Timolyn Henry

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Wednesday, September 13, 2006 4:13 PM
To: Filings@psc.state.fl.us
Cc: richzambo@aol.com; jbeasley@ausley.com; RAB@beggslane.com; rollinsmr@bv.com; JCooper@co.lake.fl.us; Bryan_Anderson@fpl.com; rhunter@greencoastenergy.org; jmoylejr@moylelaw.com; john.burnett@pgnmail.com; Judy Harlow; Larry Harris; Cochran Keating; Kathryn.Cowdery@ruden.com
Subject: Electronic Filing * Docket 060555-EI

Attachments: Comments-Renewable SOKs.Post-Wkshp.Sept13.doc

Comments-Renewable SOKs.Post-W...

a. Person responsible for this electronic filing:

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
(850) 222-7206
swright@yvlaw.net

b. Docket No. 060555-EI

In Re: Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Payments.

c. Document being filed on behalf of Montenay-Dade Limited and Lee County.

d. There are a total of 7 pages.

e. The document attached for electronic filing is Post-Workshop Comments of Montenay-Dade Limited and Lee County Regarding Rules Applicable to Standard Offer Contracts for Renewable Energy.

(see attached file: Comments-RenewableSOKs.Post-Wkshp.Sept13.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
Phone: 850-222-7206
FAX: 850-561-6834

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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 Payments	DOCKET NO. 060555-EI SUBMITTED: SEPT. 13, 2006

POST-WORKSHOP COMMENTS OF MONTENAY-DADE LIMITED AND LEE COUNTY REGARDING RULES APPLICABLE TO STANDARD OFFER CONTRACTS FOR RENEWABLE ENERGY

Montenay-Dade Limited and Lee County appreciate the opportunity to present these post-workshop comments to the Commission regarding the investor-owned utilities' standard offer contracts for the purchase of renewable energy pursuant to Section 366.91, Florida Statutes. Montenay-Dade operates the Miami-Dade County Resources Recovery Facility, which is owned by Miami-Dade County. Lee County owns the Lee County Resource Recovery Facility. Both of these electric generation facilities produce electricity using renewable fuels within the meaning of applicable Florida law.

Lee County and Montenay-Dade Limited hereby provide comments on the following issues:

1. brief comments on the overall policy favoring renewable energy articulated by the Florida Legislature;

2. choice of the avoided unit as the basis for payments under renewable energy standard offer contracts;

3. choice of the term (in years) of renewable energy standard offer contracts;

4. subscription limits for renewable energy standard offer contracts;

5. a "right of first refusal" for utilities that are purchasing the output of determination of fair market value of renewable energy credits;

6. the need to ensure that renewable energy producers are fairly compensated for value that they provide in terms of utility costs avoided by the renewable producer's operations and contract in the event of a future carbon-regulation regime;

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7. possible imputed debt or equity penalty in computing capacity payments under renewable energy standard offer contracts; and

8. possible long-term fixed energy payments in renewable energy standard offer contracts.

Florida Energy Policy Favors Renewable Power

The Florida Legislature has spoken clearly to encourage the development of renewable energy in Florida. The Public Service Commission in its rulemaking must be guided by this policy. Montenay and Lee County strongly believe that no responsible party or person would dispute the fundamental proposition that "more renewable energy is better than less," for Florida, for the United States, and for the planet. Renewable energy will generally reduce environmental impacts of electricity generation and will, at a minimum, provide physical fuel diversity relative to Florida's current and projected generation fuel mix.

Choice of Avoided Unit

Montenay-Dade and Lee County support the Staff's proposed "fossil fuel generating technology portfolio approach," which would require the investor-owned utilities ("IOUs") to offer a standard offer contract to renewable energy producers based on the first not-yet-committed unit of each fossil-fuel generating technology represented in the utility's then-current ten-year site plan.

In enacting Section 366.91, the Legislature clearly intended to foster the development of renewable energy resources in Florida and to serve Floridians' electricity needs. It is equally clear that this policy requires the Commission to provide appropriate incentives to renewable energy producers to develop, operate, and maintain their facilities and to provide those facilities' output to Florida utilities.

Giving renewable energy producers ("REPs") their choice of any fossil-fuel-fired unit in the utilities' ten-year site plans as the "avoided unit" upon which their payments will be based would provide maximum incentives to renewable producers, without exceeding the utilities' projected avoided costs. The current proposal set forth in the proposed rule would limit this to the next unit of each type of fossil generating capacity in each utility's ten-year site plan, but Montenay and Lee County believe that this should still provide meaningful incentives to the development of renewable energy.

