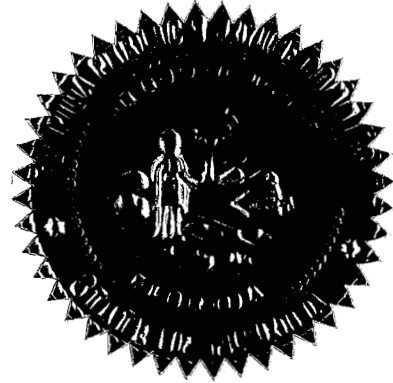


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060555-EI

In the Matter of

PROPOSED AMENDMENTS TO
RULE 25-17.0832, F.A.C.
FIRM CAPACITY AND ENERGY CONTRACTS.



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PROCEEDINGS: STAFF RULE DEVELOPMENT WORKSHOP

DATE: Wednesday, August 23, 2006

TIME: Commenced at 9:30 a.m.
Concluded at 11:36 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official Commission Reporter
(850)413-6732

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FLORIDA PUBLIC SERVICE COMMISSION

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P R O C E E D I N G S

1
2 MR. HARRIS: Good morning, everybody.

3 This is a staff rule development workshop for Docket
4 060555, proposed amendments to Rule 25-17.0832, firm capacity
5 and energy contracts. This is a workshop that was noticed in
6 the FAW. I think it was published on August 4th of 2006.

7 Mr. Zambo, can you hear me okay?

8 MR. ZAMBO: Yes, I can. Thank you.

9 MR. HARRIS: Great. We do have someone participating
10 by phone. There are sign-in sheets in the back of the room. I
11 would encourage everybody to sign in. It has got an e-mail
12 address spot, and it is important that you sign in because we
13 use that in order to be able to develop an e-mail list for if
14 we send e-mails out, that is the way we can keep track of who
15 wants to receive copies of things without you having to
16 constantly look in the docket file to see if things have been
17 added.

18 We also have an agenda back there, and copies of the
19 draft rule, so you can pick those up. They should be on either
20 side of the room. As I said, this is a staff rule development
21 workshop. Most of you all have probably participated in these
22 before. It's a relatively informal process, and the goal is
23 for staff to develop information on the rule that's drafted and
24 out there. The purpose is so that staff can get the
25 information, feedback, comments, changes, suggestions that we

1 can use in developing a recommendation to the Commissioners
2 whether to propose a rule or not. In this case to propose
3 amendments to a rule. And if to propose amendments, what those
4 amendments should be. And so we look forward to receiving your
5 comments today. And as I said, it's informal, there's no sworn
6 testimony, nobody is under oath, so we can get good comments,
7 hopefully.

8 We do have a court reporter here. This is being
9 transcribed. The transcript will be filed in the docket file
10 at some point. We have a lot of stuff on the calendar, and so
11 I can't give you a firm date, but it will probably be within
12 the next two weeks or so and that will be in the docket file.

13 I'm going to ask you all when you first introduce
14 yourself to spell your name, that's for the court reporter, and
15 then whenever, if we have back and forth and you speak more
16 than one time, identify yourself, you know, so that the court
17 reporter can get it and it makes it easier for them.

18 There will also be an opportunity for post-workshop
19 written comments to be filed, and we will discuss that towards
20 the end of this workshop today.

21 My name is Larry Harris. I'm the staff counsel
22 assigned to this docket. Sitting to my left, your right, is
23 Judy Harlow, who is the lead technical staff. We have a couple
24 of other technical staff in the room who apparently don't feel
25 they need to participate and sit up here and take the bullets

1 with us, but they are hiding over there to the left. And
2 unless there's any other preliminary matters, I think I'll go
3 ahead and turn it over to Judy to get started with sort of an
4 overview of what we're trying to do here, and how we got here.

5 Does anybody have anything they would like to bring
6 up before we start with that?

7 MS. COWDERY: I have one question, Larry. Did you
8 say that it's docketed? 080555?

9 MR. HARRIS: 060555.

10 MS. COWDERY: Thank you.

11 MR. HARRIS: You're welcome.

12 All right. Judy, if you would go ahead and get us
13 started, I think we'll get rolling.

14 MS. HARLOW: Hi, I'm Judy Harlow with staff. Just a
15 little background on how we got here. As you know, in the 2005
16 session, the legislature passed Section 366.91, Florida
17 Statutes, and that required the utilities that were subject to
18 the Florida Energy and Efficiency Conservation Act to
19 continuously offer to purchase renewable capacity and energy.
20 And so the staff started a process in which we began holding
21 workshops. We received agreement from the utilities to file
22 standard offer contracts under our existing cogen rules. The
23 reason we did that was we were trying to meet a very tight time
24 frame to have these contracts implemented by January 1st, 2006.
25 And, of course, the statute became effective on October 1st,

1 2005, so we had a very tight time frame, and that was our
2 starting point.

3 We did that. We went to the Commission with a
4 recommendation. At that point in time the Commission sent us
5 back, they told us to work with the utilities, to work with the
6 other parties, to get more input, and they asked us to hold an
7 additional workshop. Of course we did that. We had a great
8 deal of participation at that. We took those comments to
9 heart. And the utilities again filed contracts. The staff
10 filed an additional recommendation and we went to the
11 Commission with that.

12 Our recommendation was what we believed was a
13 compromise position of what we called a fossil fuel unit
14 portfolio approach. And the Commission approved that approach
15 for setting avoided costs. That Commission order is number
16 PSC-06-0486-TRF-EQ. And if I spoke too quickly, just come up
17 to me after the workshop and we'll make sure you get a copy of
18 that order. It was issued on June 6th, 2006. So the staff
19 felt like we had clear direction from our Commissioners on the
20 way to proceed with this, and they directed us to go to
21 rulemaking and that prompted this workshop today.

22 And also we felt like the order was very clear on the
23 Commission's position at that point in time on how to set
24 avoided costs and some other characteristics of the contracts.
25 So we used that as our basis for the proposed rule that you

1 have in front of you today. And, again, we have copies on both
2 sides of the room.

3 So, briefly, I would like to just go through the
4 primary changes that we have made to our existing cogen rules.
5 The first is avoided cost. We felt that the Commission was
6 very clear that they preferred the portfolio approach based on
7 a unit type rather than a statewide unit or the existing policy
8 of a single unit approach. And so we changed the language to
9 indicate that for utilities that have generation identified in
10 their Ten-Year Site Plan, they are to file multiple standard
11 offer contracts with one contract based on the first generating
12 unit of each fossil fuel generating technology type in the
13 Ten-Year Site Plan.

14 We also added language for utilities that do not have
15 identified generation, and that is something new. And,
16 unfortunately, we had an initial draft of the rule, and a few
17 of you may have gotten that where we didn't make this change,
18 so make sure that you pick up one of the copies today. And the
19 change that we made was that utilities that do not have
20 identified generation will file standard offer contract for
21 renewables based on a planned purchase. And that is what we
22 have had happen with FPUC.

23 The second thing that we addressed was the contract
24 term. As you know, the statute states that there should be a
25 contract term of at least ten years. So we have revised the

1 minimum contract term from five years to ten years, and that
2 was also included in the Commission's order. We have included
3 small power producers of 100 kW or less just like in the
4 Commission's existing rules, and we did that for administrative
5 efficiency because that is still remained by the federal law,
6 PURPA.

7 We also changed language on the capacity limit to set
8 the size of the capacity limit equal to the size of the avoided
9 unit. That was per the Commission's direction in their June
10 6th order. And a further matter on the capacity limit, we
11 allowed that the capacity for negotiated contracts with
12 renewable generators and small power producers could be applied
13 toward the capacity limit for standard offers. Staff believes
14 that this would potentially limit ratepayer risk.

15 And, finally, we set up a procedure on when to file
16 the contracts so that the utilities would have a clear
17 direction and there would be no confusion, we hope, on when the
18 contracts are filed each year. And I think we're ready to take
19 your comments on the proposed rule or any other comments that
20 you have on the statute and how you feel it should be
21 implemented.

22 MR. HARRIS: And I thought, since Mr. Zambo is on the
23 phone, he's probably trying to hold the phone line open, we
24 will give him a chance to get started, if that is all right
25 with you, Mr. Zambo.

1 MR. ZAMBO: Sure, that will be fine.

2 Can you hear me all right?

3 MR. HARRIS: Sure. We can.

4 MR. ZAMBO: Okay. Rich Zambo on behalf of the City
5 of Tampa, Solid Waste Authority of Palm Beach County, and the
6 Florida Industrial Cogeneration Association. I've just got a
7 couple of comments.

8 One is that, Judy, you mentioned an awful lot of
9 times that the Commission agreed to this and this and this in
10 terms of when they approved those current standard offer
11 contracts, but I think we have this rulemaking for them to
12 gather facts and evidence, and they may end up deciding
13 differently. So I guess I take issue with the proposed rule
14 amendments being based on what the Commission did in those
15 proceedings, because they knew that they were moving forward
16 with rulemaking, so those decisions were sort of couched in
17 what they knew at the time and leave the door open for possibly
18 changes as we move forward.

19 Let me just go through some specific issues. As far
20 as combining the QF rules with renewable energy, I've got some
21 concerns there just because we will be operating under a
22 different standard. The renewable energy is basically a
23 creation of Florida law, whereas the QFs are a creation of the
24 federal law. And if the federal law changes, then our rules
25 are going to be either antiquated or need to be changed. And

1 it seems to me like there may be some advantages to keeping the
2 renewable energy rule separately and kind of starting with a
3 clean slate. I say that because I believe that, in my view,
4 the 366.91 and .92 now define new purposes for renewable energy
5 in Florida, and the avoided costs should be based on those
6 purposes and policies as opposed to those that were in place in
7 1978, almost 30 years ago.

8 The subscription limit gives me some concern because
9 -- the subscription limit and the way to refile those
10 agreements, the replacement agreements, I think they're going
11 to result in a period of time where there won't be a standard
12 offer available. And it seems to me like that might be
13 inconsistent with the law that says it has to be a continuous
14 offer. I'm not sure how to address that. One way would be to
15 eliminate subscription limits. Of course in our comments that
16 we filed in the workshop, too -- I'm just running through a
17 list of issues I've got here, so stop me at any time if you
18 want to ask a question or ask for clarification.

19 You know, we took the position that the avoided unit
20 should revert back to a statewide unit because we are now
21 looking at doing something to implement state policy, the state
22 policy of diversifying fuel mix. And it seems like doing that
23 on the statewide basis ought to be at least looked at as a way
24 of implementing that requirement. We would suggest that for
25 purposes of my clients that the avoided unit be a statewide

1 base load coal unit, and that it be assumed to go in service in
2 the year in which -- or the avoided unit goes in service in the
3 year in which the renewable facility begins to deliver energy
4 and capacity to the grid.

5 Under contract term, it seems like there has been
6 some debate in the past and disagreement over what the maximum
7 term should be. We would suggest that the rules address that
8 and set it as a minimum of ten, and then set a maximum and make
9 it clear that the renewable energy facility would have the
10 ability to select what that term is.

