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COGENERATION & ALTERNATIVE ENERGY
ENERGY REGULATORY LAW

September 13, 2006
Via Hand Delivery

Ms. Blanca S. Bayó, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: **Docket No. 060555-EI:** Proposed Amendments to Rule 25-17.0832
Post-Workshop Comments of Renewable Energy Producers

Dear Ms. Bayó:

Enclosed herewith for filing in the referenced proceedings, please find the original and 7 copies of the "Post-Workshop Comments of Renewable Energy Producers" filed on behalf of the City of Tampa, the Solid Waste Authority of Palm Beach County and the Florida Industrial Cogeneration Association.

If you have any questions or require additional information, please contact this office.

Sincerely,

/s/ Richard A. Zambo

Richard A. Zambo
Florida Bar No. 312525

RAZ/nb

enclosure

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to Rule 25-17.0832 – Firm Capacity and Energy Contracts	))))	DOCKET NO. 060555-EI Filed: September 13, 2006

Post-Workshop Comments Of Renewable Energy Producers:

The City of Tampa, the Solid Waste Authority of Palm Beach County and the Florida Industrial Cogeneration Association ("Renewable Energy Producers"), by and through their undersigned attorney, and responsive to the request of Commission Staff made during the August 23, 2006 rule development workshop in this Docket, hereby submit these post-workshop comments.

Basic Statement of Position: As noted during the August 23rd rule development workshop, as well as in the un-docketed March 6th workshop, the Florida Legislature expects significant changes in Commission policies and rules regarding renewable energy - changes that will substantially increase the encouragement and promotion of renewable energy in Florida. The current QF rules, which the proposed amendment would merely recycle with minor modifications, are based on a nearly 30 year old federal law which was adopted at a different time and for very different reasons. The concepts embodied in those old rules no longer work for Florida. This failing was recognized by the Legislature as evidenced by the fact that renewable energy legislation has been enacted in each of the last two Legislative Sessions - a clear indication of the Legislature's concern that Florida renewable energy resources were not being encouraged.

Minor changes in the status quo, as suggested by the proposed rule, would ignore the new direction plotted by the policies and mandates articulated by the Legislature. The Legislature has made clear that the Commission must start anew with a clean slate and develop new rules designed to accomplish the policy objectives clearly articulated in Chapter 366.91, F.S. (as well as 366.92), namely, to: diversify the State's fuel mix; reduce the use of natural gas for generating electricity; reduce volatility energy prices; and, encourage investment in renewable energy in Florida.

Some of the specific issues that must be addressed by the Commission in this rulemaking proceeding are identified and discussed below. The issues presented and discussed are not intended to be an exhaustive list and, accordingly, additional issues may be raised as the proceedings move forward. The still relevant March 24th "Post-Workshop Comments Of the Florida Renewable Energy Alliance", of which Renewable Energy Producers were sponsors, are included as an **Attachment** hereto for the Commission's further information.

1. Separate Renewable Energy Rules: The policies underpinning QFs as creations of Federal law and those underpinning renewable energy facilities as creations of Florida law are sufficiently different that the Commission rules must distinguish between the two. As will be made clear by the discussions that follow, existing QF rules should be retained and this rulemaking proceeding should focus on developing new rules specifically applicable to "renewable energy" facilities and meeting the policy objectives set forth in Section 366.91, F.S. While most renewable energy facilities as defined under Florida law will also be QFs, not all QFs will be renewable energy facilities as defined under Florida law. The new legislative mandate is to promote and encourage renewable energy facilities, yet the proposed rules could apply equally (except with respect to standard offer contracts) to renewable energy facilities and non-renewable energy facilities alike.

2. New Avoided Cost Standards: Section 366.091 resulted in separate and distinct standards for determining avoided costs applicable to qualifying facilities and those applicable to renewable energy facilities. Unlike PURPA, the emphasis under Florida law is not on the utility need for generating capacity, but rather Florida's need for fuel diversity, reduced reliance on natural gas and fuel price stability. Because the purposes of Section 366.91 go well beyond those articulated by PURPA, the Commission must adopt a new methodology for determining avoided cost payments for renewable energy to advance those purposes. Section 366.91 requires a new avoided cost methodology and a major policy shift with respect to renewable energy resources.

The standard offers for renewable energy currently approved by the Commission, as well as the current DRAFT rule proposal put forth by Staff, accomplish little with respect to encouraging renewable energy resources in Florida. The Legislature had much more in mind than minor changes to the status quo. Florida Senator Michael S. Bennett, a sponsor of Section 366.91, F.S., expressed precisely those sentiments, among others, in his March 3, 2006 memorandum directed to the Commission, prior to the March 6th workshops in this matter. As the Senator noted,

> *"The current standard offer contracts available to these [renewable energy] plants do not reflect their value to Florida's energy portfolio because the avoided cost formula currently in use does not translate into revenue that encourages renewable energy generation."*

Moreover, Senator Bennett went on to say,

> *"I caution you not maintain the status quo. The Legislature clearly intends in Section 366.91 that the purchase of renewable energy be encouraged – and that means at a price that reflects their value to our State."*

Clearly, the mandate of 366.91 cannot be met by minor changes. Just as clearly, what is required of the Commission is a major change in the avoided cost concept and the development of a formula that reflects the value of renewables to the State and to encourage renewables. History shows that the current form of standard offer contracts have failed over the past decade and can only be expected to continue to fail to promote or encourage renewable energy resources.

