State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 27, 2006

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

FROM: Office of the General Counsel (Harris) PS
Division of Economic Regulation (Ballinger, Trapp)

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

AGENDA: 1/9/07 – Regular Agenda – Rule Adoption – Interested Persons May Participate at the Commission's Discretion.

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: ~~Deason~~ Carter hms

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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

Case Background

In its 2005 session, the Florida Legislature enacted Section 366.91, Florida Statutes (F.S.), regarding renewable energy. At the May 31, 2005, Internal Affairs conference, staff presented an analysis of required internal tasks regarding the new statute. On October 1, 2005, Section 366.91, F.S., became effective. Section 366.91(1), F.S., states:

> The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

Section 366.91(3), F.S., enumerates requirements to promote the development of renewable energy resources. In summary:

a) By January 1, 2006, each investor-owned electric utility (IOU) and municipal utility subject to the Florida Energy Efficiency and Conservation Act (FEECA) of 1980 must continuously offer to purchase capacity and energy from specific types of renewable resources;
b) The contract shall be based on the utility's full avoided costs, as defined in Section 366.051, Florida Statutes; and,
c) Each contract must provide a term of at least ten years.

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

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

On December 27, 2005, the Commission issued Order No. PSC-05-1260-TRF-EQ approving FPUC's proposed contract.[1] The Commission also approved the remaining four contracts with modifications through June 1, 2006, to allow time for additional discussion on policy issues associated with implementing Section 366.91, Florida Statutes. On January 17, 2006, the Florida Industrial Cogeneration Association (FICA) and Bay County each filed a protest of Order No. PSC-05-1260-TRF-EQ and requested a formal hearing. Both parties, however, requested that any hearing be deferred until after the additional workshop was held.[2]

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

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

On March 6, 2006, staff held an additional workshop to obtain further information on implementing the statute. At the workshop, there appeared to be general agreement among the representatives of renewable generators and the IOUs that: (1) the ten-year minimum contract terms should begin on the in-service date of the avoided unit; (2) the subscription limit should be set at the size of the avoided unit; and (3) the contracts should include qualifying facilities with capacities less than 100 kilowatts as required by Rule 25-17.0832(4)(a)3., F.A.C. However, one of the issues that remained unresolved was the methodology to be used to set avoided cost for standard offer contracts. At the workshop, the IOUs proposed to continue the single unit approach based on reliability needs and the value of deferral (VOD) methodology for calculating avoided costs. Representatives from the City of Tampa, the Solid Waste Authority of Palm Beach, and the FICA proposed a hypothetical statewide coal unit, with an in-service date the same as the renewable generator's, and capacity payments based on full revenue requirements of the avoided unit. Staff proposed a portfolio approach, coupled with the VOD methodology, as a refinement to calculating avoided costs, which was supported by Lee County, Montenay Dade Limited, Covanta Energy Corporation, and the Integrated Waste Services Association. The portfolio approach would provide multiple contracts based on generating units identified in a utility's annual Ten-Year Site Plan (TYSP) filing. No other written proposals were presented.

FPL, PEF, Gulf and TECO filed their petitions for approval of revised standard offer contracts on April 3, 2006. All four standard offer contracts continued to limit avoided cost offerings based on the utility's next single generating unit. On June 6, 2006, the Commission issued Order No. PSC-06-0486-TRF-EQ, in Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ and 050810-EQ. In the Order, the Commission required utilities to file standard offer contracts based on the Fossil Fuel Unit Type Portfolio approach. As stated in the Order:

> We find that a different approach – a "Fossil Fuel Unit Type Portfolio" approach – will best meet the intent of Section 366.91, Florida Statutes, to encourage the development of renewable energy resources while balancing ratepayer interests. Under this approach, each investor-owned electric utility shall file a portfolio of standard offer contracts comprised of individual contracts based on the next avoidable fossil-fueled generating unit of each technology type in the utility's 2006 Ten-Year Site Plans. Renewable generators may then select a standard offer contract based on the IOU's avoided unit type that best meets the renewable generator's pricing and timing needs and most closely matches the operating characteristics of the renewable technology.

Order No. PSC-06-0486-TRF-EQ approved the IOUs' proposed standard offer contracts, and required FPL, PEF and TECO to file additional contracts within 90 days based on additional planned generating units, to fulfill the requirements of a Fossil Fuel Unit Type Portfolio approach. Since Gulf had only a single planned generating unit in its TYSP, Gulf was not required to file additional contracts. The Commission also directed staff to initiate rulemaking to implement Section 366.91, Florida Statutes. On June 26, 2006, FICA filed a protest of Order No. PSC-06-0486-TRF-EQ and requested a formal hearing. FICA, however, agreed to a reasonable delay of the hearing until after the Commission's rulemaking proceeding was completed. Due to FICA's protest, the standard offer contracts approved by the Commission's order are not in effect, and FPL, PEF and TECO have not filed additional contracts.

In its 2006 Session, the Florida Legislature once again addressed the issue of renewable generation in Florida. Specifically, Section 366.92(1), F.S. states:

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

The statute goes on to state that the Commission may establish goals for increasing the use of existing, expanded, and new Florida renewable energy resources.

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

At the October 3, 2006 Agenda Conference, the Commission voted to propose amendments to Rule 25-17.0832, F.A.C. The Commission also set a hearing date of November 9, 2006, to allow interested persons to provide additional comments and alternative rule language. On November 9, 2006, the Commission conducted a rule hearing and heard presentations from Senator Michael Bennett, the Commission staff, representatives from Montenay-Dade Limited, Lee County, the Renewable Energy Producers (the REP consists of the City of Tampa, the Solid Waste Authority of Palm Beach County, FICA, and Covanta Energy Corporation), Wheelabrator Technologies, Inc., the Natural Resources Defense Council, Green Coast Energy, Inc., and the investor-owned utilities. At the conclusion of the hearing, the Commissioners directed staff to provide further analysis on specific topics discussed during the hearing. Post hearing comments were filed by the investor-owned utilities, the REP, the City of Tampa, and TECO.

This recommendation will address staff's proposed addition to Chapter 25-17 of a new Part IV (new Rules 25-17.200 through 25-17.310, F.A.C.), and amendments to Part III, Rule 25-17.0832, F.A.C., included as Attachment A. Recommended changes are shown in legislative format. A summary of the parties' post hearing comments is contained in Attachment B. The Commission has jurisdiction over this matter pursuant to Sections 366.04 through 366.06, 366.91 and 366.92, Florida Statutes.

