BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080503-EI

In the Matter of

RENEWABLE PORTFOLIO STANDARD FOR UTILITIES.
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VOLUME 2

Pages 139 through 213

PROCEEDINGS: STAFF WORKSHOP

DATE: Wednesday, August 20, 2008

TIME: Commenced at 9:30 a.m.
Concluded at 4:38 p.m.

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

REPORTED BY: MARY ALLEN NEEL, RPR, FPR

PARTICIPATING: (As heretofore stated.)

P R O C E E D I N G S

(Proceedings continued in sequence from Volume 1.)

MS. MILLER: Let's get started again.

MR. TWOMEY: Cindy --

MS. MILLER: And if I could start off, a couple of things. We have a new court reporter, so it's doubly important that we each keep saying our names and who we represent.

Mike.

MR. TWOMEY: Thank you. I wanted to make -- before we get out of (a) completely, I wanted to make more extended comments, if I may.

MS. MILLER: Okay.

MR. TWOMEY: And I'm Mike Twomey for AARP.

And first let me say that I was wrongly accused earlier this morning by a lot of you. I wasn't the yahoo that who left my phone off of mute, so I was wrongly accused. It wasn't me.

I'm representing AARP here, which has over 3 million members in Florida now. And I don't purport to represent those 3 million members -- some of them may take offense at AARP saying they're opposed to carve-outs and the like -- but represent the organization instead.

I want to go back just a hair to what we said, what AARP said to the Legislature in the last session that this legislation and the new law came out of. What we said in a nutshell, essentially, and we said it repeatedly, and you've heard it here before, is that we wanted to see -- whatever the goals were, we wanted to see the goals behind the RPS ultimately established by elected officials. We wanted to see those elected officials put a price tag on achieving the goals. We wanted to see the goals, once they were established and a price put on them, achieved in the most cost-effective manner possible, namely, that the customers, again who I will state are the ones who are going to pay the bills here, the utilities will not, wanted to see the customers get the largest bang for the buck, if you will, in terms of achieving the goals. We believe that having carve-outs and multipliers and things of that nature are contrary to that notion of using the most -- or achieving the most cost-effective compliance with the RPS.

Now, the legislation that came out, as you're well aware -- and you have a portion of it attached to your strawman proposal, and you have page 51 of the Laws of Florida. I want to very briefly go through a couple of things that that particular part of the statute says that you have to do and things that are "mays." Okay? And in 366.92(3), it says that you shall, that is, you, the Commission, when I say you, the Commission shall adopt an RPS.

Unless I missed something in the statute, it doesn't tell you what percentage it has to be, and it doesn't say what goals you have to achieve and by what year. Okay? The Legislature, which is this agency's immediate boss, if you will, didn't put those requirements in. You've done it in (3)(a) of your proposed strawman rule, that is, you had percentages. Okay?

And I'll tell you right now, without on behalf of AARP taking a position on those specific goals, what would be good at some point, vis-a-vis our desire to see costs, is what those specific goals are projected to cost the customers over time on an annual basis.

So, for example, some of the folks I've heard earlier this morning are naysayers about the 1 percent. Okay? They think that's not enough. They want more. The 1 percent, I'm advised by Tom Ballinger's numbers, would cost the consumers, the customers of the largest four IOUs in this state $198 million in additional rates in 2009. And, of course, it goes up from there.

And one of the things that's going to drive this, as we know, is that just in the mid-course corrections for fuel adjustment in the last three, four, or five weeks, whatever it was, the two largest utilities in this state came in and asked for mid-course corrections of a additional billion dollars a year. And that's going to, of course, drive up the total revenues against which the 1 percent or 2 percent will be compared.

We expect, I think reasonably, that fuel prices will go up again next year, so the total revenues will go up, and the 1 percent won't be -- will no longer be close to $200 million. It will be more.

And, of course, for those that would want 2 percent of a cap, if they want to have a cap at all, we're looking at close to $400 million next year. And if you wanted to shoot for 5, we would be looking at close to a billion dollars. Now, those of us out here on the customer side of the fence view that as another term for a $200 million rate increase, or a billion dollar rate increase if you want to push for 5.

The Legislature, going back to page 51 there, also said that the PSC shall include methods of managing the cost of compliance. That's in the statute. It's something you have to figure out how to do and you have to address in the rule that goes back to the Legislature for its consideration, because, as you know, everybody knows in this room, the Legislature said this rule will not be implemented until it's ratified by the Florida Legislature, which, necessarily, because of the way our process works, the Governor will have to sign it as well. So the Governor and the Legislature have to ratify whatever comes out of here.

Also in the statute, it says the Commission shall provide in this rulemaking for appropriate compliance measures and the conditions under which noncompliance shall be excused. And one of the things, as you know, that it says that can be addressed as a reason for noncompliance being excused is if the cost of securing renewable energy or renewable energy credits was cost-prohibitive.

Now, we think, whether the number is right or not, that having a budget that you proposed in terms of -- staff has proposed in terms of a 1 percent cap is a good idea. It's a good idea. Whether that number is right or not, having a cap is a good idea, in our estimation, because it provides the utilities and it provides everybody involved with a budget, no open checks. One of the things we said in the Legislature, no blank checks drawn on the customers of the utilities of the state of Florida, have a budget.

Now, when you have your budget, one of the things I said to you was, we asked the Legislature and we asked you and we asked the Commission to see that the moneys that are budgeted and come off the monthly energy bills of Florida's consumers, which we all know are oppressed with increasing taxes, insurance costs, and the like, that it be spent in the most cost-effective manner.

Now, I pointed out several of the things that the Legislature said the Commission has to do. Okay? And when we get to the idea of carve-outs and multipliers, it's not something this Commission has to do. If we look at 366.92(3)(b)3, the Commission may provide added weight to energy provided by wind and solar voltaic.

Now, going back a little earlier, and I passed over this, 366.92(3)(a) says the Commission shall evaluate the current -- and it's "shall." You have to do this, and it has to be in the rule that goes forward to the Legislature. The Commission shall evaluate the current and forecasted levelized cost in cents per kilowatt-hour through the year 2020. So I'm not sure how you're going to do that, if your consultants are going to do it or whatever, but it's got to be in there.

And when you do that, it's going to show what the projected -- or current costs and what the projected levelized costs are for each renewable methodology. And when you do that, presumably it will show where wind in Florida and where solar in Florida are ranked among the other renewables. And one of the things again we're saying to you is, we want to have a system whereby when you go back to the Legislature, we can say, "The budget is this. Use the most cost-effective, and don't give a leg up to any methodology to cut in line and have a preference."

So that's essentially it. We want to see what the costs are, and we want to have the ability to go to the Legislature and, if necessary, criticize the decisions the Commission makes if we think that the dollar amounts, the budget is too great, or if we think that the methodologies for achieving the Legislature's goals are squandered by giving certain methodologies preferred treatment. Thank you.

MS. MILLER: Thank you.

MR. TWOMEY: Oh, one last thing, Cindy. I wanted to say, we keep hearing about Germany's solar, and I would be curious to ask any of the solar advocates in this room or on the line what the Germans pay in cents per kilowatt-hour for the solar energy they purchase there and what their overall or levelized forecast, if you will, in the language of the statute, what the levelized forecast or the current cents per kilowatt-hour they have for solar. Thank you.

MR. KARNAS: Yes, I would be happy to answer that question, and I hope that we can look at the same --

MS. MILLER: This is Cindy Miller.

MR. KARNAS: -- opportunity in Florida.

MS. MILLER: This is Cindy Miller. Who's speaking?

MR. KARNAS: I'm sorry. Jerry Karnas, Environmental Defense Fund.

MS. MILLER: Okay. Go ahead.

MR. KARNAS: The overall cost to the consumer of the entire German renewable policy mechanism is 2 to 4 Euros per month, which is the equivalent of $5 to $7 American.

Now, they have very, very weak solar insolation, so in order to promote that market, their solar costs a lot of money. But wind in Germany is very, very cheap. So is biomass, and so is other renewables. So the overall cost to the program of the PV is controlled through the reduction in cost of other renewables.

So it's not really useful to look at the price per kilowatt-hour that they did on PV, which is about 65 cents per kilowatt-hour in Germany, but that's because of their insolation. What you want to look at is the overall program cost and then the results that that program cost engendered.

They were in much the same situation as we are right now in 1997, being held hostage by Vladimir Putin on natural gas. And they took that very, they seriously, and they made a national commitment to prioritize renewable energy to the grid, make sure that that energy was bought back and that people could make a fair rate of return on that renewable energy.

The result has been 40,000 jobs in solar, 250,000 total jobs in renewable energy. And First Solar, an Ohio-based company, because of these policies has put a 500-person manufacturing plant in Germany, and they are now the center of renewable energy production in the world. In fact, they're going to put more than half of the PV on the ground in one year, two gigawatts, which is the equivalent of a 1,000 megawatt -- which is the equivalent of two nuke plants in Florida.

