

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 1, 2007

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Holley)
Division of Economic Regulation (Ballinger, Baxter)

RE: Docket No. 050805-EQ – Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities and approval of tariff schedule REF-1, by Gulf Power Company.

Docket No. 050806-EQ – Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

Docket No. 050807-EQ – Petition for approval of amended standard offer contract tariff and renewable energy tariff, by Progress Energy Florida, Inc.

Docket No. 050810-EQ – Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

AGENDA: 02/13/07 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050805.RCM.DOC

Case Background

In its 2005 session, the Florida Legislature enacted Section 366.91, Florida Statutes (F.S.), regarding renewable energy which became effective on October 1, 2005. Section 366.91(1), F.S., states:

The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

Section 366.91(3), F.S., enumerates requirements to promote the development of renewable energy resources. In summary:

- a) By January 1, 2006, each investor-owned electric utility (IOU) and municipal utility subject to the Florida Energy Efficiency and Conservation Act (FEECA) of 1980 must continuously offer to purchase capacity and energy from specific types of renewable resources;
- b) The contract shall be based on the utility's full avoided costs, as defined in Section 366.051, Florida Statutes; and,
- c) Each contract must provide a term of at least ten years.

Staff held a workshop on September 12, 2005, to discuss the implementation of the statute. At the workshop, staff suggested that the statute's requirements could be implemented initially under the Commission's existing rule pertaining to standard offer contracts, Rule 25-17.0832(4) and (5), Florida Administrative Code (F.A.C.). Staff suggested this approach in an effort to meet the January 1, 2006, implementation date required by the statute.

Gulf Power Company (Gulf), Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Florida Public Utilities Company (FPUC) and Tampa Electric Company (TECO) filed petitions seeking approval of their proposed standard offer contracts on October 14, 2005. Section 366.91(4), F.S., does not require the Commission's approval of renewable standard offer tariffs for covered municipal and cooperative utilities. However, Jacksonville Electric Authority (JEA) and the Orlando Utilities Commission (OUC) filed tariffs for informational purposes on January 1, 2006.

The Commission approved FPUC's proposed contract on December 27, 2005, by Order No. PSC-05-1260-TRF-EQ.¹ The Commission also approved the remaining four contracts with

¹ Order No PSC-05-1260-TRF-EQ was issued in Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, 050809-EQ and 050810-EQ, In Re: Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities and approval of tariff schedule REF-1 by Gulf Power Company; Petition for approval of renewable standard offer contract by Florida Power & Light Company; Petition for approval of amended standard offer contract tariff and renewable energy tariff by Progress Energy Florida; Petition for approval of renewable energy tariff by Florida Public Utilities Company; and Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy by Tampa Electric Company, respectively.

modifications through June 1, 2006, to allow time for additional discussion on policy issues associated with implementing Section 366.91, F.S. On January 17, 2006, the Florida Industrial Cogeneration Association (FICA) and Bay County each filed a protest of Order No. PSC-05-1260-TRF-EQ and requested a formal hearing. Both parties, however, requested that any hearing be deferred until after an additional workshop was held.²

On March 6, 2006, staff held an additional workshop to obtain further information on implementing the statute. Remaining unresolved was the methodology to be used to set avoided cost for standard offer contracts. At the workshop, the IOUs proposed to continue the single unit approach based on reliability needs and the value of deferral (VOD) methodology for calculating avoided costs. Representatives from the City of Tampa, the Solid Waste Authority of Palm Beach, and FICA proposed a hypothetical statewide coal unit, with an in-service date the same as the renewable generator's, and capacity payments based on full revenue requirements of the avoided unit. Staff proposed a portfolio approach, coupled with the VOD methodology, as a refinement to calculating avoided costs, which was supported by Lee County, Montenay Dade Limited, Covanta Energy Corporation, and the Integrated Waste Services Association. The portfolio approach would provide multiple contracts based on generating units identified in a utility's annual Ten-Year Site Plan (TYSP) filing. No other proposals were presented.

