Matilda Sanders

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Friday, November 03, 2006 4:45 PM
To: Rich Zambo; James D. Beasley; Lee L. Willis; Bill Walker; Bryan Anderson; Rob Hunter; John T. Burnett; Paul Lewis, Jr.; Filings@psc.state.fl.us; Susan Clark; Kathryn Cowdery; Susan Ritenour; Angela Llewellyn; Schef Wright
Subject: Electronic Filing - PSC Docket No. 060555-EI
Attachments: 060555.RenewableSOCsHearingComments.Nov03.doc

ORIGINAL

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, Florida.

d. There are a total of 15 pages.

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

(see attached file: 060555.RenewableSOCsHearingComments.Nov03.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

CMP ______
COM 5
CTR ______
ECR ______
GCL ______
OPC ______
RCA ______
SCR ______
SGA ______
SEC 1
OTH kim R

DOCUMENT NUMBER-DATE
10205 NOV-3 8
FPSC-COMMISSION CLERK

ORIGINAL

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: NOVEMBER 3, 2006

COMMENTS AND SUGGESTED RULE LANGUAGE 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 submit these comments and proposed rule language for the Commission's consideration at the rule hearing to be held in this docket on November 9, 2006.

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 and suggested rule language on the following issues:

1. the renewable qualifying facility's choice of the avoided unit as the basis for payments under renewable energy standard offer contracts;

2. 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; and

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

Lee County's and Montenay-Dade's comments follow immediately below. To conserve time and effort, and to provide streamlined comments, Lee County and Montenay do not here reiterate their comments on other subjects; their comments remain as set forth in their Post-Workshop Comments submitted on September 13, 2006. Lee County's and Montenay's suggested rule language is set forth in the Appendix to these comments. Their proposed rule language is interlineated in the version of the rule attached to Commission Order No. PSC-06-0820-NOR-EI, the Notice of Rulemaking issued in this docket on October 5, 2006, and is set forth in **bold and underlined** format to distinguish that language from the proposed changes already set forth in the Notice of Rulemaking order.

Choice of 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. As discussed in their written and spoken comments on this subject, 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 nor 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]

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, for the life of that unit, which may well exceed its projected useful life at the time the investment is made. Those costs will include at least whatever cost the utility represents to the PSC in its need determination

[1] Actually, the exposure with utility-built units is 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.

case, plus future fuel costs, the reasonableness of which will be evaluated against future fuel market conditions. The utility's customers face <u>at least</u> 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.

Lee County's and Montenay's proposed rule language to implement their recommendation is included in subsection 25-17.0832(4)(g)6., F.A.C.

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 and Lee County understand that two of the Florida IOUs include such "equity penalties" or "imputed debt equivalents" in calculating their capacity payments, while the other two do not. Montenay and Lee County strongly believe that no such offset should be allowed in computing payments under renewable standard offer contracts. Allowing such would result in the renewable energy producers being paid less than the utility's full avoided cost and would discourage renewable energy, contrary to the purposes of Section 366.91, Florida Statutes.

Interestingly, another concept advanced at the rule development workshop might address both the renewable energy producers' interests and the utilities' interests in minimizing capacity payments. That concept, advanced by a renewable energy producer, was that "long term fixed energy payments" be available as a payment option under standard offer contracts. To the extent that such long-term fixed payments are perceived as risky,[2] the Commission should simply recognize that the risks

[2] 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 <u>greater</u> than the rates reflected in a fixed-energy-payment contract. In other words,

cut both ways, and that if the front-end calculations and projections are done reasonably, the allocation of long-term risk should fall about 50 percent on each side. To the extent that the utilities have a legitimate concern that capacity payments, notwithstanding their "pay for performance" character, may be perceived as affecting their balance sheets, allocating a portion of capacity costs to energy payments may address such concerns while providing renewable energy producers a potentially desirable payment option.

Lee County's and Montenay's proposed rule language to implement their recommendation to prohibit "equity penalties" is included as proposed new subsection 25-17.0832(4)(j), F.A.C.

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

---

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.

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.

Lee County's and Montenay's proposed rule language to implement their recommendation regarding compensation for avoided carbon-related costs is included as an amendment to subsection 25-17.0832(5)(b), F.A.C.

