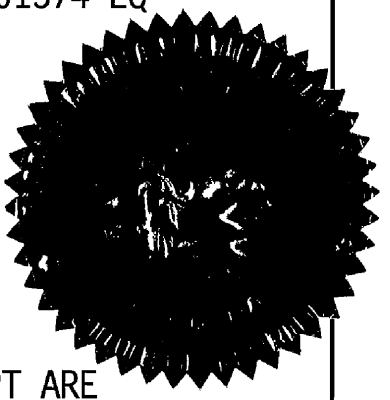
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001574-EQ

In the Matter of

PROPOSED AMENDMENTS TO RULE 25-17.0832, F.A.C., FIRM CAPACITY AND ENERGY CONTRACTS.
_____/



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PROCEEDINGS:	RULE HEARING
BEFORE:	CHAIRMAN LILA A. JABER COMMISSIONER J. TERRY DEASON COMMISSIONER BRAULIO L. BAEZ COMMISSIONER RUDOLPH "RUDY" BRADLEY COMMISSIONER CHARLES M. DAVIDSON
DATE:	Wednesday, March 19, 2003
TIME:	Commenced at 9:35 a.m. Concluded at 9:53 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	TRICIA DeMARTE, RPR Official FPSC Reporter (850) 413-6736

FLORIDA PUBLIC SERVICE COMMISSION

APPEARANCES:

ROBERT SCHEFFEL WRIGHT, ESQUIRE, Landers & Parsons, P.A., Post Office Box 271, Tallahassee, Florida 32302, appearing on behalf of Lee County, Florida; Miami-Dade County, Florida; Montenay Power Corp; and Pasco County, Florida.

RICHARD A. ZAMBO, ESQUIRE, 598 S.W. Hidden River Avenue, Palm City, Florida 34990, appearing on behalf of the City of Tampa and the Solid Waste Authority of Palm Beach County, Florida.

JAMES McGEE, ESQUIRE, Florida Power Corporation, Post Office Box 14042, St. Petersburg, Florida 33733-4042, appearing on behalf of Progress Energy Florida, Inc.

CHARLES GUYTON, ESQUIRE, Steel, Hector & Davis, LLP, 215 South Monroe Street, #601, Tallahassee, Florida 32301, appearing on behalf of Florida Power & Light Company.

RUSSELL BADDERS, ESQUIRE, Beggs & Lane Law Firm, Post Office Box 12950, Pensacola, Florida 32576-2950, appearing on behalf of Gulf Power Company.

JAMES D. BEASLEY, ESQUIRE, Ausley & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32301, appearing on behalf of Tampa Electric Company.

RICHARD BELLAK, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of Commission Staff.

I N D E X

EXHIBITS

MISCELLANEOUS

PROCEEDINGS

CHAIRMAN JABER: Let's get started. Staff, you have a notice and a preliminary matter you want to bring to our attention?

MR. BELLAK: By an order issued February 6th, 2003, a hearing -- notice of hearing was published in the matter of this rulemaking with proposed amendments to Rule 25-17.0832 for this time and place. And I think Ms. Harlow would like to speak to the most recent developments.

CHAIRMAN JABER: Thank you, Mr. Bellak.

MS. HARLOW: Good morning, Commissioners. Early this morning the parties reached a stipulation on the matter that was the Commission's concern with the rule waivers. I'd like to briefly discuss what the stipulation is. Because of the recentness of the stipulation, we do not have it in writing. We have an oral agreement. So I'd like to discuss the stipulation and the impact that we feel like that has.

And let me just start by saying that the stipulation would include all the changes that were proposed by the Commission in the rule that were cleanup changes; for example, the updates on the division names, any grammatical errors that were there. It would also change the minimum term of a standard offer contract from ten years to five years. The only difference from the proposed rule that the Commission proposed is that the word "specific," regarding a specific period of

time of a contract, would be deleted from the proposed changes. And if you'd like to see that visually, you can turn to Tab 3 in your Composite Exhibit 1, and it's on the bottom of Page 7.

Staff believes that the proposed stipulation between the parties is appropriate. We believe that reducing the minimum term on a standard offer contract from ten years to five years reduces the burden of the waiver costs that we've experienced in the past. We've had seven waivers on this particular issue in the past three and a half years.

We also feel like it can alleviate ratepayer risk that the Commission was concerned with when they asked the staff to look into this matter because it can result in without a waiver a standard offer contract with a lower term at periods of time when the Commission feels that's appropriate. And we also feel like it increases the flexibility of the rule.

We feel like, and the parties have agreed to this language, that removing the word "specific" from 25-17.0832(4)(a)(7) does not preclude any rights that the utilities have today to come in with a specific standard offer contract for your approval that has a specified term in that contract. We also feel, and the parties have agreed to this language, that it does not preclude any right that any of the cogens or any other QFs, including MSWs, have to come in and protest such a contract at that time that the Commission was

reviewing a specific standard offer contract from a specific utility.

And I'd also like to comment that removing the word "specific" from the proposed rule does not increase any rights that any party would have to protest or to put a specific period of time in a standard offer contract.

And staff is available for any questions.

CHAIRMAN JABER: Commissioners, I'm sure you have questions. I just wanted to ask legal a procedural question before we got started on substance.

Mr. Bellak, if the Commission accepts the stipulation and removes the word "specific," because this hearing was noticed with this change, are there additional noticing requirements or something we need to know in terms of procedure? Because I don't want to be put in a position of coming back.

MR. BELLAK: It won't have any effect like that. What will happen is that if you find that this is acceptable to the Commission, then we'll simply publish a notice of change and that will add a few days to the time for filing it, but that's the only effect of it.

CHAIRMAN JABER: Okay. So you file a notice of change doesn't open up the comment period again or anything like that. And then how do you get the rule adopted? Do you file a notice of adoption later?

MR. BELLAK: Once the requisite number of days -- according to the statute, the agency shall file the notice with the committee along with the reasons for such change, provide the notice to persons requesting it at least 21 days prior to filing the rule for adoption. So all we have to do is publish that in FAW, allow the requisite number of days, and then file the rule with the change.

CHAIRMAN JABER: Commissioner Bradley.

COMMISSIONER BRADLEY: Yes. And I think that I kind of can anticipate what Mr. Bellak is going to say. But, Mr. Bellak, in your opinion, what might JAPC's response be to what's being proposed here this morning?

MR. BELLAK: They would -- we'd be following to the letter the requirement of the statute, and so JAPC would have no problem with it whatsoever.

COMMISSIONER BRADLEY: Okay.

CHAIRMAN JABER: Great question. Parties, do you have anything to add to what Ms. Harlow briefed us on?

Okay. Great. You've left them speechless, Judy.

Commissioners, do you have any questions on staff's recommendation on the stipulation reached by the parties?

COMMISSIONER DEASON: Well, I guess I have a question concerning -- why was the term "specific" first included in the proposal?

MS. HARLOW: Staff originally had a concern that it

was not clear in the rule who was -- who had the right to set the specific term. And we were under the impression that if we put that one word in there, it would clear that problem up. I don't believe that that language does address that problem because I think that even if it was clear in the rule that a specific term could be set by the utility when they came in, I think that the other parties would still have the right at that point in time to come in and protest whatever that specific term was. Say it was eight years, they may say that's not appropriate. So I really don't feel like leaving the word "specific" out has a significant change to the proposed rule.

COMMISSIONER DAVIDSON: Follow-up.

CHAIRMAN JABER: Commissioner Davidson.

COMMISSIONER DAVIDSON: Thank you, Chairman. This is a follow-up to Commissioner Deason's question. Has the Commission experienced any difficulty with the use of this word in applying this rule or any similar rules?

MS. HARLOW: I'm sorry, Commissioner, I don't understand your question.

COMMISSIONER DAVIDSON: Has the word "specific" posed any problems for the Commission? I mean, I feel like we're getting into just sort of a preference to leave a word in or take it out, and I'm trying to find out if there's any sort of factual basis for the word "specific" presenting any regulatory problems.

MS. HARLOW: Not that I'm aware of. I believe that the problem between the parties was that there were concerns that -- by some of the parties that it would potentially set who sets -- that the utility sets a specific term in each contract when it comes in, and that each time that happened, those parties would have to come in and protest that at that time. So I don't believe it's the wording. I believe it's the impact they were concerned with, if I understand your question.

COMMISSIONER DAVIDSON: Thank you. That does help to answer it, but I guess I'm just concerned for the same reason that Commissioner Deason was. This word was included in the first instance, and now, it's proposed that the word be stricken, and I don't have a particular problem with that. I'm just trying to get at what's sort of the actual basis for that.

CHAIRMAN JABER: Commissioner Davidson, I think Mr. Guyton wanted to address your question, too.

COMMISSIONER DAVIDSON: Great. Thank you, Chairman.

MR. GUYTON: I just want to make sure that the Commission is aware that the word "specific" is not in the rule as it currently exists. So there's not been an experience under the existing rule with the word "specific" being in the rule. Where the word "specific" occurred was in the initial proposed rule amendment. And so when we speak of removing "specific," we are not removing "specific" from an existing rule, we're removing it from the proposed rule. I just want to

make sure that that's clearly understood.

MR. BELLAK: Madam Chairman?

CHAIRMAN JABER: Mr. Bellak.

MR. BELLAK: We'd like to move the composite exhibit into the record. I wasn't sure whether you were going to take appearances or not, but at some point, we'd like to move this into the record.

CHAIRMAN JABER: Mr. Bellak, thank you for reminding me about all of that. What is the process you want us to follow? This is sort of a new one on me. Do we need to take appearances and move comments into the record and the exhibits or --

MR. BELLAK: Well, you can take appearances, and at that point in time, we'll move Exhibit 1, Composite Exhibit 1 into the record, and that will provide a record support for the rule that we're proposing.

CHAIRMAN JABER: Great. Thank you. Mr. Guyton, let's start with you.

MR. GUYTON: Commissioners, my name is Charles Guyton. I'm with the law firm of Steel, Hector & Davis, LLP, and I'm appearing on behalf of Florida Power & Light Company in this proceeding.

MR. BEASLEY: Commissioners, James D. Beasley with the law firm of Ausley & McMullen appearing on behalf of Tampa Electric Company.

MR. BADDERS: Good morning. Russell Badders appearing here on behalf of Gulf Power Company. I'm with the law firm of Beggs & Lane in Pensacola at the address as shown in the comments.

MR. McGEE: James McGee appearing on behalf of Progress Energy Florida.

MR. ZAMBO: Rich Zambo on behalf the City of Tampa, Florida, and the Palm Beach County Solid Waste Authority.

MR. WRIGHT: Schef Wright on behalf of Miami-Dade County, Florida; Montenay Power Corp; Lee County, Florida; and Pasco County, Florida.

CHAIRMAN JABER: Anyone else in the audience that needs to make an appearance?

Staff.

MR. BELLAK: Richard Bellak representing the Commission.

CHAIRMAN JABER: Thank you. And, Mr. Bellak, you have asked that Composite Exhibit 1 be identified for purposes of the record hearing. And Composite Exhibit 1 will be identified as Hearing Exhibit 1.

MR. BELLAK: Thank you, Madam Chairman.

(Exhibit 1 marked for identification.)

CHAIRMAN JABER: And without objection -- Mr. Zambo.

MR. ZAMBO: Madam Chairman, in the spirit of cooperation, the City of Tampa and Palm Beach County Solid

Waste Authority have agreed to a request by Florida Power Corporation that we would strike portions of the supplemental direct testimony of Frank Seidman. And that would be on Page 11, beginning at Line 11, all of Page 12 and concluding on Page 13, Line 9. That's composed of one question and answer.

CHAIRMAN JABER: Okay. So you've agreed to strike from Mr. Seidman's testimony Page 11, Line 11 through Page 13, Line 9.

MR. ZAMBO: Yes, in his supplemental testimony.

CHAIRMAN JABER: And, Mr. Bellak, that was included in the composite exhibit?

MR. BELLAK: (Nodding head affirmatively.)

CHAIRMAN JABER: Okay. Commissioners, Hearing Exhibit 1 is made up of Composite Exhibit 1 as modified by Mr. Zambo pursuant to agreement today. And Hearing Exhibit 1 is admitted into the record.

(Exhibit 1 admitted into the record.)

CHAIRMAN JABER: Commissioners, do you have additional questions of staff or the parties? I have one question of staff. On the standard offer contract process, is that a PAA process?

MS. HARLOW: It typically is, yes.

CHAIRMAN JABER: Okay. Commissioners, do I have a motion, concerns, questions?

COMMISSIONER DEASON: Well, I just want to make sure

I totally understand, not having it directly in front of me. We're keeping the cleanup language which is just grammatical and references to division names, things of that nature.

MS. HARLOW: Yes, sir.

COMMISSIONER DEASON: We're changing ten-year minimum period to five years.

MS. HARLOW: Yes, sir.

COMMISSIONER DEASON: And in the proposal, there was -- as you indicated, there was the use of the term "specific" in (4)(a)(7), and we're deleting that and keeping that section as the rule currently exists.

MS. HARLOW: That's correct, sir.

COMMISSIONER DEASON: And that's the sum total -- that's the total of all the changes that we're making --

MS. HARLOW: Yes, in the stipulation. And the parties have also -- I neglected to mention that the parties have also agreed to waive any rights that they have to litigate the change in the minimum term at this time.

CHAIRMAN JABER: You confused me with that sentence. The rule is left that there would be a minimum of five years, but this doesn't restrict a company from coming in with something longer than five years --

MS. HARLOW: Correct.

CHAIRMAN JABER: -- and that might get litigated.

MS. HARLOW: Correct, correct, the change in the rule

from ten to five years.

CHAIRMAN JABER: Okay. So they have waived their litigation with respect to the rule.

MS. HARLOW: Yes.

CHAIRMAN JABER: Okay. Well, they have settled it, so I guess that goes without saying.

COMMISSIONER BRADLEY: Madam Chair?

CHAIRMAN JABER: Commissioner Bradley.

COMMISSIONER BRADLEY: Mr. Zambo, you procedurally have stricken certain testimony. What is the effect of your -- what you have stricken from the record? And what is the purpose of striking since we have already stipulated?

MR. ZAMBO: Well, the purpose of striking, as I understand it, is Florida Power Corp did not want that uncontested -- those uncontested statements in the record because we're not going to have a proceeding here at which time they could challenge that portion of our testimony. We've just removed it from the record.

MR. McGEE: That's correct.

COMMISSIONER BRADLEY: Thank you.

COMMISSIONER DEASON: Madam Chairman, I can move approval of the stipulation.

COMMISSIONER BAEZ: Second.

CHAIRMAN JABER: There's been a motion and a second to approve the stipulation reached by the parties and

recommended by staff to leave the rule as it is with the exception of changing the minimum period of time from ten to five. All those in favor say "aye."

(Simultaneous affirmative response.)

CHAIRMAN JABER: Opposed?

Okay. The motion carries unanimously. And that concludes this rule proceeding. Is there anything else you need us -- do we need to officially close the docket?

MR. BELLAK: Well, as I understand it, you can instruct that the docket will be closed on the adoption of the rule.

CHAIRMAN JABER: Commissioner Deason -- upon motion by Commissioner Deason that the docket be closed.

COMMISSIONER DEASON: So moved.

COMMISSIONER BAEZ: Second.

CHAIRMAN JABER: So it be done. Parties, I want to thank you for your getting together and reaching a resolve on this. Your hard work is much appreciated. I think at the end of the end of the day is a better process.

Mr. Guyton, I wanted to compliment -- all of the comments were wonderful, but I wanted to compliment your comments in particular on the historical perspective you gave and the thorough explanation for where we are today and why. I really appreciated that.

MR. GUYTON: Thank you, Commissioner.

CHAIRMAN JABER: Thank you.

(Rule Hearing concluded at 9:53 a.m.)

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STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, TRICIA DeMARTE, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 20th DAY OF MARCH, 2003.

Tricia DeMarte

TRICIA DeMARTE, RPR
FPSC Official Commission Reporter
(850) 413-6736

FLORIDA PUBLIC SERVICE COMMISSION
RULE HEARING
MARCH 19, 2003

COMPOSITE EXHIBIT NO. 1

PROPOSED AMENDMENTS TO
RULE 25-17.0832, F.A.C.,
FIRM CAPACITY AND ENERGY
CONTRACTS

DOCKET NO. 001574-EQ
_____/

1. FLORIDA ADMINISTRATIVE WEEKLY NOTICE AND PROPOSED AMENDMENTS TO RULE 25-17.0832, F.A.C. (FEBRUARY 14, 2003)

2. STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES; STATEMENT ON FEDERAL STANDARDS; ECONOMIC IMPACT STATEMENT; AS PROVIDED TO THE JAPC, FEBRUARY 10, 2003.

3. NOTICE OF RULEMAKING ORDER NO. PSC-03-0178-NOR-EQ, ISSUED FEBRUARY 6, 2003.

4. COMMENTS OF GULF POWER COMPANY.

5. COMMENTS OF FLORIDA POWER & LIGHT COMPANY.

6. COMMENTS OF PROGRESS ENERGY.

7. COMMENTS OF TAMPA ELECTRIC COMPANY.

8. COMMENTS OF LEE COUNTY, FLORIDA, MIAMI-DADE COUNTY, FLORIDA AND MONTENAY-DATE, LTD.

9. COMMENTS OF CITY OF TAMPA AND SOLID WASTE AUTHORITY OF PALM BEACH COUNTY, FL.

10. COMMENTS OF PASCO COUNTY, FL AND HILLSBOROUGH COUNTY, FL.

11. COMMENTS OF THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION.

12. ORDERS REGARDING WAIVER REQUIREMENTS IN RULE 25-17.0832(4)(e).

Approved Container Number	Construction Styles	Inside Body Dimension in inches (LxWxD)	Minimum Board Weights (actual weight may be heavier)*** Body	Minimum Board Weights (actual weight may be heavier)*** Cover
DOC-41-P	Plastic	22 1/2 x 14 9/16 x 7 One-piece, reusable/recyclable high-density polyethylene	n/a	n/a
DOC-42-P‡‡	Singlewall	17 1/2 x 11 _ x 8 3/4 Holding _ of a standard 4/5 bu. container, two-layer, full telescoping	90-40-90	42-33-42
DOC-43-OV‡‡	Triplewall ½ bulk bin	38 1/4 x 23 3/4 x 25 1/4 Space-saver, octagon 1/2 bin holding appx. 10 1/2 4/5 bu. equiv. loose or 7-8 4/5 bu. equiv. bagged	69-26-38-26-38-26-65	38-26-38
DOC-44-PT	Doublewall	22 _ x 14 11/16 x 6 _ B/c flute tray body, C flute cover	42-40-41-40-56	42-33-42
DOC-45-P	Singlewall	17 _ x 10 _ x 10 _ 4/5 c-flute, two piece, partial telescoping cover	42-33-57	42-26-35
DOC-46-PT	Doublewall	23 _ x 15 _ x 7 4/5 40 x 60 Euro Wave Tray	42-40-42-40-42	n/a
DOC-47-PT	Doublewall	14 1/2 x 11 _ x 6 5/16 2/5 bu, die-cut, open top platform tray	33-69-33-69	n/a
DOC-48-PT	Doublewall	22 1/4 x 14 1/2 x 5 3/4 40 x 60 Euro Tray	42-33-42-34-42	n/a

** Container may be volume filled provided the sizes designated for each variety of fruit meet the requirements of Sections 20-39.007(1), 20-39.008(1) and 20-39.009(1).

‡‡ Container does not conform to 4/5 bushel requirement of section 20-39.003(1)

*** Minimum board weight requirements shall be waived when a compression strength test by an independent testing laboratory shows that the container made with a new material is equal to, or better than, compression strength of the container with minimum approved board weight. It shall be the responsibility of the packinghouse to acquire and provide records of such compression strength testing upon request.

(4) Each container must be ventilated.

Specific Authority 601.11 FS. Law Implemented 601.11 FS. History–Formerly 105-1.03(1)(a), Revised 1-1-75, Amended 8-16-75, 8-11-77, 8-1-78, 8-21-79, 1-15-80, 10-20-80, 5-1-81, 9-1-82, 11-6-83, 10-21-84, 1-1-85, Formerly 20-39.03, Amended 9-11-86, 12-20-87, 10-14-90, 8-23-92, 10-18-92, 1-19-93, 5-23-93, 10-10-93, 1-9-94, 10-16-94, 8-29-95, 10-13-96, 10-26-97, 12-6-98, 2-20-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ken Keck, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ken Keck, General Counsel

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 15, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 31, 2003

PUBLIC SERVICE COMMISSION

DOCKET NO. 001574-EQ

RULE TITLE: RULE NO.:

Firm Capacity and Energy Contracts 25-17.0832

PURPOSE AND EFFECT: The purpose of the amendment is to reduce the minimum term for standard offer contracts from 10 to five years. The rule amendment also requires investor-owned electric utilities to specify the term of the standard offer when filing the contract for approval with the Commission. The effect is to reduce the risk that ratepayers will be tied to long-term contracts that are above avoided cost.

SUMMARY: Rule 25-17.0832, F.A.C., requires investor-owned utilities to file tariff and a standard offer contract for the purchase of firm capacity and energy from specified types of small qualifying facilities. The rule sets forth the minimum specifications and acceptable pricing methodologies for standard offer contracts. The amendment to subparagraph (4)(e)3. and 7. would reduce the ten year minimum contract term for standard offer contracts to five years. In addition, the amendment to subparagraph (4)(e)7. would require investor-owned utilities to specify the contract term when filing the standard offer for approval by the Commission.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Several municipal solid waste (MSWs) facilities oppose the rule amendments. However, the impact on the local government entities depends on future firm capacity and energy prices. If these prices increase, a shorter contract term would benefit MSW facility owners because they could enter a new standard offer contract sooner with higher payments. On the other hand, if firm capacity and energy prices decrease, MSW owners would be faced with lower payments. One MSW argued that because MSW facilities are

publicly owned, any shortfall or reduction in electrical revenues will require increasing solid waste disposal costs. In addition, at least one MSW argued that adoption of the rule amendments will result in MSWs having to negotiate more contracts, which will increase transaction costs for the MSWs. The MSWS overlook that longer contracts are still possible under the rule. The MSWs also do not acknowledge that the Commission is required to keep IOU rates reasonable and shortening the standard offer contract term is best for IOU ratepayers in an environment in which wholesale generation costs are falling. Keeping the ten year minimum term would continue the possibility that IOUs and their ratepayers would be faced with higher cost capacity and energy costs for an additional five years for new standard offer contracts, even if market costs declined. However, wholesale generation costs may increase and IOUs would lose the benefits of a fixed price contract for an additional five years. Allowing a qualifying facility to choose the contract term would abrogate the Commission's regulatory responsibility over capacity and energy contracts.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127, 366.05(1) FS.

LAW IMPLEMENTED: 366.051, 366.81 FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services, (850)413-6770, at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Richard Bellak, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6245

THE FULL TEXT OF THE PROPOSED RULE IS:

25-17.0832 Firm Capacity and Energy Contracts.

(1) No change.

(a) Within one working day of the execution of a negotiated contract or the receipt of a signed standard offer contract, the utility shall notify the Director of the Division of Economic Regulation ~~Electric and Gas~~ and provide the amount of committed capacity and the type of generating unit, if any, which the contracted capacity is intended to avoid or defer.

(b) Within 10 working days of the execution of a negotiated contract or receipt of a signed standard offer contract for the purchase of firm capacity and energy, the purchasing utility shall file with the Commission a copy of the signed contract and a summary of its terms and conditions. At a minimum, the summary shall include ~~report~~:

1. through 3. No change.

4. The type of unit being avoided, its size, and its in-service year;

5. through 6. No change.

(2) through (3)(d) No change.

(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 ~~separately~~ negotiated contract, standard offer contracts are available to the following types of qualifying facilities:

1. through (e)2. No change.

3. The payment options available to the qualifying facility including all financial and economic assumptions necessary to calculate the firm capacity payments available under each payment option and an illustrative calculation of firm capacity payments for a minimum five ~~ten~~ year term contract commencing with the in-service date of the avoided unit for each payment option;

4. through 6. No change.

7. The specific period of time over which firm capacity and energy shall be delivered from the qualifying facility to the utility. Firm capacity and energy shall be delivered, at a minimum, for a period of five ~~ten~~ years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in-service date of the avoided unit;

8. through (8)(c) No change.

Specific Authority 350.127, ~~366.04(1), 366.051,~~ 366.05(1)~~(8)~~ FS. Law Implemented 366.051, 366.81 ~~403.503~~ FS. History–New 10-25-90, Amended 1-7-97, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tom Ballinger
NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 4, 2003
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 26, No. 44, November 3, 2000

DEPARTMENT OF CORRECTIONS

RULE TITLES:	RULE NOS.:
Transfer of Supervision Interstate and Intrastate	33-301.103
Interstate Compact for Adult Offender Supervision	33-301.104
Other State Offenders Community Supervision	33-301.105

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to delete an unnecessary rule, set forth guidelines for offender travel to other states and to provide for equal standards of supervision for other state offenders supervised in Florida.
SUMMARY: The proposed rules delete unnecessary rule provisions, set forth guidelines for offender travel to other states and provide for equal standards of supervision for other state offenders supervised in Florida.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.
Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.
SPECIFIC AUTHORITY: 949.08 FS.
LAW IMPLEMENTED: 949.07, 949.08 FS.
IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULES IS:

33-301.103 Transfer of Supervision Interstate and Intrastate.

Specific Authority 944.08, 944.09 FS. Law Implemented 948.03 FS. History–New 5-28-86, Formerly 33-24.009, Repealed _____.

33-301.104 Interstate Compact for Adult Offender Supervision.

(1) An offender who has made a satisfactory adjustment while on supervision shall be allowed to visit other states, the District of Columbia, the Commonwealth of Puerto Rico or the U.S. Virgin Islands for business, visitation or vacation purposes as long as travel requirements in subsection (2) are met, public safety will not be compromised by such a visit, and the offender meets the travel requirements of the state of destination. If the offender is a high risk, high profile, or sex offender case, once the officer has verified and instructed the offender as to the requirements of the state of destination, a copy of Form DC3-220, Travel Permit, providing the offender's itinerary, must be transmitted to the Bureau of Interstate Compact. Form DC3-220 is incorporated by reference in Rule 33-302.106, F.A.C. The Travel Permit includes a waiver of extradition section which, when signed by the offender, waives extradition rights of the offender traveling outside the state or country.

(2) In order for an offender to obtain permission to travel, the following conditions must exist:

(a) The offender is not prohibited by the order of supervision from traveling to the desired location.

(b) The offender is not wanted or facing prosecution for criminal charges or violation of the order of supervision.

(c) The offender presents a plan of travel that is verifiable by providing a specific location name, telephone number, and contact person by which the information is to be verified, in advance, by the officer.

(d) The offender has provided the officer with reasonable advance notice of his or her request to travel and has provided the officer ample time to verify the travel plan and review any documentation prior to travel authorization.

(e) The travel does not interfere with condition compliance or treatment programming.

(f) Travel shall be denied for purely recreational purposes if the offender is not current with the court ordered or releasing authority imposed payment schedule or offender financial obligation agreement and the offender shall expend monies in the course of travel.

(g) No extenuating circumstances exist which indicate that authorizing the offender to travel would constitute a lack of prudence. Such extenuating circumstances include those that would cause a reasonable person to believe that the offender may be likely to violate a condition of supervision if travel were authorized.

(3) Travel shall not exceed thirty consecutive days in length. Once a travel permit is issued to an offender, the officer shall instruct the offender regarding travel issues, including the following:

(a) Immediately notifying the officer if a change of plan occurs;

(b) Immediately notifying the officer of any unusual situations or any contact with law enforcement that occurred during the travel episode;

(c) Immediately calling or reporting upon return to the county of residence;

Rule 25-17.0832
Docket No. 001574-EQ

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING RULE

During the last several years, the Commission granted five requests from IOUs to waive the ten year minimum contract term established by Rule 25-17.0832(4)(e).[1] The IOUs requested the waiver to reduce the risk that ratepayers would be tied to a long-term contract that is above avoided cost because of the uncertainty in the wholesale generation market. In each of these waivers, the minimum contract term was set at five years. The rule amendment would codify these rule waivers.

A high degree of uncertainty currently exists in the electric market due to recent regulatory changes, potential future regulatory changes, fuel price volatility, and technological changes. Given this uncertainty, reducing the minimum required term for standard offer contracts will decrease the potential for ratepayers to be tied to purchased power contracts that are priced higher than alternative power sources. Purchased power costs are passed directly to ratepayers through the Fuel and Purchased Power Cost Recovery Clause. Therefore, the rule change will impact ratepayers by reducing the probability that they will pay higher purchased power costs under a standard offer contract than would have otherwise been paid in the open market.

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[1] In re: Petition for approval of standard offer contract for qualifying cogeneration and small power production facilities by Tampa Electric Company, Order No. PSC-00-1773-PAA-EQ, 00 FPSC 9:499 (2000); In re: Petition by Florida Power & Light Company for approval of standard offer contract, Order No. PSC-00-1748-PAA-EI, 00 FPSC 9:458 (2000); In re: Petition of Florida Power Corporation for Approval of Standard Offer Contract based on a 2003 Combined Cycle Avoided Unit and Accompanying Rate Schedule COG-2 Pursuant to Section 366.051, F.S., and Rules, Order No. PSC-00-0504-PAA-EQ, 00 FPSC 3:206 (2000); In re: Petition of Florida Power Corporation for Approval of Standard Offer Contract and Accompanying Rate Schedule COG-2, Order No. PSC-00-0264-PAA-EG, 00 FPSC 2:203 (2000); In re: Petition by Florida Power & Light Company for approval of a standard offer contract and revised COG-2 tariff, Order No. PSC-99-1713-TRF-EQ, 99 FPSC 9:23 (1999).

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the subject of the amendments to Rule 25-17.0832.

MEMORANDUM

May 31, 2001

TO: DIVISION OF APPEALS (HELTON)

FROM: DIVISION OF ECONOMIC REGULATION (HEWITT)

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR DOCKET NO. 001574-EQ, PROPOSED AMENDMENTS TO RULE 25-17.0832, F.A.C., FIRM CAPACITY AND ENERGY CONTRACTS

SUMMARY OF THE RULES

Currently, Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts, contains the standards and requirements for investor-owned utilities (IOUs) to file a tariff for a standard offer contract for the purchase of firm capacity and energy from specified types of small qualifying facilities (QFs). Section (4)(e)(7) requires a ten year minimum contract term for standard offer contracts with a maximum term being the expected life of the avoided unit. The Commission approves the time period when a standard offer contract tariff is requested.

The proposed amendments would reduce the minimum standard offer contract period for the purchase of QF firm capacity and energy from ten years to five years. The proposed amendments would also update the rule to include a new division name and other editorial changes.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

There are five investor-owned electric utility companies operating in Florida and there are approximately 60 QFs; 30 with firm capacity contracts. QFs are not limited to selling their output to IOUs and would only be affected by the proposed rule changes if they seek a new standard offer contract with an IOU.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Public Service Commission and other state entities are not expected to experience implementation costs other than the costs associated with promulgating a proposed rule. Existing Commission staff would continue to handle the monitoring and review of QF contracts.

Local government entities that have an interest in solid waste facilities could be impacted. There are various cities in Florida that have interests in municipal solid waste (MSWs) facilities which are covered by this rule change. The City of Tampa and Miami-Dade responded to a data request and objected to the shortening of the possible minimum time period for a standard offer contract from ten years to five years. Tampa predicated its response on the rule limiting the maximum contract length to a five year term. However, the maximum contract term, the anticipated life of the avoided unit, would not change. Moreover, the Commission determines the period of time when a standard offer contract is approved and has granted requests for a rule waiver for a five year term limit in several recent standard offer contracts.

Although the existing MSW facility contracts would not be affected by the proposed rule changes, future contracts could be affected. Whether the effects of the proposed rule changes would be positive or negative for local governments depends on the future price for firm capacity and energy. If energy and capacity prices are increasing in the future, a shorter contract would benefit MSW facility owners and their ratepayers since they could enter a new standard offer contract sooner with higher payments. If energy and capacity prices are decreasing in the future, a shorter contract would cost MSW facility owners and their ratepayers because a new standard offer contract would have lower payments. Longer contracts would still be possible up to the anticipated life of the avoided unit if approved by the Commission. The Commission is required to keep IOU rates reasonable and shortening the term for standard offer contracts is best for IOU ratepayers in a falling electricity price environment.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

All the IOUs that responded stated that there should not be additional costs to comply with the proposed rule changes. One IOU stated that the proposed rule amendment would give it more flexibility in tailoring the terms of the contract to specific needs.

Montenay Power Corporation (MPC), which operates the Miami-Dade County Resources Recovery Facility and the Bay County Resources Recovery Facility, responded to the data request with its opposition to the proposed rule changes. MPC particularly objected to the reduction in the duration of power purchase agreements as they may apply to standard offer contracts. MPC pointed out that since these MSW facilities are publicly owned, any shortfall or reduction in electrical revenues would require increasing of solid waste disposal costs to the residents and businesses of the respective counties.

The existing minimum contract term limit of ten years does not remove the uncertainties that surround future prices and costs and the viability of contract renewability. The reduction of

the minimum contract term to five years would have the same uncertainties, the value would be "marked to market" sooner rather than later, if the contract is for the minimum term. As noted above, the costs or benefits accruing to an existing or planned facility's value when a contract is renewed depends upon the price of firm capacity and energy at that future time. Whether conditions will benefit the owner of the MSW facility and its ratepayers or an IOU and its ratepayers is unknown at present.

MPC further contends that because the proposed rule changes would reduce the attractiveness of utilities' standard offer contracts, it would be more necessary for MPC and other QFs to negotiate power purchase agreements rather than accepting a standard offer. This situation would significantly increase MPC's transaction costs in obtaining a purchase power agreement pursuant to the Public Utility Regulatory Policies Act of 1978, section 366.051, Florida Statutes, and the Commission's rules. MPC estimates that the increase in transaction costs could easily well exceed $100,000, including the engagement of attorneys to participate in negotiations and review draft contracts offered by utilities and the engagement of consultants to evaluate the utility's avoided costs estimates. If negotiations were difficult and took six months or more, MPC estimates that the transaction costs could run well over $250,000.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

Small businesses, small cities, and small counties that may have interests in MSW facilities would face the same situation as the larger cities stated above. The shorter minimum contract term may benefit or cost these entities depending on price conditions in five years.

Small businesses, small cities, and small counties that are customers of IOUs would have lower electricity costs if rates fall because IOUs can obtain capacity and energy for shorter contract periods in a falling price environment.

ALTERNATIVE METHODS

Maintaining the current rule would continue the possibility that IOUs and their ratepayers would be saddled with higher cost capacity and energy costs for an additional five years for new small standard offer contracts if market prices declined. However, prices may increase and IOUs would lose the benefits of a fixed price contract for an additional five years. MPC suggests that an eligible QF be allowed to choose to accept a standard offer contract for any period between five years and the life of the avoided unit designated in the contract. However, the Commission can not give up its responsibility to regulate the IOUs and their capacity and energy contracts.
qfserc.cbh

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.	DOCKET NO. 001574-EQ ORDER NO. PSC-03-0178-NOR-EQ ISSUED: February 6, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-17.0832, Florida Administrative Code, relating to firm capacity and energy contracts.

