

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060555-EI

In the Matter of:

PROPOSED AMENDMENTS TO RULE
25-17.0832, F.A.C., FIRM CAPACITY
AND ENERGY CONTRACTS.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW
COMMISSIONER KENNETH W. LITTLEFIELD

DATE: Tuesday, January 9, 2007

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

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1 PARTICIPATING:

2 SUSAN F. CLARK, ESQUIRE, representing Gulf Power Co.,
3 Tampa Electric Company, Progress Energy and Florida Power &
4 Light Company.

5 MICHELLE HERSHEL, representing the Florida Electric
6 Cooperatives Association.

7 FRED BRYANT, ESQUIRE, representing the Florida
8 Municipal Power Agency.

9 ROB HUNTER, Director of Operations, representing
10 Green Coast Energy, Inc.

11 KATHRYN G. W. COWDERY, ESQUIRE, representing Ruden
12 Law Firm.

13 JON C. MOYLE, ESQUIRE, representing Wheelabrator
14 Technologies, Inc, Palm Beach County Solid Waste Authority,
15 the City of Tampa, and the Florida Industrial Cogenerators.

16 MICHAEL COOKE, GENERAL COUNSEL, LARRY HARRIS,
17 ESQUIRE, TOM BALLINGER, BOB TRAPP, and ANDREW MAUREY,
18 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: We are back on the record, and we
3 are ready to begin our discussions on Item 3.

4 MR. BALLINGER: Good afternoon, Commissioners.

5 Item 3 is Staff's recommendation for adoption of
6 rules pertaining to renewable generation. On October 1st,
7 2005, Section 366.91, Florida Statutes, became effective, and
8 the statute was passed to encourage renewable generation in
9 Florida. In an effort to move away from a business-as-usual
10 approach to renewable generation, the portfolio approach was
11 first discussed at the December 20th, 2005, agenda conference
12 and many times thereafter: A March 6th workshop, a May 16th
13 Agenda, and an August 23rd Rule Development Workshop.

14 On October 3rd, 2006, the Commission proposed
15 amendments to Rule 25-17.0832 which would codify the portfolio
16 method. The Commission also established another forum for
17 discussing this topic which was the recent rule hearing held on
18 November 9th, 2006. At the conclusion of the hearing, the
19 Commissioners gave staff specific directives to analyze several
20 concepts that were discussed at the hearing. The areas to be
21 more fully explored were the feasibility of a separate rule,
22 how to maintain opportunities for small, and that means less
23 than 100 kW, qualifying facilities under PURPA, the value of
24 deferral methodology, how to include, possibly, a portion of
25 fuel payment in a fixed energy payment, who should select the

1 term of the contract, be it the renewable or the utility, the
2 effects of future carbon regulations on avoided costs,
3 ownership of tradeable renewable energy credits, a case-by-case
4 review of an equity adjustment, the need for annual reporting
5 on renewable generation, and, finally, what to do about
6 mediation dispute resolutions and contract negotiations.

7 These directives and the associated recommendations
8 are shown in the executive summary of the staff recommendation
9 on Pages 5 through 8, and I would suggest to you that might be
10 a handy road map to use as we go through some discussion today,
11 rather than delve into the actual rule language first.

12 After carefully consideration of all the comments
13 presented at the hearing and direction provided by the
14 Commissioners, staff is recommending a separate set of rules
15 for adoption at this time. A separate Part IV dedicated to
16 renewable generation would provide clarity and a centralized
17 statement of the Commission's policy regarding the role of
18 renewable generation in Florida.

19 The new Part IV does refer to existing Part III of
20 our rules to avoid unnecessary duplication of such things as
21 transmission wheeling, value of deferral calculations, and
22 other specifics. The new rules provide multiple pricing
23 options for renewable generators, while adhering to proven
24 concepts of utility planning and sound financial analysis.
25 Thus, the new rules strike a balance between encouraging the

1 development of renewable generation and minimizing costs to
2 Florida's ratepayers.

3 This has been a long journey with many twists, turns,
4 and obstacles, and staff believes that the adoption of the
5 rules would significantly encourage renewable generation, but
6 your vote today is also a springboard into other forums. For
7 example, the Commission has scheduled a workshop on
8 January 19th, 2007, to discuss ways to further encourage the
9 development of renewable generation in Florida. Subsequent to
10 the workshop, staff will provide you with recommendations on
11 various activities or other venues that you can pursue these
12 options.

13 When the IOUs filed their new standard offer tariffs,
14 there will, again, be further discussion about do they go far
15 enough, do they adhere to the rules, and there will be
16 discussions on how do they adhere to renewable generation.

17 And, finally, the Ten-Year Site Plan that is an
18 annual process is another forum that we can openly discuss
19 policies and how are we proceeding with renewable generation in
20 Florida, are we meeting our objectives.

21 There are many interested parties who wish to address
22 the Commission today, and as noted in the staff recommendation,
23 these parties may participate at your discretion. Technical
24 and Legal Staff agree that it would be useful to allow
25 participation today, even though it is a post-hearing

1 proceeding, but it is a rulemaking. As always, staff is here
2 to answer any questions you may have. Thank you.

3 CHAIRMAN EDGAR: Commissioners, as you are aware,
4 often post-hearing we limit discussion and questions to
5 Commissioners and staff. However, as also noted by our staff,
6 this is a rule hearing which is a slightly different procedure.
7 And, as noted, there have been numerous changes to the proposed
8 language through the process, and numerous changes to the
9 recommendation that is before us today since the last time we
10 sat here and discussed this issue.

11 So I think that my suggestion would be that we do
12 open it up and allow discussion and the opportunity to hear
13 from the interested parties that are with us today. However, I
14 do ask that you all please recognize that it has been a good
15 day, but a long day. And, also, please keep in mind that we
16 have had numerous discussions at agenda conference and also at
17 the rule workshop, and please try to limit the amount of time
18 that you need to spend going over the things that we have all
19 already heard and taken into account.

20 And with that, Ms. Clark, please.

21 MS. CLARK: Thank you very much, Madam Chairman, and
22 we do appreciate the opportunity to address you again regarding
23 these rules.

24 I would like to preface my remarks by saying the IOUs
25 recognize the value of renewable energy. We want to do our

1 part to promote the development of renewable energy, and we
2 believe that renewable energy is an important part of
3 diversifying the state's energy resources. You may recall that
4 we were mostly in agreement with the rules as proposed by the
5 Commission before the November 9th hearing. We, again,
6 reiterate that we are in favor of renewable generation and
7 support good public policy to promote the development of new
8 renewable resources in this state.

9 However, the rules, as proposed in this
10 recommendation, do contain some substantial newly drafted
11 changes from what was discussed at the hearing, and a number of
12 those changes are of concern to us. We want to make these
13 concerns known to you now, so there is no misunderstanding
14 about the potential impact of these changes to customers and
15 the likely implementation issues that will result from this
16 rule.

17 One thing I would like to make clear is the IOUs'
18 Position that paying above avoided cost for any generation,
19 including renewable generation, is not in the best interest of
20 customers. Further, the incentives set forth in the proposed
21 rule are not needed for existing renewable generating
22 facilities, and instead of promoting new resources, the
23 incentives may be providing a windfall to existing facilities
24 at the expense of customers.

25 Commissioners, what I would like to do is go through

1 the rules. There are things that I think need clarification or
2 modification, and I think a quick way to do that may be just to
3 go through in chronological order. I will say we have -- also,
4 I want to pass out some rule changes. These are based on some
5 information I got from staff regarding the intent of the rules,
6 and I believe they are just clarifying the intent.

7 While she is doing that, I will just start out with
8 the first one, which is Rule 25-17.210, and it has to do with
9 the definition of a renewable, saying that only 75 percent of
10 the power must be from renewable fuel for this to apply. I
11 don't believe that was discussed at the hearing. And,
12 furthermore, I have questions as to whether it can be supported
13 by the statute.

14 We also believe it encourages and allows renewable
15 generators to burn more natural gas to maximize profits from
16 payments and fails to lessen Florida's dependence on natural
17 gas as is required by statute Section 366.92. We do believe
18 this could potentially cost electric customers more since the
19 utility may have to pay higher prices than would otherwise be
20 the case if the utility produced the energy itself using
21 natural gas.

22 My understanding of the intent of staff was to
23 recognize there are certain conditions under which you may need
24 to burn something in addition to the renewable. The language
25 you have in front of you is from federal statute, and it does

1 describe that you can use minimum amounts required for
2 ignition, start-up testing, and then also in certain
3 circumstances. I understand there is no empirical basis for
4 the 75 percent, so I think language which recognizes limited
5 circumstances under which it may be appropriate to burn
6 something else than renewable should be acceptable.

7 Turning now to 17.250, the standard offer contract.
8 The new rule applies not only to renewable generation, but
9 would also apply to 10 kilowatts or less of QF capacity.
10 However, under the proposed amendments, the other standard
11 offer rule still applies, which is 17.0832. Having both
12 standard offers available to small QFs is unnecessary and would
13 be confusing, we think, to unsophisticated developers of these
14 small QFs, and we suggest deleting the phrase, "And small
15 qualifying facilities with a design capacity of 100 kWh or
16 less," from this section of the rules and leaving the current
17 standard offer contract to apply to these small renewables.

18 Still in Rule 17.50, this has to do with Subsection
19 2A, and the requirement of the continuous offer of the standard
20 offer contract. We had some concerns that this rule does not
21 indicate that when a unit drops out of the Ten-Year Site Plan
22 the utility does not have to keep that standard offer open.
23 And I understand this was staff's intent in drafting the new
24 rule. We just suggest adding language to clarify that when it
25 is no longer part of the utility's plan, the utility can

1 petition to close that standard offer.

2 Regarding capacity payments, we don't have any
3 amendments to suggest to this section, but we do want to
4 comment on the impact of it to customers. This new language
5 allows the generator to choose any payment stream for capacity
6 payment, and this represents increased risk to electric
7 customers associated with the operation of that facility. It
8 breaks the relationship between the time the unit is needed and
9 the time of making payments and moves away from the value of
10 deferral concept.

11 Essentially, payment is required in advance of
12 performance, and this puts the customers at greater risk that
13 they will pay more than avoided cost in the event the generator
14 fails to provide electric generation at the time and in the
15 amount they promised. Also, theoretically a generator could
16 even insist that the entire stream of capacity payments under
17 the contract be paid as a lump sum when the generator goes into
18 commercial operation. We do understand that adequate security
19 can be required for that and to address the necessity of
20 getting replacement power. But please be aware that this is
21 not the same as paying for performance.

22 Further, if the generator does default, it will
23 almost certainly require litigation to enforce the contract
24 provisions which take time and resources. Remember, in
25 contrast to your authority over utilities, this Commission

1 cannot compel the generator to perform and operate that
2 generating facility, but must rely on the enforcement of those
3 contract provisions.

4 The chance of a generator asking for a lump sum
5 payment is not as farfetched as you might think. Keep in mind
6 that under your rules and under statute, county and
7 municipally-owned waste-to-energy facilities cannot be
8 compelled to post security. So it is possible that they could
9 ask for that lump sum payment.

10 You should also be aware of the immediate impact that
11 would have on a customer. The lump sum payment would be passed
12 through to customers in the capacity cost-recovery clause. Let
13 me just give you an example to give you an idea of what that
14 might mean. Using FP&L's avoided coal unit as the standard
15 offer, and then having the renewable choose the life of the
16 avoided unit as their option for the term of the contract. And
17 then asking for an upfront payment in 2012 when the avoided
18 unit would go on-line, you could expect to see an impact of \$3
19 million per megawatt.

20 Now, let me translate that into what it means for
21 rates for those customers. This would translate into three
22 cents per retail customer per month per kW. And assuming there
23 was 1,000 megawatts of power that came on-line at that time,
24 and using the accelerated payment, FPL customers would be
25 paying \$30 a month for that renewable generation. And keep in

1 mind for other utilities that would be even greater because you
2 have a smaller customer base for those utilities.

3 Also, you should keep in mind that under staff's
4 proposal that impact could be accelerated to the time the
5 renewable facility comes on-line as opposed to when the
6 expected commercial operation of the avoided unit under staff's
7 proposal. They can ask for those payments as soon as they
8 start operating.

