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Subject: Electronic Filing for Comments of Investor-Owned Utilities
Attachments: Comments of Investor-Owned Utilities in Docket 060555-EI.pdf

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<<Comments of Investor-Owned Utilities in Docket 060555-EI.pdf>>

Electronic Filing

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b. Docket No. 060555-EI – Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.

c. Document being filed on behalf of Gulf Power Company, Tampa Electric Company, Progress Energy Florida, and Florida Power & Light Company.

d. There are a total of 13 pages.

e. The document attached for electronic filing are the Comments of Investor-Owned Utilities.

(See attached file: Comments of Investor-Owned Utilities in Docket 060555-EI)

Thank you for your assistance in this matter.

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ORIGINAL

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: October 25, 2006

COMMENTS OF INVESTOR-OWNED UTILITIES

I. INTRODUCTION

1. Florida's four investor-owned utilities ("IOUs") – Gulf Power Company ("Gulf"), Tampa Electric Company ("Tampa Electric"), Progress Energy Florida ("Progress"), and Florida Power & Light Company ("FPL") – together submit these comments regarding the proposed amendments to Rule 25-17.0832, Florida Administrative Code ("F.A.C."), as published in the Administrative Weekly on October 13, 2006. As requested in the Order Establishing Procedures to Be Followed at Rulemaking Hearing, Order No. PSC-06-0849-PCO-EI, the IOUs submit these initial comments now, but wish to reserve the right to submit further comments after review of any comments or specific proposals to the proposed rule amendments that may be submitted by interested parties and to provide oral comments and testimony at the public hearing.

2. The IOUs continue to support the development of renewable resources as an important resource in serving customers and recognize that the Fossil Fuel Unit Type Portfolio Approach encourages the development of renewable generation. The IOUs originally submitted standard offer contracts that differed from the proposed rule amendments and the portfolio approach. Notwithstanding those differences, the IOUs believe the proposed methodology is a reasonable means of implementing the provisions of

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section 366.91, Florida Statutes, to encourage renewable generation in the state, and is consistent with the Commission's Order No. PSC-06-0486-TRF-EQ, issued June 6, 2006, approving the IOUs' tariffs and standard offer contracts for renewable resources and requiring Tampa Electric, Progress, and FPL to file additional tariffs and standard offer contracts consistent with the Fossil Fuel Unit Type Portfolio Approach. The proposed rule amendments strike a balance between encouraging the development of renewable resources and not overburdening current and future retail electric customers with purchased power contracts at prices that result in those customers paying more for power than is necessary. This balance has been a consistent part of the Legislature's intent with regard to renewable resources, which it reiterated in 2006; that is, to promote the development of renewable energy and, at the same time, minimize costs to customers.

3. The IOUs remain committed to the use of renewable resources in serving customers in the state of Florida. For example, Tampa Electric currently has seven purchased power agreements with renewable generators, for a total capacity of over 228 MW; Progress currently has purchased power agreements with nine renewable generators, for a total capacity of 325 MW and also buys 8 MW from a renewable generator under the COG-1 tariff; and FPL currently has five purchased power agreements with renewable generators, providing 157.6 MW, and also buys from four other renewable generators, with a total of 145.8 MW, under the COG-1 tariff. [1]

[1]It should be kept in mind that the Commission has stated a preference for negotiated contracts, which offer the best opportunity for the utility and the renewable generator to decide upon mutually acceptable terms which will protect customers and encourage renewable generation. *See* Rule 25-17.0832(2), F.A.C. The IOUs support this view.

II. BACKGROUND

4. Much diligent work on the part of the Legislature, the Commission, the Commission Staff, the IOUs, and the renewable generators has brought the issue of a balanced approach to fostering new renewable energy resources to this point.

5. In 2005, after the introduction of various pieces of legislation concerning renewable resources in the 2004 and 2005 Florida Legislative sessions,[2] the Legislature passed House Bill 77, which became Chapter 2005-259, Laws of Florida. The bill created section 366.91, Florida Statutes, effective October 1, 2005. The new section, in summary, provided the following requirements:

A. By January 1, 2006, each IOU must continuously offer to purchase capacity and energy from specific types of renewable resources.

