

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: Establishment of Rule on Renewable  
Portfolio Standard.

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**COMMENTS OF THE FLORIDA SOLAR COALITION**

The Florida Solar Coalition (FSC) files its comments on the Commission's proposed Rules 25-17.400, 25-17.410, and 25-17.420 and states as follows:

The Florida Solar Coalition is comprised of the Florida Solar Energy Industries Association (FlaSEIA), the Vote Solar Initiative and The Solar Alliance. FlaSEIA is a not-for-profit association whose members include Florida university research centers, Florida utilities, Florida manufacturers, distributors, contractors, retailers and consultants providing solar water heating, pool heating and electric systems. The Vote Solar Initiative is a not-for-profit national organization with Florida members whose goal is to increase energy independence by creating the conditions necessary for the widespread development and use of solar energy. The Solar Alliance is an alliance of manufacturers, integrators and installers of solar thermal and photovoltaic equipment working with state legislators and regulators to adopt cost-effective solar policies and programs.

All of the members of the Florida Solar Coalition bring extensive expertise to the establishment of a viable, sustainable solar energy market in Florida that can efficiently provide an alternative to fossil fuel generation and the acceleration of greenhouse gas emissions as the state moves into the twenty-first century. In order to be fully effective, Florida must develop a sustainable market that offers both large and small end-use customers the greatest range of choices which encourage the use of solar energy as a cost-effective alternative to the purchase of traditional energy. If this is done, Florida will also reap the benefits of establishing a green industry adding badly needed, highly paid, technically skilled jobs to the Florida workplace.

In FSC's opinion, the use of RECs is not the best or the most cost-effective means of developing the solar energy market in Florida. A renewable energy payment program which establishes a fixed \$/kWh payment pursuant to a long-term contract available to residential and commercial customers and renewable developers is preferred. Further, performance-based incentives coupled with net metering for photovoltaic systems allows customers to finance their systems by locking in their energy rates and giving much needed assistance with the capital cost of solar renewable systems. Both of these incentive programs provide benefits directly to the electric end-user and, because they are programmatically simpler, are less expensive to establish and administer than a REC market.

That being said, FSC is aware that the Commission's proposed rule responds to the legislature's clear directive to establish a REC market in Florida. Therefore, FSC proposes to incorporate the benefits of a renewable energy payment program within the structure of a REC-based RPS. In the context of the Staff's proposed rules the legislative goals of HB 7135 can't be reached without the following: 1) inclusion of solar thermal as well as photovoltaic systems in the Renewable Portfolio Standard (RPS) which will allow the development of an expanded residential distributed solar market; 2) a standard offer fixed rate (\$/kWh) RPS contract for a term of at least 10 years for Class I renewable energy resources (solar and wind); 3) formal Commission RPS review every two years for the first eight years after the

initial IOU goals are set by the Commission; 4) a set aside for solar and wind resources; and 5) a reasonable price cap of 4% which will provide adequate resources for the solar market to get established. To accomplish these ends, FSC proposes the following amendments:

Rule 25-17.400

a. Rule 17.400(1)(b) should be amended to require that the numerical portfolio standards for each investor-owned utility initially be set every 2 years. A shorter time period than proposed is required in order for the Commission to respond more rapidly to the developing renewable energy market. As the Florida renewable energy market matures, numerical portfolio standards can be set at increasing intervals. A shorter time period is supported by the fact that the Legislature deleted §366.92(3)(2006) in HB 7135 which had required that the Commission set renewable energy goals at least every five years.

Proposed amendment:

“(b) After approval of the initial renewable portfolio standards, the Commission shall review and set renewable portfolio standards for each investor-owned electric utility at least once every two ~~five~~ years for the first eight years after approval of the initial renewable portfolio standards. . . .”

b. Rule 17.400(3)(a) should be amended to require that IOUs meet 20% of their energy needs by renewable energy resources by the year 2020. The Staff has misread Executive Order 07-127. Section 3 of Executive Order 07-127 states that the Commission is requested to initiate rulemaking to “require that utilities produce at least 20% of their electricity from renewable sources (Renewable Portfolio Standard) with a strong focus on solar and wind energy.” No year is given in the Executive Order by which this goal must be met. However, Governor Crist has repeatedly stated publically that his Renewable Portfolio Standard goal is that 20% of statewide electric demand be met with renewable sources by the year 2020 with a strong focus on solar and wind energy. See: Governor’s Office Press Release dated July 13, 2007; Florida Department of Environmental Protection’s *The Post*, Vol. 7, Issue 29, July 20, 2007 at page 2, attached to these comments. Where, as here, there is a clear directive from the Governor’s office to provide 20% of the state’s electric energy demand by 2020 with renewable resources, that directive, rather than numbers derived from greenhouse gas emission reduction goals found in Section 1, should be used to set RPS goals.