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

Respectfully submitted this 3rd day of November, 2006.

S/Robert Scheffel Wright
Robert Scheffel Wright
Florida Bar No. 966721
swright@yvlaw.net
John T. LaVia, III
Florida Bar No. 853666
jlavia@yvlaw.net
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile

Attorneys for Montenay-Dade Limited
and Lee County, Florida

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: NOVEMBER 3, 2006

APPENDIX

SUGGESTED RULE LANGUAGE OF MONTENAY-DADE LIMITED AND LEE COUNTY REGARDING RULES APPLICABLE TO STANDARD OFFER CONTRACTS FOR RENEWABLE ENERGY

Montenay-Dade Limited and Lee County submit in this Appendix their proposed rule language for the Commission's rules applicable to standard offer contracts for renewable energy producers. The suggested rule language is interlineated in the version of the rule attached to Commission Order No. PSC-06-0820-NOR-EI, the Notice of Rulemaking issued in this docket on October 5, 2006, and is set forth in **bold and underlined** format to distinguish that language from the proposed changes already set forth in the Notice of Rulemaking order.

25-17.0832 Firm Capacity and Energy Contracts.

(1) No Change.

(2) Negotiated Contracts. Utilities and qualifying facilities are encouraged to negotiate contracts for the purchase of firm capacity and energy to avoid or defer the construction of all planned utility generating units which are not subject to the requirements of Rule 25-22.082, F.A.C. If a utility is required to issue a Request for Proposals (RFP) pursuant to Rule 25-22.082, F.A.C., negotiations with qualifying facilities shall be governed by the utility's RFP process. Negotiated contracts will be considered prudent for cost recovery purposes if it is demonstrated by the utility that the purchase of firm capacity and energy from the qualifying facility pursuant to the rates,

terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility at a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the qualifying facility under the contract. Negotiated contracts with small qualifying facilities and renewable generators, as defined by Section 366.91, F.S., shall ~~not~~ be counted towards the subscription limit of the avoided unit in a standard offer contract~~, thus preserving the standard offer for small qualifying facilities as described in subsection (4)~~.

(3) No Change.

(4) Standard Offer Contracts.

(a) Upon petition by a utility or pursuant to a Commission action, 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 and renewable generators, as defined by Section 366.91, F.S. In lieu of a separately negotiated contract, 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;~~,renewable generating facility as defined by Section 366.91, F.S.; or

2. A qualifying facility, as defined by subsection 25-17.080(3), F.A.C., with a design capacity of 100 kW or less;~~-or~~.

~~3. A municipal solid waste facility as defined by Rule 25-17.091, F.A.C.~~

(b) By April 1 of each year, concurrent with filing a Ten-Year Site Plan, each public utility shall submit standard offer contract(s) based on the next avoidable fossil fueled generating unit of each technology type identified in its Ten-Year Site Plan. Each public utility with no identified planned generating units shall submit a standard offer contract based on a planned purchase.

(c) Individual standard offer contracts shall remain open until either: 1. a request for proposals pursuant to Rule 25-17.082, F.A.C., is issued for the generating unit; 2. the utility files a petition for need determination or commences construction for generating units not subject to Rule 25-17.082, F.A.C.; or 3. the contract's subscription limit, equal to the capacity of the avoided unit, is reached. Before a contract is closed, the utility shall file a petition for approval of a new contract based on the next unit of the same generating technology in its Ten-Year Site Plan, if any. If no generating unit of the same technology is in its Ten-Year Site Plan, the utility shall notify the Director of the Division of Economic Regulation when a standard offer contract is closed.

(d~~b~~) (b) and (c) renumbered as (d) and (e) No Change.

(f~~d~~) A standard offer contract which has been accepted by a utility ~~qualifying facility~~ shall apply towards the subscription limit of the unit designated in the contract effective the date the utility receives the accepted contract. If the contract is not accepted by the utility, its effect shall be removed from the subscription limit effective the date of the Commission order granting the utility's petition.

(g~~e~~) No Change.

1. – 2. No Change.