As noted, there are now separate and distinct standards for determining avoided cost applicable to "qualifying facilities" that are creations of Federal law and "renewable energy facilities" that are creations of Florida law. Prior to enactment of Section 366.91, the references to "avoided cost" contained in Section 366.051 were necessarily constrained by the Public Utility Regulatory Policies Act (PURPA) and the Federal Energy Regulatory Commission's (FERC) associated implementing regulations. (The term avoided cost was a term lifted directly from PURPA without a separate basis in Florida law.) The purposes of PURPA – to reduce our Nation's reliance on imported fuel and reduce the need for electric utilities to construct new generating plants - were arguably served by the Commission's current (but superceded when applied to renewable energy facilities) PURPA based avoided cost formula. While PURPA based avoided cost will still set the minimum or floor price for the utility purchase price of electricity produced by QFs, for purposes of this rulemaking proceeding there is no longer a maximum or ceiling price for the utility purchase price of electricity produced by renewable energy facilities. The Commission has been granted virtually unlimited discretion in establishing avoided costs for renewable energy facilities.

The Commission is now required to define avoided costs so as to comply with and implement the purposes of Section 366.91, which has established a need for certain specifically defined renewable energy resources to, among other things, provide fuel diversity, reduce dependence on natural gas, and minimize the volatility of fuel prices. The emphasis under Florida

law is not on a utility need for generating capacity, but rather Florida's need for fuel diversity and price stability. Moreover, because the term "avoided cost" as applied to defined renewable energy facilities now has a basis in Florida law -- and the purposes of Section 366.91 go well beyond those articulated by PURPA -- a new avoided cost concept and formula that will serve the several purposes of the Florida law, as more fully discussed below, must now be defined and implemented.

Importantly, avoided cost payments for renewable energy must include all costs that would otherwise be incurred by the utility and/or ratepayers – including "stop-gap" costs. Stop-gap costs refer to those "extra" costs, typically absorbed by the customer through the fuel adjustment charges, due to the failure maintain a diverse fuel mix, and/or failure to timely add coal or other fuel diversifying generating plants. In sum, the Commission must assure that avoided costs capture all costs as well as added benefits accruing to accruing to the State, consumers and the utilities as a result of renewable energy.

Finally, the Commission should also revise the protocols currently embodied in the rules and/or employed by the utilities in calculating the as-available avoided energy costs in order to assure that renewable energy facilities will be fully compensated for energy only sales, as well as capacity and energy sales.

3. Subscription Limits: Under Section 366.91, each public utility must continuously offer a purchase contract to producers of renewable energy. Adopting rules that impose subscription limits will result in "lapses" in the offering of purchase contracts, would be contrary to the requirement that utilities continuously offer a purchase contract renewable energy producers, and would only serve to impede and delay attainment of the policies articulated in Section 366.91. Subscription limits are not permissible under Section 366.91 for renewable energy facilities.

Section 366.91 clearly provides that "*. . . each public utility must continuously offer a purchase contract to producers of renewable energy.*" Accordingly, a Commission methodology, policy or rule that could result in a lapse or hiatus of the utility offer of a purchase contract would not constitute a "continuous" offer and would not be in compliance with the law. As a practical matter, the notion of applying subscription limits to purchases from renewable energy facilities will do nothing more than chill development of such facilities contrary to the specific intent of the law. Assuming that Florida installed generating capacity is currently 40,000 mW and that 50% is natural gas fired, it would require thousands of mWs of renewable energy facilities to significantly

affect the fuel diversity, reduce dependence on natural gas and other attributes mentioned in 366.91 – not including growth in demand and energy consumption.

The imposition of subscription limits will only impede and delay attainment of the policy articulated in Section 366.91 regarding renewable energy and would be contrary to the clear language that utilities must continuously offer a purchase contract to producers of renewable energy. While it may be reasonable to impose subscription limits on non-renewable generation, there should be no subscription limits applicable to renewable energy facilities.

4. Avoiding PURPA Repeal: The Commission must ensure that the avoided cost standard for renewable energy facilities is grounded in Florida law in order to prevent the repeal via Federal action - including initiatives by the FERC under the Energy Policy Act of 2005 – of utilities' obligation to purchase electricity at avoided cost. Current law allows repeal of the utility obligation to purchase electricity from QFs at avoided cost in those states where competitive wholesale markets exist. Existence of an RTO, ISO or similar market system can be evidence of a competitive market. (See below discussion of GridFlorida and FCBBS proposals.) For this reason, because 366.91, F.S. now clearly provides the Commission with a Florida based definition of avoided cost to be paid to renewable energy facilities, it is crucial that the avoided cost standard adopted by the Commission in this rulemaking proceeding be specifically tailored to Florida law, Florida needs, and Florida energy policy in order to deter the utility industry from undermining the intent of Florida law by securing a repeal of the applicability of the avoided cost purchase obligation under PURPA.