FPL, PEF, Gulf and TECO filed petitions seeking approval for their revised standard offer contracts on April 3, 2006. All four proposed standard offer contracts continued to limit avoided cost offerings based on the utility's next single generating unit. On June 6, 2006, the Commission issued Order No. PSC-06-0486-TRF-EQ approving each of the IOUs' proposed revised standard offer contracts with an effective date of June 2, 2006, and requiring FPL, PEF and TECO to file additional contracts within 90 days based on additional planned generating units, to fulfill the requirements of a Fossil Fuel Unit Type Portfolio approach. As stated in the Order:

We find that a different approach – a “Fossil Fuel Unit Type Portfolio” approach – will best meet the intent of Section 366.91, Florida Statutes, to encourage the development of renewable energy resources while balancing ratepayer interests. Under this approach, each investor-owned electric utility shall file a portfolio of standard offer contracts comprised of individual contracts based on the next avoidable fossil-fueled generating unit of each technology type in the utility's 2006 Ten-Year Site Plans. Renewable generators may then select a standard offer contract based on the IOU's avoided unit type that best meets the renewable generator's pricing and timing needs and most closely matches the operating characteristics of the renewable technology.

² The protests of the initial standard offer contracts approved in Order No. PSC-05-1260-TRF-EQ are now moot because the initial standard offer contracts of FPL, PEF, Gulf, and TECO expired as of June 1, 2006. Further, although FPUC's initial standard offer contract has not expired, on August 4, 2006, Bay County withdrew its protest.

Since Gulf had only one planned generating unit in its TYSP, Gulf was not required to file additional contracts. The Commission also directed staff to initiate rulemaking to implement Section 366.91, F.S. On June 26, 2006, FICA filed a protest of Order No. PSC-06-0486-TRF-EQ and requested a formal hearing. FICA, however, agreed to a reasonable delay of the hearing until after the Commission's rulemaking proceeding was completed. Docket No. 060555-EI was opened to address rulemaking as mandated by the Commission.

After FICA's second protest, FPL, PEF, and TECO each submitted additional tariffs containing standard offer contracts based on additional planned generating units to fulfill the requirements of the Fossil Fuel Unit Type Portfolio approach as required by Order No. PSC-06-0486-TRF-EQ. On September 21, 2006, FPL filed its Notice of Withdrawal of its additional tariffs and standard offer contracts, citing FICA's protest of Order No. PSC-06-0486-TRF-EQ, but also stating that FPL remained committed to promptly re-submitting renewable energy tariffs and standard offer contracts when appropriate. Both PEF and TECO initially submitted letters to the Commission waiving the 60-day statutory timeframe by which the Commission must suspend tariffs as required by Section 366.06, F.S., pending disposition of FICA's protest. Both TECO and PEF subsequently withdrew their additional tariffs and standard offer contracts on January 29, 2007, and January 31, 2007. Thus, the additional tariffs and standard offer contracts submitted by FPL, PEF, and TECO on July 27, 2006, and September 5, 2006, which are based on the Fossil Fuel Unit Type Portfolio approach, are not in effect.

During its 2006 Session, the Florida Legislature once again addressed the issue of renewable generation in Florida and adopted Section 366.92, F.S. Specifically, Section 366.92(1), F.S. states:

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 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.

On August 23, 2006, staff held a rule development workshop in Docket No. 060555-EI to discuss changes to the Commission's existing cogeneration rule, Rule 25-17.0832, F.A.C. Staff based its draft rule language on the Fossil Fuel Unit Type Portfolio approach approved in Order No. PSC-06-0486-TRF-EQ. At the October 3, 2006 Agenda Conference, the Commission voted to propose amendments to Rule 25-17.0832, F.A.C. The Commission also set a hearing date of November 9, 2006, to allow interested persons to provide additional comments and alternative rule language.

On December 27, 2006, staff filed its recommendation in Docket No. 060555-EI requesting that the Commission adopt new rules regarding renewable generation.³ The rules recommended for adoption require the IOUs to continuously make available standard offer

³ Staff proposed amendments to Part III, Rule 25-17.0832, F.A.C. and Part IV to the Commission's rules in Chapter 25-17, F.A.C. (Rules 25-17.200 through 25-17.310, F.A.C.).

Date: February 1, 2007

contracts based on a portfolio approach of utility fossil-fueled units; establish a methodology to calculate capacity payments using value of deferral methodology based on the utility's full avoided costs and need for power; require IOUs to expand the capacity and energy payment options to facilitate the financing of renewable generation facilities; allow for reopening of the contract in the event of future carbon taxes; clarify ownership of transferable renewable energy credits; provide for an expedited dispute resolution process; and require annual reporting from all utilities.