And so their overall program cost, Mike, is less than the cost of the 2006 energy bill that you supported with the nuclear early cost recovery. So if we implemented the German model, we could get two gigawatts of solar a year, all those jobs, and it would be less than what the people of Tampa Bay are paying now under the early cost recovery for a nuke plant that's 10 years away.

MS. MILLER: We're going to have a quick follow-up from Mike Twomey, and then we're going to turn to a different subject that --

MR. TWOMEY: Just a very quick question. Thank you, Cindy.

Jerry, did you say 55 cents per kilowatt-hour or 65 cents when you gave that price?

MR. KARNAS: What they originally started off saying, Mike, was 65 cents per kilowatt-hour, but they have a two-year review of the pricing strategies for all renewables. And you're expected, if you're a renewable energy provider under each tier, under each pricing scheme, that when you come back after two years to do another project, you have to have reduced costs by 5 percent. That's what I meant in my earlier comment about you creating economies of scale very rapidly and very quickly, that the Germans have mandated that you reduce the cost of the projects by 5 percent every review period.

Now, the Spanish and the Italians have done it differently by doing megawatt procurement targets, and then they review their pricing every year after that.

But the entire idea of the program is to get to grid parity as quickly as possible and to create the economies of scale as quickly as possible. That's what the program is designed to do. So they start at 65 cents per kilowatt-hour for solar.

But remember, they have the insolation of Maine, so it's the equivalent of Maine, not Florida. Our pricing scheme in Florida would be considerably less than the pricing scheme in Germany, but also, you do it for all renewables, which balances out the cost. But now I think they're down to about 55 cents.

MS. MILLER: Okay. Thank you.

MR. KARNAS: So they keep driving the cost down 5 percent a year.

MS. MILLER: Thank you. We're going to return to the discussion we had just about started on alternative compliance payments. I think Mr. Trapp is going to need to leave the session at a certain point, so I promised him I would turn back to that, even though we still may have some additional comments on this section.

So, Bob, you had raised some questions on it.

MR. TRAPP: I wanted to pursue with Mr. Moyle, who I think initiated the discussion early on in his comments, if he had any specific ideas with respect to alternative compliance payments or enforcement payments or whatever.

MR. MOYLE: Sure. Let me jump in with that, and we'll supplement this, I presume, with some additional written comments for your consideration.

But I made the point early on that I thought clearly the Legislature provided you with the authority to establish compliance measures. And based on the discussion, I don't think the point of disagreement is on that, and I'm glad that you all, I think, are going to maybe take another look at compliance measures or compliance mechanisms.

I was talking to somebody about this, and they said, "You know, it's a little bit like establishing a speed limit, but not putting any police officers on the road," and then also saying, "If you do get caught, there's nothing that can happen to you," that it needs to have some teeth on that end.

But the point that you raised, Bob, about, "Well, we don't think we have the authority to provide that the money be spent on additional renewables or go into a trust fund here," I think that is a good, valid point. And the way I would suggest you deal with that is, given where we are now economically, I don't think the Legislature is going to have a hard time considering what to do with that money. And I think that they could make a judgment about whether they want that money to go into the general revenue fund, whether they want that money to go to some kind of a benefits fund that would promote additional renewable energy, or whether they would want that money to go to a rebate of ratepayer payments that have been made. I think there are a wide variety of options that could be done with that money that might be realized from having an ACP.

I think the chief point I wanted to make is that as I understand the ACP, it has been something that has been put in place in a host of other states that have RPSs, that it has been viewed as a good mechanism to make the RPS successful. We can get you some additional detail on the specifics, but it acts to do a number of things, one of which is to act as a price cap, because if you set the ACP at a certain dollar figure and the utility then has to either go get RECs, or if they don't get the RECs, then they have to make a payment set at a certain level, then that acts, in effect, as your price cap, because you would know what percentage you would need to make. So it's a way that you can, I think, also get to the price cap point that I think has some appeal, based on the discussions you've had previously.

We would encourage you to take another fresh look at compliance mechanisms, particularly the ACP. Frank Ferraro with Wheelabrator is on the phone, and he has been in states throughout the United States that have that. He may have some things to add to that. But we can supplement these comments, Bob, with further written comments.

MS. MILLER: Okay. So here we are. We have been in (3)(a). Are there any additional points on (3)(a)? You'll notice in (3)(a), there are the options for wind and solar. We have had a little discussion about what people think about the different forms of carve-outs or options, multipliers, whatever. Is there any other discussion on options for wind and solar preference

MR. FERRARO: This is Frank Ferraro.

MS. MILLER: Go ahead.

MR. FERRARO: Okay. Now, we're talking about going into this -- it's actually (b), I guess, now, right, the wind and solar options?

MS. MILLER: They're still in (a), actually.

MR. FERRARO: It is?

MS. BROWNLESS: No, they're in (b), Cindy.

MS. MILLER: Oh, I'm sorry. I apologize.

MR. FERRARO: Okay. Well, anyway, we're talking about the options for wind and solar.

MS. MILLER: Yes.

MR. FERRARO: Okay. I want to throw out a slightly different tack, but I think it goes along with Option 1 or Option II, and that is to provide distinct incentives for wind and solar separate from all the other biomass -- all the other -- that was a Freudian slip. All the other renewables, and instead, to establish an RPS for Class I and a separate RPS for Class II, such that if the number for 2010 is 2 percent, for example, that you have total, perhaps that 2 percent is Class II, and then another .5 percent for Class I, and that Class II doesn't bleed over into Class I, and Class I doesn't bleed over into Class II.

And that way, you don't have this competition between wind and solar and all the other technologies, and you can incentivize Class I separately, and you don't get into is it 25 percent, and is it a minimum of 25 percent, and it can be more, or what multiplier it should be and how do you do the multipliers. If you're truly trying to incentivize wind and solar -- and Wheelabrator doesn't have any dog in that hunt, but I'm trying to be objective here. Set it aside as a separate RPS, Class I RPS, Class II RPS, and let them go on own separate paths. And I would suggest that it be based on some distinct percentages, like I said, Class II is 2 percent in 2010 and Class I is, you know, .5 -- well, yes, .5 percent in 2010. So that's my suggestion.

MS. MILLER: Okay. Tom Ballinger would like to comment on that.

MR. BALLINGER: Frank, so what you're saying is that the total value would be greater than 2 percent under your scenario?

MR. FERRARO: I just gave an example.

MR. BALLINGER: Right.

MR. FERRARO: You can make it the total value being 2 percent. And I couldn't do the math in my head right away, but, you know -- so whatever it is, 1.75 is -- or 1.5 is Class II and .5 is Class I.

MR. BALLINGER: I understand your comment.

MR. FERRARO: But remember that 2010 has to equal the existing renewables in the state, so if you -- so you have to make sure that the Class II is all encompassed by that percentage, the existing renewables are encompassed by that percentage too. So it's just a little tricky in the first years, but then, of course, it grows, like you said, at a greater rate.

MR. BALLINGER: I understand what you're saying, just setting separate levels for Class I and

Class II, and --

MR. FERRARO: And I'm just throwing out example numbers. I'm not saying these are the right numbers, but the concept is what you've got.

MR. BALLINGER: I understand the concept. Thank you.

MS. MILLER: Suzanne Brownless, did you --

MS. BROWNLESS: Yes, ma'am. Thank you.

Here is our idea. We would modify the language in Option 1 that you have on page 4, and I'll just read it. "By January 1, 2013," which matches to our 20 percent by 2020 goal, "a minimum of 25 percent of the renewable portfolio standard should be provided from Class I renewable energy sources, with 10 percent provided by Class I solar thermal systems, a minimum of 10 percent provided by Class I solar photovoltaic systems, and 5 percent provided by Class I wind systems. Should Class I wind systems fail to achieve 5 percent in any given year, solar resources shall be entitled to fill its remaining share. To the extent that the percentage of each Class I energy system is not filled, the remaining percentage can be applied to other Class I systems in the same ratio as it was originally stated."

So what we're trying to do is take that 25 percent and divide it up, 10 for solar thermal, 10 for photovoltaics, and 5 for wind, and let everybody -- at the end of every year, you would figure out, you know, how much photovoltaic you had, how much thermal you had, and how much wind you had, and let everybody fill in the blanks so that you get your entire 25 percent. For example, let's say wind was not able to fulfill all its 5 percent, because I think there really is some question about whether it would be able to, it would allow other Class I entities, in this case, other solar, solar folks, to pick up the slack up to 25 percent.