The attached Notice of Rulemaking will appear in the February 14, 2003 edition of the Florida Administrative Weekly.

A hearing will be held at the following time and place:

Florida Public Service Commission
9:30 A.M. - March 19, 2003
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

Written comments or suggestions on the rule must be received by the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than March 7, 2003. Comments previously filed in this docket will be considered part of the rulemaking record.

By ORDER of the Florida Public Service Commission, this 6th day of February, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: _____
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

RCB

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001574-EQ

RULE TITLE:	RULE NO.:
Firm Capacity and Energy Contracts	25-17.0832

PURPOSE AND EFFECT: The purpose of the amendment is to reduce the minimum term for standard offer contracts from 10 to five years. The rule amendment also requires investor-owned electric utilities to specify the term of the standard offer when filing the contract for approval with the Commission. The effect is to reduce the risk that ratepayers will be tied to long-term contracts that are above avoided cost.

SUMMARY: Rule 25-17.0832 requires investor-owned utilities to file tariff and a standard offer contract for the purchase of firm capacity and energy from specified types of small qualifying facilities. The rule sets forth the minimum specifications and acceptable pricing methodologies for standard offer contracts. The amendment to subparagraph (4)(e)3. and 7. would reduce the ten year minimum contract term for standard offer contracts to five years. In addition, the amendment to subparagraph (4)(e)7. would require

investor-owned utilities to specify the contract term when filing the standard offer for approval by the Commission.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Several municipal solid waste (MSWs) facilities oppose the rule amendments. However, the impact on thee local government entities depends on future firm capacity and energy prices. If these prices increase, a shorter contract term would benefit MSW facility owners because they could enter a new standard offer contract sooner with higher payments. On the other hand, if firm capacity and energy prices decrease, MSW owners would be faced with lower payments. One MSW argued that because MSW facilities are publicly owned, any shortfall or reduction in electrical revenues will require increasing solid waste disposal costs. In addition, at least one MSW argued that adoption of the rule amendments will result in MSWs having to negotiate more contracts, which will increase transaction costs for the MSWs. The MSWS overlook that longer contracts are still possible under the rule. The MSWs also do not acknowledge that the Commission is required to keep IOU rates reasonable and shortening the standard offer contract term is best for IOU ratepayers in an environment in which wholesale generation costs are falling. Keeping the ten year minimum term would continue the

possibility that IOUs and their ratepayers would be faced with higher cost capacity and energy costs for an additional five years for new standard offer contracts, even if market costs declined. However, wholesale generation costs may increase and IOUs would lose the benefits of a fixed price contract for an additional five years. Allowing a qualifying facility to choose the contract term would abrogate the Commission's regulatory responsibility over capacity and energy contracts.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127, 366.05(1), FS

LAW IMPLEMENTED: 366.051, 366.81, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Richard Bellak, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-17.0832 Firm Capacity and Energy Contracts.

(1) No Change.

(a) Within one working day of the execution of a negotiated contract or the receipt of a signed standard offer contract, the utility shall notify the Director of the Division of Economic Regulation ~~Electric and Gas~~ and provide the amount of committed capacity and the type of generating unit, if any, which the contracted capacity is intended to avoid or defer.

(b) Within 10 working days of the execution of a negotiated contract or receipt of a signed standard offer contract for the purchase of firm capacity and energy, the purchasing utility shall file with the Commission a copy of the signed contract and a summary of its terms and conditions. At a minimum, the summary shall include ~~report~~:

1. - 3. No Change.

4. The type of unit being avoided, its size, and its in-service year;

5. - 6. No. Change.

(2) - (3)(d) No Change.

(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 ~~seperately~~ negotiated contract, standard offer contracts are available to the following types of qualifying facilities:

1. - (e)2. No Change.

3. The payment options available to the qualifying facility including all financial and economic assumptions necessary to calculate the firm capacity payments available under each payment option and an illustrative calculation of firm capacity payments for a minimum five ~~ten~~ year term contract commencing with the in-service date of the avoided unit for each payment option;

4. - 6. No Change.

7. The specific period of time over which firm capacity and energy shall be delivered from the qualifying

held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

One Energy Place
Pensacola, Florida 32520

Tel 850 444 6111

GULF POWER
A SOUTHERN COMPANY

March 6, 2003

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Dear Ms. Bayo:

RE: Docket No. 001574-EQ, Proposed Rule Amendments to Rule 25-17.0832, F.A.C

After review of the proposed changes to the rule and the discussions at the Staff conducted workshop on February 25, 2003, Gulf believes that no revision of Rule 25-17.0832, F.A.C., is necessary at this time. However, Gulf supports the rule amendments proposed by Staff as an alternative to not revising the rule. Gulf's comments filed on March 28, 2002 are hereby incorporated by reference. These comments discuss in more detail Gulf's position regarding the amendments proposed by Staff and other parties in this docket. While Gulf does not intend to call any witnesses at the hearing, counsel for Gulf will participate in the hearing.

Sincerely,

Susan D. Ritenour

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer

lw

cc: Beggs and Lane
Jeffrey A. Stone, Esquire

One Energy Place
Pensacola, Florida 32520

Tel 850.444.6111

GULF POWER
A SOUTHERN COMPANY

March 28, 2002

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Dear Ms. Bayo:

RE: Docket No. 001574-EQ

Enclosed are an original and fifteen copies of Gulf Power Company's Response to Comments/Testimony filed on March 1, 2002 in the above referenced docket.

Sincerely,

Susan D. Ritenour (lw)

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer

lw

Enclosure

cc: Beggs and Lane
Jeffrey A. Stone, Esquire

RESPONSE TO COMMENTS/TESTIMONY FILED ON MARCH 1, 2002 DOCKET No. 001574-EQ

In general, there were two distinct actions taken on March 1, 2002 that relate to the instant docket and revisions to rule 25-17.0832, F.A.C. First, there was testimony (comments) filed with regard to the previously proposed rule language that had been discussed by the parties in earlier workshops in Docket No. 001574-EQ. Second in Docket No. 020166-EQ, there was a petition to initiate a rule development proceeding on newly submitted (not previously discussed) language and a motion to consolidate these two rule revision efforts. Gulf's comments are in response to comments and testimony that address both versions of the proposed rule amendments.

A. Response to comments on rule amendments proposed in Docket No. 001574-EQ

The primary amendment to Rule 25-17.0832 proposed in Docket No. 001574-EQ, is to change the minimum term of standard offer contract from ten to five years. Standard offer contracts are open offers from the utilities to pay any qualifying entity for their power with the goal that the utility's generating capacity may be deferred to the benefit of its customers. With standard offer contracts, the ratepayers bear the risk that they will pay higher rates for energy and capacity supplied by Qualifying Facilities (QF) pursuant to standard offers then might otherwise be available in the market. The Commission staff has stated that the five year minimum term balances the interests of the ratepayers without unduly discouraging the construction of QFs. Gulf agrees with witnesses Bruner and Salmon that the existing rules are adequate and work well, however, Gulf does support Staff's proposed changes as they appear to enhance an already effective rule. Lowering the minimum term of a standard offer contract to five years should reduce the risk to the customers of having a utility locked into high cost energy or capacity at times when energy or capacity are available at lower prices. Staff's belief that there is value in allowing for shorter contract terms at a time when markets are changing is valid. Gulf supports the rule amendments proposed by Staff in Docket No. 001574-EQ.

Gulf disagrees with several of the comments from the City of Tampa's witness Salmon and the Solid Waste Authority of Palm Beach County's witness Bruner. They both contend that the proposed rule revisions fail to make the Standard Offer Contracts a "safe harbor" or "fail safe" instrument that they could fall back on in the event that a utility chose to negotiate unreasonably for its firm capacity and energy. Gulf believes that the market is the main driver for setting purchase power prices and that it is the utility's charge by the Commission to pursue the best, most cost-effective arrangement for its customers. Rule revisions that would make standard offer contracts "Safe Harbors" would, in many instances, require utility customers to pay more for electricity than the utility's full avoided cost. Mr. Seidman points out that the "value of deferral" methodology was chosen because it protects the customers from paying too much for the capacity purchased from QFs and small

power producers. Gulf believes that this was and continues to be a sound policy decision.

Mr. Seidman, commenting on behalf of the City of Tampa, clearly opposes reducing the minimum standard offer contract term to five years. Mr. Seidman appears to take the position that by reducing the minimum term in standard offer contracts to five years, the QF would "not have the option to contract for longer than five years." Contrary to Mr. Seidman's contention, having a "minimum" contract period for standard offer contracts, in no way, prohibits the QF from pursuing a longer term agreement with the utility through a separately negotiated contract. There can be value in a long-term commitment for the purchase of power from any entity provided that there is an appropriate balance between the price and risks going forward. The Commission has always supported the ability for QFs and small power producers to enter into negotiated contracts that could better meet the needs and desires of both the utility and the non-utility generator. Negotiated contracts could be sought to better match the long-term aspects of both the QFs commitment and the utility's value of deferring the need to construct additional generating capacity.

B. Comments on Lee County, Miami-Dade County and Montenay-Dade, Ltd. proposed rule amendments

A petition to initiate rule development was filed in Docket No. 020166-EQ. That docket has been consolidated with Docket No. 001574-EQ. The petition filed in Docket No. 020166-EQ contained proposed rule amendments to Rule 25-17.0832. These newly proposed amendments have not been discussed by the parties in the rule development process. Gulf urges the Commission to postpone the May 15 hearing and schedule additional workshops to further discuss and gain a better understanding of the newly proposed rule amendments. Based on the limited information that Gulf has regarding these new amendments, Gulf has several comments on these newly proposed revisions.

The newly proposed amendments appear to require utilities to pay QFs "rates equal to the costs that would be borne by the utility's general body of ratepayers if the utility were to build its avoided unit or purchase capacity" from another source. No method or definition is provided in the revision to provide guidance on how to calculate and determine exactly what customers will pay. Gulf believes that before this concept is to be adopted, this issue must be discussed and possible solutions fully evaluated to insure that the electric customers of the State do not pay too much for QF power.

The newly proposed rule language also proposes a "risk management and fuel hedging" provision that would lock in the price of 20% of the energy price from a QF based on projected operation of the avoided unit. It appears that this would subject a utility's customer to having to pay the QF for the projected amount of energy at the fixed price even if the utility would have used it under the given economic conditions

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposed amendments to Rule 15-17.0832, F.A.C., Firm Capacity and Energy Contracts	))))	Docket No. 001574-EQ

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery or the U. S. Mail this 28th day of March 2002 on the following:

Richard Bellak, Esquire
FL Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0863

John Roger Howe, Esquire
Office of Public Counsel
111 W. Madison St., Suite 812
Tallahassee FL 32399-1400

James McGee, Esquire
Florida Power Corporation
P. O. Box 14042
St. Petersburg FL 33733-4042

John T. Butler, Esquire
Steel, Hector & Davis LLP
200 S. Biscayne Blvd., Ste 4000
Miami FL 33131-2398

Lee L. Willis, Esquire
James D. Beasley, Esquire
Ausley & McMullen
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Tallahassee FL 32302

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598 SW Hidden River Avenue
Palm City FL 34990

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Attorneys for Gulf Power Company

One Energy Place
Pensacola, Florida 32520

850.444.6111

APP/Helton

GULF POWER
A SOUTHERN COMPANY

December 19, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Dear Ms. Bayo:

RE: Gulf Power Company's Comments on the Proposed Revisions to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts
Docket No. 001574-EI

After review of the proposed changes to the rule and the discussion at the Staff conducted workshop on December 12, 2000, Gulf believes that no revision of Rule 25-17.0832, F.A.C. is necessary at this time. Changes to the Rule are best resolved through the waiver procedure already in place at the FPSC.

Sincerely,

Linda G. Malone

Linda G. Malone
Assistant Secretary and Assistant Treasurer

lw

cc: Beggs & Lane
J. A. Stone
Gulf Power Company
Susan D. Ritenour

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposed amendments to)
Rule 15-17.0832, F.A.C., Firm Capacity)
and Energy Contracts) Docket No. 001574-EI
)

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery or the U. S. Mail this 19th day of December 2000 on the following:

Mary Ann Helton, Esquire
FL Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0863

John Roger Howe, Esquire
Office of Public Counsel
111 W. Madison St., Suite 812
Tallahassee FL 32399-1400

James McGee, Esquire
Florida Power Corporation
P. O. Box 14042
St. Petersburg FL 33733-4042

Matthew M. Childs, Esquire
Steel, Hector & Davis
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Charles A. Guyton
850 222 3423

March 7, 2003

VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Proposed Amendments to Rule 25-17.0832, Firm Capacity and Energy Contracts - Docket No.: 001574-EQ

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company in the above docket are the original and seven (7) copies of the Comments of Florida Power & Light Company. At Staff's February 25, 2003 workshop, Staff requested these comments and an indication of whether parties were adopting their prior comments. FPL requests that all its prior comments in this proceeding, in addition to the enclosed comments, be included in the record.

At the February 25th Staff Workshop, Staff also requested the names of persons who would be presenting on behalf of parties at the March 19, 2003 hearing. I will be presenting FPL's comments at the rule making hearing, and Delia Perez-Alonso may also present comments or answer questions from the Commission.

If you or your staff have any questions regarding this transmittal, please contact me at (850) 222-2300.

Very truly yours,

Charles A. Guyton

CAG:gcm
Enclosure
Copy to: Judy Harlow
Tom Ballinger
Counsel for All Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to Rule 25-17.0832, Firm Capacity And Energy Contracts	)))	Docket No. 001574-EQ Filed: March 7, 2003

Comments of Florida Power & Light Company

Cogeneration Rule Amendment Proceeding

Docket No. 001574

3/07/03

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Introduction

There are four fundamental changes to the cogeneration rules before the Commission. There is the change the Commission proposed, to reduce the minimum term of the standard offer contract from 10 years to 5 years. This change is consistent with Commission policy that is evidenced by the Commission granting seven rule waiver requests and allowing utilities to employ a five year minimum term in their standard offer contracts. There are also three rule amendments proposed by Lee County, Miami-Dade County and Montenay-Dade, Ltd. that FPL strongly opposes. These amendments are at odds with twenty years of Commission cogeneration policy, are unnecessary, and, most importantly, will result in the unjust enrichment of cogenerators at the expense of utility customers.

Place The Cogenerators' Proposed Amendments in Context

It is important to place the cogenerators' amendments before the Commission in context. There are two critical contexts: one is practical, the other is historical.

Practical Context

Initially, it appears there are three groups interested in the proposed rule changes: (a) cogenerators who stand to profit if their proposed changes are adopted, (b) utility customers who stand to pay more for Standard Offer cogenerated power if the cogenerators' proposed rule amendments are adopted, and (c) investor-owned public utilities who are concerned about their customers having to pay too much for cogenerated power. However, in this proceeding the interests of utilities and their customers are closely aligned. So, really there are only two competing interests here: (a) cogenerators, who want utility customers to pay more for their power, and (b) utilities and utility customers who reasonably expect the Commission to protect them from paying too much for cogenerated power.

Undoubtedly, the Commission has seen in comments catch phrases like "encouraging cogeneration" or "fostering congeneration" or "encouraging the development of solid waste facilities." Some of these phrases are even used in statutes. However, those very same statues also place the Commission in the role of protecting utility customers. There is no statutory mandate to foster or encourage cogeneration through customers paying in excess of avoided cost. So when the Commission sees these catch phrases, remember there are two sides to this coin. If you increase payments to cogenerators to "encourage cogeneration," you increase costs paid by utility customers. Those are the interests in conflict. That is the practical context.

Historical Context

The historical context is also important. There is both a long-term and a short-term historical context. FPL's comments address both, the long-term context first.

In 1978 Congress passed the Public Utility Regulatory Policies Act ("PURPA"). Among other things PURPA required utilities to purchase power from qualifying facilities ("QFs") at the utility's avoided cost (the cost the utility would have incurred but for the purchase of the QF power). PURPA's avoided cost utility purchase requirement was appealed to the United States Supreme Court and affirmed in *American Paper Institute, Inc. v. American Electric Power Service,* 461 U.S. 402, 76 L.Ed.2d 22, 103 S.Ct. 1921 (1983).

PURPA required the Federal Energy Regulatory Commission (FERC) to adopt implementing rules, which it did. The rules regarding purchases of power from cogenerators are found today at 18 CFR Part 292. PURPA also required state regulatory commissions to adopt rules implementing PURPA and the relations between utilities and QFs.

Although PURPA and the FERC rules implementing PURPA established avoided cost as the maximum to be paid for cogenerated power, they left to the states the specific means of

quantifying avoided costs. There have been a myriad of means employed by the states to quantify avoided costs. In Florida, avoided costs associated with firm capacity and energy purchases from QFs consistently have been quantified using the Value of Deferral methodology.

The Florida Commission's first attempt to adopt cogeneration rules was in 1981 (Docket No. 780235-EU, Order No. 9970). Those rules were challenged, and a preliminary Florida Supreme Court decision, that was later withdrawn, questioned the Commission's authority to adopt cogeneration rules. While that case was pending, the Commission was given explicit statutory authority to address utility dealings with cogenerators, and in 1983 the Commission, once again, initiated cogeneration rulemaking in Docket No. 820406-EU.

It was in Docket No. 820406-EU in 1983 that the Commission first adopted most of the cogeneration policies the cogenerators in this case now seek to change. The case had extensive hearings attended by numerous parties. In addition to FPL, FPC, TECO, Gulf and the Florida Electric Coordinating Group, there were numerous cogenerators or potential cogenerators: St. Regis Paper, IMC, Florida Crushed Stone, W.R. Grace, U.S. Steel, Royster, Occidental Chemical, U.S. Sugar, ITT Rayonier, Metropolitan Dade County, Nicholas Production Company and Thermo Electron, Inc. Twenty-three witnesses testified.

After the close of the hearing, the Commission issued two orders, Order No. 12443 adopting new rules and Order No. 12634, its "Final Order" explaining its adopted rules and underlying policy. Both orders shed light on the issues raised by the cogenerators. Order No. 12443 discusses the fundamental contest between Staff, who advocated use of the Value of Deferral methodology to quantify avoided costs, and cogenerators, who advocated use of the Revenue Requirements methodology to calculate avoided cost. In Order No. 12634 the Commission explained why it chose the Value of Deferral approach.

After adopting its new cogeneration rules, the Commission had another extensive hearing to address the implementation of those rules, Docket No. 830377-EU. In the final order in that docket, Order No. 13247, the Commission first addressed its policy regarding the proper treatment of conservation when calculating avoided costs. It found that logic as well as prior interpretation of the Florida Energy Efficiency Conservation Act ("FEECA") compelled the recognition of conservation when determining avoided costs.

In these and other early orders issued in the early 1980s, the Commission established cogeneration policies that have been followed for 20 years. For the most part, the Commission's cogeneration policy has been unwavering.

FPL sets forth this long-term history because not one of the Commissioners currently serving was on the Commission when the Value of Deferral methodology, the methodology for pricing firm energy, and the methodology for treating conservation when identifying the avoided unit were settled by the Commission almost 20 years ago. Over those years other aspects of the cogeneration rules have changed, but not these principles, even though cogenerators have tried. The Commission needs to be aware that the changes being requested by cogenerators here fly in the face of almost 20 years of cogeneration policy, and not one of the arguments is new. They have all previously been rejected, sometimes on numerous occasions.

There are instances where change is necessary and warranted. At other times, attempting to change what has served customers well is unwarranted. Every change advanced by the cogenerators in this proceeding has been heard and appropriately rejected before by prior Commissions. The case for change now is much less compelling.

Twenty years ago, cogeneration was new, and thought was being given as to how it could be encouraged. States like California overpaid, and standard offer contracts quickly became

much too costly. Florida followed a more conservative approach, yet a number of cogeneration contracts in Florida have been bought out. Today the Commission is being asked not by entities that are considering entry but by established cogenerators who have already financed their facilities to take actions that will increase their revenues at utility customers' expense. This does not encourage cogeneration; this merely redistributes wealth from customers to established cogenerators. This needs to be put in context before the Commission acts.

The Commission should also look at this docket in the short-term historical context. The Commission instructed its Staff to initiate this proceeding in 2000 during an FPL rule waiver proceeding in which FPL was seeking a waiver of the rule requiring a ten year minimum term in standard offer contracts. The Commission granted that waiver and in doing so recognized that it had granted four other such waivers. Acknowledging that these repeated rule waivers reflected a change in its cogeneration policy, the Commission instructed its Staff to initiate a rulemaking proceeding to change the rule addressing the minimum term of Standard Offer contracts. That was in 2000, and that is how this docket was initiated. Since that rule waiver, there have been two more waivers of the ten year minimum term. So, the Commission has granted seven waivers of the Standard Offer ten year minimum term. In each instance it approved a five year minimum term for the Standard Offer.

So, the Commission's intended scope of this proceeding was quite narrow. The Commission did not intend to place at issue any of the rule amendments that have been proposed by the cogenerators.

The changes advanced by the cogenerators did not arise as a Commission initiated change in policy. They arose at the request of the cogenerators, who petitioned for those rule changes. As a matter of convenience, their petition was incorporated into this docket. Those

requested changes, all of which would increase the risk that the cost of cogenerated power to utility customers would increase, have not been proposed by the Commission and do not reflect current Commission policy. This short-term historical perspective is needed as well.

Summary of Current Cogeneration Rules

Before addressing the specific rule provisions before the Commission, it is helpful to review how the Commission's current cogeneration rules are structured. The Commission's cogeneration rules encourage the negotiation of contracts between cogenerators and utilities. They require utilities to purchase from cogenerators and to provide data to cogenerators to facilitate negotiations. They also require utilities to negotiate in good faith with cogenerators. These rules also contemplate that cogenerators may bid into capacity RFPs that utilities issue to meet their resource needs.

In addition to those rules, there is a cogeneration rule that requires utilities to issue standard offer contracts available to a small subset of cogenerators. The entities eligible for these standard offer contracts are entities that FERC requires to be eligible as well as solid waste facilities. The solid waste facilities were added to the FERC required entities to implement Section 377.709, Florida Statutes. That statute requires the Commission to have a cost-effective funding program in place for solid waste facilities. The important point for the Commission to recall is that the Standard Offer rule already exists as a means of facilitating solid waste facilities under Section 377.709, Florida Statutes. Nothing more is required to comply with Section 377.709. Certainly the rule changes advanced by the Solid Waste Facilities are not necessary to comply with that statute. If they were, then the Commission would have been outside of compliance with that statute for years. It has not been.

Specific Rule Changes Proposed

Having given the Commission both a practical and a historical context, please turn to the four rule amendments before the Commission. FPL will start with the Commission's proposed change in the minimum term of the Standard Offer from 10 to 5 years.

Standard Offer Minimum Term.

When the standard offer contracts were first developed, the Commission settled on a 10 year minimum Standard Offer term. Its rationale appears to have been based on planning considerations. The Commission stated in Order No. 12634:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.

Order No. 12634 at 19. The Commission went on to note that under the Value of Deferral method, a utility "pays the QF only what it earns in any given year, the value of the annual deferral...." So the Value of Deferral method confers on the QF exactly the value he provides to customers whether the term of the contract is 10 years or 5 years. For each year the QF receives the annual Value of Deferral.

The issue that arises from reading this passage is whether a 5 year rather than a 10 year minimum term provides enough time from a planning perspective. The answer is yes. In 1983 the avoided units were coal units with longer construction times and more contentious permitting. Today, avoided units tend to be gas fired and require less advance construction and permitting time. Permitting and construction lead times aside, the Commission has faced this same timing issue in load management tariffs in addressing the minimum notice such customers

may give before leaving the rate. The Commission has decided on a minimum notice of five years. So a five year minimum Standard Offer Contract term is consistent with that as well.

However, planning considerations aside, the real reason the Commission should feel comfortable in moving to a five year minimum term is because the Commission has already effectively made the policy change in granting seven waivers of the 10 year minimum term rule requirement. In each instance the Commission allowed a 5 year minimum term instead. This has become the Commission's policy; that is why a rule amendment is appropriate.

Cogenerators' Proposed Rule Changes

Lee County, Miami-Dade County and Montenay-Dade have proposed three rule amendments. (1) They ask the Commission to change, for standard offer contracts that extend for the life of the avoided unit, the method of calculating avoided costs from the currently approved Value of Deferral method to the Revenue Requirements method. (2) They ask the Commission to change the way avoided energy payments are made such that 80% of the payments would be structured as they currently are and the remaining 20% would be fixed based upon a forecast of fuel prices. (3) They ask the Commission to disregard conservation that it has approved as reasonably achievable and cost-effective when determining the avoided unit.

On all the rule changes now proposed by the cogenerators, the Commission's policy has been steadfast, despite attempts to change the policy. The Commission has always employed Value of Deferral rather than Revenue Requirements to calculate avoided capacity costs. The Commission has always calculated avoided energy costs retrospectively, giving cogenerators the actual costs they avoided. The Commission has always recognized conservation in determining a utility's avoided costs.

More importantly, each of the proposed changes by the cogenerators would likely increase what utility customers pay cogenerators for their power. None of these changes would be insignificant. Collectively, they would be a windfall for the cogenerators at the expense of customers who are looking to the Commission for protection.

Value of Deferral versus Revenue Requirements

PURPA, FERC's rules and applicable Florida Statutes all require utilities to pay no more than avoided cost for cogenerated power. The term "avoided cost" is defined generally in all those statutes and rules, but the fact of the matter is that the mechanics were left to the states.

The general process followed in determining a utility's avoided cost is to look to its planning process, determine the next resource or resources to be added to meet its resource needs and then calculate the cost associated with such resources. The ultimate idea is that by identifying and requiring utilities to pay "avoided cost," the cost that can be avoided by purchasing cogenerated power, utility customers are no worse off than they would have been if the utility had built or bought from its avoided resource.

As one might imagine from that general approach, there are a myriad of ways avoided costs could be calculated. Those decisions have been left largely to the states.

In Florida, the primary conflict or debate has been whether the Commission should use the Value of Deferral or Revenue Requirements methodology to calculate avoided cost. The Commission Staff and the utilities advocated the use of the Value of Deferral methodology. The cogenerators argued for the Revenue Requirements method. The Commission has consistently chosen the Value of Deferral methodology.

To understand Value of Deferral, one must understand the effect the purchase of cogenerated capacity has for a utility. Unless the cogeneration purchase is for the same term and

same amount of capacity as the unit the utility would build, the utility does not avoid the construction of utility generation, it just defers it. The Value of Deferral methodology quantifies the value of such a deferral on a year by year basis.

A simple example will illustrate. Assume that absent a cogeneration purchase a utility would build a 1,000 MW plant for $500 million, but with a one year purchase of 1,000 MW of cogenerated power it can move its planned construction back a year. If the utility makes the one year purchase what has been saved? Advocates of the Revenue Requirements approach would say, the revenue requirements associated with the first year of the plant that was deferred: a year's return on the $500 million investment and a year of depreciation, foregone O&M expenses, taxes, etc.... Advocates of Value of Deferral recognize that the real value is simply deferring or moving back a year the stream of revenue requirements in the plant. Instead of paying revenue requirements for a plant in years 1-30, because of the one year cogeneration purchase and one year deferral, customers will now pay revenue requirements for a plant in years 2-31. Unless the assumed inflation rate that would raise the initial cost of investment due to a one year deferral exceeds the discount rate used to discount both revenue requirements streams to present day dollars, deferral will likely save customers money. It is that difference in the net present value ("NPV") of the two revenue requirements streams that the Value of Deferral quantifies. It does it for each year, and if there is a deferral for the life of the unit, then the NPV of that 30 year stream of Value of Deferral payments equals the NPV of the revenue requirements for that plant.

The difference of the two approaches is that Revenue Requirements are front end loaded, because investment and depreciation, key components in the calculation of Revenue Requirements, are at their highest when the plant begins service. They will be at their lowest

near the end of the life of the unit. The Revenue Requirements cost curve declines over the life of the plant. Value of Deferral is not front end loaded. Each year it captures the annual value of deferring the investment one year. Over the full life of the plant, on a NPV basis, the two payment streams are the same, but the cost curve for Value of Deferral is much flatter. This is illustrated in Attachment A.

So, which stream is more appropriate for a 5 or 10 year contract that does not avoid but only defers the utility unit? Value of Deferral. Value of Deferral assures that utility customers pay only for the value of what they receive - the year by year value of deferring the utility unit. The heavily front end loaded Revenue Requirements for the utility unit are not completely avoided with a 5 or 10 year contract; they are merely deferred, so they should not be fully paid to the cogenerator. Instead, the cogenerator should receive the value of what it provides the customer - the value of deferring that 30 year revenue requirements stream for the life of the contract. Moreover, if the heavily front end loaded Revenue Requirements stream is paid to cogenerators, once cogenerators have earned a sufficient sum to pay off their debt, they have the perverse incentive to walk away from the contract.

The Commission explained this in Order No. 12634, the final order in the 1983 cogeneration rule proceeding. There are several passages from that order that are most instructive. The first passage succinctly summarizes the Commission's policy decision:

> Under the standard offer, the annual price to be paid for QF capacity is geared to the value of deferring the statewide avoided unit one year. We adopt the testimony of Mr. Trapp on this point. We agree with Mr. Trapp that there must be a link between the price paid for QF capacity and the value of other supply side alternatives available to a utility to meet its service obligation. It is this linkage that ensures that cogeneration and small power production will remain a cost effective conservation measure.

Order 12634 at 14, 15.

The second passage from Order 12634 succinctly summarizes the Value of Deferral methodology:

> The value of deferral is, in essence, a calculation of the value of deferring the revenue requirements of a new generating plant by one year. Essentially, it compares the difference in annual revenue requirements if the revenue requirements stream begins in year X as compared to beginning in year X+1.

Order 12634 at 16.

The third instructive passage from Order No. 12634 makes it unequivocally clear that the Commission would not permit payments in excess of the Value of Deferral: "We will not consider supply side alternatives more costly than the Value of Deferral because it would not benefit the ratepayers to pursue them, regardless of the source." Order 12634 at 17.

The final instructive passage from Order No. 12634 is longer, but it is shared for several reasons. First, it shows that the Value of Deferral versus Revenue Requirements debate was raised and resolved 19 years ago. Second, it clearly articulates why Value of Deferral is the superior approach:

> IMC, et al, urged us to adopt a capacity payment rule that would set a maximum cap on the level of permissible payments equal to the revenue requirements of a generic base load coal unit. We believe that the value-of-deferral methodology is superior to a revenue requirements methodology for a couple of reasons. First, revenue requirements are based on a thirty-year depreciation life for a power plant. The payments are relatively high in the early years and relatively low in the later years; if ratepayers receive service from the plant for thirty years, the disadvantage of high payments in the early years is offset by the benefit of low payments in the later years. That symmetry is missing if a QF makes only a ten-year commitment; a QF would receive the high end of the deferred revenue requirements stream without a concomitant obligation to provide service in exchange for relatively low deferred revenue requirements in later years. Second, capacity payments based on deferred revenue requirements would overpay the QF in early years, thus getting into the thorny problem of securing all capacity payments for a

number of years, not just those made pursuant to the early payment option.

> The value-of-deferral methodology overcomes these problems. First, the deferral method pays the QF only what it earns in any given year, the value of an annual deferral, thus eliminating the security question in ordinary circumstances. Second, the value-of-deferral method will, over the thirty-year depreciation life of the avoided unit, pay a QF the same amount it would have received if its capacity payments had been based on deferred revenue requirements. That is, at the end of thirty years, a QF would have received the same total amount on a present value basis, under either methodology; the difference between the two methods lies in the level of payment in any given year in that thirty year period. Levelizing capacity payments based on avoided revenue requirements mitigates but does not cure the problem; using the value of annual deferral as the benchmark, levelized capacity payments based on deferred revenue requirements still overpay a QF in the early years.

Order No. 12634 at 19.

So, do not just take FPL's word for it. Listen to prior Commissions who had the benefit of a full record and multiple witnesses. The Value of Deferral method of computing avoided costs is the superior approach, particularly for cogeneration contracts for less than the life of the planned utility unit.

The approach has been successfully used for almost 20 years. Extensive cogeneration has been encouraged. FPL alone has over 800 MW of firm cogenerated power; but most importantly, utility customers have not paid too much. When Section 377.709, Florida Statutes, was adopted, the Commission decided it did not have to change from Value of Deferral to Revenue Requirements to satisfy the statute, and it did not. Not once in those twenty years of Commission cogeneration policy has the Value of Deferral method been challenged with either a rule challenge or an appeal. There is no legitimate reason to abandon the proven Value of Deferral approach and unjustly enrich cogenerators at the expense of utility customers.

A Partially Guaranteed Firm Energy Payment Stream.

The second change urged upon the Commission by established cogenerators is to change the method of payment for firm energy in firm Standard Offer contracts. Instead of the current method, which is a 100% retrospective determination of what energy generated by the avoided unit would have cost, the cogenerators want that payment stream to be 80% retrospective based on actual costs and 20% prospective based on forecasted fuel costs at the time the Standard Offer contract is entered. They want part of their energy payment stream guaranteed.

Twenty years ago in Order No. 12634 the Commission also established its method for calculating avoided energy costs under firm Standard Offer contracts. The Commission decided that cogenerators would be paid the lesser of system incremental energy costs or the energy costs that would have been incurred if the energy had been generated by the avoided unit. Essentially, this approach recognizes that utility units are economically dispatched. If the avoided unit would have been dispatched because it would have been economic to commit it, then a cogenerator providing firm energy that allowed the utility to avoid the energy that would have been generated by the avoided unit would receive the avoided unit's energy cost. However, if the avoided unit would not have been economically dispatched because system incremental energy costs were below the energy cost associated with the avoided unit, then the cogenerator should receive that lower price.

Here is how the Commission characterized its methodology in Order No. 12634:

> The rule provides for a firm energy price that is also linked to the avoided unit. Commencing with the anticipated in-service date of the avoided unit, the QF will receive the lesser of the as available energy cost of the utility planning the avoided unit or the energy cost associated with the avoided unit itself. The energy cost associated with the avoided unit is defined as the cost of fuel, in cents per KWH, that would have been burned in the avoided unit, calculated by multiplying the average market price of the fuel that

> would have been burned in the statewide avoided unit by the average heat rate associated with it. [Rule 25-17.83(6)]. The rule requires payment of "the lesser of" because in those situations where a utility's incremental fuel costs were less that the fuel cost of the avoided unit, it would not be economical to dispatch it.

Order No. 12634 at 18. Clearly, under this approach the avoided energy payments can only be calculated retrospectively, once one can determine how the avoided unit would have been dispatched.

Although the current methodology for firm energy payments was established in Order 12634 in 1983, a dispute regarding a potential forecast energy payment quite similar to the change proposed by the cogenerators arose and was resolved by the Commission in a 1982 decision, in Order No. 10943. In that case sample cogeneration tariffs provided that energy payments to QFs be made based on estimated or forecast avoided energy costs with a one way true up - if actual costs exceeded forecast, then cogenerators received more money.