Executive Summary

At the conclusion of the hearing on November 9, 2006, the Commissioners directed staff to provide further analysis of specific topics discussed during the hearing. Staff was asked to specifically address:

1. A separate rule governing utility purchases from renewable generators. [TR 227]
2. Opportunities for small qualifying facilities (QFs). [TR 227]
3. Value of Deferral methodology as basis for determining full avoided cost. [TR 221-222, 226]
4. Encouraging fixed energy payment options. [TR 228]
5. Term of contract specified by the renewable generator. [TR 228]
6. Effects of potential carbon regulations on full avoided cost. [TR 225-226]
7. Ownership of tradable renewable energy credits (TRECs) remaining with the renewable generator. [TR 228]
8. Case-by-case review of imputed debt equivalent adjustments (equity adjustments). [TR 226]
9. Annual reporting of the level of renewable energy in Florida. [TR 223-224, 227]
10. Use of mediation in dispute resolution. [TR 228-229]

Below is a summary of each topic and reference to a particular rule, where applicable:

Separate Rule

Staff proposes the creation of a separate Part IV to the Commission's rules in Chapter 25-17, F.A.C. to promote existing and new renewable generation. In addition to the existing requirements contained in Part III of Chapter 25-17, F.A.C., new Part IV requires investor-owned utilities to provide continuous standard offer contracts based on a multi-unit portfolio of avoidable fossil-fueled generating units planned by the investor-owned utilities in their Ten-Year Site Plans. The new rules also provide options within each standard offer for a renewable generator to select:

(1) the term of the contract, ranging from ten years to the life of the avoided unit;
(2) the starting date for capacity and fixed energy payments, where applicable, starting as early as the in-service date of the renewable generating facility; and
(3) the annual/monthly level of capacity and fixed energy payments, where applicable, over the life of the contract.

The new rules clarify that TRECs remain the exclusive property of the renewable generator. A requirement for reopening contracts is included in the event new environmental or other government standards to control carbon emissions from power plants are adopted. Any request by an investor-owned utility to impute a debt equivalent adjustment (equity adjustment) must be justified in an evidentiary proceeding and approved by the Commission. All electric utilities, including municipal electric utilities and rural electric cooperatives, are required to report annually on the level of renewable generation in their service areas. Finally, a mediation and dispute resolution process is established whereby the Commission and its staff can assist renewable generators in resolving issues which may arise in contract negotiations with investor-owned utilities.

[New rules 25-17.200 through 25-17.310]

Small QFs

In order to continue to provide opportunities for small qualifying facilities, investor-owned utilities are required to provide standard offer contracts to both renewable generating facilities and small qualifying facilities with a design capacity of 100 KW or less.
[New rule 25-17.250]

Value of Deferral

Section 366.091, F.S., requires the Commission to establish payment provisions for energy and capacity purchased from renewable energy resources which are based upon the utility's full avoided costs, as defined in Section 366.051, F.S. The statute goes on to state that in order to receive capacity payments, the renewable energy generator must have operational characteristics similar to the utility's avoided unit such that capacity value is provided to the utility. Section 366.051, F.S., defines a utility's full avoided costs as the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. Staff has incorporated this definition of avoided costs into new Rule 25-17.210. F.A.C.

Section 366.92, Florida Statutes, enacted in 2006, further emphasizes the need to promote existing and new renewable energy resources with focus on diversifying the types of fuel used to generate electricity in Florida. At the same time, the statute reiterates the legislative intent to minimize the costs of power supply to electric utilities and their customers. In order to codify the legislative intent, new Rule 25-17.240, F.A.C., clarifies that utilities "are encouraged to negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units, and provide fuel diversity, fuel price stability, and energy security." [emphasis added] Standard offer contracts pursuant to new Rule 25-17.250, F.A.C., have also been expanded to provide more pricing options to renewable generating facilities, including fixed energy payments. These proposed additions to the rules will provide the Commission flexibility to ensure that the costs of fuel diversity, fuel price stability, and energy security are properly included in the full avoided costs paid to renewable generating facilities.

The new rules proposed in Part IV preserve the current value of deferral (VOD) methodology by referencing appropriate sections of the existing rules in Part III. Staff continues to believe that the VOD methodology is the appropriate method for establishing prices to be paid to renewable generating facilities. The VOD methodology is based on and reflects each utility's need for power and the timing of that need. The Commission retains flexibility throughout the whole process, from the review of Ten-Year Site Plans to the approval of standard offer tariffs, to ensure that all relevant factors are included in the determination of full avoided costs paid to renewable generators. The VOD methodology is simply a tool used to convert full avoided costs into contract prices that reflect the adequacy, reliability, fuel diversity, fuel price stability, and energy security goals and objectives of the Commission.

The VOD methodology also provides flexibility to renewable generators by allowing a renewable generator to select a contract term which is less than the life of the avoided unit. Because VOD payments escalate over time, renewable generators are encouraged to remain on-line through the life of the contract. By using proven principles of time-value-of-money, the VOD methodology also provides for flexible payment streams, starting as early as the in-service date of the renewable generator. New Rule 25-17.250(3) clarifies that a renewable generating

facility may select any payment stream for the capital component of the utility's avoided unit, including front-end loaded capacity payments, that best meets the financing requirements of the renewable generating facility. This clarification is consistent with the basic principles of the VOD methodology which hold that (1) the cumulative present value of payments made may not exceed the cumulative present value of the sum of the year-by-year values of deferral, and (2) where any annual payment is greater than the value of deferral for that year, additional security or other performance requirements may be required.
[New rules 25-17.240 and 25-17.250]

Fixed Energy Payments

During the hearing, some renewable generators stated that having fixed fuel payments would assist in financing projects. Staff has addressed this concern in sections 25-17.250(5)(a) and (b) of the proposed new rules.

In an effort to further facilitate financing, new rule 25-17.250(5)(a) allows a renewable generator to fix as-available energy prices made prior to the in-service date of the avoided unit on an annual basis. Fixed as-available energy prices would be based on the utility's projection of system incremental fuel costs based on normal conditions. A risk premium, mutually agreed to by the utility and renewable generator, would be added to account for anticipated fuel price volatility above normal conditions and would be treated for cost recovery as a "hedging cost." Fixed as-available energy prices will accomplish two things. First, they provide the renewable generator with an additional fixed source of revenue for the period of time prior to the avoided unit in-service date, subject only to the actual generating output of the renewable generator. At the same time, they provide the investor-owned utility and its ratepayers a measure of fuel price stability during this time frame.