MS. MILLER: If wind fails to meet -- how would you determine that wind failed to meet it rather than --

MS. BROWNLESS: Well, because you're going to have percentages for everybody, so you would know how many people signed up for solar photovoltaic, you would know how many people signed up for thermal, and you would know how many people signed up for wind. You would be able to have -- you would calculate those numbers. You would know. And if you didn't have enough projects sign up to meet that standard, instead of just losing that -- whatever remains of that percentage, you would allow it to pass on to other Class I technologies.

MS. MILLER: Thank you.

MS. HARLOW: Suzanne, so -- I'm sorry, Cindy.

I interrupted. So basically you've got a set-aside within a set-aside.

MS. BROWNLESS: Yes.

MS. MILLER: Tom Ballinger.

MR. BALLINGER: Suzanne, this is Tom. If I understand, it's more like the Option II. It's kind of a refinement of that Option II, where we had -- 20 percent of it would be solar PV or solar thermal and 5 percent wind. You're just allowing -- making it clear that that could bleed over if one was not met.

MS. BROWNLESS: Yes.

MR. BALLINGER: Okay.

MS. BROWNLESS: I mean, it's -- we actually starting writing with Option I. You know, we just tried to mark our rule up so that we could give you a clear mark-up.

MR. BALLINGER: But I think what I heard you say, it's closer to the Option II that's laid out in the strawman.

MS. BROWNLESS: It's a variation.

MR. BALLINGER: Okay.

MS. BROWNLESS: Option I and Option II are actually pretty close together.

MR. BALLINGER: Yes.

MR. ZAMBO: Rich Zambo has a question.

MS. MILLER: Go ahead, Rich.

MR. ZAMBO: Just for clarification, on Option III where we talk about the Class I representing in aggregate 25 percent, does that include the five times multiplier, or is that just on a gross basis?

MR. FUTRELL: Rich, this is Mark Futrell. And staff went around on this one quite a bit as well in trying to phrase this and understand the implications of all this. As we understand, with multipliers, if, for example, you buy one REC, 1,000 kilowatt-hours, then by applying the multiplier, you effectively have 5,000 kilowatt-hours, and that's what would be applied to the RPS standard. And that obviously leads the way to the discussion about whether multipliers really will effectively result in the development of renewable energy.

But to answer your question, the 25 percent is arrived at by applying -- first applying the multiplier to the actual RECs that are purchased or procured.

MR. ZAMBO: Okay. Thank you.

MS. MILLER: Sean Stafford, did you --

MR. STAFFORD: Thank you. We want to just mention one point that has been brought up, I guess, in this document. There seems to be this separation between the classes based this term "emitter." And we wanted to sort of go on record on this issue, because biomass, while it does emit carbon, biomass also during the growing process sequesters the identical amount CO_2 that it combusts. So there is an emission at the back end, but on the front end, there's also uptake of CO_2. So we're uncomfortable with any terminology that sort of classifies biomass as somehow implicitly more greenhouse gas negative than other technologies.

As a general principle, we aren't comfortable with the notion of set-asides, but we think that if you do a set-aside, it ought to be a moderate set-aside, but most importantly, it should not have one aggregate price cap. Having a set-aside for the more expensive technologies and having the same price cap apply to all of these technologies together will end up driving everyone to Tier 1, which will gobble up, so to speak, most of that available budget that Mike was discussing. You can call it a price cap allowance or budget, or whatever that number is, really not leaving a whole lot of room for the Tier 2s.

We know that the Tier 1s can deploy fast. We know they have a shorter build-out time. It takes a little more time to build a biomass plant, site a biomass plant than it does just, you know, sort of pop in some Tier 1 technologies. That may change with wind and siting issues.

But, you know, we feel that at the very least, if you move to a set-aside model, which we don't necessarily support, having one price cap is really sort of a stake in the heart for the Tier 2 technologies, because you're not going to have much availability left if you have that price cap, and all of the much more expensive Tier 1s get the preferential treatment.

MS. MILLER: Thank you. Any more discussion on (b)?

MR. TAYLOR: Yes. On the phone is Alan Taylor from PCS Phosphate. And I was just wondering if staff had given any consideration when establishing preferences and giving the solar and wind preference, whether it's discretionary or not to the discretion of staff, if they gave consideration to establishing a preference for any other technologies, or if it not necessarily for technologies, for renewable energy systems that are able to meet other needs of the Florida power system, for example, that, you know, would have greater availability, are able to provide power during peak load periods.

MR. FUTRELL: This is Mark Futrell with the staff. The staff in developing the strawman looked to the statute, and the statute gave permissive -- gave the

Commission permission to add greater weight to solar and wind, and that's the direction we took from the Legislature.

MS. MILLER: Commission Skop.

MR. TAYLOR: So do you read the statute then that it's not providing permission for you to give greater weight to any other technology or advantage that a renewable energy system could offer?

MR. FUTRELL: Well, I'll read you the statute. It's 366.92(3)(b)3, "May provide added weight to energy provided by wind and solar photovoltaic over other forms of renewable energy, whether directly supplied or procured or indirectly obtained through the purchase of renewable energy credits." That's the direction it gives.

MR. TAYLOR: And I asked you, do you read that as preventing giving the broad preference to any other technologies?

MS. MILLER: This is Cindy Miller, and we're going to turn to Commissioner Skop next, but let me mention that Chapter 120, especially 120.54 on rulemaking, requires express authority for the steps that we take in our rules, and it's pretty rigorous. So if you want to talk to me anytime about that, I'll be glad to discuss it further, but it has some pretty tough standards in it.

MR. TAYLOR: All right. That was more the answer I was looking for.

MS. MILLER: Thank you. Commissioner Skop.

COMMISSIONER SKOP: Thank you. I just wanted to briefly comment on the options for wind and solar preference. Without taking a position as to the date of implementation or the actual percentages, I just wanted to kind of at least express some pro-con thoughts on each of the three respective options.

At least with respect to Option I, I do see some perceived benefit there to the extent that it provides flexibility in putting in the cost-effective form of renewables, to the extent that -- you know, at least in the wind industry, there's a substantial backlog in terms of the supply pipeline that may exist, and a small developer may have problematic access or problems getting access to turbines. I mean, the supply chain is backed up for years.

Theoretically, the same thing could conceptually happen with solar, to the extent that the more states that develop RPSs that have carve-outs or set-asides for solar, you might have a supply and demand imbalance that would drive costs substantially. Solar is in most cases, and probably all cases, more expensive than wind.

But at least, to me, in Option I, without specifically identifying which emission-free renewable, either wind or solar, it gives flexibility to the extent that, say, some turbines become available for a developer, that they're able to go to those, and if they want to go through the incremental problems of siting them over a solar plant, that may provide a little bit of flexibility in meeting the RPS, which ultimately may be a consideration in terms of constraining costs.

With respect to Option II, as I've previously stated, it would seem to me that favoring one emission-free resource over another or incentivizing one subset of an emission-free renewable over another might be somewhat problematic, for some of the same reasons that I previously articulated. I mean, I'll point to New Jersey. They basically recently raised the price cap of the RECs to $700, or $711 per REC. I think in California it's also pretty expensive.

So again, having those type of constraints tends to drive costs. And again, I think there's been a lot of discussion that in developing an analytical framework to provide to the Legislature for ratification, that cost considerations are also paramount.

With respect to III, again, the multiplier again I think has some benefit over carve-outs or set-asides. But again, I would emphasize looking at setting a -- I don't want to say a preference, but some renewables are less costly, but more difficult to site and permit, such as wind, than solar, which is more costly, but probably easier to permit. So in terms of setting those multipliers, if they are incentivized to balance the tradeoffs between costs and problems associated with developing those renewable resources, that might also be a consideration worth looking at.

But again, I just wanted to kind of share those pro-cons without taking a position. Thank you.

MS. MILLER: Thank you. Additional comments on (b)? Suzanne.

MS. BROWNLESS: Commissioner Skop, I would just like to follow up on a few of your comments by saying that one of the reasons that the Florida Solar Coalition came up with this idea of further dividing up the carve-out or set-aside was because there is such a significance difference in capital costs between solar photovoltaic systems and solar thermal systems, for example, or wind systems. So the thought process is that since that is the case, at least initially, you need to -- if you want to encourage the development of solar photovoltaic systems, you need to given them a bit of leg up. So that's the idea.

MS. MILLER: Jon Moyle.

MR. MOYLE: Just a brief comment. I have not heard a lot of renewable providers supporting Option III of the multiplier, and I think I would just caution you as you look at this issue that potentially, you know, depending on what number you use, you may not be getting a net real increase in renewables in the ground because of the multiplier effect. So I think --

MS. ZOLLINGER: Marni Zollinger wishes to make a comment.

MR. MOYLE: So I think that -- you know, Ms. Brownless talked about the option where you have a set-aside within set-aside. That's probably a better way to proceed.

MS. MILLER: Thank you. Additional comments?

MS. ZOLLINGER: Marni Zollinger wishes to comment.

MS. MILLER: Please go ahead.

