duration of a Force Majeure.

7 3. Unreasonable restrictions on when a renewable energy facility may perform
8 maintenance on the facility.

9 4. Requirements that the renewable energy facility be dispatchable.

10 5. Unreasonable default or termination provisions that do not provide reasonably
11 adequate time for a renewable energy facility to cure an unanticipated problem with the
12 facility.

13 6. Provisions that allow the utility to terminate an agreement due to default by the
14 renewable energy facility on a non-material matter.

15 7. Language that allows the severability of contract provisions without opportunity for
16 the renewable energy facility to terminate if material provisions are severed;

17 8. Utility created limitations on the sale or use of the electricity produced by the
18 renewable energy facility;

19 9. Unreasonably lengthy or expensive interconnection procedures and requirements.

20 (j) Firm Capacity Payment Options. Each standard offer contract shall also contain, at a
21 minimum, the following options for the payment of firm capacity delivered by the
22 renewable energy facility:

1 1. Revenue requirements capacity payments: Revenue requirements capacity
2 payments shall commence on the date of delivery of capacity and energy by the
3 renewable energy facility which shall, for purposes of calculating capacity payments, be
4 assumed to be the in-service date of the statewide avoided unit. Capacity payments
5 under this option shall consist of monthly payments decreasing annually of the avoided
6 capital and fixed operation and maintenance expense associated with the avoided unit
7 and shall be equal to the revenue requirements of the statewide avoided unit, calculated
8 in accordance with paragraph (6)(a) of this rule.

9 2. Levelized capacity payments. Levelized capacity payments shall commence on the
10 date of delivery of capacity and energy by the renewable energy facility which shall, for
11 purposes of calculating capacity payments, be assumed to be the in-service date of the
12 statewide avoided unit. The capital portion of capacity payments under this option shall
13 consist of equal monthly payments over the term of the contract, calculated in
14 conformance with paragraph (6)(c) of this rule. The fixed operation and maintenance
15 portion of capacity payments shall be equal to the revenue requirements of fixed
16 operation and maintenance expense associated with the statewide avoided unit
17 calculated in conformance with paragraph (6)(a) of this rule. Where levelized capacity
18 payments are elected, the cumulative present value of the levelized capacity payments
19 made to the renewable energy facility over the term of the contract shall not exceed the
20 cumulative present value of capacity payments which would have been made to the
21 renewable energy facility had such payments been made pursuant to subparagraph (4)(
22 j)1. of this rule- revenue requirements capacity payments.

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

1 (a) For the purpose of this rule, avoided energy payments associated with firm energy
2 sold to a utility by a renewable energy facility pursuant to a utility's standard offer
3 contract shall commence with capacity payments to the renewable energy facility (b)
4 The energy payments associated with the statewide avoided unit and specified in the
5 utilities' standard offer contracts shall be defined as the cost of coal fuel, in cents per
6 kilowatt-hour, plus all delivery, storage and management costs, plus all variable
7 operation and maintenance costs, plus avoided line losses, for each monthly payment
8 period. The cost of coal fuel for each monthly payment period shall be defined as the
9 average market price of the appropriate quality of coal fuel delivered to each of the
10 utilities subject to these rules, in cents per million Btu, associated with the statewide
11 avoided unit multiplied by the average heat rate associated with the statewide avoided
12 unit. The variable operating and maintenance costs shall be estimated based on a
13 state-of-the-art, proven technology statewide avoided unit and shall include, but not be
14 limited to, costs associated with emission control devices and the cost of maintaining
15 and administering such devices. (6) Calculation of standard offer contract firm capacity
16 payment options.

17 (a) Calculation of the revenue requirement capacity payment option .

18 The monthly revenue requirement payment is:

19
$$VAC_m = 1/12[RR_n + O_o(1 + i)^n]$$

20 Where:

21 VAC_m = the monthly capacity payment of avoided capacity, \$/KW/month, for each
22 month of year n

1 RR_n = the annual revenue requirement for the carrying charges for the statewide avoided
2 unit \$/KW/year for each year, n, of year of the life of the avoided unit as determined by
3 rule 25-17.094(4)(b)

4 O_o = the total annual fixed O&M expense for the in-service year of the statewide
5 avoided unit

6 i = the annual escalation rate associated with the fixed O&M expense of the statewide
7 avoided unit

8 n = the year for which payment is being calculated

9 (b) Calculation of the levelized capacity payment option.