In Order No. 10943, the Commission rejected the idea of a guaranteed firm energy payment stream based on a forecast. It abandoned both the forecasted, guaranteed energy payment stream and the one way true up and began payments based on actual energy cost determined after the fact. That is the approach of the current rule that the cogenerators seek to change, in part.

The following is what the Commission said 20 years ago when rejecting another guaranteed payment stream:

> The purpose of the one way true-up was to guarantee a minimum price to QFs to encourage them to come on line; however, an unintended consequence of the one way true up is a subsidization of cogeneration by other ratepayers. **As long as the purchase price is the utility's actual avoided costs, which can only be determined retrospectively, QFs should not be guaranteed any price.** (Emphasis added.)

Order No. 10943 at 3.

Previous Commissioners were right on the mark 20 years ago. There is no need to guarantee energy payments, even in part. QFs have been encouraged to come on line without such guaranteed payments. More importantly, by paying actual rather than forecasted avoided energy costs, utility customers have not subsidized cogenerators. Why change now?

The cogenerators argue that this approach should be changed "to protect customers," to provide a hedge against increasing future fuel prices. FPL urges the Commission to be skeptical of cogenerators' professions that they are acting to "protect the customers' interests" rather than their own interests. Unless the cogenerators are acting against their economic interests, an improbable conclusion, they seek the rule change because they think it will yield them more money. That is more customer money.

Conservation Must Be Recognized In Determining Avoided Cost.

The final rule change the cogenerators seek would also increase customer costs. They ask that the Commission reverse its long standing, often challenged, but never rejected practice of recognizing conservation when calculating avoided cost.

The impact of this proposed change is easy to explain. To calculate avoided cost payments for cogenerators, one identifies the next unit the utility plans to build to meet its need and then calculates the value of deferring or avoiding the unit. Identifying the utility's next planned generating unit requires the use of a load forecast. The issue here is whether that load forecast should include or exclude forecasted demand reductions due to conservation. If it includes forecasted conservation, the capacity need is deferred and cogenerators are paid less by utility customers. If the load forecast excludes forecasted conservation, the capacity need is accelerated and utility customers pay cogenerators more.

FPL takes the position that Commission approved conservation that has already been found by the Commission to be cost-effective (less costly than supply side alternatives) should be recognized in the load forecast used to identify the next planned generating unit. This conservation has already been subject to review, and the Commission has determined it to be cost-effective.[1] It is scheduled to be implemented. Ignoring it would be requiring customers to pay twice for the same capacity deferral. They would pay once through the ECCR clause and again through capacity payments to cogenerators.

As previously noted, the Commission has heard and rejected this argument by cogenerators on numerous occasions for well articulated reasons. The Commission's initial rejection of this argument was in Order No. 13247, the 1984 order in the proceeding to implement the cogeneration rules. The issue was whether the load forecast used to determine the avoided unit should include or exclude prospective conservation. Here, as there, the cogenerators ask the Commission to exclude it, to ignore it and to have customer pay twice for it. The Commission's reaction then is equally appropriate now:

> During these proceedings, considerable debate was fostered by the QF intervenors as to which load forecast should be used to determine the in-service date of the statewide avoided unit. The QFs contended that the load forecast should exclude the effects of utility sponsored demand side conservation programs. In our opinion, **these arguments are totally without merit.** (Emphasis added.) Specifically we reject the testimony of Dr. Spann and Mr. Seidman regarding this subject. The Commission's cogeneration rules, implicitly require that the effects of utility sponsored conservation programs be reflected in the utilities' load forecasts for the purpose of determining the timing of the statewide avoided

[1] In Order No. PSC-99-1942-FOF-EG, the Commission approved conservation goals of an additional 496 MW for the years 2003 through 2009. This was the amount of conservation the Commission found to be reasonably achievable and cost-effective on FPL's system, and it was based upon a comprehensive analysis conducted pursuant to Commission order. The following year the Commission approved a DSM plan filed by FPL designed to achieve its reasonably achievable, cost-effective level of DSM. *See*, Order No. PSC-00-0915-PAA-EG.

> unit. Rule 25-17.83(4) describes certain evidence and the scope of analysis to be presented to the Commission by each utility to assist the Commission in determining the statewide avoided unit. Rule 25-17.83(4)(a) specifically requires each utility to identify its next planned uncertified generating unit to be added to its system pursuant to its **most current long range generation expansion plan** (emphasis added). The only adjustment to the utility's generation expansion plan is the specified exclusion of anticipated purchases from qualifying facilities which are not currently under contract. Logic, as well as past Commission practice since the adoption of the Florida Energy Efficiency and Conservation Act (FEECA), dictates that a utility's most current long range generation expansion plan must be based on the utility's most current "expected case" load forecast, inclusive of conservation. Had we desired to treat conservation differently, we would have expressly stated so as was done with regard to non-contracted QF capacity.
>
> The fact is, we do not desire to exclude the effects of utility sponsored conservation programs from the load forecasts or generation expansion plans of the Florida utilities in determining the statewide avoided unit. The reason for this was clearly stated in Mr. Jenkins' testimony: conservation in the aggregate is significantly more cost effective than cogeneration (TR 1107-12). As such, **exclusion of the effects of utility sponsored conservation programs from the load forecast in this proceeding would result in payments to qualifying facilities in excess of the utilities' avoided costs and hence, subsidization of cogeneration by the general body of Florida ratepayers. This is clearly contrary to the intent of the Commission's cogeneration rules and policy.** (Emphasis added.)

Undeterred, cogenerators raised the argument again in subsequent hearings. Again the Commission rejected it. For instance, in 1989 in Docket No. 890004-EU, FICA, the Florida Industrial Cogenerators Association, took issue with recognizing conservation in determining the avoided unit. The Commission rejected the argument as it had in the past and should here as well:

> Because of FCG's treatment of these variables, FICA states that the FCG's avoided unit study is not a least-cost generation expansion plan. We disagree. As discussed above, conservation and cogeneration are modeled as integral parts of the generation

> expansion studies. As we have consistently ruled in the past, we consider this to be the appropriate treatment for these alternatives to construction. For conservation this treatment is appropriate since it is less expensive than the construction of new generation and would be pursued first in an optimal generation expansion plan....

Order No. 22341 at 4. The Commission went on to note conservation and load management were already pre-approved by the Commission as cost-effective.

The Cogenerators' "Settlement" Offer.

On the eve of the Staff's February 25, 2003 rule development workshop, several solid waste facilities offered a "settlement" proposal. The "settlement" proposal made no mention of their suggested rule amendments to fix part of the avoided energy payment stream or to ignore conservation in determining avoided cost. Their "settlement" proposal did suggest that Revenue Requirements rather than Value of Deferral be used to calculate avoided costs, and it also allowed solid waste facilities (not all cogenerators) to choose the term of the standard offer contract between 10 and 30 years. In addition, it offered modest "discounts" from Revenue Requirements for longer term contracts chosen by solid waste facilities.

The "settlement" proposal is not a settlement at all. Even with the purported discount associated with longer term contracts, customers would be paying more under this proposal than they are under the current rule, because of the change of the method of calculating avoided cost from Value of Deferral to Revenue Requirements.

The "settlement" proposal suffers from the same infirmities that are associated with the cogenerators' rule proposals. It is inconsistent with established cogeneration policy of using Value of Deferral rather than Revenue Requirements to measure avoided cost. It is unnecessary, because there is no problem that needs to be addressed. Most importantly, it results in customers needlessly paying more for cogenerated power than they would receive in terms of value. In

short, it employs an improper measure of avoided cost resulting in unjust enrichment of solid waste facilities. In addition, there are at least two other problems with the "settlement" proposal.

First, it contains a provision that clearly would result in customers paying twice for the same capacity. Section 4(h)(1) of the proposal has a provision that if a contract does not result in the avoidance of a utility's unit and the unit is built, then the solid waste facility may extend the contract up to the life of the unavoided unit. If the contract does not purchase capacity deferral and the utility has to build the unit, customers would be paying for the unit addition as well as the contract extension. Such a double payment for capacity is unwarranted. If solid waste facility contracts do not allow deferral or avoidance of a utility unit, then they should be denied avoided capacity payments rather than receive the right to extend a contract that has proven to be worthless to customers.

Second, this rule provision goes much further than is necessary for the Commission to comply with Section 377.709, Florida Statutes. Section 377.709, Florida Statutes is not intended to result in customers subsidizing license for solid waste facilities. The Commission has already complied with the statute by making standard offer contracts available to solid waste facilities. The Commission does not have to employ Revenue Requirements for this type of cogenerator and Value of Deferral for others to comply with Section 377.709, Florida Statutes. In fact, such a decision would violate the statute because the statute contemplates that only avoided cost should be paid, and under prior Commission policy the payment of Revenue Requirements instead of Value of Deferral would be a payment in excess of avoided costs. In addition, PURPA, which creates the standard offer requirement, does not extend it to solid waste facilities. The Commission has previously extended the standard offer to solid waste facilities to satisfy

Section 377.709, Florida Statutes, and nothing more is required to comply with that statute than what is currently available under the existing rule.

Conclusions Regarding the Cogenerators' Proposed Rule Changes

The Commission said it best on any number of occasions. None of the rule changes proposed by the cogenerators should be adopted. Each of the proposed changes enhances cogenerator revenue at customer expense. Each of them is a solution in search of a problem. They are contrary to the Commission's intent and well-established cogeneration policy. In contrast, the change of the standard offer minimum term from 10 to 5 years reflects the Commission's policy and should be adopted.

Respectfully submitted,

Steel Hector & Davis, LLP
Suite 601
215 South Monroe Street
Tallahassee, Florida 32301

Attorneys for Florida Power
& Light Company

By: _____
Charles A. Guyton

Revenue Requirements
vs
Value of Deferral Methodologies

	YEAR	TOTAL REVENUE REQUIREMENT	LEVELIZED REVENUE REQUIREMENT	VALUE OF DEFERRAL
1	2004	7,768.73	5,673.28	4,593.16
2	2005	7,547.25	5,673.28	4,685.02
3	2006	7,295.74	5,673.28	4,778.72
4	2007	7,054.91	5,673.28	4,874.30
5	2008	6,823.98	5,673.28	4,971.78
6	2009	6,602.21	5,673.28	5,071.22
7	2010	6,388.90	5,673.28	5,172.64
8	2011	6,183.41	5,673.28	5,276.10
9	2012	5,982.30	5,673.28	5,381.62
10	2013	5,781.82	5,673.28	5,489.25
11	2014	5,581.33	5,673.28	5,599.04
12	2015	5,380.84	5,673.28	5,711.02
13	2016	5,180.36	5,673.28	5,825.24
14	2017	4,979.87	5,673.28	5,941.74
15	2018	4,779.39	5,673.28	6,060.58
16	2019	4,578.90	5,673.28	6,181.79
17	2020	4,378.42	5,673.28	6,305.43
18	2021	4,177.93	5,673.28	6,431.53
19	2022	3,977.45	5,673.28	6,560.16
20	2023	3,776.96	5,673.28	6,691.37
21	2024	3,599.37	5,673.28	6,825.19
22	2025	3,467.55	5,673.28	6,961.70
23	2026	3,358.62	5,673.28	7,100.93
24	2027	3,249.69	5,673.28	7,242.95
25	2028	3,140.77	5,673.28	7,387.81
26	2029	3,031.84	5,673.28	7,535.57
27	2030	2,922.91	5,673.28	7,686.28
28	2031	2,813.98	5,673.28	7,840.00
29	2032	2,705.06	5,673.28	7,996.80
30	2033	2,596.13	5,673.28	8,156.74
NPV @ 6.54%		78,637	78,637	78,637

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April 1, 2002

-VIA HAND DELIVERY-

Ms. Blanca S. Bayó
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: **Docket Nos. 020166-EQ and 001574-EQ**

Dear Ms Bayò:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket Nos. 001574-EQ and 020166-EQ are the original and fifteen copies of the Responsive Comments of Florida Power & Light Company. If you or your staff have any questions regarding this transmittal, please contact me at (850) 222-2300.

Respectfully,

Charles A Guyton
Attorney for Florida Power &
Light Company

cc: Richard Bellak

Responsive Comments of Florida Power & Light Company

FPL submits these comments in response to the rulemaking proceeding initiated by the Florida Public Service Commission to amend Rule 25-17.0832, Florida Administrative Code, relating to firm capacity and energy contracts. FPL's comments support the proposed rule modification initiated by the Commission. The amendments proposed by the Commission address primarily the reduction of the minimum term of the Standard Offer Contract from ten years to five years. FPL supports this modification. Although FPL has taken the approach of requesting a waiver on a case by case basis, it does not oppose this proposed change. This amendment to Rule 25-17.0832 will alleviate the need to file recurring and expensive rule waiver requests. Given the number of rule waiver requests that have been granted, this amendment essentially captures Commission policy.

On the other hand, FPL is concerned with and strongly opposes the suggestion by Lee County, Miami-Dade County and Montenay-Dade ("the Parties") for additional amendments to Rule 25-17.0832. The suggested amendments are contrary to established Commission policy in implementing Statute 366.051. The amendments proposed include: 1) basing the Standard Offer rates, terms and conditions on the purchase of power rather than only on the construction alternative, 2) using revenue requirements as the basis to calculate payments pursuant to a Standard Offer Contract, 3) allowing the Qualifying Facility to specify the duration of the contract, 4) providing for a

minimum of 20 % of the energy payment pursuant to the Standard Offer Contract to be based on the projected energy cost used by the utility at the time the contract is executed, and 5) excluding all demand side management alternatives not implemented or under contract from the utility's analyses in identifying its avoided unit. Adoption of these provisions would reverse twenty years of Commission cogeneration policy reflected in the current rule. Most, if not all, of the arguments presented by the Parties in support of their proposed amendments have been presented to the Commission in the past and have been rejected by the Commission. FPL believes it is a waste of the Commission's time to consider the amendments proposed by the Parties. These amendments significantly increase risks and costs to utility customers by subjecting them to payments higher than the purchasing utility's avoided costs.

The rulemaking proceeding initiated by the Commission addressed the reduction of the minimum term of the Standard Offer Contract from ten to five years. The result of this modification is to limit the risk that customers will be tied to long-term contracts that do not reflect the avoided cost of the utility. The additional amendments proposed by the Parties will have the opposite result in that they will increase the risk to the customers and result in payments to qualifying facilities that are higher than the avoided costs of the purchasing utility.

Section 366.051 establishes the rates for purchases from cogenerators and small power producers at rates equal to the purchasing utility's full avoided cost. The Commission has taken a balanced approach in implementing the

statute by balancing the allocation of the risks and benefits associated with purchases from Qualifying Facilities.

Basing Standard Offer Contracts on Purchase Options

Early on in its consideration of cogeneration rules the Commission considered and rejected the idea being advanced by the Parties, paying the higher of a construction or a purchased alternative as avoided cost. The Commission expressed a willingness to consider a purchase alternative as a measure of avoided cost, but only if the purchase was less costly than construction:

> Several intervenors, notably Dade County, urged us to consider all alternatives to additional construction available to a utility in pricing QF capacity. If other supply side alternatives, such as off system firm power purchases, are identified as available **and less costly** than construction of the statewide avoided unit, we will take that into account in pricing the standard offer. We will not consider supply side alternatives more costly than the value of deferral because **it would not benefit the ratepayers to pursue them,** regardless of the source. (Emphasis added.)

In re: Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration. 83 FPSC 10:150,166 (Order No. 12634). The Commission recognized then, as it should now; that using purchases as a measure of avoided cost was appropriate only when such cost was lower than construction cost. Any other arrangement penalizes customers.

Using Revenue Requirements Rather than Value of Deferral to Calculate Capacity Payments

The Revenue Requirements methodology for use in calculating capacity payments was rejected in the early days of QF rulemaking, in the early 80s. The preferred methodology to be used in calculating avoided costs payments has always been the value of deferral methodology. The Commission also resolved the revenue requirements versus value of deferral issue in Order No. 12634. There it said:

> We believe that the value-of-deferral methodology is superior to a revenue requirements methodology for a couple of reasons. First, revenue requirements are based on a thirty-year depreciation life for a power plant. The payments are relatively high in the early years and relatively low in the later years; if ratepayers receive service from the plant for thirty years, the disadvantage of the high payments in the early years is offset by the benefit of low payments in the later years. That symmetry is missing if a QF makes only a ten-year commitment; a QF would receive the high end of the deferred revenue requirements stream without a concomitant obligation to provide service in exchange for relatively low deferred revenue requirements in later years. Second, capacity payments based on deferred revenue requirements would overpay the QF in early years, thus getting into the thorny problem of securing all capacity payments for a number of years, not just those made pursuant to the early payment option.
>
> The value-of-deferral methodology overcomes these problems. First the deferral method pays the QF only what it earns in any given year, the value of an annual deferral, thus eliminating the security question in ordinary circumstances. Second, the value-of-deferral method will, over the thirty-year depreciation life of the avoided unit, pay a QF the same amount it would have received if its capacity payments had been based on deferred revenue requirements. That is, at the end of the thirty years, a QF would have received the same total amount on a present value basis, under either methodology; the difference between the two methods lies in the level of payment in any given year in that thirty year period. Levelizing capacity payments based on avoided revenue requirements mitigates but does not cure the problem; using the value of annual deferral as the benchmark, levelized capacity

payments based on deferred revenue requirements still overpay a QF in the early years.

The Commission's observations in 1983 are equally valid today. The revenue requirements methodology advanced by the parties unduly benefits QFs at the expense of customers.

The value-of-deferral methodology balances the benefit of purchasing from QFs with the risk of the purchasing utility paying more than full avoided cost. While theoretically a contract term equal to the life of the avoided unit using a revenue requirement methodology will yield payments on a net present value basis that are equal to payments using the value of deferral methodology, the practical result of this approach is a significant shift in risks to the customers of payments for purchased power at rates that are considerably higher than avoided costs. Should the QF walk away for any reason prior to the 30 or 40 year contract, the customers would pay more than the avoided cost. This problem is exacerbated by a history of decreasing generating capacity costs.

Allowing the QF to Specify Contract Duration – Minimum Term

The burden of justifying the term of the Standard Offer Contract has been placed on the utility, where it belongs. The minimum term specified in the Standard Offer Contract allows the Commission to implement, through its rules, a policy that once again balances risks. The minimum term needs to be long enough to incorporate planning needs and QF contractual requirements while at the same time protecting the customers from paying higher than avoided costs.

The narrow criteria that has to be met in order to qualify for a Standard Offer contract are such that the potential exists for payments to result in a subsidy. The five year minimum term mitigates this risk. Furthermore, allowing the QF to specify the term of the contract results in a significant shift in risks. The QF will only take into account its interests in deciding the term and will not consider a balancing of risks vs. benefits for the customers.

In originally approving a ten-year minimum term, the Commission was concerned about customers receiving capacity deferral benefits. It was recognized delivery for ten years was important from a planning perspective. Order No. 12634 at 168. Given the long unit permitting and construction times at that time, ten years was a reasonable term, but given the shorter terms currently prevalent, a five year term is reasonable from a planning perspective.

Energy Payments based on Projected Energy Costs

The energy payments associated with a Standard Offer Contract are tied to the actual cost of the fuel associated with the avoided unit or the as-available energy cost. The Commission explained the rationale for this linkage in Order No. 12634:

> The rule provides for a firm energy price that is also linked to the avoided unit. Commencing with the anticipated in-service date of the avoided unit, the QF will receive the lesser of the as available energy cost of the utility planning the avoided unit or the energy cost associated with the avoided unit itself. The energy cost associated with the avoided unit is defined as the cost of fuel, in cents per KWH, that would have been burned in the avoided unit, calculated by multiplying the average market price of the fuel that

would have been burned in the statewide avoided unit by the average heat rate associated with it. [Rule 25-17.83(6)]. The rule requires payment of the "lesser of" because in those situations where a utility's incremental fuel cost were less that the fuel cost of the avoided unit, it would not be economical to dispatch it.

History has demonstrated the inherent uncertainty associated with forecasting fuel costs. Once again, the suggestion that the energy payments should be, in part, tied to forecasted fuel prices shifts the risks from the QF to the customer. Each time the Commission has taken up the issue of payments to QFs in the past, the outcome has been to mitigate risks associated with energy payments by tying them to the current market price at the time of the purchase.

Excluding Demand Side Management Alternatives not Implemented or under Contract

Finally, the issue of excluding demand side management alternatives that are not implemented or currently under contract only serves to artificially increase the avoided costs associated with the avoided unit. The process of identifying the next unit to be avoided typically starts with the Ten Year Site Plan. The Ten Year Site Plan represents the utility's current official generation expansion planning document. The demand side alternatives included in the plan are previously presented and approved by the Commission. Order No. PSC-99-1942-FOF-EG approved FPL's demand side management targets included in FPL's generation expansion plan. To exclude the approved demand side management plan in the utility's determination of its next unit to be avoided can

only result in Standard Offer Contracts with payment terms and conditions higher than the Utility's avoided cost.

The Commission has previously considered and rejected this conservation argument on several occasions. Perhaps the clearest rejection of this argument is found in Order No. 13247:

> During these proceedings, considerable debate was fostered by the QF intervenors as to which load forecast should be used to determine the in-service date of the statewide avoided unit. The QFs contended that the load forecast should exclude the effects of utility sponsored demand side conservation programs. In our opinion, **these arguments are totally without merit.** Specifically we reject the testimony of Dr. Spann and Mr. Seidman regarding this subject. The Commission's cogeneration rules implicitly require that the effects of utility sponsored conservation programs be reflected in the utilities' load forecasts for the purpose of determining the timing of the statewide avoided unit. Rule 25-17.83(4) describes certain evidence and the scope of analysis to be presented to the Commission by each utility to assist the Commission in determining the statewide avoided unit. Rule 25-17.83(4)(a) specifically requires each utility to identify its next planned uncertified generating unit to be added to its system pursuant to its most current long range generation expansion plan (emphasis added). The only adjustment to the utility's generation expansion plan is the specified exclusion of anticipated purchases from qualifying facilities that are not currently under contract. Logic, as well as past Commission practice since the adoption of the Florida Energy Efficiency and Conservation Act (FEECA) dictates that a utility's most current long range generation expansion plan must be based on the utility's most current "expected case" load forecast, inclusive of conservation. Had we desired to treat conservation differently, we would have expressly stated so as was done with regard to non-contracted QF capacity.
>
> The fact is, we do not desire to exclude the effects of utility sponsored conservation programs from the load forecasts or generation expansion plans of the Florida utilities in determining the statewide avoided unit. The reason for this was clearly stated in Mr. Jenkins' testimony: conservation in the aggregate is significantly more cost effective than cogeneration (TR 1107-12). **As such, exclusion of the effects of utility sponsored conservation programs from the load forecast in this proceeding would result in payments to qualifying facilities in**

excess of the utilities' avoided costs and hence, subsidization of cogeneration by the general body of Florida ratepayers. This is clearly contrary to the intent of the Commission's cogeneration rules and policy. (Emphasis added.)

Conclusion

FPL concludes, for the reasons set forth herein, that the amendments proposed by the Commission serve to capture Commission policy. FPL supports the changes proposed by the Commission. On the other hand, FPL strongly opposes the additional amendments to Rule 25-17.0832 proposed by Lee County, Miami-Dade County and Montenay-Dade. These additional proposed amendments are contrary to Commission policy and only serve to increase the risk that customers in the state of Florida will pay higher than avoided cost for the power purchased pursuant to a utility's Standard Offer Contract.

Respectfully submitted,

By: 

Charles A. Guyton
Steel Hector & Davis LLP
Suite 601,
215 S. Monroe St.
Tallahassee, Florida 32301

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.	)	Docket No. 001574-EQ
		Filed: December 21, 2000

POST-WORKSHOP COMMENTS OF
FLORIDA POWER & LIGHT COMPANY

After reviewing written comments filed in Docket No. 001574-EQ and hearing the comments at the December 12, 2000 workshop (the "Workshop"), Florida Power & Light ("FPL"), through its undersigned counsel, hereby submits the following comments to suggested revisions of Rule 25-17.0832, F.A.C, Firm Capacity and Energy Contracts.

FPL Opposes the Proposed Elimination Of Subscription Limits

1. FPL opposes proposed changes to Rule 25-17.0832 that result in elimination of standard offer contract subscription limits. The Public Utility Regulatory Policy Act ("PURPA") and section 366.051 of the Florida Statutes (1999) require only payment of "avoided" costs. Removing the subscription limits entirely would imply that the Florida Public Service Commission ("FPSC" or the "Commission") at least in principle accepts the proposition that a utility's electric customers are required to bear capacity costs in excess of those actually avoided through deferral or avoidance of a generating unit. While encouraging cogeneration and small power production, the Florida Legislature did not intend that public utilities pay more than their avoided costs for such purchased power. Specifically, Section 366.051 provides in pertinent part: "In fixing rates for power purchased by public utilities from cogenerators or small power producers, the

commission shall authorize a rate *equal* to the purchasing utility's full avoided costs."[1] Section 366.051 clearly defines a utility's "full avoided cost" as ". . . the incremental costs to the utility of the electric energy or capacity, or both, which but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source." The definition does not envision the utility paying for capacity in excess of that which is actually deferred or avoided.

2. Because eliminating the subscription limit for standard offer contracts would imply the potential for payment of costs in excess of a utility's avoided costs, it also would endorse the concept of ratepayer subsidization of qualifying facilities. Assuming *arguendo* that a unit can be avoided or deferred through the issuance of a standard offer contract, the language of the proposed amendment completely removes the subscription limit altogether, thereby opening up the possibility of requiring investor owned utilities to make capacity payments beyond the planned capacity actually deferred or avoided.[2] Based on comments made at the Workshop, the Commission staff ("Staff") did not intend such a result in proposing an elimination of the subscription limit.

3. Although it is questionable in today's market whether there is sufficient latent qualifying facility capacity such that a standard offer contract would result in subscriptions in excess of the actual avoided unit, FPL does not believe that the Rule should be amended in a way that, even if only in theory, provides the opportunity for ratepayer subsidization of qualifying facilities. FPL submits that such a result is contrary to the intent and letter of both state and federal law and regulation.

3. The Commission's own rules recognize and support this very same principle:

---

[1] Emphasis added.

[2] *See* e.g., Notice of Proposed Rule Development *In Re: Proposed Amendments To Rule 25-17.0832, F.A.C., Firm Capacity And Energy* Contracts, Section 25-17.0832(4)(d)(2), deleting the language "the total amount of committed capacity, in megawatts, needed to fully subscribe the avoided unit specified in the contract."

> The rates, terms, and other conditions contained in each utility's standard offer contracts shall be based *on the need for and equal to* the avoided cost of deferring or avoiding the construction of additional generation capacity or parts thereof by the purchasing utility.[3]

FPL respectfully suggests that eliminating entirely the nexus between the avoided unit (i.e., the identified generation need of the utility) and the subscription limits for standard offer contracts from Rule 25-17.0832, would contravene both state and federal law.

FPL Does Not Oppose Proposed Changes Limiting Standard Offer Contract Terms To A Maximum Of Five Years

4. FPL does not oppose proposed amendments to Rule 25-17.0832 creating a maximum term of five years over which firm capacity and energy may be delivered from the qualifying facility to the utility. On the other hand, FPL is not opposed at this time to the proposal made by counsel for the Florida Industrial Cogeneration Association ("FICA"), the City of Tampa, and the Solid Waste Authority of Palm Beach County ("Authority") that the Rule be amended to lower the minimum contract term from ten to five years but retain the provision that limits the maximum term "to the anticipated plant life of the avoided unit."[4]

5. FPL's non-opposition to this proposal, however, should not be construed as agreement that a standard offer contract for any fixed term that includes capacity payments must be offered in all situations, even where no capacity will be deferred or avoided. FPL maintains the position that unless capacity will be actually deferred or avoided, capacity payments to qualifying facilities represent inappropriate subsidies (at rate payers' expense) that should not occur, let alone be potentially linked to the life of

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3 Rule 25-17.0832(4)(b). Emphasis added.

4 Rule 25.17.0832(4)(e)(7). Because FPL is not at this time opposing the alternative amendment proposed by counsel for FICA, the City of Tampa, and the Authority, FPL reserves its comments on the arguments regarding the value of deferral methodology advanced at the Workshop and in preliminary comments. FPL reserves the right to file supplemental comments to the extent requested by Staff or otherwise deemed necessary by FPL.

an "un-avoided" unit. Utilities would continue to be free to seek a waiver of the minimum term for a standard offer contract on a case-by-case basis as circumstances may warrant (e.g., a unit will not actually be deferred or avoided).

6. In summary, FPL does not oppose Staff's proposed amendment to make the maximum term five years. However, FPL would be willing to consider more fully the above-referenced alternative proposed at the Workshop by counsel for FICA, the City of Tampa, and the Authority.

Respectfully submitted, this
21st day of December, 2000

R. Wade Litchfield
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

Appl Helton

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.	Docket No. 001574-EQ
	Filed: December 21, 2000

POST-WORKSHOP COMMENTS OF

FLORIDA POWER & LIGHT COMPANY

After reviewing written comments filed in Docket No. 001574-EQ and hearing the comments at the December 12, 2000 workshop (the "Workshop"), Florida Power & Light ("FPL"), through its undersigned counsel, hereby submits the following comments to suggested revisions of Rule 25-17.0832, F.A.C, Firm Capacity and Energy Contracts.

FPL Opposes the Proposed Elimination Of Subscription Limits

1. FPL opposes proposed changes to Rule 25-17.0832 that result in elimination of standard offer contract subscription limits. The Public Utility Regulatory Policy Act ("PURPA") and section 366.051 of the Florida Statutes (1999) require only payment of "avoided" costs. Removing the subscription limits entirely would imply that the Florida Public Service Commission ("FPSC" or the "Commission") at least in principle accepts the proposition that a utility's electric customers are required to bear capacity costs in excess of those actually avoided through deferral or avoidance of a generating unit. While encouraging cogeneration and small power production, the Florida Legislature did not intend that public utilities pay more than their avoided costs for such purchased power. Specifically, Section 366.051 provides in pertinent part: "In fixing rates for power purchased by public utilities from cogenerators or small power producers, the commission shall authorize a rate *equal* to the purchasing utility's full

avoided costs."[1] Section 366.051 clearly defines a utility's "full avoided cost" as ". . . the incremental costs to the utility of the electric energy or capacity, or both, which but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source." The definition does not envision the utility paying for capacity in excess of that which is actually deferred or avoided.

2. Because eliminating the subscription limit for standard offer contracts would imply the potential for payment of costs in excess of a utility's avoided costs, it also would endorse the concept of ratepayer subsidization of qualifying facilities. Assuming *arguendo* that a unit can be avoided or deferred through the issuance of a standard offer contract, the language of the proposed amendment completely removes the subscription limit altogether, thereby opening up the possibility of requiring investor owned utilities to make capacity payments beyond the planned capacity actually deferred or avoided.[2] Based on comments made at the Workshop, the Commission staff ("Staff") did not intend such a result in proposing an elimination of the subscription limit.

3. Although it is questionable in today's market whether there is sufficient latent qualifying facility capacity such that a standard offer contract would result in subscriptions in excess of the actual avoided unit, FPL does not believe that the Rule should be amended in a way that, even if only in theory, provides the opportunity for ratepayer subsidization of qualifying facilities. FPL submits that such a result is contrary to the intent and letter of both state and federal law and regulation.

3. The Commission's own rules recognize and support this very same principle:

> The rates, terms, and other conditions contained in each utility's standard offer contracts shall be based *on the need*

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[1] Emphasis added.

[2] *See* e.g., Notice of Proposed Rule Development *In Re: Proposed Amendments To Rule 25-17.0832, F.A.C., Firm Capacity And Energy* Contracts, Section 25-17.0832(4)(d)(2), deleting the language "the total amount of committed capacity, in megawatts, needed to fully subscribe the avoided unit specified in the contract."

> *for and equal to* the avoided cost of deferring or avoiding the construction of additional generation capacity or parts thereof by the purchasing utility. [3]

FPL respectfully suggests that eliminating entirely the nexus between the avoided unit (i.e., the identified generation need of the utility) and the subscription limits for standard offer contracts from Rule 25-17.0832, would contravene both state and federal law.

FPL Does Not Oppose Proposed Changes Limiting Standard Offer Contract Terms To A Maximum Of Five Years

4. FPL does not oppose proposed amendments to Rule 25-17.0832 creating a maximum term of five years over which firm capacity and energy may be delivered from the qualifying facility to the utility. On the other hand, FPL is not opposed at this time to the proposal made by counsel for the Florida Industrial Cogeneration Association ("FICA"), the City of Tampa, and the Solid Waste Authority of Palm Beach County ("Authority") that the Rule be amended to lower the minimum contract term from ten to five years but retain the provision that limits the maximum term "to the anticipated plant life of the avoided unit."[4]

5. FPL's non-opposition to this proposal, however, should not be construed as agreement that a standard offer contract for any fixed term that includes capacity payments must be offered in all situations, even where no capacity will be deferred or avoided. FPL maintains the position that unless capacity will be actually deferred or avoided, capacity payments to qualifying facilities represent inappropriate subsidies (at rate payers' expense) that should not occur, let alone be potentially linked to the life of an "un-avoided" unit. Utilities would continue to be free to seek a waiver of the minimum

---

[3] Rule 25-17.0832(4)(b). Emphasis added.

[4] Rule 25.17.0832(4)(e)(7). Because FPL is not at this time opposing the alternative amendment proposed by counsel for FICA, the City of Tampa, and the Authority, FPL reserves its comments on the arguments regarding the value of deferral methodology advanced at the Workshop and in preliminary comments. FPL reserves the right to file supplemental comments to the extent requested by Staff or otherwise deemed necessary by FPL.

term for a standard offer contract on a case-by-case basis as circumstances may warrant (e.g., a unit will not actually be deferred or avoided).

6. In summary, FPL does not oppose Staff's proposed amendment to make the maximum term five years. However, FPL would be willing to consider more fully the above-referenced alternative proposed at the Workshop by counsel for FICA, the City of Tampa, and the Authority.

Respectfully submitted, this
21st day of December, 2000

R. Wade Litchfield
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

Florida Power
A Progress Energy Company

JAMES A. McGEE
ASSOCIATE GENERAL COUNSEL

April 2, 2002

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

Re: Docket No. 001574-EQ

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Florida Power Corporation's Comments on the proposed amendments to Rule 25-17.0832, F.A.C.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in Word format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

JAM/scc
Enclosure

cc: Parties of record

100 Central Avenue • Post Office Box 14042 • St. Petersburg, Florida 33733-4042
Phone: 727.820.5184 • Fax: 727.820.5519 • Email: james.mcgee@pgnmail.com

Docket No. 001574-EQ
Re: Proposed Amendments to Rule 25-17.0832

Comments of Florida Power Corporation

Florida Power Corporation submits these comments in response to proposed amendments to Rule 25-17.0832, Florida Administrative Code, regarding standard offer contracts. The Florida Public Service Commission initiated changes to the standard offer rule because of numerous waivers that had been requested and granted regarding the minimum term of standard offer contracts. The initial proposal was to change the minimum term of a standard offer contract from ten years to five years. Florida Power Corporation strongly supports the rule change as initiated by the FPSC.