MS. ZOLLINGER: I have heard the portion of the discussion from the gentleman speaking from AARP down to this part, and my question is, might it not be better to pattern this legislation after some of our more progressive federal legislation, which looks toward creating the language in a way that is forward-looking rather than prescriptive? What you've got is a carve-out for wind and solar, but you do not include, at least what I can see, an allowance for other emergent technologies that reach the same or similar environmental qualities.

MS. MILLER: Thank you. This is Cindy again. The statute gives us some express authority for the wind and solar, but not for other emerging technologies. So in the legislative arena, that issue could come up, but at the Commission level, we're just trying to implement the law that they put on the books.

MS. ZOLLINGER: I understand.

A second question or comment back to Mr. AARP. It seemed that his comment could be summarized by asking how much it was going to cost through the ratepaying for the average person in Florida, and he seemed to correctly be saying this is going to cost us. Is there a provision somewhere, or has it been conceived of to favor technologies that do not ask for tax money or public credit, but instead, pay for their capital costs using investment money? Because what Mr. AARP was kind of saying was the IOUs are using this RPS legislation to ask us to buy them new tires. That would be the wind farms and the solar facilities. Has anybody at this point said, "What if somebody else pays for the new tires rather than the tax money through the RPS or the ratepayers?"

MS. MILLER: Mark Futrell is going to respond.

MR. FUTRELL: This is Mark Futrell with the staff. Again, as Ms. Miller said, we are developing this rule within the framework of the statute we were given. Utility procurement of renewable energy should be done through -- to try to seek the most cost-effective and least cost way of meeting or procuring that, and then meeting any RPS requirements that may result from this process.

MS. ZOLLINGER: I agree. So in that case, when considering using the tax money or public credit, does that satisfy that question, that non-public money would be favored?

MR. FUTRELL: The rule does not get to that level of specificity as far as how the renewable energy projects will be financed or procured.

MS. MILLER: Okay. Again, as we keep saying, we do welcome alternative language, and we would like that by -- we need that by September 2nd.

Let's go on to (c), which relates to what each investor-owned electric utility RPS filing must contain. Do we have any comments on (c)?

Eric Draper.

MR. DRAPER: Eric Draper with Audubon Florida. I'll be quick. And this is in the proposal that I gave you. I just was suggesting that you switch that around so that instead of having the utilities propose the standard in this case, that you make this list 1 through 5 the basis by which the Commission evaluates the proposed standard.

MS. MILLER: Thank you. Shall we move on to (4) on compliance? Oh, I'm sorry. Was there anything else on that?

MR. MOYLE: Yes.

MS. MILLER: Jon Moyle.

MR. MOYLE: I want to just follow up on a point I think that Tom Ballinger was making. And maybe I'm just not understanding it clearly, but when he was talking earlier about RECs and a market for RECs and things like that, he was talking about an accounting function. And if that's the direction that things are going to head, why would you not have requirements about providing information or proof of your RECs? It's a piece of paper. It's a property right. Wouldn't that be something that would also be sought so that you could use that REC to figure out whether -- you know, the level of compliance?

MR. BALLINGER: I think that's in another part of the rule, Jon. I'm trying to find it, on the --

MR. MOYLE: We can get to it later. I guess sort of the point was made earlier, Tom, in terms of saying, you know, here's a number, provide your RECs. This is additional information, but I think at a minimum, you ought to have RECs being provided too.

MR. FUTRELL: This is Mark Futrell. The part about validating the RECs and tying to it a real source of energy, that's taken care of in the REC market. The administrator will perform that function, and that will be part of that compliance filing with the Commission. At least the way we've envisioned the strawman, the Commission would review the compliance filing establishing that REC market administrator, and as part of their governance procedures, we would look at how they're going to validate the RECs. So we would be part of that, and we would be monitoring that process as well.

MR. MOYLE: Okay. And we may make some written comments on this, but following along, it seems that, you know, if the RECs are going to be the driver, they're going to be sort of the currency of trade, that in addition to what you're seeking here, that you ought to also have some certification or statement that, you know, we certify that we have provided enough RECs to meet this, X, Y, or Z.

MS. BROWNLESS: And, Jon, if you can look at paragraph (6) --

MS. MILLER: Suzanne Brownless.

MS. BROWNLESS: If you can look at that, that's where all that's stated, where they're going to say the quantity of RECs purchased, the quality and vintage, all that. Do you see all that?

MR. MOYLE: Yes.

MS. BROWNLESS: So that's actually in there.

MS. MILLER: Clay Bethea.

MR. BETHEA: I don't know how -- I'm not quite sure how you guys would regulate this, and I understand where you are from the perspective, but whenever you start trying to look at the life cycle cost of that and renewables, you're looking at is it truly renewable, what people are doing. And so how do you -- somewhere, whenever an IOU comes back and says, okay, we have a renewable energy -- and I'm specifically speaking to biomass -- how are you going to determine if that's renewable? Because if you go down and cut down a tree or you harvest something and you don't put something back there, that's not renewable. And that's going to impact your life cycle cost, because after five or ten years, you might not have something there. So how do we make this section here a sustainable resource, because that's what you're looking for. And I know that's not something you guys usually do, but maybe how do we work that in there to make it a sustainable resource, because that's what we're after here.

MS. MILLER: Mark.

MR. FUTRELL: I guess we're trying to stay within the definitions that we were given, and I think your idea of sustainability is noted. It's a good one But certainly that would have to be worked into the analysis that's done. Again, this is part of this ongoing cycle of analysis that utilities will bring to us. The parties may be able to evaluate and comment on and provide their input and give the Commission additional thoughts on helping to develop what the goals should be. And so that's -- but I understand where you're coming from.

MS. MILLER: Eric Draper, and then Sean Stafford after that.

MR. DRAPER: Thank you. Going back to (c), I wanted to make -- on line 22, (c), number 3, I did not propose this, but I'm going to come back to you with a recommendation that you consider more than greenhouse gas emissions and consider other environmental conditions, specifically water use. Since one of the goals of the statute itself is to improve -- you know, improve environmental conditions, that ideally, we will be looking beyond just greenhouse gas emissions and looking at water use, since we have water shortages in a number of the areas where you have energy demand growth.

The second thing, I do have a specific recommendation that I want to make, and that is, if you go to page 5, on number 5, where it talks about having the current and ten-year forecast of the estimated retail rate impact, I'm just not sure that that's necessary in terms of a piece of information that the utilities would need to provide, and I'm not sure that that's actually called for in the statute or necessary.

I do recommend some alternative language there -- or not alternative to that, because I don't even think you need that. You need to strike it. But I suggest there are some additional forecasts that could be taken into effect, which is the effect of the promotion -- and I've given you language on this -- of renewable energy, new investment and capacity on the capacity and cost, in other words, you know, what is the effect of what they have been doing to actually promote and encourage renewable energy, you know, what effect is that actually having on the availability of the capacity and the forecast itself.

MS. MILLER: Thank you. Sean Stafford.

MR. ZAMBO: Rich Zambo would like to speak.

MS. MILLER: Sean Stafford is next, and then who is calling?

MR. ZAMBO: Rich Zambo.

MS. MILLER: Okay. Right after him.

MR. STAFFORD: I want to just add on to what Clay said. You know, Florida Crystals is very -- understands the sustainability issue, and we agree that sustainability is key as you read the statute, because greenhouse gas reductions is a key objective, we believe, of the Legislature.

And we talked about this the other day, that there's just -- I mean, responsible farming mechanisms are sustainable farming mechanisms, and when you go to a model that cuts and replants and moves down the road -- I'm sorry, cuts, doesn't replant, and moves down the road, cuts, doesn't, and moves down the road, that's not a sustainable model.

And we would -- you know, we suggest to you that there ought to be some sort of sustainability test that we could all agree on that would make sense to prevent these resources, to prevent -- I want to say biomass energy plants from having an unsustainable business plan when they move into the market, because if someone -- you know, we assume that a new biomass plant that's going to come online is going to have a sustainable business plan, but some may not. There are a lot of folks in a lot of industries today that do not require replanting of resources, and that's just not something that has ever been in the culture of the farming mentality that Florida Crystals comes from.

So in that respect, I think there would be some support for some type of sustainability test that, you know, would serve to provide the maximum greenhouse gas offset and would also really scrutinize possibly new entrants into the market so that they don't have an unsustainable business model.

MS. MILLER: Thank you. Rich Zambo.

MR. ZAMBO: Yes. Cindy and everyone else, what I wanted to say is, I plan to be there next week, and I'm going to make a more in-depth presentation, but I wanted to -- I just wanted to mention one other piece of information that may be useful when the utilities make their filing, and that is to compare the levelized cost of each of these technologies to what -- to the utility's avoided cost over a period of time.