9 Let me turn to the fixed energy payments. This
10 allows the generator to fix as available energy payments on a
11 year-by-year basis for energy generated prior to when the
12 avoided unit comes into service. Regarding these payments, we
13 understand the section to mean that the fixed payment is set on
14 an annual basis year-by-year. We also understand that the
15 premium called for could be negative or positive. We also
16 understand that this option has to be exercised at the time the
17 contract is executed. I make those statements to make sure we
18 are on the same page as to the impact of this particular
19 provision.

20 Turning now to the firm energy payments, and this
21 would be Subsection 6, Paragraph A. We understand the phrase,
22 quote, a portion of the base energy cost, means a portion of
23 the energy cost that would be paid to that particular generator
24 under the contract. This change allows the renewable generator
25 to be paid years in advance for energy to be generated at a

1 later date. Like the front unloaded capacity payments, this
2 involves an immediate pass-through to customers in the year the
3 energy payment is made. We do have some questions as to what
4 portion of the energy payment is to be firm, and we have
5 suggested language to this Paragraph B which is passed out that
6 makes it clear that it is the energy cost, assuming that unit
7 is being operated, which is currently in your standard offer
8 rules.

9 Let me focus now on implementation issues regarding
10 these options. In the past, the rules and past practices, this
11 contract is one that can be signed by the renewable generator
12 as offered and become immediately effective without need to
13 negotiate terms. In contrast, under these proposed rules what
14 is the standard offer contract loses that concept, because
15 there are a number of options available and the contract itself
16 could not be immediately executed and made effective without
17 negotiations.

18 There are a number of provisions that must be
19 mutually agreed on, and I think Commission involvement in
20 resolving disputes over those items is likely, if not certain.
21 Let me just give you some of those areas that I think are
22 likely to be contentious. The appropriate security and
23 contractual protection for front-end loaded capacity payments
24 and fixed energy payments; the premium for fixed as available
25 energy payments; the portion of firm energy payments to be

1 amortized; and the payment streams available under these
2 various options.

3 Commissioners, I'm not sure this arduous process is
4 in keeping with the statute's goal of facilitating the speedy
5 implementation of contracts for renewable generation. Further,
6 I think you can expect that the utilities will seek your
7 approval for each contract and, likewise, seek assurance that
8 any subsequent regulatory action which rescinds or alters
9 cost-recovery for capacity or energy payments would relieve the
10 utility of making those payments. I would ask that you
11 carefully consider the menu approach to standard offer and
12 whether it involves an improvement or a barrier to facilitating
13 the development of the new renewable generating in Florida.

14 Let me turn to some of the other rules now,
15 25-17.270. We have some language here just asking for
16 clarification. I believe this is staff's intent that the
17 ability to re-open the contract is limited to changes that
18 affect the avoided unit on which the contract is based, and it
19 is not some other unit that might be affected by it. And we
20 have given you draft language that would accomplish that
21 clarification.

22 Regarding Rule 25-17.280, the tradable renewable
23 energy credits, we don't have any suggestions there. We just
24 understand the rule would not preclude a tariff provision
25 giving the IOUs the right of first refusal. I didn't hear in

1 any of the hearings or any of the comments filed that this was
2 an issue for the renewables provided the price is right for
3 that right of first refusal.

4 Turning to 25-17.290, which is the imputed debt
5 equivalent adjustment. We understand this rule to allow an
6 equity adjustment in the avoided cost calculation, and that the
7 utility can seek approval of that adjustment as part of the
8 standard offer tariff approval process, and it's not something
9 that has to be approved on every contract that is entered into.
10 Further, as currently worded in this rule, it requires an
11 evidentiary hearing. We would suggest to you that you modify
12 it slightly to remove the phrase, "As a result of an
13 evidentiary hearing pursuant to Chapter 120, Florida Statutes."

14 This does not change the fact that you could order a
15 hearing if you felt it was necessary, or if somebody objected
16 to it, they could ask for a hearing. The point is only that
17 you shouldn't necessarily have to have a hearing if there
18 wasn't an issue with it and nobody objected to it. It doesn't
19 change your ability to hold such a hearing.

20 The only other comment I have, you have added a
21 section on dispute resolution. I would just suggest to you
22 that I think you can anticipate having disputes and needing to
23 resolve those disputes which will involve your staff and your
24 time and effort in settling those agreements.

25 Madam Chairman, I don't have any more specific

1 comments. If there are comments from the renewable generators
2 that we feel we need to respond to, I would welcome that
3 opportunity.

4 Thank you.

5 CHAIRMAN EDGAR: Thank you, Ms. Clark.

6 MS. HERSHEL: Thank you, Chairman Edgar. I'm
7 Michelle Hershel. I'm with the Florida Electric Cooperatives
8 Association, and I guess I'm going to hit on the only section
9 that Ms. Clark didn't, and that is Section 25-17.300, which
10 defines minimum filing requirements for Ten-Year Site Plans.
11 You already have an existing rule that defines the minimum
12 filing requirements for Ten-Year Site Plans, which is Rule
13 25-22.072 and Form PSC/ECR43, which is incorporated by
14 reference in that rule. Proposed Rule 25-17.300 would create a
15 second rule that defines the minimum filing requirements for
16 Ten-Year Site Plans, and will be located in Chapter 25-17
17 instead of Chapter 25-22, where the existing Ten-Year Site Plan
18 rules are located.

19 Let me be clear that we do not protest the filing of
20 information regarding our use of renewable energy. Seminole
21 voluntarily filed renewable information with its 2006 Ten-Year
22 Site Plan. And if staff wants the information, we will
23 continue to file the information with our Ten-Year Site Plan
24 whether or not the rule is adopted or the existing rule is
25 amended. Therefore, we believe the proposed ruling is not

1 needed. However, if the Commission wants to codify renewable
2 energy filing requirements within the Ten-Year Site Plan, we
3 believe the way to do this is by amending existing Rule
4 25-22.072.

5 In addition to being unnecessarily cumbersome, we
6 believe that it would violate at least the spirit of the APA if
7 the Commission proceeds with the adoption of proposed Rule
8 25-17.300, because you would be maintaining two separate rules
9 in very distinct chapters that both define minimum filing
10 requirements for Ten-Year Site Plans. Consequently, by
11 following the minimum requirements set forth in Rule 25-22.072,
12 a utility still could be in violation of proposed Rule
13 25-17.300, even though they would have no logical reason to
14 look in Chapter 25-17 for Ten-Year Site Plan requirements. And
15 pursuant to Section 366.095, the utility could be subject to a
16 \$5,000 per day fine for failing to file the requirements in the
17 new rule. We sincerely hope that you will not adopt proposed
18 Rule 25-17.300 today and instead consider no rule or else
19 amendments to 25-22.072.

20 In addition, we have a technical issue regarding
21 reporting renewable capacity in Subsection 1 of the proposed
22 rule. Since renewables are defined by the fuel used, not the
23 type of generator, but I think we can resolve that issue with
24 staff if the rule is not adopted today.

25 Thank you.

1 CHAIRMAN EDGAR: Thank you.

2 Mr. Bryant.

3 MR. BRYANT: Thank you, Madam Chairman. Fred Bryant
4 on behalf of the Florida Municipal Power Agency and the
5 Municipal Electric Utilities. We are in support of the
6 electric cooperative's concerns and objections of a procedural
7 nature, and certainly I do not want to promote a form over
8 substance argument, but legal minds tend to be
9 compartmentalized and form often is very important.

10 I think procedurally this is the wrong place to do
11 this, but I want to assure the Commission that all you have to
12 do as far as the Florida Municipal Power Agency or the
13 Municipal Electric Utilities is send us a request for this
14 information in whatever form that you desire, and it will be
15 responded to. I just think the procedure argument is correct,
16 and it should be done someplace else, somehow else.

17 Thank you very much.

18 CHAIRMAN EDGAR: Thank you.

19 MR. HUNTER: Thank you, Madam Chairman. My name is
20 Rob Hunter. I represent Green Coast Energy, a developer of new
21 renewable energy resources.

22 And I applaud staff and everybody's effort in the
23 steps that we have made. I think we have made some very good
24 steps. And I was hoping I could prevail upon staff to clarify
25 a few questions for me before I continue.

1 First of all, regarding full avoided cost, does this
2 new rule require standard offer contracts to include as
3 compensation for the renewable provider the value of the fuel
4 diversity, the fuel price stability and the energy security?

5 MR. TRAPP: Is that a question you would like
6 responded to?

7 CHAIRMAN EDGAR: If you are prepared to do so.

8 MR. TRAPP: Yes. I think to the extent that the
9 Commission takes into consideration fuel diversity concerns,
10 energy security concerns, or any other concerns that affects
11 the selection of the type of unit for the avoided unit and its
12 timing, that those costs are internalized to a calculation of
13 full avoided cost based on the regulations that we know affect
14 capital cost associated with power plants.

15 MR. HUNTER: Thank you. I think that is a very
16 important step to realizing what full avoided cost is, unlike
17 Senator Bennett had presented to us when last we got together.
18 I think it is important that we calculate those. And if so,
19 how much is this value? How are we going to determine what is
20 the value of the fuel price stability, the security to the
21 customers, et cetera?

22 I mean, we can easily calculate the value of
23 electricity itself. For example, the heat rate times the fuel
24 cost. How are we going to quantify what exactly is the value
25 of these other factors?

1 CHAIRMAN EDGAR: Mr. Trapp.

2 MR. TRAPP: Again, my response is that it will be
3 reflected in the capital costs and the fuel costs that are
4 estimated to be attached to the avoided unit.

5 MR. HUNTER: Okay. So this is going to be something
6 that is going to be proposed by the utility in their standard
7 offer when they bring it to the Commission for approval?

8 MR. TRAPP: Well, let me try to explain it better
9 with an example, if I might. In 2003, the Commission looked at
10 the Ten-Year Site Plans of the utilities, and they noted that
11 over the ten-year planning horizon there was a growing
12 preponderance of natural gas in the plans, such that there was
13 an excess of 50 percent after the ten-year horizon period.
14 Noting also that in that time frame we were beginning to
15 experience more volatility and more increase in the price of
16 natural gas, the Commission raised concerns as part of the
17 Ten-Year Site Plan process as to our continued dependence on
18 natural gas as the sole provider of generation for the future.

19 In so doing, the Commission first alerted the
20 industry with respect to the concerns about fuel diversity.
21 The next action the Commission took was to work with the
22 largest single user of natural gas in the state of Florida,
23 which was Florida Power and Light. And through mutual
24 agreement, the Commission basically instructed Florida Power
25 and Light to conduct a coal study. Florida Power and Light did

1 so. The results of that coal study were reviewed in the next
2 year's Ten-Year Site Plan process, and it was deemed
3 appropriate by Florida Power and Light's own cost estimates to
4 start including coal in our planning process.

5 In this last Ten-Year Site Plan process that has
6 materialized even further where the coal unit actually appears
7 in the Ten-Year Site Plans. And in the tariff approval under
8 the old existing rules that we are now improving, Florida Power
9 and Light filed a tariff based on a coal unit. That coal unit
10 was there because of this Commission's concerns about fuel
11 diversity. I would contend that that internalized the cost of
12 fuel diversity and the value of fuel diversity by switching
13 from natural gas to coal, based on projections.

14 Now, there is a leap of faith involved here.
15 Projections are always wrong. Maybe that was a good decision;
16 maybe it was not. We think it was a good decision, because we
17 think the preponderance of the evidence is that natural gas is
18 going to continue to rise in price, and that we need to get
19 into other types of fuel types. So we are seeing more and more
20 coal coming into the plans, nuclear plants coming into the
21 plans. Renewables are a desirable resource to come into the
22 plans because they displace the need for burning natural gas,
23 and we are going to price it at coal. Conservation is
24 important to come into the plans, because conservation
25 eliminates the need to burn fuel at all. So I think all of

1 these actions internalize the cost of fuel diversity and
2 price -- put a proper price, called full avoided cost, on fuel
3 diversity, and that's what's going to be paid to renewables.

4 MR. HUNTER: Thank you. The aim of my questions is
5 that as a developer, I'm really looking at the dollars and
6 cents of the contracts. For example, as of last time our
7 dollars and cents might be here, our needs might be here to be
8 able to finance one of these projects. I'm trying to see how
9 close -- you know, how close are we now. I guess we will be
10 able to look at that more once the contracts themselves are
11 presented for the Commission's consideration.