3. The payment options available to the qualifying facility including all financial and economic assumptions necessary to calculate the firm capacity payments available under each payment option and an illustrative calculation of firm capacity payments for a minimum ten ~~five~~ year term contract commencing with the in-service date of the avoided unit for each payment option;

4. No Change.

~~5. A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the issuance of timely notice of a Request for Proposals (RFP) pursuant to subsection 25-22.082(3), F.A.C., the utility shall end the open solicitation period;~~

5~~6~~. No Change.

6~~7~~. ~~**The**~~ **A space in which the qualifying facility shall specify 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 ten ~~five~~ years, and, at a maximum the life of the avoided unit, 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;~~

7~~8~~. 8. through 10. renumbered as 7. through 9. No Change.

(h~~f~~) (f) and (g) renumbered as (h) and (i) No Change.

1. No Change.

2. Early capacity payments. Each standard offer contract shall specify the earliest date prior to the anticipated in-service date of the avoided unit when early capacity payments may commence. The early capacity payment date shall be an approximation of the lead time required to site and construct the avoided unit. Early capacity payments shall consist of monthly payments escalating annually of the avoided capital and fixed operation and maintenance expense associated with the avoided unit, calculated in conformance with paragraph (6)(b) of the rule. At the option of the qualifying facility, early capacity payments may commence at any time after the specified early capacity payment date and before the anticipated in-service date of the avoided unit provided that the qualifying facility is delivering firm capacity and energy to the utility. Where early capacity payments are elected, the cumulative present value of the capacity payments made to the qualifying facility over the term of the contract shall not exceed the cumulative present value of

the capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(i~~g~~)1. of this rule.

3. Levelized capacity payments. Levelized capacity payments shall commence on the anticipated in-service date of the avoided unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the contract, calculated in conformance with paragraph (6)(c) of this rule. The fixed operation and maintenance portion of capacity payments shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the avoided unit calculated in conformance with paragraph (6)(a) of this rule. Where levelized capacity payments are elected, the cumulative present value of the levelized capacity payments made to the qualifying facility over the term of the contract shall not exceed the cumulative present value of capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(i~~g~~)1. of this rule, value of deferral capacity payments.

4. Early levelized capacity payments. Each standard offer contract shall specify the earliest date prior to the anticipated in-service date of the avoided unit when early levelized capacity payments may commence. The early capacity payment date shall be an approximation of the lead time required to site and construct the avoided unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the contract, calculated in conformance with paragraph (6)(c) of this rule. The fixed operation and maintenance expense shall be calculated in conformance with paragraph (6)(b) of this rule. At the option of the qualifying facility, early levelized capacity payments shall commence at any time after the specified early capacity date and before the anticipated in-service date of the avoided unit provided that the qualifying facility is delivering firm capacity and energy to the utility. Where early levelized capacity payments are elected, the cumulative present value of the capacity payments made to the qualifying facility over the term of the contract shall not exceed

the cumulative present value of the capacity payments which would have been made to the qualifying facility had such payments been made pursuant to subparagraph (4)(ig)1. of this rule.

Proposed new subsection (4)(j):

(j) A utility may not reduce capacity payments by any adjustment for imputed debt or an "equity penalty" or any similar adjustment, it being the intent that the capacity payments for standard offer contracts pursuant to these rules shall reflect the purchasing utility's costs for constructing the avoided unit chosen by the qualifying facility.

Proposed amendments to subsection (5):

(5) Avoided Energy Payments for Standard Offer Contracts.

(a) No change.

(b) To the extent that the avoided unit would have been operated, had that unit been installed, avoided energy costs associated with firm energy shall be the energy cost of this unit**, including any costs associated with the utility's compliance with any carbon emissions or carbon consumption regulatory system applicable to the purchasing utility, including, without limitation, any costs due to carbon taxes or to carbon emissions allowances**. To the extent that the avoided unit would not have been operated, the avoided energy costs shall be the as-available avoided energy cost of the purchasing utility**, which shall also be calculated to include any costs associated with the utility's compliance with any carbon emissions or carbon consumption regulatory system applicable to the purchasing utility**. During the periods that the avoided unit would not have been operated, firm energy purchased from qualifying facilities shall be treated as as-available energy for the purposes of determining the megawatt block size in paragraph 25-17.0825(2)(a), F.A.C.

(6) – (8)(c) No Change.