New rule 25-17.205(5)(b) allows a renewable generator to fix a portion of avoided unit fuel costs, which start with the in-service date of the avoided unit, and amortize this portion of fuel costs, on a present value basis, starting as early as the in-service date of the renewable generating facility. The portion of avoided unit fuel costs amortized would be mutually agreed upon by the utility and the renewable generator.
[New rules 25-17.250(5)(a) and (b)]

Contract Term

At the hearing, staff agreed that allowing the developer of a renewable generation facility the option to select the term of the contract, from a minimum of ten years up to the life of the avoided unit, was consistent with the overall VOD methodology.
[New rule 25-17.250(2)]

Future Carbon Regulations

While the existing rules in Part III allow for reopener provisions in standard offer contracts, new rule 25-17.270 specifically requires standard offer contracts to allow either party to reopen a contract if avoided unit costs change as a result of new environmental and other regulatory requirements, such as carbon emission standards, enacted during the term of the contract. This is consistent with current regulatory treatment of environmental costs born by investor-owned utilities as a result of new environmental standards which may be recovered through the Environmental Cost Recovery Clause.

[New rule 25-17.270]

Tradable Renewable Energy Credits (TRECs)

At the hearing, all parties agreed that TRECs belong to renewable generator. The new rule codifies this understanding.

[New rule 25-17.280]

Imputed Debt Equivalent Adjustments (Equity Adjustments)

During the hearing it was noted that some utilities reduce full avoided cost payments by imputing additional equity costs to reflect the concerns of financial rating agencies. Basically, some utilities contend that a portion of capacity payments are viewed as debt, warranting an additional of equity to balance the additional imputed debt. At the conclusion of hearing, the Commission concluded that imputed debt equivalent adjustments should be evaluated on a case-by-case basis. The new rule requires Commission approval of any imputed debt equivalent adjustment on case-by-case basis after an evidentiary hearing.

[New rule 25-17.290]

Annual Reporting

The new rule would require all utilities, including municipal and cooperative utilities, to include data regarding renewable generation as part of their Ten-Year Site Plans. While the municipal and cooperative utilities have not participated in this docket to date, the new reporting requirements should not be burdensome.

[New rule 25-17.30]

Mediation

The existing rules relating to contract dispute resolution simply state that the Commission will resolve disputes within 90 days. The new rule more fully lays out an expedited dispute resolution process which is patterned after Rule 25-22.0365, F.A.C., Expedited Dispute Resolution Process for Telecommunications Companies. Companies involved in a dispute must first attempt resolution through mediation from an independent third-party or the Commission staff. Should mediation fail, either party may petition the Commission to resolve the dispute.

[New rule 25-17.310]

Discussion of Issues

Issue 1: Should the Commission adopt new Chapter 25-17, Part IV, F.A.C., Utilities' Obligations with Regard to Renewable Generating Facilities and amend Chapter 25-17, Part III, Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts?

Recommendation: Yes. A separate part to Section 25-17, F.A.C., regarding renewable generation will provide clarity and address the unique characteristics of renewable generators. The new Part IV would be comprised of 12 new rules, 25-17.200 through 25-17.310, F.A.C.

Proposed Part IV would: 1) require investor-owned utilities to continuously offer standard contracts based a portfolio approach of utility fossil-fueled units; 2) continue to calculate capacity payments on a value of deferral basis based on the utility's full avoided cost and need for power; 3) require investor-owned utilities to expand the capacity and energy payment options to facilitate the financing of renewable generation facilities; 4) provide for an expedited dispute resolution process; and 5) require annual reporting from all utilities as part of the Ten-Year Site Plan process. The proposed additions to the rules will provide the Commission flexibility to ensure that the costs of fuel diversity, fuel price stability, and energy security are properly included in the full avoided costs paid to renewable generating facilities.

The only amendment to Part III is to delete the definition of a renewable facility and municipal solid waste facility from Rule 25-17.0832, F.A.C. These definitions are now included in Part IV of the rules. The remainder of Part III should remain, as those rules address the requirements of metering, interconnection, back-up power, wheeling, and value of deferral calculations. Generation facilities fueled by renewable resources would be governed pursuant to the new Part IV with appropriate references to Part III. Qualifying facilities with a design capacity of 100kW or less are eligible for a standard offer contract under either Part III or Part IV. Staff's recommended rule changes are shown in Attachment A. (Harris, Ballinger, Trapp)

Staff Analysis: At the October 3, 2006, Agenda Conference, the Commission voted to propose amendments to Rule 25-17.0832, F.A.C. The amendments were extensive and were intended to encourage the development of renewable generation in Florida. The Commission also set the matter for hearing. At the conclusion of the November 9, 2006, hearing, the Commissioners directed staff to evaluate the feasibility of creating a separate rule solely for renewable generation. Given this direction, staff determined that enough new concepts were being proposed that the creation of a separate rule for renewable generators is appropriate. Staff also determined that, given the range of new concepts, separate rules for each major group are appropriate. Staff believes that it is advantageous to have a self-sustaining, comprehensive collection of rules that address the unique characteristics of renewable generators. The recommended new rules are codified in Chapter 25-17, Part IV, F.A.C., Utilities' Obligations with Regard to Renewable Generating Facilities. The purchase of power from a non-utility source requires many procedures and standards. Therefore, proposed new Part IV references existing Part III rules for such things as interconnection, metering, back-up power, wheeling, and value of deferral payment calculations.

Section 366.091, Florida Statutes, requires the Commission to establish payment provisions for energy and capacity purchased from renewable energy resources which are based upon the utility's full avoided costs, as defined in Section 366.051, F.S. The statute goes on to

state that in order to receive capacity payments, the renewable energy generator must have operational characteristics similar to the utility's avoided unit such that capacity value is provided to the utility. Section 366.051, F.S., defines a utility's full avoided costs as "the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source." The costs associated with achieving strategic concerns such as fuel diversity and energy security can be internalized as part of the planning process and are included in the utility's avoided cost approved by the Commission. Staff has incorporated this definition of avoided costs into new Rule 25-17.210, F.A.C.