12 My next question -- I thank you for bearing with
13 me -- is the start date. Would it be correct to say that in
14 this new version of the rule the renewable producer can begin
15 receiving the contractual energy and capacity payments at the
16 in-service date, you know, once we begin actually performing,
17 actually generating electricity?

18 MR. TRAPP: Yes.

19 MR. HUNTER: Okay. And I'm almost done. Fixed
20 energy payments. I know that I have been the squeaky wheel, or
21 one of the squeaky wheels on this issue. I'm very grateful
22 that staff and the Commission are considering this to
23 incentivize renewables. And I agree with staff this would
24 result in a measure of fuel price stability for the ratepayers.

25 Now, that being said, I have read the rule, and I

1 just really want to make sure I understand it correctly. How
2 exactly will the fixed energy payments be handled? It says to
3 be fixed annually, so that will be decided at the beginning of
4 the year based on the fuel projection for that year?

5 CHAIRMAN EDGAR: Mr. Trapp.

6 MR. TRAPP: Let me see if I understand the question,
7 first of all, because there are two fixed energy components to
8 the rule. One has to do with fixed energy payments -- well,
9 actually, fixed energy prices associated with a period between
10 the in-service date of the renewable and the in-service date of
11 the avoided unit. Typically, under these rules and under the
12 old rules, that is an as-available energy price. Then once the
13 avoided unit comes in, you switch over to whatever fuel that
14 avoided unit would be burning, and you price forward on that
15 basis. And there is a provision in the rule to fix a portion
16 of that base energy charge. So I take it from your question
17 you are talking about the first period.

18 MR. HUNTER: Let's start -- let's begin with that.

19 MR. TRAPP: Yes. My understanding is basically what
20 we have built into the rule is a fuel hedging mechanism, which
21 basically says if the parties agree, you can basically fix the
22 price of fuel prior to the in-service date of the avoided unit.
23 And the mechanism by which to do that conceptually, and it
24 probably is going to take some work to work out all the
25 details, is basically the utilities do fuel projections now,

1 it's called the fuel adjustment clause, and they bring those
2 fuel projections to us. They do that annually, and that's as
3 far as we will let them project fuel costs.

4 So the concept was to annually allow the contract to
5 fix that fuel price for renewables, too. Now, we also
6 recognize that there is a volatility. And, again, what we are
7 trying to capture here -- and this is basically in response to
8 concerns about capturing the benefits of fuel diversity now, is
9 that there is volatility with that price. Projections are
10 wrong. They may be higher; they may be lower.

11 The parties are basically instructed by the rule to
12 calculate a risk premium associated with that volatility and
13 include that in the payment. That may reflect the probability
14 of a hurricane occurring within the year and things of that
15 nature. You are going to have to work that out, though,
16 because, obviously, it is not a number that I can know. It's
17 something that will have to be negotiated between the parties.
18 I hope that was clear.

19 MR. HUNTER: Yes, that was clear. It leads right
20 into my next question about the risk premium.

21 CHAIRMAN EDGAR: Mr. Hunter, how many more questions?

22 MR. HUNTER: One.

23 CHAIRMAN EDGAR: Okay.

24 MR. HUNTER: Okay. This risk premium, then, is that
25 being paid as in addition to the payments to the renewable

1 producer to reflect that you are having security over that time
2 as a hedge?

3 MR. TRAPP: It is intended to do so.

4 MR. HUNTER: Okay. Thank you. I have no more
5 questions. And in that case, if we receive standard offer
6 contracts that reflect these new rules, I think that that
7 could, indeed, promote renewable energy in Florida. I think
8 that that last workshop we had helped a lot of us understand
9 more about what we are really dealing with here, and I think
10 that this workshop you have coming up on the 19th would also do
11 so, and perhaps have more value in really solidifying the
12 progress we have made and really solidifying something that
13 everybody can work with. And I would respectfully suggest that
14 perhaps you might want to have that workshop before finalizing
15 the rule itself and closing the docket. And that is the end.

16 Thank you.

17 CHAIRMAN EDGAR: Okay. Mr. Hunter, I thank you for
18 your questions, they were good. And, Mr. Trapp, thank you for
19 giving us good answers, as well. We will proceed down the line
20 and then come back. I have a concern about the suggestion that
21 you've made, so I'm just going to put that out there, and then
22 we will continue with our discussion.

23 Yes, ma'am.

24 MS. COWDERY: I'm Kathryn Cowdery with Ruden McClosky
25 in Tallahassee, Florida, representing Covanta Energy

1 Corporation.

2 Covanta believes that the proposed amendments to Rule
3 Section 25-17 through the addition of Part IV, utilities
4 obligations with regard to renewable generating facilities, is
5 a step forward towards implementation of Florida Statute
6 366.91, to promote the development of renewable energy
7 resources in Florida, but that it is a first step only, and it
8 is an incomplete step.

9 The renewable energy producers participated in this
10 process and presented comments and testimony regarding the best
11 way to implement the law and to aggressively promote the
12 development of renewable energy plans in order to reduce
13 reliance on natural gas in this state. As mentioned in their
14 post-hearing comments, a one dollar per million Btu increase in
15 natural gas price results in about a 300 to \$600-million price
16 increase to the ratepayers in the state. This is the very
17 reason we believe that the aggressive implementation of the law
18 is highly beneficial to the public.

19 However, Covanta feels that the proposed rule does
20 not fully promote the development of renewable plants in this
21 state and does not fully address important issues raised. The
22 primary areas of concern which remain are, first, adoption of a
23 continuously available standard offer contract or contracts.
24 The proposed rule basically suggests mostly negotiated
25 contracts and introduces a formal dispute resolution process,

1 but it does not address the fact that the SOCs are, as they
2 stand now, in Covanta's opinion, not workable and not
3 financeable. Covanta continues to believe that the standard
4 offer contracts should have as much standard language as
5 possible across all investor-owned utilities. And the terms
6 and conditions included in these standard offer contracts must
7 be critically examined and redeveloped to make the standard
8 offer contracts financeable.

9 Second, the avoided cost pricing should be associated
10 with the statewide coal unit that matches the renewable energy
11 producer's cost structure of high capital costs and low
12 operating costs. The suggested portfolio approach will not
13 provide coal-based pricing options for at least six more years.
14 And for some utilities, Gulf Power, no coal-based option is
15 available.

16 And, finally, the rule should move away from the
17 value of deferral pricing methodology and move closer to a
18 revenue requirement pricing methodology that more closely
19 approximates both the utilities' and the renewable energy
20 producers' revenue and cash flow requirements.

21 Covanta looks forward to the January 19th renewable
22 energy workshop as a forum to continue the forward momentum of
23 taking steps to encourage renewable energy production in
24 Florida and intends to participate in that workshop. Covanta
25 reiterates the request made in the renewable energy producers

1 post-hearing comments that the record of this rulemaking
2 proceeding be kept open so as to include the January 19th,
3 2007, workshop.

4 I have gotten a copy of a draft agenda for that
5 workshop. Now, this is probably out of date because it is
6 from, I think, December 21st. But when I review that, we are
7 looking at issues that directly are related to what we are
8 covering in this rule. The Commission is bringing together
9 experts, a lot of people, a lot of knowledge, that are looking
10 at how to encourage renewable production in Florida. It seems
11 to me this is only ten days away, you know, we are going to
12 have a lot of people there. We have got a lot of new
13 suggestions here today. We got some new suggestions today. We
14 still have some questions about implementation. It seems like
15 a very good opportunity to take one more step forward where we
16 might get some new input or we might get some supporting input
17 for past ideas that would affect this rule.

18 Thank you very much.

19 CHAIRMAN EDGAR: Mr. Moyle.

20 MR. MOYLE: Thank you, Madam Chairman. And I will
21 try to be brief. I know you guys have had a long day.

22 For the record, Jon Moyle, Jr., with the Moyle
23 Flanagan law firm, appearing today on behalf of Wheelabrator
24 Technologies, which is a waste-to-energy company. I'm also
25 appearing on behalf of the Palm Beach County Solid Waste

1 Authority, the City of Tampa, and the Florida Industrial
2 Cogenerators. Those are folks who have been actively
3 participating in this case, as well.

4 Let me start by making some general comments that I
5 think we have come a long way from where we were when we first
6 started this rule development process many, many months ago.
7 And I applaud you for doing that. I applaud your staff for
8 doing that. I know it's hard sometimes to look at things
9 differently, but you all have taken steps that we have asked
10 you to consider, and we appreciate that. I mean, we have a new
11 rule. We have, I think, something that is very valuable,
12 which is information about renewables. Before you can make
13 good policy judgments, I think you need to have good
14 information. And I applaud you for actively seeking good
15 information from the electric industry about the amount of
16 renewables that they are currently using and what is in the
17 future. The track recognition, the attribute that the
18 renewable has, I thank you for recognizing that specifically.

19 Ms. Clark made a comment that she wanted to make sure
20 that there is no comments or no issues about a right of first
21 refusal. And I think the renewable energy generators have
22 said, look, we are fine on a right of first refusal provided
23 pricing can be worked out and that the time frame is limited so
24 you don't have somebody wanting to buy and you have an issue
25 where you have got to get the utilities to sign off before you

1 can sell. So I think those are good steps in the right
2 direction.

3 The contract term, the mediation, the equity penalty,
4 I applaud you for taking a look at that. And the way we read
5 it indicating that the utility is not to put the equity penalty
6 in place in a standard offer unless and until they come back to
7 you to seek permission. Now, Ms. Clark said in her comments
8 the way she is reading that is we can go ahead and put the
9 equity penalty in place and then come to you and get approval
10 of that, which I would argue that is not the right reading of
11 that, because it puts the renewable at a disadvantage if they
12 have to sit there and have the equity penalty and its
13 ramifications imposed and then wait on the utility to come to
14 the PSC. We think the correct reading is to say, wait a
15 minute, no equity penalty unless and until at some point in the
16 future the utility comes in and seeks specific approval of
17 that.

18 And you also removed any subscription limit, which,
19 again, was something that we think is a step in the right
20 direction to accomplish the legislative goals of promoting
21 renewable energy in the state of Florida.

22 Covanta made some comments that there are still some
23 work left to do, and Wheelabrator and the others that I am
24 representing agree with that. There is still work left to do,
25 I think, in order to make Florida a vibrant leader in renewable

1 energy. I mean, Commissioner Carter, I think, in one of the
2 first hearings said, you know, we need to be a leader in
3 renewable energy. And I would echo those comments and say we
4 are making steps in the right direction, but we still have a
5 ways to go.

6 You know, pricing is a big issue. Mr. Trapp, when he
7 was, I think, answering one of Mr. Hunter's questions talked
8 about, well, we are now pricing renewables to coal, and we
9 think that will work. We do think pricing it to coal will
10 work. I think you had testimony when others appeared before
11 you that we got a lot of renewables and cogeneration and
12 waste-to-energy when coal pricing was used.

13 Now, there's the opportunity for coal pricing with
14 this portfolio approach, but it is not, as pointed out, as
15 concrete and as certain as having a statewide coal unit, which
16 we continue to advocate that we think on a pricing mechanism a
17 statewide coal unit provides the best way to truly encourage
18 renewable energy in the state.

19 Also, as kind of a subset of that, you don't have
20 vulcanization of markets here. You have a statewide coal unit.
21 If I have, you know, a landfill, representing somebody with a
22 landfill in Jackson County, and there is no coal unit in Gulf's
23 plan for the next 20 years, and I need a coal unit to make the
24 deal work, with the statewide unit I think I can make it work.
25 If I have to wheel the power down to FP&L, it adds additional

1 cost.

2 Contracts terms were mentioned. The equity penalty
3 is one that we have talked about and whatnot. I would venture
4 to say that the standard offer contract has a whole bunch of
5 those types of issues that we should continue to work on going
6 forward to try to get a standard offer contract that has fair
7 and equitable terms, that is transparent, that somebody can
8 pull it up on the Internet and they don't have to come down and
9 talk to staff to figure out whether they want to do business in
10 Florida. They can look at it and say, you know, this looks
11 like a fair contract. It's a fair pricing. I can understand
12 it. It's readable.

13 You know, the Governor just announced this new
14 initiative to have plain English, plain, clear, simple
15 statements. And I think that this would be a good opportunity
16 to take the standard offer contract, make it plain, clear,
17 readable and transparent so that people can look at it. And I
18 would suggest that we continue to work on that.