FSC agrees that a starting point for January 1, 2010 is the current level of renewable capacity. Given this starting point, the goals should be as follows on January 1<sup>st</sup> of each year: 3% by 2011; 10% by 2015; 12% by 2016; 16% by 2018 and 20% by 2020. FSC will provide the Commission with our estimate of the cost and projected kWh associated with these goals by next week.

Proposed amendment:

“(a) Initially, each investor-owned utility shall submit proposed annual renewable portfolio standards which meet or exceed the following long term standards through the production or purchase of renewable energy credits pursuant to Rule 17.410, F.A.C.:

1. by January 1, 2010: 2 percent of the prior year’s retail electric sales;
2. by January 1, ~~2011~~ ~~2017~~: ~~3~~ ~~3.75~~ percent of the prior year’s retail electric sales;
3. by January 1, ~~2012~~ ~~2025~~: ~~4~~ ~~6~~ percent of the prior year’s retail electric sales;
4. by January 1, ~~2013~~ ~~2050~~: ~~6~~ ~~20~~ percent of the prior year’s retail electric sales;
5. by January 1, 2014: 8 percent of the prior year’s retail electric sales;
6. by January 1, 2015: 10 percent of the prior year’s retail electric sales;
7. by January 1, 2016: 12 percent of the prior year’s retail electric sales;
8. by January 1, 2017: 14 percent of the prior year’s retail electric sales;

9. by January 1, 2018: 16 percent of the prior year's retail electric sales;
10. by January 1, 2019: 18 percent of the prior year's retail electric sales;
11. by January 1, 2020: 20 percent of the prior year's retail electric sales.

c. Rule 17.400(b) should use Option II modified to give greater incentives for the development of solar photovoltaic systems whose current upfront capital cost is significantly higher than that of other renewable energy technologies. The track record of state incentives that have attempted to use multipliers for the development of solar resources indicates that this method has not been particularly effective.<sup>1</sup> By contrast, set-asides such as the one Staff proposes in Option II have “despite their nascent state . . . already begun to have a significant impact on the grid-connected PV market.”<sup>2</sup>

Proposed amendment:

“(b) By January 1, ~~2013~~, ~~2017~~; a minimum of 25% of the renewable portfolio standard shall be provided from Class I renewable energy sources with 10% provided by Class I solar thermal systems, a minimum of 10% provided by Class I solar photovoltaic systems and 5% provided by Class I wind systems. Should Class I wind systems fail to achieve 5% in any given year, solar resources shall be entitled to fill its remaining share. To the extent that the percentage for each Class I energy system is not filled, the remaining percentage can be applied to other Class I systems in the same ratio as originally stated.”

d. Rule 17.400 implements the requirement of §366.92(3)(b)2, F.S. (2008) that the RPS rule “provide for appropriate compliance measures and the conditions under which noncompliance shall be excused due to a determination by the commission that the supply of renewable energy or renewable energy credits is not adequate to satisfy the demand for such energy or that the cost of securing renewable energy or renewable energy credits was cost prohibitive.” FSC is concerned that there is no language in the rule that specifies the “conditions under which noncompliance shall be excused”, i.e., conditions that will ensure that the utilities are making a good faith effort to secure sufficient renewable resources and conditions that will ensure the creation of a viable, predictable market which results in new projects being developed that otherwise would not have been built at the lowest price.

Further, Rule 17.400(4)(a)2 has defined the “prohibitive cost” of a REC as 1% of the IOU’s total annual retail revenues (presumably this means the previous year’s total annual retail revenues). This value is too low. Of the twenty-six states with an RPS, nineteen have included cost caps; of these nineteen, only three have caps lower than the one percent proposed by Staff.<sup>3</sup> The average is just over four percent.<sup>4</sup> Based on this nationwide average, and Staff’s proposed development schedule, a cap based on 4% of total annual retail revenues is more likely to nurture and sustain the creation of a renewable energy market in Florida. FSC understands that the term “total annual revenues” refers to line 10 of the FERC Form 1, Electric Operating Revenues (Account 400).