B. The contract must be based on the utility's full avoided costs, as defined in section 366.051, Florida Statutes.[3]

C. Each contract must provide a term of at least ten years.

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[2]In the 2004 session, several bills related to renewable energy were proposed. House Bill 1551 required the IOUs offer renewable generation contracts, allowing the renewables to sell electric output to any IOU in the state; offer "financial incentives" based on the construction and operation of utility-owned generating facilities that provide for fuel cost stabilization for that IOU; and produce or purchase a specified percentage of its annual net energy for load from new Florida renewable energy sources; and which required the Commission to adopt rules for renewable energy credits. The original bill also specified that the Commission "may" use a statewide generating facility in determining the financial incentives in the contract. These suggestions were rejected and replaced with language that mirrored the text eventually adopted in 2005 (House Bill 77); however, no renewable energy legislation was passed in 2004. In the 2005 session, numerous bills relating to renewable generation were again introduced and considered, including House Bill 77, Senate Bill 494, and House Bill 933, all entitled Renewable Energy. House Bill 77, sponsored by Representatives Littlefield and Ambler, originally began as a bill relating only to waste-to-energy facilities, but an amendment proposed by Senator Bennett added language to the bill creating section 366.91, Florida Statutes. This new text was nearly identical to the replacement language in 2004's House Bill 1551 and to the language in 2005's Senate Bills 494 and 933.

[3]Section 366.051, Florida Statutes, describes "avoided costs" as follows:

> . . . In fixing rates for power purchased by public utilities from cogenerators or small power producers, the commission shall authorize a rate equal to the purchasing utility's full avoided costs. 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. . . .

6. On September 12, 2005, Commission Staff held a workshop to discuss implementation of section 366.91, Florida Statutes. At the workshop, the Commission Staff suggested that the statute's requirements could be implemented initially under the existing Rule 25-17.0832(4) and (5), F.A.C., in order to meet the January 1, 2006, deadline. *See* Staff's Recommendation, Docket No. 050805-EQ, December 8, 2005, at 2. The IOUs were directed to file new tariffs that complied with the statute. *Id.* Gulf, FPL, Progress, and Tampa Electric filed tariffs in Docket Numbers 050805-EQ, 050806-EQ, 050807-EQ, and 050810-EQ, respectively, on October 14, 2005.[4]

7. Staff's recommendation regarding the October 14, 2005, tariff filings proposed two methodologies for setting avoided costs: (1) a single unit approach with one standard offer contract per utility based on the next avoidable unit in each utility's Ten Year Site Plan and (2) a portfolio approach with multiple standard offer contracts per utility based on all technology types in the utility's Ten Year Site Plan. *See* Staff's Recommendation, Docket No. 050805-EQ, December 8, 2005, at 5. At the December 20, 2005, Agenda Conference, the IOUs expressed concerns with certain portions of Staff's recommendation, including the adoption of a portfolio approach; requiring subscription limits up to the entire MW of the next avoided unit; and a minimum contract term of ten years, beginning on the in-service date of the avoided unit.[5] At that Agenda Conference, the Commission approved the IOUs' tariffs, with agreed-to amendments, for six months and instructed Staff to continue working with the IOUs. The Commission's Order No. PSC-05-1260-TRF-EQ, dated December 27, 2005, memorialized that decision.

[4]The tariffs filed by the IOUs in October 2005 included the single unit approach.
[5]Because the beginning of the ten year period is tied to the in-service date of the unit, if a renewable generator chose early capacity payments, the contract period would extend beyond ten years.

8. On January 17, 2006, the Florida Industrial Cogeneration Association ("FICA") and Bay County each filed a petition requesting a hearing and leave to intervene, but requested a hearing be deferred until after a proposed workshop was held.

9. Staff held a workshop on March 6, 2006, to discuss the implementation of section 366.91, Florida Statutes, concerning standard offer contracts for renewable energy resources. As a result of the workshop and having discussed their concerns with Staff, the IOUs agreed to make the following changes to further encourage renewable generation in the state of Florida: that the standard offer contract have a minimum contract term of ten years starting on the in-service date of the avoided unit; that subscription limits be set at the size of the avoided unit; and that the same contracts apply to qualifying facilities with capacities less than 100 kW as required by Rule 25-17.0832(4)(a)3, F.A.C. *See* Staff's Recommendation, Docket No. 060555-EI, September 21, 2006, at 3. Post-workshop comments were filed by Florida Crystals Corporation and the Florida Renewable Energy Alliance, but the renewable generators did not offer any specific rule language to address their concerns. The IOUs filed new petitions for approval of the revised standard offer contracts, containing the agreed upon revisions, in April 2006.