Lee County, Miami-Dade County, Montenay-Dade, LTD., the City of Tampa and the Solid Waste Authority of Palm Beach County, Florida (the "Parties") have requested additional changes to rule 25-17.0832. These suggested amendments are contrary to established Commission policy in implementing Statute 366.051. These newly proposed amendments include: (1) requiring that standard offer rates, terms, and conditions be based upon the purchase of additional generation rather than only on the construction of the next avoided unit, (2) allowing the use of revenue requirements as the basis to calculate payments pursuant to a standard offer, (3) allowing the Qualifying Facility to specify the duration of the standard offer contract, (4) requiring that a minimum of 20% of the energy purchased with standard offer contracts be purchased at a fixed energy price based on the projected energy cost of the avoided unit, and (5) excluding all demand side management alternatives not implemented or under contract from the utility's analyses used to identify its avoided unit. FPC strongly opposes these proposed amendments. The arguments presented by the Parties to support these amendments

have been presented to the Commission in the past and have been rejected. FPC therefore believes that it is a waste of time of the Commission's time to consider the Parties' amendments.

These amendments significantly increase the risk that the utility's customers will be required to pay costs higher than under the current rules. As initiated by the Commission, this rulemaking was to reduce the minimum term of a standard offer from ten years to five years. Such an amendment limits the risk that the utility's customers will be obligated to long-term contracts that become uneconomic. On the other hand, the additional amendments proposed by the Parties would increase the risk of such uneconomic contracts.

The Commission has been mandated to establish standard offer rates that are equal to the purchasing utilities avoided cost and the Commission has taken a balanced approach in implementing this mandate by balancing the risks and benefits associated with purchases from Qualifying Facilities.

Requiring Standard Offer Rates, Terms, And Conditions Be Based Upon the Purchase of Additional Generation Rather Than Only On the Construction of the Next Avoided Unit

Purchases of additional generation by Florida utilities are and have been a common practice. However, the majority of such purchases are to address short-term needs. Purchases for such short-term needs are typically executed shortly before the need begins making the requirement of writing and approving a standard offer contract for such a need impractical to everyone.

Long-term purchases can provide benefits to the utility's customers that cannot be achieved from a single QF facility. For instance, FPC's long-term purchase agreements are system backed products and the reliability cannot be matched by any single facility. This additional reliability has value to the utility's customers. Therefore, a standard offer contract

based on the rates of such a purchase would not account for such loss in value and result in costs in excess of avoided costs.

The Use of Revenue Requirements as the Basis to Calculate Payments Pursuant to a Standard Offer

The use of Revenue Requirements methodology in calculating capacity payments was rejected in the early days of QF rulemaking. The Commission determined that the preferred methodology to be used in calculating avoided costs payments has always been the value of deferral methodology. This methodology balances the benefit of purchasing from QFs with the risk of the purchasing utility paying more than full avoided cost. The basis of the value of deferral methodology is that it determines the cost to defer the construction of a plant for one year. Therefore, under the value of deferral the term of the contract is not relevant as long as it is less than the economic life of the avoided unit. This is because for each successive year the avoided cost is the cost of deferring the construction of the avoided unit for another year until the end of the life of the avoided unit.

A standard offer contract with a term equal to the life of the avoided unit using the value of deferral will yield payments on a net present value basis that are equal to payments using revenue requirements methodology. However, the practical result of the revenue requirements approach is a significant increase in the risk to the utility's customers. This increased risk is because if the QF fails to perform for any reason prior to the end of the contract, the utility's customers would pay more than under the value of deferral methodology. This additional risk is further exacerbated by the decreasing payments under the revenue requirement methodology.

Allowing the Qualifying Facility to Specify the Duration of the Standard Offer Contract

The burden of justifying the term of the Standard Offer Contract has been placed on the utility, where it belongs. The minimum term only needs to be long enough to incorporate the

utility's planning needs. The criteria that are specified in the Commission's rules and must be met in order to qualify for a Standard Offer contract are narrow. This is appropriate because the standard offer is a pre-approved contract. If the QF does not meet the criteria in the standard offer, then the utility is obligated to negotiate in good faith under 25-17.0834(1).

Requiring that A Minimum of 20% of the Energy Purchased with Standard Offer Contracts Be Purchased at a Fixed Energy Price Based on the Projected Energy Cost of the Avoided Unit

The energy payments associated with a standard offer contract are tied to the cost of fuel delivered to the utility associated with the avoided unit. History has demonstrated the speculative nature of forecasting fuel costs. More often than not, the forecasted energy payments have been higher that market prices. Once again, the suggestion that the energy payments should be, in part, tied to forecasted fuel prices shifts the risks from the QF to the customer. After all, the price for fuel delivered to the utility is the best approximation of the price of fuel to be used at the avoided unit. Each time the Commission has taken up the issue of payments to QFs in the past the outcome has been to mitigate risks associated with energy payments by tying them to the actual utility prices at the time of the purchase.

Excluding All Demand Side Management Alternatives Not Implemented or Under Contract From the Utility's Analyses Used To Identify Its Avoided Unit

Finally, the issue of excluding demand side management alternatives that are not implemented or currently under contract only serves to artificially increase the avoided costs associated with the avoided unit. The process of identifying the next unit to be avoided typically starts with the Ten Year Site Plan. The Ten Year Site Plan represents the utility's current official generation expansion planning document. The demand side alternatives included in the plan are previously presented and approved by the Commission. To exclude the approved demand side management plan in the utility's determination of its next unit to be avoided can only results in

Standard Offer Contract with payment terms and conditions higher than the Utility's avoided cost.

Conclusion

In conclusion, with their proposed amendments the Parties are clearly attempting to increase the payments they would receive under a standard offer contract. The criteria that are specified in the Commission's rules and must be met in order to qualify for a Standard Offer contract are narrow. Again, this is appropriate because the standard offer is a pre-approved contract. If the QF does not meet the criteria in the standard offer, then the utility is obligated to negotiate in good faith under 25-17.0834(1). The Parties that proposed these changes are all governmental bodies or large corporations that would negotiate many large contracts that are required for a solid waste facility and they are certainly capable to negotiate with a utility or any other wholesale purchaser in the event that the standard offer contract does not meet their needs.

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March 7, 2003

HAND DELIVERED

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

Re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts; FPSC Docket No. 001574-EQ

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Post-Workshop Comments.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

JDB/pp
Enclosure

cc: All Parties of Record (w/enc.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.	)	DOCKET NO. 001574-EQ
	)	FILED: March 7, 2003

TAMPA ELECTRIC COMPANY'S
POST-WORKSHOP COMMENTS

Tampa Electric Company ("Tampa Electric" or "the company") submits the following Post Workshop Comments concerning Staff's proposed amendments to Rule 25.17.0832:

1. At the conclusion of the rule development workshop conducted on February 25, 2003, participants were offered an opportunity to submit further written comments by March 7, 2003.

2. Tampa Electric adopts and incorporates herein by reference the comments that it presented on three prior occasions in this proceeding as follows:

a. Tampa Electric's Post-Workshop Comments filed December 21, 2000.

b. Tampa Electric's Prefiled Comments submitted March 1, 2002.

c. Tampa Electric's Responsive Comments filed April 1, 2002.

WHEREFORE, Tampa Electric submits these its Post-Workshop Comments and urges that the amendments to Rule 25-17.0832 be adopted as proposed in Staff's recommendation dated January 21, 2003 and without the further modifications urged on behalf of the cogenerators and small power producers who are participating in this proceeding.

DATED this 7th day of March 2003.

Respectfully submitted,

LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Post-Workshop Comments, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (*) or U. S. Mail on this 7th day of March 2003 to the following:

Mr. Richard Bellak*
Staff Counsel
Florida Public Service Commission
Room 301F – Gerald L. Gunter Bldg.
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Richard Zambo
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Palm City, FL 34990

Mr. Robert Scheffel Wright
Landers & Parsons P.A.
Post Office Box 271
Tallahassee, FL 32302

Mr. David M. Owen
Assistant County Attorney
Post Office Box 398
Ft. Myers FL 33902

Mr. Frederick M. Skopp
Montenay International Corp.
3225 Aviation Avenue, Fourth Floor
Miami, FL 33133

Ms. Susan D. Ritenour
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

Mr. Jon Moyle, Jr.
Moyle Flanigan Katz Raymond
& Sheehan, PA
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Mr. Eric A. Rodriguez
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Mr. Jeffery Stone
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ATTORNEY

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AUSLEY & MCMULLEN

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April 1, 2002

HAND DELIVERED

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

Re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts; FPSC Docket No. 001574-EQ

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Responsive Comments of Tampa Electric Company.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

JDB/pp
Enclosure

cc: Richard Bellak (w/enc.)

RESPONSIVE COMMENTS OF TAMPA ELECTRIC COMPANY
DOCKET NO. 001574-EQ
FILED: April 1, 2002

Tampa Electric Company ("Tampa Electric" or "the company"), having participated in the March 12, 2002 informal workshop in this matter, adheres to its previously submitted written comments in support of Staff's proposed amendments to Rule 25-17.0832, Florida Administrative Code. As a preliminary matter, the Staff's proposed rule amendment is a straightforward and simple one that addresses the minimum term of a standard offer contract in light of recent decisions by the Commission addressing that very subject. While Staff's proposal focuses on a single issue, the Qualifying Facility ("QF") Petitioners have launched an expansive effort to readdress a number of unrelated issues that have been considered and rejected in the past. Staff's laudable and focused effort should prevail and the QF Petitioners' efforts to convert this proceeding into an onmibus rulemaking should be rejected. Tampa Electric offers the following additional specific comments in response to the comments and testimony submitted on behalf of the QF Petitioners:

1. Staff's proposed amendments conform the rule to what the Commission has already approved four or five different times since September 1999 due to uncertainty in the market. The QF Petitioners propose, unnecessarily, to "reinvent the wheel" with their amendments. Petitioners' alleged need for their proposed amendments is newly found. Petitioners did not see the need for them until

Staff proposed their unrelated amendment to conform the standard offer contract term to a number of recent rulings by the Commission.

2. The QF Petitioner's testimony infers that the uncertainty in the wholesale market is not a reflection of the cost of utility-built future generation costs, but the future market cost for new generation being built in Florida that is still in development and what, if any, effect the establishment of RTO-controlled markets might have on generation costs in Florida. Five-year terms have been accepted by the FPSC multiple times now reflecting that uncertainty over future market price.

3. The QF Petitioners inappropriately use the terms, monopsony and monopsonist, to describe utilities. A monopsony is defined as a market situation where there is only one buyer. That is a completely inaccurate description of the market available to QFs. A QF is not precluded from selling to multiple buyers. The QF has, in fact, a superior position to pure markets because there are obligated buyers as well as non-obligated buyers to whom the QF can sell. Example: A co-generator, currently under firm contract can withhold capacity at times of shortfall and instead make hourly sales in the market, taking advantage of market conditions while still

remaining within the terms of the Standard Offer contract.

4. The QF Petitioners' assertions regarding "avoided cost" and "full avoided cost" and regulatory bias against QFs are erroneous.

- The QF is offered an avoided cost contract wherein he gets paid the utility avoided costs as defined by the PSC. That cost does not have to be equal to the avoided cost over the life of some avoided unit. It can be the avoided cost during the term of a contract entered into with the QF, including the capacity costs during that term.
- QF Petitioners presume that the utility generation should be subject to a market test, downward only, of course. Utility generation is priced on a cost basis, and is neither written-up to the market price when it is below market nor written-down to the market price when it is above market. QF power is only afforded avoided cost status to the utility taking the power. If the market price is higher the QF can test that market price and sell at the end of five years to a higher market price. The benefit is that they can always seek a five-year deal at the utility avoided cost, thus setting a floor against a potential market upside.

- QFs are actually treated more favorably than the utility investment because QF costs are not an issue in determining the price to be paid. What is determinative is the utility avoided cost, which might be significantly higher than the QF cost, but the QF can extract a price based on the utility cost and thus more than recover its cost.
- The five-year term ends, but the utility is obligated to continuously provide new avoided cost offers based upon its generation expansion plan. QF's can take advantage of these offers thus setting a floor for tapping into the market with other buyers of wholesale power.

5. QF Petitioners have asserted that utilities have assurances of cost recovery. Utilities have no assurances of cost recovery. Recovery of utility generation costs over a 30 to 40-year life is always subject to prudence review by the Commission in rate proceedings and a "used and useful" test. Recovery of QF contract costs is subject to a prudence test before they can be recovered through the cost recovery process. In addition, regulations and laws associated with restructuring of the electricity market could change a utility's market position overnight. A five-year

guarantee is as much as others in the business can get. Why should a QF have more assurance than that?

6. Conservation and other demand side programs cannot be built or stopped as quickly as a new generator. The growth in those programs should not be removed when determining the avoided unit or ratepayers will be harmed who count on those programs to be available when they make choices in home construction or energy conservation measures.

7. QF Petitioners have asserted that without long-term contracts financing for their projects would not be available. Yet IPPs continue to secure financing for merchant plants with no firm capacity contracts. Why wouldn't financing be equally available to a municipality or county government for a facility that receives its primary revenues from solid waste disposal tipping fees and taxes - not energy sales?

Tampa Electric appreciates the opportunity to submit the foregoing responsive comments. The company is hopeful that the rule amendments proposed by Staff will be approved as a result of this process, and that the rule amendments proposed by the QF Petitioners will be deemed unnecessary and inconsistent with interests of retail utility customers in this state.

AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

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March 1, 2002

HAND DELIVERED

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

Re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts; FPSC Docket No. 001574-EQ

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Prefiled Comments of Tampa Electric Company.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

JDB/pp
Enclosure

cc: Richard Bellak (w/enc.)

PREFILED COMMENTS OF TAMPA ELECTRIC COMPANY
DOCKET NO. 001574-EQ
FILED: MARCH 1, 2002

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Rule 25-17.0832, Florida Administrative Code, and Order No. PSC-01-2175-PCO-EQ ("Order No. 01-2175") issued in the above docket on November 5, 2001 offers the following written comments on the proposed amendments to Rule 25-17.0832, Florida Administrative Code, entitled "Firm Capacity and Energy Contracts":

On September 4, 2001 the Commission voted to propose amendments to Rule 25-17.0832, Florida Administrative Code, as set forth in the August 23, 2001 Staff Memorandum discussing the various issues and proposing specific amendments to the rule.

Tampa Electric Company has reviewed the Staff's proposed amendments and is in general agreement with the approach taken by Staff.

This will serve as Tampa Electric's prefiled comments pursuant to Order No. 01-2175. The company reserves the right to prefile responsive comments or responsive testimony by April 1, 2002, as contemplated in Order No. 01-2175, to the extent the company deem it necessary or appropriate.

Cepp/Helton

AUSLEY & MCMULLEN
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December 21, 2000

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: In re: Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts; FPSC Docket No. 001574-EQ

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Post-Workshop Comments.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

JDB/pp
Enclosures

cc: All Parties of Record (w/enc.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.	))))	DOCKET NO. 001574-EQ FILED: December 21, 2000

TAMPA ELECTRIC COMPANY'S
POST-WORKSHOP COMMENTS

Tampa Electric Company ("Tampa Electric" or "the company") submits the following post-workshop comments concerning Staff's proposed amendments to Rule 25-17.0832:

1. Tampa Electric supports Staff's proposed amendments to Rule 25-17.0832 governing firm capacity and energy contracts. As the Staff pointed out at the December 12 workshop in this docket, the proposed rule revisions were prompted by the Commission's recent observation that a number of investor-owned utilities had been requesting rule waivers to reduce the ten year term presently specified in the rule to a five year contract term. Tampa Electric was one of those utilities.

2. As the Staff pointed out at the workshop, the contract term language initially adopted in the rule was selected to accommodate the planning and construction lead time associated with the type of generating plant the utilities were constructing when the rule was adopted. Certainly the planning and construction period associated with the smaller gas-fired units being utilized today is more consistent with a five year term, as opposed to the ten year term adopted back when utilities where constructing larger coal-fired base load plants. Nothing on the horizon would appear to warrant a standard offer contract extending beyond the proposed five year period. Thus, adopting this rule amendment would conform the rule to present day reality and obviate the need for utilities to seek rule waivers.

3. Limiting standard offer contracts to a five year term would also help utility customers reduce their risk of being locked into standard offer contracts that turn out to be significantly more costly than other power supply alternatives. Recent history has demonstrated that longer term full avoided cost based standard offer contracts can lead to just such a result.

4. Based on the foregoing, Tampa Electric believes the revisions proposed by Staff should be adopted.

DATED this 21st day of December 2000.

Respectfully submitted,

LEE L. WILLIS
JAMES D. BEASLEY
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Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Post-Workshop Comments, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (*) or U. S. Mail on this 21st day of December 2000 to the following:

Ms. Mary Anne Helton*
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Mr. Richard Zambo
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Mr. Wade Litchfield
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Mr. Russell Badders
Beggs & Lane
Post Office Box 12950
Pensacola, FL 32576

ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET No. 001574-EQ,

IN RE: PROPOSED AMENDMENTS TO RULE 25-17.0832, F. A. C.,

FIRM CAPACITY AND ENERGY CONTRACTS

SUPPLEMENTAL COMMENTS OF GERARD J. KORDECKI

ON BEHALF OF

LEE COUNTY, FLORIDA,

MIAMI-DADE COUNTY, FLORIDA,

AND

MONTENAY-DADE, LTD.

MARCH 7, 2003

DOCKET NO. 001574-EQ, IN RE: AMENDMENT OF COGENERATION RULES

SUPPLEMENTAL COMMENTS OF GERARD J. KORDECKI

Q. Please state your name, address and occupation.

A. My name is Gerard J. Kordecki. My business address is 10301 Orange Grove Drive, Tampa, Florida 33618. I am self-employed as an Energy and Regulatory Consultant.

Q. Mr. Kordecki, have you previously filed comments in this docket?

A. Yes, I filed comments on March 1, 2002.

Q. What is the purpose for your supplemental comments?

A. My comments address the additional proposed amendments to the rule submitted to the Commission on February 27, 2002 on behalf of Lee County, Miami-Dade County, and Montenay-Dade, Ltd. (collectively, "the Petitioners"). These proposed amendments were consolidated into this rule docket on March 14, 2002. I will also comment on some of the utility responses to the staff's proposed amendments, the amendments proposed by Lee County, Miami-Dade County, and Montenay-Dade, Ltd., and on issues which arose during the February 25, 2003 Commission Staff workshop.

<u>Standard Offer Capacity Payments and Determination of Avoided Cost</u>

Q. What was the first amendment in the February 27th, 2002 submission?

A. The first amendment proposed by the Petitioners is intended to more closely match standard offer contract payments to QFs with the costs that the utility would otherwise incur, as the utility would incur them. This amendment is as follows:

(4) Standard Offer Contracts.

* * *

(b) The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction or purchase of additional generation capacity or parts thereof by the purchasing utility. Each standard offer contract shall provide the option for the qualifying facility to be paid rates equal to the costs that would be borne by the utility's general body of ratepayers if the utility were to build its avoided unit or purchase capacity and energy from another source. Without limitation, this shall include payments calculated on the same basis as the utility's revenue requirements where the qualifying facility signs a standard offer contract with a term equal to the projected life of the avoided unit, payments calculated on the same basis as payments to be made pursuant to a power purchase arrangement where such power purchase is the generation resource avoided by the purchase from the qualifying facility, and payments calculated on the same basis as the utility's proposed revenue requirements for a proposed plant where the utility plans to limit cost recovery for the proposed plant to a fixed period of time. This requirement shall not preclude the use of the value of deferral payment methodology to calculate capacity payments where the qualifying facility proposes to sign a contract with a term less than the projected life of the avoided unit. Rates for payment of capacity sold by a qualifying facility shall be specified in the contract for the duration of the contract. In reviewing a utility's standard offer contract or contracts, the Commission shall consider the criteria specified in paragraphs (3)(a) through (3)(d) of this rule, as well as any other information relating to the determination of the utility's full avoided costs.

The proposed amendment very simply does three things. It expands the applicability of the standard offer contracts to purchase power contracts

and to utility plants where the utility proposes to limit the cost recovery to a fixed period of time and lastly, requires the utility to pay the Qualifying Facilities (QF's) the same revenues, in the same way as the utility would receive them if the utility had built the plant. In this latter instance the QF must be willing to sign a contract which covers the projected life of the avoided unit.

There may be occasions when a utility may sign -- or may have the opportunity to sign -- a firm power purchase agreement in lieu of building a plant. If this situation arises and the contractual performance requirements are such that a qualifying facility could meet the criteria, then it would be appropriate that the QF be eligible through a standard offer to meet the purchase requirements if the purchase is considered as the avoided unit. A unit power sale/purchase would be the most obvious example of this situation.

Q. Are you familiar with any situations where a utility wanted to rate base a unit for a specific period of time then remove it from the rate base?

A. I've read about a couple of instances where such treatments were proposed but I haven't heard what the final resolutions were. Situations where the capacity in the rate base is fixed and is less than the life of the unit, fit a standard offer contract situation and the same revenue recoveries proposed by the utility should be applied in the same manner to a QF.

Q. Mr. Kordecki, your amendment proposes that QFs should receive the same revenue requirements and in the same manner as if the utility built

the unit. Isn't it true that the QF would receive the same present value of revenues under the present rule through the Value of Deferral methodology?

A. Yes the present value of total revenues would be the same but the QF is not receiving the avoided costs in the same manner as the utility receives its revenues. Use of Value of Deferral for life of the unit contracts for QFs is not consistent with the mandates of the Public Utility Regulatory Policy Act (PURPA) and the wishes of the Florida Legislature. Promotion of QFs was deemed to be in the public interest. It was stated that QFs should receive the same level of revenues (i.e., avoided cost) that the utility would have received if the utility had built the capacity. Use of the Value of Deferral capacity payment methodology, which has increasing revenue streams, is not the same as the declining streams in the application of revenue requirements. Use of the Value of Deferral methodology also greatly increases the possibility that, at some point in time, after the QF has been paid much less than the utility's revenue requirements, the QF contract will come to be viewed as undesirable, and even attacked, because it is then "above market." This has already occurred in Florida.

Further, this is unfair because cities or counties which own or operate, or both own and operate, waste-to-energy facilities are penalized through the Value of Deferral methodology by losing the higher initial payments that the utility would receive through a revenue requirements collection methodology. The city or county has assumed the same commitment as the utility by signing

a contract which covers the expected life of the unit. In fact, the standard offer contract will have certain minimum operating parameters which must be met by the waste energy facility in order to receive the capacity payments. A utility normally doesn't carry these operating requirements in order to "collect" the associated revenue requirements.

A simple way to describe the problem is to think about your own financial position. A company offers you a job paying X dollars a year for four years. You have immediate needs to meet mortgage payments, car payments, food and various household bills. The company says it will pay 60 percent of X dollars the first year, 90 percent the second and so forth. They say that after four years you will receive on a cumulative basis the present value of four years of X dollars and that you should be indifferent to how you receive the money since you get the total amount after four years. The cities and counties have bills to pay today just like you do.

Term of Standard Offer Contracts

Q. Mr. Kordecki, what was the second suggested amendment?

A. The second suggested amendment was to change Subsection 25-17.0832(4)(e)7 to provide that, consistent with the utility's obligation to purchase all of the electric power that a QF has available to sell to the utility, the QF would have the option to specify the duration of the standard offer contract. Specifically, the proposed amendment is as follows:

(E) Minimum Specifications. Each standard offer contract shall, at minimum, specify:

* * *

7. The period of time over which firm capacity and energy shall be delivered from the qualifying facility to the utility. Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in-service date of the avoided unit. Consistent with the utility's obligation to purchase the firm capacity and energy that a qualifying facility has available to sell to a utility, the qualifying facility shall have the option to specify the duration of its obligation to deliver firm capacity and energy within the above parameters.

Q What does this amendment accomplish?

A. This amendment addition clarifies the right of a qualifying facility to sell its output to a utility for a period of time between 10 years and the life of the unit. The selection of the period for the purchase is the right of the QF. At first this might appear to be contrary to a utility's planning principles but there is no conflict since the utility is required to only pay avoided costs. With payments at avoided costs, the utility's ratepayers are neutral to the transaction. The qualifying facility may have a number of reasons to pick a specific period for the sale but, no matter what period is selected (minimum of 10 years, maximum life of the unit), the utility's ratepayers are held harmless and may even receive lower costs if the period selected has value of deferral payments which are less than the revenue requirements that a utility would receive if the utility had built the capacity. In the workshop held on February 25th of this

year, it was very apparent that there were misunderstandings about the effect of adding the word Page 6 "specific" in the staff's proposed amendment found in the description of "Minimum Specifications" Section (E). The result would be to shift to the utilities the right to name the contract period. With this change in contract responsibility, I do not see any reason that the utilities, acting in their own self-interests, would offer QFs contract periods which go beyond the minimum period (10 years presently, 5 years if the staff recommendation is accepted) since the utilities have nothing to gain. Utilities, being financially rational, would prefer to build capacity and earn a return rather than buy the power from a QF. However, this is contrary to the policy adopted by the U.S. Congress through PURPA and by the Florida Legislature through Section 366.051, Florida Statutes, to encourage cogeneration by requiring utilities to buy the power that a QF has available to sell at the purchasing utility's full avoided cost.

Fuel Cost Risk Management

Q. What are your suggestions regarding a fuel cost risk management amendment?

A. The Petitioners' suggestions regarding fuel risk management, with which I agree, arose from comments made by the Commissioners at one or more agenda conferences in which energy payment risk was discussed. The Petitioners' specific proposed amendment is as follows:

(d) As a risk management and fuel-cost hedging measure, each public utility subject to this rule shall provide for a minimum of twenty (20) percent of the energy purchased pursuant to standard offer contracts entered into following the effective date of this subsection to be purchased at the projected energy costs reflected in the utility's analyses and plans as of the date that the standard offer contract is executed by the utility and the qualifying facility. Such projected energy costs shall reflect not only the projected fuel costs associated with the avoided unit, but also the avoided operation and maintenance costs of the avoided unit, and shall also be based on the projected operations of the avoided unit as of the time the standard offer contract is executed. Further, all such costs shall be calculated on a directly comparable basis to that upon which the utility would calculate the costs associated with its avoided unit for the purpose of seeking recovery of such costs from its customers if it were to build and operate the avoided unit.

Q. What is the rationale for this amendment?

A. This amendment would provide for some limited fuel cost hedging by providing for fixed energy payments based on projections at the time that the standard offer contract is entered into. It does not require the utility to agree to make all energy payments on the basis of projected energy payments, but rather simply requires that a *minimum* of twenty (20) percent of the energy purchased under future standard offer contracts be purchased at energy prices that are fixed on the front end. This is no different than the utility entering into a longer-term fuel purchase contract. It will protect the utility against the risk of fuel costs escalating more rapidly than projected at the time that the contracts are entered into. *I believe that the 20 percent requirement* is a sound risk management measure for the utilities, reasonably balancing the risks of fuel costs going either way, and reasonably giving the utility great

leeway, i.e., between 20 and 100 percent, in specifying the amount of energy that they choose to contract for at energy prices that are fixed on the front end

Planning Analyses to Determine Avoided Unit and Avoided Cost

Q. Have you any other amendments to offer?

A. Yes. The following amendment addresses the planning assumptions in which avoided units and avoided costs are determined:

(6) Calculation of standard offer contract firm capacity payment options.

(a) Calculation of year-by-year value of deferral. The year-by-year value of deferral of an avoided unit shall be the difference in revenue requirements associated with deferring the avoided unit one year. All analyses to identify the type and timing of a utility's avoided unit, and all calculations of the value of deferral of an avoided unit, shall be conducted on a basis that treats supply-side and demand-side options equally and comparably. Specifically, all such analyses and calculations shall include only the impacts of existing and contractually committed demand-side management measures and shall not include the effects of any projected demand-side management measures that are not already in place or contractually committed to the utility. The value of deferral shall be calculated as follows:

Q. Please describe the effect of this proposed change.

A. By removing the non-committed conservation and load management programs from the forecast, all potential resources that could meet the utility demand will be evaluated on a level playing field. From the responsive comments of the utilities and some limited discussion at the recent workshop, there are three arguments presented against this amendment.

First, there is a claim that the utilities can't just start, stop and adjust their demand-side programs. From both experience and observation, utilities have, in fact, made significant program adjustments with very little lead time in many cases. They have also been forced to deal with significant customer-initiated adjustments – i.e., attrition – in their programs on relatively short notice. Due to the limited availability of the standard offer, both in megawatts and fuel sources, only relatively small qualifying facilities are in the market to sell to the utilities. On a practical basis, only small amounts of QF power would be expected to be available at any one time. Adjusting demand-side management programs to reduce not-yet-committed and/or not-yet contracted installations to reflect an addition of a relatively small increment of waste-to-energy supply-side resources would not, in my experience and opinion, be difficult.

The next set of comments involved the fact that the Commission had heard similar amendments some 20 years ago. They argue that it would be redundant to hear it again. A lot of water has gone over the dam since then. The applicability of the QF standard offer has been limited significantly and the fear that standard offer customers may not be viable or might walk away and so forth, is not applicable today; this argument is particularly inapplicable to waste-to-energy facilities, which exist primarily for the purpose of disposing of municipal waste using a preferred technology, i.e., combustion to generate power as opposed to a disfavored technology, i.e., landfills. The utilities, since those hearings, have been required to adopt an Integrated Planning Process

(IRP) to determine their resource plans. A true IRP would include QFs as potential resources during the planning process. Under the planning practices used by the utilities today, however, QFs appear to be an afterthought to be dealt with after the resource plan is decided.

Lastly, the Commission has changed demand-side evaluations. If a program (measure) or the demand reduction's life is not as long as the life of the unit to be "avoided", then a value of deferral methodology will also be included along with revenue requirements analysis in the evaluation. The Value of Deferral methodology can greatly reduce program benefits. Of course, some will say that since a demand-side program must have a cost/benefit of 1.2 or greater contrasted to the avoided costs, how can a standard offer QF be more cost effective?

There are several answers. First, QF generation will add to reliability, which, of course, has value; and QF generation, and waste-to-energy generation in particular, will add to reliability more reliably than DSM measures, because it is more reliable on a megawatt-for-megawatt basis and because contracted waste-to-energy generation cannot simply disappear from the utility's system with 30 days notice without incurring substantial penalties, unlike the case of DSM programs. Secondly, many of the "avoided" units have been combined cycle units, which will run well below the incremental generators in an economic dispatch. Ultimately this may mean that a demand-side management measure may have a fuel penalty assigned to the program due to the type of unit being avoided But the QF will not. Purchased QF

power will lead to lower average fuel costs in this case More importantly the QF can select a contract period, which can make the QF option more cost-effective than a conservation program due to lower capacity payments.

Another utility argument against removing incremental DSM is that QF capacity payments would be higher. This is true, but only if the QF is the more cost-effective option when evaluated on a truly comparable, level-playing-field basis. For all of these reasons, the commission should require that all incremental demand-side management programs be removed from the forecast that is used to determine the "avoided" unit.

Other Anti-QF Arguments

Q. Mr. Kordecki, do you have any other concerns about this rulemaking.

A. Yes I do. There seems to be some underlying belief by many of the parties that standard offer power creates undue risks for ratepayers and that the megawatts available from eligible QFs are so small that there is no real value in their purchase. Let's first look at the idea of ratepayer risks associated with purchasing this QF power. If the QF receives only avoided cost, then the ratepayers have no financial risk. The risk of the utility paying more than avoided costs for QF power is not due to the length of the period after the forecast of the avoided unit but to errors (even with prudent estimates) made in the planning analyses and forecasts. This risk is exactly the same, on a present value basis, as the risk associated with the utility building its own unit: if the QF payments are the same as the utility's revenue requirements on a

present value basis, and the QF contract comes to be above-market at some future point in time, the utility's self-built unit would also be above-market on a present value basis.

It is my understanding that the utility picks the avoided unit (which may or may not be be the next unit) and specifies the operating characteristics of this avoided unit. Along with selecting the unit type and timing, the utility picks the subscription level (number of megawatts). I have no idea how this subscription level is determined. The utility tells any potential QFs what the required operating performance parameters will be in order for the QF to receive full (or even any) capacity payments. With these performance standards, the utilities' ratepayers are protected against poor operating performance. I might add, in most cases, utilities do <u>not</u> have performance standards assigned to assets which the utilities must reach in order to receive the revenue requirements from those assets. The planning process as far as lead time for generation unit construction is much shorter today with the selection of simple combustion turbine technology without steam generators driven by heat recovery from the CT exhaust gases. The lead time now ranges from 18 months to 36 months.

What this all means is that if there are risks being created with generation selection, the utilities are the ones creating the risks in their planning processes The highest risk is created when the utility builds the unit and receives revenue requirements over the life of the unit, typically twenty or thirty years, and sometimes longer in practice. If avoided costs are accurately

forecasted then the QF receives the costs and the ratepayers are unaffected. Allowing the utilities to only offer short term contracts, which have low capacity payments due to the value of deferral valuation methodology, only discourages QF investment which in turn, encourages utility construction which has the highest potential risks over its life.

Q. What about the argument that small incremental megawatts of capacity have little or no value?

A. All generation resources have value. If every megawatt that a utility might have that is over and above its reserve margin or other planning criteria were deemed to have no value, then I would expect that the value of that plant would not be allowed in the utility's rate base and no earnings for that plant would be allowed. It is well understood that plant additions are lumpy in the sense that from year-to-year there will not be an exact match of plant and level of plant need.

The addition of standard offer QFs generally will have addition sizes similar to some of the conservation programs of the utilities. Though these programs and QF power are dissimilar in operation, they are somewhat comparable in size and collectively support the utilities' overall resource plans.

At this time, Florida has a total of 11 waste-to-energy plants with 357.2 megawatts of firm capacity committed under contract to Florida load-serving utilities; two other plants have a combined 12.0 MW of power available to sell

on a non-firm basis. There can be no doubt that this 357 MW of firm capacity has avoided some significant amount (probably between 350 and 400 MW) of capacity that would otherwise have had to be built by Florida's load-serving utilities or purchased from other sources. This is significant. And, while there may be some differences due to different payments being made to different QFs on the basis of different avoided units that were identified at different points in time, this does not mean that the QFs don't provide significant, meaningful capacity avoidance benefits to the State as a whole, nor does it necessarily mean that the QFs are being paid more than the value that they provide.

Q. Mr. Kordecki, does this conclude your comments?

A. Yes, it does.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*), or by U.S. Mail, on this 7th day of March, 2003, to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 001574-EQ,
In Re: Proposed Amendments to Rule 25-17.0832, F.A.C.,
Firm Capacity and Energy Contracts

COMMENTS OF GERARD J. KORDECKI

ON BEHALF OF

LEE COUNTY, FLORIDA,

MIAMI-DADE COUNTY, FLORIDA,

AND

MONTENAY-DADE, LTD.

