

STATE OF FLORIDA

Commissioners:  
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DIVISION OF APPEALS  
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**Public Service Commission**  
September 14, 2001

Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, FL 32399-1300

RE: Docket No. 001574-EQ - Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts

Dear Mr. Webb:

Enclosed is an original copy of the following materials concerning the above referenced proposed rule:

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

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

Sincerely,

Mary Anne Helton  
Division of Legal Services

ADM170832.MAH  
Enclosures  
cc: Division of the Commission Clerk  
and Administrative Services

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

1 25-17.0832 Firm Capacity and Energy Contracts.

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

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

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

- 19 1. The name of the utility and the owner and operator  
20 of the qualifying facility, who are signatories of  
21 the contract;
- 22 2. The amount of committed capacity specified in the  
23 contract, the size of the facility, the type of  
24 facility, its location, and its interconnection and  
25 transmission requirements;

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- 1           3.    The amount of annual and on-peak and off-peak
- 2               energy expected to be delivered to the utility;
- 3           4.    The type of unit being avoided, its size, and its
- 4               in-service year;
- 5           5.    The in-service date of the qualifying facility; and
- 6           6.    The date by which the delivery of firm capacity and
- 7               energy is expected to commence.

8           (2) Negotiated Contracts.       Utilities and qualifying  
9 facilities are encouraged to negotiate contracts for the purchase  
10 of firm capacity and energy to avoid or defer the construction of  
11 all planned utility generating units which are not subject to the  
12 requirements of Rule 25-22.082. If a utility is required to issue  
13 a Request for Proposals (RFP) pursuant to Rule 25-22.082,  
14 negotiations with qualifying facilities shall be governed by the  
15 utility's RFP process. Negotiated contracts will be considered  
16 prudent for cost recovery purposes if it is demonstrated by the  
17 utility that the purchase of firm capacity and energy from the  
18 qualifying facility pursuant to the rates, terms, and other  
19 conditions of the contract can reasonably be expected to contribute  
20 towards the deferral or avoidance of additional capacity  
21 construction or other capacity-related costs by the purchasing  
22 utility at a cost to the utility's ratepayers which does not exceed  
23 full avoided costs, giving consideration to the characteristics of  
24 the capacity and energy to be delivered by the qualifying facility  
25 under the contract. Negotiated contracts shall not be counted

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1 towards the subscription limit of the avoided unit in a standard  
2 offer contract, thus preserving the standard offer for small  
3 qualifying facilities as described in subsection (4).

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

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

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

15 1. The cumulative present worth of the value of a  
16 year-by-year deferral of the construction and  
17 operation of generation or parts thereof by the  
18 purchasing utility over the term of the contract,  
19 calculated in accordance with subsection (5) and  
20 paragraph (6)(a) of this rule, provided that the  
21 contract is designed to contribute towards the  
22 deferral or avoidance of such capacity; or

23 2. The cumulative present worth of other capacity and  
24 energy related costs that the contract is designed  
25 to avoid such as fuel, operation, and maintenance

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1 expenses or alternative purchases of capacity,  
2 provided that the contract is designed to avoid  
3 such costs;

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

14 (d) Considering the technical reliability, viability, and  
15 financial stability of the qualifying facility, whether the  
16 contract contains provisions to protect the purchasing utility's  
17 ratepayers in the event the qualifying facility fails to deliver  
18 firm capacity and energy in the amount and times specified in the  
19 contract.

20 (4) Standard Offer Contracts.

21 (a) Upon petition by a utility or pursuant to a Commission  
22 action, each public utility shall submit for Commission approval a  
23 tariff or tariffs and a standard offer contract or contracts for  
24 the purchase of firm capacity and energy from small qualifying  
25 facilities. In lieu of a separately ~~seperately~~ negotiated

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1 contract, standard offer contracts are available to the following  
2 types of qualifying facilities:

- 3 1. A small power producer or other qualifying facility  
4 using renewable or non-fossil fuel where the  
5 primary energy source in British Thermal Units  
6 (BTUs) is at least 75 percent biomass, waste, solar  
7 or other renewable resource;
- 8 2. A qualifying facility, as defined by Rule 25-  
9 17.080(3), with a design capacity of 100 kW or  
10 less; or
- 11 3. A municipal solid waste facility as defined by Rule  
12 25-17.091.