10. Standard offer contracts for renewable energy resources were discussed again at the May 16, 2006, Agenda Conference. At the Conference, Montenay-Dade Limited,[6] Wheelabrator, and Covanta Energy Corporation expressed their respective positions. Also at the Conference, the Commission directed the IOUs to implement the Fossil Fuel Unit Type Portfolio Approach and directed Staff to initiate amendments to Rule 25-17.0832, F.A.C.,

[6]Montenay-Dade Limited stated that it supported Staff's recommendation as to the portfolio approach and the only additional change it suggested was to include a provision that the contract term be from ten years up to the life of the avoided unit, at the renewable generator's option. *See* Transcript of May 16, 2006, Agenda Conference, Docket No. 050805-EQ, May 22, 2006, at 9-11.

regarding standard offer contracts for renewable generators. The Commission's decision was memorialized on June 6, 2006, in Order No. PSC-06-0486-TRF-EQ, which set forth the Commission's findings that the Fossil Fuel Unit Type Portfolio Approach would "best meet the intent of Section 366.91, Florida Statutes, by encouraging the development of renewable energy resources in Florida, providing continuously available standard offers to renewable generators, and encouraging utilities to negotiate contracts with avoided cost and operating characteristics which better match the needs of renewable generators, while balancing the interests of ratepayers." That order was protested by FICA on June 26, 2006.

11. Commission Staff held a workshop to discuss proposed rule amendments on August 23, 2006, in Docket 060555-EI. Post-workshop comments were submitted by the IOUs, City of Tampa/Solid Waste Authority of Palm Beach County/FICA, and Montenay-Dade Limited/Lee County. The renewable generators did not offer specific alternative rule language either at the workshop or in their post-workshop comments.

12. At the October 3, 2006, Agenda Conference, at which the proposed rule amendments to Rule 25-17.0832, F.A.C., were considered, the IOUs stated their acceptance of the proposed rule amendments and the renewable generators again expressed concerns regarding the proposed amendments without offering any specific alternative rule language.

III. THE PROPOSED AMENDMENTS COMPLY WITH SECTION 366.91, FLORIDA STATUTES, AND ENCOURAGE RENEWABLES

13. The proposed amendments make significant changes to the existing rule in order to encourage renewable generation and appropriately implement section 366.91, Florida Statutes.[7] The clear legislative intent of section 366.91, Florida Statutes, is to

[7]In determining a proposed rule's compliance with a statute, the plain language of the statute controls where, as here, the statute is unambiguous and conveys a clear meaning. *See Verizon Fla., Inc. v. Jacobs*, 810 So. 2d 906,

encourage the development of renewable energy resources and, by using payments that equate to the utility's avoided costs, do so without resulting in higher electric costs to customers than they would otherwise pay. In 2006, the Legislature reiterated its intent to create a balanced approach to fostering new renewable energy resources, recognizing that the goal to promote such resources must "at the same time, minimize the costs of power supply to electric utilities and their customers." § 366.92(1), Fla. Stat. (2006).

A. The Proposed Amendments Encourage Renewables by Offering a Variety of Avoidable Units

14. The proposed amendments to Rule 25-17.0832, F.A.C., include considerable changes which work to substantially promote the development of renewable resources. Under the existing version of the rule, the IOUs offered standard offer contracts for each IOU's next avoided unit. In contrast, under the proposed amendments, which contain the Fossil Fuel Unit Type Portfolio Approach, the IOUs are required to offer a standard offer contract to renewable energy producers based on the next avoidable unit of each fossil fuel technology type identified in the utility's current Ten Year Site Plan or on a planned purchase. Thus, the proposed amendments give renewable generators the opportunity to choose from a variety of avoidable units, rather than just the next avoided unit. This change encourages renewable generation by offering the renewable generators more and varied