March 1, 2002

COMMENTS OF GERARD J. KORDECKI

I. INTRODUCTION

Q. Please state your name, address and occupation.

A. My name is Gerard J. Kordecki. My business address is 10301 Orange Grove Drive, Tampa, Florida 33618. I am self-employed as an energy and regulatory consultant.

Q. Please summarize your educational background and work experience.

A. I received a Bachelor of Science degree in Advertising in 1963 and a Master of Arts in Marketing in 1965. Both degrees are from the University of Florida. I also pursued graduate courses in Economics at the University of Florida. I worked for Tampa Electric Company for 33 years in various capacities involving marketing, sales, conservation, resource planning, and rates and regulation. I have participated in the development of and supervised the preparation of numerous studies and plans involving conservation goals and programs, cost allocations, rates, load research and resource plans. Since January 1999, I have consulted with power plant developers, and industrial and institutional utility customers on rates, regulatory policy, and transmission access issues.

Q. Mr. Kordecki, have you previously testified before the Florida Public Service Commission ("FPSC" or "Commission")?

A. Yes, I have testified regarding the subjects identified above on more than 37 occasions. Proceedings in which I have testified include rate cases, determination of need hearings, various conservation dockets and hearings concerning allocation of costs and benefits between ratepayers and utilities. I have participated in numerous rule hearings, agenda conferences and Commission workshops.

Q. On whose behalf are you presenting comments in this rule proceeding?

A. My comments are presented on behalf of Lee County, which owns the Lee County Resource Recovery Facility, Miami-Dade County, which owns the Dade County Resources Recovery Facility and Montenay-Dade, Ltd., which operates the Dade County facility pursuant to an operation and management agreement with Miami-Dade County. Both facilities are qualifying small power production facilities under Federal and Florida law and solid waste facilities as I understand the definition of that term in Section 377.709, Florida Statutes.

Q. What is the purpose of your comments in this proceeding?

A. My comments point out certain problems with the Staff's proposed amendments to the Commission's Rule 25-17.0832(4)(e)3.&7., Florida Administrative Code ("F.A.C."), relating to standard offer contracts (the "Rule"). The most notable problems with the Staff's proposed amendments are: (1) that the proposed amendments treat solid waste facilities and other facilities that are eligible to accept standard offer contracts in a biased and discriminatory way as compared to the regulatory treatment afforded public utilities that construct and operate power plants and (2) that while the proposed amendments are intended to reduce the risks to utility customers (or ratepayers) associated with power sales contracts, they actually impose the virtually identical risks that are associated with utility-built power plants on utility customers. In my comments, I also suggest alternatives that will, in my opinion, better serve the State's declared policy favoring cogeneration and small power production facilities generally and solid waste facilities specifically.

Q. What is your understanding of the FPSC's proposed changes to the Rule?

A. As published in the Commission's Order No. PSC-01-1844-NOR-

EQ, the key substantive amendments to the Rule are a reduction in the minimum standard offer contract term from ten years to five years and a provision requiring that standard offer contracts have a "specific period" or term of years. Presumably, this "specific period" would be designated by the utility in its proposed standard offer contract tariffs and subject to Commission review and approval. In background documents explaining the proposed amendments, the Commission Staff stated: "The attached amendments to Rule 25-17.0832 will reduce the potential for ratepayers to be tied to a purchased power contract that is more expensive than alternative power sources during times of declining avoided cost" and "[t]he five-year minimum term balances the interests of the ratepayers without unduly discouraging the construction of small qualifying facilities."

II. BACKGROUND

Q. Mr. Kordecki, what documents have you examined or reviewed in preparing your comments concerning the proposed amendments to the Rule?

A. Yes, I have reviewed a number of statutes, legislative history documents, Commission orders, documents from previous Commission proceedings regarding the Commission's Cogeneration Rules, and other documents which address the

State of Florida's policies regarding resource efficient cogeneration in general and solid waste facility generation specifically. There are numerous dockets from the early 1980s well into the 1990s which address cogeneration and standard offer contracts.

Q. Please describe what you learned from these various documents.

A. I'll give an overview without going into great detail about the evolution of electricity supply from cogenerators in Florida with emphasis on standard offer contracts. Generally, the Commission moved conservatively in response to its obligations to meet the requirements of the Public Utility Regulatory Policies Act, commonly known as "PURPA". PURPA required utilities to purchase electricity from qualified generators and small power producers. The FPSC rule development overtones were to protect against cogenerator non-performance and assign risk discounts to avoided cost payments. This cautious approach avoided many of the mistakes made in other parts of the country—namely the Far West and Northeast, where long-term cogeneration contracts with all projected prices fixed as of the date of execution frequently turned out to be uneconomic as overall market generation costs declined. On the other hand, the

assignment of a statewide base load power plant as the avoided unit appears to have stimulated the development and construction of cogeneration facilities and solid waste facilities. A "hassle-free" or "no-hassle" standard offer alternative was part of the rules.

In the late 1980s, the Florida Legislature became more active in the encouragement of cogeneration particularly solid waste facilities. In 1988, the Legislature encouraged the use of solid waste facilities to generate electricity and as an environmentally preferred alternative to conventional solid waste disposal in Florida. During the 1989 sunset review of Chapter 366, Florida Statutes, the Legislature enacted Section 366.051, Florida Statutes, which specifically recognized the benefits of qualifying cogeneration and small power production facilities and recognized that power from such facilities was more resource efficient and its value should be calculated at the purchasing utility's avoided costs; the Legislature also required the Commission to remove the 20 percent risk factor assigned to standard offer contracts, provided that the facilities provided satisfactory security, based on their financial stability. More recent changes by the FPSC include requiring individual utility avoided unit analyses as opposed to a statewide avoided unit, removal of security

deposits, levelized payments and the limiting of the availability of standard offer contracts to solid waste facilities, small power producers or qualifying facilities with 75 percent renewable resources as their energy source, and qualifying facilities of 100 KW or less. This latter change has eliminated the hassle-free availability of standard offers from most potential cogenerators except solid waste facilities.

At this time, there is very little activity in the development of cogeneration facilities in Florida.

III. SUMMARY

Q. Mr. Kordecki, please summarize your comments.

A. My comments address the inappropriateness of reducing the minimum term for the standard offer from 10 to 5 years, which I believe will effectively result in standard offer contracts being for only 5 years without affording the qualifying facility any flexibility in defining the ultimate contract period. My comments also address the proposed requirement that the standard offer contract contain a utility selected "specified period" for the length of the contract. This proposed amendment is similarly inappropriate; it biases the capacity selection process against cogeneration and solid waste facilities and imposes un-level, discriminatory treatment on those

facilities as compared to utility-built generation facilities. Even more importantly, it will quite likely result in public utilities' customers being exposed to exactly the same types of risks associated with utility-built capacity that the Commission Staff are seeking to protect the customers from with respect to QF contracts.

My comments also include recommendations that would correct the problems identified above.

IV. DISCUSSION

Q. Please summarize your understanding of the basic policy of the Florida Legislature as it relates to cogeneration and electricity generation from solid waste facilities.

A. The Florida Legislature has enacted statutes that recognize the benefits of cogeneration, that express the Legislature's intent that the use of renewable energy sources and cogeneration be encouraged, and that declare the Legislature's policy favoring and encouraging the development of solid waste facilities because they not only represent an effective conservation effort but also represent an environmentally preferred alternative to conventional solid waste disposal.

Q. Do you consider the policy favoring cogeneration and generation by solid waste facilities to be sound public

policy that is consistent with the public interest?

A. Yes, I do. This policy promotes resource-efficient generation and reduces the amount of land in the State that must be committed to landfills, with their attendant environmental issues.

Q. Why do you oppose the Staff's recommendation to reduce the minimum contract period for standard offers from 10 years to 5 years?

A. The Commission approved the 10-year minimum contract period based on:

> "The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty-year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers." (Docket No. 820406-EU, page 19)

The overriding concern here was to protect the public utility and its ratepayers so that the capacity would be available to serve load. The Staff's recommendation implies, or appears to be based on, a belief that this availability, for "at least ten years" is no longer a concern and five years after the in-service date is apparently adequate for utilities. The selection of the 10-

year period also afforded the QF some financial protection and certainty. This certainty from a no hassle contract is greatly reduced by this proposed change to the Rule and would effectively require the QF to negotiate a new contract every five years.

This is turn will mean that the QF will have its payments re-set to then-current market prices every five years. This biases the process against QFs and discriminates against QFs because it treats them differently than public utilities who build their own plants; utilities that build their own plants, under normal circumstances, get to put the cost of their plants into their rate base and recover the costs associated with owning and operating those plants over the entire useful lives. This includes depreciation to recover the capital invested, return on investment to cover debt service and provide a return on equity, and operating and maintenance ("O&M") costs. Under standard regulatory treatment, if the utility makes additions, repairs, refurbishments, or other improvements to its plants, those costs are typically capitalized and recovered over the plant's remaining life. Under the Staff's proposed amendments, the QF is not afforded comparable treatment.

Q. How was the change from 10 years to 5 years arrived at by the Staff?

A. The proposed change in the minimum term of the standard offer apparently is based on waivers (five or six requests) granted by the Commission to utilities over the last several years. There was no rationale given in the Staff recommendation concerning how the five-year period was arrived at by the utilities as the appropriate waiver period, or by the Staff as to the minimum period for a standard offer. The Staff states:

> "the IOU's requested the waiver to reduce the risk that ratepayers would be tied to a long-term contract that is above avoided cost because of the uncertainty in the wholesale generation market." (page 2 of the Staff recommendation).

If the standard offer contract was for non-firm or as-available power with some fixed pricing, the statement would have some validity. The selection of longer periods causing risks of higher costs would seem to suggest that public utilities generally overestimate costs of generation in their resource planning. History may not bear this out.

Moreover, exactly the same risks are present with a utility-built power plant, which under conventional regulatory treatment (which, to the best of my knowledge, the Commission still employs) allows the utility full recovery of all prudently incurred capital, depreciation,

and operating costs for the entire life of the plant, which can be 30 or 40 years or even longer.

Taking the Staff's premise to the extreme -- that is, trying to match generation costs to wholesale generation market prices -- when applied to utility built generation, then utility rate-based generators would also only be allowed a five-year cost recovery period by the FPSC, and every sixth year the revenue requirements would have to be adjusted based on changes in avoided capacity costs. This process would then capture the fluctuating generation costs that the Staff feels are problematic with ten-year standard offer contracts and would level the playing field with potential standard offer cogenerators. With an initial five-year recovery and the potential unpredictable future recovery levels, utilities would be expected to have increased borrowing difficulties which in turn would raise borrowing costs. Any financial hardship caused by a shorter recovery period to the utilities would be similar to a cogenerator whose contract period is less than the life of the plant being financed. Changing from a minimum ten-year contract to a five-year contract without the cogenerator having an option for longer periods will only increase the cogenerator's costs, if for no other reason, the increased transaction costs.

Q. What effect will the reduction in the "minimum" standard offer period have on cogeneration construction?

A. Reducing the standard offer minimum to five years, which I believe will become the maximum period, can only be adverse to cogeneration. Discouragement of cogeneration through biased rules is contrary to the wishes of the Florida Legislature. The Legislature has been emphatic that efficient cogeneration should be encouraged and particularly solid waste generating facilities:

> "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state . . . ." Section 366.051, Florida Statutes.
>
> "The Legislature further declares that the combustion of refuse by solid waste facilities to supplement the electricity supply not only represents an effective conservation effort but also represents an environmentally preferred alternative to conventional solid waste disposal in this state." Section 377.709(1), Florida Statutes.

In this latter section, the Legislature directed the FPSC to establish a funding program to encourage facilities using solid waste as a source of fuel. It seems very clear that the Staff's recommendations, and the proposed amendments, are contrary to the intent of the Florida Legislature and have the effect of discouraging expansion of generation from solid waste facilities and other

qualifying facilities.

Q. Why do you believe that the five-year minimum standard offer contract proposed by the Staff becomes the maximum period?

A. Under the present Rule and the proposed changes, the utilities have absolutely no incentive to offer any standard offer beyond the minimum period (10 or 5 years) They gain nothing with a longer term. The Commission Staff states that a five-year term is preferable to ten because "Keeping the ten-year term would continue the possibility that IOUs and their ratepayers would be faced with higher cost capacity and energy costs for an additional five years for new standard offer contracts, even if market costs declined." If I were a utility manager and the Commission told me to shorten a contract period for a power purchase which had no positive upside for my stockholders, who am I to disagree. Therefore, the minimum and maximum period will likely be the same.

Q. Mr. Kordecki, isn't an option for a longer period available to the cogenerator or solid waste facility?

A. Reading the text of the Rule and the Staff's recommendation leads me to believe that de facto each contract would be

limited to five years and **may** be renegotiated every five years. The solid waste cogenerator will be forced to contract for five years or the expected life of the avoided unit. There appears to be no intervening period allowed at the request of the cogenerator, but the utility may pick "the specific period" or term of the standard offer contract, which may be greater than five years. The option for a longer period is unilateral to the utility, subject to Commission approval.

Q. In an earlier statement you indicated that the standard offer rules are biased. How are they biased in your mind?

A. Even though the Legislature has clearly stated that QFs should receive full avoided costs, there is a significant difference in how the costs are collected. The utilities recover their "costs" (which includes a return on investment) on a revenue requirements basis. In short, their revenues on the capacity are front-end loaded -- highest in the first year and declining there after. Cogenerators receive their capacity payments on a value of deferral basis -- the first year capacity payment is the lowest and the highest payments are on the back end. Even with levelized payments, a differential remains. If the standard offer contract is for the life of the unit, then

the revenue requirements and value of deferral totals will be equal only in the last year of the life of the unit.

Q. If the net present value of the overall payments are equal in both methods over the life of the unit, do you still believe there is bias?

A. Yes. The collection mechanism does make a difference -- front-end loaded versus back-end loaded. More front-end dollars would give local government-owned QFs more financial flexibility -- the same as enjoyed by utilities. This type of payment stream can also make a substantial difference in the availability of financing for a new facility.

Q. What is your reaction to standard offers which are less than the life of the unit?

A. Looking beyond the natural incentive for the utilities to want to build generating units and earn returns on these investments, the utilities want standard offer contracts to be as short as possible. This allows the utilities to contract at below utility avoided costs without a concurrent long-term obligation.

Q. Mr. Kordecki, doesn't that situation give the utility the lowest costs that will be borne by retail ratepayers?

A. No, not necessarily. For one reason, the timing of the contracts may not correspond to or correlate with changes in the market. The purchased power may be higher or lower at any one time and the five-year minimum (maximum, in my mind) does not guarantee any ability to match changing market conditions.

The important points that should be remembered in this rulemaking are that the Florida Legislature has mandated that QFs be treated financially the same as utilities by receiving revenues equal to the utilities' avoided costs, and that solid waste facilities provide significant environmental benefits to the state.

When utilities build the generation, the obligation on ratepayers automatically is extended over the life of the units. The ratepayers' obligations are less under standard offers due to contract length and the value of deferral payment methodology mandated in this Rule. Even under life-of-the-unit contracts, risks are reduced due to the value of deferral payment methodology.

Q. Do you believe that the proposed amendments fairly or appropriately balance the interests of the ratepayers with

the interests of the QFs who are eligible to accept a utility's standard offer contract?

A. No. As explained above, the proposed amendments would impose exactly the same types of risks on ratepayers that the proposed amendments are supposedly intended to avoid. The point is simple: long-term investments, regardless whether they are utility-built power plants or power purchase contracts, have risks associated with them. If market prices for the power drop over the term of the investment or contract, then the investment or contract will be "over-priced" relative to then-current market conditions; on the other hand, if market prices increase, then the investment or contract will be "under-priced." If a utility builds a power plant instead of obtaining power from QFs, and market generation costs and prices subsequently drop, the utility's power plant is just as uneconomic as the QF contract would have been, and the ratepayers are just as "stuck" with the economic consequences of the investment.

If anything, since QFs will frequently choose to sign standard offer contracts for less than the full life of the avoided unit, the risk exposure to ratepayers is generally less with such a contract than with a utility-built power plant. The risks associated with standard offer contracts

are also less because the QF has no opportunity to come back to the utility or the Commission and ask for its payments to be increased if it has to spend additional money to maintain or upgrade or retrofit its plant, whereas the utility effectively has a right to recover such costs, subject only to a prudency review by the Commission.

Q. Do you agree with the Staff that the proposed amendments do not discourage the construction of small QFs and solid waste facilities?

A. No, I do not agree with this assertion. Limiting the life of standard offer contracts to five years will make it much more difficult for eligible QFs, including solid waste facilities, to obtain financing. The uncertainty of future capacity payments will be very unattractive to potential lenders, making financing for such facilities difficult if not impossible to obtain. This will greatly discourage the construction of small QFs and solid waste facilities.

IV. RECOMMENDED RULE LANGUAGE CHANGES

Q. Mr. Kordecki, would you recommend amending the Commission's Cogeneration Rules on this subject, and, if so, how?

A. I would recommend that the Commission amend Rule 25-17.0832 (4)(b), F.A.C., to read as follows:

(4) Standard Offer Contracts.

* * *

(b) The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction or purchase of additional generation capacity or parts thereof by the purchasing utility. Each standard offer contract shall provide the option for the qualifying facility to be paid rates equal to the costs that would be borne by the utility's general body of ratepayers if the utility were to build its avoided unit or purchase capacity and energy from another source. Without limitation, this shall include payments calculated on the same basis as the utility's revenue requirements where the qualifying facility signs a standard offer contract with a term equal to the projected life of the avoided unit, payments calculated on the same basis as payments to be made pursuant to a power purchase arrangement where such power purchase is the generation resource avoided by the purchase from the qualifying facility, and payments calculated on the same basis as the utility's proposed revenue requirements for a proposed plant where the utility plans to limit cost recovery for the proposed plant to a fixed period of time. This requirement shall not preclude the use of the value of deferral payment methodology to calculate capacity payments where the qualifying facility proposes to sign a contract with a term less than the projected life of the avoided unit. Rates for payment of capacity sold by a qualifying facility shall be specified in the contract for the duration of the contract. In reviewing a utility's standard offer contract or contracts, the Commission shall consider the criteria specified in paragraphs (3)(a) through (3)(d) of this rule, as well as any other information relating to the determination of the utility's full avoided costs.

Q. What does this change accomplish?

A. This change permits the QF to operate under the same

economics as the public utilities. First, the standard offer contract would be expanded to include purchases by utilities where such purchases are in fact the public utility's avoided generation resource, i.e., where such purchases are made in lieu of building new generating units. Secondly, each standard offer contract should allow for qualifying facilities to be paid in the same manner as the utilities collect from their ratepayers. Only "life of the unit" contracts would receive revenue requirements and avoided purchases would be dealt with on the same basis as the payments for power purchase contracts.

These proposed amendments to this section only level the playing field so that QFs are facing the same treatment that is afforded to the utilities. This transparent treatment is what I believe meets the goals of PURPA and the intent of the Florida Legislature.

Q. What is your next recommended change?

A. I would recommend that the Commission amend Rule 25-17.0832(4)(e)7., F.A.C., to read as follows:

> (e) Minimum Specifications. Each standard offer contract shall, at minimum, specify:
>
> * * *
>
> 7. The period of time over which firm capacity and energy shall be delivered from the qualifying facility to the utility. Firm capacity and energy

shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in-service date of the avoided unit. Consistent with the utility's obligation to purchase the firm capacity and energy that a qualifying facility has available to sell to a utility, the qualifying facility shall have the option to specify the duration of its obligation to deliver firm capacity and energy within the above parameters.

Q. What does this change accomplish?

A. This change reflects the fact that utilities are obligated to purchase the qualifying facility's capacity at the point that each utility has nominated a type of unit or purchase and designated a date for commercial operation or purchase. Since QFs are receiving avoided cost in the form of total revenue requirements or value of deferral payments which are less than the annual revenue requirements, utilities' ratepayers are being held harmless.

The ultimate customers see the same dollar amounts on their bills if the utilities built the generating units or made firm wholesale purchases or signed a standard offer contract with a qualifying facility. In order to facilitate this process, the QFs should have the option to specify the duration of the obligation within the parameters established for the avoided facilities or purchases.

This is also consistent with the policy articulated in PURPA and in Section 366.051, Florida Statutes, that public utilities must buy, at their avoided cost, all electricity offered for sale by cogenerators and small power producers. If the QF has capacity and energy available to sell to a public utility for 17 years, then the law requires the utility to buy it at the utility's avoided cost. This is sound policy that promotes efficient generation and generation from solid waste facilities while protecting utility customers by requiring payments to be made at avoided cost.

Q. Mr. Kordecki, do you have any further comments regarding the Commission's Rule?

A. Yes. I believe that the Commission should also clarify its Rule to require a level-playing-field evaluation and identification of each utility's avoided unit. More specifically, I believe that such evaluations, as well as the subsequent calculation of the utility's avoided cost, should be based on a generation expansion plan that includes only contractually committed or existing demand-side management and conservation measures. It is my understanding that Lee County, Miami-Dade County, and Montenay-Dade, Ltd. have submitted a separate petition

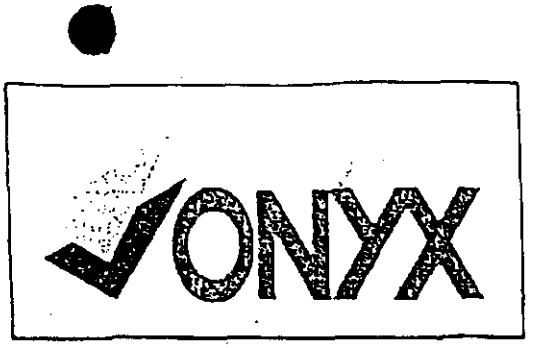
asking the Commission to amend its Rule to accomplish this, and that that issue will be taken up when the Commission acts upon that petition.

Q. Conceptually, what will this last change accomplish?

A. This last suggested change will put standard offer contract purchase options on a consistent basis in the selection of resource alternatives to meet the utilities' load growth. The language requires that all incremental conservation and load management program estimates be removed from the load and energy forecasts so that the avoided unit calculations and the availability of qualifying facility purchases are dealt with in a consistent manner with demand and other supply options.

Q. Mr. Kordecki, does this conclude your comments?

A. Yes, it does.



MONTENAY POWER CORP.

6990 NW 97th AVE
Miami, FL 33178 USA
(305) 593-7000

TO: Florida Public Svc. Comm Fax Number: (850) 413-6395
ATTN: Commissioner Jacobs
FROM: Ben Gilbert
DATE: 08-31-01
TIME: 3:01 ☐ A.M. ☒ P.M.

Total number of pages (including cover page): 3

RE:

Message:

CONFIDENTIALITY NOTE:

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Sent by

Fax #: (305) 593-7114

MONTENAY POWER CORP.

ONYX

August 31, 2001

Via Facsimile

The Honorable E. Leon Jacobs, Jr.
Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0872

Re: Comments of Montenay Power Corp. Regarding Proposed Cogeneration Rule Amendments

Dear Chairman Jacobs:

I write to you to express Montenay Power Corp.'s opposition to the amendments to the Commission's Cogeneration Rules that have been proposed by your Staff and which you will consider at your agenda conference next week. In summary, Montenay opposes the proposed amendments because they will almost certainly result in qualifying Cogeneration and small power production facilities ("QFs") being paid less than the avoided costs associated with the utility's self-build supply option and because they will discourage the development of new Cogeneration and small power production facilities in Florida, to the detriment of Florida electric consumers and Florida's citizens who rely on waste-to-energy facilities to dispose of their municipal solid waste.

While the Staff's goal of protecting ratepayers is certainly laudable, Montenay believes that the proposed amendments will more likely frustrate that goal than serve it. In particular, where the proposed amendments result in payments to QFs below the utility's full avoided cost, which will be a virtually certain result where capacity payments are limited to five years, or even ten years, and where the capacity payments are calculated using the value of deferral methodology, they will discourage the construction of new QFs and will provide incentives to existing QFs not to enter into standard offer contracts with the utility. This will likely lead to the utility building its own "avoided unit," which, by the Staff's own hypothesis -- i.e., that generation costs are decreasing -- will result in the utility's customers bearing costs associated with the utility's self-built unit that are greater than future generation costs. Please note that Montenay is not attempting to argue for payments any greater than the costs that the utility's ratepayers would incur if the utility were to build its own self-build option; Montenay simply believes that Montenay and other eligible QFs should be entitled to the same costs that the utility would otherwise incur, i.e., its full avoided cost as authorized by Section 366.051, Florida Statutes, and by PURPA.

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waste-to-energy facilities, which is set forth in Section 377.709(1), Florida Statutes.

Thank you very much for considering these comments. A representative of Montenay will be present at your agenda conference next week to more fully explain Montenay's position and concerns regarding the proposed amendments. If I can answer any questions, please give me a call at (305) 593-7000.

Sincerely,

Benjamin F. Gilbert, Jr., P.E.
Vice President

MIAMI DADE
SOLID WASTE MANAGEMENT

August 29, 2001

E. Leon Jacobs, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0842

RE: FPSC Docket No. 001574-EQ. (Proposed Amendments to 25-17.0832, F.A.C.)

Dear Chairman Jacobs:

The Miami-Dade County Department of Solid Waste Management administers the contracted operations of the County-owned Resources Recovery Facility. This small qualifying facility (SQF) provides this community with waste disposal services based on a Waste-to-Energy (WTE) technology utilizing municipal solid waste as a fuel source.

For the reasons detailed in the enclosed May 14 letter to Mr. Hewitt of the Commission staff, I am writing to you at this time to urge you to reject proceeding with rule-making pertaining to the proposed amendments (referenced above) being presented at your upcoming meeting on September 4, 2001. As explained in the May 14 letter, under the existing formulas utilized, shorter contract terms tend to unfairly undervalue this critical citizen-owned resource. This is being proposed at a time when local, renewable, reliable fuel sources and energy production technologies and fair pricing should be encouraged in Florida.

In addition, while the Commission staff analysis argues that it is best that IOU ratepayers not be tied to long-term contracts in the event that prices decline, longer term contracts would actually be best for IOU ratepayers should prices increase. Longer contracts introduce greater financial stability into this critical market. Maintaining minimum contract lengths that are in closer alignment with facility life and financing terms reduce risk which, in turn, may have a more significant role in encouraging new capacity than any specific price level.

Thank you for this opportunity to provide you with input. Your time and attention is appreciated. If you should have any questions or require any further information regarding this issue, please contact Ms. Deborah Silver, Executive Assistant to the Deputy Director at 305-594-1530.

Sincerely,

Andrew Willfork
Director

8675 Northwest 53 Street, Suite 201, Miami, Florida 33166 • 305-592-1776

"Love Your Neighbor"

MIAMI DADE
SOLID WASTE MANAGEMENT

May 14, 2001

Craig B. Hewitt
Division of Economic Regulation, Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0842

RE: FPSC Docket No. 001574-EQ. (Proposed Amendments to 25-17.0832, F.A.C.)

Dear Mr. Hewitt:

Miami-Dade County owns the Miami-Dade County Resources Recovery Facility, a Refuse-Derived-Fuel Waste-to-Energy plant, which serves a major proportion of the disposal needs of the County's 2 million residents. This facility is a small qualifying facility (SQF) pursuant to Commission rules. Accordingly, as an affected party, the County is providing you with this notice of its opposition to rule changes, including the above-referenced, that ultimately reduce the duration of energy sales contracts, particularly as they may apply to "standard offers".

Current rules require that standard contracts offer the SQF prices based on the utility's actual avoided cost, using a "value of deferral" formula. Given its design, the full and fair value of the deferral can only be realized over the entire "life" of the asset deferred. Accordingly, a single long-term deferral would, all other factors being equal, have a higher total value than a series of shorter-term deferrals. Therefore, the proposal to further limit contract duration fails to fairly and equitably take into account the value of the capacity provided.

Given the public ownership status of this and like facilities, any shortfall arising from a reduction in electrical revenues would ultimately be funded by the citizen-owners and all disposal system rate-payers, in this case the residents of Miami-Dade County. In addition to shortchanging these residents, reduced contract durations undervalue many of the benefits of this renewable energy source, such as reduced greenhouse gas emissions and displacement of imported fossil fuels. Accordingly, we oppose such rule changes and strongly encourage a reevaluation of this issue. Please add this agency to any notification lists that you maintain in relation to this subject matter and see the enclosed response for further details concerning your data request.

Sincerely,

Andrew Willfork
Director

8675 Northwest 53 Street, Suite 201, Miami, Florida 33166 • 305-592-1776

"Love Your Neighbor"

Miami-Dade County
Response to Data/Information Proposed Rule Amendments to F.A.C. Firm Capacity and Energy Contracts; Docket No. 001574-Eq.

1. **Please identify and estimate incremental costs to comply with each of the proposed rule requirements, including all potential transactional costs. For purposes of this question, "transactional costs" should include direct costs that are readily ascertainable based upon standard business practices. These costs may include filing fees, costs of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the costs of monitoring and reporting.**

The proposed rule change, by potentially shortening the term of SQF electrical sales contracts, would raise costs and/or reduce revenues for this citizen-owned facility in the following manner:

1. Reduced contract durations would result in energy revenues that are severely discounted due to the failure to compensate for the full value of the avoided cost of capacity provision. In accord with the existing "value of deferral" methodology, payments begin low and increase over time, the shorter the term, the proportionately lower the compensation will be for capacity overall.

2. Shorter contract lengths would force local governments to go out into the energy sales market on a more frequent basis resulting in higher administrative costs and added risk due to the increased instability. This in turn will affect the financial markets' evaluation of county/municipal WTE projects, contributing to lower bond ratings and an increased the cost of borrowing for local governments.

3. The proposed changes would discourage SQFs in general, and those utilizing renewable or other innovative technologies in particular at a time when such projects should be encouraged. This will deprive the citizens of Florida of added capacity in general and, more specifically, those with the environmental and long-term economic benefits of utilization of domestic renewable energy sources.

2. **Please identify and estimate additional benefits from the proposed rule.**

From the perspective of the citizen-owners of the Miami-Dade County Resource Recovery Facility, no net benefits have been identified.

3. **Please advise whether your company meets the definition of a small business per Section 288.703(1), Florida Statutes.**

Not applicable.

4. **Please provide any reasonable lower cost alternative method of accomplishing the requirements of the proposed rule. Include the estimated costs of each alternative. If only a modification of the proposed rule is suggested, please also include any related expenses/savings on the modification compared to the expense/savings on the proposed rule identified in questions 1. and 2.**

In that the proposed rule used in conjunction with the existing payment formula results in a severe under-valuation of generating capacity, we are also opposed to any alternatives. In that the proposed rule reduces the potential for long-term stability in the market, a desired feature, particularly for local governments and financial markets, we are similarly opposed to any alternatives. We welcome proposals that address these concerns.

5. **Please provide additional comments or cost estimates that may be useful to the Commission or its staff in assessing the economic impacts of the proposed rule. Please include any company-recommended modifications and related expenses/savings if not covered above.**

Publicly-sponsored biomass facilities, such as the Miami-Dade County Resource Recovery Facility, currently supply slightly less than two percent of Florida's energy needs while simultaneously providing numerous environmental benefits and meeting the disposal demands of our growing economy. These facilities are largely owned by the citizens and provide a critical public service; the sponsoring local communities are committed for the long term. Compensation for the public's investment in this capacity is returned to the community. The full value of that capacity ought to be recognized and the term over which it is paid ought to be determined by the local community. Importantly, the integrity of the "standard offer" contract and the ability of the SQF to simply take those terms must be maintained.

GCL / Bellak

ORIGINAL

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REGISTERED PROFESSIONAL ENGINEER
REGISTERED PATENT ATTORNEY

COGENERATION & ALTERNATIVE ENERGY
ENERGY REGULATORY LAW

HAND DELIVERY
March 7, 2003

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

In re: **FPSC Docket No. 001574-EQ**
Proposed Amendments To Rule 25-17.0832, F.A.C.
Firm Capacity And Energy Contracts

AUS
CMP
COM 5 + Orig
CTR
ECR
GCL 1
OPC
MMS
SEC 1
OTH

Dear Ms. Bayó,

Enclosed for filing in the captioned proceeding, please find the original and 15 copies of the Supplemental Direct Testimony of Frank Seidman on behalf of the City of Tampa, Florida (City) and the Solid Waste Authority (SWA) of Palm Beach County, Florida.

In addition, you are hereby advised that the City adopts and sponsors the March 1, 2002 testimony of Frank Seidman and Ralph Michael Salmon previously filed in this proceeding, and that the SWA adopts and sponsors the March 1, 2002 testimony of Frank Seidman and Marc C. Bruner previously filed in this proceeding. We respectfully request that the referenced testimony be included in the Docket file.

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

RECEIVED & FILED
R. V. P.
FPSC-BUREAU OF RECORDS

Sincerely,

Richard A. Zambo

RAZ/sn
Enclosures

Richard A. Zambo
Florida Bar No. 312525

COURTESY SERVICE LIST

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Tallahassee, FL 32302

Gerard J.. Kordecki
10301 Orange Grove Drive
Tampa, FL 33618

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to Rule 25-07.0832, F.A.C., Firm Capacity and Energy Contracts	)))	Docket No. 001574-EQ Filed: March 7, 2003

SUPPLEMENTAL DIRECT TESTIMONY

OF

FRANK SEIDMAN

ON BEHALF OF

THE CITY OF TAMPA

AND

THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

SUPPLEMENTAL DIRECT TESTIMONY OF FRANK SEIDMAN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN DOCKET NO. 001574-EQ

REGARDING PROPOSED AMENDMENTS

TO RULE 25-17.0832, F.A.C.,

FIRM CAPACITY AND ENERGY CONTRACTS

ON BEHALF OF

THE CITY OF TAMPA and

THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

Q. Please state your name, profession and address.

A. My name is Frank Seidman. I am President of Management and Regulatory Consultants, Inc., consultants in the utility regulatory field. My mailing address is P.O. Box 13427, Tallahassee, FL 32317-3427.

Q. Have you previously filed direct testimony in this proceeding?

A. Yes. I filed direct testimony on March 1, 2002.

Q. What is the purpose of your supplemental direct testimony?

A. The purpose of my supplemental testimony is to address two statements made in the February 6, 2003

Notice of Rulemaking (NOR) as well as to address issues or concerns that have been brought to my attention since I filed my direct testimony.

Q. What is the first statement in the NOR that you wish to address?

A. On page 3 of the NOR, in discussing the effect of the proposed reduction in the minimum contract length it is stated, " The effect is to reduce the risk that ratepayers will be tied to long-term contracts that are above avoided cost." In my opinion, the basic premise of that statement - that standard offer contracts can be above avoided cost - is in error.

Q. Please elaborate.

A. That statement not only implies that this Commission has approved contracts that result in payments to Qualifying Facilities (QFs) that are above avoided cost, but it also implies that the rule and formulae of this Commission could even produce payments that are above avoided cost. This is an absolutely false premise on which to base these proposed rule amendments.