I'll get into this in more detail next week, but one of the issues that we've identified is, you know, if you use avoided cost as the standard for the energy purchases, you don't necessarily get some of the benefits of renewable energy. For example, if the avoided unit that the energy contract or energy sale is based on is a natural gas-fired power plant, you're still going to be getting paid prices and the consumers are going to be affected as if it was actually burning natural gas, so you're not going to reduce that volatility. You may not be able to extract all the benefits, and it may be better off in the long run, if the renewable facility was willing to contract for it, to pay them at their levelized cost, which may in some cases be less than avoided cost over the long run at much lower risk to the ratepayers. So I think it would be valuable to see a comparison of that.

MS. MILLER: Thank you. Tom Ballinger has a comment.

MR. BALLINGER: Cindy, I can respond to the sustainability. And I agree, especially on the biomass, and typically I think where that would come into play is in the PPA approval. When we look at a purchased power agreement with a utility and a renewable generator such as a biomass, we look at is it a 30-year contract, 20-year, what do they have in terms of failure or performance guarantees, things of that nature, to protect ratepayers if the project is not sustainable. So I think that's where it comes into play there, because we're trying to keep flexibility with developers to sign three- to five-year contracts, 10- to 20-year contracts, you know, what do they need for their business model.

So I think the area of sustainability may be better addressed in the contract approval and not so much the RECs. What we're proposing here is a REC market, which is an at or above, to develop a market base to pay for these additional attributes.

Just my thoughts on that.

MS. MILLER: Thank you. Are we ready to move on to section (4), compliance? Yes. We're seeing nodding here.

Suzanne Brownless, do you have some points on compliance?

MS. BROWNLESS: Yes, ma'am. And this would go to the language in (4)(a).

Our first comment would note that the language in the statute that this is based on, which is 366.92, (b)2, says that the Commission shall provide for appropriate compliance measures and the conditions under which noncompliance shall be excused. So we are concerned that there are no conditions listed in this rule, and we've come up with some condition language which I can provide to you, and will.

But basically, our condition language would ensure that the electric utility has made a good-faith effort to acquire sufficient renewable energy or renewable energy credits to comply with the standard, and that good-faith efforts would include, as an example, banking renewable energy credits in advance of obligations and seeking energy -- renewable energy credits through competitive solicitations or through issuing a standard offer contract for that. So that's our first point.

Our separate point is that obviously there has been a lot of discussion today about what the definition of prohibitive cost is, and as you've heard previously, we don't think 1 percent of the IOU's total annual retail revenues is the standard that should be used. We believe the standard needs to be somewhere in the neighborhood of 3 to 4 percent, and we will provide spreadsheets that develop the rate impact numbers, revenue numbers, exactly what I think Bob Trapp wants me to do, with regard to that percentage.

MS. MILLER: Thank you. Did you -- will you be addressing what occurs if they're not in compliance?

MS. BROWNLESS: We've had some discussion in our coalition about that, and I'm really not prepared today to talk about noncompliance.

MS. MILLER: Thank you.

MS. BROWNLESS: But we will address that on the 26th.

MS. MILLER: Great. Any other comments on (4), compliance?

MR. TWOMEY: Cindy?

MS. MILLER: Mike Twomey.

MR. TWOMEY: Just briefly, AARP is not here to say grace on the 1 percent, although we think it's clearly essential that you have a definition, and that's what you've done. You've said -- you've essentially established that 1 percent -- beyond that is cost-prohibitive. So without saying that 1 percent is good, I will say that it's obvious that 1 percent, which would equate to $198 million in 2009 projections, is better than the 600 to $800 million roughly that would be associated with increased revenues to customers from Ms. Brownless's proposal, the 3 to 4 percent.

MR. KARNAS: This is Jerry Karnas, Environmental Defense Fund.

MS. MILLER: Go ahead.

MR. KARNAS: Mr. Twomey, respectfully, I just don't understand how you can be saying that to this

Commission at this time when you have supported in the past early cost recovery for nuclear plants. I mean, the ratepayer impact according to RPS for 1 percent is $1.20 a month. Your organization has supported early cost recovery for nuke plants where, if they don't get built, nobody gets the money back, okay, which takes ten years to build, and the practical implementation of that build has been $8 a month this year for Progress Energy, going all the way up to at high as $44 a month in 2017. That's the PSC's own analysis.

So, I mean, I just don't understand how your organization can take the position, you know, saying that $1.20 a month for homegrown renewable energy that creates jobs and diversifies our economy and keeps money here is prudent at this time. I mean, it just doesn't make any sense.

MS. MILLER: And this is Cindy Miller. One thing I want to keep saying is, at this point, this is just staff's strawman proposal, so the agency itself hasn't taken any position on it. But let me see if there are any other comments that folks have in response.

MR. SUTTON: Cindy, this is Thomas Sutton.

MS. MILLER: Please go ahead.

MR. SUTTON: Thank you. I had an observation and then a question.

In the wording in 1 and 2, it says the supply of renewable energy or renewable energy credits is not adequate. I was challenging whether we needed to even have the supply of renewable energy in there. It seemed as if RECs were the sole compliance measure. That's what's being bought. And even though I have a renewable energy plant, if I chose for some reason -- and I'm not sure why I would, but if I chose to withhold the sale of my RECs, then my project could not be in the numerator as far as a resource that's involved in compliance. And so it seemed to me that maybe we should just be talking about RECs there, but I wanted to hear what people thought.

And then secondly, we certainly are proponents of alternative compliance payments, and whether that gets recognized in this section or somewhere else, you know, we would like to see it in there.

MS. MILLER: Thank you. Commissioner Skop.

COMMISSIONER SKOP: Thank you. I just wanted to clarify. Maybe I may have misheard what Mr. Twomey said down on this end, but I think that he mentioned a number at the 1 percent cap approaching somewhere on the order of $1 billion, but I thought I heard staff mention that 1 percent would be roughly 250 million.

MR. TWOMEY: Well, I think, Commissioner, the -- I thought 1 percent -- I got the numbers from Tom Ballinger. I thought it was 198 in 2009 projections. I could be mistaken.

MR. BALLINGER: It is about right. It's about $190 million in 2009 and escalating up from there.

COMMISSIONER SKOP: Okay. Thank you.

MR. FERRARO: Frank Ferraro has a comment.

MS. MILLER: One minute. Let's see if there's any other follow-up to the points that were made by Tom Sutton. Let's see if there's anything else on that.

Okay. Please go ahead.

MR. FERRARO: Frank Ferraro, Wheelabrator.

In reading (4), starting off with the first sentence in (a), it talks about improving the proposed standards and enforcing compliance, and yet nowhere in here does it talk about the enforcement of compliance. And I think as Mr. Moyle said before, someone's comment about it's like speeding along the highway and getting a ticket and not having to do anything about it, and maybe not even getting the ticket. There needs to be something in here about enforcement and what the consequences are going to be rather than just leaving it up to the general assumption that it falls under the Commission's enforcement proceedings.

But I want to go to what one of the speakers just talked about, and I think it is appropriate here, the discussion of alternative compliance payments.

An alternative compliance payment obviates the need for a lot of this, because a utility is required to search out and try to get as many RECs as their RPS requirement. If they cannot find it, or if the RECs that are available are, quote, too expensive, they can pay an alternative compliance payment. So there is no reason that there would be noncompliance. They either get the RECs or they make a payment. It's pretty straightforward.

Also, an alternative compliance payment, when that value is set, perhaps in a separate proceeding, that sets the cap, and then you don't get into, well, is it 1 percent, it is $16, is it whatever. You set it within the alternative compliance payment, because an alternative compliance payment is essentially the highest value per REC that an investor-owned utility would pay, because they will either buy RECs at a lower price, or they'll pay the alternative compliance payment rather than paying a higher price. So it sets a cap, it takes care of the enforcement issues, and it does away with a lot of the things that we're looking at now and will be looking at and getting into a lot of discussion about.

So again, I think that it's appropriate to talk about here, because you could replace section (4) with just an alternative compliance payment.

And then finally, since people have talked about how great their technologies are environmentally, I want to put in a pitch for waste-to-energy. Waste-to-energy avoids the release of more greenhouse gases per megawatt-hour of any renewable, because we do more than just generate electricity.

In addition, in the discussions where people have said we need to look at water use and other things, those all are biased against combustion processes, be they waste-to-energy, biomass, landfill gas, whatever. We haven't heard anything about land use, solar reflection, noise, visual impacts, impacts on avian. You know, all of those things, if you're going look at environmental issues, then you need to be aware. You're going to have to open this thing really wide, because you're going to be accused of focusing on just a few technologists and letting the others skate by.

So I would suggest you don't even get into that environmental issues thing and just stick with it's defined as renewable, and that's what you're looking at. If you want to look at greenhouse gases, that's fine, but you're going to have to look at a life cycle analysis of greenhouse gases instead of just, oh, how many megawatts do they produce.

