State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 25, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Samantha Cibula , Office of the General Counsel SMC.

RE: Docket No. 20060555-EI

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

STATE OF FLORIDA

GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

January 10, 2007

Mr. John Rosner
Chief Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

Re: Public Service Commission Rule 25-17.0832, F.A.C.

Dear Mr. Rosner:

I am writing to respond to your correspondence of November 9, 2006, regarding your initial review of PSC Rule 25-17.0832, F.A.C. In your correspondence, you express concerns that the terms "renewable generators" and "renewable generating facility" are not defined in Section 366.91, F.S., as indicated in the rule text.

On January 9, 2007, the Commission voted to adopt, with changes, a version of Rule 25-17.0832, F.A.C. The version adopted does not contain a reference to §366.91, F.S., for those terms, and thus I believe your concerns are satisfied. Once I have had an opportunity to make the changes to the rule text as directed by the Commission, I will immediately forward a copy to you for your review.

Thank you for your time and assistance. If you have any further questions, please do not hesitate to contact me at (850) 413-6076.

Sincerely,

Larry D. Harris
Associate General Counsel

TOM LEE
President

ALLAN G. BENSE
Speaker

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

Representative Ellyn Setnor Bogdanoff, Chair
Senator Michael S. "Mike" Bennett, Vice-Chair
Senator Nancy Argenziano
Senator Larcenia J. Bullard
Representative Susan K. Goldstein
Representative Matthew J. "Matt" Meadows

F. SCOTT BOYD
EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

November 9, 2006

Mr. Larry D. Harris
Public Service Commission
Office of the General Counsel
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Public Service Commission Rule 25-17.0832

Dear Mr. Harris:

I have completed a review of the proposed changes to rule 25-17.0832 and prepared the following comments for your consideration and response.

25-17.0832
(2), (4)(a) and (4)(a)1.: The terms "renewable generators" and "renewable generating facility" are not defined in section 366.91, F.S.

I am available at your convenience to discuss the foregoing comments.

Sincerely,

John Rosner
Chief Attorney

JR\kr c:\word\jr\25_17.0832LS110906_138839

Ruden McClosky

215 SOUTH MONROE STREET
SUITE 815
TALLAHASSEE, FLORIDA 32301

(850) 412-2000
FAX: (850) 412-1307
KATHRYN.COWDERY@RUDEN.COM

October 24, 2006

Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission\
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Via Hand-Delivery

Re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts
Docket No. 060555-EI

Dear Ms. Bayo:

Enclosed for filing in this docket is the undersigned's letter of October 24, 2006 to Larry D. Harris. The purpose of this letter is to put PSC Staff and interested persons on notice that the filing of prefiled comments and/or testimony by certain interested persons will be accomplished by the November 3, 2006 filing deadline, but not necessarily by the encouraged October 25, 2006 date.

Please let me know if you have any questions.

Sincerely,

Kathryn G.W. Cowdery

cc: Larry D. Harris, Esq.
Susan F. Clark, Esq.
Vicki Gordon Kaufman, Esq.
Robert Scheffel Wright, Esq.
Richard Zambo, Esq.

TAL:57061:1

Ruden McClosky

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October 24, 2006

Larry D. Harris
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0862

Via Hand delivery

Re: Dkt. No. 060555-EI, In re: Proposed amendments to Rule 25-17-0832, F.A.C., Firm Capacity and Energy Contracts

Dear Mr. Harris:

This firm represents Covanta Energy Corporation ("Covanta") in the above-named docket. The undersigned has been authorized by Renewable Energy Producers (consisting of the Solid Waste Authority of Palm Beach County, Florida Industrial Cogeneration Association, and City of Tampa), Montenay Power Corp., and Wheelabrator Technologies, Inc., interested persons in this docket, to represent that the statements made in this letter reflect their positions. The purpose of this letter is to advise all interested persons and PSC Staff that the October 25th suggested prefiling date does not allow sufficient time for comments, testimony, and exhibits to be prepared and prefiled by the renewable energy producers identified herein.

At the October 3, 2006 Commission agenda conference, the Commission approved the September 21, 2006 Staff Recommendation regarding proposed amendments to Rule 25-17.0832, F.A.C., and voted to conduct a rulemaking hearing on November 9, 2006. The Commission expressed a strong interest in having the renewable energy producers provide a proposed rule, in strike through/ underline legislative format, which would include language reflecting the renewable energy producers' post-rulemaking workshop comments and comments made at the October 3, 2006 agenda conference. The Commission also expressed a strong interest in hearing specific testimony/ evidence supporting the positions raised by the renewable energy producers. The renewable energy producers intend to file such evidence for consideration at the November 9, 2006 hearing.