5. The Avoided Unit: The Avoided unit should be a statewide unit, and in most cases – at the option of the renewable energy producer – a base load coal unit. Additionally, the avoided unit should be assumed to go into operation on the date and year the renewable energy facility selects to commence delivery of capacity and energy under a standard offer. For reasons discussed during the Commission's March 6th workshop and herein, the base load coal plant is the type of avoided unit that would fulfill the requirements of Section 366.91. A coal plant approach would most readily comply with the legislative mandate and allow Florida consumers to reap the benefits of renewable energy technologies. An important characteristic of many renewable energy facilities is that they are similar to utility base load coal plants in that they operate at high capacity factors and can displace natural gas and oil generation. However, there are also two very important differences in their characteristics. First, and perhaps most importantly, their fuel

source is not subject to the types of price fluctuations or supply interruptions typically associated with traditional fuels. Second, the design, permitting and construction cycle for a renewable energy facility can be significantly shorter than a utility coal plant thereby providing the utility industry with an additional generation resource option.

In addition, where an avoided unit other than a coal plant is chosen by the renewable energy resource as the basis of avoided cost capacity payments, the energy payments associated with such avoided unit should not – as provided under the current rules - be the lesser of as-available energy cost and the fuel cost associated with the avoided unit; it should simply be the fuel cost associated with the avoided unit. Moreover, the avoided unit regardless of type (gas, coal, nuclear) should be assumed to go into operation on the date and year the renewable energy facility selects to commence delivery of capacity and energy under a standard offer.

6. Contract Term: The contract term should be, at the option of the renewable energy facility, no less than 10 years nor more than 30 years. The lower limit of 10 years is statutorily imposed and the upper limit of 30 years corresponds to typical life expectancies of base load plants. It is important that the renewable energy facility be the determiner of contract length to avoid disincentives to the development of such facilities.

7. Participation in Florida Cost-Based Broker System:

Over the past several years, the Commission has been the overseer of lengthy and oftentimes controversial proceedings relating to the development of a Florida-only RTO known as "GridFlorida". Due to various factors, such as an unacceptable ratio of costs to benefits, the utilities and the Commission agreed that the GridFlorida effort should be abandoned

In place of GridFlorida, the "applicants" are exploring alternatives designed to capture benefits in a cost-effective manner – including the recently proposed Florida Cost Based Broker System (FCBBS). Based on the initial discussions and concept documents provided by the utilities, there are several issues associated with the proposed FCBBS that are of concern to Renewable Energy Producers. Examples of such issues include (i) a proposed requirement that bids into the FCBBS must be cost based, (ii) proposed block size limitations that may be discriminatory to Renewable Energy Producers; (iii) the lack of a qualitative value being assigned to energy from renewable resources when evaluating otherwise comparable bids; and, (iv) the cost of participation in the market.

For example, without intending to discuss each issue here, because some renewable energy generators have essentially no fuel or variable costs (waste heat), or the fuel does not have a "market" value (municipal solid waste) a cost based bid requirement would effectively bar participation by many renewable energy generators. Such generators should be permitted to submit bids based on the market value of electricity produced.

In addition to assure an opportunity for participation by renewable energy generators, and as noted above, it is critical that the Commission's rules ensure that implementation of FCBBS (or any alternative such system) can not be claimed by Florida utilities as a basis for seeking repeal of the utility purchase obligations under PURPA.

8. Standard Offer Contract Terms and Conditions: Pricing is perhaps the most important and apparent element in promoting renewable energy in Florida. It can also be the most contentious – often diverting attention away from other critical issues. Avoided cost payments for renewable energy must include all costs that would otherwise be incurred by the utility and/or ratepayers – including "stop-gap" costs ("excess" costs incurred for failure to plan coal or other fuel diversifying generating plants) as well as any other benefits accruing to the State, consumers and utilities. But it is also of critical importance that standard offer contract terms and conditions be fair and reasonable and not serve as a disincentive to renewable energy producers. Examples of a few of the potential problem areas noted in the filed contracts include, but are not limited to: requirements for utility dispatch and control; unreasonable performance requirements; potential liability for utility income taxes; severability of contract provisions; unnecessary security requirements; and, mandatory sale of all electricity generated.

It is vital for the Commission to recognize, and account for in its rules, the fact that once a standard offer contract is approved it becomes the de facto "baseline" from which all negotiations proceed. For this reason, the standard offer must be fair and even-handed from the perspective of the producers of renewable energy. To implement the purposes of Section 366.91, F.S. all terms of the proposed standard offers must be reviewed for compliance with the requirements of the statute: to promote renewable energy resources in Florida.