19 The timing of the payment, Mr. Hunter asked a
20 question that I thought was answered by Mr. Trapp in a way to
21 say that, wait a minute, yes, you now get capacity and energy
22 payments when you deliver your power, which I applaud you if
23 that's the proper interpretation, that when the product is
24 delivered that's when you get your capacity and your energy.

25 And a final point I'll make is there has been talk

1 about deferring this until after the workshop. Madam Chairman,
2 you made comments that you are eager to move this rule forward.
3 It has been a while. We've worked hard on it. You know, I
4 think that in probably ten days if there are likely to come,
5 the result of this workshop is to be some good ideas and some
6 good concepts and notions that move the ball forward to
7 accomplish the legislative goal of promoting renewable energy,
8 that it's probably not a bad idea to consider holding off for
9 ten days or another hearing to finalize this.

10 So with that, I'll conclude and, again, express my
11 appreciation for the work we've done today, but then also note
12 that we believe that there is additional work that needs to be
13 done, as I noted.

14 Thank you, and I'll be happy to answer any questions.

15 CHAIRMAN EDGAR: Thank you. Okay. And, again, I
16 appreciate all the comments. I would like to begin my comments
17 and then open it up, of course, by again sincerely thanking
18 everybody who has participated to get us to this point, to our
19 staff and to all that have been involved back -- and I don't
20 even remember which meeting it was, maybe more than one, but we
21 certainly did have at least one and probably more meetings
22 where we asked for specific recommendations and specific
23 suggestions. And we asked, also, for people to bring us
24 language, and that has been done. We have got, you know,
25 concrete ideas and concrete concerns that were raised as we

1 have worked to get us to this point. Sometimes we express
2 concern that -- we hear concerns with no suggestions as to how
3 to address them. And so people participating and bringing
4 forward suggested language has been very helpful and very much
5 appreciated.

6 I'd like to take a moment and speak to some of the
7 comments we have heard about the workshop that we are having
8 very soon, later this month. And I am thrilled to hear
9 awareness and, hopefully, enthusiasm and participation. I am
10 hopeful and optimistic that that will be another or continuing
11 springboard to further discussion and further work.

12 However, I do note that at the time months ago when I
13 asked our staff to begin to put together some ideas for a
14 workshop to have at the beginning of this year to help kick off
15 some of our discussions for this year, at that point in time, I
16 personally subjectively thought that we would have a rule that
17 had been adopted by this Commission some months ago. We, as a
18 body, chose to take some additional time in order for our staff
19 to do some additional work in order to get more suggestions,
20 and I think that that is a process that has worked well and has
21 well-served the product that is before us. But I do note that
22 when I requested staff to consider helping us put on a workshop
23 that, again, we thought the rule would have been much further
24 through the process than we are.

25 The workshop that we are having, again, I see as a

1 continuation of the discussions that we've had, but also an
2 opportunity. I am hoping for us to focus on some of the other
3 issues that go beyond what this proposed rule language does,
4 and that is more specifically to look at technologies, to look
5 at what is available and, hopefully, doable with inspiration
6 and determination for Florida and in Florida, to look at ways
7 to -- to look at financing possibilities and options, and ways
8 to incentivize, which I think of as going beyond encouraging,
9 but also to incentivize. And so those are some of my concerns
10 personally about holding off a little further on the rule.

11 I do commit to everybody here and everybody of
12 interest that just as one Commissioner, as Chairman for this
13 year, I look forward to, and feel strongly about having many
14 more discussions on all of the issues that are related to what
15 is before us and to looking at alternative energy as an issue
16 that -- in my career I've worked on many environmental issues.
17 I have worked in the energy area for a number of years. And I
18 am very excited that we have as much enthusiasm across the
19 state as we do right now and hope to build on it and leverage
20 on it.

21 I'm going to, I think, here in a minute ask our staff
22 if they can address some of the language and suggestions that
23 Ms. Clark proposed because that is something that is concrete
24 and it is before us. And before I do that, general comments or
25 questions.

1 Commissioner Carter.

2 COMMISSIONER CARTER: Thank you, Madam Chairman.

3 I'm back where I was the last time we were here, and
4 I think it is no secret about, as you said in your leadership,
5 no secret about where we are trying to get to. And it is no
6 secret that we are not lolly-gagging. Remember, we had that
7 discussion. This is not a Commission that lolly-gags. And
8 then at the extent when we had the tremendous amount of time,
9 resources, efforts and parties here, we said give us your best
10 shot. Don't sandbag us.

11 And if I may, Madam Chairman, I would like to be
12 permitted to read into the record two quotations from the
13 statute, because I'm still where I am now is that if we wait to
14 try to get something perfect, we will never get anything done.
15 And we have received two legislative grants, first of all from
16 the 2005 session back when you were in the Legislature, our
17 distinguished colleague, Commissioner Littlefield. Section
18 366.91, Section 1, Florida Statutes says, "The Legislature --"
19 this was from '05, "The Legislature finds that it is in the
20 public interest to promote the development of renewable energy
21 resources in this state. Renewable energy resources have the
22 potential to help diversify fuel types to meet Florida's
23 growing dependency on natural gas for electric production,
24 minimize the volatility of fuel cost, encourage investment
25 within the state, improve environmental conditions, and make

1 Florida a leader in the new and innovative technologies."

2 Mr. Moyle, you are right, I was quoting the statute
3 when I said that. And that is what we all said here.

4 In the 2006 session, I'll read for you 366.92(1). It
5 says again, "It is the intent of the Legislature to promote the
6 development of renewable energy to protect the economic
7 viability of Florida's existing renewable energy facilities,
8 diversify the types of fuel used to generate electricity in
9 Florida, lessen Florida's dependence on natural gas and fuel
10 oil for the production of electricity, minimize the volatility
11 of fuel costs, encourage investment within the state, improve
12 environmental conditions, and at the same time minimize the
13 cost of power supply to electric utilities and their
14 customers."

15 Ladies and gentlemen, as a Commission, we asked you
16 to go back, do your best work. We had our staff devote
17 hundreds of hours of staff time to working with the various and
18 sundry parties to come up with, you know, our best efforts.
19 And now it's time to cut the Gordian knot. You know, are we
20 going to wait until the 2007 session, when they will say again,
21 like was said in 2005, it is our intent; again, like was said
22 in 2006, it is our intent. I mean, I like the way the language
23 was. Madam Chairman, I love the way the language was because
24 it must have been somebody over there listening to our meetings
25 when we said that -- it said they wanted to do it as soon as

1 possible, and at the same time minimize cost of power supply to
2 electric utilities and their customers.

3 We can do this. We have got the will. Do we have a
4 perfect rule? No. We have got a good rule. It's like you
5 said, Madam Chairman. You said, look, when you come back with
6 recommendations, come back with -- I was there -- come back
7 with specific recommendations based upon the rule that staff
8 has drafted. Our staff, in addition to putting together this
9 draft, they spent hundreds of hours talking to all the
10 disparate parties. It is time now. It is time for us to move.

11 And, you know, I'm not trying to rush anybody, but,
12 you know, if you wait long enough a glacier will melt. So it
13 is time for us to -- you know, it's time for us to take a move.
14 And I applaud your leadership on this. You are absolute right.
15 I support you wholeheartedly. This Commission supports you
16 whole-heartedly, because that is what we all said we were going
17 to do, follow the statute passed by our bosses, the Florida
18 Legislature, and signed by the Governor into law.

19 So I think we have got a good product here. Do we
20 have a great product? No. We never will. But this is a very
21 good product that our staff has drafted here based upon the
22 workshops we had, based upon hearing from the Commissioners,
23 based upon hearing from the industry, based upon hearing from
24 the consumer groups. And it is time now for -- I mean, you
25 know, no matter what we do, someone is going to appeal it or

1 they are going to file a challenge, or whatever the case may
2 be, so we may as well move on, Madam Chairman. And that is
3 just, you know, from the whatever-it-is-worth department.

4 Thank you.

5 CHAIRMAN EDGAR: Thank you, Commissioner Carter.
6 Commissioners, are there other general comments?
7 Commissioner Arriaga.

8 COMMISSIONER ARRIAGA: Well said, Commissioner
9 Carter. I join you in the speech. Fantastic. You read our
10 minds.

11 Thank you, Madam Chairman, for clarifying the issue
12 regarding the workshop. Delaying the rule until after the
13 workshop, from what I was feeling around and listening to, may
14 fall us into the trap of spending that beautiful time and the
15 good preparation of that workshop into dealing with this rule
16 all over again and the little details that have not been taken
17 into account or have been, but there is no agreement.

18 So we better dedicate that January 19th date to
19 fruitful discussion of new sources of energy, where we are
20 going from here, financial possibilities, all of those kind of
21 good things that promote renewable energy, not ten hours of
22 going over the same thing that we have gone one over and over
23 and over. So thank you for that clarification.

24 During the hearing there was a lot of confusion --
25 not confusion. There was a lot of questions from the

1 Commission, and there was a lot of direction to the Commission.
2 I do remember that I had to leave a little early, but I came
3 back and I read most of the comments made by the Commissioners
4 instructing the staff to do certain things. And I took the
5 time to meet with you, also, to let you know what I would have
6 said here in public.

7 I asked you to take dearly those considerations into
8 your analysis, and you did. I think you did a fantastic job.
9 This is one of those times where you really interpreted the
10 will of the Commission, one of the many times, but this was
11 exemplary. You really took into account what we were asking
12 you to do, analyzed it and came back, maybe not pleasing us
13 totally.

14 I had already met with you and told you that I had
15 some doubts on certain issues. But, fine, they are nothing
16 really out of this world. But you can't please us all the
17 time, you know. There is a -- you know, as I said this
18 morning, we have, you know, fruitful discussions and agreements
19 and disagreements. But you did a wonderful job taking into
20 consideration our recommendations to you. So thank you for
21 that. That's all.

22 CHAIRMAN EDGAR: Commissioner Littlefield.

23 COMMISSIONER LITTLEFIELD: Just to prove that I can
24 speak. I, too, agree with Commissioner Carter. Up until this
25 point there has been nothing in concrete, and every artist has

1 to have a medium that they use to create that masterpiece.
2 This is not a masterpiece. What staff and what these workshops
3 and what you have done, you have gone to the quarry, and you
4 have pulled out a medium. You have pulled out a piece of
5 marble, if you will, and we have begun chipping away, working
6 toward that masterpiece, working toward what we want it to look
7 like. And knowing that that is a process, knowing that we do
8 not just wave the magic wand and suddenly the masterpiece is
9 there. But with this, we have that medium before us, we have
10 that that we can start chipping away, expanding on, working on,
11 but at least it brings us to the point where we draw the line
12 in the sand, and we move on.

13 So it's interesting that when you look at the IOUs,
14 there are some things that they agree with; some things they
15 disagree with. When you look at the renewables industry, there
16 are things that they agree with; there are things that they
17 disagree with. And so I think we are on the right track. I
18 know that in the Legislature when we were discussing debating
19 bills, if both parties went away not happy, we probably had a
20 pretty good document in front of us.

21 I see a little bit of that in what we have, what we
22 have here. And what that tells me is that we are headed in the
23 right direction. I'm looking forward to hearing more testimony
24 on January 19th. That will give us more tools, that will give
25 us more time to be able to chip off a corner here, chip off a

1 corner, smooth an edge here. But what we have here is a place
2 to start, and when the question is posed today, I will be in
3 the affirmative.

4 CHAIRMAN EDGAR: Thank you, Commissioner.

5 It's getting late; I'm getting tired; but this issue,
6 as we have all said, is very, very important to us. So we will
7 take a little additional time to get us to where we need to be.
8 So I would like to ask our staff to walk us, if you can,
9 quickly through your thoughts, and if you are able to,
10 recommendations on some of the suggested changes and/or
11 clarifications that have been proposed to us by Ms. Clark and
12 by Ms. Hershel.

13 MR. BALLINGER: Okay. I guess I'll take the first
14 one, which was the definition suggestion from the IOUs. I
15 presume that is what you are looking for.

16 Our reading of it is still a primary energy source
17 could be 51 percent using renewable fuel and would qualify. We
18 think staff's 75 percent qualification tightens that a little
19 bit to make sure we get a true renewable out there. It's also
20 based on existing rules that are out there, so we don't have a
21 problem of a potential DOAH challenge of where did this
22 evidence come from.