Q. Could you explain further?

A. Yes. Contracts that result in payments to QFs in excess of avoided cost are not possible in Florida. Such contracts are not allowed under the law, are not allowed by existing rules, and cannot happen when prices are determined using the formulae that were developed and implemented by this Commission. There are three very good reasons for this:

First, federal law requires that no rule prescribed shall provide for a rate which "exceeds the incremental cost to the electric utility of alternative electric energy." And federal law defines incremental cost as "the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source." In other words, whether capacity is supplied by the utility or the QF, the cost will be transparent to the ratepayer.

Second, this Commission implemented federal law by setting prices to be paid to qualifying facilities under a standard offer contract

which, according to Commission rule, "shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction of additional generation capacity or parts thereof by the purchasing utility."

Third, all contracts approved by the Commission must contain prices that pass a test set up in the rules that insures that they do not exceed the avoided cost.

Accordingly, under the formulae and provisions of the Commissions rules, a situation cannot exist where the ratepayers will be tied to long-term contracts that are above avoided cost. Prices based on a utility's avoided cost cannot - by definition - result in prices that exceed that utility's avoided cost. Therefore, the premise for the proposed rule amendments is nonexistent.

Q. That same statement in the NOR also addresses reducing the risk of QF contracts to the ratepayers. Do you have any comments on that issue?

A. Yes, I do. The risk to ratepayers of payments made to QFs is already so much less than the risk of a

utility constructing its own generating capacity, that I do not believe anything further can be done without violating the provisions of state and federal law. This is because there are so many safeguards already built in to the formulae and the rules.

First, is the value-of-deferral (VOD)payment stream on which payments under the standard offer contracts are based. Under VOD, QFs get paid very small fixed cost payments in the early years of a contract (in exchange for larger payments in future years), whereas, if a utility constructed its own capacity, it would receive very large payments in the early years.

Second, a QF only gets paid for the "planned" or "projected" cost of generation. In comparison, if a utility builds its own generating capacity, it gets paid for the actual cost of construction, including any cost overruns. An example of this, is TECO's Polk coal-gasification units which were

projected to cost $389 million but actually ended up costing in excess of $506 million. A standard offer contract for deferral of capacity from this unit would have been based on the $389 million, whereas all $506 million ended up in TECO's rate base. QF contracts - in lieu of the coal-gasification units - would have reduced the risk to ratepayers by about $117 million.

Third, there are always additional capital costs incurred during a generating plant's lifetime, be it for replacements of major components, technological upgrades or for meeting changing environmental requirements. For a utility constructed unit, those costs end up in rate base. For capacity provided by a QF, they do not. The payments are fixed, based solely on the originally projected costs, without consideration for any future capital expenditures.

Fourth, when a utility constructed unit operates at a lower efficiency and reliability than planned or projected, the additional

operating costs end up in the expenses passed on to the ratepayer. That cannot happen under a QF standard offer contract because, the payments are based on a set level of efficiency and reliability. Lower levels of efficiency or reliability result in reduced payments to the QF and accordingly reduce costs to be borne by the ratepayers.

All of these factors act to reduce the risk of QF standard offer contracts to the utility's ratepayers to a level much lower than the risk associated with utility constructed capacity.

Q. What is the second statement in the NOR that you wish to address?

A. On page 5 of the NOR, it is stated, " Allowing a qualifying facility to choose the contract term would abrogate the Commission's regulatory responsibility over capacity and energy contracts." In my opinion, this statement is completely misguided and in error. Allowing the QF to choose the maximum length of the contract has been an option since 1983. Staff therefore seems to be implying that the Commission has been abrogating

its responsibility for the past 20 years. Surely that has not been the case. Staff's statement begs the question "why does allowing a qualifying facility to choose the contract term abrogate the Commission's regulatory responsibility, but allowing the utility to choose it does not?"

The purpose of setting contract term limits in the rules seems to have been forgotten. The rules set a minimum and maximum contract period. The minimum contract period was set at only 10 years (even though it would not offset the life of a generating unit) to ensure the QF would be around long enough to confer a capacity benefit on the utility and its ratepayers. The maximum contract period was set at the life of the unit because, with payments being made on the VOD basis, it was only at the end of that period that the QF would receive the same amount, on a present value basis, as it would have received on a revenue requirements basis. In other words, the minimum period protected the ratepayer from the QF not conferring a capacity benefit, and the maximum period protected the QFs entitlement to a full avoided cost payment.

This newly advocated preference for short-term contracts, without any assurance that a long-term contract can be secured, goes against the purposes of the rule. By removing the protection that a QF can earn full avoided cost, QF development will be impeded contrary to the intent and requirement of the law.

Allowing the QF to seek longer contract terms, up to the life of the avoided unit, not only assures benefits to the ratepayers, but also allows QFs to secure long term financing for what is a major, long term, capital commitment on behalf of local governments. The ability to enter into a long term contract is essential for obtaining financing for waste-to-energy projects which typically have useful lives and financing terms in excess of 20 years. Eliminating the option of long term standard offer contracts will severely limit a QF's ability to finance.

Q. You stated that you also wanted to address some issues or concerns that have been brought to your attention since you filed your direct testimony. Would you please elaborate?

A. Yes; I would be happy to. There seems to be a concern that small amounts of generating capacity cannot defer the need for large utility power plants. I touched on this matter to some degree in my original direct testimony of March 1, 2002. In that testimony I pointed to language in several Commission orders regarding approval of revised utility standard offer contracts that said that it was unlikely that the avoided unit would be avoided. It has always been my opinion that any capacity provided by a QF avoids an equal or greater amount of utility capacity. Until recently, tangible evidence and utility admission of this "theory" had been lacking. However, evidence confirming this opinion and theory can be found in the records of this Commission's Determination of Need for FPL's Martin Unit 8 plant. In that case, the Commission observed that the lack of 15 MW required FPL to accelerate installation of a new 789 MW plant in order to maintain reserve margins.

As an aside, but of great significance in this regard, it should be noted that selection by a utility of a proposed planned plant size is not an exact science. Plant size selection depends to a

large extent on the unit sizes available in the market - especially from manufacturers of combustion-gas turbines. Because there is a substantial degree of flexibility necessary when choosing a specific plant size, it is reasonable to assume that small increments of QF capacity can avoid or defer capacity - either small increments equal in size to the QF, or, as demonstrated in the Martin need hearings, a 789 MW plant.

Q. ~~Are there any other areas of concern that you would care to address?~~

A. ~~Yes. It appears that the large amounts of QF capacity purchases by FPC (now Progress Energy of Florida) in the early 1990's, necessary to avert capacity shortages, may have played a role in focusing the Commission (staff) attention on the so-called "above market" pricing issue. If so, this is an erroneous premise for several reasons - each equally important. As I will discuss, those problems arose as a result of poor planning on the part of FPC, and the QFs in fact rescued FPC and its ratepayers at a time when there were no other options available.~~

First, FPC insisted that its next planned generating unit - the avoided unit on which those QF contracts were based - was a coal fired power plant with high capital and low operating costs.

Second, absent the urgent need for capacity, FPC would have constructed a coal fired power plant. However, FPC would not have been able to permit and construct the avoided coal plant in the time frame they deemed necessary to avoid capacity shortfalls and outages.

Third, QFs were able to provide the capacity needed in a much shorter time frame thereby "rescuing" FPC and the grid in general, from the results of poor utility planning.

Fourth, if FPC had constructed the avoided coal plant, the ratepayers would have been responsible for its total cost - fixed and variable - over its useful life - with no opportunity for FPC to "renegotiate" or "buy-down" the cost as it has done with many of the QF contracts.

~~The issues that arose in the early 1990's had nothing to do with QF payments in excess of avoided cost and everything to do with the utility planning process and the utility's inability to react as quickly as QFs to changes in a utility's planning. The proposed amendments to the rule are intended to solve a problem that does not exist by penalizing the QF industry which actually came to the rescue of FPC and its ratepayers.~~

Q. Do you have any concluding remarks?

A. Yes. I would ask the Commissioners to keep in mind the many safeguards for the ratepayers that are already built into the rules, such as value of deferral pricing. Value of deferral pricing, which pays the QF very little up-front dollars, assures that the only way a QF can earn full avoided cost - as required by state and federal law - is to provide capacity and energy for as many years as the utility's avoided generating unit would have provided that capacity and energy. Please also keep in mind that by reducing the contract term, as is proposed in these amendments, guarantees that a QF will never receive the cost avoided by the utility and thus will end up subsidizing the utility. It is

understandable therefore, why the utilities are supportive of the rule amendments proposed by staff in this proceeding. But please keep in mind that the end result of the amendments - if implemented by the Commission - would be: (1)a substantial deterrent to QF development contrary to law, and (2) a pure and simple subsidy from the QF to the utility and its ratepayers.

I would also ask that the Commission keep in mind that smaller, dispersed generating units - such as those typically provided by QFs - contribute to a more reliable and secure electric system, and provide it at a cost no greater than that which would be incurred by the utility. The proposed amendments would thwart the intentions of the law and reduce the availability of those benefits.

Q. Does that conclude your supplemental direct testimony?

A. Yes it does.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to Rule 25-07.0832, F.A.C., Firm Capacity and Energy Contracts	)))	Docket No. 001574-EQ Filed: March 1, 2002

TESTIMONY

AND EXHIBITS

OF

FRANK SEIDMAN

ON BEHALF OF

THE CITY OF TAMPA

AND

THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

TESTIMONY OF FRANK SEIDMAN
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
IN DOCKET NO. 001574-EQ
REGARDING PROPOSED AMENDMENTS
TO RULE 25-17.0832, F.A.C.,
FIRM CAPACITY AND ENERGY CONTRACTS
ON BEHALF OF
THE CITY OF TAMPA and
THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

Q. Please state your name, profession and address.

A. My name is Frank Seidman. I am President of Management and Regulatory Consultants, Inc., consultants in the utility regulatory field. My mailing address is P.O. Box 13427, Tallahassee, FL 32317-3427.

Q. State briefly your educational background and experience.

A. I hold the degree of Bachelor of Science in Electrical Engineering from the University of Miami. I have also completed several graduate level courses in economics at Florida State University, including public utility economics. I am a Professional Engineer, registered to practice in

the state of Florida. I have over 30 years experience in utility regulation, management and consulting. This experience includes nine years as a staff member of the Florida Public Service Commission, two years as a planning engineer for a Florida telephone company, four years as Manager of Rates and Research for a water and sewer holding company with operations in six states, and three years as Director of Technical Affairs for a national association of industrial users of electricity. I have been providing rate and regulatory consulting services in Florida for over 20 years. Specifically, with regard to Commission rules affecting cogenerators and small power producers, I have participated in the development of those rules on behalf of cogenerators and small power producers, and presented testimony or comments before this Commission on their behalf, in nearly every rulemaking proceeding since 1982.

Q. On whose behalf are you presenting this testimony ?

A. I am presenting this testimony and appearing on behalf of the City of Tampa, Florida ("Tampa") and the Solid Waste Authority of Palm Beach County, Florida ("the Authority").

Q. What is the interest of Tampa and the Authority in proceeding?

A. The Authority and Tampa each currently own municipal solid waste facilities which are defined as a solid waste facility or Small Qualifying Facility ("SQF") by Commission Rule and as such are eligible for Standard Offer Contracts pursuant to Commission Rule 25-17.0832, F.A.C., the subject of this proceeding. Accordingly, both the Authority and Tampa have a direct interest in the rule amendments proposed in this proceeding.

Q. What is the position of Tampa and the Authority with regard to the proposed rule amendments?

A. It is the position of Tampa and the Authority that the proposed amendments to the rule will result in payments to QF's that are less than the purchasing utility's avoided costs, will increase transaction costs for QF's, and will otherwise negatively impact upon QF's and consumers of electricity in Florida. One detrimental effect of the proposed amendments is that they would act as a disincentive to the development of QF's and thereby indirectly contribute to an increase in the consumption of scarce resources, contrary to the letter and very

clear intent of existing federal and state laws. In addition, Tampa and the Authority are very concerned that the proposed rule amendments as well as interpretations of the existing rules, as expressed in recent Commission orders regarding standard offer rule waivers, no longer reflect the conservation benefits and economic principles upon which the laws and regulations encouraging the development of QF's were founded.

Q. What are the conservation benefits and economic principles to which you refer?

A. The conservation benefits and economic principles to which I refer are that (1) qualifying cogeneration facilities, as defined in federal laws and regulations, provide substantial savings in the consumption of energy relative to conventional separate production of electric energy and thermal technologies; (2) qualifying small power producers conserve scarce resources producing energy through the use of renewable resources; and (3) payments to QF's equal to full avoided cost, as defined in federal and state laws and regulations, are just and reasonable to consumers, because they reflect costs to the utility that are neither higher nor

lower than the utility would have incurred, had it generated the electricity itself, or purchased it from another source.

HISTORY OF LAWS AND RULES ENCOURAGING QF'S

Q. Would you briefly summarize the development of the law and rules encouraging QF's?

A. Yes. In 1978, in response to a world oil shortage resulting from an embargo, and other concerns regarding the availability of finite fuel resources and the efficient use of those resources in producing electric energy, Congress passed the Public Utility Regulatory Policies Act (PURPA). A significant part of that act was devoted to encouraging the development of cogeneration and small power production facilities that produce electricity by the use of highly efficient systems, or renewable fuel resources, or both. PURPA's primary means of encouraging the development of cogeneration and small power production was to remove the then existing institutional barriers that had grown out of the traditionally monopolistic electric utility industry. PURPA did this by requiring utilities to offer to purchase electricity from qualifying cogenerators and small

power producers ("Qualifying Facilities" or "QF's") at rates that were just and reasonable to consumers, non-discriminatory to QF's and not in excess of the cost the utility would have incurred to generate such electricity or purchase it from another source. To be a qualifying cogenerator or small power producer, the facility had to meet certain energy efficiency or fuel use standards to be established by the Federal Energy Regulatory Commission (FERC) The FERC, which was also responsible for developing regulatory guidelines for the states to implement PURPA, concluded that if rates for the purchase of electricity from QF's were set at the purchasing utility's full avoided cost for energy and capacity, the rates would meet the criteria set forth in PURPA.

Beginning in 1981, and during most of the 1980's, this Commission developed and refined rules, the purpose of which, was to implement the intent of PURPA and the FERC regulations. The Commission's understanding and endorsement of the principles set out in PURPA and FERC regulations was clearly evident from its statement in Order No. 12443,

issued September 2, 1983 adopting rules in relation to cogeneration:

> " The encouragement of cogeneration through the establishment of electric utility markets for electricity produced by qualifying facilities (cogenerators and small power producers) will result in economic savings to consumers of electricity and the citizenry of Florida at large. These economic savings stem from the lessened dependency on the use of foreign oil as a boiler fuel and the deferral or cancellation of the construction of additional generating capacity by electric utilities in Florida which result from cogeneration."

The rules developed by the Commission included four important features. (1) The first feature was a requirement that utility's must make available to QF's, a standard offer contract for the purchase of firm capacity and energy as an alternative to negotiation of a contract with a utility. This

feature protected the QF from unreasonable and extended negotiations. (2) The second feature was a requirement that the capacity payments under a standard offer contract be based on the year-by-year value of deferral methodology. This feature was included as a means of protecting the consumer from a QF defaulting on a contract because payments would only have been made for the actual value of deferred capacity. It is important to note that at that point in time, the QF industry was in its infancy and the Commission and utilities were exercising caution, with a view toward erring (if at all) in favor of the consumer. (3) The third feature was the inclusion of a "risk factor" in the capacity payment as a result of which a QF would be paid only 80% of a utility's avoided capacity cost. The purpose of this feature was to further protect the customer; this time from various "unknown factors" such as the possibility that there might be an insufficient amount of capacity when needed or that a QF commitment of less than the useful life of the avoided unit would leave the utility with insufficient capacity in later years. (4) The fourth feature was a requirement that the standard offer contract period be a minimum of ten years and

a maximum of the useful life of the avoided unit. This feature protected the customer and the QF. It protected the customer because, in the words of the Commission: "while a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers." (Order No. 12634 at p. 9.) It protected the QF by allowing the opportunity to contract for a period longer than ten years and to receive payments equal to full avoided cost if it was willing to contract for the life of the avoided unit. As the Commission pointed out in Order No. 12634, the value-of-deferral methodology pays low payments in the early years and high payments in the later years, while the revenue requirements for a generating unit are higher in the early years and lower in the later years (see Exhibit (FS-1)_____, Graph 1). But over the life of the avoided unit the value-of-deferral method will pay the QF the same amount it would have received if capacity payments had been made based on deferred revenue requirements. This is an extremely important fact in the context of this rulemaking proceeding. To repeat, a QF can only

receive full avoided cost (to which it is lawfully entitled) if it contracts for a period of time equal to the entire useful life of the avoided unit.

Both the ten year minimum contract period and the other provisions, such as the inability of a QF to unilaterally modify its capacity commitment, were designed to protect the utility and the customer. As the Commission stated, "The rules pertaining to standard offer contracts have been carefully designed to provide the planning certainty required to allow a utility to depend on the QF capacity and defer additional power plant construction." (Order No. 13247 at p. 11).

These features fairly well defined the Commission's implementation of PURPA and FERC regulations, through most of the 1980's.

Q **Were there changes in the Florida statutes near the end of the 1980's that had an affect on Commission cogeneration rules?**

A. Yes. Among other things, in 1988, the Florida legislature passed the 1988 Solid Waste Management

Act. This act specifically encouraged the development of local government solid waste facilities that use waste as the primary energy source for electrical generation. As regards the Commission's cogeneration rules, it required the elimination of the 20% risk factor when establishing capacity payments in a standard offer contract.

Then, in 1989, the Florida legislature conducted a sunset review of Chapter 366, Florida Statutes. Until this review, all of the Commission's actions to encourage cogeneration were in response to the mandate of PURPA and the implementing FERC regulations. To that point, the Florida statutes had not addressed the issue, other than to give the Commission jurisdiction in matters pertaining to QF's. During the sunset review the legislature added language to the statute specifically addressing QF's. A new section, 366.051, was added to Chapter 366, Florida Statutes providing that electricity produced by cogeneration and small power production is a benefit to the public. In addition, this new section mandated the Commission to authorize a rate equal to the purchasing

utility's full avoided costs. Thus, cogeneration and small power production were now encouraged, at both the federal and state level, through payments for purchases at full avoided costs. Several changes were made to the existing rules. But a major change, with regard to standard offer contracts, was to limit their availability to solid waste facilities and other QF's of 75 MW or less. Until that change, the standard offer contract was available to any QF, regardless of size.

Q. After reviewing the history of the development of the Commission's rules through 1990, are there any conclusions that can be drawn?

A. Yes. The rules regarding standard offer contracts, as they evolved through 1990 fairly implemented the intent and purpose of federal and state laws as they apply to QF's. They fully recognize the conservation benefits and economic principles I described earlier in my testimony. As a result, they encourage the development of qualifying facilities.

Q. Did the Commission make any changes in the 1990's that affected the standard offer rule?

A. Yes. In 1993, the Commission adopted a "bidding rule" that required all regulated electric utilities to issue Requests for Proposals for any capacity addition with a steam-electric generating capability of 75 MW or more. In the same year, assuming its bidding rules would provide ample opportunity for QF's to sell electricity, the Commission amended its rules to significantly limit the applicability of the standard offer contract. In Order No. PSC-96-1548-FOF-EQ, issued December 19, 1996, the Commission limited the standard offer to "small qualifying facilities" which includes municipal solid waste facilities, small power producers or other QF's with a primary energy source of at least 75% renewable resources, and QF's no greater in size than 100 KW.

Q. With that rule change did the rules continue to fully recognize the conservation benefits and economic principles you described earlier and continue to encourage the development of qualifying facilities?

No. Absolutely not. That change severely limited the encouragement of QF's because it forced many otherwise qualified QF's into the negotiation

process with no reasonable expectation of success. However, for those that could still pass the Commission's litmus test for "small" QF's, it did offer a fair opportunity to contract at full avoided cost payments. As an aside, the Commission's bidding rules were and are defective in the sense that a utility can circumvent the intent of the rule by, for example, building combined cycle plants in piecemeal fashion. First, the utility can build the combustion turbine components of a plant as a peaking facility. Because there is no steam generation the bidding rule does not apply. Later, when the utility seeks to add the steam portion, no bidder is able to compete with the utility because the utility only needs to build half of a plant to complete the combined cycle, while the bidder would have to build the entire plant.

PRIMARY FEATURES OF THE EXISTING RULES

Q. For those that still qualify for the standard offer contract, what are the primary features of the existing rules that result in a fair implementation of the requirements of federal and state laws and the encouragement the development of QF's?

A. The primary features of the existing rules that encourage the development of QF's in the fair manner required by federal and state laws, are as follows:

1. They protect the customer by ensuring that capacity delivered is paid for only at its deferred value;

2. They protect the planning process of the utility and the QF's by requiring a minimum ten year standard offer contract. This provides planning certainty and allows a utility to depend on QF capacity and deferral of additional construction.

3. They protect the QF from monopsonistic behavior in negotiations by setting as a default alternative, a standard offer contract that pays full avoided cost for a contract period up to the life of the avoided unit;

4. They provide QF's with a basis for the long term financing of qualified facilities by providing a QF with the opportunity to contract, within the standard offer, for the life of a unit. Since a QF's generating facility will have a life equal or very similar to that of an avoided unit, it can be assured of a revenue stream to finance construction

by opting for a contract equal to the life of the unit.

PROBLEMS WITH THE PROPOSED AMENDMENTS

Q. Will the proposed rule amendments continue to fairly implement the requirements of federal and state laws and encourage the development of QF's?

A. Unfortunately, no. The combined proposed amendments to the rules - lowering the minimum contract period from ten years to five years and requiring the utility to set a specific contract period in the standard offer contract - will negate at least two of the four means of fair implementation and encouragement that I just summarized, and quite probably three. First, the protection from monopsonistic behavior is removed. Second, the basis for long term financing by the QF is seriously impaired. And to some degree the protection of the planning process is weakened. More importantly, however, the proposed amendments will result in capacity payments to QF's which are less than full avoided cost, thereby falling short of the requirement of Florida and Federal law.

Q. How does the proposed rule change remove the protection from monopsonistic behavior?

A. As previously discussed, the existing rules require that a utility must enter into a standard offer contract as an alternative to negotiation. This is protection against monopsonistic behavior only if the standard offer is set high enough to encourage the utility to negotiate. Under current rules, the standard offer indicates only the minimum length of the contract period, and allows the QF to choose a contract period up to the anticipated useful life of the avoided unit. Only a contract for a period of time equal to the life of the avoided unit will pay the QF full avoided cost for the capacity deferred. This was part of the leverage provided to QF's to insure that utility's had a motive to negotiate. If a utility would not negotiate in good faith, the QF could fall back on the standard offer.

Under the proposed rule amendments, the utility would be permitted to establish the contract period so long as the minimum contract period is no less than five years. A number of Standard Offer rule waivers allowed by the Commission over the past

several years have already allowed some utilities to specify the standard offer contract at five years, so the minimum contract period has already become the maximum contract period - unless the QF negotiates. But where is the leverage under the proposed rule with which the QF can negotiate? What is the incentive for the utility to negotiate? Is the QF to negotiate for less than five years and then fall back to five years if negotiations are unsuccessful? That is not a realistic expectation if the Commission truly seeks to continue to encourage QF's and comply with the mandate of law. Nor is it realistic to expect a utility to negotiate for more than five years, when the only fall back for the QF for an unsuccessful negotiation is five years. The end result is that there is no longer protection from the utility's monopsonistic behavior. In short, the QF either accepts the bone thrown to it, or incurs substantial transaction costs to challenge the utility and the Commission, or - in cases where the QF is a new proposed facility - the capacity is simply not built.

Q. How does the proposed rule language impair the basis for long term financing by the QF?

A. QF's in general, and solid waste facilities in particular, are designed, constructed, operated and maintained to reliably produce electricity over a useful life of 20 to 40 years - similar to that of a utility generating plant. If such a facility is to be financed at a reasonable cost - or at all - there must be some assurance that revenues from electricity sales will be available during the financing period, which again, similar to a utility facility, can be for a long period of time and often through the useful life of the facility. That cannot be done when the QF does not have the option to contract for longer than five years. The proposed rule amendments effectively eliminate the QF's ability to enter into a contract of any meaningful length.

Q. How does the proposed rule language weaken the planning process?

Utilities need to plan for both the long and short term. When units are designated as an avoided unit, the implication is that without an alternative, the unit will need to be built. That is a long term

commitment on the part of the utilities, the risk for which is borne by the customers. A utility may be able to defer construction for short periods, but eventually capacity must be built by someone. The alternative to purchase from another source is only possible if there is another source. All sources are the result of a long term commitment by some entity - either the utility requiring the energy, another utility, or a non-utility supplier. By limiting standard offer contracts for QF's to a term too short to allow financing, the availability of QF's, as a resource will be, for all intents and purposes, eliminated. It also removes the "planning certainty" which the Commission identified in Order No. 13247 as being required to allow a utility to depend on QF capacity to defer additional construction. This weakens the planning process by essentially discarding a reliable, efficient and cost-effective long-term generating alternative.

RECENT COMMISSION INTERPRETATIONS

Q. Earlier in your testimony, you indicated that Tampa and the Authority were concerned that interpretations of the existing rules, as expressed in recent Commission orders regarding standard

offer contract rule waivers, no longer reflect the conservation benefits and economic principles upon which the laws and regulations encouraging the development of QF's were founded. What do you mean by that?

A. The rules developed and implemented throughout the '80's and most of the '90's supported the federal and state premises that payments set at full avoided costs best met the criteria of just and reasonable to consumers and non-discriminatory to QF's. In addition, the rules protected the QF and the utility by making the standard offer contract an alternative to negotiations and by requiring contracts to be at least ten years in length, but up to the life of an avoided unit, so that a QF had the opportunity to earn the full avoided cost as it is legally entitled.

Then, beginning in 1999, in response to petitions by each of the investor owned utilities (some more than once) for approval of "sub-standard" standard offer contracts through, among other things, waivers of the ten year minimum contract requirement, the Commission began including statements in its orders that lead me to believe

that the Commission no longer considers QF's an economic alternative resource nor a more efficient electricity producer (i.e., more energy efficient) than utility generation. The comments lead me to believe that the Commission considers QF's to be nuisances rather than viable generating alternatives. The orders are replete with statements and innuendo that QF's provide no benefit and therefore any payment to them - above energy payments - is a subsidy. This is simply not true. It is disconcerting how far afield the Commission has come from the its original concepts of QF's.

Q. Could you be more specific with regard to the statements made by the Commission?

A. Yes. In Order No. PSC-99-0748-FOF-EQ, the Commission approved a new standard offer contract for Tampa Electric Company (TECO), designating a 2001 CT as the avoided unit. The Commission then goes on to say that it is unlikely that the unit can be avoided, that payments made to QF's amount to a subsidy, and that this subsidy is mandated by federal and state regulations.

In Order No. PSC-99-1091-PAA-EI, the Commission approved a new standard offer contract for Gulf Power Company (GFC), designating a 2002 CC as the avoided unit. But, the Commission stated that most likely, the offering of said contract will not result in benefits to Gulf's ratepayers.

In Order No. PSC-00-0505-TRF-EG, the Commission approved a new standard offer contract for Florida Power and Light Company (FPL), designating a 2001 CT as the avoided unit. The Commission then went on to state that the contract offer may result in a potential subsidy to QF's, that QF's should compete on an equal footing with all other producers of electricity, and that unless the federal and state laws are changed, QF's are being given preferential treatment.

In Order No. PSC-00-0265-PAA-EG, the Commission approved a new standard offer contract for Florida Power Corporation (FPC), designating 2001 CT as the avoided unit and approving a waiver to the 10 year minimum period and authorizing a 5 year limit to the contract period. The Commission stated that the waiver is warranted because a longer contract

period will result in an economic hardship to ratepayers who bear the risk of generation that is not avoided or deferred. The Commission then restated the same arguments it made in the FPL order.

Then, in Order Nos. PSC-00-0504-PAA-EQ, PSC-00-1748-PAA-EI, PSC-00-1773-PAA-EQ, PSC-01-1418-TRF-EQ, all dealing with petitions by FPC, FPL or TECO for new standard offer contacts and/or waivers of the minimum contract period, the Commission's approval was supported by the same rationale used in the cases previously discussed.

Q. What do you infer from the Commission statements in these recent orders?

A. The only logical inference is that: (1) the Commission has decided to no longer base its decisions on sound economic principles and to no longer recognize the conservation benefits of QF's; or, (2) the Commission has erroneously been led to believe that the economic and conservation benefits of QF's no longer exist. Nothing could be further from the truth, and for that reason, I sincerely

hope it is the latter reason, because those erroneous beliefs can be pointed out and corrected.

Q. How do the proposed rule amendments fit in with all of this?

A. The proposed rule amendments merely codify the Commission's actions and stated intent in approving the recent standard offer contract rule waivers of the minimum contract period. The proposed rule amendments assume that the Commission's reasoning in those orders is correct and therefore are the basis for the proposed rule change.

Q. Would you please address the Commission's statement that QF's are being given preferential treatment and should be on an equal footing with all other producers?

A. If the rules actually were implementing the intent of the federal and state laws, I would agree that QF's were being given preferential treatment - a treatment to which they are legally entitled. After all, that is the intent of the Florida and Federal laws previously referred to with respect to QF's. There is nothing wrong with encouraging or preferring facilities that conserve scarce

resources by making more efficient use of those resources than conventional fossil fuel burning facilities. That is the basis of all utility conservation programs approved by the Commission and paid for by the customers. But the Commission's statements imply that such preference is not deserved. There is simply no basis for that conclusion.

The sad fact is that with the restrictions to entry placed upon QF's in the 1996 rule change and the proposed amendments now before the Commission, the rules could be better characterized as unduly discriminatory against QF's. The 1996 rule changes severely limited and constricted the QF market. The proposed rule amendments will more severely restrict that market and undermine the economic incentive for a QF contracting to sell firm capacity and energy.

THE CONSERVATION AND ECONOMIC BENEFITS OF QF'S

Q. Do the conservation and economic benefits of QF's continue to exist?

A. Absolutely. Nothing has happened that has changed those characteristics. By definition, QF's always

conserve energy and/or scarce resources. By definition, avoided cost payments are always fair and reasonable to the utility and to the customer.

Q. How do QF's always conserve energy and/or scarce resources?

A. The facilities that "qualify" as QF's are either cogenerators, facilities that produce electricity by use of renewable resources, or in some cases both.

A cogenerator is a system that produces both electrical or mechanical energy and thermal energy sequentially from the same primary source. By definition, a cogenerator gets two products out of the same source. When one of those products is electrical energy, producing any thermal output from the same primary source makes it more energy efficient than a system that produces only electrical energy. Moreover, the minimum thermal output requirements of the federal regulations and Commission rules insure this outcome.

QF's that are small power producers, according to federal regulations must produce energy using a

renewable resource for at least 50% of its primary fuel input. To qualify for a standard offer contract under PSC rules, it must use a renewable resource for at least 75% of its primary fuel input. When renewable resources are used, nonrenewable fossil fuels are not. By definition, using renewable resources conserves scarce resources. In addition, though beyond the scope of this proceeding, resource recovery facilities minimize the amount of solid waste going to landfill thereby reducing a potential threat to Florida's scarce ground water supplies.

Compared to conventional electric generation, QF's always conserve scarce resources.

Q. Why are avoided cost payments fair and reasonable?

A. One only has to look at the definition in Section 366.051, Florida Statutes. " A utility's "full avoided costs" are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source." Obviously, if the costs the utility would have

incurred in generating or purchasing are fair and reasonable, paying *those same costs* to an alternative source to provide the same product is fair and reasonable. In the case of QF's, the utility would be paying those avoided costs for a product that is superior in that the same product will be provided with the use of less fossil fuel input.

RESPONSE TO COMMISSION STATEMENTS

Q. The Commission has stated, in the Rulemaking Notice, that keeping the ten year minimum would "continue" the possibility that IOU's and their ratepayers would be faced with "higher" costs. Would you please respond to those statements?

A. Yes. First, in what context are the terms "continue" and "higher" used? "Continue" implies that payments made to QF's in the past are higher. Higher than what? Payments to QF's are equal to or lower than the cost the utility would have incurred had it provided its own generation. The Commission sets those payments based on information provided by the utilities. The payments made to QF's cannot be higher than the costs avoided, and any capacity provided by QF's is avoided by the utility. So, is

the Commission saying those numbers were in error? If so, that is not something for which QF's should be penalized. Or is the Commission saying they chose the wrong avoided units, and therefore they are not really avoided? Again, that is not something for which QF's should be penalized.

Q. The Commission, in the recent orders discussed above has made statements to the effect that standard offer contracts will not likely result in a unit being avoided or result in benefits to ratepayers. Would you please address those statements?

A. Yes. I believe those statement are simply incorrect. When capacity requirements are provided by other than the serving utility, the need for that utility to construct that capacity is avoided. The utilities have identified their own avoided units. The selection is their choice; the timing for the selection is their choice. Capacity provided by others avoids the need for that unit's capacity in part or in total. For each year that any amount of alternative capacity is provided, the need for utility capacity is deferred or avoided or reduced. If alternative capacity is provided for

five years, the need is deferred for five years. If capacity is deferred for twenty years, and the utility would have been required to build a unit with a twenty year life, the need is avoided entirely. It is as simple as that and that is the basis for the payment scheme devised by the Commission with the assistance of the utilities.

Q. Well what if the cost of capacity goes down in the short term - say five years? Wouldn't, it be a detriment to ratepayers, as the Commission infers, if QF's with a long term contract are continued to be paid at the higher cost of their contract?

A. No. The ratepayers would be unaffected. Remember, if the utility unit had not been deferred or avoided, it would have been built by the utility. Then, the cost of that investment would be recovered through rates for the life of the unit, regardless of what happens to the cost of future units. That's what payments based on avoided costs are all about. If a utility builds a unit with a twenty year life, its liability for paying the associated capital costs does not go away if by chance, in five years, the cost of future construction goes down. But that is exactly what

is being asked of QF's if a five year contract term is mandated. The Commission would be saying to the QF - "you commit to building a unit to defer a utility's need to construct capacity. We'll pay you the equivalent cost for five years and then we'll take another look to see if construction costs have changed. If they have gone down, that's too bad. I guess you will just have to make up the difference somewhere else. Of course, if costs go up, we'll pay you more, but that doesn't seem very probable, or we would not be proposing this rule change."

Q. Is that a viable choice for QF's?

A. Not any more so than for utilities.

THE ECONOMIC OF PAYMENTS - PROPOSED VS. EXISTING RULES

Q. In stating your position you said that the proposed rules will result in payments to QF's that are less than the purchasing utility's avoided costs. Would explain how that happens?