9. Renewable Energy Portfolio Standard:

Beyond the standard offer contact mandates discussed above, the broad policy scope of Section 366.91, F.S. to diversify fuel mix, reduce reliance on natural gas as a fuel for generating electricity, and reduce the volatility of fuel prices vests the Commission with broad discretion with

respect to additional means of encouraging and promoting the development of renewable energy resources within Florida. Among the options that the Commission should seriously consider as a means of meeting these important policy objective is the establishment of a sizeable renewable energy portfolio standard (RPS). Given that thousands of mWs of renewable energy will be required to achieve the policy objectives outlined in Section 366.91, F.S., an RPS would be an effective mechanism to encourage renewable energy resources while allowing for adjustments over time as may be appropriate in light of response to the standard. An RPS should be an integral and significant part of the rules adopted by the Commission in this proceeding.

As noted, the still relevant March 24th "Post-Workshop Comments Of the Florida Renewable Energy Alliance", of which Renewable Energy Producers were sponsors, are included as an Attachment hereto for the Commission's further information.

WHEREFORE, Renewable Energy Producers respectfully requests that the Commission give due and full consideration to the issues and discussion set forth herein and in the Attachment hereto, and express their appreciation for the opportunity to submit these comments.

RESPECTFULLY submitted on September 13, 2006.

/s/ Richard A. Zambo

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Attorneys for Renewable Energy Producers

ATTACHMENT

Post-Workshop Comments of the Florida Renewable Energy Alliance

March 24, 2006

The Florida Renewable Energy Alliance

MEMORANDUM

March 24, 2006

via email

TO: **The Florida Public Service Commission**

FROM: City of Tampa
Covanta Energy Corporation
Florida Industrial Cogeneration Association
Lee County
Montenay Power Corp
National Public Energy
Solid Waste Authority of Palm Beach County
Wheelabrator Technologies, Inc.

RE: **Implementation of Section 366.91, Florida Statutes, concerning standard offer contracts for renewable energy resources.**

Post-Workshop Comments of the Florida Renewable Energy Alliance

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INTRODUCTION

The Florida Renewable Energy Alliance ("FREA") is an Ad Hoc group of public and private entities with substantial vested interests in Florida renewable energy. FREA members were involved in the drafting and development of Florida's Renewable Energy Law - Section 366.91, Florida Statutes (the "Renewable Energy Bill") enacted in 2005 - and are especially interested in Commission's efforts to properly implement and effectuate the clear legislative intent of that bill. The FREA members listed above who have joined in support of these comments represent a majority of current and planned Florida renewable energy facilities – accounting for, in the aggregate, approximately 800 megawatts of electrical generating capacity from Florida renewable energy resources.

FREA's comments will address many of the issues arising out of the Commission's implementation of Section 366.91, Florida Statutes (2005), including, but not limited to the three issues Commission Staff identified (length of standard offer contract term; subscription limits for renewables, and; the appropriate method to determine avoided costs). FREA will also provide comment on three important additional issues: the clear requirement and need for a new avoided cost formula; the critical need for rulemaking or formal hearing to fully implement the requirements of Section 366.91; and, the crucially important issue of standard offer contract terms and conditions.

FREA members are also engaged in the development of a proposed standard offer contract that contains reasonable and appropriate terms and conditions for submittal to the Commission at a later date. It was not possible, given the number and complexity of terms and conditions issues, to submit a proposed standard offer contract at this time. FREA hopes to submit a proposed standard offer sometime after the utility proposed standard offer contract submittals which are currently scheduled for April 3rd.

Based on FREA members' understanding of the workshop presentations and comments by interested parties, it appears that Staff identified Issue 1 is no longer controversial. Based on that understanding, FREA comments will only briefly address Issue 1 and will focus on the more important issues of policy, the appropriate method of determining avoided cost in accordance with the Renewable Energy Bill, the need for rulemaking or other formal hearing process designed to implement Section 366.91, and the development of standard offer contract terms and conditions that will not interfere with the promotion of renewable energy in Florida.

