

Matilda Sanders

From: DONNA COLE [DONNAC@burkeblue.com]
Sent: Tuesday, January 17, 2006 10:30 AM
To: Filings@psc.state.fl.us
Cc: WC HENRY; rriley@williamsmullen.com
Subject: Petition of Bay County, Florida Protesting Order No.PSC-05-1260-TRF-EQ

Attachments: petition of bay county renewable standard offer contract 2.doc



petition of
county renew

a. Person submitting this e-mail:

Donna Cole, Legal Secretary to William C. Henry, Esq.
Burke, Blue, Hutchison & Walters, P. A., Attorneys for Bay County
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b. Petition of Bay County, Florida Protesting Order No.PSC-05-1260-TRF-EQ
And Request For a Formal Hearing

To be filed in: Docket No's: 050805-EQ; 050806-EQ; 050807-EQ; 050809-EQ; and 050810-EQ

c. Petition filed on behalf of:

Bay County, a political subdivision of the State of Florida

By: William C. Henry, Esquire, Bay County Attorney d. 1 Attachment - 8 pages e. The attached Petition is Bay County's response to the Florida Public Service Commission's Order No. PSC-05-1260-TRF-EQ and requesting a formal hearing.

Thank you.

Donna Cole
Legal Secretary to William C. Henry
Burke, Blue, Hutchison & Walters, P. A.
221 McKenzie Avenue
Panama City, FL 32401
(850)769-1414, Ext. 249

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DOCUMENT NUMBER-DATE

00398 JAN 17 06

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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. DOCKET NO. 050805-EQ

In re: Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company. DOCKET NO. 050806-EQ

In re: Petition for approval of amended standard offer contract tariff and renewable energy tariff, by Progress Energy Florida, Inc. DOCKET NO. 050807-EQ

In re: Petition for approval of renewable Energy tariff by Florida Public Utilities Company. DOCKET NO. 050809-EQ

In re: Petition for approval of standard offer Contract for small qualifying facilities and Producers of renewable energy, by Tampa Electric Company. DOCKET NO. 050810-EQ

PETITION OF BAY COUNTY, FLORIDA
PROTESTING ORDER NO. PSC-05-1260-TRF-EQ
AND
REQUEST FOR A FORMAL PROCEEDING

In response to the Florida Public Service Commission's ("Commission") Order No. PSC-05-1260-TRF-EQ, (hereinafter referred to as "Order No. 05-1260") Bay County, a political subdivision of the State of Florida ("Bay County"), by and through its undersigned attorney, hereby petitions the Commission and requests a formal hearing, as per Order No. 05-1260 and Rule 28-106.201, Florida Administrative Code, ("F.A.C.") and in support thereof says:

- 1. The name and address of the agency affected by this petition:

DOCUMENT NUMBER-DATE
00398 JAN 17 8
FPSC-COMMISSION CLERK

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The Florida Public Service Commission's docket numbers are indicated in the caption of this pleading.

2. The Petitioner's full name and principal place of business:

Bay County, Florida
c/o Bay County Manager
310 W. 6th Street
Panama City, Florida
(850)784-4015

3. All pleadings, orders, notices and other correspondence with respect to these dockets should be addressed to:

William C. Henry, Esq.
Burke, Blue, Hutchison, & Walters, P.A.
221 McKenzie Avenue
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Panama City, Florida 32402
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4. Bay County owns an operating "solid waste facility", as defined in section 25-17.091(a), F.A.C., located near Panama City, Florida ("the Bay County Facility"), and has just completed a major retrofit of the facility's pollution control equipment. As such, Bay County is a producer of "renewable energy" as such term is defined in Section 366.91 (2)(b), Florida Statutes. Bay County currently sells capacity and associated energy from its solid waste facility to Progress Energy Florida (formerly Florida Power Corporation) ("PEF") pursuant to a power purchase agreement that will terminate on December 31, 2006. (See the Commission's April 8, 2002 order in Docket No. 011365-EQ). The Bay County Facility is located within Gulf Power

Company's ("Gulf") franchised service area.