23 I haven't seen this federal definition of primary
24 energy source. It just gives me a little discomfort. I'm
25 personally biased towards the 75 percent. It's something we

1 discussed back years ago when we first tried to wrap renewables
2 into our standard offer rules. It was acceptable then. I
3 think it still should be acceptable now. And that's my opinion
4 on that one. So I would say to not adopt their changes on the
5 definition, to leave the rule as it stands.

6 CHAIRMAN EDGAR: Okay. I'm going to ask you to keep
7 going, and then, Ms. Clark, I will come back to you, as you had
8 asked for some additional time, and we will give it to you.

9 MR. BALLINGER: Sure. The second suggestion was to
10 strike the portfolio approach, if you will, applying to small
11 qualifying facilities of 100 kW or less. I agree, it is a
12 little confusing to have the 100 kW or less in two parts of the
13 rule, Part III and Part IV.

14 For administrative efficiency, I would like to see
15 them also in Part IV to give them the opportunity to have a
16 portfolio, as well. I don't think there is any harm. I think
17 the utilities would satisfy Part III for the small QFs by doing
18 a portfolio for everybody under Part IV. So I think they would
19 meet the requirements of Part III by just looking at Part IV.
20 From administrative efficiency, I'd like to see it there,
21 because it is one less tariff I've got to look at.

22 The second one, 25-17.250, the suggested additions, I
23 don't have a problem with that. I think in discussions it was
24 very clear, the utility is free to petition us at any time if
25 they want to close a standard offer because a unit is no longer

1 needed. Let's say load decreased or they got a purchased power
2 agreement somewhere else and it changed their plan, come in and
3 petition us, take it off the books. We don't really have a
4 problem with that, this clarification here. So I think we
5 could add their suggested language under 25-17.250. It would
6 be the Part III.

7 The next one, 25-17.250, Part B, the firm energy
8 payments. Again, we think that's a good clarification. It
9 does mean the energy costs associated with the avoided unit.
10 That's where you are going to derive the portion of the
11 payments that could be fixed. We see no problem in adding that
12 to the rule.

13 Again, on the reopener provisions, clarifying that it
14 should be based on the unit which the contract is based.
15 Again, we have no problem with adding that additional
16 clarification.

17 I think here is where we have a little disagreement
18 on the equity penalty, and it's a procedural one. Staff has
19 put the onus, if you will, on the investor-owned utilities.
20 There is a lot of -- staff in the financial section of electric
21 regulation, that is unsure about the equity adjustment. Is it
22 needed, is it a real item, this kind of thing. Well, it has
23 never really been fully fleshed out before the Commission. And
24 we think as an opportunity to fully promote renewables to go
25 ahead and pull it out, not allow it as a standard offer

1 contract, and make the utilities request it as a hearing if
2 they really see it as a necessary item, and put the burden on
3 the utilities, quite frankly, to prove up the case.

4 The utilities want you to put it in to allow them to
5 include it as a tariff and have the renewable request a hearing
6 if they don't like it. We don't think that's the intent of
7 these rules. The intent of these rules is to provide as much
8 flexibility to renewable generators as possible. It should not
9 be their burden to come in and petition the Commission to
10 remove something that is causing a financial hardship. And
11 that is why the rule as we wrote it we think should stand. And
12 the utilities, if they want to include an equity penalty or
13 equity adjustment, should request a hearing by the Commission.

14 I must warn you that that has the potential of
15 delaying this whole process. Because while you are debating
16 the equity penalty, the inclusion or not, what do you do with
17 tariffs? Do we get any tariffs filed? That's an awkward
18 issue, and we're not quite sure how to do it. If we didn't
19 include it at all, I guess, in the rules and spun it out as a
20 separate hearing, you could get some tariffs with an equity
21 penalty, with not -- I'm not sure what's going to happen with
22 it. Who's going to request the hearing first, I guess is what
23 I'm getting at. And I'm not certain how it's going to the
24 handled.

25 The intent of the rule was to put the burden on the

1 investor-owned utilities, to leave it as flexible to the
2 renewables. Unfortunately, I think this issue might cause some
3 delay in the process or has the potential to.

4 CHAIRMAN EDGAR: Okay. Just a moment.

5 Commissioner Tew.

6 COMMISSIONER TEW: I was just going to ask about the
7 right of first refusal that was mentioned, too. I don't think
8 there was any language proposed, but --

9 MR. TRAPP: You are going to get two answers.

10 MR. BALLINGER: You are going to get two answers. In
11 past standard offer contracts that language was in there with a
12 right of first refusal. The disagreement between the renewable
13 generators and the investor-owned utilities was the timing of
14 when they would get back to them of a price. The parties have
15 worked that out. They understand each other, what their needs
16 and desires are. It's basically that the IOU doesn't hold up
17 the selling of a tradable renewables energy credit. So right
18 of first refusal to me is not a problem.

19 MR. TRAPP: If the renewables want to give the
20 investor-owned utilities a right of first refusal, they are
21 free to do so. I have a problem with utilities putting any
22 kind of language or any kind of conditions, you know, on
23 insisting on or we want a right of first refusal in the
24 standard offer contracts. My position is one of purity with
25 respect to policy in the rules. It just basically says that

1 these credits belong to the renewable, they can do what they
2 want to with them. And the IOU will put absolutely no
3 conditions whatsoever on those. There will no leverage on
4 their part.

5 Again, as Tom has said, the intent of the rules is to
6 provide the elections and options to begin with the renewables.
7 Now, the IOU can ask for it, and maybe they can get something
8 for it. But it has to -- the elections have to start with the
9 renewables. The leverage has to be a little tilted toward the
10 renewables, because right now I believe it is too much in the
11 hands of the investor-owned utilities.

12 CHAIRMAN EDGAR: Commissioner Tew.

13 COMMISSIONER TEW: I just wanted to throw this out.
14 Is there any benefit to mentioning that as an option for
15 consideration in negotiations in the same vein that we have
16 other aspects in this rule? I mean, is it something that
17 should be included in there as something that should be
18 considered by the negotiating parties, or is it --

19 MR. TRAPP: I don't think it's that big an issue. I
20 don't think it is that big a money issue or big an issue. I
21 think the IOUs are interested in it for what might happen down
22 the line with respect to tradable renewable credits. And if
23 that's the case, then I think it will come out in the natural
24 course of a negotiated contract. Because once the renewables
25 find out they have got something of value, they are going to

1 use it to trade with.

2 CHAIRMAN EDGAR: Mr. Harris, you may be, and if not
3 tell me, but the person to address the procedural -- I want to
4 call it procedural issue that was raised by Ms. Hershel and
5 Mr. Bryant.

6 MR. HARRIS: Yes, ma'am. In a perfect world, that
7 provision should have been in the Ten-Year Site Plan rule. The
8 problem with the rulemaking provisions are whenever you want to
9 modify a rule you have to properly notice it. And since that
10 rule was not part of the chapter of rules we were modifying, by
11 the time that provision came up at hearing, there wasn't time
12 to go ahead and initiate a rulemaking on the Ten-Year Site Plan
13 chapter.

14 I agree that it would be nice if it was in the
15 Ten-Year Site Plan. I don't think it is fatal that it is not.
16 Their argument has merit. Somebody could say they are
17 legitimately confused. They didn't know they had to do that.
18 I don't see the Commission show causing them for that. I mean,
19 realistically, this is a type -- the Ten-Year Site Plans are a
20 thing that staff works year-around on. If staff see that a
21 report is coming in without that data, they are going to call
22 the utility and say, hey, where is your renewable information?
23 The utility is going to say we didn't know anything about it.
24 And then we say, well, you need to include it. So I don't
25 think it is that big a problem. I don't see it as fatal.

1 If it is your pleasure to not put it in this rule,
2 you heard the commitment from the municipals and the
3 cooperatives that they are going to provide the information to
4 us. So we are confident we are going to get it. We just feel
5 that it is important to put it out there in writing, that there
6 is an affirmative obligation to report this information so that
7 you all can use that information in whatever way you need to.
8 And it is better in our staff's opinion to have it as an
9 affirmative obligation for reporting than just leaving it up to
10 staff to ask it as an informal data request or trusting that
11 the companies are going to include it of their own will.

12 So we would recommend that this rule stay in. If it
13 is not your pleasure, staff will, of course, look at taking
14 whatever direction you give us, whether it's a different
15 proceeding to open a new rule or something else.

16 CHAIRMAN EDGAR: Thank you.

17 Commissioner Tew.

18 COMMISSIONER TEW: Mr. Harris, how long would it take
19 to actually begin a ruling proceeding to put that in the
20 Ten-Year Site Plan rule, assuming no challenges and that we
21 open it for the specific purpose of dealing with that request?

22 MR. HARRIS: The problem with that is you can't do
23 that. You can initiate us -- ask us to initiate rulemaking,
24 and we can open that up next -- I can publish an FAW notice
25 next Tuesday, which will go out ten days from then and get it

1 started. The problem is once that is opened, it opens the
2 entire rule up, and we don't know the universe of concerns that
3 might be existing with the Ten-Year Site Plan. And so it is
4 very possible that we could notice it with just this one
5 addition, and we would get in a bunch of comments or requests
6 for hearing saying, great, we don't care about that, but we
7 really are concerned about reporting this other stuff. And at
8 that point, because it is a rulemaking, we would have to
9 consider those.

10 I'm not saying you would have to take any action, but
11 you would at least have to look at it. Realistically, if
12 nobody has a problem, we could probably have it done in three
13 or four or five months, just because you have these time lines.
14 If somebody wants to file comments or request a hearing, 12
15 months, 18 months. It all depends on how much they want to ask
16 for.

17 CHAIRMAN EDGAR: Ms. Clark.

18 MS. CLARK: Thank you, Madam Chairman. Let me first
19 turn to the staff comments on the 75 percent. I would suggest
20 to you that the language proposed does not open it up to 75
21 percent or even 51 percent. And this is a very important
22 issue. You could have a renewable generator that, in effect,
23 builds a plant that allows them to burn 25 percent of gas, so
24 they can increase the capacity payment they are eligible for by
25 burning gas. And I would suggest to you that's not what you

1 are intending to promote by these rules.

2 This language here comes from federal legislation.
3 And it is, in my view, very clear of the minimal mounts you can
4 use in order to keep that generator going and providing it
5 through renewable resources. This isn't going to encourage
6 them to build a resource where they burn 25 percent gas. It
7 has been in the federal statute. There is no empirical basis
8 for the 75 percent that your staff is suggesting. It happened
9 to be in the existing rules. But if you are thinking about
10 your purposes today, I don't think you want to be encouraging
11 them to build into that facility burning gas on a regular
12 basis.

13 Let me turn to the equity adjustment. I think your
14 staff has indicated the difficulty in putting this on a
15 case-by-case basis. Maybe it's a matter of semantics. We are
16 suggesting that as part of the tariff filing to implement these
17 rules, the utility would have to say if they are including an
18 equity adjustment as part of the capacity calculation. I would
19 remind you in terms of the effect on the customer. It matters
20 not if that purchased power agreement is from a renewable
21 generator or any other generator. It does have a cost in terms
22 of cost of capital, and that is the reason why you have an
23 equity adjustment. And it is not something this Commission
24 hasn't considered over and over again when purchased power
25 contracts have come up, when bids have come up.

1 I would also point out to you the federal law when
2 PURPA was amended required commissions to look at the impact on
3 cost of capital in these purchased power agreements. So it's
4 not a new concept, it's not a new idea. The utilities do
5 understand that as part of their tariff filing they would have
6 to prove up the need for including that in the calculation.
7 And because you are allowing long-term contracts that can have
8 significant amounts of megawatts, it has a significant impact.
9 And you should allow them to prove that up as part of their
10 tariffs.

11 The other item, the right of first refusal, I'm
12 frankly a little confused regarding staff's position on this,
13 because as you recall in those hearings there was no
14 disagreement on the part of the renewable community of keeping
15 that right of first refusal in there. We just want the
16 understanding that when the tariff is filed that can be
17 included in the tariff.

18 Getting back to the equity adjustment for a minute,
19 the exclusion of the evidentiary hearing, we just feel it would
20 be appropriate to have that not be mandatory on this
21 Commission. But, certainly, if you want to hear about that
22 equity adjustment and your staff alerts you to the fact that it
23 is in there, and the utility says in their tariff filing it is
24 in there, that you have the right to request that evidentiary
25 hearing. Likewise, a generator -- a community of generators

1 could ask for the evidentiary hearing. We are just suggesting
2 as a matter of flexibility for you all that you could call that
3 hearing or not, depending on the controversy of it.