And, of course, the Commission will keep in mind the State's overall policy favoring renewable energy as time goes on, and can accordingly be positioned to act on future standard offer contract offerings. For example, if a meaningful amount - say 2,000 MW - of coal-fired capacity were to be subscribed under standard offer contracts with renewable energy producers within the next 2 or 3 years, the Commission could take account of such success in determining what standard offer contracts to require next.

Contract Term

Montenay-Dade and Lee County support a minimum standard offer contract term of 10 years and a maximum contract term equal to the life of the chosen avoided unit.

Again, as discussed above, the purpose of Section 366.91 was and is to foster further development, operation, and maintenance of renewable energy facilities in Florida. Allowing REPs to choose among shorter (minimum of 10 years) and longer terms, up to the life of the selected avoided unit, will meet this policy goal.

Clearly, shorter-term standard offer contracts will not provide as much incentive to renewable energy development and production as the availability of longer-term contracts will. Moreover, the incentives that shorter-term contracts provide will not be nearly as meaningful as longer-term contracts. It is obvious that the incentive of 10 years of capacity payments will not induce as much investment as 25, 30, or 40 years of capacity payments.

In discussion at the workshop, Staff indicated that they are concerned with the potential economic risks to ratepayers associated with longer-term contracts. As stated at the workshop, however, Lee County and Montenay strongly believe that this concern is misplaced, because the risks in long-term resource commitments are the same for utility-built units as they are for units built by renewable energy producers who sell their output under long-term contracts.[1]

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[1] Actually, the exposure with utility-built units is at least arguably greater than with long-term contracts, because utilities generally have the opportunity, either through base rate proceedings or through cost recovery clauses, especially the Environmental Cost Recovery Clause, to seek recovery of additional capital costs incurred after plants are up and running, whereas independent renewable energy producers generally have no such opportunity.

If a utility builds a coal-fired unit, it has committed itself and its captive ratepayers to all reasonable and prudent costs associated with that unit. Those will include at least whatever cost the utility represents to the PSC in its need determination case, plus future fuel costs, the reasonableness of which will be evaluated against future fuel market conditions. The utility's customers face exactly (at least) the same risks of a resource decision becoming uneconomic in the long term if the utility builds the unit or if it contracts for the unit's output for a long period. If the utility-built coal plant turns out to have been an uneconomic decision (in hindsight from some future vantage point), then the ratepayers are exposed to those risks in exactly the same way as if the utility had bought renewable energy pursuant to a long-term contract based on the costs associated with the same coal plant.

Subscription Limits

Montenay-Dade and Lee County strongly support subscription limits equal to the projected capacity of each avoided unit in each respective utility's ten-year site plan.

Progress Energy, Gulf Power, and Tampa Electric proposed small subscription limits in their renewable standard offer contracts submitted last fall, 20MW by Progress and 10MW by Gulf and TECO. Such small subscription limits run counter to the purposes of Section 366.91, Florida Statutes, in that they provide nearly meaningless incentives to developers of substantial renewable electricity production facilities.

Again, as discussed above, the purpose of Section 366.91 was and is to foster further development, operation, and maintenance of renewable energy facilities in Florida. Allowing REPs to subscribe renewable standard offer contracts up to the capacity of the selected avoided unit, will meet this policy goal.[2]

[2] An entirely reasonable argument can be made that, in order to further the pro-renewable energy policy articulated by the Florida Legislature, there should be no subscription limits on renewable standard offer contracts. Even so, if, as may reasonably be expected, the current proposal produces 2,000 MW or more of coal-based contract subscription capacity, then that would be a meaningful opportunity for renewable producers. And, if such capacity were in fact to become fully subscribed in a relatively short time, then the Commission could - and should - consider whether to revise the rules to provide more incentives to encourage more renewable power in Florida.

Renewable Energy Credits - Utility's Right of First Refusal

The concept of allowing the utility that purchases a renewable producer's output to have a "right of first refusal," or "ROFR," to also purchase any Renewable Energy Credits ("RECs") was discussed at the workshop. Lee County and Montenay agree with most of those who addressed this issue at the workshop that such a ROFR would be reasonable and acceptable, so long as the renewable energy producer received fair market-based value for any RECs or similar values created by its entrepreneurship in developing and operating its renewable energy generating facility.