908 (Fla. 2002); *Starr Tyme v. Cohen*, 659 So. 2d 1064, 1067 (Fla. 1995); FPSC Order No. PSC-06-0078-FOF-TP, Docket No. 040156-TP (Feb. 3, 2006). The legislative intent behind the statute should only be explored when the statute is ambiguous or unclear. *Capers v. State*, 678 So. 2d 330, 332 (Fla. 1996); FPSC Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP (Sept. 10, 2002). If the statute is ambiguous, it is appropriate to look at the legislative intent explicitly expressed in the statute, *see Ervin v. Peninsular Tel. Co.*, 53 So. 2d 647, 653 (Fla. 1951), and at the legislative intent expressed in the legislative staff reports analyzing the bill, *see White v. State*, 714 So. 2d 440, 443 n.5 (Fla. 1998). It is not appropriate to extrapolate the intent expressed by one legislator to the Legislature as a whole. *See Security Feed & Seed Co. v. Lee*, 189 So. 869, 870 (Fla. 1939); *State v. Patterson*, 694 So. 2d 55, 58 n.3 (Fla. 5th DCA 1997); *Fields v. Zinman*, 394 So. 2d 1133, 1135-36 (Fla. 4th DCA 1981). Thus, while the two letters received by the Commission from Senator Bennett may reflect his motives in voting for House Bill 77, his comments cannot be assumed to reflect those of the other legislators who voted in favor of the bill and should only be considered as reflecting his views as the Commission determines the proposed amendments' compliance with section 366.91, Florida Statutes.

choices upon which to enter into a standard offer contract. As the chart below illustrates, for FPL and Progress, this change means renewable generators may choose among three unit types including coal units; for Tampa Electric there are two units from which to choose. Gulf would continue to offer one unit.

AVOIDED UNIT UNDER FOSSIL FUEL UNIT TYPE PORTFOLIO APPROACH				
	FPL	**Progress**	**Tampa Electric**	**Gulf**
Combustion Turbine (CT) Units	2008 CT (160 MW)	2010 CT (161 MW)	2009 CT (97 MW)	No CTs in TYSP
Combined Cycle (CC) Units	2015 CC (553 MW)	2009 CC (1,159 MW repowering)	No CCs in TYSP	2014 CC (600 MW)
Coal Units	2012 Coal (850 MW)	2013 Coal (750 MW)	2013 IGCC (605 MW)	No coal in TYSP

B. The Proposed Amendments Encourage Renewables by Dramatically Increasing Subscription Limits

15. The existing version of the rule does not provide a specific subscription limit, but the Commission has in the past typically approved standard offer contracts with low subscription limits. These low subscription limits were approved because the Commission recognized there was not likely to be sufficient response to the offers to avoid or defer the proposed unit which would lead to customers paying twice for the same capacity (once to generators under the standard offer contract and again for the utility-built generation that would not be avoided). The purpose of the low subscription limits "was to limit the 'subsidy' that . . . would be paid to cogenerators for their capacity and energy while the utility simultaneously built the avoided unit on which these payments were based." *See* Staff's Recommendation, Docket No. 050805-EQ, December 8, 2005, at 8. However, Staff recognized that such low subscription limits could hinder opportunities for potential

developers of renewable energy projects to sign standard offer contracts and addressed this issue by proposing the expansion of subscription limits. Under the proposed amendments, subscription would be constrained only by the size of the avoided unit itself. This significant revision encourages more participation on the part of the renewable generators by making the standard offer contract available to any size renewable generator. Potential suppliers of renewable energy can rely on the provisions of the standard offer contract in developing their project and pursuing financing, in addition to the option of developing a contract with the utility through negotiations.

C. The Proposed Amendments Encourage Renewables by Increasing the Solicitation Period to Always Available

16. Another feature of the proposed rule amendments which encourages the development of new renewable energy resources is the requirement, consistent with the statute, that utilities continuously offer standard offer contracts for renewable generators. Under current rules, a limited solicitation period is permitted. The proposed amendments substantially expand the opportunities for renewable generators to enter into standard offer contracts by requiring that: new standard offer contracts be filed by April 1 of every year; a new contract be filed before an existing contract is closed; and a standard offer contract be made available for each fossil fuel unit type in the Ten Year Site Plan. Developers of renewable energy are assured the availability of a standard offer at any time they may be ready to enter into such a contract – they need not wait for a defined solicitation period.