10 The monthly levelized capacity payments shall be calculated as follows:

11
$$P_L = F/12 \times [r/\{1-(1+r)^{-L}\}] + O_n$$

12 Where:

13 P_L = the monthly levelized capacity payment starting on the in-service date of the
14 statewide avoided unit

15 F = the net present value, in the in-service year of the statewide avoided unit of the
16 stream of

17 annual revenue requirements for the carrying charges of the statewide avoided unit
18 over L , the useful life of the statewide avoided unit

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

20 L = useful life of the statewide avoided unit

21 O_n = monthly fixed operation and maintenance component of the capacity payment in
22 the year n , such that:

23
$$O_n = 1/12 \times O_o(1+i)^n$$

1 Where:

2 O_0 = the total annual fixed O&M expense for the in-service year of the statewide

3 avoided unit

4 i = the annual escalation rate associated with the fixed O&M expense of the statewide

5 avoided unit in year n , of the life of the unit

6 n = the year for which payment is being calculated

7 (7) Upon request by a renewable energy facility or any interested person, each utility
8 shall provide within 30 days its most current projections of its future generation mix
9 including type and timing of anticipated generation additions, and at least a 20-year
10 projection of fuel forecasts, as well as any other information reasonably required by the
11 renewable energy facility to project future avoided cost prices.

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

16 (b) Upon execution of the contract by the renewable energy facility and delivery to the
17 utility, firm energy and capacity payments made to a renewable energy facility
18 pursuant to a standard offer contract shall be recoverable by a utility through the
19 Commission's periodic review of fuel and purchased power costs.

20 (9) Changes or modifications to, or approvals of, standard offer contracts shall not be
21 valid except pursuant to an order of the Commission following an appropriately noticed
22 evidentiary proceeding with opportunity for full and fair participation by any affected
23 party.

1 (10) Within 60 days of the effective date of this Part IV, the Commission shall initiate
2 and properly notice evidentiary proceedings for the purpose of developing and
3 approving a uniform standard offer contract for firm energy and capacity that must be
4 used by each public utility subject to this rule. The standard offer contracts of each
5 utility shall be identical, with the exception of minor differences relating to utility
6 specific provisions such as line losses, contact persons, and similar such matters. Once
7 approved, such standard offer contract may not be modified except upon order of the
8 Commission following further evidentiary proceedings before the Commission upon
9 petition of a renewable energy facility or a utility subject to these rules.

10

11 **25-17.0945 Annual Florida Renewable Energy Report.**

12 (1) By March, 1st of each year, the State's electric utilities shall jointly prepare and file
13 an aggregated, comprehensive Florida Renewable Energy Report containing accurate,
14 complete and detailed information regarding existing and planned Florida renewable
15 energy facilities for the immediately preceding calendar year.

16 (2) The information contained in the report shall include, but not be limited to:

17 (a) the current installed renewable energy generating capacity,

18 (b) the planned renewable energy generating capacity in mW,

19 (c) the annual renewable energy electrical production in mWhs,

20 (d) the number of on-going negotiations for the purchase of renewable energy,

21 (e) the number of failed negotiations for the purchase of renewable energy, and

22 (f) all other such information that may assist the Commission in determining

23 1. the rate of renewable energy development in the State,

- 1 2. the success of the Commission's rules in encouraging renewable energy, and
- 2 3. the extent to which the State is meeting the policy objectives articulated in Section
- 3 366.91, Florida Statutes.

4 (3) Not later than 60 days following submittal of the Florida Renewable Energy Report
5 by the electric utilities, the Commission shall conduct a docketed inquiry and
6 evidentiary hearing with respect to each annual Florida Renewable Energy Report and
7 issue an order declaring with specificity its findings, directions to the State's electric
8 utilities, and plans for future actions regarding renewable energy facilities.

9

10 **25-17.095 Settlement of Disputes in Contract Negotiations.**

11 (1) Public utilities shall negotiate in good faith for the purchase of capacity and energy
12 from renewable energy facilities and interconnection with renewable energy facilities.

13 In the event that a utility and a renewable energy facility cannot agree on the rates,
14 terms, and other conditions for the purchase of capacity and energy, or the cost, terms or
15 other conditions for interconnection, the renewable energy facility may petition the
16 Commission for relief, and may request that the Commission order the utility to sign a
17 contract for the purchase of capacity and energy at rates, terms and conditions that are
18 consistent with this rule or to interconnect with the renewable energy facility for a
19 reasonable cost and in accord with other reasonable terms and conditions.

20 (2) To the extent possible, the Commission will dispose of an application for relief
21 pursuant to this rule within 90 days of the filing of a petition.