11 We also would like to see you expand this to include
12 not only the firm energy and capacity rules but also the
13 as-available rules. I think the way as-available energy prices
14 are calculated now, again, are based on concepts and policies
15 that go back to PURPA in 1978. And there may be some reasons
16 to change things for renewables facilities.

17 We think the rules ought to look at, perhaps, the
18 adoption of a renewable portfolio standard. It seems that the
19 language of both 366.91 and .92 gives the Commission the
20 flexibility to do that. Also, we -- in the past it was
21 difficult for QFs, actually it was pretty much impossible for
22 QFs to participate in the old Florida Energy Broker System
23 because it was a cost-based system and some QFs didn't have
24 fuel costs because they used waste heat or they used landfill
25 gas or municipal solid waste, and they either didn't have a

1 cost or the cost was subsidized by other factors. For example,
2 in municipal solid waste the costs may be subsidized by the
3 fees the residents pay for garbage disposed. So there was a
4 difficulty in determining the cost basis on which to bid into
5 that system. And as a result, they were prevented from
6 effectively participating. And the utilities are now looking
7 at another mechanism called -- I think it is the Florida
8 cost-based spot market. And preliminary indications are that
9 we would have that same problem for those renewable facilities
10 that don't have a fuel cost, per se, and we would like these
11 rules to make it clear that we would be able to participate in
12 those, in those markets perhaps by an exemption from any
13 cost-based requirements.

14 And I think that ends my list. I will be happy to
15 provide this in writing to you, if that would be helpful.

16 MS. HARLOW: Mr. Zambo, this is Judy. Could I ask a
17 question?

18 MR. ZAMBO: Sure.

19 MS. HARLOW: I'm not sure I understand your point on
20 the subscription limit. Could you address that again in more
21 detail, please.

22 MR. ZAMBO: Well, as I understand it, and I guess I'm
23 presuming some things, if a subscription limit is reached, then
24 by definition the standard offer would no longer be applicable
25 and something else would have to come along and replace it.

1 And if that's the case, there would be a period of time from
2 the time the subscription limit was reached and one contract
3 was closed to the time another one was opened, and that would
4 seem like there would be a lapse.

5 I don't know exactly how, you know, what you plan to
6 do in terms of administering that but, say, for example, there
7 was an avoided coal plant, and that avoided coal plant
8 subscription limit got filled up, there would be no coal plant
9 for anyone after that to sign up for until the new contract was
10 approved, filed and approved by the Commission.

11 MS. HARLOW: I understand. You're addressing the gap
12 in time between when one contract would close and the next one
13 would be approved by the Commission, correct?

14 MR. ZAMBO: Yes. And I understand that if a utility
15 has a portfolio, say they have maybe three different
16 technologies in their plan, then when one closes the others
17 would still be available. But you may have a time where a
18 utility where they only have one in the plan. And when that
19 one is filled, there would be no longer be a standard offer, at
20 least for a period of time.

21 MS. HARLOW: Thank you for clarifying that.

22 MR. ZAMBO: Any time.

23 MR. HARRIS: Great.

24 Thank you, Mr. Zambo. I believe the line will still
25 be open if you want to hang on and keep listening or whatnot.

1 MR. ZAMBO: I appreciate that. I think I will do
2 that. Thank you, Larry.

3 MR. HARRIS: Great. And if you want to chime in, you
4 might have to do it loudly, because you are somewhat faint, and
5 if people are talking it will be difficult, but we are not
6 ignoring you deliberately.

7 MR. ZAMBO: Okay.

8 MR. HARRIS: With that, I think we'll go ahead and
9 start with the people here. I see a question.

10 MR. HUNTER: (Inaudible. Microphone off.)

11 MR. HARRIS: No.

12 MR. HUNTER: (Inaudible. Microphone off.)

13 MR. HARRIS: Okay. Well, we have someone who is
14 volunteering. Great. Go ahead and identify yourself and spell
15 your name and we'll move forward.

16 MR. HUNTER: Good morning. My name is Rob Hunter,
17 I'm representing Green Coast Energy. My name, R-O-B-E-R-T
18 H-U-N-T-E-R. Green Coast Energy is a Florida-based developer
19 of renewable power projects. We are currently working to
20 develop approximately 300 megawatts of renewable power here in
21 Florida using primarily biomass waste-to-energy and hydropower.

22 I'm here to present you some of the issues facing the
23 qualified facilities in dealing with the current versions of
24 the standard offer contracts being prepared by the
25 investor-owned utilities. Per Section 366.91 of the Florida

1 Statutes, as we discussed, each public utility will offer to
2 continuously purchase renewable energy. In order to consummate
3 the intentions of the legislature, the Commission needs to set
4 forth the rules and requirements upon what these standard offer
5 contracts include that make them economically feasible for the
6 QF. Otherwise if it is not economically feasible, no one is
7 going to fund it, and there won't be any renewable power
8 generated as a result of these contracts. That would
9 invalidate the whole purpose of the activity. So I want to
10 raise a couple of key issues and concerns with the existing
11 standard offer contracts as proposed.

12 First of all, the term. I agree with Mr. Zambo, I
13 would like to see a minimum and a maximum term with the
14 renewable developer having the option to choose. It says so
15 far, at least ten years as a term, but all the contracts
16 included said ten years and no more, and this makes investors
17 less likely to provide funding for the project. We would like
18 to see contract terms with a maximum of, say, 25 years as is
19 common in PPAs throughout the industry. This would allow the
20 QFs enough years to generate the revenues to pay off all the
21 costs and provide enough of return to entice investors into
22 funding them.

23 Secondly, the energy payments and the avoided costs.
24 The energy payment per kilowatt hour needs to be clearly
25 defined over the life of the project, at least that is what we

1 would like. As this is the main source of revenue for the QF,
2 the financiers need to know this figure to be able to calculate
3 a return on the project in order to decide if they want to
4 commit their money to investing in renewable energy in the
5 state of Florida.

6 We would ask that the IOUs be required to set forth a
7 rate schedule in the standard offer that will, one, remain
8 constant throughout the life of the agreement, and, two,
9 provide enough revenue for the QF to make a reasonable project
10 cost feasible with a return. So be it nine cents, ten cents,
11 eleven cents, whatever, per kilowatt hour, we just need to know
12 what our revenues will be to determine if a project is going to
13 work.

14 Moreover, if we fix a rate, that will shield our
15 ratepayers from the rising costs of fuel. So, for example, we
16 provide a lot of zero fuel cost sources, like Mr. Zambo was
17 saying, solid waste, waste wood, et cetera. If we are
18 providing this to an investor-owned utility and the
19 investor-owned utility, the cost of gas goes up so their normal
20 costs would go up, well, it wouldn't affect the ratepayers
21 because they would be paying a fixed rate because there is no
22 fuel cost coming from us. I'll clarify if that made no sense.

23 MS. HARLOW: I have a question. In your constant
24 rate, were you including the capacity costs or were you just
25 speaking to energy costs?

1 MR. HUNTER: We were just speaking to the firm energy
2 cost.

3 MS. HARLOW: Okay. So you would want a fixed
4 capacity cost plus a fixed energy cost, is that what you are
5 saying?

6 MR. HUNTER: Yes, that's right.

7 MS. HARLOW: For the life of the contract?

8 MR. HUNTER: Yes.

9 I understand that the Public Service Commission, one,
10 wants to consummate the intent of the legislature through these
11 rules and, two, wants to insulate and shield the ratepayers
12 from any risk or liability, including the spiking costs of
13 fossil fuels and foreign oil. I think if we have something
14 like this, it kind of marries those two objectives together.
15 Because, one, it's because we know how much money we will be
16 making, we can plan these properly and attract investors to
17 fund these renewable projects. And, two, we can shield the
18 ratepayers from the rising cost of fuel.

19 A third issue, the renewable energy credits defined.
20 It is currently unclear whether the QF or the IOU is entitled
21 to the renewable energy credits resulting from generation of
22 green power by the QF. We would ask that the standard offer
23 contracts have a stipulation that the renewable energy credits
24 are the property of the entity that generates the power, namely
25 the QF.

1 We laud the Florida Legislature and the Public
2 Service Commission for your efforts to bring renewable energy
3 to our state and reduce our dependence upon foreign oil and
4 other conventional energy sources. If you can implement a
5 couple of these changes like we discussed, this will allow
6 renewable power producers like ourselves to bring in, one,
7 clean reliable power that is independent of volatile foreign
8 politics that have so ravaged the cost of conventional fuel;
9 two, billions of dollars of investment money into the state of
10 Florida for renewable projects; and, three, countless high
11 paying jobs for the construction, operation, and maintenance of
12 these renewable facilities, often in low income areas that
13 otherwise would not have these jobs but they are perfect
14 because of a site location.

15 In addition, with renewable power sources replacing
16 oil, coal, and other pollutant energy sources, the state of
17 Florida will take a lead role and become a paradigm for the
18 nation and the entire world itself in renewable energy.

19 Thank you for your time, and I'll be happy to answer
20 any questions.

21 MS. HARLOW: Mr. Hunter, this is Judy again. I have
22 a question on the renewable energy credits. The existing
23 contracts that the utilities filed, I'm not sure about all of
24 them, but I believe the bulk of them had the credits going to
25 the renewable provider, but the utility had a right of first

1 refusal before they were sold to another party. What's your
2 opinion on that?

3 MR. HUNTER: I'm comfortable with that. As long as
4 we are the ones who are able to realize those revenues, because
5 we're the generators -- I'm sorry, Rob Hunter speaking again.

6 MS. HARLOW: Thank you.

7 MR. HARRIS: Thank you, Mr. Hunter.

8 Do we have another volunteer?

9 All right, then we will go with the -- I see the
10 person sitting to my left at the far end of the table. I guess
11 you are up, Dude.

12 MR. ANDERSON: Good morning. My name is Bryan,
13 B-R-Y-A-N, Anderson, A-N-D-E-R-S-O-N. I'm an attorney for
14 Florida Power and Light Company.

15 First, we'd like to thank Mr. Harris, Ms. Harlow, and
16 other staff members for this renewable workshop today and for
17 having circulated the draft rule.

18 Florida Power and Light Company supports very much
19 renewable energy as an important resource in serving our
20 customers. We presently have about 300 megawatts of the
21 state's approximately 900 megawatts of renewable capacity under
22 contract. I think annually we buy about 1.3 million megawatt
23 hours. We are actually engaged now in negotiations for about
24 200 additional megawatts. So we are very vitally interested in
25 the development of fair and reasonable rules implementing the

1 Commission's and the Legislature's policy directions.

2 We have had an opportunity to review briefly the
3 proposed rule that staff has put on the table, which in our
4 view represents a good effort to implement the fossil fuel unit
5 type portfolio which was developed and articulated by Staff.
6 Our preliminary review does not identify any exceptions we
7 would see to the language in there, and we agree that it is
8 supportive of the direction that staff has articulated and the
9 Commission has supported and directed in its orders thus far,
10 and we are supportive of that direction.

11 Staff is aware that we made a commitment to the
12 staff, we made a commitment to the Commission to file our
13 standard offer contracts by a date certain, which commitment we
14 met, and they contain many improvements, in our view, which
15 were the product of having listened at prior renewable standard
16 offer contracts. Among those were, as Ms. Harlow pointed out,
17 provisions, for example, that our standard offer contracts
18 clearly provide the property rights and interests of renewable
19 energy credits being with the developer, for example, with the
20 right of first refusal.