5. Bay County's substantial interests are affected by the Commission's Order No. 05-1260 because as a producer of renewable energy, the proposed renewable energy tariffs and the related standard offer contracts for renewable resources ("Renewable SOCs") are directly applicable to the Bay County Facility.

6. Bay County learned of Order No. PSC-05-1260-TRF-EQ from the Commission's web-site. Pursuant to Rule 25-22.029(1), F.A.C., the twenty one day period for filing this Petition expires on January 17, 2006. This Petition is timely filed.

Background

7. In 1989, the Florida Legislature enacted Section 366.051, Florida Statutes, which recognizes the important benefits that cogenerators and small power producers provide Floridians. In 2005, the Legislator reinforced the earlier law by enacting Section 366.91, Florida Statutes, regarding renewable energy. Section 366.91(1) provides, in pertinent, part as follows:

[T]he 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.

In addition, Section 366.91(3) Florida Statutes, requires that, on or before January 1, 2006, each of Florida's investor-owned electric utilities ("IOUs"): Florida Power & Light Company ("FPL"), PEF, Tampa Electric Company ("TECO"), Gulf, and Florida Public Utilities Company ("FPUC"), must continuously offer a purchase contract to producers of renewable energy.

8. On October 14, 2005, each of Florida's IOUs filed petitions for approval of renewable standard offer tariffs and related Renewable SOCs. The petitions were consolidated.

9. On December 27, 2005, the Commission issued Order No. 05-1260 which approved the tariffs and Renewable SOC's proposed by the IOUs, as amended by such order, and provided that, on or before December 28, 2005, the IOU's refile their proposed tariffs and Renewable SOC's with the amendments discussed in the December 27, 2005 Order. The Commission also ordered that its staff shall have authority to administratively approve the refiled tariffs and standard offer contracts upon verification that the agreed amendments set forth in the order had been made.

Disputed Issues Of Material Fact And Law

10. Bay County alleges disputed issues exist as to, among other things, material facts concerning whether the terms and conditions of the proposed Renewable SOC's are reasonably applicable to renewable energy facilities so as to encourage the development of renewable resources, including without limitation, required rates, avoided costs, and the timing of energy and capacity payments. Bay County contends that many provisions of the proposed form Renewable SOC's are unduly onerous and out-of-step with power contracts from renewable resources. Order No. 05-1260 fails to address the negative impact of such terms and conditions specifically proposed in each of the Renewable SOC's. Section 366.91(3) Florida Statutes requires that the IOUs (along with any municipal utility subject to the Florida Energy Efficiency and Conservation Act of 1980) "must continuously offer to purchase capacity and energy from specific types of renewable resources". Although we applaud the Commission and its Staff for addressing certain aspects of the Renewable SOC's relating to "continuous offers", subscription limits and minimum terms, Order No. 05-1260 does not address other provisions contained in the proposed Renewable SOC's that do not promote the development of renewable energy resources

in Florida, and may actually discourage any such development. For example, Order No. 05-1260 does not address or analyze whether any of the proposed terms and conditions of the Renewable SOC's adequately address the "real world" operational characteristics of renewable energy producers. Moreover, the Order does not discuss the onerous "availability factor" requirements and related penalties associated with failing to meet such requirements that are not reasonably applicable to renewable energy producers. Although the unreasonably high availability factors may be appropriate for certain new natural gas fired combustion turbine facilities (although that is also very debatable, as is demonstrated by the equivalent availability factors demonstrated by the IOU's facilities), these availability requirements are certainly not reasonably applicable to renewable energy providers such as the Bay County Facility. For example, FPL is requiring that the renewable facility maintain an annual capacity billing factor of 97 % for both On Peak and Off Peak Hours to qualify for full capacity payments under its proposed Renewable SOC, and if the facility falls below a 90% annual capacity billing factor, monthly capacity payment will be zero (0). This is materially different from FPUC's 70% capacity factor; TECO's monthly availability factor of 90% and monthly capacity factor of 80%; PEF's On Peak and Off Peak availability factor of 89%; and Gulf Power's 94% equivalent availability factor. In addition, several of the proposed Renewable SOC's impose draconian termination payments and exposure to damages which are not appropriate for a renewable energy resource.

