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September 13, 2006

HAND DELIVERED

Mr. Larry Harris
Office of General Counsel
Florida Public Service Commission
Room 301D – Gerald L. Gunter Bldg.
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy contracts; FPSC Docket No. 060555-EI

Dear Mr. Harris:

Enclosed are the original and one copy of Tampa Electric Company's Post-Workshop Comments.

Sincerely,

James D. Beasley

JDB/pp
Enclosure

cc: Judy Harlow (w/enc.)
Blanca S. Bayo (w/enc.)
Bryan Anderson (w/enc.)
John Burnett (w/enc.)
Russell Badders (w/enc.)
Jeff Cooper (w/enc.)
R. Scheffel Wright (w/enc.)
Brenda Irizarry (w/enc.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.	DOCKET NO. 060555-EI FILED: September 13, 2006

TAMPA ELECTRIC COMPANY'S
POST-WORKSHOP COMMENTS

Tampa Electric is committed to the goal of encouraging the development of incremental renewable energy generating resources in this state. The company has gone on record stating this commitment and has demonstrated that commitment through its actions. We believe the fossil fuel unit type portfolio approach, adopted by the Commission in June of this year[1], is an approach to achieving that development and implementing the legislative intent embodied in Sections 366.91 and 366.92, Florida Statutes. While we recognize a request for a hearing was subsequently filed relative to the June 6 order, we believe the approach the Commission has adopted should prevail in the final analysis.

In crafting rules to implement standard offer contracts for renewable energy resources, it is important to keep in mind the clear legislative goals expressed in recent legislation. The Legislature has defined a balanced approach to fostering new renewable energy resources. The clear goal articulated by the Legislature is to encourage the development of renewable energy resources without overburdening ratepayers. This balance is evidenced in Section 366.91, Florida Statutes, which focuses on the utility's avoided unit costs as the basis for determining payments for energy and capacity provided by renewable energy resources. This focus balances

[1] Order PSC-06-0486-TRF-EQ, issued June 6, 2006 in Dockets Nos. 050805-EQ, 050806-EQ, 050807-EQ and 050810-EQ

the goal of encouraging the development of incremental renewable energy resources without losing track of the Commission's continuing obligation under Section 366.03, Florida Statutes, to ensure that all rates and charges are fair and reasonable. Section 366.92, Florida Statutes, adopted during this year's legislative session, clearly defines the balanced approach the Commission is charged with implementing. The very first subsection of this statute sets forth Florida's renewable energy policy:

> 366.92 Florida renewable energy policy.—
>
> (1) It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and at the same time, minimize the costs of power supply to electric utilities and their customers. (Emphasis supplied.)

This clearly defined, two-pronged legislative policy of promoting a set of laudable goals while, at the same time, minimizing the costs of power supply to electric utilities and their customers, should be the polestar going forward, both in this rulemaking and in disposing of the pending request for hearing on the investor-owned utilities' standard offer contracts. Tampa Electric believes the draft revisions to Rule 25-17.0832, Florida Administrative Code, distributed at the August 23, 2006 rule development workshop, and the Commission's fossil fuel unit type portfolio approach those rule revisions would implement, do adhere to the Legislature's renewable energy policy and should be adopted. The company also believes that various proposals advanced by renewable energy interests, both in the rule workshop and in the workshop and agenda conference preceding the Commission's June 6 order, run counter to that policy and, if adopted, would operate to the detriment of ratepayers.

Set forth below are brief comments on certain points raised by workshop participants and Tampa Electric's points in response:

One Rule for Qualifying Facilities and Renewables

It was suggested during the workshop that there should be separate rules for renewable resources vis-à-vis qualifying facilities ("QFs"). It is clear from the operative statutes (Section 366.051, Florida Statutes, for QFs and Sections 366.91 and 366.92, Florida Statutes, for renewable resources) that the legislative intent with respect to both QFs and renewables is to promote the development of these alternative energy resources without causing ratepayers to pay more for electricity than they would have to pay if the utility generated the power itself or purchased it from another source. In addition, most, if not all, QFs qualify as renewable energy resource providers given the manner in which renewable energy is defined in Section 366.91, Florida Statutes. There is simply no reason to have two separate rules on the books promoting essentially the same concepts in the same manner.

The point was made during the workshop that cogeneration and QFs are a federal concept whereas the promotion of renewable energy resources is a state concept. This ignores the fact that the promotion of cogeneration and QFs could not really be implemented in Florida until the Florida Legislature implemented this policy as a state policy in Section 366.051, Florida Statutes. Clearly the promotion of cogeneration and the promotion of renewables are equally grounded in state legislative policy and for similar, if not identical, reasons it is appropriate to address both concepts in the same implementing rule.

Subscription Limits

Concern was also expressed regarding subscription limits and the possibility that such limits would violate that provision of the law requiring utilities to have a continuous standard

offer for the purchase of energy produced by renewable energy providers. This should not present a problem. In the first place, under the fossil fuel unit type portfolio approach, the utility will likely have more than one standard offer contract open at any given point in time based on different unit types. In addition, under the draft rule language circulated by Staff, even if one unit is completely subscribed the utility would be required to petition for approval of a new standard offer contract for the next planned unit of the same type as the one fully subscribed. The time frame for the approval process of standard offer contracts typically has been inconsequential in the past. Moreover, one participant in the workshop commented that it takes units of local government a considerable period of time to get their plans in place to even take advantage of a standard offer. The brief interval between the full subscription of one unit and the approval of a standard offer contract based on the next planned unit of that type, together with the likelihood that more than one standard offer would be open at any particular point in time, preclude the likelihood that a subscription limit will operate to the disadvantage of any renewable energy source provider.