Section 366.92, Florida Statutes, enacted in 2006, further emphasizes the need to promote existing and new renewable energy resources with focus on diversifying the types of fuel used to generate electricity in Florida. At the same time, the statute reiterates the legislative intent to minimize the costs of power supply to electric utilities and their customers. In order to capture this legislative intent, new Rule 25-17.240, F.A.C., clarifies that utilities "are encouraged to negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units, and provide fuel diversity, fuel price stability, and energy security." Standard offer contracts pursuant to new Rule 25-17.250, F.A.C., have also been expanded to provide more pricing options to renewable generating facilities, including fixed energy payments. The proposed additions to the rules will provide the Commission flexibility to ensure that the costs of fuel diversity, fuel price stability, and energy security are properly included in the full avoided costs paid to renewable generating facilities.

In addition to the requirements contained in Part III, investor-owned utilities would be required to continuously offer standard contracts based a portfolio of utility fossil fueled units identified in the utility's annual Ten-Year Site Plan. The developer of a renewable generation facility would select the term of the contract and the date when capacity payments would begin. To further facilitate financing, the developer of a renewable generation facility would have multiple capacity and energy payment options to choose from. The new rules would provide an expedited dispute resolution process which is patterned after Rule 25-22.0365, F.A.C., Expedited Dispute Resolution Process for Telecommunications Companies. While municipal and cooperative utilities have not participated in the current docket to date, the annual reporting requirements should not be burdensome.

Below are summaries for each of the recommended rules.

25-17.200 Application and Scope – This rule states the Commission's intent with regard to renewable generation. The language is taken from Section 366.92(1), F.S.

25-17.210 Definitions – This rule provides a definition for a "Renewable Generating Facility." Staff has included a requirement that at least 75% of the facility's primary fuel come from a renewable energy source as defined in 366.91, F.S. The percent of primary fuel source was determined from the definition previously contained in Part III, Rule 25-17.0832(4)(a), F.A.C. The percent of primary fuel qualifier is being added to insure that the rules encourage facilities that will reduce Florida's dependence on natural gas and oil for the production of electricity. The other definitions contained in this rule reference definitions from various other Statutes.

25-17.220 Qualifying Criteria – At the November 9, 2006, hearing, some representatives of renewable generation facilities questioned whether a renewable facility had to be a qualifying facility (QF) under federal law in order to be eligible to utilize the Commission's rules. The new rule codifies that all renewable generators shall be deemed a "QF" for purposes of these rules, and therefore have all of the rights, privileges, and responsibilities contained in Part III. [3]

25-17.230 The Utility's Obligation to Purchase and Sell – The purchase of power from a non-utility source requires many procedures and standards. Therefore, Part IV references the procedures and standards already established in Part III and reiterates that utilities must interconnect, meter, and purchase power from renewable generators. The new rule also reiterates that utilities must provide back-up power and transmission service to wheel power to another utility if desired by the developer of the renewable facility.

25-17.240 Negotiated Contracts – This rule clarifies that utilities are encouraged to negotiate purchased power agreements with renewable generators to contribute towards the deferral or avoidance of additional capacity construction and to provide fuel diversity, fuel price stability, and energy security. Rates paid shall not exceed full avoided costs as defined by Section 366.051, F.S. As planned generating units are designated "avoided units' for the purpose of contracting purchases from renewable generators, the costs associated with achieving strategic concerns such as fuel diversity and energy security are included in each utility's avoided unit costs. The Commission retains flexibility throughout the whole process, from the review of Ten-Year Site Plans to the approval of standard offer tariffs, to ensure that all relevant factors are included in the determination of full avoided costs paid to renewable generators. The Fossil Fuel Portfolio approach will provide cost information to renewable generators as costs associated with fuel diversity, energy security, etc., are internalized and become part of the utility's avoided cost.

25-17.250 Standard Offer Contracts – Investor-owned utilities are required to continuously offer standard contracts based a portfolio approach of utility fossil-fueled units. In the new rules, capacity payments will continue to be calculated on a value of deferral (VOD) basis based on the utility's full avoided cost and need for power. The VOD methodology is based on and reflects the utility's need for power and the timing of that need. The costs associated with achieving strategic concerns such as fuel diversity and energy security are included in each utility's avoided unit costs.[4]

The VOD methodology provides flexibility to renewable generators by allowing a renewable generator to select a contract term which is less than the life of the avoided unit. Because VOD payments escalate over time, they encourage the renewable generator to remain on-line through the life of the contract. Over the life of the avoided unit, the cumulative present value of value of deferral payments and the cumulative present value of revenue requirements are equal.

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[3] Generally, a qualifying facility is a small power producer or cogenerator that meets certain federal requirements. QF status allows a facility to take advantage of certain rights and protections that are not generally available to independent power producers.

[4] As part of the Ten-Year Site Plans submitted for Commission review annually, utilities provide information pertaining to their planned capacity additions, fuel mix, and generation costs. The costs to build the plant reflect the value of fuel diversity, fuel price stability, energy security, and compliance with environmental regulations. Under the Fossil Fuel Portfolio approach, these planning assumptions form the basis for each utility's avoided costs included as part of their standard offer contracts to renewable generating facilities.

By using the proven principles of time-value-of-money, the VOD methodology also provides for flexible payment streams, starting as early as the in-service date of the renewable generator. This is important to enable a renewable generator to obtain project financing. New Rule 25-17.250(3) clarifies that a developer of a renewable generating facility may select any payment stream for the capital component of the utility's avoided unit, including front-end loaded capacity payments, that best meets the financing requirements of the renewable generating facility. This clarification is consistent with the basic principles of the VOD methodology which hold that (1) the cumulative present value of payments made may not exceed the cumulative present value of the sum of the year-by-year values of deferral, and (2) where any annual payment is greater than the value of deferral for that year, additional security or other performance requirements may be required.

In an effort to further facilitate financing, staff recommends that the developer of a renewable generation facility should select the term of contract, from a minimum of ten years up to the life of the avoided unit. Capital needs will vary from project to project. For example, very little capital is likely to be needed for an extension of an existing contract with a renewable generator with remaining physical life. However, potentially millions of dollars of capital would be required for construction of a new facility. Allowing the developer of a renewable generation facility to select the term of the contract would provide the needed flexibility to match the term of the contract to the capital financing needs of the project.[5] This provision is contained in subsection (2).

