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In re: Establishment of rule on renewable portfolio standard

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FPL Post Workshop Comments

Attachments: Appendix A, Appendix B, Appendix C

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9/8/2008

FPSC-COMMISSION CLERK

**BEFORE  
THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**Establishment of Rule On        )  
Renewable Portfolio Standard )**

**Docket No. 080503-EI**

**COMMENTS  
OF  
FLORIDA POWER & LIGHT COMPANY**

**I.       Introduction**

On July 11, 2008, the Florida Public Service Commission ("Commission") convened a rulemaking workshop for the purpose of developing and submitting for legislative consideration a proposed draft rule to establish a Renewable Portfolio Standard ("RPS") for Florida, sometimes hereinafter the "RPS Rule" or the "Rule". In its notice for the July 11<sup>th</sup> workshop, the Commission indicated that "[t]he purpose of the workshop is to provide the Commissioners and interested parties with an opportunity to discuss issues relevant to the development and implementation of a Renewable Portfolio Standard for Florida pursuant to the provisions of House Bill 7135."<sup>1</sup> At the outset of the workshop the Commission's staff presented the legislative intent relating to the RPS. Specifically, Staff noted that the purpose of the RPS, and thus the Rule, is to:

- promote development of renewable energy
- protect economic viability of existing renewable energy facilities
- diversify fuel use
- lessen dependence on natural gas and fuel oil
- minimize volatility of fuel costs
- encourage investment within the state

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<sup>1</sup> See, Workshop Agenda July 11, 2008

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- improve environmental conditions
- at the same time, minimize the costs of power supply to electric utilities and their customers<sup>2</sup>

Subsequent to the July 11<sup>th</sup> workshop, the Commission Staff conducted two technical workshops to gather data and evaluate the cost and technical potential of various renewable energy generation technologies in Florida through the year 2020. On August 6, 2008, the Commission Staff provided notice that it would be conducting a rules development workshop on August 20, 2008. Subsequent to the August 20<sup>th</sup> workshop, the Commission staff held another workshop on August 26<sup>th</sup> to permit those entities unable to attend the August 20<sup>th</sup> workshop an opportunity to comment and discuss the Staff's initial draft RPS Rule.

In accordance with the procedural schedule established by the Commission Staff, Florida Power & Light ("FPL") hereby submits its post-workshop comments<sup>3</sup>, supplementing and clarifying its comments at the August 26<sup>th</sup> workshop. At the outset, FPL acknowledges that its comments and recommended rule may be perceived by some as falling outside the parameters of certain aspects of H.B. 7135. However, FPL also would suggest that the overriding objective of the Commission, and therefore participants in this process, is to recommend to the Legislature a rule that will best meet the objectives of H.B. 7135. To that end, FPL is submitting its comments and its proposed revisions to Staff's initial draft RPS Rule. To the extent the Commission believes that a legislative change is required to address or include any aspect of these guidelines, the Commission's report should include a recommendation that the legislature effect such a change. Similarly, FPL suggests that the rule the Commission refers to the Legislature for its consideration should be influenced and guided by what

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<sup>2</sup> Slide presentation of Angela Patterson, Commission Staff.

<sup>3</sup> FPL reserves the right to supplement these comments.

the Commission believes would best fulfill the objectives of H.B. 7135, with explanatory notes, comment, and legislative recommendations, as necessary.

## **II. Guiding Principles for a Clean Energy Portfolio Standard**

At both the national and state level, initiatives are being undertaken to address climate change issues. Some of these initiatives range from the implementation of renewable portfolio standards; creation of regional greenhouse gas compacts among states; to possible introduction of state and national carbon cap-and-trade programs. The bottom line is that they all are a means to assist with the reduction of emissions of greenhouse gas emissions; foster the development of renewable resources and, increase our nation's energy security. However, the achievement of these important goals requires a methodologically sound and uniform approach. Alternatively, if these objectives are pursued in a piecemeal manner, without proper consideration of natural market forces and the economic incentives that will drive performance, these goals will not be met and/or the efforts to attain the goals will result in unintended additional costs to customers. Therefore, FPL believes that a holistic approach of assessing our current environment as well as future policy changes is crucial if we are to succeed in achieving the objectives of the legislature. To that end, the policies pertaining to the development of renewables and reduction in greenhouse gas emissions must be considered together in order to reduce the cost implications to our customers. The implementation of a Clean Energy Portfolio Standard will harmonize these policy objectives. For a Clean Energy Portfolio Standard will encourage the development of both renewable energy and clean energy projects in the State; foster fuel diversity; lessen dependence on natural gas and fuel oil for the production of electricity; encourage investment within the State; reduce greenhouse emissions and improve environmental conditions and

minimize costs to electric utilities and their customers. For these reasons, FPL recommends adoption of a "Clean Energy Portfolio Standard" (CEPS) rather than an RPS.