21 So we are supportive of this process. We are
22 supportive of the direction we see here. We would like to
23 reserve, of course, the right to submit written comments based
24 upon what others have to say, and reserve any further verbal
25 comments based on what others have to say. But, again, thank

1 you all very much for having us here today, and we are
2 supportive of this direction.

3 MR. HARRIS: Thank you, Mr. Anderson. And if you
4 want to jump in, just raise your hand and I will try to
5 acknowledge you.

6 Ms. Cowdery.

7 MS. COWDERY: I'm Kathryn Cowdery, that is
8 C-O-W-D-E-R-Y, and I'm with Ruden McCloskey in Tallahassee,
9 Florida. I'm representing Covanta Energy Corporation, which is
10 a renewable energy producer.

11 Preliminarily, I would agree with the comments of
12 Rich Zambo and Rob Hunter. Back as part of the combined
13 standard offer contract dockets, essentially 050805 through
14 810, plus or minus a few, the Commission directed that the
15 workshop be held, as Ms. Harlow indicated, to obtain further
16 information on implementing 366.91. And as part of that, as
17 also referenced by Mr. Zambo, the Florida Renewable Energy
18 Alliance submitted a memorandum dated March 24th, 2006.
19 Covanta believes that the points raised in that memo should be,
20 to the extent possible, incorporated into the rule to make sure
21 that we are implementing the intent of the legislature.

22 Going over some of them briefly, I think you'll hear
23 a lot of what Mr. Zambo said. First, as to contract term, we
24 do believe that the contract term should be at the option of
25 the renewable energy facility, no less than ten years or more

1 than thirty years. The lower limit of ten years, as we state
2 in our memo, is statutorily imposed. And the upper limit of 30
3 years corresponds to the typical life expectancies of base load
4 plants. It's important that the renewable energy facility be
5 the determiner of contract length to avoid inadvertent
6 disincentives to renewable energy producers. And if you refer
7 to the March 24th memo, you'll be able to get all the details
8 supporting these summary statements.

9 Along the same lines, we still believe that there is
10 a concern about the subscription limit. As you, Ms. Harlow,
11 discussed with Mr. Zambo, we just want to make sure that there
12 isn't a gap that would be problematic with regard to the
13 availability of the standard offer contracts.

14 I would also agree with Mr. Zambo that we are in a
15 rulemaking proceeding now, and the focus of this proceeding
16 should be to look at the language of the statute, to look at
17 the intent of the legislature, to develop information, to
18 gather information, and to determine the best way to proceed.
19 It would be inappropriate to say we have gotten direction
20 previously that we want to follow in formulating a rule. It
21 would be more appropriate to take all the information that's
22 being presented at the workshops and come up with the best
23 rules based on all of this information.

24 Covanta also believes that a more detailed look into
25 a change in the avoided cost standard should be made. For the

1 reasons set forth in the March 24th memo, 366.91 does require a
2 new avoided cost formula in consideration of a major policy
3 shift. A revenue requirement formula which more closely models
4 the cost-recovery cash flow associated with the utility plant
5 and rate base will provide accurate cost recovery, give the
6 proper price signals, and promote the development of renewable
7 energy resources in Florida. I know this isn't the direction
8 that you are currently taking, but it's something that should
9 be considered in order to implement the statutes.

10 And as far as the standard offer contract terms and
11 conditions go, notwithstanding that we have another docket on
12 those contracts and we have a possible hearing coming up on
13 them, to the extent that there are certain minimum or base line
14 provisions which should be provided for in the standard offer
15 contracts, it's appropriate that those base line requirements
16 should be included in the rule. For instance, the avoided cost
17 payments for renewable energy should include all costs that
18 would otherwise be incurred by the utility and/or ratepayers,
19 including stopgap costs which are discussed in the March 24th
20 memo and other benefits accruing to the state consumers and
21 utilities.

22 It would also be, I think, beneficial to consider,
23 and I think Mr. Zambo alluded to this, the creation of an
24 industry-specific waste-to-energy standard offer contract
25 portfolio.

1 I had one question for you. We have got in 2006,
2 now, the legislature passed 366.92, Florida Renewable Energy
3 Policy, and as part of that there was an allowance for the
4 Commission to adopt rules to administer and implement the
5 provisions of that section, which included the Commission
6 adopting appropriate goals for increasing the use of existing,
7 expanded, and new Florida renewable energy resources.

8 So my question is, is this something that you might
9 want to roll into this proceeding? Is it something that has
10 been discussed as far as implementing this particular statute
11 and wouldn't this be a good time to maybe consider that.

12 MR. HARRIS: Judy can correct me if I'm wrong, I
13 don't believe staff at this point is intending to include goals
14 in this docket. That is not to say that we won't have some
15 other type proceeding to look at goals. It's my recollection
16 from the Internal Affairs we had last week that we made a
17 presentation, staff made a presentation to the Commissioners.
18 And I don't recall at that point any -- that staff was making
19 any recommendation to go forward with goals at that point. So,
20 the fact that you are asking this question, I think, gives us
21 the -- basically that makes staff look into this.

22 MS. COWDERY: Think about it.

23 MR. HARRIS: Think about it. Well, I know we had
24 thought about it. But I think now that we are getting a
25 request from you all, we need to go back and think about it

1 some more and see what the appropriate proceeding would be.

2 I haven't talked to the staff. I wouldn't think that
3 that would be included in this particular docket, but that is
4 not to say we wouldn't. I would think it is more likely,
5 however, we would probably open a new docket to address goals.
6 But, again, I haven't spoken with the staff. And I can commit
7 to you that we will. You know, we're going to take all of
8 these comments to heart.

9 Judy.

10 MS. HARLOW: The recommendation that the staff made
11 at the Internal Affairs to the Commission was that we would get
12 these standards put in place, these standard offer contracts,
13 and see if they do, indeed, encourage renewables, which is the
14 staff's goal to implement this statute. And we also, at the
15 same time, have sent out several data requests to all the
16 utilities. And we're trying to get a clear picture of what's
17 going on in the state right now with regard to renewables. And
18 we feel like that information would be very important if the
19 Commission did determine that they wanted to move forward with
20 goals. So those are two actions that the staff has taken at
21 this point.

22 And I would also like to say to you and Mr. Zambo, as
23 well, that the staff is certainly aware that the Commission
24 gave us the direction to listen to the parties and to take it
25 to heart, and that is the purpose of this workshop today. So

1 we understand that. But we also felt like the Commission gave
2 us a clear direction, and we used that as a starting point. So
3 I would like to ease your minds on that point.

4 And also, Ms. Cowdery, I would like to ask you a
5 question. I'm sorry, but I missed your point on the purpose of
6 the industry-specific contract with respect to waste-to-energy.
7 If you could clarify that, please.

8 MS. COWDERY: This was something that Covanta had
9 brought up. We discussed a little bit in-house about whether
10 or not having a standard offer contract just as a discussion
11 point, is the standard offer contract that would be more
12 specific as to terms and conditions that would relate to the
13 waste-to-energy type industry as opposed to some of the
14 industries where you might have other considerations.

15 MS. HARLOW: If you could refresh my memory. Was
16 that specifically addressed in the March 24th memo?

17 MS. COWDERY: No, that was not.

18 MS. HARLOW: Thank you.

19 MR. HARRIS: Ms. Cowdery, anything else?

20 MS. COWDERY: No. Thank you very much.

21 MR. HARRIS: Great.

22 Mr. Beasley.

23 MR. BEASLEY: Jim Beasley, B-E-A-S-L-E-Y, for Tampa
24 Electric Company.

25 We have just received the draft rule, and are looking

1 at it, and will be glad to provide our analysis after we have
2 had a chance to discuss it in the form of written comments
3 following the workshop. Tampa Electric is on record as
4 supporting the development of renewable energy resources in
5 Florida. And we would also like to reserve an opportunity to
6 address the comments of other parties in our post-workshop
7 comments.

8 MR. HARRIS: Great. Thank you.

9 Mr. Moyle.

10 MR. MOYLE: For the record, Jon Moyle with the Moyle
11 Flanigan law firm appearing today on behalf of Wheelabrator
12 Technologies, which is a waste-to-energy provider, a renewable
13 energy resource here in the state. Also with me is Dave Bivins
14 (phonetic), who is the chief financial officer for
15 Wheelabrator.

16 Some of the points that I'm going to address have
17 already been made, and I'll try not to be redundant and maybe
18 just highlight them again for you. But Ms. Harlow, I think,
19 appropriately started out by saying how did we get here, and I
20 think obviously the legislature has a renewed interest in
21 renewable energies because they have acted in that area for the
22 last two legislative sessions. They have sent, I think, pretty
23 clear messages that Florida needs to do more to have additional
24 renewable energy resources. I think when you consider that
25 with some of the things that are happening in the world today,

1 the Middle East uncertainty, clearly in the legislation they
2 talk about helping to diversify fuel types. And any type of
3 energy resource which can be home grown, if you will, whether
4 it is from solid waste or another biomass product, it's
5 something that the legislature has said let's see what we can
6 do to get more of this and encourage it and expand it.

7 And you are familiar with the 366.91, renewable
8 energy legislation that passed, which is what has gathered us
9 here today. If I could just briefly comment on the 366.92
10 legislation that passed during the 2006 session. I understand
11 you had an Internal Affairs discussion about that the other
12 day. I would encourage you to consider, maybe stepping back
13 and taking a broader view of this and saying how are these two
14 most recent legislative pronouncements going to work in tandem
15 with one another, and consider possibly trying to expand this
16 docket or to link the two dockets together. Because clearly,
17 from my perspective anyway, the legislature said, PSC, help us
18 move forward with renewable energy.

19 And as part of that I think they are going to want to
20 know how are we doing. I mean, how have we done previously,
21 how are we going to move the ball forward? And the language
22 about setting goals, I think, would give you a clear benchmark
23 and give the public a clear benchmark and the legislature a
24 benchmark to measure how are we doing. You had mentioned that
25 there is some outstanding data requests. I applaud you for

1 doing that, because I think clearly everyone needs to know
2 where are we now, what is the base line, and then have
3 information by which we can be measured as to whether we are
4 succeeding or not. Because at some point, if we are succeeding
5 they may say, great, you know what, the legislation we passed
6 has had the effect that we intended. If it's not, they are
7 going to need some good information to come back and say, well,
8 we need to ratchet it up and try to do some other things.

9 So I would urge you to consider trying to link the
10 goals with some of the changes in the renewable energy. And in
11 addition to goals, I think you probably have the existing
12 authority to do this. It sounds like you are already doing it,
13 but I would consider putting it in the rule so not only staff,
14 but folks like my client, others, and perspective developers of
15 new renewable energy could have some information by which they
16 could make business judgments.