During the hearings, some renewable generators stated that having fixed fuel payments would assist in financing projects. Staff has addressed this concern in sections 25-17.250(5)(a) and (b) of the proposed new rules. New section 25-17.205(5)(b) allows a renewable generator to fix a portion of avoided unit fuel costs, which start with the in-service date of the avoided unit, and amortize this portion of fuel costs, on a present value basis, starting as early as the in-service date of the renewable generating facility. The portion of avoided unit fuel costs amortized would be mutually agreed upon by the utility and the renewable generator. Negotiated contracts with this feature have previously been approved by the Commission.

Finally, to fully capture the benefits of fuel diversity, new section 25-17.250(5)(a) allows a renewable generator to fix as-available energy prices on an annual basis for generation delivered prior to the in-service date of the avoided unit. Fixed as-available energy prices would be based on the utility's projection of system incremental fuel costs based on normal conditions. A risk premium, mutually agreed to by the utility and renewable generator, would be added to account for anticipated fuel price volatility above normal conditions and would be treated for cost recovery as a "hedging cost". Fixed as-available energy prices will accomplish two things. First, they provide the renewable generator with an additional fixed source of revenue for the period of time prior to the avoided unit in-service date, subject only to the actual generating output of the renewable generator. At the same time, they provide the investor-owned utility and its ratepayers a measure of fuel price stability during this time frame.

[5] A longer contract provides financial security to the project's backers, who can rely on a steady stream of payments of a given amount for a given time period, allowing easier calculation of the project's revenues. A shorter contract allows project backers to take advantage of possible increases in the utility's full avoided costs (and therefore, a higher purchase price) when the contract is renegotiated or extended, but does not provide for the long term quantifiable, predictable payment stream.

25-17.260 Subscription Limits – The Commission's proposed rule had set a subscription limit equal to the size of the utility's avoided unit. Based on the portfolio approach, this would have offered approximately 5,000 MW of capacity for purchase[6], which is approximately ten times the existing renewable capacity under contract today. Staff now recommends removing the subscription limit entirely to send a clear signal regarding the Commission's commitment to encouraging renewable generation. Should too much renewable generation result, the utility may petition the Commission for appropriate relief.

25-17.270 Changes in Environmental Regulations - Montenay-Dade Limited and Lee County stated that renewable generators should receive payment for avoided future carbon taxes or carbon allowances. Carbon taxes or allowances are not currently required under federal or state law. Hence, it is unclear what impact such new environmental regulations would have on a utility's avoided costs, or when the cost impacts would occur. Staff believes that if carbon taxes or allowances are required by law in the future, then such costs would be included in a utility's avoided cost calculation at that time. Currently, if an investor-owned utility builds a plant and future environmental regulations are imposed, the utility can seek cost recovery through the Environmental Cost Recovery Clause. By requiring a reopener provision to address these potential additional costs, a contract with a renewable generator mirrors the way an investor-owned utility currently petitions the Commission for additional cost recovery for changes in environmental regulations.

25-17.280 Tradable Renewable Energy Credits (TRECs) - There is a developing market for TRECs in the United States that represents the environmental benefits of renewable energy and provides an additional revenue source for renewable generators. At the hearing, parties agreed that TRECs belong to the developer of the renewable facility. The new rule clarifies this understanding.

25-17.290 Imputed Debt Equivalent Adjustments – Some utilities impute additional equity costs to reflect rating agencies' views of purchased power contracts. Basically, a portion of the capacity payments are viewed as debt and the rating agency requires the utility to add additional equity to offset the effect this imputed debt has on the utility's balance sheet. The utility adds this additional equity to its balance sheet by reducing the payments due to the renewable generator under the contract. The direction from the Commissioners at the conclusion of the hearing was not to eliminate the equity adjustment outright, but allow negotiations and Commission evaluation on case-by-case basis. Short term contracts with small MW amounts do not generate much of an equity adjustment. Since the subscription limit is being removed and the term of the contract is now selectable by the renewable generator, equity adjustments could become significant. However, such adjustments should only be imposed after PSC approval. The new rule requires Commission approval on a case by case basis after an evidentiary hearing before a utility can impose an equity adjustment in a standard offer contract with a renewable generator.

25-17.300 Annual Reporting – In post-hearing comments, the investor-owned utilities and the REP suggested some form of annual reporting relating to renewable generation in Florida. The utilities suggested adding a section to their Ten-Year Site Plans and the REP suggested a

[6] Source: 2006 Ten Year Site Plan.

separate annual report from the investor-owned utilities. Staff is proposing that all utilities who file Ten-Year Site Plans, including municipal and cooperative utilities, be required to provide some basic data regarding renewable generation within their service territory.

25-17.310 Dispute Resolution – Existing rules relating to contract dispute resolution are broad in scope and require the PSC to resolve disputes, if feasible, within 90 days. The new rule more fully lays out an expedited dispute resolution process which is patterned after Rule 25-22.0365, F.A.C., Expedited Dispute Resolution Process for Telecommunications Companies. Companies involved in a dispute must first attempt resolution through mediation from an independent third-party or the Commission staff. Should mediation fail, either party may petition the Commission to resolve the dispute. The filing would require specific issues to be identified and timelines have been included for responsive comments. The PSC would resolve the dispute on an expedited basis, normally within 90 days.

Amendments to 25-17.0832 Firm Capacity and Energy Contracts

Staff initially recommended, and the Commission proposed, amendments to existing Rule 25-17.0832, F.A.C., Firm Capacity and Energy Payments. After review of the rulemaking record, and the comments from the November 9, 2006, Rule Hearing, staff determined that separate new Part to Chapter 25-17, F.A.C. would better accomplish the goals of the statute. A number of the provisions of Part III continue to apply, however. In order to create a new Part IV for renewable generators, part of existing Rule 25-17.0832, F.A.C. must be amended. This amendment removes the references to renewable generators from Part III.

INCLUSION OF POST-HEARING COMMENTS

Post-hearing comments were filed by the REP, investor-owned utilities, City of Tampa and TECO. Staff has carefully considered the post-hearing comments, as well as the record of the hearing, and has included suggested changes where appropriate. None of the parties provided specific rule changes as part of their post-hearing comments. A summary of post-hearing comments and staff's analysis is contained in Attachment B.