However, at the October 3, 2006 agenda conference, the undersigned and counsel for other renewable energy producers expressed to the Commission grave concerns that requiring comments to be prefiled by an October 18th date suggested by Staff would not allow sufficient time for renewable energy producers to prepare comments and testimony and to work together to

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prepare a proposed rule. One option suggested by the renewable energy producers was for a rulemaking hearing to be set at a date later than November 9, 2006.

The October 10, 2006 Order Establishing Procedure issued in this docket strongly encouraged all interested persons to prefile testimony, including a proposed rule, by October 25, 2006. The procedural order recognizes that the actual deadline for prefiling comments and testimony is November 3, 2006, which represents the statutorily imposed minimum time period for interested persons to submit comments following publication of the proposed rule in the Florida Administrative Weekly. Covanta and the other renewable energy producers understand the Commission's concern that all interested persons and Staff have sufficient time prior to the November 9, 2006 rulemaking hearing to review prefiled comments, testimony, and exhibits. However, in order to prepare fully for the rulemaking hearing, it appears at this juncture that these renewable energy producers will need until November 3, 2006 in which to adequately prepare and prefile testimony and exhibits, including a proposed rule. These renewable energy producers will continue to endeavor to file prior to the November 3rd deadline but can offer no assurances to that effect.

Sincerely,

Kathryn G.W. Cowdery

cc: Susan F. Clark, Esq. (via hand delivery)
Vicki Gordon Kaufman, Esq.
Robert Scheffel Wright, Esq.
Richard Zambo, Esq.
Robert Hunter

TAL:57123:1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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

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

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

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

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

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

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attempted to respond to items the Commissioners raised at the

Introduction

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

However, the Renewable Energy producers believe that the proposed amendments will not meaningfully serve the Legislature's declared goals of promoting the development of renewable energy in Florida and protecting the economic viability of Florida's existing renewable facilities, nor the other goals that flow from these. It is clear from Florida's history with the development of cogeneration and small power production facilities that the vast majority of such facilities have been developed when contracts with pricing based on coal units[2] were available. It is not disputed that all existing

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conclusion of the hearing.

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

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

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

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

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

Separate Rule for Renewable Standard Offer Contracts

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

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

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

The Commission's Rules Should Promote Renewable Electricity Generation

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

> (1) It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the

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

> production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.

Promoting new renewable energy facilities and protecting existing renewable energy facilities are "primary" goals. The other goals - fuel diversification, reduced dependence on natural gas[4] and fuel oil, minimizing fuel cost volatility, encouraging investment in renewable energy facilities in Florida, and improving environmental conditions - all flow directly from, and are all promoted directly by, the encouragement of new renewable energy facilities and the protection of existing renewable energy facilities in Florida.

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

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

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

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

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

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

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capacity payments. Accordingly, this is what the REPs mean

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

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

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

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

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

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

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

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

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

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

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

Continuously Available Standard Offers Based On Coal Units

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

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

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

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

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

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

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

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

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

Timing of Rule Adoption

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

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environmental and fuel diversity benefits enumerated in the

No Imputed Debt or "Equity Penalty"

In many, if not all, of the "competitive solicitation" processes conducted by Florida IOUs under the Commission's Rule 25-22.082, F.A.C. (the "Bidding Rule"), the utility issuing the RFP reduces the capacity payments by certain amounts based on a percentage of an "imputed debt equivalent" that the long-term capacity payments are claimed to represent. Independent power producers frequently refer to these offsetting values as an "equity penalty," because they supposedly reflect the carrying costs of additional equity that the utility claims it must raise to offset "imputed debt equivalents."

The Renewable Energy Producers understand that two of the Florida IOUs include such "equity penalties" or "imputed debt equivalents" in calculating their capacity payments, while the other two do not. The Renewable Energy Producers strongly believe that no such offset should be allowed in computing payments under renewable standard offer contracts. Allowing an equity penalty would result in the renewable energy producers being paid less than the utility's full avoided cost and would discourage renewable energy, contrary to the purposes of section 366.91, Florida Statutes.

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

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statutes.

Standard Offers Based on Fixed Energy Payments

Another concept advanced at the rule development workshop may address both the Renewable Energy Producers' interests and the utilities' interests in minimizing capacity payments.[8] That concept, advanced by a renewable energy producer, was that "long term fixed energy payments" be available as a payment option under standard offer contracts.

