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FMEA
FLORIDA MUNICIPAL ELECTRIC ASSOCIATION

September 12, 2007

Mr. Mark Futrell
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Post-Workshop Comments on Development of a Renewable Energy Portfolio Standard

Dear Mr. Futrell,

The Florida Municipal Electric Association submits the attached post-workshop comments on issues discussed at the August 23 workshop on development of a renewable portfolio standard for the State of Florida.

If you have any questions, please call me at (850) 224-3314, ext. 1, or send an email to bmoline@publicpower.com.

Sincerely,

Barry Moline

Barry J. Moline
Executive Director

417 East College (32301) P.O. Box 10114 Tallahassee, Florida 32302 Tel: (850) 224-3314 Fax: (850) 224-2831
www.publicpower.com

Florida Municipal Electric Association Comments on
Florida Public Service Commission Staff Workshop
on a Renewable Portfolio Standard
September 12, 2007

I. INTRODUCTION

The Florida Municipal Electric Association ("FMEA") is the state trade association for the thirty four municipal electric utilities in Florida. FMEA represents these utilities before the Legislature and regulatory agencies, including the Florida Public Service Commission. While some FMEA members may provide individual comments to the FPSC on this rule development, they have joined together to offer the comments contained herein.

FMEA has been on record discussing a proposal to promote its Green Energy Portfolio Standard in Florida. FMEA initially developed this proposal in response to House Bill No. 7123 ("HB 7123"), passed during the 2007 Legislature session. Section 39 of HB 7123 ordered the FPSC to conduct a study and provide recommendations to the Legislature for "an appropriate renewable portfolio standard for the state." Ultimately, the bill was vetoed by Governor Charlie Crist, however the legislative intent and concerns are clear – the future of Florida's electric market must include renewable energy.

As a result, FMEA members took this task seriously, and convened to discuss the components of renewable portfolio standards ("RPSs") around the United States - what works, what doesn't, and what FMEA believes would be good public policy for Florida. The result of several months of meetings and drafts is the Green Energy Portfolio Standard we have presented publicly.

In summary, the FMEA Green Energy Portfolio Standard proposal includes the following main components:

- Development of renewable energy, including solar and wind
- Inclusion of energy efficiency and energy conservation
- An Affordability Rate Cap of one percent of electric utility revenues to control costs for consumers
- A three-year evaluation to evaluate the appropriateness of the goals and budgets set.

FMEA did not intend that our Green Energy Portfolio Standard be adopted as a PSC rule absent further legislative direction. While FMEA stands firmly behind our proposal and intends to continue advocating its adoption at the Legislature, FMEA questions whether the PSC currently has the statutory authority to adopt a mandatory renewable portfolio standard for municipal electric utilities. Public power utilities are committed to a greener Florida, and we must do so in a way that strongly and affirmatively honors local control of all financial and reliability impacts. Furthermore, it must respect the long history of jurisdictional rules that have served us well for decades.

Overview of FPSC Jurisdiction Over Municipal Electric Utilities

FMEA agrees with the policy goal of encouraging the increased use of renewable energy through a renewable portfolio standard. However, as applied to municipal electric utilities, it is not clear the Commission has the jurisdiction to adopt a mandatory, enforceable RPS. As a creature of statute, the PSC may only act within the scope of those powers granted by the Legislature. See United Telephone Co. of Florida v. Public Service Com'n, 496 So.2d 116, 118 (Fla. 1986); State Dep't of Transp. v. Mayo, 354 So. 2d 359, 361 (Fla. 1977). While the Commission has plenary powers over investor-owned utilities (IOUs), the Florida Legislature has granted the Commission only limited jurisdiction over municipal electric utilities.

The Commission's limited jurisdiction over municipal electric utilities is well-founded. FMEA's member utilities are governed by elected boards, commissions, and councils that are locally accountable to the rate-payers served by the electric utility. Unless the Legislature expressly preempts municipal authority, policy decisions affecting rate-payers are made at local meetings open to public participation.