COST IMPACTS OF THE RECOMMENDED RULE AMENDMENTS

Staff prepared a Statement of Estimated Regulatory Costs (SERC) for the rule that was proposed on October 3, 2006, which is included as Attachment C. The new rules expand upon and mandate that investor-owned utilities offer the types of terms and conditions that are currently available only through negotiations. The bulk of the Commission's October 3, 2006, proposed rule is being codified in Part IV. Therefore, the cost impacts should remain approximately the same as estimated in the SERC prepared for the rule as proposed.

CONCLUSION

Staff recommends that the Commission adopt Chapter 25-17, Part IV, Florida Administrative Code, Utilities' Obligations with Regard to Renewable Generating Facilities, and amend Chapter 25-17, Part III, Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts, as shown in Attachment A. The recommended new rules and amendment accomplish the intent of Sections 366.91 and 366.92, F.S., to encourage the development of renewable generators while balancing the interests of electric utility ratepayers.

Issue 2: Should the rules as approved by the Commission be filed for adoption with the Secretary of State and the docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendations contained in Issue 1, following publication of a notice of change, the rule may be filed for adoption with the Secretary of State and the docket should be closed. (Harris)

Staff Analysis: If the Commission approves staff's recommendations contained in Issue 1, staff will publish a notice of change in the Florida Administrative Weekly. If no challenge to the rules is timely filed with the Department of Administrative Hearings, the rules will be filed with the Secretary of State for adoption and the docket may then be closed.

PART IV UTILITIES' OBLIGATIONS WITH REGARD TO RENEWABLE GENERATING FACILITIES

25-17.200 Application and Scope. The purpose of these rules is to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers. Unless otherwise stated, these rules apply to all investor-owned utilities.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New .

25-17.210 Definitions.

For purposes of these rules:

(1) "Renewable Generating Facility" means an electrical generating unit or group of units at a single site, interconnected for synchronous operation and delivery of electricity to an electric utility, where 75 percent, at a minimum, of the primary energy in British Thermal Units (BTUs) used for the production of electricity is from one or more of the following sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, or waste heat from a commercial or industrial manufacturing process.

(2) "Biomass" means a fuel source that is comprised of, but not limited to, combustible

residues or gases from forest products manufacturing, agricultural and orchard crops, waste products from livestock and poultry operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

(3) "Full Avoided Costs," as defined in 366.051, Florida Statutes, means the incremental costs to the purchasing utility of the electric energy or capacity, or both, which, but for the purchase from a renewable generating facility, such utility would generate itself or purchase from another source.

(4) "Investor-owned utility" shall have the same meaning as Section 366.02(1), Florida Statutes.

(5) "Electric utility" shall have the same meaning as Section 366.02(2), Florida Statutes.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.220 Qualifying Criteria.

For purposes of these rules, a renewable generating facility shall be deemed a qualifying facility pursuant to Rule 25-17.080(1) and shall have all the rights, privileges, and responsibilities specified in Rules 25-17.082 through 25-17.091, F.A.C.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.230 The Utility's Obligation to Purchase and Sell.

(1) Each investor-owned utility shall purchase electricity produced and sold by

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renewable generating facilities at rates that have been agreed upon by the utility and renewable generating facility or at the utility's published tariff. Each investor-owned utility shall file a tariff or tariffs and a standard offer contract or contracts for the purchase of energy or capacity, or both, from renewable generating facilities that reflects the provisions set forth in these rules.

(2) Each investor-owned utility's tariff or standard offer contract shall specify the metering requirements for billing purposes in accordance with Rule 25-17.082 subsections (2) and (3), F.A.C.

(3) Each investor-owned utility shall interconnect with any renewable generating facility in accordance with Rule 25-17.087, F.A.C.

(4) Each investor-owned utility shall sell energy to renewable generating facilities in accordance with Rule 25-17.084, F.A.C.

(5) Each investor-owned utility shall provide, upon request by a renewable generating facility, transmission service to wheel as-available energy or firm energy and capacity produced by the renewable generating facility from the renewable generating facility to another electric utility in accordance with Rule 25-17.0889, F.A.C.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.240 Negotiated Contracts.

(1) Investor-owned utilities and renewable generating facilities are encouraged to negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability, and energy

security.

(2) Negotiated contracts will be considered prudent for cost recovery purposes if it is demonstrated by the investor-owned utility that the purchase of firm capacity and energy from the renewable generating facility pursuant to the rates, terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility and provide fuel diversity, fuel price stability, and energy security at a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the renewable generating facility under the contract.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.250 Standard Offer Contracts.

(1) Standard Offer Contract. In addition to the requirements contained in Rules 25-17.082 through 25-17.091, F.A.C., each investor owned utility shall, by April 1 of each year, file with the Commission a standard offer contract or contracts for the purchase of firm capacity and energy from renewable generating facilities and small qualifying facilities with a design capacity of 100 kW or less. A separate standard offer contract shall be based on the next avoidable fossil fueled generating unit of each technology type identified in the utility's Ten-Year Site Plan filed pursuant to Rule 25-22.071, F.A.C. Each standard offer contract based on each of the utility's avoidable units shall be consistent with the requirements of Rule 25-17.0832(4), (5), and (6), F.A.C., except as modified by this rule. Each investor-owned utility with no planned generating

unit identified in its Ten-Year Site Plan shall submit a standard offer based on avoiding or deferring a planned purchase.

(2) Continuous Offers.

(a) In order to ensure that each utility continuously offers a purchase contract to producers of renewable energy, each standard offer contract shall remain open until:

1. A request for proposals (RFP) pursuant to Rule 25-22.082, F.A.C., is issued for the utility's planned generating unit; or

2. The utility files a petition for a need determination or commences construction for generating units not subject to Rule 25-22.082, F.A.C.

(b) Before a standard contract offering is closed, the utility shall file a petition for approval of a new standard offer contract based on the next unit of the same generating technology, if any, in its Ten-Year Site Plan. If no generating unit of the same technology is in the utility's Ten-Year Site Plan, the utility shall notify the Director of the Division of Economic Regulation prior to closing a standard offer.

(3) Term. At the election of the renewable generating facility, the term of each standard offer contract shall be for a minimum of 10 years from the in-service date of the avoided unit up to a maximum of the life of the avoided unit.