So that's a side thing, but the main thing here is the alternative compliance penalty payment.

MS. MILLER: Thank you. And Judy Harlow has some comments.

MS. HARLOW: I want to go back. I hate to go backwards this late in the day, but I want to go back to Mr. Sutton's point about page 5, line 9, of the draft rules.

You had a concern that we had the supply of renewable energy or renewable energy credits in sub 1 and sub 2. And I think staff's thinking when we wrote that language was that the utility would have to prove up not only that they could not achieve sufficient renewable energy credits in the market, but also that they could not develop renewable energy on their own, and I believe that's why that language is there. And I appreciate Mr. Sutton's comments, because I think we may need to relook at that and perhaps tighten that language up.

And also, Mr. Sutton, if you had specific rule language suggestions on that, I would appreciate it.

MS. BROWNLESS: Cindy?

MS. MILLER: Suzanne Brownless, and -- go ahead.

MS. BROWNLESS: Specifically to that point, if you look at 366.92(3)(b)2, you lifted that language verbatim out of the statute, so that's pretty much a direct legislative directive. I don't know that you can do much with that.

MS. HARLOW: Thank you.

MS. ZOLLINGER: Marni Zollinger wishes to comment.

MS. MILLER: One second. Michael Dobson.

MR. DOBSON: Yes. I just want to make a brief comment regarding the compliance, and I want to go out on a limb, which is probably out on a ledge, actually. I just want to suggest to you that without enforcement mechanisms that include an ACP, that at the end of the day, we're not going to have much of an RPS.

And Bob -- well, he's gone. I think earlier he mentioned what the staff was up against with regard to placing some language in the proposal regarding an ACP as to how far you could go with, you know, creating a trust fund or something of that nature which you would place that money in and then send that money back into renewable energy projects. But what I didn't hear is that if your intentions were to in some place in the language to at least go as far as you possibly can with an ACP, making some suggestions that the Legislature do consider going to the next step, given that it has the authority to do so.

MS. MILLER: Thank you. Marni?

MS. ZOLLINGER: Yes. I would like to thank the gentleman who spoke to waste-to-energy. I thought his points were right on, and his analysis that the highest cost needs to be assigned to that REC alternative payment, otherwise, they will pay the low cost. They would rather pay a penalty than actually meet the RPS standard, and that's obvious logic, so I would like to, you know, second that.

The next thing I would like to say is that I think there needs to be added a number 3 to the part of compliance. Evolution Markets have confirmed that there are rising numbers or rising proposals that are called merchant facilities in America, and the reason for merchant facilities are -- these are facilities that are put and financed and directed, and they simply put energy into the line due to the open assets, you know, FERC abilities.

And the reason they do that rather than have a power purchase agreement with the utility is that the utilities in general do not offer bankable contracts.

And bankable contracts in this sense can be defined as something that meets the Office of the Comptroller of the Currency, their definition, which is defined in a letter called OCC 1051, and that is a bankable contract.

If they don't -- if the utilities are known to be refusing a bankable contract to a renewable energy protagonist of any sort, then aren't they the ones at fault for not having sufficient renewable energy?

MS. MILLER: We look forward to --

MS. ZOLLINGER: So could that language be amended so that if one -- another way to not get an excuse is that if they refuse to provide a bankable contract to renewable providers?

MS. MILLER: We welcome alternative language by September 2nd, and we'll review it and check to see what authority we have.

MS. ZOLLINGER: Thank you.

MS. MILLER: Are there any other comments on compliance? What we're thinking about is a ten-minute break. We're not planning to run real late here today, so for those of you who might have child care arrangements or another need to know, we're not planning to run real late at all, but we are thinking of a ten-minute break right now.

Mark.

MR. FUTRELL: I would just like to make a quick comment. We've heard a lot about ACP on this, and we would appreciate your comments on it.

We would also like as you're developing your comments to do so in the context of what authority the Legislature has given us. You know, we've talked about this quite a bit in our workshop process last year, and we heard all the pros and cons and all the potential impacts of that as a good way of encouraging compliance, but there are some issues with it. And also, now that we have a statute, we want to hear your thoughts on it given what we have to operate under. So I just throw that out there.

MS. MILLER: Commissioner Skop.

COMMISSIONER SKOP: Thank you. I don't want to interrupt the break, but two quick points, one on Mark's and one on the previous question.

To Mark's point, if staff decides to evaluate the RPS based on participant input and finding legislative direction to go down that path, I think it would be very important for staff to provide some sort of guidance or explanation in that if we go down that way of thinking, to the extent that there be some provision, express provision or express recommendation to the Legislature that that money, if it's collected, be used solely for renewables as opposed to being, you know, available for other things. That would just be my two cents on that one. I think that has come up before in the discussion on alternate compliance payments.

To the other previous question that talked about the specter of merchant plants, in their comments to staff, if they could please articulate how that would comport or not be in accordance with the holding in PW Ventures, I think is the case that basically -- was it PW Ventures, or was it the New Smyrna Beach case?

So thank you.

MS. MILLER: Okay. We'll take a ten-minute break. We will reconvene at 4:10.

(Short recess.)

MS. MILLER: Okay. We're on our last short round here. We've had comments on compliance, (4), and we have two sections left in this rule. We have cost recovery, and we have reporting requirements, so let's go ahead and move into cost recovery.

MR. MOYLE: Cindy, before we do, I just wanted --

MS. MILLER: Okay. Jon Moyle.

MR. MOYLE: I think we've made the point clear -- Jon Moyle -- about compliance being a needed part of the rule and something that needs to be relooked at.

You know, I know the Legislature was made aware of this. Some of us were over there working during that process. I think that there's another reason for taking another look at it. I mean, this rule is going to be looked at, as somebody made the point on the phone, by investment bankers trying to figure out whether to invest money and capital in Florida. It needs to be pretty clear that it's a rule and it's sending the right message to the investment community.

The whole compliance section now, it doesn't have anything about enforcement. The whole thing is about getting out of it, and I don't think that sends the right message, that your whole compliance section is all about excused compliance. So as you move forward, I know you'll take a good look at some things that we might be able to do proactively to put some strength in it and some teeth.

MS. MILLER: Thank you. And any alternatives to the alternative compliance mechanism would be welcomed as well.

Sean Stafford.

MR. STAFFORD: I agree with what Jon said, and one of the options in addition to an ACP that we would throw out is a refund to ratepayers as a credit to the fuel adjustment clause. That's perhaps one option. But we'll provide more options to you and try to argue their -- get the lawyers involved and argue the statutory construct and the legality of it. But I agree wholeheartedly with what Jon and others here have said. If you don't have teeth in this, renewable energy development just will not go anywhere.

MS. MILLER: Thank you. Section --

MR. KARNAS: Cindy, this is Jerry Karnas, Environmental Defense.

MS. MILLER: Okay, Jerry. Go ahead.

MR. KARNAS: Jon and Sean's comments are very well taken. I agree with those.

One other thing on compliance. One of the downsides that has emerged from a REC-only market is unhealthy market concentration leading to quasi-monopolies, and I'm wondering if the compliance section is a section where that should be dealt with.

You know, Maryland and New Jersey are trying to fix their market now because of Sun Edison and Sun Power's 60 percent market share there. You know, what the danger is is that folks that understand how these RECs work can really aggregate them and almost -- virtually monopolize them very quickly, shutting out large sectors of the market, particularly in solar.

So I was just wondering if there has been any thought given to how to avoid that potential downfall with this rule in Florida.

MS. MILLER: This is Cindy. I don't see anyone wishing to comment, but I don't remember seeing a provision in the statute relating to that. But if you have language, send it to us by September 2nd.

Judy Harlow has a point to make here.

MS. HARLOW: This is really more of a question. Mr. Karnas, I think earlier this morning you mentioned a study about REC markets or RPS that were based solely on RECs and that being a more expensive option for compliance. Was that you?

MR. KARNAS: Yes, ma'am.

MS. HARLOW: Is there any way you could provide that to staff, please, or just e-mail the source to us?

MR. KARNAS: Yes, yes. I'm preparing that.

MS. HARLOW: Thank you.

MR. KARNAS: But it's probably easily found. It's Summit Blue Consulting for the New Jersey Board of Public Utilities, but I will provide it.

MS. HARLOW: Thank you.

MR. WALLACE: Hello, Cindy. This is Wayne Wallace with Solar Source. I would like to make a comment, if I could.

MS. MILLER: Okay, Wayne. Go ahead.

MR. WALLACE: I'm also in agreement with what Jerry Karnas said with Environmental Defense there. I mean, we've had some folks come down here and make some presentation to us from New Jersey and Maryland, and the very fact of the way those folks developed their REC policy was such that those small to mid-sized solar companies, solar contractors -- and that's what we are. We're solar contractors here in the Tampa Bay area of Florida. Those guys were actually laying people off and looking to come to Florida because these big companies out of California that Jerry had mentioned were coming in and taking most of the market share for these large projects, which certainly did not help them at all.