The Commission's powers are generally set forth in Chapter 366, Florida Statutes.[1] There is a clear distinction throughout chapter 366 between the Commission's jurisdiction over municipal electric utilities and the Commission's jurisdiction over IOUs. In fact, section 366.11, Florida Statutes (2007), provides the comprehensive list of sections within chapter 366 that apply to municipal electric utilities, and expressly exempts municipals from all sections not included therein.[2] See e.g., Amerson v. Jacksonville Elec. Authority, 362, So. 2d 433; Op. Att'y Gen. Fla. 2005-14 (2005). Nowhere in these enumerated sections is the Commission granted the authority to adopt a mandatory renewable portfolio standard for municipal electric utilities.

Renewable energy is provided for in section 366.92, Florida Statutes (2007), which grants the Commission the authority to "adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable energy sources." However, section 366.92 is not included in section 366.11, and therefore cannot be applied to municipal electric utilities. See e.g. Op. Att'y Gen. Fla. 2005-14 (2005).

Similarly, the stated purpose of section 366.91, Florida Statutes (2007), is to promote the development of renewable energy sources in Florida; however its application to municipal electric utilities is limited. While section 366.91 is generally applicable to municipals pursuant to section 366.11, the language of the statute limits the PSC's rulemaking authority to IOUs.

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[1] The Commission has not indicated the specific authority by which it proposes to adopt a RPS. Instead, in its Notice of Staff Workshop Re: Renewable Portfolio Standards (issued Aug. 9, 2007), the Commission staff stated, "This Commission is vested with jurisdiction over this subject matter by the provisions of Chapter 366, Florida Statutes."

[2] These sections include §§ 366.04, 366.05(7) and (8), 366.051, 366.055, 366.093, 366.095, 366.14, 366.80-366.85, and 366.91, Florida Statutes.

Specifically, section 366.91 requires both IOUs and municipals to continuously offer a purchase contract to producers of renewable energy. As to IOUs, the Commission is authorized to "establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers and may adopt rules to administer this section." § 366.91(3), Fla. Stat. (2007). The Commission does not have this same authority as to municipals. Instead, municipal electric utilities self-govern the implementation of their standard offer contracts, and are required to pay full avoided cost "as determined by the governing body of the municipal utility…." § 366.91(4), Fla. Stat. (2007); see also § 366.051, Fla. Stat. (2007) (granting the PSC authority to adopt rules regulating the purchase of electricity from cogenerators and small power producers only as to IOUs). This is further recognized in the PSC's rules implementing this section, as they are applicable only to IOUs. See Fla. Admin. Code r. 25-17.200 (2007).

In short, without further Legislative direction, FMEA questions the Commissions authority to go forward with a rule that establishes a mandatory RPS applicable to municipal electric utilities. Furthermore, the Commission may not rely on the Governor's recent executive order to expand its statutory boundaries. On July 13, 2007, Governor Crist issued Execute Order No. 07-127, which establishes immediate actions to reduce greenhouse gas emissions within Florida. One aspect of Executive Order 07-127 is a "request" of the PSC to "initiate rulemaking to require that utilities produce at least 20% of their electricity from renewable sources…."

The PSC is a legislative entity that performs legislative functions and derives its authority entirely from the Legislature. See § 350.01, Fla. Stat. (2007). The PSC is not an executive branch agency. See Chiles v. Public Service Com'n Nominating Council, 573 So. 2d 829 (Fla. 1991). The Governor may not, by executive order or otherwise, grant any authority to the PSC that is not found in the Florida Statutes; any attempt to do so would constitute an encroachment on the powers of the Legislature. See e.g., Op. Att'y Gen. Fla. 081-49 (1981). Likewise, the PSC may not look to an executive order of the Governor in order to find the required statutory authority to act.

Of significance, Executive Order 07-127 does not "order" the PSC to initiate rulemaking to adopt a RPS; but rather "requests" the PSC to do so. The PSC acquiesced in the Governor's "request," and began rule development proceedings. However, Executive Order 07-127 does not affect the requirement that the PSC act only within its statutory grant of authority.

Bifurcate Dockets to Consider FMEA's Green Energy Portfolio Standard

While jurisdictional issues remain, in order to facilitate progress towards the laudable goal of encouraging increased use of renewable energy and to avoid jurisdictional debates, FMEA has voluntarily begun development of its Green Energy Portfolio Standard. In order to consider this proposal in light of the unique characteristics of Florida's municipal electric utilities, FMEA requests the Commission bifurcate these rulemaking proceedings.