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

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

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

To the extent that such long-term fixed payments are perceived as risky,[9] the Commission should recognize that the risks cut both ways, and that if the front-end calculations and projections are done reasonably, the allocation of long-term risk should fall about 50 % on each side. To the extent that the utilities have a legitimate concern that capacity payments, notwithstanding their "pay for performance" character (as distinguished from "take or pay"-type contracts), may be perceived as affecting their balance sheets, allocating a portion of capacity costs to energy payments may address such concerns while providing renewable energy producers a potentially desirable payment option.

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

[9] The risks associated with long-term contracts and pricing cut both ways. In this context, a long-term energy payment stream exposes captive utility customers to the risk that future generating fuel costs will turn out to be less than the fixed payments under the contract. However, the converse is frequently overlooked in these discussions, and it is that there is a similar risk - borne by the renewable energy producer - that future generating fuel costs will be <u>greater</u> than the rates reflected in a fixed-energy-payment contract. In other words, the customers have a chance to be better off with the fixed-energy-payment structure. It actually shifts some - presumably half - of the market risk to the renewable producer, whereas with current energy payment provisions that tie future payments to future market conditions, all of the market risk is borne by the customers.

Fair Compensation of Renewable Energy Producers for Avoided Costs

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

Standardizing the Standard Offer

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

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

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

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

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

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

Conclusion

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

Respectfully submitted,

City of Tampa

Covanta Energy Corporation

Florida Industrial Cogeneration Association

Green Coast Energy, Inc.

Lee County

Montenay-Dade Limited

Solid Waste Authority of Palm Beach County

Wheelabrator Technologies, Inc.

CERTIFICATE OF SERVICE

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

Larry Harris
Florida Public Service Commission
Division of Legal Services
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to Rule 25-17.0832 – Firm Capacity and Energy Contracts	))))	DOCKET NO. 060555-EI Submitted: December 6, 2006

POST-HEARING COMMENTS OF GREEN COAST ENERGY, INC

PERTAINING TO RULEMAKING ON STANDARD OFFER CONTRACTS

FOR RENEWABLE ENERGY

Green Coast Energy, Inc ("GCE") is grateful for the opportunity, and the generous time allowance, to submit comments regarding the discussions held on the hearing of November 9th. GCE seeks to develop renewable energy projects in Florida, and is currently seeking a negotiated contract with Florida Power and Light for firm capacity and energy of a 42 megawatt (gross) biomass facility to be located in Volusia County.

I would like to begin my discussion with a quote from Commissioner Carter: "It is a great day in the State of Florida." GCE would concur with this statement, and the context in which it was made. We had the opportunity to learn a great many things from each other on the hearing of November 9th, and I believe we learned, as Mr. Moyle put it, 'that renewable energy is not an easy issue.' However, I think that we all have a much better understanding now of what it will take to bring renewable power projects on-line to diversify our fuel source.

But I would ask the question: is diversifying our fuel source the only benefit that having renewable energy brings? Is it only to avoid putting all our electrical-generating eggs in one basket? Or is there more value to renewable energy than just a 'different way to make electricity?'

I believe Senator Bennett's speech came as a wake-up call on this question, and answered it with a resounding, 'Yes!' To quote: (Bennet, pages 9-10)

And often times it's come back to us, well, yes, Senator, you can get the renewable energy, but it's going to increase the cost to the consumer in the State of Florida and we don't want to do that, and I've always disagreed with that argument. It might increase the price a little bit, but it's not going to increase the cost. If we have sustainable energy and renewable energy in the State of Florida, it'll decrease the cost because part of the cost is polluted air, part of the cost is depleting our natural resources. Those are costs. The price is what you actually pay. It's the cost of not doing renewable energy that the consumers and your children and their grandchildren are going to pay if we all don't do something here.

I honestly do not believe it could be said any more clearly than that. The State of Florida *needs* renewable energy for a sustainable future. The opportunity cost of *not* having renewables is significantly greater than the couple cents extra per kilowatt hour it would cost to fairly compensate renewable energy producers. The Legislature has empowered the PSC with the flexibility and responsibility to enact rules that will capitalize on the renewable resources our state enjoys and diversify our fuel source. The current level of renewables in Florida is an insignificant fraction (whether we are using the 500, 600, or 800 MW estimates), and the only way for us to increase it is to have standard offer contracts that are attractive to investors.