And we have a very, very large concern of that happening here in Florida. So, you know, when we hear the REC policy, we go, "Oh, no, we don't want that to happen here in Florida and have these big corporations come into Florida and then have us work for wages for them." I mean, we just don't want that to happen.

And as we, you know, search and look at a better policy mechanism, I just have to mention this feed-in tariff policy or renewable energy payments, that Dr. Herman Scheer, when he came to the Governor's summit there in Miami -- in fact, he sat right next to Governor

Charlie Crist, and there was a moderator there, I forget the gentleman's name, one of the Governor's friends that said, "Hey, okay, our work is all finished here," after Dr. Herman Scheer gave his presentation on feed-in tariffs or renewable energy payments.

So, you know, there's completely empirical evidence that 45, I think it is now, countries that use that policy mechanism to meet those goals, there has hardly been any failure with the right policy mechanism with that. And I understand California now is finally looking at that renewable energy payment policy or, you know, feed-in tariff policy to get them back on track.

So I don't know if the Public Service Commission has looked at this policy, but I urge the Public Service Commission to research, look at this policy. From everything I've read about it, there is no better policy mechanism on the planet to help us develop renewable energy here in Florida, specifically solar, which is our most abundant resource here. So --

MS. MILLER: Okay. Well, thank you for that comment. And again, we're looking at everything through the prism of the statute that we have before us, but we will take a look at that as well.

Let's move on to section (5), cost recovery. Do we have comments on the cost recovery section?

Seeing none, let's move to --

MR. SUTTON: Cindy?

MS. MILLER: Pardon me?

MR. SUTTON: This is Thomas Sutton.

MS. MILLER: Please go ahead.

MR. SUTTON: Thank you. This is a question on cost recovery, and it covers other sections, but it gets back to this bundling and unbundling.

It's clear from the strawman that if it's an unbundled product, the REC is recovered through the ECR, and the energy presumably under PPA would get covered under, you know, normal ratemaking.

If we sell a bundled product, which I think I heard earlier we would be allowed to, so if I have a PPA and I get paid one price, dollar per megawatt for energy and the attribute, does that imply that the IOU in that instance would only get recovery through the traditional ratemaking concept? And if not, how then administratively is that one price broken into two, and would the contractual parties have unilateral authority to come up with whatever pro rata share they wanted to ascribe to that?

MS. MILLER: Tom Ballinger will respond on that one.

MR. SUTTON: Thank you.

MR. BALLINGER: I would think that we would look to have those prices split. It might be one contract, but at least separately identified in the PPA and in the REC separately so that the cost recovery could go through the different mechanisms and keep these as unbundled products.

MS. MILLER: Any other comments on section (5)? Jon Moyle.

MR. MOYLE: I'm sorry to do this, because it is late, and I know we're tired. We've been at this for a while.

The cost recovery section, as I read it, is going to flow through a clause. I'm trying to understand and reconcile. To jump ahead just briefly, there's another section that is found -- I misplaced exactly where it is, but it's another section of the rule where you talk about the administrative costs shall be recovered through membership dues. This is in the renewable energy credit market section, paragraph (c), (1)(c).

And I'll quote for those that don't have it in front of them. "The administrative costs associated with the Florida Renewable Energy Credit Market shall be collected either through membership dues, certification fees, or administrative fees assessed to a renewable energy credit. Fees shall be fair, equitable, and cost-based."

I was just trying to reconcile that, because my understanding of the cost recovery, it's a utility flow-through. And the appropriate place, we would argue, for that cost to be reflected is in the utility's costs, and they can recover them, and that you shouldn't further burden the renewable energy providers by trying to have them have to pay some portion of the value for the REC as an administrative cost, particularly because they don't have the ability to come in and seek that money through a clause.

MS. BROWNLESS: I don't understand what you're saying, Jon. Perhaps it's late. What are you saying?

MS. MILLER: And that's Suzanne Brownless raising a question.

MR. MOYLE: I guess I'm just trying to argue and suggest that the language that it comes through the clause is acceptable, but the language that they have, which appears to conflict with it in another portion of the draft rule that talks about administrative costs, that says that administrative costs are coming out and are assessed to the renewable energy credit, which I interpret to mean if you have the renewable energy credit and you're selling it, that possibly that is a deduct from your credit. I don't think it should be a deduct from your credit, but it should be part of the administrative costs that are passed through the clause as you have in your cost recovery paragraph.

You got it now?

MS. BROWNLESS: Yes, I got it now. Thank you.

MS. MILLER: Thank you. Any other comments on cost recovery?

Sean Stafford.

MR. STAFFORD: We had a couple of concerns. And I know we're tying this into cost recovery, but it goes back to some discussions we had when Bob was here.

Is it the position of staff in the rule that cost recovery is going to be the unbundled cost recovery, you're going to get full cost recovery for the REC at whatever cap is set, and then there will be a separate cost recovery proceeding in ratemaking procedures that's going to still be tied back to the avoided cost mechanism? Is that how you foresee this cost recovery?

MR. BALLINGER: I think so. If I understand your question correctly, the PPA and the energy and capacity payments would still be gauged against the utility's avoided cost, and then the REC payments, whatever they may be in the market, would go through the

ECRC.

MR. STAFFORD: So -- if I might, so if we entered into a voluntary agreement with an IOU that was above avoided cost, with the RECs separate -- let's say we had an unbundled product. If we entered into that contract, similar to the Manatee agreement that was floated out six or eight months ago, if that agreement is above avoided cost, it then has to go through the standard ratemaking process, and you interpret the new law to -- you don't interpret the new law to apply to this ratemaking process, the new law that notwithstood avoided cost?

MR. BALLINGER: I think the way we're interpreting it is that the avoided cost is still the capacity and energy. We're creating a new market to, quote, go above avoided cost. It's a cost-plus. And that's what the REC is doing. It's giving you the adder to get you above the utility's avoided cost because it's a separate market. And I think the legislation gave us the authority to create this separate market and not violate PURPA.

So I think, in essence, to go back to the Manatee example that you had, had that contract come before us, if this were adopted, these rules in place where the RECs are sold separately and as a requirement of a mandated market, it would be allowable.

Does that answer your question?

MR. STAFFORD: I think so. I mean, we're having a -- we're still having a hard time understanding how we're still tied with part (a) to avoided cost and why exceeding avoided cost would be sort of disallowed under the new structure that was specifically in the law written to get us out from underneath the avoided cost model. I understand what you're saying is an option, but we're wondering why the option wouldn't even be considered to allow voluntary agreements that are above avoided cost in addition to the RECs.

MR. BALLINGER: I think staff was trying to keep things simpler and understand it, keep those precepts of avoided cost, let the REC market be our adder of what we need to induce investment in renewable energy and not commingle the two. Otherwise, it gets confusing real fast. We're trying to gauge to let the RECs be adder, what does that need to be to induce investment, and that's what we focused on, and not talk about avoided cost. Let's not complicate things. That's how we approached it.

MS. MILLER: Suzanne Brownless.

MS. BROWNLESS: I think part of the problem is, for people who have existing purchase agreements with utilities that have been negotiated on the basis of avoided cost energy sales, because that's the standard for standard offer contracts for cogen plants and -- I guess most of the contracts that are out there are cogen contracts. Obviously, there was an energy and capacity payment in those PPA contracts. And I know people are confused about the fact that -- how are you going to use your RECs in addition to those -- in addition to the contract you already had, which is for energy and capacity.

And if I'm understanding what the staff is proposing and the way this REC structure is set up, your current contract does not address the unbundled REC portion. So while your energy and capacity contract numbers and payments are tied to avoided cost of the avoided unit against which you negotiated that contract, the REC portion is not tied to avoided cost.

So the RECs have nothing to do with avoided cost at all. The RECs have a separate price that's going to be established independently, and that's going to be a separate component. So if you were negotiating a new contract now, you would have two pieces to your contract. One contract would be energy and capacity based upon avoided cost, and one piece of the contract would be your RECs, and that could be above avoided cost.

Am I correctly stating that?

MR. BALLINGER: I think you got it correctly.

MS. BROWNLESS: Thank you.

MS. MILLER: I've often said that doing rulemaking is like doing 100 declaratory statements at once, because you're thinking about individual factual scenarios and how they're going to play through, so that makes it really tough.

Are there any quick follow-up questions on that?

MS. ZOLLINGER: This is Marni Zollinger. I would like to make a comment.

MS. MILLER: One second. Commissioner Skop, do you have any comments?

COMMISSIONER SKOP: I'll yield to the question, and I'll take the next one.

MS. MILLER: Okay. Marni, please proceed.

MS. ZOLLINGER: Are there any representatives from the utilities listening or in the audience?