17 You know, if you have a goal of, say, 10 percent
18 renewable energy in this state and the utilities submit
19 information that says we are at 9.9, a developer may say, you
20 know, Florida, if there is only a slim margin to meet that
21 goal, maybe that's not the place I want to develop the next
22 renewable energy project, or you could consider changing the
23 goals. But I think that is important information, transparent
24 information that could give people signals about developing
25 future renewable energy projects. So I would urge you to

1 consider putting in some goals and reporting requirements so
2 that probably on an annual basis, maybe make it part of the
3 Ten-Year Site Plan or something where you are getting a
4 concrete filing with respect to where we are and how we are
5 doing on renewable energy.

6 A couple of more specific points to the proposed
7 rule, and this has been touched on about continuously offering
8 renewable energy contracts. To me the subscription limit, I
9 know it is steeped in history with PURPA and whatnot, but it
10 seems that it is probably a bit of a barrier to folks being
11 able to come in and provide renewable energy. I understand the
12 legislature said look at avoided costs, but I don't perceive
13 their action to be any kind of endorsement that might limit the
14 ability to get renewable energy in the state. I think a
15 subscription limit for some of the reasons that others have
16 talked about potentially could do that, because you are going
17 to have a gap between one contract closing and the other
18 contract closing.

19 It seems to me that the way that the rule previously
20 read with respect to the small generators, where you said small
21 generators don't count against the subscription limit, you
22 know, that you might consider saying renewables don't count
23 against the subscription limit. So you basically are giving
24 them a green light to go forward and do the best that they can.
25 That change could be affected pretty easily just by, on Page 2,

1 you have stricken the word not, Line 8. If you would leave not
2 in there, then I think that would help renewables and send a
3 pretty strong signal that Florida is open for business for
4 renewables.

5 There was a little bit -- switching gears briefly.
6 There was a little bit of discussion about the renewable energy
7 credit, and the question I think Ms. Harlow asked was would you
8 be supportive of a requirement that those belong to the
9 renewable energy generator and could be sold, I presume, on a
10 market rate basis and there be right of first refusal for the
11 utility. I think the important points there are that the
12 renewable energy credit is an asset that belongs to the
13 generator, and the generator ought to receive compensation for
14 those at a market rate price. You know, a lot of contracts are
15 negotiated bilaterally. And if a right of first refusal is
16 something that can be negotiated then that seems to make sense.
17 But clearly, I think, giving the renewable energy generator the
18 ability to receive value for that makes sense. And, again, it
19 is consistent with the legislative direction of promoting
20 renewable energy.

21 There has been a little bit of discussion about
22 avoided cost, and we would also encourage kind of a fresh look
23 at avoided cost. And one of the things that I remember, I
24 think it was Commissioner Deason making a point early on when
25 we started this discussion. If I recall correctly there was a

1 couple of filings made. And one filing, I think, it was -- one
2 filing included firm fuel transportation costs which resulted
3 in a higher rate as compared to the filings compared to some of
4 the other utilities. And when that issue came up at an agenda
5 conference, I think it was acknowledged that there had been a
6 lot of internal discussion within the company that made that
7 filing. I think initially they said, well, we presume that
8 ought to be in there because it is a cost we would avoid, so we
9 ought to have it in there, and then some further discussion
10 ensued and I think they backed it out.

11 And I think Commissioner Deason said, look, I'm not
12 real big on putting labels on this stuff, but what we ought to
13 do if we are promoting renewable is if it is a cost you are not
14 otherwise incurring, it ought to be in. So just thinking back
15 in preparing for today, I said that is something that you guys
16 ought to take a look at to make sure that everything that is
17 avoided, if you are going to go with that approach, that
18 everything that is properly within that mix is included when
19 you're calculating your cost.

20 And, again, the main desire is to promote renewable
21 energy, send a green light. And if those types of things like
22 the firm fuel transportation cost was included, it might make
23 another small incremental difference in some benefit to the
24 renewables, but it would serve the purpose of promoting
25 renewable energy.

1 A couple of other points. You know, the contract
2 term has been mentioned. The legislature said a minimum
3 ten-year. Again, to promote renewable, I think the renewable
4 generator ought to have the choice to go 10 up to 30. Give the
5 renewable generator the choice on that.

6 The payments, as to when the renewable generator
7 starts to receive payments. Rather than have those payments
8 start to flow when the avoided unit would otherwise come
9 on-line, it seems to me that the payments would start to flow
10 when the renewable energy is being provided. I mean, that is
11 the product that is out there. When it hits the grid, that is
12 when payment ought to be received kind of at the full freight
13 and not to have a graduated payment. Again, because the goal
14 is to promote renewable energy. So anything that you can do to
15 send the right signal to the financial markets. The gentleman
16 down here said, you know, we have got to try to get these
17 financed. Banks are going to look at them, investors are going
18 to look at them. The more you can do to make it a financeable
19 deal, I think, the more you are going to have renewable energy
20 come to the state of Florida.

21 I did have one question that I wanted to ask just to
22 seek clarification on, and I would just refer you, if I could,
23 to the draft rule, Page 3, Line 24. Covanta and Wheelabrator
24 and some of Mr. Zambo's clients are in the municipal solid
25 waste business of converting municipal solid waste into energy.

1 Line 24 strikes the phrase, "A municipal solid waste facility
2 as defined by Rule 25-17.091, Florida Administrative Code," and
3 I just want to clarify that the reason that is being taken out
4 is because you are inserting above in Line 20 the term,
5 "Renewable generating facility as defined by Section 366.91,
6 Florida Statute." And you didn't want to be redundant because
7 Section 366.91 includes municipal solid waste facility in its
8 definition. I presumed that was correct, but I just wanted to
9 make sure I was right in that reading.

10 MS. HARLOW: That's correct. We are certainly not
11 excluding municipal solid waste facilities. But thank you for
12 bringing that up.

13 MR. MOYLE: Okay. Let me just take a quick look at
14 my notes. I think I may have covered most of the points.
15 That's it. And I will be happy to answer any questions that
16 you might have. Thank you.

17 MS. HARLOW: Can we go back to the subscription
18 limit, please?

19 MR. MOYLE: Sure.

20 MS. HARLOW: You expressed a concern that we change
21 the language that applied the negotiated contracts with the
22 renewables toward the subscription limit. Our feeling is even
23 with that change, we have substantially increased the capacity
24 that would be available to be contracted for renewables because
25 we used to have these subscription limits that in recent policy

1 were quite small, five to ten megawatts. And so we have
2 increased it to the size of the unit, which we think is a
3 substantial benefit for the renewables, and yet we were trying
4 to balance that with ratepayer risk, and that is why we changed
5 the other language about applying negotiated contracts. So we
6 did not feel that that would be a detriment to the renewables
7 because, again, they would have the right to go to the table
8 with the utility and negotiate a contract, as well.

9 MR. MOYLE: Yes. And I appreciate the ability to
10 negotiate the contracts, and think like has been said
11 previously, that is always best when people can sit down at the
12 table and work through it. I guess the thought that I have on
13 that is the legislature has said -- I think they have made an
14 effort to protect the ratepayers with respect to the avoided
15 costs, so you have got to figure all the things that go in
16 there. And we have talked about like the firm fuel
17 transportation costs and asked you to take a fresh look at
18 that. But, you know, clearly they have said let's go with
19 renewables, let's go, let's push.

20 And to the extent that you are setting goals, it
21 seems to me that, you know, one approach to consider would to
22 be say we are going to set a goal of X and have a discussion
23 about what X is. Is it 10 percent, 15 percent, 20. Whatever
24 it is, that is the goal, and then it seems like the
25 subscription limit potentially gets in the way a little bit,

1 because I don't really perceive it as doing a whole lot to
2 promote the renewable energy.

3 I think if you get to that goal of X, then you are
4 going to have clear information that the policymakers, the
5 legislature can say, you know what, maybe we need to slow down
6 on renewable now because we have made our goal of X and, you
7 know, we're more comfortable imposing some limitation. But I
8 don't perceive the legislation that was passed to impose kind
9 of a subscription limitation on there. And I think we had this
10 discussion, you know, at some point. And it is theoretical,
11 because Florida is growing.

12 But if you had a state that there was not growth,
13 but, again, the state wanted to have more renewable energy
14 because of some of the things we have talked about with the
15 Middle East and whatnot, you know, they could have passed this
16 type of legislation. And if you then came in and implementing
17 it tied it to a subscription limit where there was no growth
18 you wouldn't move the ball forward because there wouldn't be
19 new units out there that people would be bidding against. So I
20 think the subscription limit thing should just be rethought and
21 see it really is not anything that is needed, candidly.

22 MR. ZAMBO: Judy, this is Rich Zambo. Could I make a
23 comment?

24 MS. HARLOW: Sure.

25 MR. ZAMBO: One of the things that I'd like to

1 encourage you to consider is with the new Florida legislation
2 now we are no longer looking at strictly the way we did through
3 PURPA. I mean, PURPA was looking at the next -- you know,
4 avoiding the next generating plant. Under the Florida law, the
5 way I interpret it, is we are supposed to be doing what we can
6 to diversify the fuel mix. So that doesn't necessarily mean
7 that there even has to be another unit that the utility is
8 planning, because the utility is not planning units that are
9 diversifying fuel mix. And if they are, they are way out in
10 the future.

11 So what Mr. Moyle is saying is exactly how my clients
12 think, and that is that as soon as that renewable energy starts
13 flowing to the grid it ought to be paid a price that reflects
14 the value of that renewable energy, and also in amounts that
15 can meet those goals. I mean, we probably need five or 10,000
16 megawatts of renewable energy in order to really diversify the
17 fuel mix. So I would just like you to think about it in those
18 terms. Look at a clean slate, forget what we know about
19 avoided cost from a 30-year-old law, and look at what the
20 legislature is intending in the bills that it enacted this year
21 and last year. Thank you.

22 MR. HARRIS: Mr. Moyle, anything else?

23 MR. MOYLE: No. Thank you.

24 MR. HARRIS: Mr. Wright.

25 MR. WRIGHT: Thank you. I'm Schef Wright, S-C-H-E-F

1 W-R-I-G-H-T, and I'm here today representing Montenay-Dade
2 Limited, which operates the Dade County Resources Recovery
3 Facility, Lee County and Pasco County.

4 I have a few comments specifically on behalf of
5 Montenay-Dade, Lee, and Pasco Counties. And based on a couple
6 of that have come up or that have occurred to me this morning,
7 I'm going to give you my own thoughts, but I will be very
8 brief.

9 First, I think we all agree that more renewable
10 energy is better than less, and I think the Legislature wisely
11 recognized that in advocating and supporting and encouraging
12 renewable energy as a means of diversifying Florida's
13 generation fleet and energy mix. I have a question for staff,
14 and that relates to the term of the contract. We have
15 supported a choice between ten years and the life of the
16 avoided unit. I don't think there is anything magic about 30.
17 If it is a 40-year coal unit, I think a 40-year contract ought
18 to be available.

19 The rule language -- my question for staff is this,
20 the rule language is not clear. Does staff have an intention
21 one way or the other as to whether it's to be the QF's choice
22 or the utility's choice? In the contracts that have been
23 filed, Gulf Power filed theirs making it explicit that it was
24 the QF's choice. The other utilities filed theirs making it
25 explicit that it was the minimum allowable term.

