

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to)
Rule 25-17.0832, F.A.C., Firm) DOCKET NO. 060555-EI
Capacity and Energy Payments) SUBMITTED: DECEMBER 8, 2006
_____)

POST-HEARING COMMENTS OF RENEWABLE ENERGY PRODUCERS
REGARDING RULES FOR STANDARD OFFER CONTRACTS
FOR RENEWABLE ELECTRIC CAPACITY AND ENERGY

Pursuant to the Chair's instructions at the conclusion of the rulemaking hearing held in this docket on November 9, 2006, City of Tampa (Tampa), Covanta Energy Corporation (Covanta), the Florida Industrial Cogeneration Association (FICA), Green Coast Energy, Inc. (Green Coast), Lee County (Lee), Montenay-Dade Limited (Montenay-Dade), the Solid Waste Authority of Palm Beach County (Palm Beach), and Wheelabrator Technologies, Inc. (Wheelabrator) (collectively, "Renewable Energy Producers" or "REPs") appreciate the opportunity to submit these comments for the Commission's consideration as the Commission deliberates on the language in this proceeding.¹

Tampa is a long-time producer of renewable energy and currently can generate approximately 22 megawatts of capacity from renewable resources. Covanta owns and/or operates 31 waste-to-energy facilities and processes more than 15 million tons of municipal solid waste per year. FICA is comprised of a group of cogenerators, many of whom have the ability to provide capacity

¹ The REPs have not reiterated herein all their previously filed comments, which they incorporate by reference. Rather they have

from renewable energy resources. Green Coast seeks to develop renewable energy projects in Florida, and is currently seeking a negotiated contract with Florida Power and Light for firm capacity and energy of a 42 megawatt (gross) biomass facility to be located in Volusia County. Lee County owns the Lee County Resource Recovery Facility. Montenay-Dade operates the Miami-Dade County Resources Recovery Facility, which is owned by Miami-Dade County. Palm Beach owns a waste to energy facility of approximately 50 megawatts located in Palm Beach County, Florida. Wheelabrator owns three plants in Florida: two waste-to-energy facilities located in Broward County with a combined electric generating capacity of 143 megawatts, and a facility that produces electricity from waste wood, waste tires, and landfill gas located in Auburndale, which has an electric generating capacity of 50 megawatts. Wheelabrator also operates the waste-to-energy plant owned by Pinellas County, with a generating capacity of 77 megawatts, and the waste-to-energy plant owned by the City of Tampa, which has a generating capacity of 22 megawatts.

All of the electric generation facilities owned and operated by the Renewable Energy Producers described above generate electricity using renewable fuels within the meaning of applicable Florida law.

attempted to respond to items the Commissioners raised at the

Introduction

The Renewable Energy Producers appreciate the Commission Staff's initial steps set forth in their rule proposal presented at the rule hearing on November 9th, including: setting the subscription limit for each standard offer contract ("SOC") equal to the capacity of the avoided unit that is the basis for each SOC and giving the REP the choice of the term of an SOC between 10 years and the life of the avoided unit.

However, the Renewable Energy producers believe that the proposed amendments will not meaningfully serve the Legislature's declared goals of promoting the development of renewable energy in Florida and protecting the economic viability of Florida's existing renewable facilities, nor the other goals that flow from these. It is clear from Florida's history with the development of cogeneration and small power production facilities that the vast majority of such facilities have been developed when contracts with pricing based on coal units² were available. It is not disputed that all existing

conclusion of the hearing.

² There are about 2,100MW of cogeneration and small power production firm capacity contracts in place in Florida, about 500 MW of which is renewable capacity. (Draft Review of Ten-Year Site Plans, 2006.) Many of these facilities were developed and brought into commercial service based on contracts (negotiated or standard offers) that were based on coal avoided units. (The 1991-vintage "negotiated" contracts through which Florida Power Corporation (now Progress Energy) subscribed approximately 700-800MW of QF capacity were all standard in form and, except for their pricing, were all close to Florida Power's standard offer contract. Thus, while they were in fact negotiated contracts, they were highly standardized, with the QFs bidding capacity

Florida renewable energy facilities, and most likely new renewable electricity generation facilities that could be developed in Florida in the future, have costs and operating characteristics like those of coal-fired power plants. Based on the current Ten-Year Site Plans ("TYSPs") of Florida's investor-owned utilities ("IOUs"), the portfolio approach will not offer coal-based pricing options for *at least 6 more years*. Accordingly, the Renewable Energy Producers strongly believe that the present rules will not meaningfully promote renewable energy in Florida for at least the *next 6 years*. Further, the REPs strongly believe that, unless the Commission finds ways to do more to encourage renewable energy generation, including finding a way to make coal-based SOCs available earlier and more continuously, and moving away from the value of deferral methodology while moving toward revenue requirements as the capacity pricing methodology, the Commission's rules will not meaningfully encourage renewable generation in Florida, as the legislation requires.