Case in Point: GCE's Negotiations with FPL for Sale of Renewable Power

To demonstrate the inadequacy of the existing standard offer contracts, I would now like to depart from the theory of the matter and delve into a current, real-life example. As the reader may know, GCE is developing a 42 MW biomass facility in the Volusia County area. We met with representative from FPL on November 14th at their Miami office to negotiate terms for a contract to sell the renewable power generated by the project.

The existing 2012 coal-based Standard Offer Contract provides for capacity payments that we calculated on a per-kilowatt-hour basis to equate to approximately 3 cents per kwh. The 'avoided cost' basis energy payments are variable but could be estimated at around 1.7 cents per kwh (an estimate confirmed by FPL at the meeting). So this coal-based contract, the most likely document to be financeable, provides for a grand total revenue of only 4.7 cents per kilowatt hour! I cannot speak for my renewable colleagues, but for GCE this is insufficient to cover debt service and expenses, much less provide a return to equity investors or a coverage ratio.

To date, the argument has been that if the terms of a standard offer contract are insufficient for the renewable producer, then we are free to negotiate different payment terms. The representatives from FPL indicated they were receptive and willing to negotiate contract terms, as long as it had nothing to do with the pricing. This standpoint called to mind Henry Ford's famous 'I'll paint the car any color you want, as long as it is black.' I would like to note that the FPL representatives indicated that their inflexibility in deviating from the existing price is derived from some PSC mandate; perhaps this new rule is an excellent opportunity for the Commission to clarify this issue (going back to what Commissioner Tew said about encouraging fixed energy payments in negotiated contracts, though not requiring them in the rule).

There are other contract offers out there, using different avoided units, but the capacity payments are negligible in comparison, leaving the majority of the project revenues pegged to uncertain and volatile fuel prices. I had thought that the intent was to *save* consumers from that risk, rather than bind them to it inextricably. I will address this further in my recommendations to come.

The contracts with low capacity payments ask our investors to take much higher risk, since so much of the contract revenues are uncertain. Assuming that they are willing to take that risk, it is a certainty that they will demand a higher return, increasing our cost of capital further. Moreover, my conversations with staff have indicated that the terms of the contract only apply *when the avoided unit would be running*...at all other times, the renewable producer would be paid the as-available energy rate instead of the contract rate.

So, for a contract based on a combustion turbine 'peaker' unit, the contractual energy payment rate would only apply a small percentage of the time, and for the rest of the time the rate would be that of the last incremental unit dispatched, be it coal, nuclear, gas, etc. This adds even more uncertainty to the revenue stream and acts as a strong disincentive for those considering bringing their investment money to the State of Florida.

As a company developing a new renewable energy project, GCE may end up being one of, if not *the*, Florida poster child for the new PSC rulemaking. Thus, I would ask you to consider our current situation as one that all future renewable producers will face when contemplating Greenfield development in Florida. To bring about renewable energy and diversify our fuel supply we need to have a contract where the dollars and cents make it feasible.

After participating in the hearing on November 9th, reading over all the documents, and my own negotiations with one of the investor-owned utilities, I have maintained and

confirmed my comments that the Proposed Rule as put forth by Mr Zambo and his team represents a balanced approach in encouraging renewable energy with minimal impact upon the consumers. At the same time, I would like to suggest the following solutions:

Idea 1: How much should be paid for renewable energy?

The existing standard-offer contracts are inadequate for encouraging renewable energy; at the same time, we want to minimize the financial impact and volatile risk of fossil fuels upon the ratepayers. This is a difficult and complicated situation, and such situations are often solved by simple solutions.

Why not establish a panel of experts to just *set* the total amount that should be paid for renewable energy?

I know that this is a deviation from what has been the norm (perhaps even a 'bold move' as the senator put it), but I would ask everyone to consider this with an open mind.

This statewide renewable energy rate would be calculated taking into consideration the additional amount that the utility must charge to cover its overhead costs. For example, I am an FPL customer and my electric bill runs approximately 10-12 cents per kwh (dependant upon how much electricity my household consumes). So if FPL's cost of electricity is 7 cents per kwh, and their overhead is 4 cents per kwh (hypothetical numbers), then this panel of experts (under the guidance and authority of the PSC) could take this into account when deciding how much renewable energy is worth, how much renewable producers need to operate, and how much extra cost there is.

The end result would be a fixed contractual energy payment that 'energizes the market' for renewables, while minimizing the risk to the consumer of volatile fuel prices. So if the panel and PSC decide that renewable energy is worth 8 cents per kwh, and the utility's overhead is 50%, then the net cost to the consumer would be 12 cents per kwh, as compared to

the status quo of 10-12 cents per kwh PLUS pollution PLUS fuel volatility PLUS diminishing natural resources. Remember, like Senator Bennett said, we have to consider the big picture.