(4) Capacity Payments Options. In addition to the capacity payment options contained in Rule 25-17.0832(4)(g), F.A.C., and subject to the provisions of Rule 25-17.0832(3)(a) through (d), F.A.C., a renewable generating facility may elect a payment stream for the capital component of the utility's avoided unit, including front-end loaded capacity payments, that best meets the financing requirements of the renewable generating facility. Early capacity payments consisting of the capital component of the avoided unit may, at the election of the renewable

generating facility, commence any time after the actual in-service date of the renewable generating facility and before the anticipated in-service date of the utility's avoided unit. Regardless of the payment stream elected by the renewable generating facility, the cumulative present value of capital cost payments made to the renewable generating facility over the term of the contract shall not exceed the cumulative present value of the capital cost payments which would have been made to the renewable generating facility had such payments been made pursuant to Rule 25-17.0832(4)(g)(1), F.A.C. Fixed operation and maintenance expense shall be calculated in conformance with Rule 25-17.0832(6), F.A.C.

(5) Content. Unless otherwise modified by these rules, the contents of each standard offer contract shall be in accordance with Rule 25-17.0832(4) , F.A.C.

(6) Fixed Energy Payments. In order to facilitate third-party financing of renewable generating facilities and provide fuel price stability to electric ratepayers, upon request by a renewable generating facility, each investor-owned utility shall provide for the following fixed energy payment options:

(a) As-available energy payments. As-available energy payments made prior to the in-service date of the avoided unit shall be based on the utility's year-by-year projection of system incremental fuel costs, prior to hourly economy energy sales to other utilities, based on normal weather and fuel market conditions plus a fuel market volatility risk premium mutually agreed upon by the utility and the renewable generating facility.

(b) Firm energy payments. Subsequent to the determination of full avoided cost and subject to the provisions of Rule 25-17.0832(3)(a) through (d), F.A.C., a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the utility and renewable energy generator, shall be fixed and amortized on a present value basis over the term of the

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contract starting, at the election of the renewable generating facility, as early as the in-service date of the renewable generating facility.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.260 Subscription Limits.

There shall be no preset subscription limits for the purchase of capacity and energy from renewable generating facilities. To the extent that the purchase of capacity and energy from a renewable generating facility is not needed for reliability or will increase costs to the general body of ratepayers above full avoided cost, the utility shall petition the Commission for relief. In any such proceeding, the Commission shall determine the need for power and the utility's full avoided cost, including strategic benefits such as fuel diversity and energy security, that are in the best interests of the general body of ratepayers.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.270 Changes in Environmental and Governmental Regulations.

All contracts for the purchase of capacity and energy from a renewable generating facility shall include a provision to reopen the contract, at the election of either party, limited to changes affecting the utility's full avoided costs as a result of new environmental and other regulatory requirements enacted during the term of the contract.

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Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.280 Tradable Renewable Energy Credits (TRECs).

Tradable renewable energy credits and tax credits shall remain the exclusive property of the renewable generating facility. A utility shall not reduce its payment of full avoided costs or place any other conditions upon such government incentives in a negotiated or standard offer contract, unless agreed to by the renewable generating facility.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.290 Imputed Debt Equivalent Adjustments.

An investor-owned utility shall not impose any imputed debt equivalent adjustments (equity adjustments) to reduce the avoided costs paid to a renewable generating facility without the approval of the Commission as a result of an evidentiary hearing pursuant to Chapter 120, Florida Statutes.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.300 Reporting. Each electric utility shall report, at a minimum, the following information,

actual and projected, as part of its Ten-Year Site Plan filing pursuant to Rule 25-22.071, F.A.C.:

(1) The total megawatts and percentage of each utility's total capacity mix comprised of renewable generating capacity.

(2) The total megawatt-hours and percentage of each utility's net energy for load and fuel mix of energy purchased from renewable generation.

(3) The total megawatts and megawatt-hours of self-service generation by renewable generation.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.05(5), 366.05(7), F.S.

History–New _____.

25-17.310 Dispute Resolution

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between renewable generating facilities and investor-owned utilities.

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute either through negotiation or by seeking mediation from an independent third party or Commission staff.

(3) Subject to subsection (2) of this rule, any party negotiating an agreement under this Part may, at any point in the negotiation, petition the Commission to resolve any differences arising in the course of the negotiation. The petition shall contain, at a minimum:

(a) an overview of the issues discussed and resolved by the parties;

(b) the unresolved issues;

(c) the position of each of the parties with respect to each unresolved issue;

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(d) all relevant documentation concerning each unresolved issue.

(4) A party petitioning the Commission under subsection (1) shall provide a copy of the petition and any other documentation accompanying the petition to the other party or parties not later than the day on which the petition is filed with the Commission. A non-petitioning party may respond to the petition and provide additional information within 30 days after the petition is filed with the Commission.

(5) The Commission will require the petitioning party and the responding party to provide additional information if it determines the additional information is necessary for the Commission to reach a decision on the unresolved issues. If any party refuses or fails to respond on a timely basis to any request from the Commission, then the Commission shall proceed on the basis of the best information available to it from whatever source derived.

(6) The Commission will resolve each issue set forth in the petition and the response, if any, in an expedited manner, normally within 90 days unless waived by the parties or on the Commission's own motion. The Commission shall base its decision on whether the provision in dispute will encourage the development of renewable generation in the State and is in the best interests of the purchasing utility's general body of ratepayers pursuant to the provisions of this Part.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

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PART III UTILITIES' OBLIGATIONS WITH REGARD TO COGENERATORS AND SMALL POWER PRODUCERS

25-17.0832(1) through 25-17.0832(3) – No changes

25-17.0832(4) Standard Offer Contracts.

(a) Upon petition by a utility or pursuant to a Commission action, each public utility shall submit for Commission approval a tariff or tariffs and a standard offer contract or contracts for the purchase of firm capacity and energy from small qualifying facilities. In lieu of a separately negotiated contract, standard offer contracts are available to ~~the following types of qualifying facilities:~~

~~1. A small power producer or other qualifying facility using renewable or non-fossil fuel where the primary energy source in British Thermal Units (BTUs) is at least 75 percent biomass, waste, solar or other renewable resource;~~

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

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

25-17.0832(4)(b) through end – no changes.