At the January 9, 2007, Agenda Conference, after hearing discussion from staff and the parties, the Commission voted to adopt the rules with some changes. The Commission subsequently published its Notice of Change in the January 26, 2007, Florida Administrative Weekly. The rules are scheduled to be filed for adoption with the Florida Department of State on February 16, 2007, with an effective date of March 8, 2007. A copy of the rules, as adopted, is attached to this recommendation.

This recommendation will address whether the Commission should require Gulf, FPL, PEF and TECO to file tariffs containing new standard offer contracts with terms that are consistent with the Commission's stated policy as expressed by the adoption of the rules addressing renewable energy; whether the tariffs that were approved by Order No. PSC-06-0486-TRF-EQ should be closed; and the status of FICA's protest of Order No. PSC-06-0486-TRF-EQ. The Commission has jurisdiction over this matter pursuant to Sections 366.04 through 366.06, 366.91 and 366.92, F.S.

Discussion of Issues

Issue 1: Should the Commission require Gulf Power Company (Gulf), Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), and Tampa Electric Company (TECO) to file tariffs containing new standard offer contracts?

Recommendation: Yes. Gulf, FPL, PEF, and TECO should be required to file tariffs by April 1, 2007, that contain new standard offer contracts with terms that are consistent with the Commission's policy as expressed by the adoption of renewable energy rules in Docket No. 060555-EI. The standard offer contracts should be based on each type of generating unit available in each investor-owned utility's 2007 Ten Year Site Plan. (Holley, Ballinger, Baxter)

Staff Analysis: On June 6, 2006, the Commission approved tariffs containing revised standard offer contracts which were filed on April 3, 2006, by FPL, PEF, Gulf, and TECO by Order No. PSC-06-0486-TRF-EQ. The Commission's Order also found that the Fossil Fuel Unit Type Portfolio approach would best meet the intent of Section 366.91, F.S., and would be the best approach to encourage renewable energy resources while balancing ratepayer interests. Accordingly, the Commission directed FPL, PEF, and TECO to file additional standard offer contracts based on the Fossil Fuel Unit Type Portfolio approach within 90 days of the Order.⁴ The revised standard offer contracts that were approved by Order No. PSC-06-0486-TRF-EQ, with an effective date of June 2, 2006, did not incorporate the Fossil Fuel Unit Type Portfolio approach but instead calculated the utility's avoided costs by limiting the contract offered to one based upon the utility's next single planned generating unit. By also ordering the IOUs to file additional new standard offer contracts to implement the Fossil Fuel Unit Type Portfolio approach, the Commission ensured that the requirement of Section 366.93(3), F.S., that the IOUs "continuously offer" standard offer contracts, would be met.

Order No. PSC-06-0486-TRF-EQ also directed staff to initiate rulemaking to implement Section 366.91, F.S. The rulemaking proceeding required by that Order is now complete and has resulted in the adoption of new rules.⁵ Furthermore, as a result of the rulemaking proceeding, the Commission's policy with respect to renewable generation has been clearly defined and expanded. Specifically, the Commission has reiterated its choice of the Fossil Fuel Unit Type Portfolio approach and value of deferred methodology to determine an IOU's total avoided costs. The rules also require IOUs to expand the capacity and energy payment options to facilitate the financing of renewable generation facilities; allow for reopening of the contract in the event of future carbon taxes; clarify ownership of transferable renewable energy credits; provide for an expedited dispute resolution process; and require annual reporting from the utilities.

The existing revised standard offer contracts that were approved by Order No. PSC-06-0486-TRF-EQ limit the contract offering to the utility's next single planned generating unit. These contracts do not reflect the Commission's current policy for renewable generation as expressed in the newly adopted rules. Although FPL, TECO, and PEF submitted additional

⁴ Because Gulf had only a single planned generating unit in its TYSP, Gulf was not required to file additional contracts.

⁵ Amendments to Part III, Rule 25-17.0832, F.A.C. and Part IV to Chapter 25-17, F.A.C. (Rules 25-17.200 through 25-17.310, F.A.C.).

Date: February 1, 2007

tariffs containing standard offer contracts consistent with the requirements of a Fossil Fuel Unit Type Portfolio approach as required by Order No. PSC-06-0486-TRF-EQ, due to FICA's protest and the ongoing rulemaking proceeding, no action has been taken to approve those tariffs. Furthermore, the standard offer contracts submitted by FPL, TECO, and PEF were based on each IOU's 2006 TYSP, and were thus based on outdated planning assumptions, and have since been withdrawn by the utilities.