Proposed amendment:

“(4) Compliance.

(a) In approving the proposed renewable portfolio standards and enforcing compliance with the

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<sup>1</sup> Ryan Wiser, Galen Barbose, Lawrence Berkley National Laboratory, *Renewables Portfolio Standards in the U.S.: A Status Report with Data Through 2007*, (April 2008).

<sup>2</sup> *Id.* at 17.

<sup>3</sup> *Id.* at Table 19.

<sup>4</sup> *Id.*

approved renewable portfolio standards, the Commission shall consider excusing an investor-owned electric utility from compliance with any renewable portfolio standard based upon a showing that:

1. the electric utility has made a good faith effort to acquire sufficient renewable energy or renewable energy credits to comply with the standard. Such good faith efforts shall include, but are not limited to: banking renewable energy credits in advance of obligations and seeking renewable energy credits through competitive solicitations and/or standard offer REC contracts; and

2. the supply of renewable energy or renewable energy credits is not adequate to satisfy the demand for such energy; or

3. the cost of securing renewable energy credits was prohibitive such that the total costs for compliance with the renewable portfolio standard exceeded four one percent of the investor-owned electric utility's total annual retail revenues."

#### Rule 25-17.410

e. Rule 17.410(1) requires that the IOUs establish a REC market subject to Commission approval. Rule 17.410(1)(a) "encourages" the IOUs to contract with an independent not-for-profit corporation for the development, administration and maintenance of the Florida REC market. FSC strongly believes that the Commission should develop the parameters of the Florida REC market itself by issuing a request for proposals (RFP) to select a not-for-profit corporation to develop, administer and maintain the REC market subject to Commission oversight and approval. Putting the IOUs in charge of establishing and running the market that certifies, buys, sells and trades RECs, while allowing the IOUs to develop and own renewable energy resources that produce RECs themselves, is institutionalizing a conflict of interest from the very moment of the REC market's inception.

During the rule workshops, the Commission staff raised the practical ability of the Commission to fund a REC RFP absent specific statutory language or a line item budget authorization to do so. In the cases of the Western Renewable Energy Generation Information System (WREGIS), the Midwest Renewable Energy Tracking System (M-RETS) and the Generation Attributes Tracking System (GATS) of the PJM states, APX and Clean power Markets, private corporations, have responded to RFPs for the development of REC trading markets. Compensation for the time and expertise used to develop the REC market structure was provided to these companies as part of the administrative costs of operating the market. In this way the Commission could receive the benefit of outside expertise in this area without the prior authorization of funds by the legislature.

Proposed amendment:

"(1) ~~Investor-owned electric utilities~~ The Commission shall establish and administer through a nationally-advertised request for proposals subject to Commission approval pursuant to subsection (4), an electronic renewable energy credit market. The renewable energy credit market shall allow for the transparent production, buying, selling and trading of renewable energy credits used to comply with the renewable portfolio standards of Rule 25-17.400, FAC. All records associated with the production of and the buying, selling, price reporting, or trading of renewable energy credits shall be available to the Commission for audit purposes.

(a) Investor-owned electric utilities shall ~~are encouraged to collectively establish and~~ contract with the independent not-for-profit corporation selected by the Commission to for development, administration, and maintenance of a Florida Energy Credit Market. The Florida Energy Credit Market administrator/not-for-profit corporation selected by the Commission shall not be engaged directly or indirectly in the construction and or ownership of renewable energy systems.

(4) Within 90 days from the effective date of this rule, the Commission ~~investor-owned electric~~

utilities shall prepare and issue a request for proposals regarding the development of file for Commission approval of the structure, governance, and procedures for administering the renewable energy credit market. . . .”

f. Rule 17.410(3) proposes a “price cap” of the equivalent of \$16 per ton of net greenhouse gas emissions (GHG) otherwise emitted by the IOU. This price cap shall be reevaluated and/or phased-out upon the adoption of a federal or state cap and trade system. FSC believes that this “price cap” is unnecessary because of the “cost prohibitive” exemption from the purchase of RECs granted by Rule 17.400(4)(a)2 discussed above. In essence it acts as a “second bite” at funds available to develop renewable resources and addresses the limitation of GHG emissions, an area beyond the Commission’s regulatory expertise or specific statutory authority.