1 Does staff have a position on that?

2 MS. HARLOW: I can give you my opinion, at the time I
3 worked on the rule change that it reduced the minimum to five
4 years. At that point in time, and we are in the same situation
5 today, we are faced with a lot of uncertainty in the utility
6 industry, I believe, particularly with regard to fuel prices
7 and fuel availability. And at that point in time, I believed
8 that it should be up to the Commission to have the flexibility
9 to -- perhaps at one point in time, a ten-year contract would
10 seem the appropriate way to go, given what we knew at that
11 point in time. And perhaps at another time a longer term
12 contract would seem the way to go.

13 It depends on if you feel like costs are going to
14 escalate or not. And that was my opinion at that point. And I
15 have to tell you I have not put enough thought into it at this
16 point, and I'm appreciating the comments on this today.

17 MR. WRIGHT: I guess the answer is as written we
18 would be essentially where we were, and that is we could
19 litigate it on a case-by-case basis. If there were a renewable
20 producer that wanted a longer term contract than what the
21 utility was proposing, we could come and say, no, that is not
22 right, it ought to be longer.

23 MS. HARLOW: Well, we certainly looked at TECO's
24 position. I believe it was TECO, that they had the choice up
25 to the renewable and we felt like the utility -- if that was

1 the utility's point of view and they were willing to take that
2 on, we thought that they should have that flexibility. And, of
3 course, the Commission would have the decision point on whether
4 that contract was appropriate.

5 MR. WRIGHT: Okay. Thanks. The one counter-point to
6 the risk consideration, I will certainly agree that there is
7 risk that go both ways, and with uncertainty you don't know.
8 The real point that I would make, though, is that when the
9 utility builds its unit, they have locked in the same risks
10 that you are wanting to avoid by limiting the exposure.

11 If you only let the QF sign a contract for five or
12 ten years, then, yes, you have ensured against the risk of the
13 QF contract being noneconomic after the fifth year or after the
14 tenth year, but if you wind up with no QFs, no renewable
15 producers, and the utility builds its unit, you have locked the
16 ratepayers into the risk, the exact same risk you thought you
17 would avoid beginning in the sixth or eleventh year. That's
18 just how it works. Because the utility is not going to say,
19 oh, well, we will come back and renegotiate our ratemaking
20 recovery treatment in year six or year eleven. That is not
21 going to happen.

22 MS. HARLOW: I understand your point of view. The
23 staff and the Commission as well are in the position of
24 implementing the statute and the intent of the Legislature to
25 encourage renewables and at the same time limiting ratepayer

1 risk. And I'd like to know how you reconcile that statement
2 with the requests we have had from the renewables to not have a
3 capacity limit.

4 MR. WRIGHT: I have not discussed -- I'm happy to
5 answer that on my own behalf. I have not discussed that
6 particular issue with my clients on whose behalf I am here
7 today. Personally, I think -- you've got competing interests.
8 Personally, if you want to focus on ratepayer risk, it's okay
9 to have a subscription limit. The counter-point to that is, as
10 has been articulated by my colleagues here today, is that a new
11 goal articulated by the Legislature is to diversify Florida's
12 generation mix. And one of the quickest ways you can probably
13 get there realistically is by doing the most you can to
14 encourage renewables. And so you could make a case -- I don't
15 know where it comes out.

16 You could make a case that no subscription limit
17 would produce more renewables than subscription limits equal to
18 the capacity of each utility's next identified unit of the
19 given type in its plan. I don't know how that really comes
20 out, frankly. I think that if we see meaningful standard
21 offers for renewables based on coal capacity that are generally
22 available, I think my rough numbers indicate that Progress has
23 one or two, well, they have at least one, FPL as one, and TECO
24 has one. And I think if you just took the first unit of
25 Progress and FPL and then TECO's gas IGCC unit, you're probably

1 looking at somewhere north of 2,000 megawatts of coal capacity
2 that would be available via standard offers.

3 Personally, sitting here today, if we get 2,000
4 megawatts of coal capacity available in standard offers, I
5 think that is a good incentive for QFs or for renewable
6 producers. Personally, I wouldn't have any problem going
7 forward in that regime.

8 Now, if you got them all subscribed in the next three
9 years, you might want to go back and look at 366.92 and the
10 legislature's encouragement of renewables to diversify
11 Florida's energy mix and say, boy, you know, that worked,
12 having those coal-based standard offers available. We got
13 2,000 megawatts of renewable energy under contract, maybe we
14 ought to have some more available to further stimulate it.

15 And I do agree with a couple of things Rich said.
16 One of them in particular is if you want to get there, more
17 renewables is better than less. It has all the benefits and
18 not a whole lot of risk. You know, if you want to get there,
19 if you want to get to 5,000 or 10,000 megawatts to really have
20 a meaningful influence on Florida's generation mix, that's
21 probably the best you can do, realistically. And we have a
22 little bit of low-head hydro capacity that has not yet been
23 developed in Florida, but it is not a whole lot.

24 I have a couple of other comments. I have a question
25 for the utilities, and it is not completely clear to me, and I

1 just don't know the answer. The question is this: In the RFP
2 processes pursuant to 25-22.082, there are usually imposed as
3 an offset to the capacity payments what we on our side call an
4 equity penalty or compensation for imputed debt. And my
5 question is does the computation of the capacity payments under
6 the standard offer contracts include that same kind of equity
7 penalty or debt equivalent equity carrying cost offset sort of
8 thing? If it does, I think it shouldn't. And my clients think
9 it shouldn't, and probably everybody on our side of the issue
10 thinks it shouldn't. But it is a question that I have.

11 Regarding the RECs, the renewable energy credits,
12 whether they are called RECs, TRECs, green tags or whatever,
13 again, I have not discussed this issue with my client, but I am
14 intimately familiar with the issue, and I would agree with what
15 Mr. Moyle said. Personally, I think it's fine for the utility
16 to have a ROFR, a right of first refusal, as long as the
17 compensation is at a fair market-based value for the RECs. And
18 that is like Economics 102. As long as you are getting the
19 fair value of the asset, it's entirely reasonable for the
20 utility to have the right of first refusal to buy that to meet
21 whatever requirement it might have.

22 MS. HARLOW: Mr. Wright?

23 MR. WRIGHT: Yes.

24 MS. HARLOW: Do you have any opinion on how that fair
25 market value would be determined?

1 MR. WRIGHT: There would be a couple of different
2 ways. You could refer it to arbitration. That might work.
3 One easy way to do it, and ultimately -- an easy way to do it
4 is let's say my client gets an offer to buy 10,000 RECs, or
5 50-megawatts worth of RECs for equivalent generation over ten
6 years from an agency of the federal government. And the price
7 is \$5 per megawatt hour equivalent of RECs. The easy way is my
8 client goes to the utility who is buying the capacity and
9 energy under the standard offer and says I've got this offer to
10 sell this stuff for ten years at \$5 a megawatt hour equivalent
11 of RECs, you can buy it at that price.

12 Now, where that becomes an issue is the utility says
13 we don't believe you, you know. And hopefully there will be a
14 market in these things and it will be something that is readily
15 accessible. In that scenario, you know, kind of putting on my
16 lawyer/arbitrator/economist hat, I think probably the best you
17 can do is refer it to a special master. Somebody whose
18 integrity is absolutely unimpeachable, and just say, look at
19 this and certify back to the utility that this is a legitimate
20 bona fide offer. You know, it seems workable to me.

21 MR. ZAMBO: Judy, this is Rich Zambo. I've got some
22 recent experience in this area, if you would like to hear a
23 comment.

24 MS. HARLOW: Sure, go ahead.

25 MR. ZAMBO: There are a couple of things. One is the

1 right of first refusal can become a real problem. Because as
2 Schef said, the utility doesn't believe you, so now your
3 contract is held up and you can't sell it to the bona fide
4 bidder. So one of the things you do need is you need a bright
5 line, a cut off, a definition so you know when the utility's
6 rights expire. And one of the ways of doing that is you just
7 do an RFP and you notify the other folks that someone else has
8 a right of first refusal. You do the RFP, you give the utility
9 the right to match the best bid. If they refuse, their rights
10 are terminated at that point and you're free to do what you
11 want to do.

12 But there has to be a clear point of disconnection,
13 otherwise it's difficult to sell it because you have to
14 essentially certify that you have the right to sell those
15 credits. And if your utility objects claiming they still have
16 a right under the right of first refusal, you can't make the
17 sale. So they end up having a lot of negotiating leverage.

18 But the RFP process seems to be the simplest
19 approach. The only problem with it is sometimes bidders are
20 reluctant to bid if they know someone else has got a right of
21 first refusal. But on the other hand that sometimes gives them
22 the incentive to bid a higher price. It keeps them honest.
23 That's all I've got to say about that.

24 MS. HARLOW: Thank you, Mr. Zambo.

25 MR. ZAMBO: But it is a significant issue.

1 MR. MOYLE: Can I just follow up to that briefly? I
2 think the original question was how do you establish a market
3 for the renewable energy credits. And I'm not an expert on
4 this, but it's my understanding that there are markets that
5 have been established in other jurisdictions for that. And the
6 old Adam Smith market forces supply and demand, I think,
7 probably are setting the price.

8 I think Mr. Zambo, in his comments, suggested that
9 consideration of a renewable portfolio standard is something
10 that you might want to think about. And, Rich, obviously
11 correct me if I'm wrong on that, but I understand that the
12 other states that have done this have put in place a renewable
13 portfolio standard where they require that utilities generate
14 or have as part of their generation a certain percentage of it
15 being from renewable resources and whatnot.

16 I think, you know, the Commission historically has
17 been given a lot of latitude by, I think, sometimes the
18 legislature to say you guys are the experts on this stuff, go
19 forth and do good. And also by the courts when you are
20 interpreting statutes that deal with your subject matter of
21 expertise, energy, you are given a lot of latitude by courts in
22 rulemaking in the event that there is a challenge.

23 And clearly 366.91 gives you rulemaking authority.
24 And arguably, I think, it gives you the ability to consider a
25 renewable portfolio standard. And the language that I would

1 refer you to says, quote, the Commission shall establish
2 requirements relating to the purchase of capacity and energy by
3 public utilities from renewable energy producers and may adopt
4 rules to administer this section.

5 So, again, while you are say, okay, legislature, we
6 heard you, we want to get more renewable energy out there. You
7 know, I think part of this discussion ought to be for a
8 renewable portfolio standard to say, utilities, you ought to do
9 X percent and have that kicked around a little bit. You've got
10 that experience in a lot of other states. You could get some
11 other experts from these other states to come down and say it
12 works great, it doesn't work great, or whatever the issues are.
13 But I think that ought to be part of this broader discussion
14 that we are embarking upon.

15 MR. HUNTER: I think the most fair and equitable way to
16 do it would simply be take the spot value of renewable energy
17 credits say as of a certain date every year. Like Mr. Moyle
18 said, there is, indeed, a market for these credits. And, you
19 know, supply and demand governs the price of it. That way
20 there won't be the whole issue of credibility, do we believe
21 you really got that bid, do you believe someone offered you
22 that. It would simply be this is what the market is, you could
23 look it up on Yahoo.com, and this is how much we will pay for
24 it. Thank you.