Accordingly, staff recommends that Gulf, FPL, PEF, and TECO be required to file new tariffs by April 1, 2007, that contain new standard offer contracts with terms that are consistent with the Commission's policy as expressed by Rules 25-17.200 through 25.17.310, F.A.C., which were recently adopted in Docket No. 060555-EI. The standard offer contracts should be based on each type of fossil fuel generating unit contained in the IOUs' 2007 TYSP, which should be filed on April 1, 2007.

Issue 2: Should the tariffs filed by Gulf, FPL, PEF, and TECO containing proposed standard offer contracts and approved by Order No. PSC-06-0486-TRF-EQ be closed?

Recommendation: Yes. The tariffs containing the standard offer contracts approved by Order No. PSC-06-0486-TRF-EQ are not consistent with the Commission's current policy as expressed by the adoption of new rules in Docket No. 060555-EI. Therefore, the tariffs containing the IOUs' proposed standard offer contracts that were approved by Order No. PSC-06-0486-TRF-EQ should be closed upon the filing of tariffs containing new standard offer contracts as described above. (Holley, Ballinger, Baxter)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, Gulf, FPL, PEF and TECO will each be required to file by April 1, 2007, tariffs containing new standard offer contracts that are consistent with the Commission's stated policy on renewable generation as articulated in Docket No. 060555-EI, requiring a Fossil Fuel Unit Type Portfolio approach which will be based on each type of generating unit contained in each IOU's 2007 TYSP.

The standard offer contracts approved by Order No. PSC-06-0486-TRF-EQ limit each IOU's contract offered to one based upon the utility's next single planned generating unit and are thus inconsistent with the Commission's current policy on renewable generation as expressed by the adoption of the new rules. FPL, TECO, and PEF all submitted additional tariffs containing standard offer contracts consistent with the requirements of a Fossil Fuel Unit Type Portfolio approach as required by Order No. PSC-06-0486-TRF-EQ. However, as stated previously, FPL, PEF, and TECO have subsequently withdrawn those tariffs. Thus, no further action by the Commission is necessary with respect to those tariffs.

Accordingly, because the standard offer contracts approved by Order No. PSC-06-0486-TRF-EQ are not consistent with the Commission's current policy, and will be replaced by tariffs containing the IOUs' proposed standard offer contracts that reflect the Commission's stated policy, the tariffs approved by Order No. PSC-06-0486-TRF-EQ should be closed upon the filing of tariffs containing new standard offer contracts as described above.

Issue 3: Is the protest of Order No. PSC-06-0486-TRF-EQ moot?

Recommendation: Yes. If the Commission approves staff's recommendation in Issues 1 and 2, once Gulf, FPL, PEF, and TECO file tariffs containing new standard offer contracts with terms that are consistent with the Commission's stated policy as expressed by the adoption of renewable energy rules in Docket No. 060555-EI, and the tariffs containing the proposed standard offer contracts approved by Order No. PSC-06-0486-TRF-EQ are closed, FICA's protest of Order No. PSC-06-0486-TRF-EQ will be rendered moot. When the Commission issues a decision on the tariffs containing new standard offer contracts with terms that are consistent with the Commission's current stated policy, all persons whose substantial interests are affected will have a point of entry to challenge the Commission's decision. (Holley)

Staff Analysis: FICA's protest raises disputed issues of fact and law concerning outdated renewable energy contracts that were filed by the utilities. Thus, staff believes that once the tariffs that were approved by Order No. PSC-06-0486-TRF-EQ are closed, and since the subsequent tariffs filed by FPL, PEF and TECO have been withdrawn, the basis of the protest will no longer exist and FICA's protest will be rendered moot.

Once Gulf, FPL, PEF, and TECO file tariffs with new standard offer contracts as described in Issue 1, the Commission will be required to issue a decision approving or denying those tariffs. Consistent with Commission practice, that decision will be issued in the form of a Tariff Order, which will afford any substantially affected person, such as FICA, a twenty-one day period to protest the Commission's decision and request a hearing. Thus, FICA will not be harmed or prejudiced by the determination that its protest of Order No. PSC-06-0486-TRF-EQ has been rendered moot. Staff also notes that consistent with the Commission's past treatment of tariffs, if a protest to its Tariff Order is received, the tariffs approved by that Order will remain in effect pending the resolution of the protest.