There is precedent to this approach. In 2006, recognizing both the inherent and jurisdictional differences between municipal electric utilities and IOUs, the Commission created a separate "storm hardening" docket for municipal electric utilities. See PSC Docket No. 060512-EU. In a separate storm hardening docket, municipals were able to work collaboratively with Commission

staff to develop a rule that met the Commission's goals, while avoiding jurisdictional disputes.[3] FMEA recommends the Commission take this same approach in the instant rulemaking proceedings.

II. FMEA'S RESPONSE TO FPSC STAFF QUESTIONS

What follows is FMEA's response to PSC staff's questions presented at the Rule Development Workshop held August 23, 2007. To facilitate further discussion, we provide answers to these questions within the framework of our proposed Green Energy Portfolio Standard.

1. **What are the underlying goals and objectives of a Renewable Portfolio Standard? i.e. encourage renewables; reduce greenhouse gases; fuel diversity; minimize cost; energy security; economic development.**

   A renewable portfolio standard is one component of Governor Charlie Crist's Climate Change Initiatives. Executive Order Nos. 07-126, 07-127 and 07-128 direct and request various state agencies to take certain actions to reduce their energy consumption or conduct rulemakings with the ultimate goal of reducing greenhouse gases to 80 percent below 1990 levels by the year 2050. Thus, FMEA interprets every directive or request made by the Governor in these orders serves to accomplish one principle goal: reduce greenhouse gasses.

   FMEA believes that the other goals and objectives identified in the question are laudable; however, when evaluating every component of the proposed policy in the RPS, the question must be asked: "Does this recommendation get the State of Florida closer to the goal of reducing greenhouse gasses?"

   Once within the framework of reducing greenhouse gas emissions, FMEA emphasizes that minimizing cost is paramount. There are a great many things we as a society would like to accomplish to make our world a better place; however, we must first prioritize the cost effectiveness of every recommendation to determine that the actions we take provide the greatest impact – toward greenhouse gas reduction – for every dollar spent.

   Fuel diversity follows closely behind cost. We have seen the economic impact of relying too heavily on a single fuel (e.g., recent natural gas price spikes and supply interruptions from hurricanes in the Gulf of Mexico), and we emphasize that a diverse resource base is an important criterion for choosing greenhouse gas reduction projects. There may be some cases where cost may be compromised for fuel diversity, but we must be steadfast and objective toward favored or biased energy resources if their costs are prohibitive.

[3] Upon bifurcating the dockets, FMEA (along with the Florida Electric Cooperative Association) and PSC staff quickly developed a storm hardening rule with which FMEA members have already begun implementing.

Energy security is closely associated with fuel diversity. Like a balanced investment portfolio of stocks, bonds and real estate, it is likewise important for the State of Florida to have a balanced portfolio of energy resources, including renewable energy, energy efficiency, energy conservation, natural gas, nuclear power and clean coal.

We must be prudent and recognize that not all forms of renewable energy are equally available or cost-effective in specific geographic regions. At the Governor's July 2007 conference on global climate change, the Serve to Preserve Summit, Vinod Khosla, co-founder of Sun Microsystems, clearly stated that ethanol from corn was not cost-effective, but ethanol from cellulose has the potential to be economically viable. Likewise, we must not be tied to myths about the viability of a singular renewable resource, but rather, be constantly open to the best, most cost-effective ideas to accomplish the highest goal: reducing greenhouse gases.

Finally, we believe that a sound policy that focuses on cost-effectiveness will simultaneously enhance economic development. Thus, while FMEA strongly supports economic development, we believe that other goals, stated above, should take precedent.

2. Does the statute require all utilities to meet the goal?

As more fully discussed above, FMEA is not aware of any statute that grants the PSC the authority to adopt a mandatory, enforceable renewable portfolio standard applicable to municipal electric utilities. However, FMEA has voluntarily begun drafting a Green Energy Portfolio Standard and recommends further developing this standard in a separate rulemaking docket.

3. Should the goal be statewide or utility specific?

The goal should be utility-specific and based on retail sales.

4. How should a statewide goal be allocated across utilities?

See answer to question 3.

5. Should existing renewable resources be included in the standard?

Existing renewable energy resources should be included in the standard. A portfolio standard is just that – a standard for all generation. It should not be a standard for "almost all" generation, but rather a standard for all of a qualified utility's generation. Including existing generation is important because some utilities have taken the initiative to include renewable energy in their generating portfolio for many years. They must not be penalized for taking early action. Rather, their efforts should be rewarded with recognition. Furthermore, the quantity is relatively modest; thus, while some utilities will receive this recognition as a benefit, it is relatively small on a statewide basis – well less than five percent.