Tampa Electric supports the Staff's modification of its draft rule, at page 2, line 8, to make it clear that negotiated contracts with small QFs and renewable generators count toward the subscription limit of the avoided unit. There is no reason to treat negotiated contracts any differently than standard offer contracts. An avoided increment of capacity is the same regardless of the form of the agreement that allows it to be avoided.

Statewide Avoided Unit

The renewable interests, once again, are advocating the concept of a statewide avoided unit for all utilities. While this proposal might produce more compensation to QFs and renewables, it is a concept which the Commission has carefully studied and appropriately

rejected, both in 1990 and in subsequent proceedings including those proceedings that led to the Commission's June 6, 2006 adoption of a fossil fuel unit type portfolio approach. As Commissioners observed when they adopted the individual utility avoided unit approach in 1990, utilizing a utility's specific avoided unit (or units) puts an element of truth and realism back into the process. The fossil fuel unit type portfolio approach Staff currently has on the table accomplishes this goal and should be adopted.

Contract Term

One commenter suggested there should be minimum and maximum contract terms as opposed to a 10-year minimum. Other comments suggested that the term should be at the discretion of the proposed provider. The statute contemplates a 10-year minimum term and Tampa Electric believes that a duration any longer than 10 years should be a matter negotiated between the utility and the proposed provider. The Staff's draft rule would clearly carry out the legislative intent of having a minimum 10-year standard offer contract term and at the same time comport with the Commission's express desire to favor negotiated agreements over standard offer contracts. It would also avoid the impossible task of attempting to define through rulemaking the ultimate contract term for myriad contracts, a decision which depends on the specific facts of a particular proposal.

Tampa Electric does see the need for one minor change with regard to the 10 year minimum term. While 10 years might be an appropriate minimum contract term when considering the avoidance of the construction of an actual generating unit, 10 years might be too long in duration in circumstances where a planned purchase of wholesale power of less than 10 years is the 10 year site plan resource to be avoided. One way to resolve this would be to insert new language in subsection 6 of Staff's draft rule as follows:

6. The period of time over which firm capacity and energy shall be delivered from the qualifying facility to the utility. Firm capacity and energy shall be delivered, at a minimum, for a period of ~~five~~ ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in-service date of the avoided unit. **In the case of a planned power purchase, the firm capacity and energy shall be delivered for the lesser of a period of 10 years or the planned duration of the purchase;**

Fixed Rates for Capacity and Energy

One workshop commenter spoke in favor of levelized capacity and energy payments. While levelized capacity payments are contemplated in the existing rule, any attempt to fashion levelized energy payments would be a mistake. Capacity costs are relatively predictable, which accounts for the inclusion of a levelized capacity payment option in the existing rule. On the contrary, energy costs are not so predictable, which is why the existing rule bases energy payments on the lesser of the avoided unit's energy costs or the as-available energy rate. This difficulty in long-term prediction of energy prices also accounts for the recovery of fuel and purchased power costs through the annual fuel adjustment mechanism. Any attempt to levelized energy payments for QFs and renewable energy providers over a minimum 10 year term would place undue risk on ratepayers that energy prices might later decline below the predicted level, or would threaten the stability of the contract if energy prices rise above the level assumed in the contract, putting pressure on the QF or renewable provider to breach the contract in pursuit of higher profits elsewhere.

Goal Setting versus Rulemaking

Certain of the renewable energy resource representatives inquired about setting goals for renewable energy resources in connection with this rulemaking. Tampa Electric concurs with

the Staff's view that it would be better to adopt rules, get them in force and then see what impact that has on promoting renewable energy.

Completion and Performance Guarantees

One commenter suggested that completion guarantees might not be needed because if a renewable does not perform, the utility only loses fuel diversity and not capacity. However, this is clearly not the case if the renewable energy provider has contracted to receive capacity payments for a capacity commitment. Again, the renewable policy of this state, as expressed this year by the Legislature, is to advance the development of renewable energy resources and at the same time minimize the costs of power supply to electric utilities and their customers. Reducing or eliminating completion and performance guarantees for renewable energy projects would run contrary to the second prong of the Legislature's renewable energy policy.

Cost of Compliance

At the conclusion of the August 23 workshop, the participants were asked to provide Staff with estimates of their incremental cost of complying with the draft rule amendments Staff provided. Tampa Electric already has standard offer contracts it has prepared and submitted to the Commission. If the company has to create a new standard offer contract to reflect a new unit technology type, the company estimates the up front cost of that effort would be approximately $2,850. The incremental costs of maintaining and updating existing standard offer contracts would be fairly nominal, perhaps $500 per year.

Summary

Tampa Electric believes the draft revisions to Rule 25-17.0832, Florida Administrative Code, distributed by Staff at the August 23, 2006 rule development workshop, appropriately implement the policies and pronouncements of the Commission's June 6, 2006 order regarding

the appropriate content of standard offer contracts for renewable energy resources. Although a request for hearing was subsequently filed with regard to the June 6, 2006 order, Tampa Electric believes that the content of that order should be reaffirmed in the ultimate disposition of that request for hearing. The various proposals submitted on behalf of renewable energy providers during the rule development workshop have been carefully considered and appropriately rejected by the Commission in the past. Those proposals do not need to be incorporated in the rule in order to carry out the intent of the Legislature and, in fact, could run contrary to that legislative intent and operate to the detriment of electric utility customers in this state.

DATED this 13th day of September, 2006.

Respectfully submitted,

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