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DOCKET NO. 960912-EI

CERTIFICATION OF

PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES

FILED WITH THE

DEPARTMENT OF STATE

I do hereby certify:

/X/ (1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

/X/ (2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

/X/ (3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

/X/ (a) Are filed not more than 90 days after the notice; or

/_/ (b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

/_/ (c) Are filed more than 90 days after the notice, but not less than 21 days from the date of publication of the notice of change; or

/_/ (d) Are filed more than 90 days after the notice, but within 21 days after the adjournment of the final public hearing on the rule; or

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/_/ (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

/_/ (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

/_/ (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-17.0833

Under the provision of subparagraph 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records & Reporting

_____
Number of Pages Certified

(S E A L)

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TALLAHASSEE, FLORIDA

25-17.0833 Planning Hearings.

~~(1) Upon petition or on its own motion, the Commission shall periodically review optimal generation and transmission plans from a statewide and individual utility perspective. In connection with these proceedings, the Commission shall consider the need for capacity from both a statewide and individual utility perspective, the adequacy of the transmission grid, and other strategic planning concerns affecting the Florida electric grid.~~

~~(2) Upon petition, or on its own motion, the Commission, as needed, shall review individual utility generation and expansion plans at any time.~~

Specific Authority: 366.05(8), 366.051, 350.127(2), F.S.

Law Implemented: 366.051, F.S.

History: New 10/25/90, Repealed ____.

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TALLAHASSEE, FLORIDA

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

by PSC in determining statewide need. Accordingly, the "statewide need" criteria can be satisfied by different submissions. In Re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Regarding Cogeneration and Small Power Production, 92 FPSC 2:24 (Docket No. 910603-EQ, Order No. 25668) (1992).

Fuel adjustments

Petitioner Florida Power & Light Co. (FPL), prospective owner of proposed electrical power plant, presented evidence sufficient to permit recovery from its customers (through fuel adjustment clause) of payments for energy and capacity made by FPL pursuant to its agreement with Indiantown Cogeneration, L.P. Tripartite criteria of Rule 25-17.083(2), F.A.C., were met by petitioner; it was demonstrated that purchase of energy and capacity from Qualifying Facility (QF) can reasonably be expected to result in the economic deferral or avoidance of additional capacity construction by Florida utilities from a statewide perspective; cumulative present worth of energy and capacity made to QF over term of the contract are within prescribed limits; contract contains provisions adequate to protect utility's ratepayers in the event QF fails to perform pursuant to terms and conditions of the contract. In re: Petition of Florida Power & Light Co. and Indiantown Cogeneration, L.P., 91 FPSC 2:75 (1991).

Generating capacity

The 75 MW cap referenced in Rule 25-17.0832(3)(a), F.A.C., refers to the total net generating capacity of the QF. If "committed" capacity, rather than total net generating capacity, were the measure by which to calculate the 75 MW cap, QFs of any size could participate in standard offer contracts, contrary to the clear intent of the rules to preserve such participation for small QFs. In re: Petition of Polk Power Partners for a Declaratory Statement Regarding Eligibility for Standard Offer Contracts, 92 FPSC 7:388 (1992).

Regulatory out provisions within standard offer contracts

PSC determined that there is no need for a regulatory out provision within standard offer contracts for the purchase of firm capacity and energy from small qualifying facilities (QFs) less than 75 MW or from solid waste facilities as defined in Rule 25-17.091, F.A.C. Significant difference between standard offer and negotiated contracts is that PSC requires utilities to purchase firm capacity and energy pursuant to standard offer contracts; when standard offer contract is approved by PSC it makes a commitment that it will allow cost recovery of payments made to small QFs. Accordingly, there is no need for a regulatory out provision in the standard offer, which provision has become unnecessary surplusage and has created misconceptions concerning reliability of revenues under standard offers. In Re: Planning Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Florida's Electric Utilities, 91 FPSC 8:560 (Docket No. 910004-EU, Order No. 26989) (1991).

Risk factor

The 1.0 risk factor employed by Rule 25-17.0832(5)(a), F.A.C., is not and was not intended by the PSC nor the Legislature to be one of the factors that vary in option B contracts. Rather, the risk factor was a constant number that represented the risk to the utility and the ratepayers posed by reliance on proposed or promised cogenerated power to fulfill future capacity needs. The risk factor did not change with changing economic conditions. However, as Petitioner's cogeneration contracts (extant before adoption of subject rule) recognized a generic 0.8 risk factor to be included in the calculation of the value of deferral, and rules are not applied retroactively (unless they are curative in nature), PSC ruled that appropriate risk factor to be applied to Petitioner's contracts is 0.8. In re: CFR Bio-Gen's Petition for a Declaratory Statement, 91 FPSC 4:109 (1991).

Treatment of negotiated contracts for cost recovery purposes

PSC determined that negotiated contracts should be treated in the same manner as standard offer contracts for cost recovery purposes. In light of previous Commission ruling that PSC approval of a negotiated contract constitutes a determination that payments made by a utility to a QF under the negotiated contract constitute a prudent expenditure by the utility, once Commission's determination of prudence becomes final by operation of law, utility cannot (absent extraordinary circumstances) be denied cost recovery of payments made to a QF under negotiated contract. In Re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Regarding Cogeneration and Small Power Production, 92 FPSC 2:24 (Docket No. 910603-EQ, Order No. 25668) (1992).

25-17.0833 Planning Hearings.

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(2) Upon petition, or on its own motion, the Commission, as needed, shall review individual utility generation and expansion plans at any time.

Specific Authority 366.05(8), 366.051, 350.127(2) FS. Law Implemented 366.051 FS. History—New 10-25-90.

ANNOTATIONS

Changes within generation expansion plans

PSC concluded that utilities should be required to notify, in a timely manner, interested qualifying facilities (QFs) and the Commission of changes in utilities' generation expansion plans, within a reasonable time after management approval of the changes. However, PSC did not direct that utilities file new generation expansion plans with it for purposes of PSC formal review and participation by all interested parties. Rules 25-17.0832 and 25-17.0833, F.A.C., provide sufficient opportunities for QFs to participate in the review of the utilities' plans. A requirement of PSC review of a utility's plans upon every change in same would result in ambiguities concerning which plan utilities should use as a basis for negotiated contracts and would likely prolong the negotiation processes, to the ultimate detriment of consumers and ratepayers. In Re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Regarding Cogeneration and Small Power Production, 92 FPSC 2:24 (Docket No. 910603-EQ, Order No. 25668) (1992).

25-17.0834 Settlement of Disputes in Contract Negotiations.

(1) Public utilities shall negotiate in good faith for the purchase of capacity and energy from qualifying facilities and interconnection with qualifying facilities. In the event that a utility and a qualifying facility cannot agree on the rates, terms, and other conditions for the purchase of capacity and energy, either party may apply to the Commission for relief. Qualifying facilities may

Rule 25-17.0833
Docket No. 960912-EI

SUMMARY OF RULE

Rule 25-17.0833 is repealed.

SUMMARY OF HEARINGS ON THE RULE

No hearing was requested and none was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

Utilities now identify individual avoided units under the qualifying facilities (QF) rules and Ten-Year Site Plan filings. Therefore, Rule 25-17.0833, which provides for planning hearings to develop a statewide avoided unit, is no longer necessary and should be repealed.