To meet the legislative intent of H.B. 7135, it is imperative that a well-designed Florida-specific CEPS have guiding principles. FPL's guiding principles are captured in the Power Point presentation attached to these comments<sup>4</sup>. The Power Point presentation also encapsulates the company's comments pertaining to Staff's proposed draft rule.

The guiding principles of a Florida-specific CEPS are as follows:

**A.** A Florida CEPS should have three principal objectives:

- i. To reduce emissions of Greenhouse Gases from the production of electricity,
- ii. To increase the nation's and Florida's energy security, and
- iii. To reduce price volatility of electricity while maintaining reliable electric service for customers

**B.** A Florida CEPS should value foremost clean/renewable energy sources that have the greatest effect in meeting the above three objectives. Therefore, clean energy sources such as renewables and nuclear, as well as carbon reductions due to the modernization of power plants and energy efficiency, should be recognized and encouraged as critical components in meeting a Florida CEPS.

**C.** To encourage the development of and investment in clean/renewable energy sources, up-front and expedited prudence determinations and cost recovery approvals with administrative finality are essential.

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<sup>4</sup> See, Appendix B.

- D.** The Florida Public Service Commission (FPSC) should set and periodically (every 3 years) review all aspects of the CEPS and set targets and expenditure caps to ensure the targets can be met without imposing unacceptable costs or adverse reliability effects on customers. Expenditure caps also should be reviewed on the same schedule to ensure continued appropriateness.
- E.** In order to prevent Florida from becoming economically disadvantaged by higher electricity costs, a Florida CEPS should be adjusted and harmonized with a Federal renewable portfolio standard or other similar standard should one become law.
- F.** The methods and incentives for complying with a Florida CEPS need to be consistent with the objectives set forth in item A above.
- G.** Electric customers should be fully informed of their contribution to meeting a Florida CEPS.

Incorporation of these guiding principles into a Florida CEPS will enable the Commission to implement a CEPS that satisfies the basic objectives of H.B. 7135 in a measured economic manner. As noted above, to the extent the Commission believes that a legislative change is required to address or include any aspect of these guidelines, the Commission's report should include a recommendation that the legislature effect such a change.

### III. Overview of FPL's Recommendations

FPL recognizes that a first effort to develop a rule of such import is not an easy task and will necessarily require analysis and input from affected stakeholders. To that end, FPL welcomes the opportunity to review and comment on the draft Rule. While the initial draft Rule provides a starting point for discussion, FPL respectfully submits that certain aspects of Staff's initial draft Rule will not further the goals of H.B. 7135. Specifically, FPL does not believe that the framework contemplated by the draft Rule will promote any meaningful development of new renewable generating sources in the state of Florida. As described more fully below, FPL's recommendations are intended to achieve the legislative objectives set forth in H.B. 7135 and, specifically, to foster the development of renewable assets in Florida.

**A. Currently proposed targets and long-term standards are not aggressive enough to promote sufficient amounts of new generation to meet the three goals of reducing emissions, increasing our energy security and reducing price volatility. Certain dates are too late, the target levels are too low, and the implementation plan is flawed.**

(i) FPL supports CEPS percentage targets above those indicated in the current draft RPS rules, but with a reasonable period of time to allow each investor-owned utility (IOU) to develop an efficient strategy for developing clean / renewable assets in Florida.

(ii) FPL supports a framework that will allow the development of a robust set of CEPS targets, beginning in 2017, together with an appropriate annual expenditure cap.

(iii) FPL supports a 5% target in 2017 and a 10% target in 2025. These targets, along with the ultimate goal of reaching a 20% CEPS target by 2030,

are proposed irrespective of whether clean resources are included in this rule; however, it is clear that the cost impact will be substantially higher to customers, if new, clean energy sources are not allowed for purposes of meeting these targets. Customers who will be bearing the cost of these new clean energy sources should be given credit for the significant and valuable contributions to the environment and to the objectives of H.B. 7135.

**B. A robust CEPS should require that at least 50% of the CEPS target be met through in-state energy and up to a maximum of 50% should be permitted to be met through the purchase of certified, U.S. generated RECs.**

(i) The portion of the target (at least 50%) met through in-state energy should require that:

(1) At least 67% of the requirement can be met using renewable sources.

(2) Up to 33% of the requirement can be met using clean resources, such as new nuclear power.