FREA POSITIONS ON STAFF ISSUES

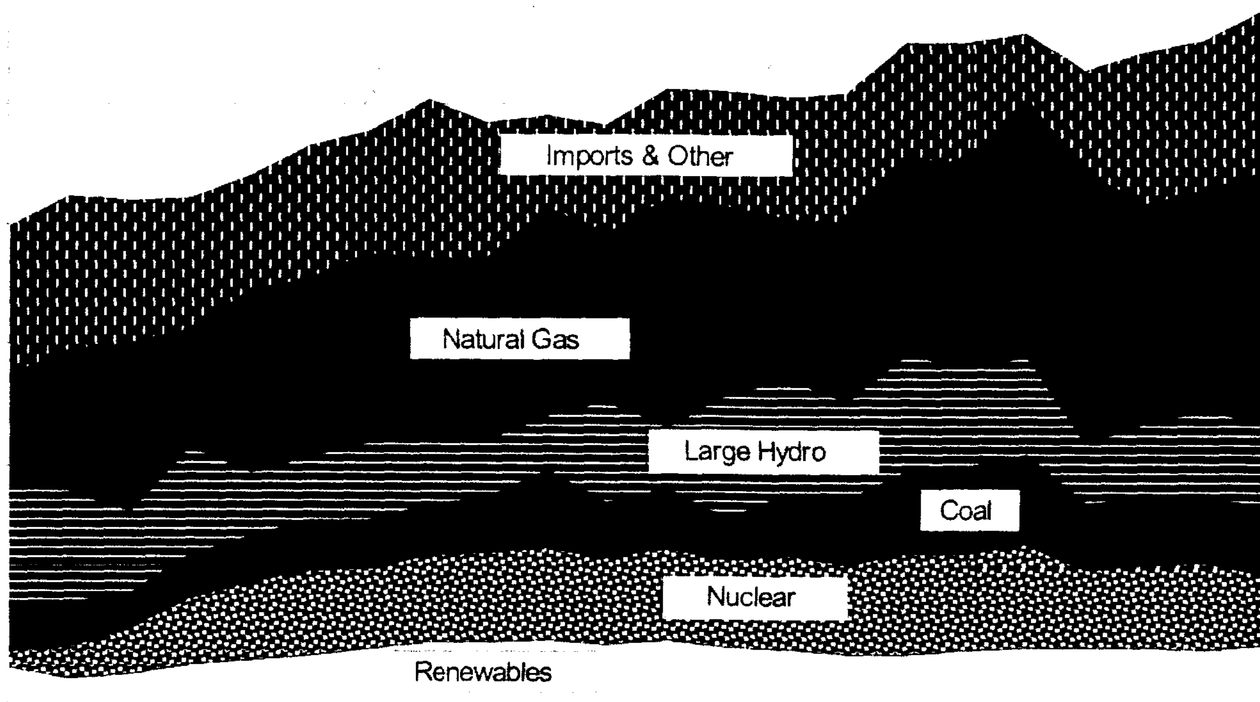
1. Contract Term: The contract term should be, at the option of the renewable energy facility, no less than 10 years nor more than 30 years. The lower limit of 10 years is statutorily imposed and the upper limit of 30 years corresponds to typical life expectancies of base load plants. It is important that the renewable energy facility be the determiner of contract length to avoid inadvertent disincentives to renewable energy producers.

2. Subscription Limit: There should be no subscription limit for renewable energy facilities. As also discuss briefly below, the Renewable Energy Bill has established a need for renewable energy to, among other things, provide fuel diversity and minimize the volatility of fuel prices. The emphasis has been shifted from utility need for generating capacity, to the State's need for fuel diversity and price stability. Accordingly, the imposition of any subscription limits would be contrary to the purposes and clear language of Section 366.91 and the requirement that utilities must continuously offer a purchase contract to producers of renewable energy. Ad hoc

3. Choice of Avoided Unit: The Avoided unit should be a statewide base load coal unit, assumed to go into operation on the date and year the renewable energy facility selects to commence delivery of capacity and energy under a standard offer. For reasons discussed during the Commission's March 6th workshop and herein, the base load coal plant is the type of avoided unit that would fulfill the requirements of Section 366.91. A coal plant approach is necessary if the Commission is to comply with the legislative mandate and allow Florida consumers to reap the benefits of renewable energy technologies. One very important characteristic of many renewable energy facilities – especially those with which FREA's members are associated – is that they are similar to utility base load coal plants in that they operate at high capacity factors and can displace natural gas and oil generation. However, there are also two very important differences in their characteristics. First, and perhaps most importantly, their fuel source is not subject to the types of price fluctuations or supply interruptions typically associated with traditional fuels. Second, the design, permitting and construction cycle for a renewable energy facility can be significantly shorter than a utility coal plant thereby providing the utility industry with an additional generation resource option.

The graph below depicts how renewable energy facilities would fit into a well diversified "model" fuel mix/generation stack including a variety of generating resources. Like nuclear and coal, renewables should provide "base" generation – thereby displacing the maximum amount of fossil fuels and most particularly – natural gas.

Electrical Production By Resource Type – Example Of A Diversified Fuel Mix Including Renewables



FREA recognizes that not all of the renewable energy technologies identified in the Renewable Energy Bill will necessarily possess all of the characteristics of the types of facilities with which the FREA members submitting these comments are associated. Most notably, for example, wind and solar facilities would not possess "base-load" characteristics due to their direct reliance on unpredictable weather conditions. They would however possess the fuel diversity characteristics and perhaps shorter lead times as well. Such technologies can be accommodated by use of an "adjustment" in capacity payments to reflect a lower capacity factor or by use of a separate avoided unit intended to more closely reflect their operating characteristics and benefits to the State and its energy consumers.