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

24 (c) The utility shall evaluate, select, and enter into  
25 standard offer contracts with eligible qualifying facilities based

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1 on the benefits to the ratepayers. Within 60 days of receipt of a  
2 signed standard offer contract, the utility shall either:

3 1. Accept and sign the contract and return it within  
4 five days to the qualifying facility; or

5 2. Petition the Commission not to accept the contract  
6 and provide justification for the refusal. Such  
7 petitions may be based on:

8 a. A reasonable allegation by the utility  
9 that acceptance of the standard offer  
10 will exceed the subscription limit of the  
11 avoided unit or units; or

12 b. Material evidence showing that because  
13 the qualifying facility is not  
14 financially or technically viable, it is  
15 unlikely that the committed capacity and  
16 energy would be made available to the  
17 utility by the date specified in the  
18 standard offer.

19 (d) A standard offer contract which has been accepted by a  
20 qualifying facility shall apply towards the subscription limit of  
21 the unit designated in the contract effective the date the utility  
22 receives the accepted contract. If the contract is not accepted by  
23 the utility, its effect shall be removed from the subscription  
24 limit effective the date of the Commission order granting the  
25 utility's petition.

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1 (e) Minimum Specifications. Each standard offer contract  
2 shall, at minimum, specify:

- 3 1. The avoided unit or units on which the contract is  
4 based;
- 5 2. The total amount of committed capacity, in  
6 megawatts, needed to fully subscribe the avoided  
7 unit specified in the contract;
- 8 3. The payment options available to the qualifying  
9 facility including all financial and economic  
10 assumptions necessary to calculate the firm  
11 capacity payments available under each payment  
12 option and an illustrative calculation of firm  
13 capacity payments for a minimum five ~~ten~~ year term  
14 contract commencing with the in-service date of the  
15 avoided unit for each payment option;
- 16 4. The date on which the standard contract offer  
17 expires;
- 18 5. A reasonable open solicitation period during which  
19 time the utility will accept proposals for standard  
20 offer contracts. Prior to the issuance of timely  
21 notice of a Request for Proposals (RFP) pursuant to  
22 Rule 25-22.082(3), the utility shall end the open  
23 solicitation period;
- 24 6. The date by which firm capacity and energy  
25 deliveries from the qualifying facility to the

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

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

15 8. The minimum performance standards for the delivery  
16 of firm capacity and energy by the qualifying  
17 facility during the utility's daily seasonal peak  
18 and off-peak periods. These performance standards  
19 shall approximate the anticipated peak and off-peak  
20 availability and capacity factor of the utility's  
21 avoided unit over the term of the contract;

22 9. The description of the proposed facility including  
23 the location, steam host, generation technology,  
24 and fuel sources;

25 10. Provisions to ensure repayment of payments to the

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1 extent that annual firm capacity and energy  
2 payments made to the qualifying facility in any  
3 year exceed that year's annual value of deferring  
4 the avoided unit specified in the contract in the  
5 event that the qualifying facility fails to perform  
6 pursuant to the terms and conditions of the  
7 contract. Such provisions may be in the form of a  
8 surety bond or equivalent assurance of repayment of  
9 payments exceeding the year-by-year value of  
10 deferring the avoided unit specified in the  
11 contract.

12 (f) The utility may include the following provisions:

- 13 1. Provisions to protect the purchasing utility's  
14 ratepayers in the event the qualifying facility  
15 fails to deliver firm capacity and energy in the  
16 amount and times specified in the contract which  
17 may be in the form of an up-front payment, surety  
18 bond, or equivalent assurance of payment. Payment  
19 or surety shall be refunded upon completion of the  
20 facility and demonstration that the facility can  
21 deliver the amount of capacity and energy specified  
22 in the contract; and
- 23 2. A listing of the parameters, including any impact  
24 on electric power transfer capability, associated  
25 with the qualifying facility as compared to the

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1           avoided unit necessary for the calculation of the  
2           avoided cost.