6. What renewable resources should be eligible to meet the goal?

FMEA members believe that all viable renewable technologies should be eligible. We believe that renewable technologies that get Florida closer to the goal of fewer greenhouse gases emitted should have highest priority. Furthermore, we feel strongly that all measures related to energy efficiency should be emphasized.

In developing our Green Energy Portfolio Standard, FMEA researched the technologies used by other states with portfolio standards, and recommends that the following be eligible in Florida:

i. Solar photovoltaics
ii. Solar thermal
iii. End-use energy efficiency
iv. Energy Conservation
v. Measures that reduce end use energy consumption
vi. Biomass (with land management)
vii. Biofuels
viii. Wind
ix. Landfill methane
x. Methane digester or wastewater treatment
xi. Geothermal
xii. Ocean energy – thermal, tides, currents or waves
xiii. Transmission or distribution system efficiency improvements
xiv. Power plant efficiency improvements
xv. Waste-to-energy
xvi. Hydropower
xvii. Fuel cells (renewable-resource-derived)
xviii. Combined heat and power
xix. Thermal storage
xx. Other resources identified by individual utilities and recognized by the PSC. Furthermore, the PSC may consider assigning greater weight to technologies and programs that yield carbon-free kWh.

7. Should there be a process to approve new technologies?

Under FMEA's Green Energy Portfolio Standard, an initial list of eligible technologies would be developed. Nevertheless, technologies will change, evolve and be discovered, and we believe there should be a continuous process for approving new technologies.

8. Should other resources be eligible to meet the goal?

FMEA strongly recommends that energy efficiency and energy conservation be included as eligible technologies. Clearly, these two resources, while not necessarily renewable, are CLEANER than renewable energy. It is a fact that a kWh not used is cleaner than a kWh generated by renewable energy.

Of the twenty-five states that have some sort of RPS, six states currently include energy efficiency and energy conservation as an eligible technology. These states include: Colorado, Connecticut, Hawaii, Maine, Nevada, and Pennsylvania. Most of these states have adopted these RPS laws or rules within the past few years, and we believe that they have included efficiency and conservation for two reasons: 1) if the overall goal is greenhouse gas reduction, or at a minimum, cleaner energy, then one of the most obvious, promising tools available (i.e., efficiency) must not be ignored, and 2) like Florida, these states have proposed aggressive generation portfolio goals, yet they recognize that a high renewable percentage, such as twenty percent, may be difficult to achieve without efficiency and conservation.

We believe that the Florida Legislature clearly envisioned energy efficiency to be a part of a renewable portfolio standard. Although vetoed, section 40 of HB 7123 provided that the FPSC shall "recommend the establishment of an energy efficiency and solar energy initiative."

Furthermore, FMEA believes that energy efficiency on both the customer side of the meter be eligible as well as on the utility side of the meter. Again, we ask what is the difference between a kWh saved anywhere in the utility system? The unbiased answer is none. For example, utilities may be able to install energy efficient transformers, which cost more money but use less kWh. Because of the higher cost of these transformers, certified as EPA Energy Star, they are seldom installed. If they are allowed under the FPSC standard, another obvious tool available to us to reduce greenhouse gases will be available.

Finally, FMEA believes that expenditures in research, development and demonstration (RD&D) should be eligible as investments in Green Energy. RD&D is a vital component of advancing promising technologies that might have a significant impact on advancements in renewable energy and energy efficiency. We believe that a reasonable fraction of the Green Energy budget should be allowed to be invested at a qualified Florida university or research center for research, development and/or demonstration of Green Energy.

9. What is the basis for setting the standard? i.e., net energy for load, capacity.

FMEA members would prefer to establish a standard that is based on net energy for load in terms of megawatt-hours. Our understanding is that all other states with a renewable portfolio standard use a net-energy-for-load standard. A capacity standard would be fraught with problems, the least of which being the lack of guarantee that any renewable energy would actually be used. With capacity constructed, a utility could meet the standard but never actually use the renewable energy. A production standard is based on actual generation and use.

