

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of renewable energy tariff standard offer contract, by Florida Power & Light Company.	DOCKET NO. 070234-EQ
In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Progress Energy Florida, Inc.	DOCKET NO. 070235-EQ
In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.	DOCKET NO. 070236-EQ FILED: January 25, 2008

**WHEELABRATOR TECHNOLOGIES, INC.'S
PETITION TO INTERVENE**

Wheelabrator Technologies, Inc. (Wheelabrator), pursuant to Sections 120.569(1), Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code, files this Petition to Intervene, and in support thereof states:

INTRODUCTION

1. The name and address of the affected agency is:

The Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

2. The name and address of Petitioner is:

Wheelabrator Technologies, Inc.
4 Liberty Lane West
Hampton, NH 03842
(603) 929-3345 (voice)

Copies of all correspondence, pleadings, notices, orders and other documents in this docket should be provided to:

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NOTICE OF RECEIPT OF ACTION

3. Wheelabrator received notice of this proceeding through the Commission's website.

BACKGROUND

4. Section 366.91, Florida Statutes, which was passed to "promote the development of renewable energy resources in this State." Section 366.92, Florida Statutes, states that "[i]t is the intent of the Legislature to promote the development of renewable energy [and to] protect the economic viability of Florida's existing renewable energy facilities." As a result of this legislation, the Commission conducted a rulemaking proceeding and amended rule 25-17.0832 and rules 25-17.200 -17.310, Florida Administrative Code. Pursuant to those rule amendments, Florida Power & Light (FPL)¹ and the other investor-owned utilities filed standard offer contracts and tariffs in alleged compliance with the amended rule. Whether those contracts and tariffs comply with the rule and statute, are reasonable, and will promote the development of renewable energy in Florida is the subject of this proceeding.

¹ FPL's contract is the focus of Wheelabrator's participation in this case.

STATEMENT OF SUBSTANTIAL INTERESTS

5. Wheelabrator is a wholly-owned subsidiary of Waste Management, Inc. It operates 19 renewable energy facilities throughout the United States. Wheelabrator developed, built, and operated the first commercially successful waste-to-energy plant in the United States.

6. In Florida, Wheelabrator owns and operates 2 waste-to-energy facilities in Broward County, which generate 134 MWs. Wheelabrator built and operates the City of Tampa's waste-to-energy facility, which generates 22 MWs. Wheelabrator owns and operates a waste wood/tires/landfill gas-to-energy facility in Auburndale, which generates 50 MWs. Wheelabrator has a strong interest in developing additional renewable energy projects in Florida.

7. As a company engaged in the production of renewable energy in Florida through baseload waste-to-energy generation, Wheelabrator has a substantial interest in ensuring that FPL's proposed renewable energy contract and tariffs comply with the statute and rules, are fair and reasonable, and will result in the development of renewable energy in Florida. Because the proposed contract and tariff contain unreasonable and burdensome terms as well as energy and capacity payments, which are not fully reflective of true avoided costs, Wheelabrator's substantial interests will be affected by the action the Commission takes in this docket.

8. Wheelabrator's substantial interests will be directly affected by the Commission's decision in this proceeding and are the type of interests that this proceeding is designed to protect. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981).

DISPUTED ISSUES OF MATERIAL FACT AND LAW

9. Wheelabrator's allegations of disputed issues of material fact and law include, but are not limited to, the following:

a. FPL has understated the avoided cost, of both energy and capacity, upon which its proposed contract payments are based. The following are examples of the issues FPL's proposed payments and calculations raise; however, it is not intended to be an all inclusive list. For example, FPL's proposed energy payment calculations are based on assumptions and determinations which appear to be in FPL's discretion and which have not been the subject of Commission review in this docket. Further, such energy payments do not appear to match the capacity payments proposed as they are based on "dispatch hours" whose designation is totally within FPL's control and will result in underpayment to renewable generators. Similarly, FPL provides no information as to how it will calculate as-available energy rates. (Section 3; Appendix A);

b. FPL's performance requirement that the renewable generator maintain the very high 97% availability to receive capacity payments unfairly penalizes renewable generators, discourages the development of renewable resources, is inconsistent with its proposed energy payments, and should be rejected. (Section 3; Appendix A);

c. FPL's committed capacity testing procedures requiring that the generator results be based on a test period of twenty-four (24) hours is commercially unreasonable, discourages the development of renewable resources, and should be rejected. (Section 6.2);

d. FPL's ability to dictate a generator maintenance schedule that is not "reasonable by industry standards" for a baseload waste-to-energy unit, thereby limiting the number of maintenance days and when such maintenance should occur is commercially unreasonable, discourages the development of renewable resources, and should be rejected. (Section 8.2);