Issue 4: Should Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, and 050810-EQ be closed?

Recommendation: Yes. If the Commission approves staff's recommendation as set forth in Issues 1, 2, and 3, and if no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the order, Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, and 050810-EQ should be closed upon the issuance of a consummating order. The Commission should open new dockets to consider the tariffs filed by Gulf, FPL, PEF, and TECO containing new standard offer contracts required by Issue 1. (Holley)

Staff Analysis: If the Commission approves staff's recommendation as set forth in Issues 1, 2, and 3, and if no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the order, Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, and 050810-EQ should be closed upon the issuance of a consummating order. The Commission should open new dockets to consider the tariffs filed by Gulf, FPL, PEF, and TECO containing new standard offer contracts required by Issue 1.

PART IV UTILITIES' OBLIGATIONS WITH REGARD TO RENEWABLE GENERATING FACILITIES

25-17.200 Application and Scope. The purpose of these rules is 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 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. Unless otherwise stated, these rules apply to all investor-owned utilities.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History—New _____.

25-17.210 Definitions.

For purposes of these rules:

(1) "Renewable Generating Facility" means an electrical generating unit or group of units at a single site, interconnected for synchronous operation and delivery of electricity to an electric utility, where the primary energy in British Thermal Units (BTUs) used for the production of electricity is from one or more of the following sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, or waste heat from a commercial or industrial manufacturing process.

(2) “Biomass” means a fuel source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, agricultural and orchard crops, waste products from livestock and poultry operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

(3) “Full Avoided Costs,” as defined in 366.051, Florida Statutes, means the incremental costs to the purchasing utility of the electric energy or capacity, or both, which, but for the purchase from a renewable generating facility, such utility would generate itself or purchase from another source.

(4) “Investor-owned utility” shall have the same meaning as Section 366.02(1), Florida Statutes.

(5) “Electric utility” shall have the same meaning as Section 366.02(2), Florida Statutes.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.220 Qualifying Criteria.

For purposes of these rules, a renewable generating facility shall be deemed a qualifying facility pursuant to Rule 25-17.080(1) and shall have all the rights, privileges, and responsibilities specified in Rules 25-17.082 through 25-17.091, F.A.C.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.230 The Utility's Obligation to Purchase and Sell.

(1) Each investor-owned utility shall purchase electricity produced and sold by renewable generating facilities at rates that have been agreed upon by the utility and renewable generating facility or at the utility's published tariff. Each investor-owned utility shall file a tariff or tariffs and a standard offer contract or contracts for the purchase of energy or capacity, or both, from renewable generating facilities that reflects the provisions set forth in these rules.

(2) Each investor-owned utility's tariff or standard offer contract shall specify the metering requirements for billing purposes in accordance with Rule 25-17.082 subsections (2) and (3), F.A.C.

(3) Each investor-owned utility shall interconnect with any renewable generating facility in accordance with Rule 25-17.087, F.A.C.

(4) Each investor-owned utility shall sell energy to renewable generating facilities in accordance with Rule 25-17.084, F.A.C.

(5) Each investor-owned utility shall provide, upon request by a renewable generating facility, transmission service to wheel as-available energy or firm energy and capacity produced by the renewable generating facility from the renewable generating facility to another electric utility in accordance with Rule 25-17.0889, F.A.C.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History—New _____.

25-17.240 Negotiated Contracts.

(1) Investor-owned utilities and renewable generating facilities are encouraged to

negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability, and energy security.

(2) Negotiated contracts will be considered prudent for cost recovery purposes if it is demonstrated by the investor-owned utility that the purchase of firm capacity and energy from the renewable generating facility pursuant to the rates, terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility and provide fuel diversity, fuel price stability, and energy security at a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the renewable generating facility under the contract.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.250 Standard Offer Contracts.