MS. MILLER: We have some folks here. Their primary people are not here because of the storm, it's my understanding, but we have some here who are monitoring.

MS. ZOLLINGER: Well, good. I just wanted to make sure that we hadn't had two sides of the conversation.

MS. MILLER: Right.

MS. ZOLLINGER: My question here is that it seems that we have a toss-up here on the compliance question between the utilities being worried about paying a punishment, you know, paying a fine for RECs that aren't out there, and renewables wanting to make sure the RECs and our renewable energy get bought.

And my compromise or suggested compromise in this compliance section is that under number 3, which I already suggested, because there's 1 and 2 there -- I suggested a third about the power purchase agreement. I suggest also a number 4 there, that the utilities adopt a "green first" policy.

Utilities say they're afraid that there's not enough renewable energy there and they're going to get hit. So if they believe that truly, then would they be willing or can we write a "green first" policy, so that if there's a choice between one megawatt produced by clean solar and another megawatt produced by dirty coal, we're in the agreement that the one that is transmitted and bought is it the one from solar first.

Would anyone object to that?

MS. MILLER: I'm looking around the room. I think everyone is pretty tired right now, but I think everyone has heard what you've posed, and we'll see if there are any follow-up comments on that.

Commissioner Skop.

COMMISSIONER SKOP: Thank you. Just two quick points to Mr. Ballinger's point with respect to the cost recovery. I think I understood pretty clearly what he was stating in terms of how he would envision an RFP with an IOU entering into a long-term power purchase agreement, a PPA for energy and capacity, and that would be at avoided cost, and then the generator or the utility would negotiate for the RECs over and above the cost-plus theory.

How would that work for an IOU if an IOU were to self-build? I was trying to envision how that might work, how you would distinguish energy and capacity from --

MR. BALLINGER: Our current regulatory framework would be that if it's an IOU-owned asset, it would be looked at for prudency and things of that nature and rolled into rate base, recovered through base rates.

COMMISSIONER SKOP: But limited to avoided cost for the installed capacity, and then they would be able to monetize the value of the RECS through -- either for themselves or --

MR. BALLINGER: I don't think so. I think on that situation it would be actual cost, much like we're going to be faced with the FPL solar facilities. That may be above their avoided cost, but they're in for a reason.

COMMISSIONER SKOP: I know that there was a specific provision with respect to that, but that only referenced up to 110 megawatts of solar. To use a hypothetical wind project or something else, would -- is there current legislative delegation that would allow that full cost recovery?

MR. BALLINGER: No.

COMMISSIONER SKOP: Okay. Thanks.

Oh, one more quick follow-up. I don't know if the previous question was still on the line, but it was the small solar installer, and I don't know if he's still listening in, but I was wondering why, briefly, he thought that the current rule would be detrimental to distributed solar PV generation that small providers would install.

MS. MILLER: Is Tom Sutton still on the line?

COMMISSIONER SKOP: I don't think it was Tom Sutton.

MR. KARNAS: I think it was Wayne Wallace.

COMMISSIONER SKOP: I guess not. We'll move on. Thank you.

MS. MILLER: Is he still on the line? I know our numbers are dwindling.

Well, let's, if we could, move on to the reporting requirements, section (6). And this will be our final section for the day. Do we have any comments on the reporting requirements?

Okay. We do have some housekeeping measures to talk about. As you know, this workshop is being recessed until Tuesday, August 26th, at 9:30, but I know that Mark Futrell has some points that he wants to make, and we'll see what those are.

MR. FUTRELL: Thanks, Cindy. Mark Futrell with staff again.

As Cindy has mentioned, post-workshop comments, we would ask that you file those by September 2nd. If you wish to file something prior to that date, you're more than welcome to. We received a couple of sets of comments prior to today's workshop. Those will be placed in the docket file and also on the Web site for access.

We would again ask that going forward, if you would file -- anything you file, file it in the docket, 080503. If you wish to also supplement that with an e-mail to staff, that's fine as well, but it's very important to file it in the docket. And I think that's about all for right now.

Oh, and we are not planning to have a call-in next time. We're asking those that wish -- we've tried to provide plenty of notice. We provided the call-in today because of the extraordinary circumstances with the storm, but folks have hopefully had plenty of time to make their arrangements to get here next Tuesday. And so we will welcome and look forward to your comments in person next Tuesday.

MS. MILLER: Tom Ballinger.

MR. BALLINGER: One final comment. On your comments that you file, given the expeditious nature that we have to produce the rule and get it to the Legislature, we would really appreciate your comments also having suggested rule language in type-and-strike using the staff's strawman as a starting point. That would greatly assist us in putting your comments to how you want them worded.

MR. TAYLOR: A comment on the phone, please.

MS. MILLER: Pardon me?

MR. TAYLOR: A comment from the phone. This is Alan Taylor with PCS Phosphate.

Regarding the lack of a call-in number for next week, that seems problematic, because we have not had any utility speak today, and so it appears that next week will be focused on the utilities' feedback on the rules. And if there's no call-in number, it's pretty much -- they're able to say whatever they want without being challenged. And what we've seen today is that when people have different points of view, they're able to discuss it. So I'm just wondering if not having a call-in number and burdening everybody to show up is the best way to proceed.

MR. FUTRELL: Well, I'm sure everyone that will be here will be challenging each other, regardless of who makes their proposals. Certainly we'll provide audio access on our Web site to monitor what goes on. And again, you'll have the opportunity to file written comments on what you hear and what your thoughts are on the rule.

MS. MILLER: We do plan to start at the beginning again on Tuesday.

MR. MOYLE: I was going to ask that.

MS. MILLER: For those -- I've been asked that.

MR. MOYLE: Can we -- rather than go back through stuff we've already done --

MS. MILLER: For those who were not able to be here today.

MS. BROWNLESS: Well, could we --

MS. MILLER: Pardon me. Let's start with Jon Moyle.

MR. MOYLE: I guess I was just going to ask -- because a lot of people were here by phone, even though they weren't here in person. I thought we were going to maybe start with the renewable energy credit market, the second portion of the rule, rather than go back through the stuff we've already talked about today extensively when we start on Monday and finish working through the rule and then give people an opportunity at the end to say, you know, "I want to go back." But if that's not the intent, I just want to know for planning purposes.

MS. BROWNLESS: And, Cindy, if I may just --

MS. MILLER: Suzanne Brownless.

MS. BROWNLESS: -- support Jon's request, we have spent an awful lot of time today. I know that many people have listened on the phone call. And, of course, they all have the ability to go to the Commission's archives and listen. They'll also have a transcript that I'm sure will be out shortly.

If we could just start where we left off, because that's a pretty -- I mean, I think there are going to be some comments about that, but certainly not as many as there will be on what we've already done. And the last piece of the rule is for munis and co-ops, and I should expect there wouldn't be very much comment on that part at all, and then we can go back and let people talk about the beginning as much as they wish.

MS. MILLER: We'll send an e-mail out on the order, but we hear what you're saying.

MS. BROWNLESS: Thank you so much.

MS. MILLER: Michael Dobson.

MR. DOBSON: Actually, I just wanted to echo what Suzanne and Jon have said. I think we've done a good job of covering this, and I know our organization has submitted written comments, and I'm sure there are many others that are available, and I don't see why we can't just start from where we left off, so to speak.

MR. MOYLE: That would be my vote.

MS. MILLER: Any other comments that we have? Ryder Rudd?

MR. RUDD: This is Ryder Rudd with staff. There's a lot of parties that weren't able to attend due to the storm and circumstances beyond their control, and that's the reason we are recessing this meeting and allowing those parties to come back. I'm sure there's going to be a lot of comments that they make that you're going to be highly interested in, so I do intend that we will go back through this initial rule for those parties to hear those comments.

However, we wouldn't want to rehash some of the same things we've already been through, and I don't intend that, but I do intend to allow those parties to be heard and let them go ahead and make those comments initially and then roll through the rest of the rules, but not redo everything that we have just gone through, with the exception of them being able to have the opportunity to have those comments.

MR. MOYLE: The only suggestion I would make if you do that, some people -- you know, time is precious. Maybe you want to say at a time certain if you're going to pick up the second portion of the rule, let everybody come back from 9:30 to 12:00 and talk about the first portion, and then the second portion say we're going to pick up the market piece and the co-op piece.

MR. RUDD: We'll address that later.

MS. MILLER: Thank you. Well, with that, we're recessed until Tuesday at 9:30. Thank you for all your diligent participation.

(Proceedings recessed at 4:38 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, Registered Professional Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 139 through 212 are a true and correct record of the aforesaid proceedings.

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

DATED THIS 25th day of August, 2008.

Mary Allen Neel

MARY ALLEN NEEL, RPR, FPR
2894-A Remington Green Lane
Tallahassee, Florida 32308
(850) 878-2221