11. Moreover, each of the proposed Renewable "standard" offer contracts proposed by the five IOU's contain terms and conditions that are materially different from each other, and thereby present five contracts that are anything but "standard". For example, each of the five IOUs propose different provisions concerning: definitions, performance standards, availability

factors, methods used to calculate such performance standards and availability factors, non-performance, termination and default. One of the proposed renewable SOC's contains terms which are not defined within it or its tariff. Order No. 05-1260 fails to address or analyze any of the foregoing provisions contained in the proposed Renewable SOC's and the contrary impact of these terms and conditions many of which are unfair to the renewable energy generators and undermine the Legislature's intent to encourage the development of renewable resources.

12. Moreover, Bay County asserts that it is inappropriate for the Commission to utilize its existing rules to calculate avoided costs and impose operational parameters (as set forth in the proposed Renewable SOC's) by reference to an IOU's next identified generating unit, (especially when the IOU's designate a gas fired combustion turbine or a gas fired combined cycle unit).

13. In addition, Gulf's original October 14, 2005 filing in Docket No. 050805-EQ proposed using a hypothetical unit with an in-service date of June 2009, a unit that is not currently planned for construction. Because, Gulf's current Ten-Year Site Plan identified a June 2012 combustion turbine unit as its next identified generating unit, the Commission's staff recommended that Gulf refile its proposed tariff and Renewable SOC based on the June 2012 unit. As a result, Gulf Power refiled its tariff and Renewable SOC using the June 2012 unit in its expansion plan as the avoided cost unit. Accordingly, Gulf Power would not be required to contract with a renewable energy provider to purchase capacity until the year 2012.

14. Notwithstanding the foregoing, Gulf has recently announced its intention to solicit bids to purchase 400 to 500 megawatts of capacity deliverable in 2009. Gulf Power anticipates that the winning bidder in this RFP process would begin delivering capacity to Gulf Power no later than June 2009, for a 5 year term contract (*i.e.*, through 2014).

15. The Commission is vested with authority to review standard offer contracts “to ensure that they are fair to the parties to the contract and that they further the energy policies of the State as defined by the Legislature.” See, *Florida Power & Light Co. v. Beard*, 626 So.2d 660 (Fla.1993). The Florida Supreme Court recognized that section 366.051, Florida Statutes, defines those policies. *Id.* at 663.

16. Bay County believes that the onerous and inconsistent terms of the proposed Renewable SOCs frustrate and undermine the legislative intent of Section 366.91, Florida Statutes, which is to promote the development of renewable energy resources in the State of Florida. As such, the Commission should not grant approval of the proposed tariffs and related Renewable SOCs without a full assessment of the foregoing and other relevant issues that will certainly influence the development of renewable energy resources in the State of Florida. Bay County respectfully contends that the Commission is required to make such an assessment under Section 366.91, Florida Statutes, and other provisions of applicable law.

Relief Requested

17. For the reasons set forth herein, Bay County respectfully requests the Commission to conduct a formal proceeding to fully assess each of the terms and conditions of the proposed renewable energy tariffs and the related Renewable SOCs to ensure that such tariffs and contracts are redrafted to comport fully with the legislative purpose of Section 366.91, Florida Statutes. Bay County confirms that it is protesting the entire Order No. 05-1260 for the purpose of preserving its rights and positions for final hearing. Bay County asserts that the only appropriate resolution of the proposed tariffs and Renewable SOCs proposed by the IOUs is for the Commission to review all of the terms and conditions to confirm that such provisions are

consistent with the purpose of Section 366.91(1), Florida Statutes, and that such tariffs and contracts do not actually subvert the development of renewable energy resources in the State of Florida.

18. However, because Order No. 05-1260 directed that a workshop be conducted expeditiously to allow for further discussion of the policy issues set forth in the body of Order No. 05-1260 and other matters related to the development of Renewable SOCs, Bay County requests the Commission to defer any formal hearings in these dockets until after said workshop. Bay County requests permission to fully participate in said workshop.

Filed electronically with the Florida Public Service Commission, this 17th day of January, 2006.

Respectfully Submitted on January 17, 2006.

BURKE, BLUE, HUTCHISON, & WALTERS, P.A.
Bay County Attorneys

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