**C. FPL firmly believes that the only renewable energy credit (REC) market that makes good environmental, economic, and public policy sense is a national REC market. A CEPS cannot realistically and practically look to RECs for CEPS compliance if there is not going to be a national REC platform as the mechanism to promote renewables.**

(i) A CEPS should not be parochial in its approach to CO2 emissions reductions. A ton of carbon emitted (or avoided) in Maine or California or China has the same impact on global warming as a ton emitted in Florida. As a result, carbon knows no state boundaries. Global warming is a global issue.



(ii) It will be more expensive for customers to rely on in-state RECs for CEPS compliance rather than through national RECs. For the same reasons that Florida purchases its natural gas from Louisiana and Texas or its wine from California rather than grow grapes in-state, and just as Maine purchases its oranges from Florida, the use of the most efficient domestic renewable resources – whether in-state or out-of-state – represents the only rational economic approach and is simply smart economics. Forcing customers to pay more for in-state RECs is naturally inefficient and, moreover, unnecessary to adequately promote the development of renewables in the State of Florida. FPL's proposal strikes an appropriate balance between promoting the development of in-state renewables and minimizing the cost to customers of participating in a REC market.

(a) National RECs (both in-state and out-of-state) allow Florida to properly disconnect the delivery of energy (which is a local issue) from the green attribute (which is the sole attribute of a REC) and provide a more robust, liquid, and therefore more cost effective market.

(b) The Legislature has presently limited the draft rule from the Commission to in-state renewables to encourage investment in the state. However, an in-state REC market is not necessary to encourage the development of in-state renewables. In fact, an in-state REC market would be an artificial market that would take years to establish and would be costly to create and maintain. The reality is that the market in Florida would be too small to be efficient, and there would be too few players who would likely enter into large, private, multi-year, bilateral contracts.

(c) Moreover, the proposed REC price cap would set an artificial price ceiling and is too low to support development of new renewable assets in Florida.

FPL believes that if the proposed REC price cap is adopted, there would be very few, if any, new megawatts of renewables developed in Florida. Nor would it be practical to attempt to create a “standard offer” for a Florida REC because a Florida-only REC market would be too small and not have enough liquidity to establish a rational, market-based price for a REC.

(d) Staff’s proposed expenditure cap and periodic Commission review of CEPS costs and targets are better cost control options than establishing an artificial REC price ceiling or utilizing other similar market-limiting type structures.

(e) Accordingly, the proposed exclusive in-state REC market will be unnecessarily expensive for customers, inherently inefficient, and will fail to promote public policy objectives of capital investment in the state, job creation and job growth, and a strong state and national renewable market.

**D. FPL believes a good cost control option is to have an annual expenditure cap. We agree with Staff on this approach. However, the proposed expenditure cap of 1% is too low to promote the meaningful pursuit of clean/renewable projects while providing protection for the customers of IOUs. FPL supports more aggressive targets than presently proposed, with an increased expenditure cap to provide the necessary cost control.**

(i) FPL supports the use of an expenditure cap and believes that it provides the best mechanism to protect customers under a new CEPS paradigm.

(ii) FPL recommends that the expenditure cap be calculated as a specified percent of retail revenues in each year.

(iii) FPL recommends that a reasonable expenditure cap be 3% to 5% of annual retail revenues, increasing over time.

(iv) The expenditure cap should then be compared to the incremental cost to customers for CEPS compliance in that year (measured in terms of incremental levelized revenue requirements) above what cost customers would otherwise have incurred in that same year absent the CEPS requirement.

(v) FPL recommends that a regular review of the expenditure cap every three years is appropriate given the dynamic and changing market for renewables and cost uncertainties, and allows set timeframes and proper planning for all involved.

**E. In light of the dynamic and changing market for renewables and cost uncertainties, FPL agrees with Staff that periodic review of cost impacts and targets is essential to protect customers.**

(i) That said, the open-ended nature of Staff's current proposal for subsequent updating and review of the RPS is untenable and administratively impractical.

(ii) FPL recommends that a regular review of the CEPS every three years is appropriate given the dynamic and changing market for renewables and cost uncertainties, and allows set timeframes and proper planning for all involved.

**F. Generation qualifying under a CEPS should not limit itself to solar and wind, and compliance with the CEPS target should be measured in terms of delivered energy and the use of national RECs.**

(i) The primary objectives of a Florida CEPS should be to reduce emissions of Greenhouse Gases from the production of electricity, increase the nation's and Florida's energy security, and reduce volatility in electric prices while maintaining reliable electric service for customers.

(ii) Therefore, it is essential to include “clean resources” such as new nuclear megawatts, fossil plant modernizations, and energy efficiency measures in a CEPS. FPL intends to advocate for the inclusion of such “clean resources” in a CEPS during the 2009 Legislative Session and would encourage the Commission and others to do so as well in order to ensure that proper credit under such a regime is given to these “clean resource” options that fundamentally meet all of the legislative objectives of H.B. 7135, particularly where the incremental costs of not including those “clean resource” options otherwise would be borne by customers.