25 MR. HARRIS: Mr. Wright. And unless anybody else

1 wants to chime in, Mr. Wright can probably move forward.

2 MR. WRIGHT: One is a response to something mentioned
3 earlier, and the other is just something that occurred to me
4 today. One, I think you all ought to consider what to do maybe
5 in this rulemaking -- not a bad idea -- with the possibility of
6 costs that would otherwise be incurred by the utility in the
7 event that there is some future carbon tax regime imposed.
8 Now, it is possible that in a fuel price indexed energy payment
9 system, if the price is imposed on the sale of the fuel that
10 will show up in the price the QF has otherwise paid. If the
11 tax is imposed on CO2 emissions, it might not otherwise. It is
12 a cost that the utility would otherwise incur if it burned
13 fossil fuels to generate a given amount of electricity, and
14 accordingly it is a cost for which the renewable producer, in
15 particular, because most of us are carbon zero, carbon neutral,
16 or maybe even a little bit carbon negative depending on the
17 technology we are using, it is something we should be
18 compensated for.

19 Finally, I just wanted to -- again, these are my
20 thoughts, and this is in response to comments made by Mr.
21 Hunter supporting fixed energy payments. I will tell you, my
22 client, all of them think that a nice stream of fixed energy
23 payments would be great. We understand the reluctance on the
24 part of regulators and utilities to -- at least I understand
25 the reluctance on the part of regulators and utilities to

1 approve such contracts, but I would make the same point I made
2 a little while ago, and that is this, risk cuts both ways.

3 And you all probably remember that back in PURPA or
4 in the original PURPA rules, there was a flat out requirement
5 that a QF could elect a payment stream based on the projected
6 energy payments as of the time the contract was entered into.
7 And this resulted in some contracts that had fixed payments of
8 like six cents in, I think, California and New York.

9 And when those contracts were entered into in the
10 1980s, they looked okay. When you got to -- in the early '80s.
11 When you got to the late '80s, they looked real bad because
12 with the real upswing of combined cycle, gas-fired combined
13 cycle as the generation technology of choice, all of a sudden
14 you were looking at -- with \$2 and \$2.20 per million Btu gas,
15 all of a sudden you were looking at all in generation costs
16 from new gas-fired combined cycle beginning in the late '80s
17 and well into the 1990s in the range of like 3.5 cents, 4
18 cents, 3.2, 3.3. It was not a lot. It was the real deal of
19 the day.

20 Now, if you had of those six cent contracts and it
21 was a six cent levelized payment over a stream of years, when
22 you got to 2004 you are going to look like a genius. And the
23 point is that the risk cuts both ways. If you set it right on
24 the front end you allocate the risk. The renewable, in this
25 context, takes the risk that energy prices would escalate

1 higher than projected in the payment stream in return for the
2 certainty, that is their bargain, and the utility and the
3 customers take the risk that energy payments would escalate
4 lower. They do that as partly a hedge against the risk the
5 prices would be higher and to take the certainty. That is the
6 only point, it cuts both ways. Thanks.

7 MR. HARRIS: I think we have some other staff who
8 have a comment or two.

9 MR. BALLINGER: I apologize for being late. I was
10 tied up somewhere else. This is Tom Ballinger with the staff.
11 Schef, if I could follow up on that one comment you made there
12 about risk cutting both ways. Would you agree that the longer
13 a term the contract is the greater risk both ways? I mean, is
14 that kind of a premise that goes with it? And, again, I'm
15 talking about the fixed energy pricing concept of it.

16 MR. WRIGHT: I think the answer is probably yes, Tom,
17 but two things. One, what I would certainly agree is that the
18 longer term has more uncertainty associated with it, and I
19 think it is fair to equate uncertainty -- as uncertainty gets
20 bigger over time you could say risk gets bigger over time. But
21 the same point I've made twice already still applies. If the
22 utility builds its unit, unless we are going to change our fuel
23 cost recovery regime, which I do not foresee and I don't think
24 anybody in this room foresees, then the risks get bigger as you
25 go out in years if the utility builds its unit. If the utility

1 is locked to gas or locked to coal or whatever, the utility is
2 locked, as well, and the ratepayers under our current fuel cost
3 recovery regime are similarly locked.

4 MR. BALLINGER: I would pose this question to all
5 renewable participants here.

6 I understand there has been some discussion about the
7 term of contracts and things of this nature, but what is your
8 thoughts about the appropriateness or fairness of having in
9 standard offer contracts performance or security guarantees
10 for, like, completion of the project and then as you perform,
11 either letters of credit, bonds, things of that nature? And we
12 can just kind of go down the table, if you want, and let me
13 know your thoughts on that.

14 MR. HUNTER: I guess I will go first regarding your
15 question. I have no problem putting up a performance bond
16 regarding the plant, regarding the delivery of the energy.
17 Also, just to touch on the comment about the risk over a longer
18 period of time, if we lock in at a certain rate, let's say nine
19 cents per kilowatt hour, and the price of energy for regular
20 fuel sources goes up, which it probably will, so we are
21 paying -- we are only getting nine cents per kilowatt hour over
22 25 years or 30 years, while other systems are paying 14 cents
23 per kilowatt hour, our investors wouldn't fund the project
24 unless they were satisfied with the revenues that they are
25 getting. So that's not really a problem for us. On the other

1 hand, if the citizens were getting a cheaper power or saving
2 money, that is a benefit for them. So that is a win in both
3 situations.

4 MR. BALLINGER: Schef, do you have an opinion on that
5 one?

6 MR. WRIGHT: Generally speaking, I think all the
7 contracts I have been around have completion and performance
8 securities in them. We, generically speaking, do not have a
9 problem with them. We might have a problem with a level
10 requested by the utility.

11 MR. BALLINGER: Do you think they should be
12 comparable similar to a contract with a fossil fuel generator
13 or should there be some distinction because it is renewable?

14 MR. WRIGHT: The risk you're trying to protect
15 against is the risk of nonperformance.

16 MR. BALLINGER: Right.

17 MR. WRIGHT: To the extent the risks are comparable,
18 it would make sense to have the security provisions be
19 comparable with the following caveat. I think we all do agree
20 that more renewable energy is better than less. We know we are
21 under a statutory encouragement mandate to encourage
22 renewables. And to the extent that it might make a difference,
23 you could consider going lower with renewables. You might
24 protect it -- and you might do this with a regular fossil fuel
25 IPP contract, as well. You could have -- and I have seen this

1 in some contracts, you could have step-in rights in lieu of or
2 in addition to certain amounts of performance security.

3 But I think there is a case to be made -- as we sit
4 here today with our not real diverse fuel mix in Florida, there
5 is a case to be made that the more you can do to encourage
6 renewables, the better. And so you could make the case that
7 having a somewhat reduced performance security for renewables
8 would be appropriate. But assuming equal risk of performance,
9 there is certainly good reason to have them set the same.

10 MR. ZAMBO: Tom, this is Rich Zambo. I would like to
11 respond, if I could.

12 MR. BALLINGER: Sure.

13 MR. ZAMBO: I think, again, what comes into play here
14 is a lot of what you are using in your assumptions, and
15 everybody is using the history of what we have had in Florida
16 under the existing rules under PURPA. I think if you look at
17 this in a different way, if the goal is to now encourage
18 renewable energy and diversify fuel mix, if the renewable
19 producer doesn't produce, all you have lost is the fuel
20 diversity, so why should there be a guarantee?

21 It's not a capacity. We are not looking at -- the
22 way I like to look at it is we are not looking at kW for kW, we
23 are looking at kWhs to take natural gas out of the generation
24 mix. So unless that particular unit or particular renewable
25 can be shown to have had a capacity impact where the utility is

1 now without capacity to serve a load, I don't see a need for
2 any security or penalty.

3 I envision you are going to have a lot of excess
4 capacity because we're trying to get renewables into the mix.
5 The risk is that we don't have renewables. The risk is that we
6 continue, and that is basically what the legislature said.
7 They said, you know, we have got too big a risk now. We have
8 got volatile fuel prices, we have got too much dependency on
9 natural gas. We want to diversify our fuel mix. And that is
10 how you need to look at the avoided cost now. That is how you
11 need to look at the policy you're implementing.

12 MR. BALLINGER: So, Rich, are you saying that we
13 should not have a performance or completion security for
14 renewables?

15 MR. ZAMBO: I think generally, yes. Generally
16 speaking, I agree, yes, we should not have a performance
17 security unless there is -- you know, unless that particular
18 unit, if it is a big enough unit that it could have reliability
19 impacts. If you are just basically getting renewable energy
20 from it, no, I don't think you need --

21 MR. BALLINGER: Well, if the generator is going to
22 get capacity payments, does that constitute, then, the need for
23 a security?

24 MR. ZAMBO: I don't think so. You need to do what
25 you can to encourage this stuff.

1 MR. BALLINGER: Okay. Jon.

2 MR. MOYLE: A couple of thoughts and a question. I
3 think Wheelabrator, historically, has been involved in
4 providing some level of security for a pretty known technology.
5 I mean, Rich's point, if I understand it, is to say, look, if
6 you are not going to be counting on the renewable energy with
7 respect to a capacity payment or something, then why burden a
8 new venture that may be out there that if you put in some kind
9 of a one-size-fits-all requirement may not allow that project,
10 you know, to move forward.

11 Another thought. I know in the most recent
12 legislation that passed, the legislature spoke to existing,
13 expanded, and new renewable energy facilities. So I think,
14 obviously, if you are going to consider security, then there
15 needs to be a finer distinction between new, expanded, and
16 existing. I mean, obviously your level of risk with expanded
17 or existing is not the same as with new.

18 MR. WRIGHT: Larry, Schef over here. I just wanted
19 to clarify one thing relative to my conversation with Tom. I
20 understood your question really to relate to performance
21 securities and completion securities as applicable to the
22 capacity of the unit. Was that accurate? It was in that
23 regard that I answered your question.

24 MR. BALLINGER: Yes, that is the way I look at it.

25 MR. WRIGHT: Okay, great. Thank you.

1 MR. ZAMBO: Yes, Tom, let me just clarify, too. My
2 comment has to do with dollar -- like deposits, letter of
3 credits. I'm not saying there shouldn't be performance
4 requirements. There should be reasonable performance
5 requirements that if they are not met, then the payments are
6 suspended. But I don't think there should be a need for a
7 large cash deposit to guarantee performance.

8 MR. BALLINGER: Okay. And that's what I was talking
9 about is the upfront posting of a bond or a letter of credit to
10 guarantee completion, and then performance which would slowly
11 be drawn down over time. We have seen those typically in
12 contracts.

13 MR. ZAMBO: Yes, that makes sense when you are
14 avoiding capacity that's needed to serve load. When you are
15 talking about capacity that is only needed to diversify, I
16 think it is a different issue.

17 MR. BALLINGER: Okay. Thank you.

18 MR. ZAMBO: Oh, I also wanted to make a comment, if I
19 can, just follow up on something Schef said earlier about the
20 fixed price payments that resulted from PURPA back in the early
21 '80s. You know, it's not as simple as saying that those
22 contracts were over-market or over-priced, because there were
23 so many things that happened. There are some people that will
24 say the only reason the prices came down over time was because
25 they did pay those big prices up front to jump start the

1 industry.