A. **As previously discussed,** the annual payments to QF's for capacity are determined by calculating the year-by-year value of deferral of investment in the avoided unit. Value of deferral payments begin low and increase with time (see Exhibit (FS-1)_____,

Graph 1); the later payments being higher to reflect the time value of money and the value of deferring for longer periods of time. If the unit can be deferred entirely; i.e. for the length of its useful life, then the amount deferred is the total cost that the utility would have incurred to construct the unit and pay all the associated carrying costs. If a QF enters into a contract equal to the life of the avoided unit, it will be paid all of those avoided costs over the life of the plant, even though, as a practical matter, it will receive capacity payments in the early years that may be drastically less than its own actual carrying costs to build a facility to defer or avoid the utility's unit. In the later years, capacity payments are likely to be higher than its actual carrying costs to have built the facility to defer or avoid the utility's unit. On a net present value basis, however, the results are the same, over the life of the unit. In other words, on a net present value basis that accounts for the time value of money, the total value of deferral payments to the QF would be equal to the "revenue requirements" the utility would have collected from its ratepayers for the same capacity. If a QF

contracts for, or is forced to contract for, anything less than the life of the avoided unit, it will not receive payments equal to the full avoided cost of the unit. Under existing Commission rules, the QF has the opportunity to decide how long a contract it can enter into, as long as it is at least ten years. If the QF determines that a contract term shorter than the life of the avoided unit is workable, it can make that decision. It has a viable choice.

Under the proposed rule amendments the QF will not have that choice. The minimum contract period will be five years and the choice of making it longer belongs solely to the utility. With the contract period limited to a minimum of five years or to a maximum at the utility's discretion, there can be no other conclusion than that QF's will receive payments that are less than the purchasing utility's avoided cost.

Q. **The proposed rule amendment allows the QF to renew its contract every five years. Assuming avoided costs don't change, if a QF proceeds with that option for four five-year periods, won't it receive**

the same payments it would have received with a twenty year contract?

A. No. Each time it enters into a new contract, the payments to the QF start over at the low end of the value-of-deferral payment stream. So the QF never receives the higher payments that make the present value of deferred payments and revenue requirements equal over the life of the unit. It just gets twenty years of low payments. This is illustrated in Exhibit (FS-1)_____, Graph 2.

Q. Can you provide a numerical example to the Commissioners to illustrate this point?

A. Yes. Exhibit (FS-2)_____ is just such an illustration, based on TECO's COG-2 Standard Offer tariff, effective July 24, 2001. The exhibit compares the payments a QF would receive if it entered into repeating 5 year contracts versus a single 20 year or 30 year contract. As the exhibit illustrates, the present value of the payments a QF would receive from four repeating contracts with 5 year terms would be 12% less than if it had entered into a single 20 year contract. And the present value of the payments a QF would receive from six repeating contracts with 5 year terms

would be 17% less than if it had entered into a single 30 year contract. Of course, this illustration assumes that a standard offer contract will be available to the QF at then end of each successive five year period.

CONCLUSION

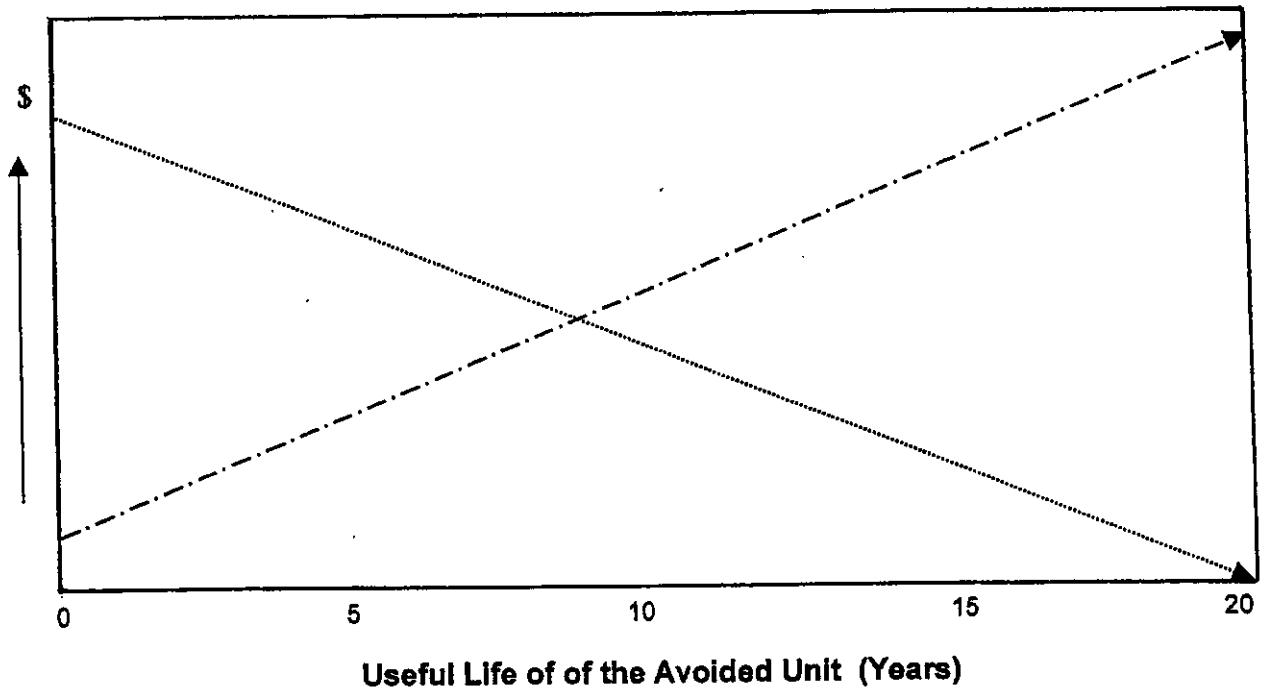
Q. If the proposed rule amendments are approved will the development of QF's continue to be a viable choice?

A. Not in my opinion. I cannot see how anyone can afford to construct a unit with a twenty year life based on the assurance that it can cover its cost for only five years. If you don't believe me, ask the utility's if they would be willing to make a commitment to construct their avoided (or unavoided) unit with a twenty year life based on the assurance that they will receive value-of-deferral receipts for only five years, but will have another shot at another unknown payment stream every five years.

Q. Does that conclude your direct testimony?

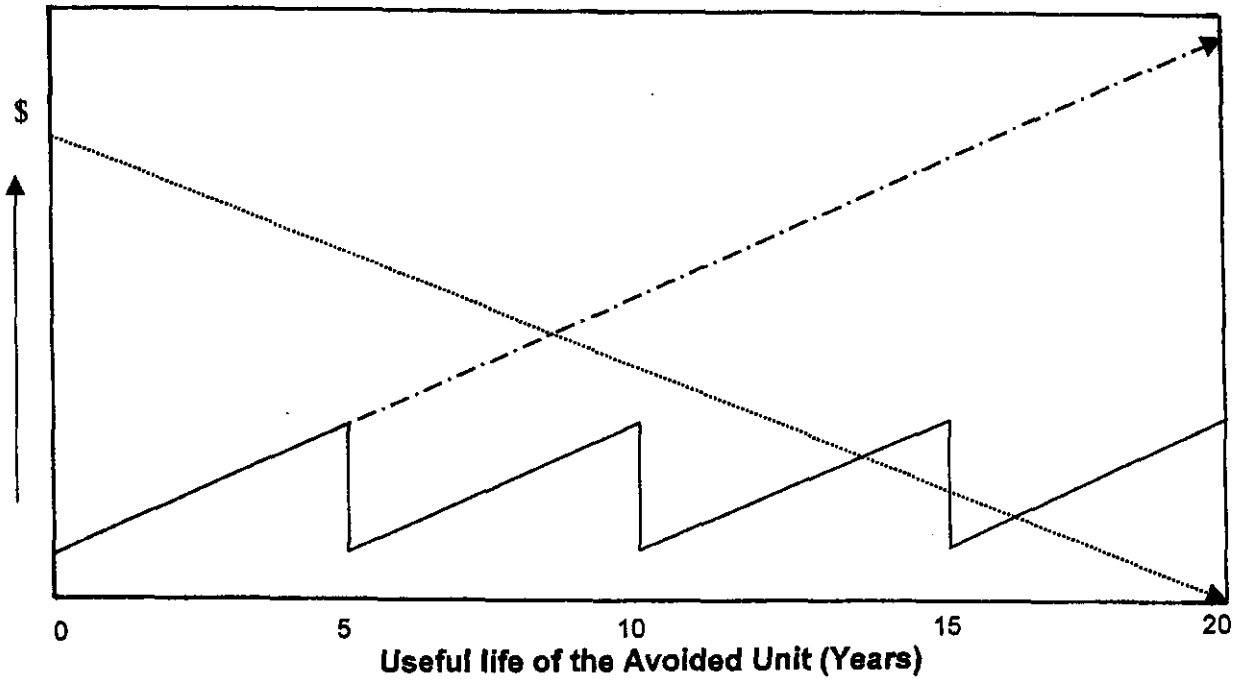
A. Yes it does.

GRAPH 1



Note: Present Value of "Value of Deferral" Payment stream = Present Value of "Revenue Requirement" Payment Stream = the full avoided cost of the capacity deferred.

GRAPH 2



Note: Present Value of "Value of Deferral" Payment stream = Present Value of "Revenue Requirement" Payment Stream, **but** Present Value of Staff Proposed " Value of Deferral" Payment streams **is less than** Present Value of "Revenue Requirement" Payment Stream and **less than the full avoided cost of the capacity deferred.**

Docket No. 001574-EQ
Seidman Exhibit (FS-2)_____

COMPARISON OF PAYMENTS
REPEATING 5 YEAR NORMAL PAY CONTRACTS, INCLUDING O&M
VERSUS 20 AND 30 YEAR NORMAL PAY CONTRACTS INCLUDING O&M

Year	4 5 Year Contracts	20 Year Contract		6 5 Year Contracts	30 Year Contract
1	$3.56	$3.56		$3.56	$3.56
2	$3.65	$3.65		$3.65	$3.65
3	$3.75	$3.75		$3.75	$3.75
4	$3.85	$3.85		$3.85	$3.85
5	$3.95	$3.95		$3.95	$3.95
6	$3.56	$4.05		$3.56	$4.05
7	$3.65	$4.15		$3.65	$4.15
8	$3.75	$4.26		$3.75	$4.26
9	$3.85	$4.37		$3.85	$4.37
10	$3.95	$4.48		$3.95	$4.48
11	$3.56	$4.60		$3.56	$4.60
12	$3.65	$4.72		$3.65	$4.72
13	$3.75	$4.84		$3.75	$4.84
14	$3.85	$4.97		$3.85	$4.97
15	$3.95	$5.10		$3.95	$5.10
16	$3.56	$5.23		$3.56	$5.23
17	$3.65	$5.37		$3.65	$5.37
18	$3.75	$5.50		$3.75	$5.50
19	$3.85	$5.65		$3.85	$5.65
20	$3.95	$5.79		$3.95	$5.79
21				$3.56	$5.94
22				$3.65	$6.10
23				$3.75	$6.26
24				$3.85	$6.42
25				$3.95	$6.59
26				$3.56	$6.76
27				$3.65	$6.93
28				$3.75	$7.11
29				$3.85	$7.30
30				$3.95	$7.49
NPV	$394.55	$450.34	NPV	$440.25	$530.67
Diff fr 20 Yrs	-12.39%		Diff fr 30 Yrs	-17.04%	

Note: Based on TECO COG-2 Tariff, effective Juy 24, 2001

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COGENERATION & ALTERNATIVE ENERGY
ENERGY REGULATORY LAW

March 1, 2002

By Hand Delivery

RECEIVED-FPSC
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COMMISSION
CLERK

Ms. Blanca S. Bayó, Director
Commission Clerk & Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Florida Public Service Commission Docket No. 001574-EQ
Proposed Amendments To Rule 25-17.0832, FAC,
Firm Capacity And Energy Contracts

Dear Ms. Bayó,

Enclosed for filing and distribution, on behalf of the City of Tampa, Florida, please find 10 copies of the *Direct Testimony of* Ralph Michael Salmon.

If you have any questions or require anything further, please contact this office immediately.

Sincerely,

Richard A. Zambo
Florida Bar No. 312525

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	Docket No. 001574-EQ Filed: March 1, 2002

DIRECT TESTIMONY

OF

RALPH MICHAEL SALMON, P.E., DEE

FOR

THE CITY OF TAMPA, FLORIDA

DIRECT TESTIMONY OF RALPH MICHAEL SALMON, PE, DEE

ON BEHALF OF

THE CITY OF TAMPA, FLORIDA

FPSC DOCKET NO. 001547-EQ

Q. **Please state your name, occupation and business address.**

A. My name is Ralph Michael Salmon. I'm Deputy Chief Administrative Officer of the City of Tampa Florida with offices at 306 E. Jackson, Tampa, Florida 33602.

Q. **State briefly your educational background and experience.**

A. I have a BS and MS in Civil Engineering and a Masters of Public Works degree and have been a practicing Public Works official in three cities including the past 26 years in the City of Tampa, Florida. I'm a Registered Professional Engineer in Missouri and Florida and a Diplomate Environmental Engineer of The American Academy of Environmental Engineers.

Q. **On whose behalf are you presenting this testimony?**

A. I am presenting this testimony and appearing on behalf of the City of Tampa, Florida (the "City" or "Tampa") in my capacity as Deputy Chief Administrative Officer.

Q. **What is City's interest in this proceeding?**

A. The City currently owns a municipal solid waste facility which is defined as a solid waste facility or Small Qualifying Facility ("SQF") by Commission Rule. As such,

we are eligible for Standard Offer Contracts pursuant to Commission Rule 25-17.0832, F.A.C., the subject of this proceeding. In addition to our existing facility, there is the possibility that our SQF capacity may be expanded, or that we would construct one or more additional SQFs. Accordingly, we are very concerned in maintaining our access to a viable standard offer contract as is provided for in the current rules - without the proposed amendments.

Q. Please provide a brief general description of the City's solid waste facility.

A. The City's facility disposes of approximately 320,000 tons of municipal solid waste annually. Most of the waste is generated within the City of Tampa. Our facility is of the "mass burn" type, where, after separating out large non-combustibles, and certain recyclables, the bulk of the solid waste is combusted "as-is" in an incinerator. Recyclable metals, and other materials are recovered from the ash after the combustion process. (This is in contrast to RDF facilities which recover recyclables prior to combustion and which convert non-recyclable combustible wastes into a refuse derived fuel for firing in a boiler.) Heat produced in the incineration process is recovered to produce steam for use in a 22 mW steam turbine-generator. The City's facility generates approximately 185,000 mWh of electricity annually, the majority of which (about 160,000 mWh) is sold to Tampa Electric Company (TECO), pursuant to

a contract for firm energy and capacity. The contract was executed in August, 1982 (prior to the Commission's standard offer rules), was amended by renegotiation in May, 1989, and will expire in August, 2011.

Q. Is the City's contract with TECO a standard offer contract?

A. No. The contract is the result of negotiations between the City and TECO. As I stated, the contract was originally executed prior to the time the Commission adopted the standard offer rules. Since that time it has been renegotiated in accordance with subsequently adopted rules of the Commission.

Q. It appears that the City was successfully able to negotiate a contract with TECO without the benefit of a standard offer contract. Why then are you concerned with the proposed amendment to the standard offer rules?

A. Until you have attempted to sell firm capacity and energy from an SQF to TECO, or to any electric utility, you will not likely understand the tremendous, and frankly unfair, advantage that the utility has in the negotiation process.

Q. Please elaborate.

A. As an SQF, selling electricity to a utility is very similar to anyone buying electricity from a utility. We are restricted to selling electricity produced by our facility to the utility. The utility is therefore the

only buyer. When we are buying we are restricted to buying only from the utility. The utility is therefore the only seller. Either way, acting as a monopsony or a monopoly, our only buyer and seller, the utility has a great advantage in the market. It can set prices too low when buying and too high when selling because the other party to the transaction has no alternative. In the same way that "standard" tariff rates approved by this Commission are necessary to prevent monopoly utilities from overcharging for electricity sold, standard offer contracts are necessary to prevent monopsony utilities from underpaying for electricity purchased. The standard offer acts as a constraint on the monopsony power of the utility just as approved retail tariff act as constraints on its monopoly power. We need both.

Q. You said the City renegotiated its original contract with TECO. Isn't this evidence that the negotiation process works?

A. No, it is not. The original contract severely undervalued the electricity generated by the City and sold to TECO. We were able to renegotiate our contract with TECO as a result of the appeals of the City, as well as a number of other local governments, to the Florida legislature for relief. As a result, the legislature directed this Commission to adopt rules under which solid waste facilities could renegotiate their firm capacity and energy contracts with the purchasing utility. It is as a

result of those rules that TECO was willing to enter into renegotiations with the City.

Q. Did you rely on the standard offer in the renegotiation process?

A. We did, but not as directly as we might have liked. As I recall, we were eligible to renegotiate, but due to the terms and conditions of our original contract, we were not eligible to accept the standard offer. (There was however I believe, a standard offer in effect at that time.) We relied on the standard offer in the sense that we used it as a measure of what were considered by the Commission to be reasonable terms, conditions and pricing for the sale of firm capacity and energy.

Q. So as the owner of an SQF, the City sees value in a standard offer even though you have never entered into one.

A. Absolutely. The value of having a reasonable, fair and legitimate standard offer is of great value to the SQF. If the utility is reluctant to negotiate in good faith, or seeks to unduly delay the negotiation process, the standard offer should be there to serve as a safety valve of sorts. If negotiations are failing and time is running out, a fair and reasonable standard offer provides an alternative to the SQF.

Q. What did you intend by your reference to "time running out"?

A. The process leading up to the start-up and operation of a solid waste facility is a lengthy one - on the order of perhaps 3 to 5 years. However, the time period becomes critical as the project proceeds, starting out slower and gaining momentum as the pieces fall into place. Delays in executing an electricity sales contract can delay financing, which can delay construction and start-up. Because solid waste facilities are usually being designed to relieve burdens on landfill operations, delays in start-up can have significant negative economic as well as environmental impacts. Knowing this, utilities might be tempted to delay the negotiation process to gain an advantage. As the deadline date for financing (or other milestone event relying on electricity sales) the SQF will be pressed to accept what the utility offers or potentially delay the project.

Q. Please elaborate on how the standard offer serves as a safety valve.

A. Quite simply, I meant that if the standard offer contract is a reasonable one and if the utility proves to be unreasonable in negotiations, the SQF would have the option of accepting the standard offer in lieu of negotiation. The current rules, if enforced by the Commission would by definition result in reasonable standard offers, and would continue to serve in this

safety valve capacity. However, the proposed amendments - in spite of the apparently minor changes - would destroy the value of the standard offer as both a reasonable alternative and as a negotiation safety valve.

Q. Would you please explain?

A. Yes, certainly. If at the time an SQF is negotiating for the sale of firm capacity and energy, a legitimate standard offer is in effect (one that is reasonable with respect to terms, conditions and pricing) the SQF will be in a position to resist unreasonable demands of the utility, as well an undue delays in the negotiation process. If necessary, the SQF could accept the standard offer, even though a negotiated contract might have benefited the SQF and the utility. One way to look at it is that the existence of the standard offer in a sense establishes the Commission's presence in the negotiation process as a mediator to help the parties overcome sticking points.

Q. What is the City's position with regard to the proposed rule amendments?

A. Our position is that the proposed amendments, if adopted, will result in standard offer contracts that will no longer be reasonable in their terms, conditions or pricing. As such, the standard offer contract will no longer serve as a safety valve mechanism, thereby allowing the purchasing utility to take unfair advantage of SQFs

seeking to sell electricity by exercising its unregulated monopsony power.

Moreover, it is our view, and that of our legal counsel, that the proposed rule amendments would clearly violate both Florida and Federal law in that they would result in payments less than the specified "full avoided cost". Our consultant, Mr. Frank Seidman will address in detail our concerns with respect to the full avoided cost issue and how the proposed rule amendments will result in payments of less than full avoided cost.

Finally, we are somewhat perplexed that the Commission would propose an amendment which would so clearly violate the applicable law, and thereby force the City and other local governments to expend their time and financial resources in opposing the amendment.

Q. Do you have any suggestions or closing comments for the Commissioners?

A. As I mentioned, our consultant Mr. Frank Seidman will address the details of the proposed amendment. However, as a general comment, the City would suggest that the Commission should be exploring ways to encourage the development of SQFs - QFs in general and waste fueled QFs in particular - rather than taking steps to further deter the industry. In 1985, the City of Tampa undertook the retrofit of its then nearly 20 year old incinerator

entirely as a result of the State of Florida's mandate for resource recovery which specifically included Refuse to Energy (RTE). This was at a time when landfilling of municipal solid waste was creating great political friction due to the difficulties of siting and permitting and the public sentiment that landfilling in the State of Florida was undesireable due to porous soils and high water tables. The disconnect appeared to occur when the utilities were not seen to be a willing buyer of the energy due to traditional ratemaking strategies encouraging ownership and control of generating capacity. More recently, federally mandated environmental rules required much more sophisticated emission controls and the City of Tampa, in choosing not to again increase the amount of municipal solid waste taken to landfill, accomplished a massive $100 million retrofit. The certainty of a fair payment for the energy benefits provided by such facilities would seem a reasonable request.

Q Does this conclude your direct testimony?

A. Yes it does.

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COGENERATION & ALTERNATIVE ENERGY
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March 1, 2002

By Hand Delivery

Ms. Blanca S. Bayó, Director
Commission Clerk & Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Florida Public Service Commission Docket No. 001574-EQ
Proposed Amendments To Rule 25-17.0832, FAC,
Firm Capacity And Energy Contracts

Dear Ms. Bayó,

Enclosed for filing and distribution, on behalf of the City of Tampa, Florida and the Solid Waste Authority of Palm Beach County, Florida, please find 10 copies of the Direct Testimony and Exhibit of Frank Seidman.

If you have any questions or require anything further, please contact this office immediately.

Sincerely,

Richard A. Zambo
Florida Bar No. 312525

RAZ/sn
enclosure

AUS
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March 1, 2002

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Ms. Blanca S. Bayó, Director
Commission Clerk & Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Florida Public Service Commission Docket No. 001574-EQ
Proposed Amendments To Rule 25-17.0832, FAC,
Firm Capacity And Energy Contracts

Dear Ms. Bayó,

Enclosed for filing and distribution, on behalf of the Solid Waste Authority of Palm Beach County, Florida, please find 10 copies of the Direct Testimony of Marc Bruner.

If you have any questions or require anything further, please contact this office immediately.

Sincerely,

Richard A. Zambo
Florida Bar No. 312525

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	Docket No. 001574-EQ Filed: March 1, 2002

DIRECT TESTIMONY

OF

MARC C. BRUNER, Ph.D.

FOR

THE SOLID WASTE AUTHOITY

OF

PALM BEACH COUNTY, FLORIDA

DIRECT TESTIMONY OF MARC C.BRUNER, Ph.D.

ON BEHALF OF

THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY, FLORIDA

FPSC DOCKET NO. 001547-EQ

Q. Please state your name, occupation and business address.

A. My name is Marc C. Bruner. I'm the Director of Planning and Environmental Programs for the Solid Waste Authority of Palm Beach County, with offices at 7501 North Jog Road, West Palm Beach, Florida, 33412

Q. State briefly your educational background and experience.

A. I have BA and MS Degrees in Botany from the University of Wisconsin - Milwaukee, and a Ph.D. in Ecology from the University of Tennessee - Knoxville. I have been practicing as an environmental manager for over twenty years in both government and the private sector. I have been the Director of Planning and Environmental Programs for the Authority for over 15 years. In that role I have been responsible for the long range planning for the Authority, including the waste-to-energy facility.

Q. On whose behalf are you presenting this testimony?

A. I am presenting this testimony and appearing on behalf of the Solid Waste Authority of Palm Beach County, Florida ("the Authority") in my capacity as Director of Planning and Environmental Programs.

Q. What is Authority's interest in this proceeding?

A. The Authority currently owns a municipal solid waste facility that is defined as a solid waste facility or Small Qualifying Facility ("SQF") by Commission Rule. As such, we are eligible for Standard Offer Contracts pursuant to Commission Rule 25-17.0832, F.A.C., the subject of this proceeding. In addition to our existing facility, there is the possibility that our SQF capacity may be expanded, or that we would construct one or more additional SQFs. Accordingly, we are very concerned with maintaining our access to a viable standard offer contract as is provided for in the current rules - without the proposed amendments.

Q. Please provide a brief general description of the Authority's solid waste facility.

A. The Authority disposes of approximately 1.3 million tons of municipal solid waste annually. Approximately 800 thousand tons of this total is delivered to the waste-to-energy facility for processing. Once at the facility, the solid waste undergoes processing to separate recyclable materials, primarily ferrous metal and aluminum, from non-recyclable materials. The non-recyclable materials are further processed into a material known as refuse derived fuel (RDF). (This is in contrast to "mass burn" facilities, which incinerate the waste stream first and separate afterward.) RDF is fired in steam boilers to produce steam for use in a 62-mW steam turbine-generator. The facility generates approximately 450 thousand mWh of

electricity annually, the majority of which is sold to Florida Power and Light Company (FPL), pursuant to a contract for firm energy and capacity which was executed in January 1987 and expires in March 2010.

Q. Is the Authority's contract with FPL a standard offer contract?

A. No. The contract is a result of negotiations between the Authority and FPL.

Q. If the Authority did not previously avail itself of the standard offer contract, opting instead to negotiate a contract with FPL, why are you concerned with the proposed amendment to the standard offer rules?

A. Unless you have attempted to sell firm capacity and energy from a SQF to FPL, or to any electric utility, you will probably not understand the tremendous value of having the standard offer available as a "fall-back" or "fail-safe" contract. If the standard offer had not been available to us as an alternative to the negotiated contract, I feel strongly that we would have been at a great disadvantage to FPL.

Q. Please elaborate.

A. When anyone buys electricity from a regulated utility, the utility is the only seller - this is a monopoly. As a SQF, selling electricity to a regulated utility is very similar to anyone buying electricity from a utility. We are restricted to selling electricity produced by our

facility to the utility, just as buyers are restricted to buying from the utility. The utility is the only buyer - which is known as a monopsony, rather than a monopoly. But either way, acting as a monopoly or a monopsony, the utility has a great advantage in the market. It can set prices too low when buying and too high when selling because the other party to the transaction has no alternative. In the same way that "standard" tariff rates approved by this Commission are necessary to prevent utilities from overcharging for electricity sold, standard offer contracts are necessary to prevent utilities from underpaying for electricity purchased.

Q. **You described the standard offer as a fall-back or fail safe contract. What did you mean by that?**

A. Quite simply, I meant that if the standard offer contract is a reasonable one and if the utility proves to be unreasonable in negotiations, the Authority would have accepted the standard offer in lieu of negotiation. In other words, we could fall back on the standard offer. The current rules, if enforced by the Commission would result in reasonable standard offers, and would continue to serve in this fall back or fail safe capacity. However, the proposed amendments - in spite of the apparently minor nature of the changes - would destroy the value of the standard offer as both a reasonable alternative and as a negotiation fall back or fail safe.

Q. Would you please explain?

A. Yes. At the time the Authority negotiated it current contract with FPL, the standard offer that was in effect at the time was a reasonable one with respect to terms, conditions and pricing. If necessary, the Authority could have accepted the standard offer, even though it was obvious that a negotiated contract would have benefited both the Authority and FPL. There were some aspects of the standard offer contract that we wanted to modify and some that FPL wanted modified, pointing to a negotiated contact as the way to proceed, if both sides would act in a reasonable fashion. We negotiated a contract that deviated from the standard offer contract in ways that benefited the Authority while enhancing the value of our firm capacity and energy sale to FPL and its ratepayers.

During the negotiation process with FPL, we encountered difficulties on several occasions. However, the existence of the standard offer - which in a sense establishes the Commission's presence in the negotiation process as a mediator - provided sufficient incentive to overcome the sticking points.

Q. What is the Authority's position with regard to the proposed rule amendments?

A. Our position is that the proposed amendments, if adopted, will result in standard offer contracts that will not be reasonable in their terms, conditions or pricing. As

such, the standard offer contract will no longer serve as a fall back or fail safe mechanism. These changes will eliminate the value of the standard offer contract as a reasonable alternative to negotiations for the SQFs. This will allow a purchasing utility to exercise its monopsony power without regulatory constraint, and to take unfair advantage of SQFs seeking to sell electricity.

Moreover, it is our view, and that of our legal counsel, that the proposed rule amendments would clearly violate both Florida and Federal law because they would result in payments less than the specified "full avoided cost". Our consultant, Mr. Frank Seidman will address this aspect of our concern, and we will brief the legal issues in our comments following these hearings.

We are also concerned that the Commission would propose an amendment that runs contrary to the applicable law, and requires the Authority and other local governments to expend their time and financial resources in opposing the amendments.

Q. Do you have any suggestions or closing comments for the Commissioners?

A. As I mentioned, our consultant Mr. Frank Seidman will address the details of the proposed amendment. However, as a general comment, the Authority would suggest that the Commission should be exploring ways to encourage the development of SQFs - QFs in general and waste fueled QFs

in particular - rather than taking steps to further deter the industry.

Waste-to-energy facilities are SQFs that provide significant benefits to the State of Florida. Florida has more waste-to-energy facilities than any other state, and produces more electricity from waste than any other state. Over half the population of the state of Florida is served by solid waste management systems that utilize waste-to-energy. These solid waste systems rely on the revenue from the sale of electricity as part of their overall funding base, and if the waste-to-energy SQFs are not fairly compensated for the value of the electricity they produce, the costs to our customers will have to be increased.

Q Does this conclude your direct testimony?

A. Yes it does.

Appl Helton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	))))	Docket No. 001574-EQ

PRELIMINARY COMMENTS
OF
THE CITY OF TAMPA

December 11, 2000

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	)	Docket No. 001574-EQ
	)	Submitted for filing: December 11, 2000

PRELIMINARY COMMENTS OF THE CITY OF TAMPA

The City of Tampa (the "City"), through its undersigned attorney hereby submits these comments in opposition to certain of the proposed amendments in the captions proceeding.

1. The City owns a municipal solid waste facility, as defined by rule 25-17.091, which is a small qualifying facility ("SQF")[1] pursuant to Commission rules.

2. Under current Commission rules, standard offers are only available to certain types of non-utility generating facilities (referred to as SQFs) that this Commission specifically sought to encourage when it last revised its rules. The proposed amendments would deter or eliminate access by SQFs to meaningful standard offer contracts. This would appear to be contrary to both Florida and Federal law[2].

3. The City is particularly concerned with those provisions of the proposed amendment - appearing in the notice as proposed rule 25-17.0832(4)(d)2. - which would change the term of the standard offer to a maximum of 5 years.[3] Without conforming

[1] The City's McKay Bay facility is a type of facility described by rule 25-17.0832(4)(a), FAC, which is eligible for Standard Offer Contracts.

[2] §366.051, Florida Statutes, and Section 210 of the Public Utility Regulatory Policies Act (PURPA).

[3] Current rules call for a minimum contract term of 10 years, and a maximum contract term equal to the useful life of the avoided unit on which the standard offer is based.

changes to the methodology and/or formula by which capacity payments are calculated, the proposed amendment would unlawfully limit standard offer capacity payments to less than avoided cost.

4. The current rules relating to firm energy and capacity contracts require that standard offer capacity prices be based on the utility's actual avoided unit. As provided by rule 25-17.0832 (4) (b), F.A.C.: *"The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction of additional generation capacity[4] or parts thereof by the purchasing utility."* The proposed rule amendment, absent corresponding changes to the pricing provisions of the rules, would render this impossible.

5. A key element of the standard offer rules is the "value of deferral" avoided capacity pricing methodology. This pricing methodology, as the term implies, determines the value of "deferring" the revenue requirements associated with a new utility rate-based generating plant. By its very design, the value of deferral payment mechanism can only result in avoided cost payments if the SQF can sell capacity to the utility over the projected useful life of the avoided unit on which the value of deferral is based. The proposed amendment wrongly decouples contract term from useful life and therefore from avoided cost. Arbitrarily limiting standard offers to 5 year terms would thereby assure that SQFs cannot receive actual avoided cost in direct contravention of applicable law.

[4]The City is unaware of any "real life" electric generating unit with a useful life of 5 years - as is apparently assumed in the proposed rule amendment. Virtually all recently constructed or planned electric generating units have minimum useful lives in the range of 30 years.

RICHARD A. ZAMBO, P.A. ● 598 S.W. HIDDEN RIVER AVENUE ● PALM CITY, FLORIDA 34990 ● (561) 220-9163

6. The value of deferral methodology essentially "inverts" the stream of capacity payments to the SQF, when compared to what the utility would receive if it constructed the avoided unit and added it to rate base. This is best illustrated by example.

7. Assume that a utility constructed an electric generating unit at a cost of $100 million. Assume further a useful life of 20 years, straight line depreciation, and a 10% rate-of-return. In very simplified terms, ignoring taxes and other factors, the first year the unit is in rate base, the utility would earn (ie increase its revenue requirement as reflected in rates) $10 million, the second year would be $9.5 million, the third year $9 million, and so on until in the twentieth (final) year the utility would earn $0.5 million. (A characteristic of the "revenue requirements" payment stream is that payments begin high and decline over time.)

8. If that same generating unit were avoided or deferred by SQF's entering into standard offer contracts, the revenue stream - and the rate impact on the utility's customers - would be "inverted" by virtue of the value of deferral methodology. The payments to the SQF would initially be very low - perhaps on the order of $1 million in the first year - but would escalate annually so that at the end of the 20 year useful life of the avoided unit, the net present value of payments received by the SQF would equal the net present value of revenues earned by the utility had it constructed the unit. (A characteristic of the "value of deferral" is that payments begin low and increase over time[5].)

9. Integral to the value of deferral payment mechanism is the minimum term of the standard offer. Commission rules currently require that standard offers include *". . .a*

[5] The value of deferral was adopted by the Commission for a number of reasons, For example, it tends to reduce intergenerational inequities as well as "rate shock" to the current utility customers. As payments under the value of deferral grow over time, there will be a larger customer base over which to spread the costs, thus reducing per-customer impacts.

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minimum ten year term contract commencing with the in-service date of the avoided unit[6]. . ." and that "*At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit*[7]. . . ". This requirement assures that an SQF willing to contract for a period equal to the anticipated plant life of the avoided unit, will receive avoided cost, and allows all or part of a proposed generating unit to be avoided. The ten year minimum term was deemed necessary both from the utility planning perspective, and to be of sufficient length to confer substantial capacity benefit on the utility ratepayers[8]. The proposed amendment's arbitrary imposition of a 5 year contract term minimum/maximum is clearly discriminatory to SQFs, defeats the public policy purpose of the standard offer rules, and assures less than avoided cost payments to SQFs.

10. The current rule implements the provisions of Chapter 366.051, F.S. relating to cogeneration and small power production, which is specifically intended to encourage cogeneration and small power production.[9] Under the proposed amendment, standard offer

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[6] 25-17.0832(4)(e)3., F.A.C.

[7] 25-17.0832(4)(e)7., F.A.C.