FREA POSITIONS ON ADDITIONAL ISSUES

4. Avoided Cost Standard: It is FREA's position that Section 366.91 requires a new avoided cost formula and major policy shift. Prior to the enactment of Section 366.91, the references to "avoided cost" contained in Section 366.051 were necessarily constrained by the Public Utility Regulatory Policies Act (PURPA) and the Federal Energy Regulatory

Commission's (FERC) associated implementing regulations. (The term avoided cost was a term lifted directly from PURPA without a separate basis in Florida law.) The purposes of PURPA – to reduce our Nation's reliance on imported fuel and reduce the need for electric utilities to construct new generating plants - were arguably served by the Commission's current, but now superceded, PURPA avoided cost formula.

The Commission is now able -- indeed is required -- to redefine avoided costs to comply with and implement the purposes of the Renewable Energy Bill. The Renewable Energy Bill has established a need for renewable energy to, among other things, provide fuel diversity and minimize the volatility of fuel prices. The emphasis has been shifted from utility need for generating capacity, to the State's need for fuel diversity and price stability. Moreover, because the term "avoided cost" now has a basis in Florida law -- and the purposes of Section 366.91 go well beyond those articulated by PURPA -- a new avoided cost formula that will serve the several purposes of the Florida law, as more fully discussed below, must now be defined and implemented.

5. Rulemaking Or Formal Hearing: A rulemaking or formal hearing process is necessary to fully and properly implement Section 366.91. As was demonstrated by the large number of interested parties and observers present at the March 6th undocketed Staff workshop, there appears to be a great deal of interest in the Commission's implementation of the Renewable Energy Bill and in the proposed standard offer contracts proposed by the utilities. Moreover, the issues are complex and there was substantial controversy and disagreement among the participants. These factors, individually or in combination, are an unmistakable indicator of the need for Commission rulemaking or formal evidentiary hearings in which to fully air the issues, understand the positions of all interested parties, and allow for the thoughtful and fully informed consideration of the important policy issues presented.

6. Standard Offer Contract Terms and Conditions: Pricing is perhaps the most important and apparent element in promoting renewable energy in Florida. It can also be the most contentious – often diverting attention away from other equally critical issues. Certainly, FREA believes that avoided cost payments for renewable energy must include all costs that would otherwise be incurred by the utility and/or ratepayers – including "stop-gap" costs

discussed herein and other benefits accruing to the State, consumers and utilities. But, it is also of critical importance that standard offer contract terms and conditions be fair and reasonable and not serve as a disincentive to renewable energy producers. A few of the potential problem areas noted in the filed contracts include, but are not limited to: requirements for utility dispatch and control; unreasonable performance requirements; ownership of renewable energy attributes; potential liability for utility income taxes; severability of contract provisions; and, mandatory sale of all electricity generated.

It is vital to realize that once a standard offer contract is approved it becomes the "baseline" from which negotiation proceeds. To implement the purposes of Section 366.91 all terms of the proposed standard offers must be reviewed for compliance with the requirements of the statute: to promote renewable energy resources in Florida. (As noted previously, FREA intends to file at a later date a separate and better detailed proposed standard offer contract containing terms and conditions that would alleviate the concerns of the renewable energy producers in this regard.)

DISCUSSION OF ISSUES

Avoided Cost Standard

366.91 Requires A New Avoided Cost Formula and Major Policy Changes: Standard Offer Contracts were available to FREA members prior to the enactment of 366.91. It should be acknowledged from the outset, therefore, that FREA members were/are already eligible as "qualifying facilities" pursuant to PURPA to sell electric capacity and/or energy pursuant to currently existing rules of this Commission as more specifically set forth below. As such, FREA does not believe that the recycled standard offer contracts approved by the Commission will "promote" renewable energy in Florida, nor will they help to achieve the other objectives of the Renewable Energy Bill.

> *25-17.0832 (4)(a)* **. . .** *each public utility shall submit for Commission approval a tariff or tariffs and a standard offer contract or contracts for the purchase of firm capacity and energy from small qualifying facilities . . . standard offer contracts are available to the following types of qualifying facilities:*
>
> > *1. A small power producer or other qualifying facility using renewable or non-fossil fuel where the primary energy source in British Thermal Units*

> *(BTUs) is at least 75 percent biomass, waste, solar or other renewable resource;*
>
> *2. A qualifying facility, as defined by Rule 25-17.080(3), with a design capacity of 100 kW or less; or,*
>
> *3. A municipal solid waste facility as defined by Rule 25-17.091.*

The standard offers approved by the Commission in December, 2005 are nothing more than the status quo. It is FREA's strong contention that the Legislature had much more in mind than changing the title of the previous standard offer contracts by adding the words "renewable energy". Florida Senator Michael S. Bennett, who sponsored the Florida Energy Bill, expressed precisely those sentiments, among others, in his March 3, 2006 memorandum directed to the Commission. As the Senator noted,