As discussed at the rule workshops, the purpose of the renewable initiative is not tied exclusively to the reduction of greenhouse gas emissions. Rather, it is to “**promote the development of renewable energy**; protect the economic viability of Florida’s existing renewable energy facilities; diversify the type 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.” §366.92(1), F.S. (2008)(emphasis added.) With this extensive list of benefits to be expected from the renewable initiative, it is clearly not the legislature’s intent to tie spending on renewable energy projects to greenhouse gas emissions savings alone.

The 2007 Florida legislature has addressed the issue of greenhouse gas (GHG) emissions by directing the Department of Environmental Regulation (DEP) to develop a greenhouse gas allowance cap and trade regulatory program for Florida with the goal of reducing GHG emissions in the state. §§ 403.44(1), (5), (6), (7) and (8), F.S. (2008). It is not the Commission’s legislative directive, nor does the Commission have the expertise, to develop rules to reduce GHG emissions. DEP has been given this task and given until January 1, 2010 to do so. § 403.44(5), F.S. (2008). It is the Commission’s specific directive to promote the development of renewable energy as a way to diversify the fuels used to produce electricity and lessen Florida’s dependence on fossil fuels in meeting the state’s electric energy needs. For these reasons, proposed section 17.410(3) should be completely stricken.

Proposed amendment:

~~“(3) Initially, the price of each renewable energy credit shall be capped at the equivalent of \$16 per ton of net greenhouse gas emissions (GHG) reduced by Florida renewable energy resources relative to the GHG emissions otherwise emitted by the utility. The price cap shall be reevaluated or phased out upon adoption of a state or federal cap and trade system.”~~

g. Rule 17.410(2)(a) lists the types of entities that can generate RECs counted toward the RPS. At the August 26, 2008 workshop several parties noted that §366.92(2)(d), F.S. (2008) defined a “renewable energy credit” as the “unbundled, separable, renewable attribute of **renewable energy produced in Florida** and is equivalent to 1 megawatt-hour of electricity generated by a **source of renewable energy located in Florida.**” Further, §366.92(2)(a), F.S. (2008) defines “Florida renewable energy resources” as “renewable energy . . . that is **produced in Florida.**” Given these definitions it is clear that only RECs generated by renewable facilities actually located in Florida can be counted toward Florida’s IOU standards/goals whether owned by an IOU or by a third party. To clarify this point, FSC would modify the language of Rule 17.410(2)(a)1 as follows:

Proposed amendment:

“1. Investor-owned electric utility ~~Florida-owned~~ renewable energy resources located in Florida;”

h. Rule 17.410(4)(a)-(e) lists the provisions that must be included in the REC market design. The FSC acknowledges the Commission’s desire to minimize ratepayer impacts through competitive incentive levels. However, this must be balanced with the need to provide a transparent, investable, financeable climate for capital-intensive smaller systems and for smaller developers who may lack the means to participate in a dynamic REC market. In order to stimulate the development of capital intensive solar photovoltaic systems, the REC market must provide a REC standard offer contract of at least 10 years duration at a set kWh price for renewable energy with Class I renewable energy resources given preference for those contracts.

Proposed amendment:

(f) a standard offer power or REC purchase contract stating a set kWh price of at least 10 years term for Class I and Class II renewable energy resources with preference given to Class I renewable energy resources.

#### Policy Comments

At the August 26, 2008 workshop the Staff asked all participants to comment on several issues. FSC’s comments follow.

a. Use of bi-lateral contracts:

Section 366.92(3), F.S. (2008) allows IOUs to supply renewable energy to its customers “directly, by procuring, or through renewable energy credits.” Section 366.92(3)(b)1, F.S. (2008) also reiterates that an IOU can meet its RPS goals by “procurement of renewable power”. Thus, it is clear that IOUs have the legislative authority to enter into bi-lateral contracts with renewable energy facilities to meet their renewable energy goals. FSC sees these contracts as being similar to the current power purchase agreements with renewable energy facilities pursuant to §366.91(3), F.S. (2008) and Rules 25-17.250-17.310, F.A.C. These contracts would contain provisions for the sale of capacity, energy and RECs as defined in §366.92(2)(d), F.S. (2008). The number of RECs associated with a Florida renewable energy resource would be set by the REC market administrator through a certification process. The price of the RECs would be negotiated between the parties with reference to the REC market price. The price of the REC would be totally independent of the avoided unit used to set the price of renewable energy and capacity pursuant to Rules 25-17.250-17.310, F.A.C. In this way, the dollar amount associated with the REC could be tracked by the REC administrator and audited by the utility and the Commission for compliance with yearly utility goals.