e. FPL's requirement that the renewable generator "perform a trip-test after each overhaul of the Facility's turbine, generator, or boiler," is commercially unreasonable for a waste-to-energy unit, discourages, the development of renewable resources, and should be rejected. (Section 8.4.2);

f. FPL's provision to curtail a renewable resource and "not accept or purchase energy" when "incurring costs greater than those which it would incur if it did not make such purchases" is unilateral and one-sided, discourages the development of renewable resources, and should be rejected. (Section 8.4.6);

g. FPL's provision requiring the renewable resource to reduce output during certain hours, and the frequency of such a request is commercially unreasonable for a baseload renewable resource, i.e., waste-to-energy, and should be rejected. (Section 8.4.8);

h. Many of the default provisions included in FPL's proposed contract are unilateral and one-sided and, in appropriate instances, no cure period is provided. Many of the default provisions are commercially unreasonable, discourage the development of renewable resources, and should be rejected. (Section 12);

i. The Force Majeure provisions in FPL's proposed contract are commercially unreasonable, as they exclude from the definition of Force Majeure many typical Force Majeure events, such as the failure of another entity to perform. These provisions are unreasonable, discourage the development of renewable resources, and should be rejected. (Section 16);

j. FPL's proposed contract contains an excessive time frame for FPL to exercise its right of first refusal as to renewable energy attributes. This provision is commercially

unreasonable, discourages the development of renewable resources, and should be rejected. (Section 17.6.2);

k. FPL's language regarding representations and warranties is one-sided, commercially unreasonable, discourages the development of renewable resources, and should be rejected. (Section 17);

l. FPL's attempt to restrict assignment of the contract in its "sole discretion" is one-sided, commercially unreasonable, discourages the development of renewable resources, and should be rejected. (Section 18.4);

m. FPL's proposed language regarding set off rights is unilateral, commercially unreasonable, one-sided, unreasonable, discourages the development of renewable resources, and should be rejected. (Section 18.16);

n. FPL's proposed language excluding actions it may take and not be in breach of the contract is one-sided, commercially unreasonable, discourages the development of renewable resources, and should be rejected. (Section 8.4.9);

o. FPL's proposed contract contains excessive performance security requirements. Such requirements are commercially unreasonable, discourage the development of renewable resources, and should be rejected. (Section 9);

p. FPL's proposed contract contains a commercially unreasonable and one-sided termination fee. This provision is commercially unreasonable, discourages the development of renewable resources, and should be rejected. (Section 10);

q. The commercially unreasonable and burdensome provisions in FPL's proposed contract will make the proposed contract exceedingly difficult to finance in the market

place. Thus, the proposed contract and tariff are inconsistent with the statute requiring the promotion of renewable energy in Florida.

STATEMENT OF ULTIMATE FACTS

10. Without waiving or relinquishing the right to allege additional ultimate facts should they become known through discovery or otherwise, Wheelabrator's allegations of ultimate facts include the following:

a. FPL's avoided costs for energy and capacity are understated, resulting in payment below avoided cost;

b. FPL's proposed standard offer contract contains terms and conditions that are onerous, burdensome, unilateral, and unreasonable;

c. FPL's proposed standard offer contract will be exceedingly difficult to finance;

d. FPL's proposed standard offer contract will not encourage the development of renewable resources in the state as required by section 366.91, Florida Statutes, and the Commission's rules.

STATEMENT OF SPECIFIC RULES AND STATUTES REQUIRING REVERSAL OF THE AGENCY'S DECISION

11. Wheelabrator is entitled to relief pursuant to:

a. Section 120.569 and 120.57, Florida Statutes, which entitle Wheelabrator to a hearing when its substantial interests are affected as they are in this matter;

b. Sections 366.91, 366.92, Florida Statutes, which require the promotion of the development of renewable energy in the state; and

c. Rule 25-17.200 -17.310, Florida Administrative Code, via which the Commission is to require and encourage the development of renewable energy in the state and protect the viability of Florida's existing renewable energy facilities;.

RELIEF REQUESTED

WHEREFORE, Wheelabrator requests that:

- a. It be permitted to intervene in a full party in this matter;
- b. The Commission require FPL to adopt terms and conditions in its standard offer contract and tariff which are reasonable and which will encourage the development of renewable energy in the state of Florida pursuant to the mandate of section 366.91, Florida Statutes, and rule 25-17.200, Florida Administrative Code.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished electronically, by electronic mail and U.S. mail this 25th day of January, 2008, to the following:

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