- 3           3. Provisions that allow for revisions to the contract  
4           based upon changes to the purchasing utility's  
5           avoided costs.

6           (g) Firm Capacity Payment Options. Each standard offer  
7 contract shall also contain, at a minimum, the following options  
8 for the payment of firm capacity delivered by the qualifying  
9 facility:

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

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

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1           construct the avoided unit.       Early capacity  
2           payments shall consist of monthly payments  
3           escalating annually of the avoided capital and  
4           fixed operation and maintenance expense associated  
5           with the avoided unit, calculated in conformance  
6           with paragraph (6)(b) of the rule. At the option  
7           of the qualifying facility, early capacity payments  
8           may commence at any time after the specified early  
9           capacity payment date and before the anticipated  
10          in-service date of the avoided unit provided that  
11          the qualifying facility is delivering firm capacity  
12          and energy to the utility. Where early capacity  
13          payments are elected, the cumulative present value  
14          of the capacity payments made to the qualifying  
15          facility over the term of the contract shall not  
16          exceed the cumulative present value of the capacity  
17          payments which would have been made to the  
18          qualifying facility had such payments been made  
19          pursuant to subparagraph (4)(g)1. of this rule.

20           3. Levelized capacity payments. Levelized capacity  
21           payments shall commence on the anticipated in-  
22           service date of the avoided unit. The capital  
23           portion of capacity payments under this option  
24           shall consist of equal monthly payments over the  
25           term of the contract, calculated in conformance

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1 with paragraph (6)(c) of this rule. The fixed  
2 operation and maintenance portion of capacity  
3 payments shall be equal to the value of the year-  
4 by-year deferral of fixed operation and maintenance  
5 expense associated with the avoided unit calculated  
6 in conformance with paragraph (6)(a) of this rule.  
7 Where levelized capacity payments are elected, the  
8 cumulative present value of the levelized capacity  
9 payments made to the qualifying facility over the  
10 term of the contract shall not exceed the  
11 cumulative present value of capacity payments which  
12 would have been made to the qualifying facility had  
13 such payments been made pursuant to subparagraph  
14 (4)(g)1. of this rule, value of deferral capacity  
15 payments.

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

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

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

19 (a) For the purpose of this rule, avoided energy costs  
20 associated with firm energy sold to a utility by a qualifying  
21 facility pursuant to a utility's standard offer contract shall  
22 commence with the in-service date of the avoided unit specified in  
23 the contract. Prior to the in-service date of the avoided unit,  
24 the qualifying facility may sell as-available energy to any utility  
25 pursuant to Rule 25-17.0825.

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1 (b) To the extent that the avoided unit would have been  
2 operated, had that unit been installed, avoided energy costs  
3 associated with firm energy shall be the energy cost of this unit.  
4 To the extent that the avoided unit would not have been operated,  
5 the avoided energy costs shall be the as-available avoided energy  
6 cost of the purchasing utility. During the periods that the  
7 avoided unit would not have been operated, firm energy purchased  
8 from qualifying facilities shall be treated as as-available energy  
9 for the purposes of determining the megawatt block size in Rule 25-  
10 17.0825(2)(a).

11 (c) The energy cost of the avoided unit specified in the  
12 contract shall be defined as the cost of fuel, in cents per  
13 kilowatt-hour, which would have been burned at the avoided unit  
14 plus variable operation and maintenance expense plus avoided line  
15 losses. The cost of fuel shall be calculated as the average market  
16 price of fuel, in cents per million Btu, associated with the  
17 avoided unit multiplied by the average heat rate associated with  
18 the avoided unit. The variable operating and maintenance expense  
19 shall be estimated based on the unit fuel type and technology of  
20 the avoided unit.