We know we want renewables, the Legislature and Senator Bennett made that abundantly clear. We know the existing rules have resulted in miniscule diversification of the fuel supply, and we know that companies like GCE who want to build more renewables are deterred from doing so by standard contracts which won't pay the bills.

If the PSC were to adopt this recommendation in some form and *set* a price for renewable energy that fairly compensates the producer, then the State of Florida would quickly diversify its fuel source and meet whatever realistic goals it may choose to set for renewable energy. Moreover, consumers would not need to fear rising costs of fossil fuels or worry that conflict in the Middle East will cause their expenses to shoot up.

Idea 2: A Statewide Green Pricing Program

This second suggestion may not be germane to the standard offer contract rule itself, but Commissioner Carter *did* ask for ideas to energize the renewable market. So I apologize in advance if this is not the proper forum to relate this idea.

Several utilities around the nation have what is known as a 'Green Pricing Program', in which customers voluntarily purchase 'blocks of green'. For example, Georgia Power offers customers the opportunity to make their electricity 'green' by buying 100 kwh blocks for $4.93 per block. This goes to support their investments in renewable energy projects.

What if the PSC established a statewide green pricing program, in which the consumers who choose to support renewables purchase blocks of green, and at the end of the year the total green payments get liquidated amongst those producing renewable energy? The PSC could establish a fund for these renewable pricing payments, administered by a fiduciary of impeccable character.

This could serve as one tool the PSC might use to encourage the development of renewable energy in Florida. An attractive part of this idea is that it is entirely at the discretion of the consumers and there is nothing to lose by implementing it.

Idea 3: The Renewables and the IOU's Working Together?

This is another idea that would probably not be a part of any rule, but that nonetheless might be useful in some situations to energize the market and have the renewables and the IOU's team up on these projects.

Under the current tax provisions (IRC sec. 45), there is a production tax credit available of $19/mwh for producers of renewable energy using wind, solar or closed-loop biomass. There is a partial tax credit of $10/mwh for several other types of renewable facilities, including open-loop biomass, municipal solid waste, and hydroelectric power. These are indexed for inflation and are available for the first ten years of a project.

It is quite possible that a project's federal income tax liability will be significantly less than the tax credit, and thus unless the renewable producer has other tax liability to be offset against, the tax credit may not be fully realized. The IOU's, however, have substantial tax liability and could make good use of this federal tax credit. For many renewable projects, it might make sense for the IOU and REP to join forces and pass the tax credit on to the IOU, in return for a revenue payment.

Example An REP and an IOU do a joint venture in which the IOU receives all the production tax credits to apply against their taxes. The IOU agrees to pay the REP a revenue stream (above and beyond capacity and energy) equal to the $10/mwh tax credit, which improves the REP's ability to finance the project. The REP produces 10 mwh of electricity, and receives $100. The IOU receives $100 in production tax credits. Net results: the REP has more front-

loaded income to make the project financeable, the IOU is price-neutral, consumers are price-neutral.

This idea will only work for certain projects in certain situations, but is worth considering as a means to improve cash flows without affecting the utility or the consumers.

Of the three ideas GCE has put forth, only the first two would actually require PSC action, but I hope that they will be considered with the current situation in mind. Lastly, I would like to reiterate a key point for renewable producers: the contract start date. The rule proposed by staff incorporates a Portfolio Approach, and offers the REP a choice of avoided units. However, the rule as proposed does not yet offer the REP the ability to choose *when* the contract will start under the SOC terms.

For example, if GCE wishes to enter into a contract with FPL based upon their combined cycle unit, the contract start date will not be until 2015. Our 42 MW biomass facility will be up and running 2011-2012, but under the current rule our contract would not begin until 2015. Whether the Commission ultimately adopts a rule based on the Renewable Group's proposal, or Staff's proposal, GCE asks you to include in this rule a provision allowing the contract to start once the REP begins providing firm capacity and energy.

The Legislature has given the Commission the flexibility to make 'bold moves' to improve our state's energy situation, and I hope that these post-hearing comments will be helpful to Staff and the Commission in formulating your recommendations and decisions.

Once again, we would like to express our thanks to the Commission and Staff for the opportunity to submit these comments.

Respectfully submitted this day, December 6th, 2006.

/s/ *Robert E. Hunter*

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