10. What type of goal should be established?

The goal should be reasonable. Currently the only direction provided to the FPSC is twenty percent of generation. However, it remains unclear whether twenty percent is achievable in Florida, what a realistic timeframe would be to achieve twenty percent, and what the cost impact might be on consumers. FMEA recommends that the FPSC support a resource study that examines a variety of renewable energy and energy efficiency opportunities in Florida, the current installed capacity and output, projected resources, timing for implementation, greenhouse gas impact of each technology, emissions, and cost estimates. The Legislature wrote in Section 39 of HB 7123 that the FPSC should conduct a resource study prior to recommending an "appropriate renewable portfolio standard for the state."

Furthermore, FMEA recommends that a limit on expenditures be established. We recommend that one percent of electric utility revenues be devoted to Green Energy, which we define as renewable energy, energy efficiency and energy conservation.

Each qualified utility would be solely responsible for determining the funding necessary to meet its percentage goal identified for that year.

In this example, a utility would choose Green Energy resources that achieve the greatest benefit versus cost to the utility, consistent with the utility's resource availability, load profile, or customer needs. If the cost of procuring Green Energy to achieve the annual goal for a particular year exceeds the utility's annual Green Energy budget, it shall only be required to purchase/spend the budgeted amount and it shall report its efforts in its annual report to the FPSC. If the available Green Energy does not match the utility's resource, load profile, or customer needs, or would be detrimental to the utility's operations (as determined by the utility and justified to the FPSC in its annual report), it shall not be required to procure such Green Energy and include the reason in its annual report.

The annual investment in Green Energy should include an Affordability Rate Cap, and be calculated on a system average basis as one percent of the utility's revenues, calculated to include its combined base rate, fuel costs and other regulatory costs (e.g., environmental). It should exclude local, state and federal taxes, general fund transfers and franchise fees.

For example, if the goal for a particular year is to achieve a Green Energy goal of five percent, the utility may comply in one of two ways. It may develop, invest in, or participate in Green Energy projects or purchase Green Energy credits. The budget for such investment shall be set at once percent of electric utility revenues. Conversely, if the utility achieves the five percent Green Energy goal by spending less than one percent of electric utility revenues, it is not required to spend the entire one percent. If the utility chooses to, however, it may spend more than the one percent Affordability Rate Cap budget.

If an electric utility purchases Green Energy or invests in a renewable energy generator, the only cost that may be applied to the Affordability Rate Cap is the marginal cost above the utility's avoided cost for that energy and/or capacity.

Utilities should be able to pass all costs incurred to meet Green Energy goals on to customers.

FMEA believes that customer education should be limited to no more than fifteen percent of annual Green Energy expenditures and be counted toward the utility's annual Green Energy budget. The purpose of this recommendation is to guarantee that actual investments in Green Energy are made, and not just talked about with customers. Another budgetary constraint would be on measurement and verification. While we believe that all Green Energy must be measured and verified, we believe that there should be a limit of fifteen percent of the utility's Green Energy budget devoted to this administrative activity.

11. Should the goal be phased-in?

Yes, the goal should be phased in over multiple years. The phase-in period should be based on the resource study such that the goal should match the projected availability of renewable energy and energy efficiency available to Florida. We recommend that the goal be identified in steps. For example, after five years the goal could be five percent; ten percent in ten years, and so on. Furthermore, we recognize that even the most well-intentioned goals may not be properly set. Thus, FMEA recommends that the Portfolio Standard be evaluated every three years to determine if the goals and Affordability Rate Cap are set properly compared to available Green Energy resources and costs.

In addition, FMEA's Green Energy Portfolio Standard would require utilities report annually to the PSC the status of achieving their Green Energy goals, and if they do not achieve their goal for that year, they provide an explanation describing the reasons. The report should include a disclosure of the technologies and measures used, costs, and their contribution (in MWh) to achieving Green Energy goals. This will allow utilities to learn what works and what doesn't work so they can make corrections to their own efforts.

12. Should provisions be established to encourage the use of particular renewable sources? i.e. percentage purchase obligations; tiers; carve-outs; multipliers

FMEA recommends that particular and preferred technologies be given a multiplier for each MWh produced. Executive Order 07-127 states that solar and wind should be emphasized. This can easily be done by giving all output from those technologies a multiplier of three times, for example. The multiplier should be based on the advantage that solar and wind have as clean fuels, as well as the price disadvantage they have compared to other renewable technologies. Thus, a policy decision must be made based on these economic and environmental factors. Such multipliers are equivalent to a subsidy for these technologies. It is important to identify all subsidies so that consumers and investors can clearly understand the economics and make investment decisions.