4 I think that covers everything. So I would urge you
5 to adopt those good amendments.

6 CHAIRMAN EDGAR: Thank you.

7 MR. HARRIS: Chairman, if I may.

8 CHAIRMAN EDGAR: Yes.

9 MR. HARRIS: Going back to a question you and
10 Commissioner Tew had asked about, the concerns of the
11 municipals and co-ops. In the spirit of moving this rule
12 forward, staff would like to propose, perhaps, something that
13 might meet their concerns and add it to the rule.

14 On Page 23 of the recommendation, the last line,
15 Line 23, which starts the rule. It's titled, 25-17.300,
16 reporting. Each electric utility shall report. We would
17 suggest striking the phrase "at a minimum" and replacing it
18 with "by April 1st of each year." So we strike "at a minimum"
19 and replace it with, "by April 1st of each year." And then it
20 would continue with, "the following information, actual and
21 projected:," and then we would delete the rest of that
22 sentence. So we would delete the entire reference to the
23 Ten-Year Site Plan. And that would require -- that would
24 establish a rule that requires annual reporting of this
25 renewable information, but it would not tie it back to the

1 Ten-Year Site Plan in any way.

2 I don't know that that satisfies all of Ms. Hershel's
3 concerns in that it is in a different part of the rule other
4 than the Ten-Year Site Plan. Since we are not referencing that
5 it might go a long way.

6 CHAIRMAN EDGAR: Ms. Hershel.

7 MS. HERSHEL: I guess I have a question as to what
8 the implementing statute would be for those reporting
9 requirements?

10 MR. HARRIS: 366.051, Subsection 6, I believe, that
11 requires -- says we have jurisdiction for requiring reports,
12 and I can read it to you exactly.

13 CHAIRMAN EDGAR: Mr. Bryant, do you have additional
14 comment or question on that suggested change to try to address
15 the comments made?

16 MR. BRYANT: I think that is a well-placed change,
17 and it is technically correct.

18 CHAIRMAN EDGAR: Thank you. Okay. Commissioners.
19 Commissioner Tew.

20 COMMISSIONER TEW: Just one clarification question
21 for Larry, and I know he is scrambling, but they would still be
22 able to file it as part of their Ten-Year Site Plan because it
23 doesn't suggest where it goes, right?

24 MR. HARRIS: Yes, ma'am.

25 COMMISSIONER TEW: Thank you.

1 MR. TRAPP: It just so happens that is the date of
2 the filing of the Ten-Year Site Plan.

3 CHAIRMAN EDGAR: We love it when a plan comes
4 together. Okay.

5 MS. CLARK: Madam Chairman, I just --

6 CHAIRMAN EDGAR: Yes, ma'am.

7 MS. CLARK: I need a clarification on the small QFs.
8 Is it staff's intent that there will be two -- filing two that
9 are applicable to the small QFs, that they could choose the
10 renewable or choose the other?

11 MR. BALLINGER: Madam Chairman, may I respond?

12 CHAIRMAN EDGAR: Yes.

13 MR. BALLINGER: No. If you file one portfolio that
14 says it is available to 100 kW or less, that satisfies it.

15 MS. CLARK: Well, I guess -- maybe it's a technical
16 issue, but I think you have it in two places. I mean, you have
17 left the 100 megawatts or less still in the existing rule.

18 MR. BALLINGER: Yes. And if you want to choose to
19 file two, you may, or you may file it all as one portfolio. We
20 will leave the option to the IOUs.

21 MS. CLARK: Okay.

22 CHAIRMAN EDGAR: Okay. Commissioners, I think where
23 we are is that we have the language that was proposed by our
24 staff in the item as published here, with the discussion with
25 everyone in this room, we have a slight modification that has

1 been recommended by our staff on Pages 23 and 24 of the rule to
2 address the concerns raised by Ms. Hershel and Mr. Bryant. We
3 have some suggested language changes put forth by the IOUs as
4 have been described by Ms. Clark from the handout she gave us.
5 My understanding is that our staff have told us -- and as
6 always, jump in if I get this wrong -- and I am going to move
7 forward a little bit. Page -- excuse me, suggested language on
8 Page 3, Page 4, Page 5, that the language on those pages they
9 have said that they do not have concerns with. And then that
10 leaves us with some differences of opinion, I think, for the
11 suggested language on Page 1, perhaps on Page 2, and on Page 6.

12 That is my understanding of where we are, and if I
13 have missed one, please tell me. So how would you like to
14 proceed, recognizing that it is about that time?

15 MS. CLARK: Madam Chairman.

16 CHAIRMAN EDGAR: Ms. Clark.

17 MS. CLARK: I think on deleting the small qualifying
18 facility, I think the staff has made it clear that it is an
19 option, that you can file one or two standard offers. That
20 makes it clear to us, so I'm not sure that we would need that
21 change.

22 COMMISSIONER CARTER: (Inaudible. Microphone off.)

23 CHAIRMAN EDGAR: Page 2.

24 MS. CLARK: Right.

25 CHAIRMAN EDGAR: Okay. So, Ms. Clark, am I

1 understanding, then, from the discussion we have had here, that
2 you would be withdrawing the suggestion that is on Page 2 of
3 the handout you gave us?

4 MS. CLARK: Yes.

5 CHAIRMAN EDGAR: Okay. Thank you very much.

6 So then that leaves us with the suggested language
7 that Ms. Clark has put forward on Page 1 and Page 6 of the
8 handout that I am hearing still some difference of opinion.

9 And, Commissioner Arriaga.

10 COMMISSIONER ARRIAGA: Thank you.

11 CHAIRMAN EDGAR: Yes, sir.

12 COMMISSIONER ARRIAGA: Ms. Clark, on Page 1 I heard
13 you several times mention federal regulation, statutes. Are
14 you suggesting some kind of federal case, some kind of question
15 at the federal level?

16 MS. CLARK: No. What I'm suggesting to you, this is
17 language that is known and used in the industry with respect to
18 how you -- what qualifies someone to be within a renewable or
19 QF. And it's the notion of, you know, you don't want a
20 facility that has 25 percent renewables. It is sort of
21 accepted language to describe what is a renewable generator,
22 understanding that you do need some supplemental fuel to start
23 it up, to test it for flame stabilization, and things like
24 that. But you are -- and in emergencies. But you don't build
25 into the renewable unit allowing them to use 25 percent gas.

1 And I would suggest to you that I don't -- it is known, it is
2 used. I don't think it should cause any problems as far as
3 interpretation while introducing the 75 percent. I think it
4 will be contrary to what you are trying to accomplish by these
5 rules.

6 COMMISSIONER ARRIAGA: One follow-up.

7 COMMISSIONER CARTER: We've heard what you --

8 CHAIRMAN EDGAR: Just a minute. Commissioner Arriaga
9 and then Commissioner Carter.

10 COMMISSIONER CARTER: Could we hear from staff before
11 we go to --

12 COMMISSIONER ARRIAGA: No, no. I'm on the same
13 point, follow-up. I was just going to ask staff to please
14 clarify. If this is proper federal standard language, what's
15 wrong with it?

16 MR. TRAPP: Here is our concern. First of all, I
17 want to clarify that staff is extremely sympathetic to the
18 point that Commissioner Clark makes. We think the statute said
19 we want renewables. We don't think it said we want gas. The
20 problem is the statute didn't put a definition of what percent
21 could be generated. It was an issue that was overlooked, I
22 guess, in the statute definitions. You know, when staff was
23 dialoguing this section, I was arguing for 99.99 percent,
24 but --

25 MS. CLARK: I think we would agree with that.

1 MR. TRAPP: We had a little bit of a record
2 difficulty in that that number was nowhere, and so we didn't
3 want to get too outside the record on this thing. And so, you
4 know, my staff referred me back to the existing rule, which was
5 based on federal standards enacted in 1978, the PURPA
6 requirements, that had requirements in there of a 75 percent
7 minimum for something to be called a small power producer, I
8 think, which is basically a renewable. So that is where we
9 came up with the 75. I am extremely sympathetic to not using
10 that number, though.

11 The problem I have with the words "primary energy
12 source," however, doesn't clearly clarify to me that that means
13 anything more than 51 percent. And here is why, and it may be
14 my own engineering bias. I'm so used to looking at the
15 Ten-Year Site Plans that are submitted by the utilities, and
16 they have a column on their generation sheets that says primary
17 energy source. But then they have got another column that says
18 second energy source. And the utilities build power plants
19 that will use dual fuels, and they could use, you know,
20 25 percent gas and an oil unit. And there is fuel switching
21 that goes on out there in the utilities. So I don't think this
22 definition captures what Commissioner Clark, you know,
23 suggested.

24 I would be more comfortable, quite frankly, either
25 leaving it as an open question to be, you know, done on a

1 case-by-case basis by just taking out the 75 percent. Well, I
2 guess what I'm saying is we could adopt her language. I don't
3 think it solves the problem entirely, because I think there is
4 still an open question about what percentage under primary.

5 Another way you can say it is we don't expect -- you
6 could add language that says we don't expect renewable
7 generators to have an alternative fuel source. But I'm not
8 sure about the wisdom of that, because, again, we are beginning
9 to get outside the record. So I am very sympathetic. I'm not
10 sure this is the cure.

11 CHAIRMAN EDGAR: Ms. Clark.

12 MS. CLARK: Madam Chairman, maybe the answer is to
13 just say the primary energy source means the fuel or fuels used
14 for the generation of electric energy. Further, any secondary
15 energy source is limited to the minimum amounts required to
16 such and such and the minimum amounts such and such, maybe that
17 is the way to accomplish it.

18 MR. MOYLE: Can I be heard on this just briefly?

19 CHAIRMAN EDGAR: Oh. Mr. Moyle, yes, sir.

20 MR. MOYLE: You know, I think everybody is trying to
21 go in the right direction. I'm just a little uncomfortable
22 that we are interjecting a term that -- you know, what appears
23 to be the eleventh hour that really hasn't been vetted by my
24 client or others in terms of what the application and use of
25 this primary energy source of the federal term is. I mean, it

1 seems that, you know, that we are really not real sure of it.
2 And I think the safer course of action is to not go with a new
3 term that is introduced really late in the day that we haven't
4 had time to understand and talk with our clients about.

5 MR. BALLINGER: Madam Chairman, another suggestion
6 would be to, basically, revert back to just what was in the
7 statute, which did not have a percentage at all, leave it an
8 open-ended definition and let the companies put something in
9 their tariff, if they want to qualify this, of what the primary
10 energy source means. That is another option to you.

11 MS. CLARK: Madam Chairman, we think that would be
12 acceptable.

13 CHAIRMAN EDGAR: Okay.

14 MR. HARRIS: So we would suggest striking that clause
15 where -- 75 percent at a minimum, we would just suggest
16 striking that. And the sentence would then read to an electric
17 utility where the primary energy source in British thermal
18 units, Btus. So the 75 percent at a minimum would be stricken.

19 CHAIRMAN EDGAR: Okay. Is everybody clear as to that
20 recommendation? I'm seeing nods. Any overwhelming,
21 compelling, absolutely hate it?

22 COMMISSIONER CARTER: Madam Chairman.

23 CHAIRMAN EDGAR: Commissioner Carter.

24 COMMISSIONER CARTER: May I ask you a question?

25 CHAIRMAN EDGAR: Absolutely.

1 COMMISSIONER CARTER: That means that we strike all
2 of the underlined language here.

3 CHAIRMAN EDGAR: On Page 1 of the handout, the
4 suggested underlined new language, Section 6 would be withdrawn
5 as a suggestion, with the change as described by -- I hear
6 something, but I don't --

7 Mr. Harris, yes.

8 MR. HARRIS: I'm sorry, Chairman. What I would
9 suggest is we go to the actual recommendation. And we are on
10 Page 16 of the actual recommendation, and we are on Line 18.
11 So on Page 16, Line 18, staff would suggest striking the words
12 "75 percent at a minimum of." So "75 percent at a minimum of,"
13 we would strike through that. The sentence would then read,
14 "Renewable generating facility means an electrical generating
15 unit or group of units at a single site interconnected for
16 synchronous operation and delivery of electricity to an
17 electric utility where the primary energy in British thermal
18 units, Btus, used for the production," et cetera.