(iii) The use of a “delivered energy” CEPS target of at least 50%, coupled with the ability to meet remaining CEPS requirements with certified, U.S. based RECs, eliminates the need for an inefficient, unworkable in-state REC market.

**G. Encouraging the aggressive development of renewables in Florida requires a CEPS that promotes speed to market and agility in the development of renewables assets. In order to encourage the fastest, most efficient and cost-effective development of and investment in renewable energy sources, up-front and expedited prudence determinations, and cost recovery approvals with administrative finality, are essential.**

(i) Florida’s clean energy policy should be built on rules and policies that robustly promote the development of renewable assets in Florida and provide for annual cost recovery for utilities, subject to an expenditure cap that provides a layer of protection for customers of investor-owned utilities.

(ii) H.B. 7135 established an excellent framework for encouraging development of renewable energy and authorizing appropriate cost recovery.

**(a)**The statute authorizes cost recovery for renewable energy projects, up to a total of 110 MW state-wide, “so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility.”

**(b)**The Commission recently unanimously approved three solar projects utilizing this framework.

**(iii)** FPL proposes an exemption of the bid rule for utilities that develop renewable assets, and provisions for annual cost recovery through the Environmental Cost Recovery Clause similar to the way in which the Legislature has authorized cost recovery for the initial 110 MW of solar in Florida, as well as return-on-equity (ROE) incentive adders to encourage renewable investments that meet the standards set forth in H.B. 7135.

**(iv)** A bid rule exemption will promote renewable resource development by removing the delay and expense of bid rule challenges and appeals, and the risk associated with low bidders who lack the financial, technical and operational capabilities and experience to ensure successful development, design, construction and long-term commercial operation and reliable service.

**(v)** In addition, a process for expedited cost recovery should be developed by Commission rule for solar and wind projects.

**(vi)** A well-designed CEPS should include both penalties for non-compliance and rewards for compliance. Such penalties and rewards could be triggered based on whether the provider meets the applicable standard or target. Penalties could include an alternative compliance payment mechanism. Rewards could include an ROE adder as contemplated by H.B. 7135.

**H. In summary, a Clean Energy Portfolio Standard focused on the development and delivery of renewable energy and clean resource projects, as opposed to the purchase of in-state RECs, will quickly result in the real development of renewable resources in Florida and will best achieve the objectives of H.B. 7135 which include:**

- development of renewable energy;
- diversity of fuel;
- lessening dependence on natural gas and fuel oil for the production of electricity;
- encouraging investment within the state;
- improving environmental conditions; and
- minimizing costs to electric utilities and their customers

FPL's approach to a Clean Energy Portfolio Standard in Florida would not only achieve these statutory objectives, but would raise the bar and shorten the timelines for meaningful development of clean/renewable resources in Florida.

#### **IV. Specific Recommendations to Staff's Proposed RPS Rules**

##### **a. Section 17.400 Florida Renewable Portfolio Standard Section (1) - Application and Scope**

Staff's proposed rule would require that after the rule becomes effective, each IOU must submit proposed annual standards designed to meet or exceed the long-term standards. It also requires for at least once every five years, the Commission shall review the RPS. Further, the draft rule contains the provision that "[u]pon petition by a

substantially affected person,” the Commission “shall initiate a proceeding to review” the RPS.

It is important for the Commission to at least initially have a more frequent cycle of review to protect customers. FPL proposes a procedure under which (i) the Commission would review all aspects of the CEPS, including targets and the expenditure cap, every three (3) years and (ii) the Commission would only change the CEPS long-term standards and the expenditure cap for reasonable cause.<sup>5</sup>

FPL also recommends that the provision referencing that the standards may be modified upon a petition by any person substantially affected be replaced with language that is currently in the FEECA statute – “The commission may change the standards for reasonable cause.” This modification would eliminate the potential for open-ended reviews of the CEPS. Certainty of the targeted percentages is critical due to capital commitments that must be made to build and construct renewable resources.

Finally, FPL recommends that any modifications to the CEPS targets and expenditure cap should account for changes in load growth, technology, costs, and other factors that affect the availability and cost of renewable/clean sources of energy.

## **Section (2) - Definitions**

FPL has added the following definitions to Staff’s proposed rules: (1) Florida clean energy resources; (2) Energy Efficiency; and (3) Greenhouse gases. These definitions have been included to reflect FPL’s recommendation that clean energy resources be considered eligible resources for the purposes of complying with the RPS. FPL also has amended the definition in the Staff’s draft rule of “Florida renewable energy resources” to include renewable projects approved by the Commission as eligible for cost recovery pursuant to H.B. 7135 and prior to the effective date of the rule.

