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June 8, 1998

Ms. Blanca S. Bayó, Director
Division of Records & Reporting
Florida Public Service Commission
Capitol Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

VIA FEDERAL EXPRESS

In Re: FPSC Docket No. 980569-PU
Rule 25-17.087 Interconnection and Standards

Dear Ms. Bayó:

In response to the Commission's Amended Notice Of Proposed Rule Development in the referenced proceeding, the Florida Industrial Cogeneration Association (FICA) through its undersigned counsel hereby files these "comments" on the proposed rule amendments. FICA is concerned with issues raised by the Commission's proposal to delete paragraph (2) of the rule - which authorizes utilities to unilaterally impose interconnection requirements which differ from those specified in the rule - and paragraph (3) of the rule - which provides for relief by an aggrieved QF and establishes the burden of proof. The proposed repeal of paragraphs (2) and (3) of rule 25-17-087, raises a number of important issues of serious concern to FICA and its members.

I have recently discussed those issues and concerns with Commission staff members Mary Ann Helton and Mark Futrell, who have agreed to recommend changes to the rule consistent with FICA's "Recommendations" contained herein. The following will summarize my discussions with staff and describe the issues presented.

CK _____
FA 1
PP Helton
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DISCUSSION

With regard to the repeal of 25-17-087 (2): FICA has no objection per se to the repeal of paragraph (2) of the rule, which would in essence revoke the utilities' unilateral authority to modify QF interconnection requirements on a case by case basis. FICA is concerned however, that while the repeal of paragraph (2) may appear to be necessary to comport with the APA, a serious problem will remain for QF's because the language of some

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interconnection agreements memorialize and reinforce the utilities' unilateral authority to modify interconnection requirements by incorporating the concepts, if not the exact language, of paragraph (2). Had it not been for the existence of paragraph (2), such language would not have been incorporated into the agreements.

Moreover, there appears to be at least one similar provision in rule 25-17.087, which the Commission should also repeal for compliance with the APA - namely, paragraph (7)(c) which allows the utility discretion in determining whether separate transformation will be required on a case by case basis.

With regard to the repeal of rule 25-17.087 (3): FICA strongly objects to the repeal of paragraph (3) which, regardless of whether or not paragraph (2) is repealed, provides important protections and remedies for QF's. Key among the protections and remedies is placement of the burden of proof on a utility which refuses to interconnect or attempts to impose unreasonable interconnection requirements. In FICA's view, repeal of this rule is not necessary to comport with the APA, except perhaps to the extent of deleting the reference to paragraph (2).

The Commission should be aware that even if paragraph (2) is repealed, the protections and remedies - including the burden of proof - embodied in paragraph (3) will continue to be critically important to QF's. Prior to adoption of this rule, utilities attempted to frustrate QF projects by being unreasonable in establishing interconnection requirements and challenging QF's to initiate litigation at the Commission or elsewhere, while knowing full well that the resulting delays would serve as a formidable barrier to QF's. FICA urges the Commission to retain Paragraph (3) to offer necessary protection from a utility which ". . . refuses to interconnect . . ." with a QF, or which attempts to impose ". . . unreasonable standards . . ." pursuant to provisions of an interconnection agreement, or otherwise.

FICA's RECOMMENDATIONS

FICA offers the following alternate proposed rule amendments:

25-17.087 Interconnection and Standards.

- (1) Each utility shall interconnect with any qualifying facility which:
- (a) is in its service area;
 - (b) requests interconnection;
 - (c) agrees to meet system standards specified in this rule;
 - (d) agrees to pay the cost of interconnection; and
 - (e) signs an interconnection agreement.

~~(2) Nothing in this rule shall be construed to preclude a utility from evaluating each request for interconnection on its own merits and modifying the general standards specified in this rule to reflect the result of such an evaluation.~~

(3) Where a utility refuses to interconnect with a qualifying facility or attempts to impose unreasonable standards pursuant to subsection (2) of this rule, the qualifying facility may petition the Commission for relief. The utility shall have the burden of demonstrating to the Commission why interconnection with the qualifying facility should not be required or that the standards the utility seeks to impose on the qualifying facility pursuant to subsection (2) are reasonable.

As noted previously, I have discussed this matter with Ms. Helton and Mr. Futrell of the Commission Staff who have agreed to recommend changes to the rule consistent with FICA's Recommendations - in lieu of the language contained in the notice. Accordingly, FICA has not requested a workshop.

If you have any questions or require any further information, please do not hesitate to contact this office.

Sincerely,



Richard A. Zambo

RAZ/jnh

xc: Mark Futrell
Mary Ann Helton