19 CHAIRMAN EDGAR: Okay. Thank you, Mr. Harris. And
20 that is clear to me.

21 Everybody else looks clear, too. Good.

22 Okay. Then I think that leaves one outstanding issue
23 that we have not yet had full nods on, and that would be the
24 issue addressed in the handout, Page 6 of equity adjustments.

25 Commissioner Tew.

1 COMMISSIONER TEW: I may complicate things like I
2 have done many times before, but I would ask staff with respect
3 to this proposal, is there anything short of an evidentiary
4 hearing that could be used to resolve this issue or could be a
5 first try before an evidentiary hearing to resolve?

6 MR. HARRIS: And the answer is yes. You know, let's
7 think about one situation where this might occur. The standard
8 offer contracts are filed as tariff filings. They are brought
9 to the Commission for approval, and no one mentions the -- no
10 one is concerned. Nobody who is part of that year's tariff,
11 you know, proceeding is concerned about the inclusion of an
12 equity penalty -- sorry, equity adjustment. It goes into
13 effect that year. No problem.

14 The next year somebody comes in, Mr. Hunter, and
15 wants to participate in that year's tariff filing for this
16 second year of standard offer contracts. And, again, the IOU
17 includes a provision that the equity adjustment will be
18 applied. Mr. Hunter says, I don't agree with that. You all
19 come to agenda conference, and he presents it, and you all
20 decide one way or the other for that tariff whether you want to
21 include it or not. Let's say you include it again for the
22 second year. Mr. Hunter then has the opportunity to file a
23 request for hearing on that tariff, and it goes to an
24 evidentiary hearing. So that would get us there that way.

25 Our biggest concern, I think, and speaking from staff

1 would be what if Mr. Hunter doesn't come forward, and yet the
2 staff looks at this and says we are not sure that this is
3 applicable in this situation. We are concerned that there
4 isn't enough renewable generation. We are hearing sort of
5 informally that this equity adjustment is causing people to not
6 want to enter into these standard offer contracts. But for
7 whatever reason, they are not hiring attorneys to come forward
8 and protest this.

9 Staff decides they wants to bring it up. We come to
10 the agenda conference. It is filed by the IOUs. Staff in its
11 recommendation to you whether you should approve or not says we
12 believe you should strike this and this is why. You all agree
13 that it should be stricken. I mean, you agree not to strike
14 it, and you decide, for whatever reason, you don't want to
15 follow staff's recommendation. Staff doesn't have the
16 opportunity to file a protest of that tariff. So we might feel
17 very strongly, and you are our bosses and you have hold us to
18 be quiet, but we might still feel very strongly. Versus if it
19 goes to an evidentiary hearing, staff could on its own file a
20 staff witness. And this could be because a renewable generator
21 doesn't have the resources or whatever, or the record is
22 unclear on this.

23 And, you know, staff have filed, you know, testimony
24 before. We would have the ability to do that with an
25 evidentiary hearing. Again, we work for you, and we are not

1 saying we would disregard your will, but what our concern would
2 be is having the ability to present a staff witness in an
3 evidentiary hearing, if that wasn't something that fell out of
4 that tariff filing.

5 And I hope I still have a job when Mr. Cooke is done.
6 But I take comfort that the Gators won last night. So I think
7 the answer to your question, Commissioner, is, yes, if you
8 strike that language, it doesn't necessarily mean that the
9 companies are going to be able to put this through without
10 someone having to come in and talk about it. It just makes it
11 a little bit less likely that there will be a full development
12 of an evidentiary record with all of the facts and
13 circumstances involved in that particular application of the
14 equity adjustment in that particular case.

15 And you'll recall where this originally came from,
16 the order back in 2002 used the terms, you know, on a
17 case-specific or a case-by-case basis. We're concerned that
18 without the evidentiary hearing language, the case-by-case
19 basis could sort of slip through the cracks.

20 CHAIRMAN EDGAR: Ms. Clark. Are you still with us?

21 MS. CLARK: I'm just a little surprised, I guess.
22 Here is how I interpret it. Put a rule there so that staff can
23 demand you hold a hearing. The last time I checked, you all
24 were in charge of the staff. And it seems to me if they
25 suggest a hearing, you know, you will take that to heart and

1 decide whether it's appropriate to have a hearing. This is not
2 changing your authority in any way. It's just suggesting where
3 it's not an issue, where it's not required, the rule doesn't
4 tie your hands.

5 MR. MOYLE: Can I be heard on this, as well?

6 CHAIRMAN EDGAR: Mr. Moyle.

7 MR. MOYLE: This issue, it's getting a little
8 interesting, because I think when your staff --

9 CHAIRMAN EDGAR: It's been interesting all day.

10 MR. MOYLE: -- initially presented the
11 recommendation, they said the way that we interpret our rule is
12 that this equity penalty will not be imposed by the utilities.
13 Because the idea, as they told you, was to promote renewable
14 generation, and this is something that cuts against the
15 renewable generators, so it's not going to be imposed.

16 Ms. Clark, when she made her comments, she said we
17 want to just make clear that you guys will let us impose it,
18 and put it in, and then the renewable energy generators has the
19 burden, has to come in and ask for a hearing. And I think
20 that, you know, we are into this issue, but you all ought to
21 clarify which is it. I mean, is it a situation where it's not
22 going to be imposed, it's going to promote renewable energy,
23 and then if the utilities want to impose it, come in and let
24 them present a case. That satisfies staff's concerns, because
25 they are going to be asking to present evidence and you will

1 have a case.

2 If you go the other way, you know, it has a very real
3 possibility of going the way that Mr. Harris outlined, which is
4 it might not get brought up, there might not be somebody
5 wanting to challenge it at this point in time. And I would
6 urge you to just take the view that it is the interpretation
7 that it's not going to be imposed unless and until the utility
8 comes in and asks to present a case as to why it should be.

9 CHAIRMAN EDGAR: Commissioner Tew.

10 COMMISSIONER TEW: I'll take a crack at it.

11 Mr. Moyle, I didn't interpret what Ms. Clark said
12 exactly the same as you. I think that the reason they have
13 proposed this is because they did interpret it the same way
14 that you have suggested, and they're proposing for us to do
15 something differently. But I will leave that up to Ms. Clark
16 to clarify.

17 But it seems to me that if you took some sort -- I
18 guess where I was going with staff was is there some sort of
19 step before you have an evidentiary hearing every time this
20 comes up, is there some way of determining that. But that
21 aside, I think if you didn't have language like that, I think
22 there would be a necessity to put something in the rule as an
23 indicator to the renewable generator that this is something
24 that you may want to look at and consider. Because I think
25 when we talked about the slipping through the cracks issue, I

1 think you could resolve that by putting something in there to
2 say this is one of those options that could be discussed in
3 negotiations.

4 But I do have some concerns about requiring a hearing
5 every time it comes up. But I do understand why staff has
6 proposed it, and I do think that it is a step forward in
7 promoting renewable generation, and it would leave it up to the
8 Commission on a case-by-case basis to decide if an equity
9 adjustment was appropriate. I may have confused it worse, but
10 that was my take on what Ms. Clark had suggested.

11 MR. HARRIS: Commissioner, if I could add one more
12 comment. I do believe it's the position of staff that you all
13 would have the discretion to set it for hearing. So if a
14 tariff was filed, even if no one comes in and mentions that,
15 your intervenor step would be the Commission on its own motion
16 could say we are going to suspend this tariff filing and set it
17 for an evidentiary hearing for whatever facts we thought were
18 important to flesh out. So you would have that discretion.

19 MS. CLARK: Madam Chairman, I might just give you
20 some background that --

21 CHAIRMAN EDGAR: Can I ask you to hold for just one
22 moment?

23 MS. CLARK: Yes.

24 CHAIRMAN EDGAR: Commissioner Carter.

25 COMMISSIONER CARTER: Thank you, Madam Chairman. For

1 staff, whenever this equity adjustment is applied, it's a
2 financial concern, is it not?

3 MR. HARRIS: Yes, sir.

4 COMMISSIONER CARTER: And wouldn't the utility
5 company have to disclose this information up front, whoever is
6 financing the project? I mean, it's either on their financial
7 statement or someplace. Wouldn't it have to be disclosed?

8 MR. HARRIS: Mr. Maurey is here, and he might can
9 fill in the gaps, but the way I would see it, the company would
10 come in and say that the IOU would put as part of the standard
11 offer contract that the payment stream you select will have
12 some impact on our balance sheet. And in order to make our
13 balance sheet neutral, we will impose some type of equity
14 adjustment on that payment stream to bring us back to
15 neutrality.

16 And then as this menu option would go through, the
17 calculations would fall out, and at the end of it there would
18 be some type of payment stream developed. And then I believe
19 the IOU would come back and say, okay, based on this payment
20 stream, the liability impact, the imputed debt impact on our
21 balance sheet is X. Therefore, we need to offset that with Y
22 equity for reducing that stream of payments that we pay to you
23 and crediting it to our balance sheet to offset that in the
24 amount of Y. Where X equals Y.

25 So that would be disclosed in the negotiations, that

1 would be part of the development of the actual contract itself.
2 So, yes, but I don't think it would be developed in the form of
3 a part of the tariff that just says for every case we are going
4 to automatically apply, you know, one dollar per million Btus,
5 or one dollar per megawatt, or something like that as an equity
6 adjustment. I think it would be something that would be
7 contingent on the terms of the actual contract and would be
8 developed with the renewable generator and the IOUs in their
9 negotiating trying to come up with the payment streams and the
10 options and everything that we discussed earlier.

11 COMMISSIONER CARTER: Madam Chairman, just a
12 follow-up comment. I just don't want us to lose perspective of
13 what the legislature has charged us with doing. We don't want
14 to have a chilling effect on the renewable community. We want
15 them to say come on to Florida. We want -- they gave us a
16 legislative mandate, you know. I don't want to bore you with
17 reading that again, but we have a legislative mandate to create
18 an environment, a user friendly, for lack of a better word, a
19 user friendly environment for renewables to be part of our
20 energy mix.

21 And, you know, if you start throwing curve balls to
22 people and you start looking at your finances and say, you
23 know, you have got this charge here that we didn't know about,
24 so all of a sudden your plant is not -- we can't loan you the
25 money, sorry. You know, there is a good deal of burned trash,

1 but, nah, we don't want to do that. So you get into a whole
2 perspective. And the goal, as I read the legislation, both
3 from '05 and '06, is that they said we want to promote
4 renewables. Is that the way -- am I reading something wrong?

5 MR. HARRIS: That was our intent in including that
6 provision the way it was worded, yes, sir.

7 COMMISSIONER CARTER: Okay. I thought so. Thank
8 you, Madam Chairman.

9 CHAIRMAN EDGAR: Mr. Hunter.

10 MR. HUNTER: Thank you, Madam Chairman.

11 I would agree entirely with what Commissioner Carter
12 just said. It could, indeed, have a chilling effect having
13 this unknown on your standard offer contract that you are
14 trying to obtain financing for. Because, especially if it's
15 stated forth, one dollar per megawatt, et cetera, if it is
16 buried in a set of formulas in the very back of the contract,
17 and not knowing exactly what it is from day one. I would agree
18 with the way that staff has it put forth, because that way the
19 burden lies upon the utility to come forth and prove that it's
20 necessary, and then to prove what the actual impact will be of
21 it.

22 CHAIRMAN EDGAR: Thank you.

23 Ms. Clark.

24 MS. CLARK: Madam Chairman, I think there is some
25 confusion here. We are not intending to file a tariff that we

1 don't tell you it includes an equity adjustment. We would tell
2 you and seek your approval of that adjustment. I might point
3 out that in previous standard offers, particularly with respect
4 to FPL's standard offer, staff has looked at it, been aware
5 that there is an equity adjustment in there, and specifically
6 made a recommendation on that. All we are saying is allow that
7 to be a part of the tariff approval process, it is disclosed to
8 us, and a decision is made by you on including that equity
9 adjustment.

10 CHAIRMAN EDGAR: Mr. Moyle.

11 MR. MOYLE: My understanding, and Mr. Wright spoke to
12 us at one of our hearings, is that other utilities have not
13 filed a tariff that have not had the equity penalty in it, and
14 if given a choice, if you have to, you know, send a statement
15 or make a statement about should it have the equity penalty in
16 it or should it not, if you are going to promote renewable
17 energy, I would argue it should not have an equity penalty in
18 it.