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<sup>5</sup> See Appendix C which contains FPL’s strike and type edits to Staff’s proposed rule.

**Section (3) - Renewable Portfolio Standard**

Staff's proposed rules provide that within 90 days of the effective date of the rule, not less than every five years thereafter, each IOU shall file for approval by the Commission proposed renewable portfolio standards.

**Section (3) (a) – long term standards**

Under Staff's proposed rules the RPS long term standards are to be met solely through the production of or purchase of RECs. Staff's proposed long term standards are:

By January 1, 2010	2% of the prior year's retail sales
By January 1, 2017	3.75% of the prior year's retail sales
By January 1, 2025	6% of the prior year's retail sales
By January 1, 2050	20% of the prior year's retail sales

FPL proposes the following targeted percentages:

By January 1, 2017	5%
By January 1, 2025	10%
By January 1, 2030	20%

FPL disagrees with Staff's approach as set forth in the proposed draft rules. That is, FPL believes that the initial CEPS standard should not be implemented in the first year after these rules take effect as renewable projects take years to complete. More extended timeframes are appropriate for these types of lumpy investments which essentially take three to four years to design, engineer, construct and permit.

The company supports the higher long-term standards that allow until 2017 to hit the initial 5%. From there, there would be an interim period to reach the 10% target by 2025. And ultimately, reaching the Governor's 20% by 2030. Although the targets will ultimately depend, in part, on what resources will be included, they can only be reasonably accomplished by fully utilizing all of our new, clean energy sources. The



CEPS should require that at least 50% of the CEPS target be met through incremental, in-state energy and up to a maximum of 50% should be permitted to be met through the purchase of certified, U.S. generated RECs. The portion of the CEPS target (at least 50%) met through incremental, in-state energy should require that: (i) at least 67% of the requirement can be met using new renewable sources; and (ii) up to 33% of the requirement can be met using incrementally built clean resources, such as new nuclear power.

### **Section (3) (b) – Options for Wind and Solar**

Staff's proposed rules contain three options pertaining to ways to incent the development of solar and wind resources. The proposed options are in the nature of carve-outs and a multiplier. FPL does not support any of the options. First, FPL does not support the use of carve-outs or set-asides because their use leads to inefficiencies in the market and drive up the price of the preferred technology. Second, with a CEPS there will be no need for the employment of a multiplier.

### **Section (3) (c) – Filing standards**

The proposed rule sets forth certain minimum filing requirements with respect to each IOU's proposed renewable portfolio standard. FPL has recommended some editorial changes to the proposed rules to clarify that the filings will address the IOU's current portfolio and its planned portfolio. FPL also recommends that subsection (4) be deleted. As drafted, subsection (4) would require the IOUs to discern the effect of their RPS on "economic development in Florida". This language is too broad in scope and application, and would perhaps require IOUs to submit information that they may not be in a position to provide.

#### **Section (4) – Compliance**

The Staff's proposed draft rules provide that the Commission has discretion to excuse noncompliance with the RPS due to inadequate supply of renewable energy or renewable energy credit or the cost of securing said is cost prohibitive. In contrast, H.B. 7135 provides that noncompliance "shall be excused" due to the aforementioned conditions. Therefore, FPL's suggested edit to this section conforms the language in the regulation to the legislation.

The second editorial change in this section removes the reference to "renewable energy credits". As will be discussed in the section pertaining to the proposed Renewable Energy Credit Market, FPL does not believe that an in-state REC market is workable and that a CEPS is the cost-effective model. Thus, the reference to the use of an in-state REC for compliance is not appropriate. FPL notes that a legislative change authorizing the use of a national REC market would make the cost of securing RECs an appropriate factor in determining compliance.

#### **Section (5) – Cost Recovery**

Staff's proposed draft rule provides for the recovery of reasonable and prudent costs associated with the provision or purchase of RECs to meet compliance with the RPS, including administrative costs associated with the operations of Staff's proposed REC market through the Environmental Cost Recovery Clause. In Staff's Executive Summary, Staff indicated that "[c]ost recovery for utility-owned renewable facilities and power purchase agreements will be handled through normal ratemaking procedures."<sup>6</sup>

First, as has been discussed throughout these comments, FPL does not believe that an in-state REC only compliance model is efficient or cost effective. Second, Staff's proposed rule does not foster the development of renewable assets in Florida.

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<sup>6</sup> Staff's Summary of Draft Rule at 4.