> *"The current standard offer contract available to these [renewable energy] plants do not reflect their value to Florida's energy portfolio because the avoided cost formula currently in use does not translate into revenue that encourages renewable energy generation."*

Moreover, Senator Bennett went on to say,

> *"I caution you not maintain the status quo. The Legislature clearly intends in Section 366.91 that the purchase of renewable energy be encouraged – and that means at a price that reflects their value to our State."*

Clearly, the mandate of 366.91 cannot be met by a mere name change. Just as clearly, what is required of the Commission is a drastic change in the avoided cost formula to reflect the value of renewables to the State and to encourage renewables. History shows that the standard offer contracts have been dismal failures over the past decade and can only be expected to continue to fail to promote or encourage renewable energy resources. FREA believes that the recommendations/suggestions it is providing in these comments – if implemented by the Commission – would go a long way toward meeting the intent of 366.91.

History Supports FREA's Positions and Concerns: When the Commission implemented its avoided cost formula under PURPA in the early 1980s, Florida had a serious fuel diversity problem – a heavy dependence on oil for electric production. In response, the Commission established rules and policy that based avoided costs for QFs on a statewide

avoided coal unit, as that best fit the characteristics of the majority of QFs. That policy was successful during the time it was in effect -- from about 1983 through about 1990 -- a time period in which the majority of QF capacity was developed and committed to firm capacity contracts. Around 1990, the Commission abandoned the successful policy, opting instead for the "next planned generating unit for each individual utility" approach advocated by the utility industry, and, as an almost immediate result of that policy change, the amount of QF capacity developed and committed to firm capacity contracts dropped precipitously and has not recovered to date. As noted above, history shows that recent standard offer contracts have failed over the past ten to fifteen years and will continue to fail to promote or encourage renewable energy resources. According to Florida's Energy Plan, the amount of natural gas used for generating electricity tripled during that same time - from 1990 to 2005 - and is projected to nearly double again by 2013. The Commission should consider this experience as it implements Section 366.91.

The Florida Renewable Energy Bill Requires A New Avoided Cost Formula: Prior to the enactment of 366.91, the references to "avoided cost" contained in 366.051 were necessarily dictated by PURPA and the FERC's associated implementing regulations. The purposes of PURPA -- to reduce our Nation's reliance on imported fuel and reduce the need for electric utilities to construct new generating plants -- were arguably served by the Commission's current, but now superceded PURPA avoided cost formula. The Commission is now able -- indeed required -- to redefine avoided costs to comply with and serve the purposes of the Renewable Energy Bill. Because the purposes of 366.91 go well beyond those articulated by PURPA, a new avoided cost formula must be defined and adopted -- an avoided cost formula that will serve the several purposes of the Florida law as set forth below.

> *366.91 Renewable energy.–*
> *(1) The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.*

Section 366.91 declares in no uncertain terms that it is the policy of this State to: (1) promote the development of Florida renewable energy resources; (2) diversify fuel mix to reduce Florida's growing dependence on natural gas; and, (3) minimize the volatility of fuel costs.

These goals, which are very different from PURPA's goals, will require a very different avoided cost formula and standard offer contract if they are to be realized. For example, as would occur under the Commission's current avoided cost formulas, avoided costs calculated using a combustion turbine fueled by natural gas would fail with respect to all three policy objectives of the law. As will be discussed in greater detail below, avoided costs that are tied to natural gas prices will always fail in that they will not comply with the requirement to reduce the volatility of fuel costs and will not promote the development of renewable energy resources. Section 366.051, F.S. provides in pertinent part, that:

> *"A utility's 'full avoided costs' are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source."*

In order to properly implement the mandates of 366.91, the Commission must now consider, at a minimum and among other things, the cost of the type of energy or capacity that a utility would generate or purchase from another source that would meet the policy objectives of 366.91. Such energy or capacity must, at a minimum, result in diversifying fuel mix to reduce Florida's growing dependence on natural gas, and minimize the volatility of fuel costs. FREA submits that only a base load coal plant can meet these requirements and therefore must serve as the avoided unit for avoided cost purposes. In addition, the Commission should seek to quantify additional benefits of renewable energy that inure to electric consumers and the State for inclusion in avoided cost.

Renewable energy standard offers approved by the Commission in December use natural gas fired combustion turbines for determining avoided costs. This result occurs because utility generation planning is conducted without considering the availability of renewable energy capacity options on the front-end. They are only considered after-the-fact when they are essentially "force-fit" into a flawed plan that failed to consider them in the first place. Clearly, establishing avoided costs using a natural gas fired combustion turbine does not minimize fuel price volatility – a stated goal of 366.91 – because avoided energy prices would be directly "tied" to natural gas prices. The current utility planning process and standard offer avoided unit

selection process forces ratepayers to fund what are essentially "stop-gap" measures (quick-build natural gas fired combustion turbines) that fill a temporary need while future facilities with fuel diversity and price stability are planned. The cost of funding such stop-gap measures should be included in avoided cost calculations.