19 CHAIRMAN EDGAR: Commissioners?

20 Commissioner Arriaga.

21 COMMISSIONER ARRIAGA: You are the financial wizard
22 here at the Commission, and kindly -- and you have been to New
23 York and you know Wall Street and all of that, and you just
24 went through this bond issuance, you know, it is a very intense
25 process.

1 How much does Wall Street or the financial community,
2 how much attention do they pay to these equity payments?

3 MR. MAUREY: Well, Commissioners, its more of the
4 rating agencies that consider the situation that Ms. Clark is
5 describing, the equity adjustment. Or really it is the imputed
6 debt that the rating agencies put on the balance sheet for
7 purchased power. However, it's not clear what the impact on
8 the cost of capital for IOUs are under all circumstances
9 involved in purchased power. Sometimes, depending on how
10 strong the utility is before that analysis is made, there may
11 be a minimal impact. So it's not a universal declaration.
12 Many factors go into the determination of the cost of capital,
13 but it is a focus of their analysis.

14 COMMISSIONER ARRIAGA: So if it didn't even exist,
15 would it make a difference?

16 MR. MAUREY: It is relevant to some utilities.
17 Utilities that are not well capitalized, that have low equity
18 ratios, it is a very real concern. Utilities that are well
19 capitalized, like the utilities in this state that have very
20 high equity ratios, it's not as much of a concern.

21 COMMISSIONER ARRIAGA: Okay.

22 MS. CLARK: Madam Chairman, if I --

23 CHAIRMAN EDGAR: Ms. Clark.

24 MS. CLARK: -- could just interject. It does have a
25 significant impact on a utility's cost of capital. For

1 instance, if you have 1,000 megawatts, it could translate into
2 \$3 billion of debt for that utility. That will affect the
3 rating agencies' assessment of the quality of debt and quality
4 of their equity. You may have, let's say, I don't know, my
5 math isn't that good, maybe 100 contracts of ten megawatts or
6 ten contracts of 100, but they add up to the same amount, they
7 add up to the same impact, and it is a cost to the utility's
8 customers. You know, if it isn't paid, recognized here, you
9 need to recognize that it will have an impact on the cost of
10 capital to customers.

11 It should be an item that is left for the tariff, for
12 the utility to come in and say we believe it is the right thing
13 to do. Staff can highlight it to you as part of the tariff,
14 and the utility can put on their case as to why it needs to be
15 included in there. We are just suggesting that you don't
16 mandate an evidentiary hearing. It could be held at your
17 discretion. You always have the discretion to conduct an
18 evidentiary hearing when you are uncertain about a policy to
19 develop.

20 CHAIRMAN EDGAR: Commissioner Carter.

21 COMMISSIONER CARTER: Thank you, Madam Chairman.
22 Here is my concern about taking it out is that it is always an
23 option. It's always an option. The utility can negotiate a
24 contract with a renewable and it's not even an issue. But if
25 you don't negotiate, then it's an issue, because then you can

1 have it to hide behind. And the legislature was unequivocal in
2 terms of what they want us to do. And we have got to set out
3 the welcome mat for renewables to come to Florida. We can't
4 continue to be heavily reliant on gas and oil. We have got to
5 have a diversity of fuel mix. And I tell you, even with this
6 language in here, we don't have to have an evidentiary hearing,
7 because staff can say the parties got together, Madam Chairman,
8 they negotiated and we are presenting this as a stipulated
9 agreement between the parties, and we're done.

10 But to not put it in there, it just seems to me that
11 it seems like we are putting the unwelcome mat out there for
12 renewables. And I don't think that is what the legislature had
13 in mind. I just think -- we want to show -- if you really want
14 to change the paradigm, then you have to go beyond, you have to
15 make a paradigm shift. Is that if we keep doing what we have
16 always done, we'll always get what we have always gotten.

17 The legislature spoke to us in '05, they spoke to us
18 in '06, we'll be here again in '07. We need to put out the
19 message loud and clear that Florida is welcoming renewables of
20 all kinds. And I don't think that this is an unnecessary
21 burden on the utilities. They can say, look, we negotiated it.
22 It's a contract anyway. You're going to negotiate the contract
23 anyway. I think this is much ado about nothing.

24 CHAIRMAN EDGAR: Mr. Harris.

25 MR. HARRIS: If it is the Commission's pleasure,

1 staff has attempted to wordsmith the changes suggested by
2 Ms. Clark on Page 6, and we have an alternative we would
3 propose that you might consider that we think meets her needs
4 and accomplishes our goal in promoting renewables. And that
5 would be to -- I will start from the beginning of the sentence
6 and then tell you where the change is. "An investor-owned
7 utility shall not impose any imputed debt equivalent
8 adjustments (equity adjustments) to reduce the avoided costs
9 paid to a renewable generating facility," and here we would
10 make the change, "unless the utility has demonstrated the need
11 for the adjustment and obtained the prior," and then we would
12 continue with, "approval of the Commission." So we would
13 strike the remaining language that Ms. Clark has indicated
14 should be stricken, the evidentiary hearing part.

15 We believe that would give you all the opportunity --
16 the utility would have the burden of demonstrating the need for
17 the adjustment, and they would have to obtain your prior
18 approval, and that could be done through the tariff filing.
19 They would include it in the tariff, in the standard offer
20 contract, demonstrate the need, and if you all were concerned,
21 you could suspend the tariff and take it to a hearing within
22 the eight months. If you weren't concerned, you could go ahead
23 and order it. We think that would accomplish everyone's goals.

24 CHAIRMAN EDGAR: Okay. Mr. Harris -- in just a
25 moment, Commissioner Carter.

1 If you would, I understand what you're saying, but if
2 you would read the language as you have suggested it one more
3 time so I know that I have it before me and us.

4 MR. HARRIS: Yes, ma'am. It would say, "Unless the
5 utility has demonstrated the need for the adjustment and
6 obtained the prior approval of the Commission."

7 CHAIRMAN EDGAR: Commissioner Carter, did you have
8 further --

9 COMMISSIONER CARTER: You read my mind -- (Inaudible.
10 Microphone off.)

11 CHAIRMAN EDGAR: Okay. Mr. Harris, thank you for
12 that suggestion.

13 Ms. Clark, do you have thoughts?

14 MS. CLARK: Absent any nodding of heads differently
15 behind me, I think that is acceptable.

16 CHAIRMAN EDGAR: Okay. I think we may be close.

17 Nope, nobody is grabbing their chest.

18 Mr. Moyle, I know you had some concerns earlier, do
19 you have anything you would like to share with us on this
20 point?

21 MR. MOYLE: If I'm reading it properly, I think that
22 it would suggest they have to obtain approval to impose the
23 equity adjustment or the equity penalty from the Commission
24 prior to doing so. So if I'm reading that correctly, I think
25 I'm okay with it.

1 CHAIRMAN EDGAR: Mr. Harris is nodding. That is my
2 understanding from our discussion.

3 MR. HARRIS: Yes, ma'am. That's correct.

4 CHAIRMAN EDGAR: Okay. All right. We are about
5 there.

6 Commissioners, further questions, clarifications,
7 discussion?

8 I will give it a shot here. I think, kind of, from
9 our discussion and the back and forth, the productive back and
10 forth, we have from the item language before us we have a
11 suggested language change, the deletion of the 75 percent
12 language on Page 16, the deletion of language on Page 24 which
13 addressed the concern of the co-ops and the municipals. We had
14 the language withdrawn -- no, I have already addressed that.

15 Then with those two suggested changes by our staff,
16 the handout that Ms. Clark had given us, Page 1 has been
17 addressed, and so that language would be withdrawn. From the
18 clarifying discussion that we had, Page 2 would be withdrawn.
19 We have had a nod of assent from our staff for the language on
20 Page 3, Page 4, Page 5, and then the just discussed suggested
21 language change on Page 6. And that is my understanding of
22 kind of the point that we have reached.

23 Are there questions? Commissioner Tew.

24 COMMISSIONER TEW: Sorry, I had forgotten about this
25 until we went back and looked at Page 24, but I remember

1 Ms. Hershel pointing out that the word capacity she didn't
2 believe was technically correct. And I wondered if we needed
3 to address that or at least have technical staff address that
4 so that we're clear.

5 CHAIRMAN EDGAR: Katrina -- I'm sorry, Commissioner
6 Tew. I apologize.

7 COMMISSIONER TEW: That's okay.

8 CHAIRMAN EDGAR: I'm not sure I got all of it. So if
9 you could just repeat that.

10 COMMISSIONER TEW: It was on Page 24 of the staff
11 recommendation. I believe Ms. Hershel -- and I'm not clear
12 exactly as to what she said, but I think it was in (1) at the
13 top, the total megawatts and percentage of each utility's total
14 capacity mix comprised of renewable generating capacity.

15 I believe she took issue with the word capacity, but
16 I'm not -- it was something along the lines of renewables are
17 defined by the fuel used.

18 MS. HERSHEL: That's right. In the statute the
19 definition of renewable resources refers to fuels used and not
20 capacity. So we did have a slight problem with that language.

21 MR. BALLINGER: If I may address that, staff was just
22 looking for a megawatt count of renewables that you have, and
23 then Part II was megawatt hours that you get from the
24 renewables. I understand they are based on fuel, but of that
25 fuel type, how many megawatts do you have on your system. And

1 then Part II is how many megawatt hours do you purchase from
2 them.

3 COMMISSIONER TEW: Chairman, I'm not proposing that I
4 have an issue with it, I just didn't want it to go unaddressed.
5 I think that we had forgotten that earlier.

6 CHAIRMAN EDGAR: I appreciate you raising it. I have
7 been trying to keep track of it all, but that had slipped past
8 me.

9 Ms. Hershel, do you have further comments?

10 MS. HERSHEL: Subject to check, I think that will be
11 okay, the way the language is right now. And, if not, I can
12 get together with staff and discuss it.

13 CHAIRMAN EDGAR: All right. Thank you very much.

14 COMMISSIONER CARTER: (Inaudible. Microphone off.)

15 CHAIRMAN EDGAR: Mr. Bryant, you're comfortable with
16 where we are? Okay. Thank you.

17 Commissioners, I think I'm ready for a motion. Is
18 anybody else?

19 COMMISSIONER CARTER: Madam Chairman.

20 CHAIRMAN EDGAR: Commissioner Carter.

21 COMMISSIONER CARTER: I believe I'm in order, and I
22 would move the staff recommendations with the amendments that
23 we have discussed and approved here today on Issue 3, or Item 3
24 as we are calling it.

25 CHAIRMAN EDGAR: Thank you.

1 COMMISSIONER TEW: And I would second that motion and
2 echo the comments of my colleagues earlier, that staff has
3 really done a good job on this, and we do thank all the
4 parties, or at least I thank the parties for all the input. It
5 has taken us awhile, but I think we are at a better place than
6 we were when we started. So thank you all.

7 CHAIRMAN EDGAR: Thank you, Commissioner.

8 It is always a bit scary and sometimes painful to
9 craft rule language from the bench. And I'm sorry that we have
10 had to do it late in the day when I know that we are all not
11 necessarily at our freshest, at least I am not. But I
12 appreciate everybody staying. I'm sorry that we have gone past
13 the normal work hours, but I think it has been worthwhile.
14 Thank you for your patience and your continued constructive
15 dialogue.

16 Commissioners, we have a motion and a second. All in
17 favor say aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN EDGAR: Opposed? Show it adopted.

20 And this agenda conference is adjourned.

21 COMMISSIONER CARTER: Madam Chairman, hold it, you
22 didn't hit the gavel yet.

23 CHAIRMAN EDGAR: So close. Commissioner Carter.

24 COMMISSIONER CARTER: For the good of the order.

25 CHAIRMAN EDGAR: Yes, sir.

1 COMMISSIONER CARTER: I would just like to say that
2 Florida is a great state. Not only did the University of
3 Florida win the National Championship in basketball, but last
4 night they also won the National Championship in football, so
5 Florida is a great state, and it is a great day to be in the
6 State of Florida.

7 Thanks you.

8 CHAIRMAN EDGAR: Thank you. And we are adjourned.

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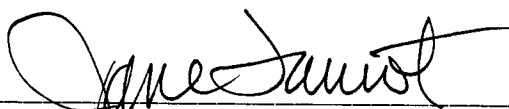
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I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 17th day of January, 2007.



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