The renewable resource policy in Florida should focus on the development of renewable and clean resource facilities and the provision of clean, carbon-free power. To achieve that goal, it is essential to include an exemption from the bid rule for Florida renewable energy resources in the Commission's CEPS rule and to provide annual recovery as contemplated by the Legislature. A bid rule exemption will promote renewable development by removing the delay and expense of bid rule challenges and appeals and the risk associated with low bidders who lack the financial, technical and operational experience and wherewithal to ensure ongoing commercial operation and reliable service. A "normal cost recovery" standard, as recognized by the Legislature with respect to the 110 MW, simply will not work for new technologies and will impose incremental risk on the providers of renewable resources.

FPL supports a continuation of the current legislative policy for cost recovery for renewables in this Rule. Specifically, as in the case of the 110 MW approved for cost recovery in the statute, we support annual cost recovery for self-build renewable projects through the Environmental Cost Recovery Clause upon a showing that the "provider has used reasonable and customary industry practices in the design, procurement, and development of the project in a cost-effective manner appropriate to the location of the facility." This would be overlaid with an appropriate expenditure cap which would balance the goals of promoting development of renewable and clean energy facilities while providing rate impact protection for our customers.

To encourage the development of wind and solar wind projects, FPL believes that the rule should include an expedited proceeding for these resources as well as an incentive – an equity adder as contemplated in the legislation.

## **Section (6) – Reporting Requirements**

Staff's proposed section (6) sets forth the components of the annual filing report in which the IOUs are to submit to the Commission. Some of the components pertain to the use of RECs for compliance purposes. As previously noted, FPL has discussed why the use of an in-state REC only model is not the better course to pursue to foster the most cost-effective delivery of renewable energy in Florida. Accordingly, FPL's minor editorial changes reflect the adoption of FPL's CEPS model.

### **b. Section 17.410 Florida Renewable Energy Credit Market**

Staff's proposed RPS rules require the IOUs to establish and administer a transparent REC market. The IOUs are encouraged to contract with a non-profit third party to administer the REC market. The selection and functions of the REC administrator would be subject to Commission approval. All transactions and records of the REC market must be fully transparent and open for Commission inspection and audit. Further, the rule requires that IOUs must submit a compliance filing within 90 days of the effective date of the rule.

FPL believes that an in-state only REC market is not workable, will be costly and administratively burdensome, and will not best promote the development of renewable assets and the provision of renewable energy in Florida.

An in-state only REC market is impractical and problematic. It will be costly and inefficient to try to develop a single-state REC trading market. While FPL has consistently taken the position that utilities should be able to purchase in-state and out-of-state RECs to comply with an RPS, the Legislature has spoken on this issue, and we do not foresee a change on this position. The Legislature's rejection of a national REC market makes it imperative for the Commission to focus on policies that will best promote the development of renewable assets and the delivery of renewable energy in

Florida. Therefore, to encourage the development of renewable assets in Florida the Commission should reject Staff's in-state only REC construct. Rather, the Commission should adopt a policy similar to that of California which limits purchases of renewable energy to in-state deliveries of energy which will lead to more robust levels of actual renewable energy resources in Florida. The use of a "delivered energy" CEPS target of at least 50%, coupled with the ability to meet remaining CEPS requirements with certified, U.S. based RECs, eliminates the need for an inefficient, unworkable in-state REC market.

Aside from the above, FPL has some practical and legal concerns regarding the proposed requirement for an IOU established and administered REC market. First, the REC trading model designed by Staff would require IOUs to establish and administer the REC trading market. Then the IOUs must participate in the very market it establishes to meet its RPS obligation. Creation of such a structure will breed distrust from external entities and become a lightning rod for allegations of self-dealing, anti-trust, and collusion. In fact, during the August 26<sup>th</sup> workshop, some of these very concerns were voiced by a number of the participants. The challenges would be endless and will place the IOUs in the position of defending an inordinate number of allegations.

Further, the creation of a REC market in which a commodity is to be traded among entities may raise concerns of a creation of some type of "futures" market that would have Commodities Future Trading Commission implications.

Thus, in light of these practical and legal concerns, as well as the fact that an in-state only REC market will not foster the development of renewable assets in Florida, FPL would recommend the rejection of this construct.

**c. 25-17.420 Municipal Electric Utility and Rural Electric Cooperative Energy Reporting**

FPL is not presenting any formal comments with regard to the municipal electric and rural electric cooperative energy reporting requirements.