Determining the Fair Market Value of Renewable Energy Credits

At the workshop, there seemed to be general agreement that the value of RECs ought to go to the renewable energy producer. The Staff raised the appropriate question as to how to determine the fair market value of RECs and/or similar environmental values. Options that were mentioned included: a request for proposals or "RFP" process, a special master, reference to established "futures prices" if RECs are traded on a recognized commodity exchange, and arbitration.

Generally, any of these should work to provide fair compensation to the renewable energy producer in the context of its providing RECs produced by its facility to the purchasing utility. One suggestion was offered with which Lee County and Montenay do not agree, and that is the suggestion that an annual spot market value be used to establish the value for RECs. While it would be acceptable for a utility and a renewable energy producer to agree to such a provision in a negotiated contract, based on their assessments of risks and other bargained-for values, such a provision should not be incorporated into renewable energy standard offer contracts, for the following obvious reason: the stream of annual spot market values of RECs is simply not the same product as a committed stream of 5, 10, or more years of RECs. Thus, where a renewable producer has a third-party offer to buy 100,000 MWH per year equivalent of RECs for 10 years, it is that product for which a fair market value must be determined.

One option that was not mentioned at the workshop, but which Montenay and Lee County believe deserves serious consideration, is the use of an auction process to establish the value of RECs.

Fair Compensation of Renewable Energy Producers for Avoided Carbon-Related Costs

One general principle that the Commission has always strived to follow in setting rates to be paid to power producers selling to Florida utilities under standard offer contracts is that the compensation provisions of such contracts should fairly compensate the producers for the value that their efforts provide in terms of costs that those efforts enable the purchasing utility to avoid. To many observers, it appears highly likely that, in the not-too-distant future, there will be some form of carbon-emission regulation system implemented in the United States. It may be a "cap and trade" regime such as that long in place for sulfur dioxide, or it may be a carbon tax, or some other structure.

The simple point for these rulemaking proceedings is this. If a renewable energy producer enables a purchasing utility to avoid real carbon-related costs, then the producer should be compensated for those avoided costs. If the regime is a tax on the carbon content of fuel, then such compensation should occur by operation of normal energy payment provisions, with the carbon tax value reflected in the cost of the "proxy fuel" that forms the basis for the renewable producer's energy payments. If, on the other hand, a tax were imposed on carbon emissions, then this would not fairly compensate the renewable producer.

No Imputed Debt or "Equity Penalty"

In many if not all of the "competitive solicitation" processes conducted by Florida IOUs under the Commission's Rule 25-22.082, F.A.C. (the "Bidding Rule"), the utility issuing the RFP reduces the capacity payments by certain amounts based on a percentage of an "imputed debt equivalent" that the long-term capacity payments are claimed to represent. Independent power producers frequently refer to these offsetting values as an "equity penalty," because they supposedly reflect the carrying costs of additional equity that the utility claims it must raise to offset "imputed debt equivalents." Montenay's and Lee County's representative asked at the workshop whether the IOUs follow this practice in setting the capacity payment rates for renewable energy standard offer contracts, but no response was given. Lee County and Montenay strongly believe that no such offset should be allowed in computing payments under renewable energy standard offer contracts.

Long-Term Fixed Energy Payments

At the workshop, the suggestion was offered that renewable energy standard offer contracts should offer the option of long-term fixed energy payments. Montenay and Lee County do not oppose this; indeed, consistent with the Legislature's pro-renewable policy, it should be expected that the availability of such an energy payment option would significantly encourage additional renewable energy development and production in Florida. Against this obviously desired end must be balanced the risk that the energy payments would turn out to not to reflect future generating fuel costs.

This leads directly back to the discussion of risk allocation set forth above (in Lee County's and Montenay's comments regarding the term of standard offer contracts). And the point here is essentially the same as above: the risks associated with long-term contracts and pricing cut both ways. In this context, a long-term energy payment stream exposes captive utility customers to the risk that future generating fuel costs will turn out to be less than the fixed payments under the contract. However, the converse is frequently overlooked in these discussions, and it is that there is a similar risk - borne by the renewable energy producer - that future generating fuel costs will be greater than the rates reflected in a fixed-energy-payment contract. In other words, the customers have a chance to be better off with the fixed-energy-payment structure. It actually shifts some - presumably half - of the market risk to the renewable producer, whereas with current energy payment provisions that tie future payments to future market conditions, all of the market risk is borne by the customers.

Perhaps the Commission should seriously consider offering this as an option on at least some percentage of each utility's renewable standard offer purchases, if only as a risk-shifting mechanism.

Again, Lee County and Montenay-Dade Limited sincerely appreciate the opportunity to present these comments and thank the Commission and the Staff for their consideration.