Stated differently, as long as the Commission chooses to apply a rigid "utility-specific-avoided-cost" standard and "value of deferral" pricing standard for renewable SOCs, the Commission's rules will not promote new, or protect existing, Florida renewable energy sources. Should the Commission decide

prices at or below Florida Power's avoided costs associated with an avoided coal unit.

to apply, as an established Commission policy, for renewable energy these rigid standards, Florida is unlikely to move forward - let alone become a leader - in developing renewable energy supplies for the benefit of all Floridians. Accordingly, as discussed in more detail below, the REPs urge the Commission to do more to promote renewable energy, and the REPs offer some ways for the Commission to do so.

Separate Rule for Renewable Standard Offer Contracts

The Renewable Energy Producers urge the Commission to adopt a separate rule for renewable energy SOCs. At the rule hearing, there did not appear to be disagreement that a separate renewable rule is desirable. The renewable rule would be similar in structure and content to existing Rule 25-17.0832, F.A.C., but would address renewable energy facilities and SOCs specifically. The REPs believe that a separate rule would recognize the unique position of renewable energy in Florida's energy supply system, and that it would provide opportunities for the Commission to consider rule options specifically designed to promote renewable energy, as directed by the statutes.

The rule should include a requirement that the IOUs annually file, separate and apart from the TYSPs, a renewable energy report. This report should contain, at a minimum, the following:

- The percentage and megawatts of each utility's generation assets that are comprised of renewable energy;
- The utilities' plans, including a time frame for, future development, acquisition, or contract of renewable energy;
- A description of the utilities' existing green pricing programs, including the capacity such programs generate, and plans to implement and/or expand such programs in the future.

**The Commission's Rules Should Promote
Renewable Electricity Generation**

The statutory basis for the Commission rules applicable to SOCs for renewable electricity generation facilities is found in sections 366.051, 366.91, and 366.92, Florida Statutes (2006).³ The REPs believe that the Legislature's language in the newest of these statutes, section 366.92, sets forth goals that are realistic with an appropriate rule in place. The relevant language is found in Section 366.92(1), Florida Statutes, which provides, in its entirety:

(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

³ All references to the Florida Statutes in these post-hearing comments are to the 2006 edition of the Statutes.

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.

Promoting new renewable energy facilities and protecting existing renewable energy facilities are "primary" goals. The other goals - fuel diversification, reduced dependence on natural gas⁴ and fuel oil, minimizing fuel cost volatility, encouraging investment in renewable energy facilities in Florida, and improving environmental conditions - all flow directly from, and are all promoted directly by, the encouragement of new renewable energy facilities and the protection of existing renewable energy facilities in Florida.

The last phrase of the statute - "minimize the costs of power supply to electric utilities and their customers" - does not interfere nor is it in conflict with the statute's goal of encouraging renewable energy as the IOUs appear to suggest. Interpreting this phrase as requiring adherence to a strict, utility-specific avoided cost standard,⁵ as the IOUs urge, has

⁴ \$1/MMBTU increase in natural gas prices equates to \$500 to \$600 million of increased cost to the electric consumer. Renewable energy can help staunch the increased costs arising from increases in natural gas prices.

⁵ The REPs understand that the IOUs' position is that this means that a purchasing utility should pay only, at most, the exact costs that it would incur to generate or purchase additional electric capacity and energy, with the avoided unit forming the basis for any SOC being a utility-specific avoided unit and either having an in-service/start date identical to that of the avoided unit or having the payments adjusted to equate the net present value of capacity costs if the REP is to receive early

the practical effect of negating the other goals of the statute. This could not have been what the Legislature intended, in enacting renewable legislation in not one, but the past two legislative sessions.