**V. FPL's Responses to Staff's Specific Questions**

**Question 1: Please provide a list of facilities interconnection to the IOU.**

**FPL:** Please see Appendix A, Item No. 1.

**Question 2: Please provide FPL's proposed figures for meeting FPL's 2017 five (5) percent standard without the inclusion of nuclear, modernizations, and energy efficiency.**

**FPL:** FPL is continuing its efforts to address this question.

**Question 3: Please provide a list of renewable generation, in order of priority, that should have a return on equity adder.**

**FPL:** FPL believes that solar and wind generation should have a return on equity adder.

**Question 4: Please describe the use of bilateral contracts in the REC market design.**

**FPL:** One of the criticisms that FPL has raised about the in-state REC only compliance model advocated by Staff is the simple fact that it will breed inefficiencies. A

true functioning market is comprised of a sufficient number of both buyers and sellers to create price liquidity. The price of the commodity being traded is a product of market forces. None of these components exist under Staff's single-state REC model. The in-state REC market would be comprised of virtually only four players with the price of the REC being administratively created and capped. In essence, what will occur under the in-state REC only market construct, the major players will simply end up entering into bilateral contracts in order to meet their RPS requirement. This construct will not foster the development of renewable assets in Florida; it will only lead to the negotiations of bilateral contracts between a limited number of buyers and sellers. If the State truly wants to foster the development of renewable assets in the State, the only real approach is to accept FPL's proposal of a "delivered energy" CEPS, coupled with a national REC market.

**Question 5: Please describe the hourly trading concept in the REC market design.**

**FPL:** As indicated above, an in-state only REC market will not encourage the development of renewable assets in Florida and would ultimately only result in a few entities entering into bilateral contracts. Similarly, there would not be a sufficient number of transactions among the players to create a spot market. In fact, a number of the renewable resource developers during the course of the August 26<sup>th</sup> workshop advocated that the Commission mandate that IOUS enter into long-term contracts, e.g. 10 and 15 years in length. A mandate to enter into contracts with such long-term provisions would further hinder the ability to create a spot market. The buyers would be obligated to honor these long term commitments and would not be able to avail themselves of any spot market

purchases, if one existed. These market deficiencies further support FPL's reasoning for a "delivered energy"/national REC CEPS model.

**Question 6: Please elaborate on the use of rewards and penalties for RPS compliance.**

**FPL:** It has been recommended by a number of parties to this proceeding that the Staff's proposed rule should contain an Alternative Compliance Payment ("ACP") or some other type of penalty. These entities, mostly developers of renewable resources, contend that the Commission should impose such a measure to ensure compliance by the IOUs. In response to these suggestions the Commission Staff voiced some concerns with whether they have the authority to impose a penalty and to arbitrarily designate a state agency as the "collection agency".

If the Commission feels the need to embrace the concept of penalties and awards, FPL recommends that the CEPS rule should include both penalties for non-compliance and rewards for compliance. Such penalties and awards could be triggered based on whether the IOU meets the applicable standard. Penalties could include an Alternative Compliance Payment mechanism and the rewards could include an ROE adder as contemplated by H.B. 7135.

To address the concerns voiced by Staff, FPL proposes the following ACP construct: (1) the imposition of an ACP only if the IOU has not spent up to its expenditure cap; (2) to eliminate the need to designate a state agency to receive the payment, the IOUs would designate and administer an ACP account which would be subject to the Commission's oversight.; and (3) the administration of the ACP account by the IOUs would ensure that the funds,



which if managed by a state agency could possibly become part of the state's general fund, would be used solely for the development of renewables in the State. Further, that the imposition of an ACP shall be waived if events beyond the reasonable control of a utility prevent it from meeting its CEPS requirements or compliance is not in the best interest of the utility or its customers. Events or circumstances that are outside of a party's reasonable control may include weather-related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions of a governmental authority that adversely effect the generation, transmission, or distribution of renewable energy from an eligible resource under contract to a utility.

**Question 7: With regard to cost recovery, please discuss whether there should be a separate clause for renewables for the purposes of accountability, reporting and to address unique cost issues for renewable generation.**

**FPL:** FPL does not believe that it is necessary for the Commission to establish a separate cost recovery clause for the purposes of accounting or reporting of issues pertaining to renewable generation. Presently, the Commission has a number of cost recovery clauses that are suitable to address the renewable issue. It is FPL's opinion that all reasonable and prudent costs pertaining to the renewable asset would be recoverable through the Environmental Cost Recovery clause. By using the existing clauses, the Commission can be ensured that costs are allocated to customers appropriately. Further, for administrative efficiencies there is no inherent reason to create another docket for these matters. Currently, there are established clause filing schedules, audits, reports and hearings. The renewable filings would only be incremental in nature to these

already established practices and thus, from an efficiency standpoint, would not need a stand-alone clause proceeding.