(1) Standard Offer Contract. In addition to the requirements contained in Rules 25-17.082 through 25-17.091, F.A.C., each investor owned utility shall, by April 1 of each year, file with the Commission a standard offer contract or contracts for the purchase of firm capacity and energy from renewable generating facilities and small qualifying facilities with a design capacity of 100 kW or less. A separate standard offer contract shall be based on the next avoidable fossil fueled generating unit of each technology type identified in the utility's Ten-Year Site Plan filed pursuant to Rule 25-22.071, F.A.C. Each standard offer contract based on each of the utility's

avoidable units shall be consistent with the requirements of Rule 25-17.0832(4), (5), and (6), F.A.C., except as modified by this rule. Each investor-owned utility with no planned generating unit identified in its Ten-Year Site Plan shall submit a standard offer based on avoiding or deferring a planned purchase.

(2) Continuous Offers.

(a) In order to ensure that each utility continuously offers a purchase contract to producers of renewable energy, each standard offer contract shall remain open until:

1. A request for proposals (RFP) pursuant to Rule 25-22.082, F.A.C., is issued for the utility's planned generating unit; or

2. The utility files a petition for a need determination or commences construction for generating units not subject to Rule 25-22.082, F.A.C.

3. The generating unit upon which the standard offer contract was based is no longer part of the utility's generation plan, as evidenced by a petition to that effect filed with the Commission or by the utility's most recent Ten Year Site Plan.

(b) Before a standard contract offering is closed, the utility shall file a petition for approval of a new standard offer contract based on the next unit of the same generating technology, if any, in its Ten-Year Site Plan. If no generating unit of the same technology is in the utility's Ten-Year Site Plan, the utility shall notify the Director of the Division of Economic Regulation prior to closing a standard offer.

(3) Term. At the election of the renewable generating facility, the term of each standard offer contract shall be for a minimum of 10 years from the in-service date of the avoided unit up to a maximum of the life of the avoided unit.

(4) Capacity Payments Options. In addition to the capacity payment options contained

in Rule 25-17.0832(4)(g), F.A.C., and subject to the provisions of Rule 25-17.0832(3)(a) through (d), F.A.C., a renewable generating facility may elect a payment stream for the capital component of the utility's avoided unit, including front-end loaded capacity payments, that best meets the financing requirements of the renewable generating facility. Early capacity payments consisting of the capital component of the avoided unit may, at the election of the renewable generating facility, commence any time after the actual in-service date of the renewable generating facility and before the anticipated in-service date of the utility's avoided unit. Regardless of the payment stream elected by the renewable generating facility, the cumulative present value of capital cost payments made to the renewable generating facility over the term of the contract shall not exceed the cumulative present value of the capital cost payments which would have been made to the renewable generating facility had such payments been made pursuant to Rule 25-17.0832(4)(g)(1), F.A.C. Fixed operation and maintenance expense shall be calculated in conformance with Rule 25-17.0832(6), F.A.C.

(5) Content. Unless otherwise modified by these rules, the contents of each standard offer contract shall be in accordance with Rule 25-17.0832(4), F.A.C.

(6) Fixed Energy Payments. In order to facilitate third-party financing of renewable generating facilities and provide fuel price stability to electric ratepayers, upon request by a renewable generating facility, each investor-owned utility shall provide for the following fixed energy payment options:

(a) As-available energy payments. As-available energy payments made prior to the in-service date of the avoided unit shall be based on the utility's year-by-year projection of system incremental fuel costs, prior to hourly economy energy sales to other utilities, based on normal weather and fuel market conditions plus a fuel market volatility risk premium mutually agreed

upon by the utility and the renewable generating facility.

(b) Firm energy payments. Subsequent to the determination of full avoided cost and subject to the provisions of Rule 25-17.0832(3)(a) through (d), F.A.C., a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the utility and renewable energy generator, shall be fixed and amortized on a present value basis over the term of the contract starting, at the election of the renewable generating facility, as early as the in-service date of the renewable generating facility. "Base energy costs associated with the avoided unit" means the energy costs of the avoided unit to the extent the unit would have been operated.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.260 Subscription Limits.

There shall be no preset subscription limits for the purchase of capacity and energy from renewable generating facilities. To the extent that the purchase of capacity and energy from a renewable generating facility is not needed for reliability or will increase costs to the general body of ratepayers above full avoided cost, the utility shall petition the Commission for relief. In any such proceeding, the Commission shall determine the need for power and the utility's full avoided cost, including strategic benefits such as fuel diversity and energy security, that are in the best interests of the general body of ratepayers.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.270 Changes in Environmental and Governmental Regulations.