2 And the other thing is it was so -- you can also
3 argue that PURPA was so successful that Congress then enacted
4 the Energy Policy Act of 1992 that created, you know,
5 independent power producers and exempt wholesale generators
6 which really fed the technology and grew the combined cycle,
7 the high-efficiency technologies that we're dealing with today.
8 So I don't think you can say that was a mistake. And I would
9 hate anybody to think that was a mistake and it was risky,
10 because it got us -- you know, I think it may have worked.

11 That's all I have got to say.

12 MR. HARRIS: Mr. Wright, did you have any more
13 comments?

14 MR. WRIGHT: No.

15 MR. HARRIS: Okay. Did anybody else want to chime in
16 on this question Mr. Ballinger asked? Okay.

17 Progress.

18 MR. BURNETT: Thank you, Mr. Harris. John Burnett,
19 B-U-R-N-E-T-T, for Progress Energy Florida. Just a few small
20 and simple comments.

21 Progress Energy Florida wants to express its support
22 for the current rule that staff has put on the table, and also
23 express that we do want to file some written comments to
24 address a lot of the discreet points made here today. But as a
25 general matter, I wanted to express a concern of what I see as

1 the concept that the standard offer contract is some sort of
2 barrier to a renewable energy provider being able to do
3 business in Florida. I see the standard contract as not an end
4 or a barrier, but simply a starting point. A starting point
5 for a negotiation to begin. Something that we are seeing in
6 the real world today. Not in hypotheticals, in real life to
7 where the standard offer contract is being brought to the table
8 even today and being negotiated against and seeing success.

9 Not seeing a hypothetical, we cannot get financed,
10 but seeing, yes, we can get financed if we simply knock on the
11 door, come to the office, and start talking. So as a general
12 matter, I would say let's not lose focus of the concept that
13 this is not a barrier, it is just what it is titled to be.
14 It's a standard offer contract to start negotiations, not to
15 end them. That's all. Thank you.

16 MR. HARRIS: Gulf.

17 MR. BADDERS: Russell Badders, B-A-D-D-E-R-S, on
18 behalf of Gulf Power. We do not have any substantive comments
19 on the draft rule at this time. We will take it back and we
20 will try to get you some written comments.

21 My preliminary review of it, it does look like it is
22 a fair compromise of all the interests that we have been trying
23 to meet over the last year or so when we first started this.
24 So, again, we will file written comments. And we do appreciate
25 this chance.

1 MR. HARRIS: And I see someone has moved forward from
2 Lake County. If you would identify yourself.

3 MR. COOPER: My name is Jeff Cooper. I'm employed by
4 the Lake County Board of County Commissioners. I do not speak
5 for the Commissioners. I am the contract manager with our
6 qualifying facility. I am somewhat humbled by the company I
7 keep here today, so if you will please bear with me.

8 In my research, and listening to the comments of
9 those people today, I have these following comments from the
10 municipal or the county perspective. The subscription limit
11 was a concern, and the reason it's a concern is because it
12 takes so long for us to decide what to do. And as a result of
13 that, if we start right now, and our contract is done in 2014,
14 if we start talking right now about what we want to do in the
15 future and the subscription limit is met between now and then,
16 then all of those plans and all of those changes and without
17 that energy contract we are kind of left out in the cold. We
18 have to stop right where we are, and we have to go to an
19 alternate plan which will probably take another five or six
20 years. And I think many of the different municipalities and
21 counties and entities may have some of that same problem.

22 Second, I have somewhat of a different perspective on
23 renewable credits. Many of the qualifying facilities that
24 actually -- and most of the discussion today is about who gets
25 the renewable credits. Well, most of the facilities were built

1 and negotiated with the municipalities and the counties and so
2 on and to forth in a partnership type of an agreement where we
3 are providing all the fuel and you are processing the fuel and,
4 therefore, we negotiate the contract with the energy companies
5 and so on and so forth.

6 So my perspective is kind of like, well, wait a
7 minute. And especially in our contract where we are
8 responsible for 100 percent of all of the fuel to the
9 qualifying facility, why can't we have a piece of the pie? And
10 we are the ratepayers, we represent the counties, and perhaps
11 maybe we should have a slice of the pie. And maybe there is
12 some way that we can negotiate that, or work on that, or have
13 something to do with that rather than just, you know, the
14 qualifying facility being entitled to it with the energy
15 company getting first right of refusal. So that is kind of a
16 different perspective than anything I have heard here today,
17 which is to be expected, I guess.

18 And lastly, my third comment is really two comments,
19 and it is more of a question type thing, and it may be a lack
20 of my knowledge or understanding of the process. Is it my
21 understanding that the different options that are now available
22 and that the proposals for the standard contracts would make
23 the present value of those contracts revenue neutral so that
24 they all provide the same level of compensation, or however you
25 want to use the term, in relation to the question about the

1 number of years, the term?

2 It seems to me -- and I think the last gentleman
3 talked about that is a starting point. It seems to me that
4 what we are trying to do between the municipalities and in
5 negotiating with the qualifying facilities and dealing with the
6 energy contract portion of this whole process, or the whole
7 solid waste system in each of the localities, is we have to
8 coordinate this with what we can sell to the financing arm of
9 this whole thing. We need to be able to have some flexibility.

10 So my question is kind of if the present value of the
11 offers is the same in terms of total, that just allows the way
12 to figure out where we want our capacity payment versus the
13 energy produced payment and coordinate that with, you know, how
14 our financing goes. And does the rule say that the minimum of
15 ten years is that all we are going to be -- I mean, do we
16 get -- is there more flexibility in this? And this is so that
17 I understand this, because it seems to me that, you know, if
18 our initial term of contract with the qualifying facility was
19 20 years, I mean, we almost don't have a choice, we need to go
20 20 years with this, you know, energy contract in order to help
21 sustain the payment for the construction.

22 And, as an example, I would give you when we
23 renegotiated our contract with our qualifying facility, one of
24 our goals was that the energy contract -- that the bond, the
25 refinancing of the bonds were at a level below what we received

1 in energy so that the bank or the financing people had a source
2 of collateral, if you want to call it, that was unimpeachable.
3 I mean, it was excellent. And I guess to put it in numbers, if
4 we were -- if our debt service was 6.9 million and our energy
5 revenue was 7.5 million, I mean who would turn us down?

6 I mean, that's kind of the point of this thing. And
7 each individual locality has to decide how much they are going
8 to spend and what size facility and all of those types of
9 things. So I think that is a real important thing. And I
10 guess it is a long question, but I want to know that the rule
11 that you are proposing allows us all of this flexibility and
12 that we are not limited to just that. If all they are going to
13 offer us is ten years, that is not going to hack it. And so
14 it's a question, I guess it's rhetorical maybe. I don't know.
15 Those are my questions, comments.

16 MR. HARRIS: I can't answer either of them, so I'll
17 look to somebody else.

18 MR. HUNTER: I will. First of all, regarding can the
19 county get a piece of the pie on the RECs. I would say that if
20 you formed a partnership with the QF, then that contract
21 between the two of you should address that specifically in that
22 document rather than in the standard offer contract between the
23 QF and the investor-owned utility. So I think certainly you
24 would be entitled to it, but you should take that up with the
25 QF.

1 Secondly, regarding the topic of the starting point.
2 Yes, I fully agree that we should try to negotiate whatever we
3 can above and beyond the standard offer contract, but I would
4 like to pose the question to the question: Is the standard
5 offer contract meant to be able to stand alone? My
6 understanding is that it is meant to be able to stand alone.
7 Thank you.

8 MR. HARRIS: Mr. Cooper.

9 MR. COOPER: And I think you are absolutely right. I
10 think I'm the only municipality of any kind here. And the
11 problem is I don't know that they know that they have anything
12 about RECs, they are so new. And I guess the question is, you
13 know, I don't know if you just put something in there and say,
14 hey, don't forget about this. And that would be my only
15 concern. I know it. And if I was going to do something about
16 it, or if we were going to renegotiate something, I would
17 certainly ask that question. But I don't know that any of the
18 other places know about it because it is so new.

19 I mean, you talked about how -- you know, I think you
20 asked the question about, you know, how do you set the rates
21 for the RECs and how do you get reimbursed for the RECs and
22 everything. I mean, this is all so new, we just need to make
23 sure that as a ratepayer perspective that we know that that is
24 available to us and that we need to discuss that. Thank you.

25 MS. HARLOW: I think Mr. Hunter made a good point

1 about handling the issue that you brought up about the TRECs,
2 that that sound like something that needs to be handled between
3 the QF and the municipal that has a deal with that QF, and then
4 those two parties would be going to the utility to sign a
5 standard offer or a negotiated contract. So that doesn't sound
6 like something that needs to be addressed in our rule that is
7 specific to the standard offer contract.

8 And I'm not sure I understand your question on the
9 contract term. If you could maybe restate that, that would
10 help us.

11 MR. COOPER: I don't know if I could do that, either.
12 This is all so new for me. I'm trying to figure out is the
13 ten-year contract the beginning point? You're not stating in
14 your rule that that is all that has to be offered. They can do
15 more, they can do less. And is it based on the present value?
16 Because if all you are going to do is provide a standard
17 contract at a minimum of ten years, or do they have to provide
18 us a standard contract for whatever term you determine. And
19 who determines what they have to offer you?

20 So, for example, let's say that the standard -- and I
21 think you requested in the order from June 6th that they
22 provide within 90 days standard offer contracts for a minimum
23 of ten years. I would assume that the energy companies would
24 provide whatever they had to provide based on a ten-year
25 period. Well, if I'm renegotiating either my current contract

1 or wanting to do something new, and we determine for financing
2 purposes that it takes 20 years, can I require them to take or
3 provide me with a 20-year standard contract, or am I just left
4 to the present value of the ten-year and have to renegotiate
5 that?

6 MS. HARLOW: The contracts that we currently have
7 filed by the utilities handle that in different ways. All of
8 the utilities except, I think, TECO -- I hate to single you out
9 there, Mr. Beasley -- but all the utilities except TECO went
10 with a ten-year contract term, and it was a set term. TECO had
11 it open, and you all have to refresh my memory, but it was ten
12 years up until the life of the unit.

13 MR. BALLINGER: I think you might be referring to
14 Gulf, might have had that in their contract as open-ended.

15 MS. HARLOW: It was Gulf, sorry.

16 MR. BALLINGER: Perhaps I could add to that, too. If
17 the desire of the municipal was to have a 20-year contract, you
18 would not be bound to the present value of the ten-year payment
19 stream. You would be looking at a 20-year payment stream, so
20 the dollars are on the table. But then you are getting to a
21 negotiated contract, and you are free to do that. The standard
22 offer has been set as a starting place. It is not meant to fit
23 everything.

24 As you see, everybody has got different
25 circumstances, different situations that they want or need for

1 their particular projects. And, personally, I believe that is
2 where a negotiated contract comes in handy is people have
3 different needs and different wants, and that is what they
4 should do is negotiate. So the standard offer is a benchmark,
5 if you will, out there that is put out there to start the
6 process.