<u>Specific Authority: 350.127, 366.05(1), F.S.</u>

<u>Law Implemented: 366.051, 366.81, F.S.</u>

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

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Summary of Post Hearing Comments

Party	Comment	Staff analysis
REP *	Separate rule for renewable generation should be adopted.	Staff agrees. While it may be more efficient to have one rule for QFs and renewable generators, staff also believes there is benefit from having a separate and distinct rule regarding renewable generation. A new rule will allow a utility to use a portfolio approach to satisfy requirements for small QFs (< 100kW).
	IOUs should provide report, separate from TYSP, on utility efforts with regard to renewable generation.	Staff disagrees. The new rule requires IOUs, munis, and coops to file data as part of TYSP.
	Promoting new and protecting existing renewable energy facilities are "primary goals" of statute. Adherence to a strict utility specific avoided cost standard has the effect of negating this goal.	Staff disagrees. The statute does not define promotion of renewable facilities as a primary goal with costs to ratepayers being secondary.
	Contracts with high capacity and low fuel costs should be offered continuously.	Staff disagrees. In addition to electricity sales, renewable generators often have other sources of revenue such as TRECs, tax credits, federal incentives, tipping fees, etc. The comment requests that the PSC establish prices that would fund renewable generator and ignore utility's full avoided cost.
	Diversity provides additional value.	Staff agrees. The utility planning and unit selection process incorporates strategic considerations, such as fuel diversity. Therefore, the strategic benefit of fuel diversity is internalized in the standard offer contract payments.
	Rule adoption should be delayed until after January workshop.	Staff disagrees. 366.91 became effective in 2005 with an implementation date of 1/1/06. Adoption of rules is a step towards encouraging renewable generation.
	No equity penalty.	Staff disagrees. Short term contracts with small MW amounts do not generate much equity adjustment. Since subscription limits are removed and the term is now selectable by the renewable generator, equity adjustments should only be imposed after PSC approval.
	Long term fixed energy payments should be an option.	Staff agrees. Some renewable generators stated that having fixed fuel payments would assist in financing projects. While this is true, the amount to include is case specific and requires additional security or other performance requirements. As such, the new rule allows for a renewable generator to request a portion of fuel payments be included in capacity payments.
	All environmental attributes remain with renewable generator.	Staff agrees. The recommended rule states that TRECs are property of renewable and utility should not reduce payments due to TRECs
	Terms and conditions should be standardized.	Staff disagrees. Contract terms such as completion security, performance requirements, milestones, etc. should be addressed as part of the tariff filing and PAA process.

* Renewable Energy Providers (REP) – City of Tampa, Covanta, FICA, Green Coast Energy, Lee County, Montenay-Dade, Palm Beach, Wheelabrator

Summary of Post Hearing Comments

Party	Comment	Staff analysis
IOUs	Length of contract should be set by the utility. Long term contracts subject ratepayers to risk of contract breach or changed economic circumstances.	Staff disagrees. Long term contracts do carry some risk, but these should be mitigated with completion and performance security measures. The new rule allows the renewable generator to select the term, which should assist in financing of new projects.
	Premature to address carbon emission regulations. TRECs should be addressed in tariffs.	Staff disagrees. Utilities are permitted to request recovery of future environmental regulations through the Environmental Cost Recovery Clause. The recommended rule requires a standard offer contract to include a reopener provision. The recommended rule states that TRECs are property of the renewable generator and the utility should not reduce payments due to TRECs.
	Detail contract terms should be addressed in tariffs.	Staff agrees. Contract terms such as completion security, performance requirements, milestones, etc. should be addressed as part of the tariff filing and PAA process.
	Separate rule for renewable generation is unnecessary and inefficient.	Staff disagrees. While it may be more efficient to have one rule for QFs and renewable generators, staff also believes there are benefits from having separate and distinct rules regarding renewable generation. The new rules will allow a utility to use portfolio approach to satisfy requirements for small QFs (< 100kW)
	Use the Ten-Year Site Plan filings as a means of reporting on the status of renewable generation. Provided a template for a table of information.	Staff agrees. The new rule requires IOUs, munis, and coops to file data as part of Ten-Year Site Plan.
	Goals for renewables are premature.	Staff agrees. However, the possibility and types of goals to consider should be discussed at the workshop planned for January 2007.
	Adequate complaint procedure already exists.	Staff disagrees. The recommended rule provides for staff mediation and requires specific issues to be raised and addressed by the other party to the dispute. Complaints will be handled on an expedited basis.
	Rule should not prohibit equity adjustment.	Staff agrees. However, equity adjustments should only be imposed after PSC approval.
	Statewide coal unit could be disincentive to some renewable generators.	Staff agrees. The parties at the hearing represented renewable generators with operating characteristics similar to a coal unit. The statute also defines several types of renewable facilities which do not having the operating characteristics of a coal unit. The statute further states that if a renewable generator does not provide a capacity benefit, then no capacity payments are required. Therefore, a statewide coal unit would provide a disincentive for renewable facilities powered by wind, solar, and other intermittent energy sources.
	Value of deferral is appropriate.	Staff agrees. At the hearing, evidence was presented that confirmed that the value of deferral methodology is the proper method to link the utility and renewable business models.

Summary of Post Hearing Comments

Party	Comment	Staff analysis
Green Coast Energy	Establish a panel of experts to set the total amount that should be paid for renewable energy.	Staff disagrees. This proposal is beyond the scope of the existing rulemaking.
	Establish a statewide green pricing program with PSC establishing fund to be administered by a "fiduciary of impeccable character".	Staff disagrees. Individual utility green pricing programs are currently available.
	Have renewables and IOUs work together to maximize current tax incentives.	Staff agrees. The example provided seems workable under current rules for negotiated contracts. GCE admits that the idea will work only for certain projects with specific conditions. No need to amend rules.
City of Tampa	Utilities have unfair advantage in negotiations. Renewable forced to take what they can get.	Staff disagrees. Parties are free to petition the PSC for relief if negotiations are believed to be not of good faith
TECO	Negotiations have been fair and resulted in no protests from other party.	Staff agrees. Parties are free to petition the PSC for relief if negotiations are believed to be not of good faith

State of Florida

Public Service Commission

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

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

DATE: September 21, 2006

TO: Office of General Counsel (Harris)

FROM: Division of Economic Regulation (Hewitt)

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

SUMMARY OF THE RULE

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

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

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

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

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

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

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

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

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Electric Utilities' Costs

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

Benefits

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

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

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

CH:kb
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