22 (3) If the renewable energy facility presents credible evidence that a utility has failed to
23 negotiate or deal in good faith with the renewable energy facility, the Commission shall

1 order the utility to immediately take action to remedy such failure, including actions
2 deemed necessary by the Commission to comply with this Part IV, and shall impose an
3 appropriate penalty on the utility including, but not limited to those approved by Section
4 350.127, F.S.

5

6 **25-17.0955 Modification to Existing Contracts; When Approval Is Required.**

7 (1) Each public utility shall notify the Commission of material modifications that have
8 been mutually agreed upon by the utility and the renewable energy facility who are
9 parties to an existing contract for the purchase of firm capacity and energy, the costs of
10 which are reviewed through the Commission's periodic review of fuel and purchased
11 power costs, within 30 days of the modification. At a minimum, the following
12 information shall be submitted:

13 (a) A description of the modification and a statement indicating why the utility believes
14 that the modification is a material change;

15 (b) A copy of the documents that evidence the modification;

16 (c) A detailed statement explaining whether the existing contract would be viable if no
17 modification is made; and,

18 (d) A statement indicating whether the date of delivery of capacity and energy by the
19 project will change because of the modification.

20 (2) In order for a utility to recover its costs, Commission approval is required for a
21 material modification. Such modifications may include changes to contractual terms
22 such as location, prime mover technology type, fuel type, or length of contract term.

1 (3) Commission approval is not required for any modifications explicitly contemplated
2 by the terms of the contract or for routine administrative changes.

3 (4) In cases where approval of a contract modification is required for utility cost
4 recovery, a utility shall file a petition for contract modification approval that provides
5 the information required by paragraphs (1)(a) through (d) above. The petition shall also
6 comply with the applicable Commission procedural requirements. When a petition is
7 filed, the petition shall serve as the notice required by subsection (1) above.

8

9 **25-17.096 The Utility's Obligation to Sell.**

10 Each utility shall sell electricity to renewable energy facilities at rates which are just,
11 reasonable, and non-discriminatory.

12

13 **25-17.097 Periods During Which Purchases Are Not Required.**

14 Where purchases from a renewable energy facility will impair the utility's ability to
15 give adequate service to the rest of its customers or, due to operational circumstances
16 directly relating to reasonable minimum loading limitations of a utility unit, purchases
17 from renewable energy facilities will cause the utility to incur excessive costs which the
18 utility would not incur if it did not make such purchases, the utility shall be temporarily
19 relieved of its obligation under these rules to purchase electricity from a renewable
20 energy facility; provided, however, that the utility shall use best efforts to minimize the
21 time period during which it is temporarily relieved from such obligation. If practicable,
22 the utility shall notify the affected renewable energy facility or facilities prior to the
23 instance giving rise to those conditions. If prior notice is not practicable, the utility

1 shall notify the renewable energy facility or facilities as soon as practicable after the
2 fact. In either event the utility shall notify the Commission, and the Commission staff
3 shall, upon request of the affected renewable energy facility or facilities, investigate the
4 utility's claim. Nothing in this section shall operate, or be construed to operate, to
5 relieve the utility of its general obligation to purchase for a renewable energy facility
6 pursuant to Rule 25-17.094, F.A.C

7

8 **25-17.098 Transmission for Self-service for Renewable Energy Facilities.**

9 Public utilities are required to provide transmission and distribution services to enable a
10 retail customer to transmit electricity generated by a renewable energy facility owned or
11 operated by the customer at one location to the customer's facilities at another location
12 or locations when the provision of such service is not likely to adversely affect the
13 adequacy or reliability of electric service to all customers.

14

15 **25-17.099 Transmission Service for Renewable Energy Facilities.**

16 (1) Upon request by a renewable energy facility, each electric utility in Florida shall
17 provide, subject to the provisions of subsection (3) of this rule, transmission service to
18 wheel as-available energy or firm energy and capacity produced by a renewable energy
19 facility from the renewable energy facility to another electric utility.

20 (2) The rates, terms, and conditions for transmission services as described in subsection

21 (1) and in Rule 25-17.098, F.A.C., which are provided by a public utility shall be those

22 approved by the Federal Energy Regulatory Commission.

1 (3) A utility may deny, curtail, or discontinue transmission service to a renewable
2 energy facility on a non-discriminatory basis if the provision of such service would
3 adversely affect the safety, adequacy or reliability of electric service to the utility's
4 general body of retail and wholesale customers.