The REPs' view that the rigid construction the IOUs urge is incorrect flows from Florida's history with cogeneration and small power production development. The vast majority of such facilities have been developed based on contracts with coal-unit-based pricing. Moreover, with respect to REPs that produce electricity via the combustion of municipal solid waste, the utilities seem to overlook or ignore the fact that revenues in addition to those derived from the sale of electricity are required to financially support such facilities and that those additional revenues are provided by the residents - "ratepayers" - served by such facilities. Those residents have no choice - if the REPs are to be financed, built and operated - but to provide substantial financial support. In essence, residents of the local communities served by such REPS are required to subsidize the utilities and the utilities' customers by making up the shortfall between full avoided cost and the less than full avoided cost resulting from the rules.

All existing Florida renewable energy facilities, and most likely candidates for new renewable electricity generation facilities in Florida, have cost and operating characteristics

capacity payments. Accordingly, this is what the REPs mean

like those of coal-fired power plants. The suggested portfolio approach will not provide coal-based pricing options for at least 6 more years. Given the urgency in the legislation the Commission is implementing, it is unreasonable to suggest that the Legislature thinks that Florida should wait *six years* before any results of encouraging renewable generation are realized. The Commission can - and must - do more to encourage renewable energy and that encouragement must occur now, not *six years* in the future.

Moreover, the IOUs' suggestion that it would be unlawful to establish standard offer contracts based on coal units with in-service dates - for pricing purposes - assumed to be earlier than a utility-planned coal unit is simply incorrect.⁶ First, the Federal Energy Regulatory Commission (FERC) has concluded that "in setting an avoided cost rate, a state may account for environmental costs of all fuel sources included in an all source determination of avoided cost." *Southern California Edison Co.*, 70 FERC ¶ 61,215 at p. 61,676 (1995). Further, FERC declared: "[t]his means that environmental costs, if they are real costs that would be incurred by utilities, may be accounted for in a determination of avoided cost rates . . . A state may only account for costs which actually would be

herein by the term "strict utility avoided cost standard."

⁶ It is the REPs' position that "earned" capacity payments (as opposed to so-called "early payments") to a renewable generator should begin on the date the generator chooses to begin delivery of firm capacity and energy to the grid.

incurred by utilities. A state may, through state action, influence what costs are incurred by the utility. Thus, accounting for environmental costs may be part of a state's approach to encouraging renewable generation." *Id.* at 62,080.

This principle, that the state may encourage the development of environmentally friendly power generation, has equal applicability to the state's power to promote fuel diversity through the promotion of electric generation from renewable resources. As FERC also stated in *Southern California Edison Co.*: "states have numerous ways outside of PURPA to encourage renewable resources," such as the ability to "direct the planning and resource decisions of utilities under their jurisdiction." *Id.* FERC further noted that states may order utilities to build renewable generators themselves, deny certification of other types of facilities if state law so permits or, may even order utilities to purchase renewable generation. *Id.* at 62,079.

Section 366.91, Florida Statutes, is an example of state legislation intended to encourage both fuel diversity and greater use of renewable resources. Under Florida law predating section 366.91, consistent with PURPA, the Florida Commission was empowered to set the avoided cost rates that utilities must pay the owners of qualifying facilities under PURPA. Although section 366.91, Florida Statutes, retains the avoided cost standard, it most clearly manifests the state's intention that

the Commission must fashion policies and rules that will promote the development of renewable resources - including the recalibration of avoided cost. The REPs further note that each utility has its own, and often different, method of calculating avoided cost. The Commission should review these methodologies, not only for firm capacity and energy, but for as available energy as well, to ensure a fair and standardized approach to payment.

To implement the state's objectives, the statute directs the Commission to "establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers" and allows the Commission to "adopt rules to administer this section." The language of the statute is broad and grants the Commission substantial discretion in effectuating the principal purpose of the legislation -- to promote the use of renewable energy to diversify fuel sources. While the statute indicates payments to QFs are based on a utility's avoided costs, if it had *not* been the legislative intent that the Commission recalibrate avoided costs in light of the clearly stated objectives of section 366.91, Florida Statutes, there would have been no point to enacting the legislation. Courts and agencies are required to read a statute as a whole, giving meaning and effect to all of its parts. *U.S. Nat. Bank of Oregon v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 454-55 (1993).