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

23 (a) Calculation of year-by-year value of deferral. The year-  
24 by-year value of deferral of an avoided unit shall be the  
25 difference in revenue requirements associated with deferring the

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1 | avoided unit one year and shall be calculated as follows:

$$2 \quad \underline{VAC_m = 1/12 [KI_n(1-R)/(1-R^L) + O_n]}$$

3 | Where, for a one year deferral:

4 |  $VAC_m$  = utility's monthly value of avoided capacity, in  
5 | dollars per kilowatt per month, for each month of  
6 | year n;

7 |  $K$  = present value of carrying charges for one dollar of  
8 | investment over  $L$  years with carrying charges  
9 | computed using average annual rate base and assumed  
10 | to be paid at the middle of each year and present  
11 | value to the middle of the first year;

12 |  $R$  =  $(1+ip)/(1+r)$ ;

13 |  $I_n$  = total direct and indirect cost, in mid-year dollars  
14 | per kilowatt including AFUDC but excluding CWIP, of  
15 | the avoided unit with an in-service date of year n,  
16 | including all identifiable and quantifiable costs  
17 | relating to the construction of the avoided unit  
18 | that would have been paid had the avoided unit been  
19 | constructed;

20 |  $O_n$  = total fixed operation and maintenance expense for  
21 | the year n, in mid-year dollars per kilowatt per  
22 | year, of the avoided unit;

23 |  $i_p$  = annual escalation rate associated with the plant  
24 | cost of the avoided unit(s);

25 |  $i_o$  = annual escalation rate associated with the

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1 operation and maintenance expense of the avoided  
2 unit(s);

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

5 L = expected life of the avoided unit; and

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

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

13  $A_m = [A_c (1 + ip)^{(m-1)} + A_o (1 + io)^{(m-1)}] / 12$  for m=1 to t

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

17  $i_p$  = annual escalation rate associated with the plant  
18 cost of the avoided unit;

19  $i_o$  = annual escalation rate associated with the  
20 operation and maintenance expense of the avoided  
21 unit(s);

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

25 t = the term, in years, of the contract for the

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1 purchase of firm capacity;

$$2 \quad \underline{A_c = F[(1-R)/(1-R^t)]}$$

3 Where: F = the cumulative present value in the year that  
4 the contractual payments will begin, of the  
5 avoided capital cost component of capacity  
6 payments which would have been made had  
7 capacity payments commenced with the  
8 anticipated in-service date of the avoided  
9 unit(s);

10 R = (1+ip)/(1+r); and

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

$$14 \quad \underline{A_o = G[(1-R)(1-R^t)]}$$

15 Where: G = The cumulative present value in the year that the  
16 contractual payments will begin, of the avoided  
17 fixed operation and maintenance expense component  
18 of capacity payments which would have been made had  
19 capacity payments commenced with the anticipated  
20 in-service date of the avoided unit; and

21 R = (1+io)/(1+r).

22 (c) Levelized and early levelized capacity payments. Monthly  
23 levelized and early levelized capacity payments shall be calculated  
24 as follows:

$$25 \quad P_L = F/12\{r/[1-(1+r)^{-t}]\} + 0$$

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1 | Where:  $P_L$  = the monthly levelized capacity payment,  
2 | starting on or prior to the in-service date of  
3 | the avoided unit;  
4 |  $F$  = the cumulative present value, in the year that  
5 | the contractual payments will begin, of the  
6 | avoided capital cost component of the capacity  
7 | payments which would have been made had the  
8 | capacity payments not been levelized;  
9 |  $r$  = the annual discount rate, defined as the  
10 | utility's incremental after tax cost of  
11 | capital; and  
12 |  $t$  = the term, in years, of the contract for the  
13 | purchase of firm capacity.  
14 |  $O$  = the monthly fixed operation and maintenance  
15 | component of the capacity payments, calculated  
16 | in accordance with paragraph (5)(a) for  
17 | levelized capacity payments or with paragraph  
18 | (5)(b) for early levelized capacity payments.

19 | (7) Upon request by a qualifying facility or any interested  
20 | person, each utility shall provide within 30 days its most current  
21 | projections of its future generation mix including type and timing  
22 | of anticipated generation additions, and at least a 20-year  
23 | projection of fuel forecasts, as well as any other information  
24 | reasonably required by the qualifying facility to project future  
25 | avoided cost prices. The utility may charge an appropriate fee,

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1 | not to exceed the actual cost of production and copying, for  
2 | providing such information.

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

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

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

20 | Specific Authority: 350.127, ~~366.04(1)~~, ~~366.051~~, 366.05(1) ~~& (8)~~,  
21 | F.S.