The value of deferral formula has outlived its usefulness: The Commission should abandon the value of deferral formula and substitute in its place a revenue requirements payment formula. The value of deferral formula was a product of times past -- a time when QFs were "new" commodities created to advance the wise Federal policy of introducing competition into the wholesale electricity supply markets. The value of deferral formula is a relic of the Commission's then warranted cautious approach to adopting rules for determining the avoided cost to be paid to these new entities. The deferral pricing formula gave the Commission comfort in knowing that capacity payments would begin low and increase over the contract term, thereby providing an incentive for long-term operation of the QF. This caution is no longer warranted for either renewable energy facilities or QFs, both of which have proven their reliability and longevity over the last twenty-plus years.

A revenue requirement formula which more closely models the cost recovery/cash flow associated with utility plant in rate base will provide accurate cost recovery, give the proper price signals and promote the development of renewable energy resources in Florida.

Rulemaking Or Formal Hearing:

A rulemaking or formal hearing is necessary to implement Section 366.91: Referring to proceedings under the Federal PURPA mandate to implement an avoided cost methodology for Florida, the Commission made the following comment in its Order 12443 issued September 2, 1983 that is pertinent to the Commission's implementation of the mandates of the Renewable Energy Bill:

> *The hearings on the proposed rules were held on May 16, 18 and 19, 1983. Due to the complexity of the issues, the interest aroused by them and the number of witnesses involved, the Commission conducted the hearing in a manner similar to that required by Section 120.57, Florida Statutes. In addition to their prefiled*

testimony, several witnesses filed rebuttal testimony setting forth their evaluation of the positions taken by other parties.

As was demonstrated by the large number of parties represented at the March 6th undocketed Staff workshop, there is a great deal of interest in the Commission's implementation of the Renewable Energy Bill and in the proposed standard offer contracts proposed by the utilities. Moreover, the issues are similarly complex and there was substantial controversy and disagreement among the participants. These factors, individually or in combination, are an unmistakable indicator of the need for Commission rulemaking or formal evidentiary hearings in which to fully air the issues, understand the positions of all interested parties, and allow for the thoughtful and fully informed consideration of the important policy issues presented.

For example, some questions that may be answered in such proceedings might include:

- Why are Florida utilities planning so few base load coal plants even though such plants would add diversity and fuel price stability to the State's fuel mix?
- Would utilities seek generating capacity with base load plant characteristics if it were feasible to implement on a shorter planning horizon? (e.g., A renewable energy plant with operational and fuel diversity characteristic of a base-load coal plant with combustion turbine lead time)
- Is it prudent that utility planning ignore the availability of renewable energy resources as an available generation capacity option?
- Can planning be improved by including renewable energy resources as a planning option?
- If so, should utilities be required to consider such resources along with traditional resources in creating a generation plan?
- Should the Commission re-institute the annual planning hearings?

To proceed in this matter without the benefit of rulemaking or formal evidentiary proceedings will almost certainly result in a decision making process -- and ultimately a final decision -- that is factually, technically and legally flawed. The "temporary" approval of standard offer contracts provides a window of opportunity in which the Commission could conduct hearings, thus allowing for a reasoned and informed consideration of all issues presented.

The Commission's implementation of the Renewable Energy Bill is no less important, controversial or complex than was the implementation of PURPA, especially given the unique energy supply challenges now facing Florida. Accordingly, in light of its importance to Florida, FREA members strongly believe that implementation of the Renewable Energy Bill deserves and warrants no less than -- at a minimum -- the procedural treatment afforded PURPA.

Standard Offer Contract Terms and Conditions:

Terms and conditions must be fair and reasonable: It is of critical importance that the terms and conditions of the standard offer contract be fair and reasonable and not serve as a disincentive to renewable energy producers. In addition, it is also important that all standard offer contracts of the investor-owned utilities be identical from utility to utility in order to further minimize any disincentives to Florida renewable energy producers. Because all Florida investor owned utilities are subject to the same rules and regulations of this Commission, there is no compelling reason for their standard offer contracts to differ.

It is vital to understand that once a standard offer contract is approved it becomes the "baseline" from which negotiation proceeds. To implement the purposes of Section 366.91 all terms of the proposed standard offers must be reviewed for compliance with the requirements of the statute: to promote renewable energy resources in Florida. As noted previously, FREA intends to file at a later date a separate proposed standard offer contract containing terms and conditions which would alleviate the concerns of the renewable energy producers in this regard.

CONCLUSION

FREA members appreciate the opportunity to submit these comments to the Commission in connection with this most important matter of implementing the Florida Renewable Energy Bill. FREA urges the Commission to adopt the recommendations and suggestions presented herein, and appreciates the opportunity to submit these comments in this important matter.

If you have any questions, require further information or would like to discuss these comments, please contact Rich Zambo, FREA Chair, at 772 225 5400.