**Question 8: Please discuss whether there should be an RFP process for utilities' self-build renewable generation and/or cost effectiveness criteria for self-build renewable generation.**

**FPL:** FPL has recommended that IOUs' self-build renewable generation should be subject to the cost recovery mechanism prescribed by the Legislature for the 110 MWs incentive projects. The Legislature established certain parameters for the recovery of cost associated with the development of renewable resources given the nature of these types of projects. The bill provided for "...full cost recovery under the environmental cost-recovery clause of all reasonable and prudent costs incurred by a provider for renewable projects ...Such costs shall be deemed reasonable and prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility." <sup>7</sup> The legislation provides additional guidance with respect to what additional information the provider is to proffer to the Commission in the cost recovery proceeding. In particular, the provider shall report to the commission as part of the cost-recovery proceeding the construction costs, in-service costs, operating and maintenance costs, hourly –energy production of the renewable energy project and any other information deemed relevant by the Commission.<sup>8</sup>

To further reduce potential costs of developing renewable assets, the

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<sup>7</sup> Section 366.92 (4), F.S.

<sup>8</sup> Id.

Commission should adopt a bid rule exemption in the CEPS rule. A bid rule exemption will promote renewable development by removing the delay and expense of bid rule challenges and appeals and the risk associated with low bidders who lack the financial, technical and operational experience and wherewithal to ensure ongoing commercial operation and reliable service.

Adoption of this construct would ensure that the most cost-effective renewable project is built and provides for an additional layer of oversight by the Commission. This will result in renewable assets being constructed in such an economic manner as to alleviate undue financial harm to the citizens of Florida.

**Question 9: Please discuss whether there should be Standard Offer Contracts in the REC market.**

**FPL:** Similarly, as was discussed in response to questions numbered (4) and (5), given the inefficiencies of an in-state REC market – lack of liquidity to establish a rational, market-based price, it would not be practical to attempt to create a “standard offer” for a Florida REC.

**Question 10: Please discuss the calculation of the revenue cap.**

**FPL:** FPL recommends that a reasonable expenditure cap would be 3 to 5% of annual retail revenues, increasing over time. The expenditure cap would be calculated as a specified percent of retail revenues in each year. The expenditure cap should then be compared to the incremental cost to customers in that year (measured in terms of incremental levelized revenue requirements) above what cost customers would have incurred

in that same year absent the CEPS requirement. .

**Question 11: Please provide any specific wording changes to the Staff's proposed RPS rules with regard to issue of sufficient compliance measures.**

**FPL:** See response to Question No. 6.

**Question 12: Please provide explicit suggested language regarding RPS enforcement.**

**FPL:** See response to Question No. 6.

**Question 13: Please provide suggested language on getting the most “bang for the buck” – ensuring that the best projects get built and the least cost RECs get purchased.**

**FPL:** See response to Question No. 8.

**Question 14: Please provide an explanation of FPL's position that an expense cap of 3 to 5 % may need to increase over time.**

**FPL:** In order to ensure that the amount of installed capacity meets the increasing CEPS requirements, FPL supports a 3 -5 % expense cap that increases overtime. A cap which increases over time will provide utilities with the requisite flexibility (i) to meet the renewable requirements in a market that may necessitate increased capital investment for renewable generation and (ii) account for the fact that renewable costs are dynamic, due to the global volatility of key commodities such as steel, copper, concrete and silicone; permitting and siting issues; and other factors that have a potential impact on the project's completion.

**Question 15: Please address, if there shouldn't be a REC cap, should the proposed RPS rule contain any protections and/or allow the PSC to intervene if any anomalies should occur?**

**FPL:** As previously discussed, the Commission should not embark on an in-state REC paradigm. Having said that, if the Commission were to abandon the proposal for a REC cap, it is FPL's opinion that if a REC cap is not in place, the CEPS rule could contain a provision for the Commission to intervene in case of certain anomalies. However, the rule would have to be specific to the conditions that would trigger such intervention. Once the target percentages are established parties will begin undertaking certain long-term commitments and thus would be vulnerable if a change in course is arbitrary evoked. Therefore, the metrics for any intervention and the type of action envisioned to be undertaken by the Commission in light of certain anomalies must be expressly provided at the outset and explicitly spelled out in order for the parties to be better prepared to reduce their financial exposures.

## **VI. Conclusion**

In conclusion, an RPS focused on the development and delivery of renewable energy and clean resource projects, as opposed to the purchase of in-state RECs, will result in the real development of renewable resources in Florida and will best achieve the objectives of H.B. 7135 which include: (1) development of renewable energy; (2) diversity of fuel; (3) lessening dependence on natural gas and fuel oil for the production of electricity; (4) encouraging investment within the state; (5) improving environmental conditions; and (6) minimizing costs to electric utilities and their customers.

FPL's approach will achieve these statutory objectives by stimulating meaningful development of renewables in Florida.

Respectfully submitted,

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