7 MR. COOPER: My question was -- Jeff Cooper again.
8 My question was, though, if we need to have that 20-year
9 period, for example, in the June 6th thing you had that little
10 chart that said that they had to provide -- well, let's see,
11 FPL would have to provide three different standard offers
12 there. Do they have to provide me with -- even though it's a
13 start, or they provided the ten-year thing, if I said I need 20
14 years, do they have to provide me three alternatives for the 20
15 years based on the three different methods, or do they just
16 provide one and that is where you start and that is it?

17 MR. BALLINGER: My understanding is they would
18 provide ten-year contracts for each of those units. If you
19 were looking for something else, that's when negotiations
20 start.

21 MR. COOPER: And my question is is that okay? Does
22 that protect the ratepayers? Is that a fair start?

23 MR. BALLINGER: That's why we are here today. We're
24 trying to -- I understand.

25 MR. MOYLE: Can I jump in with a comment on this

1 point? I mean, I hear the gentleman essentially saying, look,
2 I'm interested in renewables, but if all I've got is a ten-year
3 deal, he said it's not going to work. And if all the utilities
4 have to offer me is ten years, if I understood him he is going
5 to say that may not get me where I need to be for financing
6 purposes. And the legislature said at a minimum ten, so I
7 don't think there is anything that says you guys can't go
8 beyond that.

9 But, again, since we are trying to promote renewable
10 energy, something to consider may be to, you know, allow -- you
11 know, we talked about 30 and the option of the generator and
12 whatnot, but at least allow somebody who wants to do a
13 renewable energy project in Florida the ability to come forward
14 to the Commission if they are not able to negotiate it with the
15 utility to make a presentation, a showing that the only way the
16 deal can get done and financed -- I mean, it may be his banker
17 showing up with them to say, you know, we are going to need at
18 least 20 years so that there is a safety valve so that the
19 project can get done in the event that you are not able to come
20 to terms with the utility over the length of the contract.

21 You know, giving the renewable the ability to make a
22 showing affirmatively to the Commission that this project can
23 get done if I'm given an 18-year -- whatever the bankers say
24 that they need, then you would, I think, be moving forward with
25 the legislative policy of promoting renewable energy.

1 MR. HUNTER: I feel -- and I think we have heard from
2 others today that we need to see this option in the standard
3 offer contract itself rather than relying upon negotiations.
4 Because I'm not saying that any of our utility friends would do
5 this, but if it came to the point we said we can't get this
6 financed unless we have a 20-year contract, they could
7 potentially say I'm sorry to hear that. So I think that is why
8 for this to be able to stand alone we need to have the option
9 to have a longer pay back period. Thank you.

10 MR. ZAMBO: This is Rich Zambo. I would like to make
11 a comment on that. You know, how things have worked in the
12 past with the standard offers is as a practical matter -- I
13 have been in a lot of negotiations with QFs and utilities, and
14 as a practical matter that standard offer becomes the base
15 line. And if you want to do anything that deviates from that,
16 there is a bartering thing that goes on.

17 So if you want to increase the term from ten years to
18 15 years, the utility is going to say, okay, what are you going
19 to give me in exchange. You know, five or ten percent discount
20 on energy payments? It turns out that the standard offer is
21 usually the best deal out there financially. And when you
22 negotiate, you are always giving up something on the financial
23 side in order to get more favorable terms and conditions. And
24 I'm not sure that's what the legislature intended when they
25 said we should be encouraging and promoting renewable energy.

1 The other way to handle it is make the standard
2 offer -- right now you have got a standard offer that is skewed
3 in favor of the utilities. Maybe you do it differently this
4 time. Do a standard offer that is skewed in favor of the
5 renewable energy producer and let the utility come to the
6 producer and try to negotiate better terms.

7 But, you know, don't be misled into thinking that
8 it's simple to negotiate something better than the standard
9 offer. The standard offer basically says this is all we are
10 required to do by law, and it's hard to overcome that.

11 MR. HARRIS: Did anyone else want to chime in on
12 this?

13 MR. MOYLE: (Inaudible. Microphone off.)

14 MR. HARRIS: Mr. Cooper, I think, is more or less
15 done with his. Is that correct? I was seeing if anyone else
16 wanted to sort of comment on the questions that he had asked
17 and that we have been having a discussion on.

18 Okay. Well, I think what we are going to do is take
19 a few minutes of a break. I'm going to ask if there is anyone
20 else who wants to make comments, either people who have already
21 spoken who want to speak again, or if there is anyone else in
22 the room who would like to come forward and make some comments.
23 So just a couple of minutes so people can change places, if
24 that is necessary, or people can look through their notes and
25 see if there is anything that they would like to make before we

1 move on. So a couple of minutes.

2 (Recess.)

3 MR. HARRIS: All right. I had mentioned before the
4 break if there was anyone else who was going to want to make
5 any presentations or comments or anything like that. So is
6 there anyone else who has anything they would like to bring up
7 this morning?

8 I'm not seeing anything. A lot of people have
9 mentioned written comments. We are going to ask you all for
10 written comments. I think I normally ask for two weeks, which
11 would be September 6th, and I would like to do that again
12 unless someone tells me that that is not going to work for them
13 for some reason, in which case we will -- you know, we want the
14 information, so if that is not going to work, we will think
15 about it. But I would like to suggest written comments,
16 post-workshop comments.

17 I'm seeing some people holding up three fingers. Tom
18 Ballinger, a lot of people are saying --

19 MR. ZAMBO: Larry, this is Rich Zambo. I would like
20 to have an extra week. That is the Labor Day weekend, in the
21 middle of that, and I've got to coordinate my comments with
22 several clients, so more time would be a little better for me.

23 MR. HARRIS: Okay. We'll say three weeks from today,
24 which is September 6th plus seven is September, what, 13th. So
25 September 13th for post-workshop comments. I'm also going to

1 ask, you know, we have to do a SERC for all of our rules. To
2 the extent that you all can include cost information in your
3 comments, we would like to have that. Not to prejudge
4 anything. You know, we are taking comments, we are going to
5 make changes, but I guess they would have to be based on the
6 rule as it is. And so get your cost information, and based on
7 this draft rule, and if you don't have firm numbers, you know,
8 maybe at least estimates or orders of magnitude. You know, it
9 is going to cost us a bazillion, quadillion dollars per
10 contract, or it is going to cost us 35 cents per contract, or
11 whatever it is.

12 And then also in those cost data, you know, if you
13 can -- you all have been here today and you have heard some of
14 the things that have been mentioned. To the extent you have
15 the data or it is easy to put in there, you know, as it is it
16 is going to cost us this much. If the term changes it might
17 add this much cost or reduce this much. If the, you know,
18 avoided cost or unit changes it will make this impact, those
19 kind of things. We know it is still preliminary. But to the
20 extent we can get the ball rolling, we can move this a lot more
21 quickly. So to the extent you can include that data with your
22 written comments in three weeks, I know Craig would probably
23 really appreciate that.

24 Judy, am I missing anything else? And, again, this
25 was Docket 060555-EI, which is on CMS now. It's open. For

1 those of you who don't know our process, are either listening
2 or are not familiar, the Commission website, you can pull up
3 all the data on filings and contacts and information and stuff
4 like that, so it is a good resource for you.

5 You can all call me. My name is Larry Harris. And
6 Judy Harlow is the technical contact. And both of our
7 information is on our website. Or you can call the Commission
8 generally and get patched through to us.

9 So, with that, if there is nothing else, we will go
10 ahead and adjourn. And I really want to thank you all for your
11 comments. We have heard some really good stuff today, and a
12 lot of stuff for the staff to think about, and I can assure you
13 we will be doing that.

14 MR. MOYLE: Larry.

15 MR. ZAMBO: Larry, can I ask a question before you
16 bang the gavel?

17 MR. MOYLE: And I had one, as well.

18 MR. HARRIS: Go ahead.

19 MR. ZAMBO: You know, procedurally I'm questioning
20 why you would ask for the cost information at this point if
21 there is an expectation that there may be some changes made to
22 the rule as drafted. Wouldn't it be more efficient to wait
23 until we get to something that you are ready to propose to the
24 Commission to initiate the actual rulemaking?

25 MR. HARRIS: Yes. I hear what you're saying, but the

1 thing is, the earlier Craig can start getting the cost data in,
2 even if it is rough estimates that we know are going to change,
3 I think the earlier he can start looking at what other
4 information he might require. If we wait until the final
5 version of the rule, which is what we will be doing the final
6 SERC on. So, Rick, I'm not prejudging it, we will be doing the
7 SERC on the final version of the rule. But to the extent he
8 gets initial information, when he goes to do his data requests,
9 he can sort of look at the data he has gotten in preliminarily
10 and decide maybe what he has to ask for or what he has to
11 refine. And so the earlier he starts getting the idea of the
12 type of data that is out there, the earlier he can start
13 thinking about what he will be doing for the final rule.

14 MR. ZAMBO: Okay. That's fine.

15 MR. HARRIS: So, if that answers your question.

16 MR. ZAMBO: Yes, it does. Thank you.

17 MR. HARRIS: Mr. Moyle.

18 MR. MOYLE: Just a quick comment and a follow up by a
19 question. And I appreciate you being patient and listening to
20 all the comments today. I think it was a healthy discussion.
21 I heard at some point, and I may have read somewhere, I mean,
22 compromise. I mean, I think we are still a ways apart before
23 we kind of shake hands and say a deal is a deal and compromise
24 with our utility friends, because I think there are a lot of
25 issues we have put out there which I think is pretty obvious,

1 but I just did want to make that point.

2 The other thing, the gentleman from Lake County, I
3 think, raised some points particularly on the renewable energy
4 credit. I think he is kind of indicating that he is plugged in
5 on this, but maybe a lot of people are not. Are you
6 anticipating holding additional workshops? And if you are
7 holding additional workshops, are you going to try to hold any
8 maybe in conjunction down state or any other places? Have you
9 given any thought to that?

10 MR. HARRIS: Are we planning to hold additional
11 workshops? We don't have one scheduled at this point, but it
12 is really going to depend on our discussions internally about
13 what we heard today and the written comments. To the extent
14 that the comments come in, we are going to look at those. And
15 we might need additional workshops. It might come in and
16 everybody says that they are great. We love the rule. And we
17 have some wordsmithing to do, but other than that we love it,
18 in which case we wouldn't.

19 The second point, I would doubt there would be any
20 workshops down state. We generally do the rule workshops up
21 here. I suppose we could consider it if there was a request,
22 but I don't think the staff would anticipate doing that, and
23 probably not. Again, I'm not saying absolutely no, but we
24 probably would not.

25 MR. MOYLE: Thanks.

1 MR. HARRIS: You're welcome.

2 Any other questions or comments finally? Okay.

3 Thank you all for coming today. Have a good afternoon.

4 MR. ZAMBO: Thank you, Larry. I appreciate it.

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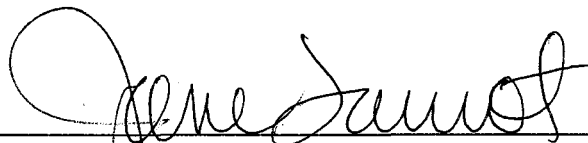
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 30th day of August, 2006.



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