22 | Law Implemented: 366.051, 366.81 ~~403.503~~, F.S.

23 | History: New 10/25/90, amended 01/07/97, amended \_\_\_\_\_.

24 |  
25 | soc#5.mah

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NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001574-EQ

RULE TITLE:

RULE NO.:

Firm Capacity and Energy Contracts 25-17.0832

PURPOSE AND EFFECT: The purpose of the amendment is to reduce the minimum term for standard offer contracts from 10 to five years. The rule amendment also requires investor-owned electric utilities to specify the term of the standard offer when filing the contract for approval with the Commission. The effect is to reduce the risk that ratepayers will be tied to long-term contracts that are above avoided cost.

SUMMARY: Rule 25-17.0832 requires investor-owned utilities to file a tariff and a standard offer contract for the purchase of firm capacity and energy from specified types of small qualifying facilities. The rule sets forth the minimum specifications and acceptable pricing methodologies for standard offer contracts. The amendment to subparagraphs (4)(e)3. and 7. would reduce the ten year minimum contract term for standard offer contracts to five years. In addition, the amendment to subparagraph (4)(e)7. would require investor-owned utilities to specify the contract term when filing the standard offer for approval by the Commission.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Several

municipal solid waste (MSWs) facilities oppose the rule amendments. However, the impact on these local government entities depends on future firm capacity and energy prices. If these prices increase, a shorter contract term would benefit MSW facility owners because they could enter a new standard offer contract sooner with higher payments. On the other hand, if firm capacity and energy prices decrease, MSW owners would be faced with lower payments. One MSW argued that because MSW facilities are publicly owned, any shortfall or reduction in electrical revenues will require increasing solid waste disposal costs. In addition, at least one MSW argued that adoption of the rule amendments will result in MSWs having to negotiate more contracts, which will increase transaction costs for the MSWs. The MSWs overlook that longer contracts are still possible under the rule. The MSWs also do not acknowledge that the Commission is required to keep IOU rates reasonable and shortening the standard offer contract term is best for IOU ratepayers in an environment in which wholesale generation costs are falling. Keeping the ten year minimum term would continue the possibility that IOUs and their ratepayers would be faced with higher cost capacity and energy costs for an additional five years for new standard offer contracts, even if market costs declined. However, wholesale generation costs may increase and IOUs would lose the benefits of a fixed price contract for an additional

five years. Allowing a qualifying facility to choose the contract term would abrogate the Commission's regulatory responsibility over capacity and energy contracts.

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

SPECIFIC AUTHORITY: 350.127, 366.05(1), FS

LAW IMPLEMENTED: 366.051, 366.81, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-17.0832 Firm Capacity and Energy Contracts.

(1) Firm capacity and energy are capacity and energy produced and sold by a qualifying facility and purchased by a utility pursuant to a negotiated contract or a standard offer

contract subject to certain contractual provisions as to the quantity, time, and reliability of delivery.

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

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

1. The name of the utility and the owner and operator of the qualifying facility, who are signatories of the contract;
2. The amount of committed capacity specified in the contract, the size of the facility, the type of facility, its location, and its interconnection and transmission requirements;
3. The amount of annual and on-peak and off-peak energy expected to be delivered to the utility;
4. The type of unit being avoided, its size, and its



in-service year;

5. The in-service date of the qualifying facility;  
and

6. The date by which the delivery of firm capacity  
and energy is expected to commence.

(2) No change.

(3) No change.

(4) Standard Offer Contracts.

(a) Upon petition by a utility or pursuant to a Commission action, each public utility shall submit for Commission approval a tariff or tariffs and a standard offer contract or contracts for the purchase of firm capacity and energy from small qualifying facilities. In lieu of a separately ~~seperately~~ 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, as defined by Rule 25-17.080(3), with a design capacity of 100 kW or less; or
3. A municipal solid waste facility as defined by

Rule 25-17.091.

(b) through (d) No change.

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

1. through 2. No change.

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

4. through 6. No change.

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

anticipated in-service date of the avoided unit;

8. through 10. No change.

(f) through (g) No change.

(5) through (8) No change.

Specific Authority: 350.127, ~~366.04(1)~~, ~~366.051~~, 366.05(1) ~~&~~  
~~(8)~~, F.S.