Based on the above, it is the REPs' position that the Legislature has, at a minimum, authorized (and the REPs would urge directed) the Commission to redefine avoided costs for Florida utilities based on the avoided costs of a new statewide base load coal plant. This interpretation is consistent with prior FERC pronouncements in that - in order to meet the state's objective of diversifying fuel sources while promoting renewable energy - utilities must alter their generation mix, an area over which states have been typically given broad discretion. Because the Legislature has determined that the state's utilities have too great a reliance on gas-fired generation, those utilities could, consistent with federal law, be required to purchase and add renewable generation to their generation and fuel mix. The Commission could lawfully define avoided costs based on the cost of adding the type of generating capacity that would provide the requisite fuel diversity while promoting renewable energy in the state - the statewide base load coal plant. Contrary to the arguments of the Florida utilities, the Commission would be on sound legal ground in requiring that a utility's avoided costs must be based on the cost of a statewide base load coal-fired plant when establishing the avoided cost payments for renewable energy facilities under standard offer contracts.

The REPs now direct their comments toward what the Commission might do to thus promote and protect renewable energy in Florida.

Continuously Available Standard Offers Based On Coal Units

It is clear from Florida's history with the development of cogeneration and small power production facilities that the vast majority of such facilities have been developed when contracts with pricing based on coal units were available. It is equally clear that very little renewable or other capacity has been developed in Florida under the current standard offer regime that has been dominated by small-capacity contracts based mostly on CT (peaking) units with low fixed costs, high fuel costs, and very low operating factors.

Accordingly, the REPs strongly believe that the only way that the Commission can meaningfully implement incentives that will promote and encourage the development of new renewable facilities (and encourage the continued operation of existing renewable facilities) is by making contracts available - continuously available -- that have high capacity costs and low operating costs, like coal units and like most renewable energy technologies. Because REPs are like utility-constructed coal plants - in terms of higher capital costs and lower operating costs - it follows that the REP's cash flow and revenue requirements will also be like a utility's. The Commission must therefore also give serious consideration to moving away from

the value of deferral pricing methodology and moving closer to a revenue requirement pricing methodology that more closely approximates both the utilities' and the REPs' revenue and cash flow requirements.

The obvious way to accomplish this is simply to ensure that standard offer contracts based on coal units are available to renewable energy facilities with pricing based on revenue requirements. This approach will accomplish this purpose, which will in turn promote nearly all of the specific goals and purposes set forth in the renewable energy statutes.⁷

**Diversity Provides Additional Value, Which Should Be Recognized
in Payments to Renewable Energy Producers**

Renewable energy will provide physical fuel diversity. If the contracts under which the renewable energy is provided to Florida utilities are based on coal units, then renewable energy provided through those contracts will also provide financial or pricing diversity. When viewed in the context of the Legislature's expressly articulated concern regarding the

⁷ Another option might be to require the investor-owned utilities to annually evaluate the cost-effectiveness of adding coal-priced capacity to their systems, even earlier than they could otherwise build a coal unit. For example, a utility might determine that, if it could hypothetically add 100, 200, or 500 MW of coal capacity in 2009 or 2010, such an addition would be cost-effective vs. other available options. If so, then the utility could - the Renewable Energy Producers would suggest that it should - offer standard offers for 2009 or 2010, as applicable, based on coal units and pricing. If renewable energy producers subscribed to provide this capacity, Florida would get the benefit of more cost-effective capacity than otherwise available to the utility, as well as all of the other

volatility of natural gas and oil prices, pegging renewable energy prices to a statewide avoided coal unit should have a positive impact on Florida's total electric energy costs and rates.

Thus, renewable energy - based on coal-unit pricing - provides fuel diversity benefits to purchasing utilities and their customers, and the Commission should account for this value in setting the standard offer pricing for renewable energy. The obvious, fairly easy way to do this is to provide standard offer pricing options to REPs based on coal unit costs.

Timing of Rule Adoption

The Renewable Energy rule should be adopted promptly, but not before the upcoming Commission renewable energy forum that is tentatively scheduled for January. The REPs understand that this forum, while not directly tied to this rulemaking, will bring together experts in renewable energy from around the country. This forum may produce concepts and approaches the Commission has not previously considered. Accordingly, the Commission should keep the record of this rulemaking proceeding open and available to incorporate the results of the renewable energy forum. Staff indicated that the results of the renewable energy forum would be useful to them in crafting a renewable energy rule that, as the Legislature made clear, promotes renewable energy.

environmental and fuel diversity benefits enumerated in the

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."