FMEA does not support quotas, "carve outs" or tiers devoted solely to certain technologies, such as two percent for solar photovoltaics. This is nothing more than a hidden subsidy. We do support taking that quota and turning it into a multiplier so that the public can understand the subsidy and make investment decisions accordingly.

13. Should renewable energy credits be counted toward the goal?

FMEA supports the use of credits to comply with the goal. We envision two types of credit markets: 1) a national market, and 2) a state market.

The national market would likely be based on a national standard for credits, such as the Environmental Resources Trust, which is specific to the types of renewable energy that can be counted and traded. We recommend that such credits be usable in Florida.

Furthermore, FMEA recommends that there be statewide trading of credits based on the definition of renewable energy used for this rule if it is different from a national standard.

The following is our opinion on the use of Green Energy credits: Each year utilities would, alone or with others, develop, invest in, participate in, or account for Green Energy projects. Utilities should be able to purchase Green Energy credits from other utilities, renewable energy producers, credit marketers or energy consumers that have permanently reduced their energy consumption (based on the useful life of the measure). One MWh equals one Green Energy credit. Credits could only be counted once (i.e., the entity generating the Green Energy may either use the credit or sell the credit to another entity; both entities may not use the same Green Energy credit). Finally, credits must be verified by metering or statistical evaluation.

14. Should out-of-state renewable energy credits be counted toward the goal?

Yes, out of state credits should be counted toward the goal. FMEA has several reasons for supporting this position. First, renewable energy generation projects may be regional in nature. For example, some North Florida utilities are investigating biomass generating plants in South Georgia, which is close to their service territories. There is no reason why such projects should be excluded if they are economically justified. Second, if the goal is to reduce greenhouse gas emissions, it should not matter where projects are developed. If verifiable projects can be developed cost-effectively nationwide, then Florida electric consumers benefit, and our planet benefits from fewer greenhouse gas emissions. Finally, some utilities in Florida have already invested in renewable energy outside of Florida, and they should not be penalized for their early progressive investments in clean technologies.

15. What entity should administer the renewable energy credits, including tracking across regions?

FMEA does not have a strong preference for who should administer the credit program. Nevertheless, we recommend that Florida create a statewide web-based credit tracking

system that would provide for any renewable system owner to register his generator and deposit his credits into a trading pool that is accessible to all credit buyers. Such systems exist for other states, and there are several regional online tracking systems as well.

16. How long should a renewable energy credit be allowed to be used for compliance?

Renewable energy credits should never expire.

17. Should owners of renewable energy credits have the ability to "bank" credits and if so, how long?

Owners of renewable energy credits should be allowed to bank those credits, indefinitely, to meet their goals. Furthermore, they should be allowed to sell those credits to others.

18. How will voluntary green power programs be affected by the use of renewable energy credits in a renewable portfolio standard?

Customers who spend their own funds to install renewable energy projects, without funding, input or coordination from their electric utility, should own their credits. However, if the electric utility, in any way whatsoever contributes to the coordination, subsidization, administration or joint investment in renewable energy projects, including paying or providing an incentive to the customer in any way for the renewable energy, then the utility should retain the sole use of credits and be allowed to use the output to meet its goal. The states of Texas, Wisconsin and Arizona allow utilities to count credits used in their retail green pricing programs as well as count them for their RPS goal.

Respectfully submitted this 12th day of September, 2007:

BARRY MOLINE
Executive Director
Florida Municipal Electric Association
P.O. Box 10114
Tallahassee, FL 32302-2114
O: (850) 224-3314, ext. 1
F: (850) 224-2831
C: (850) 251-5060
bmoline@publicpower.com

FREDERICK M. BRYANT
FMEA General & Regulatory Counsel
Florida Bar No: 126370
DANIEL B. O'HAGAN
Attorney
Florida Bar No. 33504
P.O. Box 3209
Tallahassee, FL 32315-3209
T: (850) 297-2011
F: (850) 297-2014
Email: fred.bryant@fmpa.com
dan.ohagan@fmpa.com