b. Hourly trading of RECs:

To the FSC’s knowledge, within the United States to date, there is no solar REC market which trades or settles hourly. RECs are not the same as energy, which is a volatile commodity. In fact, since RECs serve primarily to support long-term, capital-intensive project financing, there would be no advantage in designing such a market. An hourly trading market would create market volatility and complicate the financing of renewable energy systems resulting in higher REC costs, ultimately imposing an increased, unnecessary burden on ratepayers. RECs need to be established for a term that corresponds with the IOU’s annual goals, not traded on an hourly basis.

c. Rewards and penalties for compliance or non-compliance

Every IOU has the statutory mandate to fully comply with all Commission rules and

regulations. With the adoption of RPS goals for each utility, should a utility fail to comply with its goals, the Commission may: (1) seek appropriate relief in circuit court pursuant to §366.05(10), F.S. (2008) and/or (2) fine the utility for each day that it does not comply with the rule \$5,000 pursuant to §366.095, F.S. (2008). The Commission would also have the ability to decrease the IOU's return on equity in its next rate case pursuant to §366.06, F.S. (2008). Conversely, the Commission has the authority to increase the IOU's return on equity pursuant to §§366.06 and 366.92(3)(b)1, F.S. (2008).

d. Cost recovery

The IOUs have argued that the cost of all RECs should be recovered either through the creation of a separate cost recovery clause or through the environmental cost recovery clause established by §366.8255, F.S. (2008). The IOUs point to the fact that §366.92(4), F.S. (2008) uses the environmental cost recovery clause to recover the costs associated with the state's 110 MW renewable energy "demonstration projects", i.e., Florida Power & Light Company's Martin, DeSoto and Space Coast solar energy projects (Docket No. 080281-EI) approved by the Commission on July 15, 2008.

For all RECs associated with non-utility renewable energy facilities the costs should be recovered through a separate cost recovery clause so that the cost of RECs charged to the ratepayer is completely transparent. For all RECs associated with utility-constructed renewable energy facilities, the cost should be rate-based. Given the relatively small capital and operational costs of renewable facilities when compared to traditional generation, the IOUs can easily fund them from general revenues without suffering any adverse economic effects, i.e., under-earning. Further, limiting cost recovery to a separate clause for non-utility renewable energy facilities would incentivize the IOUs to truly exhaust the marketplace before building renewable facilities themselves thereby strengthening the REC market.

e. IOU self-build option

Developing renewable energy resources in Florida will help diversify the industrial sector in Florida, create high paying technical jobs and recruit renewable energy manufacturers to the state as well as increase distributed electric generation. In order to meet these important policy goals, while also enabling cost-effective renewable energy within the state, the rule should encourage IOUs to explore all available options to ensure a competitive marketplace. At a minimum all IOUs should be required to issue an RFP pursuant to Rule 25-22.082, F.A.C., for proposed renewable energy facilities. Should an IOU's project be determined to be the most cost-effective pursuant to the RFP process, that project should be assigned RECs by the REC third-party administrator on the same basis as if a non-utility was constructing the facility. Those RECs could be used to meet the IOU's RPS goals or, if sold, the revenues generated should be given back to the ratepayers who provided the money to develop the renewable energy project.

f. REC standard offer contracts

FSC believes that there should be a standard offer REC contract which would be modeled after the currently available standard offer renewable energy contracts. The price of the REC would be a set rate (\$/kWh) for a term not less than 10 years with preference given to Class I wind and solar renewable energy resources. This contract will should be available for both small and large thermal and photovoltaic systems and contain provisions allowing for an up-front payment to defray the capital cost of the renewable energy system.

g. Revenue requirement cap

FSC supports a revenue requirement cap of 4% of each IOU's annual retail revenues as reported on FERC Form 1, line 10. FSC will provide the Staff with calculations of the rate impact of this

revenue cap requirement as well as kWh projections associated with this cap within the week.

h. Ratepayer protections

Use of a 4% revenue cap and a competitive REC market coupled with the frequent review of RPS goals should provide ratepayers with adequate protection. FSC would remind the Commission that use of renewable energy decreases each IOU's total cost of fuel and the state's increasing reliance on higher capital cost nuclear power.

Respectfully submitted this \_\_\_\_\_ day of September, 2008 by:

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