The Renewable Energy Producers 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. The Renewable Energy Producers strongly believe that no such offset should be allowed in computing payments under renewable standard offer contracts. Allowing an equity penalty 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.

The Renewable Energy Producers support the specific rule language proposed by Lee County and Montanay to implement their recommendation to prohibit "equity penalties."

statutes.

Standard Offers Based on Fixed Energy Payments

Another concept advanced at the rule development workshop may address both the Renewable Energy Producers' interests and the utilities' interests in minimizing capacity payments.⁸ 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.

There is actually long-standing Commission precedent for this approach arising out of utility conservation programs. As Staff pointed out at the November 9th hearing, the value of deferral capacity pricing methodology was specifically developed in the early 1980s for purpose of measuring the cost-effectiveness of utility conservation programs. REPs understand that the cost-effectiveness of conservation programs depends on a number of factors, including projections of long-term energy prices. If that is the case, the Commission's determination of cost-effectiveness is, in essence, based on long-term fixed energy prices. Because the Commission has chosen to use the value of deferral methodology to calculate capacity payments for REPs, it is logical to also use long-term fixed energy payments based on the estimates of long-term fixed energy prices associated with the avoided unit. That way, both the capacity payments and the energy payments to REPs will be treated in the

⁸ Another option might be to include in the avoided cost calculation, or to eliminate, wheeling charges if a renewable

same fashion as they are for the conservation programs for which the value of deferral was developed. It is not logical or fair to apply only part of the conservation evaluation criteria.

To the extent that such long-term fixed payments are perceived as risky,⁹ the Commission should recognize that the risks 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 % on each side. To the extent that the utilities have a legitimate concern that capacity payments, notwithstanding their "pay for performance" character (as distinguished from "take or pay"-type contracts), 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.

producer in one location sends its capacity to an IOU in a different service territory.

⁹ 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.

Fair Compensation of Renewable Energy Producers for Avoided Costs

The Renewable Energy Producers agree with the Commission Staff that all environmental attributes, including but not limited to renewable energy credits (RECs), are the property of the renewable energy generator. The Commission should make it clear in its rule that all environmental attributes associated with renewable generation remain the property of the renewable generator.

Standardizing the Standard Offer

At the rule hearing, the Commission heard discussion about the difficulty renewable generators have had negotiating reasonable contracts with the IOUs that can be financed. The solution to this problem is not to require more negotiation. It is to put in place a uniform statewide standard offer, which has reasonable terms and conditions (include coal pricing), and which a renewable generator may sign. As noted above, the greatest period of development in Florida of small power production and generation occurred when meaningful standard offers with coal pricing were in place.

The onerous and burdensome terms in the IOUs' contracts defeat the purpose of SOC terms designed to facilitate and encourage the development of renewable generation.¹⁰ Contract

¹⁰ Covanta enumerated just some of the areas in the SOCs which require this Commission's attention: conditions precedent, committed capacity and capacity testing, performance factors,

language and requirements must be standardized for all IOUs to produce meaningful and fruitful negotiations.

In order to have SOCs that are truly meaningful and which REPs can, and will, sign "off the shelf," the Commission should begin a proceeding to design a meaningful standard offer contract which can be financed in the marketplace. A truly "standard" standard offer will greatly facilitate the development of renewable energy in the state.

default and termination, and completion and performance security. Direct testimony of Sami Kabbani at 7.

Conclusion

In order to comply with the goals of the renewable legislation enacted in the last two legislative sessions, the Commission must go much further than the changes it has proposed to its current rules. The opportunity for the Commission to encourage renewable generation for the benefit of all Floridians is at hand. It should do so in this rulemaking.

Respectfully submitted,

City of Tampa

Covanta Energy Corporation

Florida Industrial Cogeneration
Association

Green Coast Energy, Inc.

Lee County

Montenay-Dade Limited

Solid Waste Authority of Palm
Beach County

Wheelabrator Technologies, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Hearing Comments of Renewable Energy Producers Regarding Rules for Standard Offer Contracts for Renewable Electric Capacity and Energy was served via e-mail and U.S. mail this 8th day of December, 2006, to the following:

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