17. The combination of the greatly expanded subscription limits and the continuously offered contracts results in a sizeable increase in the offerings available to renewable generators under the proposed rule amendments. Under the existing rule, the IOUs have been offering standard offer contracts with low subscription limits and with

limited solicitation periods. For example, Gulf's last standard offer had a 10 MW limit and was open for two weeks after Commission approval. FPL's and Progress' last standard offer contracts both contained a 20 MW subscription limit and were open for two weeks. Tampa Electric's last standard offer contract had a 5 MW limit and was open for three weeks after Commission approval. Under the proposed rule amendments, the subscription limit would be the capacity of the avoided unit, ranging from 97 MW to 1,159 MW, and contracts would continuously be available. In total, the expanded subscription limits allow for contracts totaling up to 4,935 MW.[8]

D. The Proposed Amendments Encourage Renewables by Doubling the Minimum Contract Term

18. Under the current rule, the minimum contract term is five years. In compliance with section 366.91, Florida Statutes, the proposed amendments increase the minimum contract term to ten years, with this period beginning at the in-service date of the unit. This change in the contract term makes standard offer contracts more attractive to renewable generators by offering a longer contract period. A longer standard contract term can make financing new renewable generation more feasible. In addition, since the minimum ten year contract term does not start until the in-service date of the avoided unit, the actual contract period could extend well beyond ten years if the renewable generator chooses early capacity payments. For example, FPL's next planned coal unit is anticipated to go in service in 2012. If a renewable generator entered into a contract with FPL for early

[8]This amount far exceeds the recent estimate "of potential and commercially feasible, near term, and new renewable capacity that could be developed in Florida." The Commission and the Department of Environmental Protection jointly estimated the amount of new renewable capacity that could be developed in the state to be approximately 651 MW, less than one seventh the capacity available for contract under the rules proposed by Staff (4,935 MW). Total existing renewable capacity in Florida, 1,028 MW, is also dwarfed by the capacity available for contract under the proposed rules. *See* An Assessment of Renewable Electric Generating Technologies for Florida (Jan. 2003), at 1 and 2.

capacity payments beginning in 2006 and then the ten year minimum contract period ran from 2012 (the in-service date) through 2022, the actual contract period would be from 2006 through 2022 – for a total of 16 years.

19. Thus, the proposed rule amendments comply with section 366.91, Florida Statutes, to encourage renewable generation by expanding the variety of standardized contracts available to renewable generators, by dramatically increasing the subscription limits, by increasing the solicitation period to always available, and by doubling the minimum contract term.

IV. THE PROPOSED AMENDMENTS COMPLY WITH THE STATUTE REGARDING THE USE OF AVOIDED COSTS

20. The proposed amendments comply with section 366.91, Florida Statutes, regarding the use of avoided costs in standard offer contracts. Section 366.91, Florida Statutes, states that the standard offer contracts offered by the IOUs "shall contain payment provisions for energy and capacity which are based upon the utility's full avoided costs, as defined in s. 366.051." § 366.91(3), Fla. Stat. (2006). That statute provides 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." § 366.051, Fla. Stat. (2006). In 2006, the Legislature reiterated its intent to create a balanced approach to fostering new renewable resources, recognizing that the goal to promote such resources must, "at the same time, minimize the costs of power supply to electric utilities and their customers." § 366.92(1), Fla. Stat. (2006). Both of these objectives – promoting renewable resources and minimizing costs to customers – can be achieved through the proposed rule amendments.

V. THE COMMISSION SHOULD ADOPT AMENDMENTS TO RULE 25-17.0832 AS PROPOSED AT THE OCTOBER 3 AGENDA CONFERENCE

21. The proposed amendments to Rule 25-17.0832, F.A.C., implementing the provisions of section 366.91, Florida Statutes, are reasonable measures to encourage renewables without overburdening current and future retail electric customers with inflated costs. Over the past year, the Commission has held three workshops regarding standard offer contracts for renewable energy resources, has issued two orders, and has considered the matter at three Agenda Conferences. The proposed rule amendments make appropriate changes to the existing rule and provide ample encouragement in the development of renewable energy,[9] particularly when coupled with the incentives and tax credits provided in the 2006 energy legislation. The rule amendments, as proposed by the Commission on October 3, 2006, should be adopted.

Respectfully submitted,

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[9]Indeed, some renewable generators have recognized that the proposed rule amendments encourage renewable resources. "The current proposal set forth in the proposed rule [Fossil Fuel Unit Type Portfolio Approach] . . . should still provide meaningful incentives to the development of renewable energy." Post-Workshop Comments of Montenay-Dade Limited and Lee County Regarding Rules Applicable to Standard Offer Contracts for Renewable Energy, Docket No. 060555-EI, September 13, 2006, at 2. (See similar comments made by Montenay-Dade regarding contract term and subscription limits at pages 3 and 4 of its Post-Workshop Comments).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Investor Owned Utilities has been furnished by U.S. Mail this 25th day of October 2006, to the following:

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