Law Implemented: 366.051, 366.81 ~~403.503~~, F.S.

History: New 10/25/90, amended 01/07/97, amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Judy Harlow, Division  
of Safety and Electric Reliability.

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:  
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: September 4, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:  
Volume 26, Number 44, November 3, 2000.

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

Any person requiring some accommodation at this hearing because  
of a physical impairment should call the Division of the  
Commission Clerk and Administrative Services at (850) 413-6770 at

least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

M E M O R A N D U M

May 31, 2001

TO: DIVISION OF APPEALS (HELTON)

FROM: DIVISION OF ECONOMIC REGULATION (HEWITT) *CBH content 1992*

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR DOCKET NO. 001574-EQ, PROPOSED AMENDMENTS TO RULE 25-17.0832, F.A.C., FIRM CAPACITY AND ENERGY CONTRACTS

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SUMMARY OF THE RULES

Currently, Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts, contains the standards and requirements for investor-owned utilities (IOUs) to file a tariff for a standard offer contract for the purchase of firm capacity and energy from specified types of small qualifying facilities (QFs). Section (4)(e)(7) requires a ten year minimum contract term for standard offer contracts with a maximum term being the expected life of the avoided unit. The Commission approves the time period when a standard offer contract tariff is requested.

The proposed amendments would reduce the minimum standard offer contract period for the purchase of QF firm capacity and energy from ten years to five years. The proposed amendments would also update the rule to include a new division name and other editorial changes.

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

There are five investor-owned electric utility companies operating in Florida and there are approximately 60 QFs; 30 with firm capacity contracts. QFs are not limited to selling their output to IOUs and would only be affected by the proposed rule changes if they seek a new standard offer contract with an IOU.

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

The Public Service Commission and other state entities are not expected to experience implementation costs other than the costs associated with promulgating a proposed rule. Existing Commission staff would continue to handle the monitoring and review of QF contracts.

Local government entities that have an interest in solid waste facilities could be impacted. There are various cities in Florida that have interests in municipal solid waste (MSWs) facilities which are covered by this rule change. The City of Tampa and Miami-Dade responded to a data request and objected to the shortening of the possible minimum time period for a standard offer contract from ten years to five years. Tampa predicated its response on the rule limiting the maximum contract length to a five year term. However, the maximum contract term, the anticipated life of the avoided unit, would not change. Moreover, the Commission determines the period of time when a standard offer contract is approved and has granted requests for a rule waiver for a five year term limit in several recent standard offer contracts.

Although the existing MSW facility contracts would not be affected by the proposed rule changes, future contracts could be affected. Whether the effects of the proposed rule changes would be positive or negative for local governments depends on the future price for firm capacity and energy. If energy and capacity prices are increasing in the future, a shorter contract would benefit MSW facility owners and their ratepayers since they could enter a new standard offer contract sooner with higher payments. If energy and capacity prices are decreasing in the future, a shorter contract would cost MSW facility owners and their ratepayers because a new standard offer contract would have lower payments. Longer contracts would still be possible up to the anticipated life of the avoided unit if approved by the Commission. The Commission is required to keep IOU rates reasonable and shortening the term for standard offer contracts is best for IOU ratepayers in a falling electricity price environment.

#### ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

All the IOUs that responded stated that there should not be additional costs to comply with the proposed rule changes. One IOU stated that the proposed rule amendment would give it more flexibility in tailoring the terms of the contract to specific needs.

Montenay Power Corporation (MPC), which operates the Miami-Dade County Resources Recovery Facility and the Bay County Resources Recovery Facility, responded to the data request with its opposition to the proposed rule changes. MPC particularly objected to the reduction in the duration of power purchase agreements as they may apply to standard offer contracts. MPC pointed out that since these MSW facilities are publicly owned, any shortfall or reduction in electrical revenues would require increasing of solid waste disposal costs to the residents and businesses of the respective counties.