All contracts for the purchase of capacity and energy from a renewable generating facility shall include a provision to reopen the contract, at the election of either party, limited to changes affecting the utility's full avoided costs of the unit on which the contract is based as a result of new environmental and other regulatory requirements enacted during the term of the contract.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.280 Tradable Renewable Energy Credits (TREC)s.

Tradable renewable energy credits and tax credits shall remain the exclusive property of the renewable generating facility. A utility shall not reduce its payment of full avoided costs or place any other conditions upon such government incentives in a negotiated or standard offer contract, unless agreed to by the renewable generating facility.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.290 Imputed Debt Equivalent Adjustments.

An investor-owned utility shall not impose any imputed debt equivalent adjustments (equity adjustments) to reduce the avoided costs paid to a renewable generating facility unless the utility has demonstrated the need for the adjustment and obtained the prior approval of the

Commission.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New _____.

25-17.300 Reporting. Each electric utility shall report, by April first of each year, the following information, actual and projected:

(1) The total megawatts and percentage of each utility’s total capacity mix comprised of renewable generating capacity.

(2) The total megawatt-hours and percentage of each utility’s net energy for load and fuel mix of energy purchased from renewable generation.

(3) The total megawatts and megawatt-hours of self-service generation by renewable generation.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.04(5), 366.05(7), F.S.

History–New _____.

25-17.310 Dispute Resolution

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between renewable generating facilities and investor-owned utilities.

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute either through negotiation or by seeking mediation from an independent third party or Commission staff.

(3) Subject to subsection (2) of this rule, any party negotiating an agreement under this Part may, at any point in the negotiation, petition the Commission to resolve any differences arising in the course of the negotiation. The petition shall contain, at a minimum:

- (a) an overview of the issues discussed and resolved by the parties;
- (b) the unresolved issues;
- (c) the position of each of the parties with respect to each unresolved issue;
- (d) all relevant documentation concerning each unresolved issue.

(4) A party petitioning the Commission under subsection (1) shall provide a copy of the petition and any other documentation accompanying the petition to the other party or parties not later than the day on which the petition is filed with the Commission. A non-petitioning party may respond to the petition and provide additional information within 30 days after the petition is filed with the Commission.

(5) The Commission will require the petitioning party and the responding party to provide additional information if it determines the additional information is necessary for the Commission to reach a decision on the unresolved issues. If any party refuses or fails to respond on a timely basis to any request from the Commission, then the Commission shall proceed on the basis of the best information available to it from whatever source derived.

(6) The Commission will resolve each issue set forth in the petition and the response, if any, in an expedited manner, normally within 90 days unless waived by the parties or on the Commission's own motion. The Commission shall base its decision on whether the provision in dispute will encourage the development of renewable generation in the State and is in the best interests of the purchasing utility's general body of ratepayers pursuant to the provisions of this Part.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.076, 366.81, 366.91, 366.92, F.S.

History–New _____.

PART III UTILITIES' OBLIGATIONS WITH REGARD TO COGENERATORS AND SMALL POWER PRODUCERS

25-17.0832 Firm Capacity and Energy Contracts.

25-17.0832(1) through 25-17.0832(3) – No changes

25-17.0832(4) Standard Offer Contracts.

(a) Upon petition by a utility or pursuant to a Commission action, each public utility shall submit for Commission approval a tariff or tariffs and a standard offer contract or contracts for the purchase of firm capacity and energy from small qualifying facilities. In lieu of a separately negotiated contract, standard offer contracts are available to qualifying facilities, as defined by subsection 25-17.080(3), F.A.C., with a design capacity of 100 kW or less. ~~the following types of qualifying facilities:~~

- ~~1. A small power producer or other qualifying facility using renewable or non fossil fuel where the primary energy source in British Thermal Units (BTUs) is at least 75 percent biomass, waste, solar or other renewable resource;~~
- ~~2. A qualifying facility, as defined by subsection 25-17.080(3), F.A.C., with a design capacity of 100 kW or less; or~~
- ~~3. A municipal solid waste facility as defined by Rule 25-17.091, F.A.C.~~

25-17.0832(4)(b) through end – no changes.

Specific Authority: 350.127, 366.05(1), F.S.

Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, 050810-EQ
Date: February 1, 2007

ATTACHMENT A

Law Implemented: 366.051, 366.81, F.S.

History—New 10-25-90, Amended 1-7-97, 5-18-03, .

Rule 25-17.-2xx.doc