The existing minimum contract term limit of ten years does not remove the uncertainties that surround future prices and costs and the viability of contract renewability. The reduction of

the minimum contract term to five years would have the same uncertainties, the value would be “marked to market” sooner rather than later, if the contract is for the minimum term. As noted above, the costs or benefits accruing to an existing or planned facility’s value when a contract is renewed depends upon the price of firm capacity and energy at that future time. Whether conditions will benefit the owner of the MSW facility and its ratepayers or an IOU and its ratepayers is unknown at present.

MPC further contends that because the proposed rule changes would reduce the attractiveness of utilities’ standard offer contracts, it would be more necessary for MPC and other QFs to negotiate power purchase agreements rather than accepting a standard offer. This situation would significantly increase MPC’s transaction costs in obtaining a purchase power agreement pursuant to the Public Utility Regulatory Policies Act of 1978, section 366.051, Florida Statutes, and the Commission’s rules. MPC estimates that the increase in transaction costs could easily well exceed \$100,000, including the engagement of attorneys to participate in negotiations and review draft contracts offered by utilities and the engagement of consultants to evaluate the utility’s avoided costs estimates. If negotiations were difficult and took six months or more, MPC estimates that the transaction costs could run well over \$250,000.

#### IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

Small businesses, small cities, and small counties that may have interests in MSW facilities would face the same situation as the larger cities stated above. The shorter minimum contract term may benefit or cost these entities depending on price conditions in five years.

Small businesses, small cities, and small counties that are customers of IOUs would have lower electricity costs if rates fall because IOUs can obtain capacity and energy for shorter contract periods in a falling price environment.

#### ALTERNATIVE METHODS

Maintaining the current rule would continue the possibility that IOUs and their ratepayers would be saddled with higher cost capacity and energy costs for an additional five years for new small standard offer contracts if market prices declined. However, prices may increase and IOUs would lose the benefits of a fixed price contract for an additional five years. MPC suggests that an eligible QF be allowed to choose to accept a standard offer contract for any period between five years and the life of the avoided unit designated in the contract. However, the Commission can not give up its responsibility to regulate the IOUs and their capacity and energy contracts.

qfserc.cbh

**STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE**

During the last several years, the Commission granted five requests from IOUs to waive the ten year minimum contract term established by Rule 25-17.0832(4)(e).<sup>1</sup> The IOUs requested the waiver to reduce the risk that ratepayers would be tied to a long-term contract that is above avoided cost because of the uncertainty in the wholesale generation market. In each of these waivers, the minimum contract term was set at five years. The rule amendment would codify these rule waivers.

A high degree of uncertainty currently exists in the electric market due to recent regulatory changes, potential future regulatory changes, fuel price volatility, and technological changes. Given this uncertainty, reducing the minimum required term for standard offer contracts will decrease the potential for ratepayers to be tied to purchased power contracts that are priced higher than alternative power sources. Purchased power costs are passed directly to ratepayers through the Fuel and Purchased Power cost Recovery clause. Therefore, the rule change will impact ratepayers by reducing the probability that they will pay higher purchased power costs under a standard offer contract than would have otherwise been paid in the open market.

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<sup>1</sup> In re: Petition for approval of standard offer contract for qualifying cogeneration and small power production facilities by Tampa Electric Company, Order No. PSC-00-1773-PAA-EQ, 00 FPSC 9:499 (2000); In re: Petition by Florida Power & Light Company for approval of standard offer contract, Order No. PSC-00-1748-PAA-EI, 00 FPSC 9:458 (2000); In re: Petition of Florida Power Corporation for Approval of Standard Offer Contract Based on a 2003 Combined Cycle Avoided Unit and Accompanying Rate Schedule COG-2 Pursuant to Section 366.051, F.S., and Rules, Order No. PSC-00-0504-PAA-EQ, 00 FPSC 3:206 (2000); In re: Petition of Florida Power Corporation for Approval of Standard Offer Contract and Accompanying Rate Schedule COG-2, Order No. PSC-00-0265-PAA-EG, 00 FPSC 2:203 (2000); In re: Petition by Florida Power & Light Company for approval of a standard offer contract and revised COG-2 tariff, Order No. PSC-99-1713-TRF-EG, 99 FPSC 9:23 (1999).



**STATEMENT ON FEDERAL STANDARDS**

There is no federal standard on the subject of the amendments to Rule 25-17.0832.