[8] See FPSC Order 12634 at page 19

[9] That section provides in part that: "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state or consumed by a cogenerator or small power producer. The electric utility in whose service area a cogenerator or small power producer is located shall purchase, in accordance with applicable law, all electricity offered for sale by such cogenerator or small power producer; or the cogenerator or small power producer may sell such electricity to any other electric utility in the state. The commission shall establish guidelines relating to the purchase of power or energy by public utilities from cogenerators or small power producers and may set rates at which a public utility must purchase power or energy from a cogenerator or small power producer." In fixing rates for power purchased by public utilities from cogenerators or small power producers, the commission shall authorize a rate equal to the purchasing utility's full avoided costs. A utility's "full avoided costs" are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. (Emphasis supplied)

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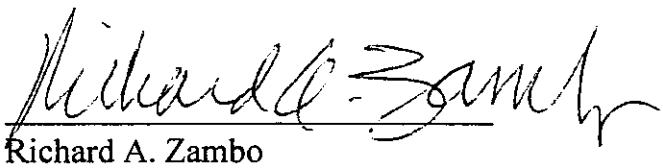
capacity prices would not be based on an avoided unit, would not represent avoided cost, and would fall well short of the statutory requirement.

11. The proposed decoupling of contract term from useful life (and thereby capacity payments from avoided costs) raises other issues of concern to the City, such as the appropriate capacity pricing methodology, and the role of subscription limits on standard offers. The City reserves the right to raise and pursue these and other issues at this or any further proceedings that may be conducted by the Commission in this matter.

12. The City respectfully suggests that the Commission withdraw the proposed amendments.

December 11, 2000

Respectfully Submitted,



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Attorney for: The City Of Tampa

App/Hetton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	))))	Docket No. 001574-EQ

PRELIMINARY COMMENTS

OF

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

December 11, 2000

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	)	Docket No. 001574-EQ Submitted for filing: December 11, 2000

PRELIMINARY COMMENTS
OF
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

The Solid Waste Authority of Palm Beach County (the "Authority"), through its undersigned attorney hereby submits these comments in opposition to certain of the proposed amendments in the captions proceeding.

1. The Authority owns a municipal solid waste facility, as defined by rule 25-17.091, which is a small qualifying facility ("SQF")[1] pursuant to Commission rules.

2. Under current Commission rules, standard offers are only available to certain types of non-utility generating facilities (referred to as SQFs) that this Commission specifically sought to encourage when it last revised its rules. The proposed amendments would deter or eliminate access by SQFs to meaningful standard offer contracts. This would appear to be contrary to both Florida and Federal law[2].

3. The Authority is particularly concerned with those provisions of the proposed amendment - appearing in the notice as proposed rule 25-17.0832(4)(d)2. - which would change the term of the standard offer to a maximum of 5 years.[3] Without conforming

[1] The Authority's facility is a type of facility described by rule 25-17.0832(4)(a), FAC, which is eligible for Standard Offer Contracts.

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7. Assume that a utility constructed an electric generating unit at a cost of $100 million. Assume further a useful life of 20 years, straight line depreciation, and a 10% rate-of-return. In very simplified terms, ignoring taxes and other factors, the first year the unit is in rate base, the utility would earn (ie increase its revenue requirement as reflected in rates) $10 million, the second year would be $9.5 million, the third year $9 million, and so on until in the twentieth (final) year the utility would earn $0.5 million. (A characteristic of the "revenue requirements" payment stream is that payments begin high and decline over time.)

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10. The current rule implements the provisions of Chapter 366.051, F.S. relating to cogeneration and small power production, which is specifically intended to encourage cogeneration and small power production.[9] Under the proposed amendment, standard offer capacity prices would not be based on an avoided unit, would not represent avoided cost, and would fall well short of the statutory requirement.

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12. The Authority respectfully suggests that the Commission withdraw the proposed amendments.

December 11, 2000

Respectfully Submitted,

Richard A. Zambo
Florida Bar No. 312525

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Palm City, FL 34990
Phone: (561) 220-9163
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Attorney for:
Solid Waste Authority of Palm Beach County

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001574-EQ,

IN RE: PROPOSED AMENDMENTS TO RULE 25-17.0832, F. A. C.,

FIRM CAPACITY AND ENERGY CONTRACTS

SUPPLEMENTAL COMMENTS OF DANIEL STROBRIDGE

ON BEHALF OF

PASCO COUNTY, FLORIDA,

AND

HILLSBOROUGH COUNTY, FLORIDA

MARCH 7, 2003

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

PSC DOCKET NO. 001574-EQ, FIRM CAPACITY AND ENERGY CONTRACTS

COMMENTS OF DANIEL STROBRIDGE

My name is Daniel Strobridge, and my business address is Camp Dresser McKee, 1715 North Westshore Boulevard, Tampa, Florida 33602. I am employed by Camp Dresser McKee in the development and operation of municipal solid waste facilities, also known as waste-to-energy facilities, in Florida. I am submitting these comments on behalf of Pasco County, Florida, and Hillsborough County, Florida, in support of the proposed rules offered by Lee County, Miami-Dade County, and Montenay-Dade, Ltd. in these rulemaking proceedings. My comments address why long-term power sales contracts are required to support the financing of waste-to-energy facilities.

Why Long-Term Contracts Are Required to Finance Waste-to-Energy Facilities

Introduction

Camp Dresser & McKee Inc. (CDM) is a nationally recognized engineering firm that has been responsible for the development and implementation of a number of waste-to-energy (WTE) facilities including those in Hillsborough, Pasco and Lee Counties Florida. We have been requested by our Pasco and Hillsborough County clients to submit these comments on their behalf.

waste facilities) or some other funding mechanism will be in place, and that the local government will have sufficient revenues available from user fees and power sales revenues to meet the debt service on the bonds and to maintain specified minimum cash reserves.

WTE facilities and the associated solid waste disposal systems rely upon two revenue streams to meet debt service, O&M, and reserve fund cost obligations. These are revenues from (1) the sale of electric energy and capacity and (2) user fees. User fees are reviewed annually and adjusted if necessary to pay the balance of budget cost requirements that are not met by energy and capacity sales revenues. For the three WTE facilities CDM was instrumental in implementing in Florida, energy and capacity revenues were projected in year 2003 to comprise between about 20 and 47 percent of the total system revenue depending upon the specific project. As can be seen from these examples, energy and capacity sales revenues are a significant component of the overall project revenue stream. Without them, the solid waste user charges would be significantly higher. So high, in fact, that certain projects may never have been implemented. (When waste-to-energy projects are not developed, the alternative is disposal of solid waste in landfills.)

The demonstrations of financial feasibility and other legal issues are presented in the Official Statement or prospectus for the Revenue Bond Issue. The Official Statement contains an Engineer's Feasibility Statement, which among other things describes the technical aspects of the WTE facility, the contractual arrangements for its construction and operation and energy sales, waste supply availability, financial feasibility analysis, and the sensitivity of financial feasibility to changes in underlying assumptions relative to waste availability, energy revenues, and other economic factors over the term of the bonds. A key

conclusion that the investment banking community expects to see with respect to financial feasibility is that the user fees/charges required to support the enterprise are reasonable charges for solid waste disposal in the general geographic area of the facility. Without a long–term energy and capacity contract to provide for a portion of the revenue necessary to finance the system, the user fees would **NOT** be reasonable and revenue bond financing could not be secured.

Other forms of indebtedness such as general obligation (GO) bonds are not a practical option for solid waste disposal facilities because municipal units of government are legally limited to the amount of GO bond indebtedness that they can incur and typically reserve this funding source for non-revenue generating public services such as schools, libraries, police and fire protection.

Conclusion

Without long-term contracts for energy and capacity sales, WTE projects in Florida would not be economically feasible and could not be financed. The revenue from energy and capacity sales assists in supporting this method of environmentally sound solid waste disposal. The continued availability of long-term contracts for WTE projects is necessary to maintain the viability of this solid waste disposal option to local units of government throughout Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*), or by U.S. Mail, on this 7th day of March, 2003, to the following:

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Jon Moyle, Jr., Esq.*
Moyle Flanigan Katz Raymond
& Sheehan, PA
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Attorney

App/Helton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	))))	Docket No. 001574-EQ

PRELIMINARY COMMENTS

OF

THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION

December 11, 2000

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	))))	Docket No. 001574-EQ Submitted for filing: December 11, 2000

PRELIMINARY COMMENTS
OF
THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION

The Florida Industrial Cogeneration Association ("FICA") and its members, through their undersigned attorney, hereby submits these comments in opposition to certain of the proposed amendments in the captions proceeding.

1. FICA members own small power production facilities, or other qualifying facilities 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, which are small qualifying facility ("SQF")[1] pursuant to Commission rules.

2. Under current Commission rules, standard offers are only available to certain types of non-utility generating facilities (referred to as SQFs) that this Commission specifically sought to encourage when it last revised its rules. The proposed amendments would deter or eliminate access by SQFs to meaningful standard offer contracts. This would appear to be contrary to both Florida and Federal law[2].

3. FICA is particularly concerned with those provisions of the proposed amendment - appearing in the notice as proposed rule 25-17.0832(4)(d)2. - which would

[1] FICA member's facilities are of the described by rule which are eligible for Standard Offer Contracts.

[2] §366.051, Florida Statutes, and Section 210 of the Public Utility Regulatory Policies Act (PURPA).

change the term of the standard offer to a maximum of 5 years.[3] Without conforming changes to the methodology and/or formula by which capacity payments are calculated, the proposed amendment would unlawfully limit standard offer capacity payments to less than avoided cost.

4. The current rules relating to firm energy and capacity contracts require that standard offer capacity prices be based on the utility's actual avoided unit. As provided by rule 25-17.0832 (4) (b), F.A.C.: *"The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction of additional generation capacity[4] or parts thereof by the purchasing utility."* The proposed rule amendment, absent corresponding changes to the pricing provisions of the rules, would render this impossible.

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7. Assume that a utility constructed an electric generating unit at a cost of $100 million. Assume further a useful life of 20 years, straight line depreciation, and a 10% rate-of-return. In very simplified terms, ignoring taxes and other factors, the first year the unit is in rate base, the utility would earn (ie increase its revenue requirement as reflected in rates) $10 million, the second year would be $9.5 million, the third year $9 million, and so on until in the twentieth (final) year the utility would earn $0.5 million. (A characteristic of the "revenue requirements" payment stream is that payments begin high and decline over time.)

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[5] The value of deferral was adopted by the Commission for a number of reasons, For example, it tends to reduce intergenerational inequities as well as "rate shock" to the current utility customers. As payments under the value of deferral grow over time, there will be a larger customer base over which to spread the costs, thus reducing per-customer impacts.

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minimum ten year term contract commencing with the in-service date of the avoided unit[6]. . ." and that "*At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit*[7]. . . ". This requirement assures that an SQF willing to contract for a period equal to the anticipated plant life of the avoided unit, will receive avoided cost, and allows all or part of a proposed generating unit to be avoided. The ten year minimum term was deemed necessary both from the utility planning perspective, and to be of sufficient length to confer substantial capacity benefit on the utility ratepayers[8]. The proposed amendment's arbitrary imposition of a 5 year contract term minimum/maximum is clearly discriminatory to SQFs, defeats the public policy purpose of the standard offer rules, and assures less than avoided cost payments to SQFs.

10. The current rule implements the provisions of Chapter 366.051, F.S. relating to cogeneration and small power production, which is specifically intended to encourage cogeneration and small power production.[9] Under the proposed amendment, standard offer capacity prices would not be based on an avoided unit, would not represent avoided cost, and would fall well short of the statutory requirement.

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[6] 25-17.0832(4)(e)3., F.A.C.

[7] 25-17.0832(4)(e)7., F.A.C.

[8] See FPSC Order 12634 at page 19

[9] That section provides in part that: "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state or consumed by a cogenerator or small power producer. The electric utility in whose service area a cogenerator or small power producer is located shall purchase, in accordance with applicable law, all electricity offered for sale by such cogenerator or small power producer; or the cogenerator or small power producer may sell such electricity to any other electric utility in the state. The commission shall establish guidelines relating to the purchase of power or energy by public utilities from cogenerators or small power producers and may set rates at which a public utility must purchase power or energy from a cogenerator or small power producer." In fixing rates for power purchased by public utilities from cogenerators or small power producers, the commission shall authorize a rate equal to the purchasing utility's full avoided costs. A utility's "full avoided costs" are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. (Emphasis supplied)

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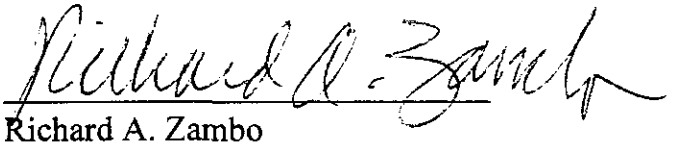
11. The proposed decoupling of contract term from useful life (and thereby capacity payments from avoided costs) raises other issues of concern to FICA, such as the appropriate capacity pricing methodology, and the role of subscription limits on standard offers. FICA reserves the right to raise and pursue these and other issues at this or any further proceedings that may be conducted by the Commission in this matter.

12. FICA respectfully suggests that the Commission withdraw the proposed amendments.

December 11, 2000

Respectfully Submitted,



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Attorney for:
Florida Industrial Cogeneration Association

App/Helton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	))))	Docket No. 001574-EQ

PRELIMINARY COMMENTS

OF

THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION

December 11, 2000

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	)	Docket No. 001574-EQ
	)	Submitted for filing: December 11, 2000

PRELIMINARY COMMENTS
OF
THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION

The Florida Industrial Cogeneration Association ("FICA") and its members, through their undersigned attorney, hereby submits these comments in opposition to certain of the proposed amendments in the captions proceeding.

1. FICA members own small power production facilities, or other qualifying facilities 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, which are small qualifying facility ("SQF")[1] pursuant to Commission rules.

2. Under current Commission rules, standard offers are only available to certain types of non-utility generating facilities (referred to as SQFs) that this Commission specifically sought to encourage when it last revised its rules. The proposed amendments would deter or eliminate access by SQFs to meaningful standard offer contracts. This would appear to be contrary to both Florida and Federal law[2].

3. FICA is particularly concerned with those provisions of the proposed amendment - appearing in the notice as proposed rule 25-17.0832(4)(d)2. - which would

[1] FICA member's facilities are of the described by rule which are eligible for Standard Offer Contracts.

[2] §366.051, Florida Statutes, and Section 210 of the Public Utility Regulatory Policies Act (PURPA).

change the term of the standard offer to a maximum of 5 years.[3] Without conforming changes to the methodology and/or formula by which capacity payments are calculated, the proposed amendment would unlawfully limit standard offer capacity payments to less than avoided cost.

4. The current rules relating to firm energy and capacity contracts require that standard offer capacity prices be based on the utility's actual avoided unit. As provided by rule 25-17.0832 (4) (b), F.A.C.: *"The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction of additional generation capacity[4] or parts thereof by the purchasing utility."* The proposed rule amendment, absent corresponding changes to the pricing provisions of the rules, would render this impossible.

5. A key element of the standard offer rules is the "value of deferral" avoided capacity pricing methodology. This pricing methodology, as the term implies, determines the value of "deferring" the revenue requirements associated with a new utility rate-based generating plant. By its very design, the value of deferral payment mechanism can only result in avoided cost payments if the SQF can sell capacity to the utility over the projected useful life of the avoided unit on which the value of deferral is based. The proposed amendment wrongly decouples contract term from useful life and therefore from avoided cost. Arbitrarily limiting standard offers to 5 year terms would thereby assure that SQFs cannot receive actual avoided cost in direct contravention of applicable law.

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[3] Current rules call for a minimum contract term of 10 years, and a maximum contract term equal to the useful life of the avoided unit on which the standard offer is based.

[4] FICA is unaware of any "real life" electric generating unit with a useful life of 5 years - as is apparently assumed in the proposed rule amendment. Virtually all recently constructed or planned electric generating units have minimum useful lives in the range of 30 years.

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6. The value of deferral methodology essentially "inverts" the stream of capacity payments to the SQF, when compared to what the utility would receive if it constructed the avoided unit and added it to rate base. This is best illustrated by example.

7. Assume that a utility constructed an electric generating unit at a cost of $100 million. Assume further a useful life of 20 years, straight line depreciation, and a 10% rate-of-return. In very simplified terms, ignoring taxes and other factors, the first year the unit is in rate base, the utility would earn (ie increase its revenue requirement as reflected in rates) $10 million, the second year would be $9.5 million, the third year $9 million, and so on until in the twentieth (final) year the utility would earn $0.5 million. (A characteristic of the "revenue requirements" payment stream is that payments begin high and decline over time.)

8. If that same generating unit were avoided or deferred by SQF's entering into standard offer contracts, the revenue stream - and the rate impact on the utility's customers - would be "inverted" by virtue of the value of deferral methodology. The payments to the SQF would initially be very low - perhaps on the order of $1 million in the first year - but would escalate annually so that at the end of the 20 year useful life of the avoided unit, the net present value of payments received by the SQF would equal the net present value of revenues earned by the utility had it constructed the unit. (A characteristic of the "value of deferral" is that payments begin low and increase over time[5].)

9. Integral to the value of deferral payment mechanism is the minimum term of the standard offer. Commission rules currently require that standard offers include *". . .a*

[5] The value of deferral was adopted by the Commission for a number of reasons, For example, it tends to reduce intergenerational inequities as well as "rate shock" to the current utility customers. As payments under the value of deferral grow over time, there will be a larger customer base over which to spread the costs, thus reducing per-customer impacts.

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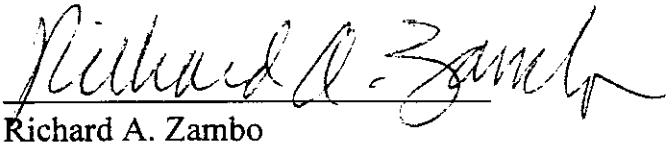
December 11, 2000

Respectfully Submitted,



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Attorney for:
Florida Industrial Cogeneration Association

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Tampa Electric Company for approval of new standard offer contract for qualifying cogeneration and small power production facilities, and for waiver requirement in Rule 25-17.0832(4)(e)7, F.A.C., that standard offer contracts have a ten-year term.	DOCKET NO. 020725-EQ ORDER NO. PSC-02-1625-PAA-EQ ISSUED: November 25, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING RULE WAIVER AND NEW STANDARD OFFER CONTRACT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On July 15, 2002, Tampa Electric Company (TECO) filed a Petition for Approval of a Standard Offer Contract (Petition) for qualifying cogeneration and small power production facilities. The proposed contract and associated tariffs are based on a 5 MW

subscription limit of a 180 MW combustion turbine generating unit, Polk Unit 4, with an anticipated in-service date of May 1, 2005.

Along with its July 15, 2002, Petition, TECO filed a Petition for Waiver of Rule 25-17.0832(4)(e)7., Florida Administrative Code (Petition for Waiver). TECO seeks a waiver from the 10-year minimum contract term required by the rule, and proposes a 5-year contract term.

At the September 3, 2002 Agenda Conference, we suspended the tariff revisions filed as part of TECO's Petition. The tariff suspension allowed sufficient time to review TECO's Petition.

This Order addresses both the Petition for Approval of the proposed Standard Offer Contract and the requested Petition for Waiver. We have jurisdiction pursuant to Sections 120.542, 366.04, 366.05, 366.051, 366.06, and 366.80 through 366.82, Florida Statutes.

RULE WAIVER

I. Standard Of Review

Section 120.542, Florida Statutes, mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. . . .

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been or will be met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations

relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

As stated in the case background, TECO filed its Petition For Waiver in conjunction with its Petition For Approval Of A Standard Offer Contract. The waiver requested by TECO is for a fixed standard offer contract term of five years instead of the ten-year minimum contract term required by Rule 25-17.0832(4)(e)7., Florida Administrative Code. Notice of the waiver request was published in the Florida Administrative Weekly on August 30, 2002. The comment period expired on September 14, 2002. No comments in opposition to the Petition For Waiver were received.

II. TECO's Petition for Waiver

As stated above, a petitioner for waiver of a rule must show: (1) that the purpose of the underlying statute has been or will be met; and (2) that the petitioner will either suffer "substantial hardship" or that "principles of fairness" will be violated. TECO claims that its Petition for Waiver demonstrates that it satisfies each of the two requirements. TECO argues that it has satisfied both these requirements as set forth below.

A. Purpose of the Underlying Statute

In its Petition for Waiver, TECO correctly identifies Section 366.051, Florida Statutes, as the underlying statute implemented by the rule from which a variance is requested. According to TECO, the purpose of that statute (and the Public Utility Regulatory Policies Act of 1978 - PURPA) with respect to cogeneration and small power production is to "encourage cogeneration while at the same time protect ratepayers from paying costs in excess of avoided costs."

TECO states that the above-noted purpose "will be achieved by utilizing a five-year contract term." TECO further notes neither PURPA nor Section 366.051, Florida Statues, mandate a minimum term, and that the continued availability of standard offer contracts would provide "more than enough incentive to encourage the development of cogeneration in accordance with the statutes."

Finally, in paragraph 8 of its Petition for Waiver, TECO notes as follows:

> In considering the Standard Offer filed by Florida Power & Light Company in Docket No. 990249-EG, the Commission granted a variance from the rule's minimum ten-year requirement and approved a five-year term (Order No. 99-1713-TRF-EG, issued September 2, 1999, pages 10-16). The policy reasons relied on by the Commission in approving the five-year term - ratepayer protection and adequate QF incentive - are equally applicable to this petition. The Commission, likewise, recently granted a rule waiver allowing Florida Power Corporation to use a five-year term in its Standard Offer. See Order No. 00-0504-PAA-EQ, issued on March 7, 2000 in Docket No. 991973-EQ. The Commission granted the same rule waiver request for Tampa Electric in the company's last Standard Offer Contract approved in Order No. PSC-01-1418-PAA-EQ issued June 29, 2001 in Docket No. 010334-EQ.

B. Substantial Hardship

TECO asserts that strict adherence to the ten-year term would create a substantial hardship on both it and its ratepayers. Specifically, TECO argues that "new technologies and other factors may lower" costs over the coming years and that "limiting the term of the Standard Offer to five years" would give TECO "the opportunity to revisit the issue of its avoided cost and take advantage of lower costs for the benefit of ratepayers prior to the passage of a full ten years." TECO further argues that it "would subject the company to substantial hardship by adversely affecting its cost structure, and would subject its ratepayers to substantial hardship by raising the price that they would otherwise have to pay for electricity," if TECO were required "to adhere to a ten-year term in the face of declining costs."

III. Analysis

A. Purpose Of The Underlying Statute

The purpose of Section 366.051, Florida Statutes, to encourage cogeneration and small power production, is expressly stated in the

statute: "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state . . . ." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Subparagraph 25-17.0832(4)(e)7., requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit.

The rule provides a range for the contract period tied to the plant life of the utilities' avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten-year minimum contract term, while not a requirement of PURPA, was mandated by us in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, addressing the issue of a ten-year minimum contract term, we stated:

> The requirement that a QF [qualifying facility] be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.

Order No. 12634, page 19.

However, as noted by TECO, in three successive orders involving Florida Power and Light Company, Florida Power Corporation, and TECO, respectively, we have found that the purpose of the underlying statute to encourage cogeneration has been met by allowing this waiver to a five-year period. To promote cogeneration, investor-owned utility's planned generation units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and non-utility generators. Rule 25-17.0837(1), Florida Administrative Code. The alternative provision is standard offer contracts. Insofar as a cogenerator's ability to enter into negotiated contracts is unaffected by the variance request, and a cogenerator retains the ability to enter into a five-year minimum standard offer contract with TECO, TECO's request for a variance appears to satisfy the underlying purpose of the statute.

B. Substantial Hardship

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological or legal hardship. The hardship demonstrated by TECO is economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred.

C. Conclusion

In sum, we find that TECO's Petition for Waiver from the minimum standard offer contract term shall be granted because it satisfies the mandatory statutory requirements. TECO has demonstrated that the purpose of the underlying statute will be met if the waiver is granted, because cogeneration will continue to be encouraged through negotiated as well as standard offer contracts. In addition, TECO's Petition for Waiver demonstrates substantial hardship to its ratepayers.

NEW STANDARD OFFER CONTRACT

Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR 292.304. Florida law requires this Commission to

"adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. We are further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

These federal and state requirements were implemented by us through our adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file a tariff and a Standard Offer Contract. These provisions implement the requirements of PURPA and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger qualifying facilities and other non-utility generators may participate in a utility's Request For Proposal process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, TECO proposes a new Standard Offer Contract based on a 5 MW portion of TECO's next identified generating unit, Polk Unit 4, a 180 MW combustion turbine (CT) unit with an anticipated in-service date of May 1, 2005. CT units typically require about 18 months to construct. Therefore, TECO will need to commence construction by November 1, 2003.

TECO's proposed COG-2 (firm capacity and energy) tariff includes a three-week open season period for receiving standard offer contracts. If TECO does not fully subscribe the 5 MW available for Standard Offer Contracts during the initial three-week open season period, an additional three-week open season period will be held within 60 days. This open season period is similar to that contained in previous TECO Standard Offer Contracts which have been approved by us.

The evaluation criteria contained in TECO's proposed Standard Offer Contract should be readily understandable to any developer who signs the contract. The avoided unit cost parameters appear to be reasonable for a CT unit, and the resulting capacity payments are appropriate.

It is unlikely that purchases made by TECO pursuant to the proposed Standard Offer Contract will result in the deferral or avoidance of TECO's 2005 CT unit, because: 1) the eligibility pool for Standard Offer Contracts is limited; 2) the subscription limit of TECO's avoided unit is only a portion of the CT unit's total capacity; and, 3) TECO has not received any takers for its last three Standard Offer Contracts. The interest in TECO's last three Standard Offer Contracts may have been reduced because the contracts were all based on CT units. Capacity payments for CT units are typically low relative to capacity payments based on other generation technologies such as combined cycle or coal.

If TECO signs Standard Offer Contracts under the proposed contract, but the need for the 2005 CT unit is not deferred or avoided, TECO will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of the state regulations discussed above may result in a subsidy to the qualifying facilities. However, the potential subsidy could be mitigated, as TECO may have opportunities to sell any surplus capacity on the wholesale market.

Ideally, qualifying facilities should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, qualifying facilities are to be given some preferential treatment. We have minimized this unequal footing by requiring Standard Offer Contracts only for small qualifying facilities, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement due to their size or timing. Thus, our rules balance market imperfections with the existing policy of promoting qualifying facilities.

While we do not expect that TECO's proposed Standard Offer Contract will result in the avoidance of the 2005 CT unit, the proposed contract and tariffs do comply with our cogeneration rules. For this reason, TECO's petition to establish its new Standard Offer Contract and associated tariffs is approved.

In order to process both the waiver request and the tariff filing simultaneously, we have used the proposed agency action process instead of the tariff process. While both processes provide for a point of entry for protest, under the tariff process,

if there is a protest, the tariff would go into effect pending the outcome of the hearing; whereas under the proposed agency action process, if protested, the tariff would not go into effect as the proposed agency action order becomes a nullity. Therefore, TECO's proposed Standard Offer Contract shall only become effective upon the issuance of a consummating order. If there is no timely protest, the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electic Company's Petition for Waiver of Rule 25-17.0832(4)(e)7., Florida Administrative Code, is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that Tampa Electic Company's Petition for Approval of a Standard Offer Contract with a contract term of five years is approved. It is further

ORDERED that this new Standard Offer Contract shall become effective upon the issuance of a Consummating Order if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of this Order. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed upon the issuance of the Consummating Order.

By ORDER of the Florida Public Service Commission this 25th day of November, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding,

in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 16, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of standard offer contract based on 2005 combined cycle avoided unit and accompanying Rate Schedule COG-2, by Florida Power Corporation.	DOCKET NO. 020295-EQ ORDER NO. PSC-02-0909-PAA-EQ ISSUED: July 8, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING RULE WAIVER AND APPROVING PETITION
FOR STANDARD OFFER CONTRACT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On April 2, 2002, Florida Power Corporation (FPC) filed a Petition for Approval of a Standard Offer Contract and associated tariffs. The proposed contract subject to this petition is based on a 20 Megawatt (MW) portion of FPC's next planned capacity addition, Hines 3, a 530 MW combined cycle unit with a scheduled in-service date of December 1, 2005.

Concurrent with the filing of this petition, FPC also filed petitions for waiver of the requirements of Rule 25-17.0832(4)(e)7,

and Rule 25-17.0832(4)(e)5, Florida Administrative Code. Rule 25-17.0832(4)(e)7, Florida Administrative Code, requires standard offer contracts to have a minimum term of ten years. The term of FPC's proposed standard offer contract is five years. Rule 25-17.0832(4)(e)5, Florida Administrative Code, requires that a standard offer contract's open solicitation period must end prior to the issuance of a request for proposal (RFP) pursuant to Rule 25-22.082, Florida Administrative Code. This rule is often referred to as the Commission's "bidding rule."

Pursuant to Section 120.542(6), Florida Statutes, notice of FPC's Petitions was submitted to the Secretary of State for publication in the April 19, 2002, Florida Administrative Weekly. The 14-day comment period provided by Rule 28-104.003, Florida Administrative Code, expired on May 3, 2002. No comments concerning these petitions for waiver were filed.

This Order addresses both the petition for approval of the proposed standard offer contract and the requested rule waivers. We are vested with jurisdiction over these matters by Section 120.542, Florida Statutes, as well as by several provisions of Chapter 366.06, Florida Statutes, including Sections 366.04, 366.05, 366.051, 366.06, and 366.80-.82, Florida Statutes.

I. Waiver of Rule 25-17.0832(4)(e)7, Florida Administrative Code

A. Standard for Approval

Section 120.542, Florida Statutes, mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated

> when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

B. FPC's Petition for Waiver

The waiver requested by FPC is to allow for a standard offer contract term limited to five years instead of the ten year minimum contract term required by rule 25-17.0832(4)(e), Florida Administrative Code.

1. Purpose of the Underlying Statute

In its Petition For Waiver, FPC identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues. According to FPC, the purposes of the statute, and the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA), are to promote the growth of alternative generating facilities, with the express limitation that electric customers should not pay more for power than they otherwise would.

FPC states that its Petition For Waiver will meet the purpose of the statute. FPC asserts that the standard offer contract will provide economic incentive for the development of the type of projects contemplated by the statute. FPC further asserts that new technologies and other factors may lower FPC's costs over the coming years. Limiting the term of the Standard Offer to five years gives FPC the opportunity to revisit the issue of its avoided cost and take advantage of lower cost for the benefit of its ratepayers prior to passage of a full ten years.

2. Substantial Hardship

FPC states that strict adherence to the ten-year term provided for in the Commission's rules would create a substantial hardship on FPC and its ratepayers by raising the price that would otherwise be paid for electricity.

C. Analysis

The purpose of Section 366.051, Florida Statutes, which is to encourage cogeneration and small power production, is expressed in the Statute as follows: "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state. . . ." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Subsection 25-17.0832(4)(e)7, requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit.

The above rule provides a range for the contract period tied to the plant life of the utilities' avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten year minimum contract term, while not a requirement of PURPA, was mandated in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, we addressed the issue of a ten year minimum contract term. That Order stated:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the

> avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.

Order No. 12634, pg. 19.

The purpose of the statute underlying Rule 25-17.0832(4)(e), Florida Administrative Code, is to encourage cogeneration. Investor-owned utilities' planned generation units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and non-utility generators by Rule 25-17.0837(1), Florida Administrative Code. The alternative provision is standard offer contracts.

Insofar as cogenerators' ability to enter into negotiated contracts is unaffected by the waiver request, and because a cogenerator retains the ability to enter into a five year standard offer contract with FPC, FPC's request for a waiver satisfies the underlying purpose of the statute.

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological, or legal hardship. Purchases made by FPC pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of its proposed avoided unit, the 2005 CC. This is due to the subscription limit being 20 MW of a 500 MW unit. Thus, FPC has demonstrated in this case that application of the rule would create an economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred.

In addition, we note that there have been other requests for waiver of the ten year minimum contract requirements of Rule 25-17.0832(4)(e), Florida Administrative Code, which we have granted, on substantially the same grounds asserted by FPC in this docket:

1. Order No. PSC-99-1713-TRF-EG, issued on September 2, 1999, in Docket No. 990249-EG granted Florida Power and Light Company (FPL) a variance of this rule.

2. Order No. PSC-00-0265-PAA-EG, issued on February 8, 2000 in Docket No. 991526-EQ granted FPC a waiver of this rule. In this Order, we also directed staff to initiate a rulemaking proceeding to amend Rule 25-17.0832(4)(e)(7), Florida Administrative Code, to amend the contract term provision of the rule. (Hearing currently planned for October, 2002).

3. Order No. PSC-00-0504-PAA-EQ, issued on March 7, 2000, in Docket No. 991973-EQ granted FPC a waiver of this rule.

4. Order No. PSC-00-1748-PAA-EI, issued on September 26, 2000, in Docket No. 000868 granted FPL Company a waiver of this rule.

5. Order No. PSC-00-1773-PAA-EQ, issued on September 27, 2000, in Docket No. 000684 granted Tampa Electric Company (TECO) a waiver of this rule.

FPC's present petition for waiver from the minimum standard offer contract term satisfies the statutory requirements for a rule waiver. FPC has demonstrated that the purpose of the underlying statute will be met if the waiver is granted. This is so because cogeneration will continue to be encouraged through negotiated as well as standard offer contracts. In addition, FPC's Petition for waiver demonstrates that substantial hardship to its ratepayers would result from application of the rule.

For these reasons, we approve FPC's petition for a waiver of Rule 25-17.0832(4)(e)7, Florida Administrative Code.

II. Waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code

A. Standard for Approval

FPC also requested a waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code, which requires that the open solicitation period for a utility's standard offer contract must terminate prior to its issuance of a notice of Request for Proposal (RFP) based on the standard offer contract's avoided unit.

As discussed previously, FPC must demonstrate that the purposes of the underlying statute will be met, and that

application of the rule either creates a substantial hardship or violates principles of fairness.

B. FPC's Petition for Waiver

1. Purpose of the Underlying Statute

In its Petition For Waiver, FPC identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues, the purpose of which is to encourage cogeneration while at the same time protecting ratepayers from potential adverse effects. According to FPC, the purpose of the statute will not only be achieved, but enhanced by the requested waiver of the rule's standard offer closure provision.

2. Substantial Hardship

FPC states that strict adherence to the closure provision would create a substantial hardship on FPC and its ratepayers. FPC's waiver request is intended to protect FPC and it ratepayers from potential adverse effects of the rule.

C. Analysis

Rule 25-17.0832(4)(e)5, Florida Administrative Code, implements Section 366.051, Florida Statutes, the purpose of which is to encourage cogeneration and small power production. Pursuant to the Rule, each standard offer contract shall, at minimum, specify:

> A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the issuance of timely notice of a Request for Proposals (RFP) pursuant to Rule 25-22.082(3), the utility shall end the open solicitation period.

We agree that the purpose of the underlying statute will be enhanced by the requested waiver because it will eliminate a limitation on the availability of a standard offer contract to cogenerators. The waiver will enable the standard offer to remain in effect and available to cogenerators while the RFP process is

underway, a situation that would be impermissible under the rule sought to be waived.

Further, we agree that allowing the issuance of the RFP at the same time as the open solicitation period will satisfy the underlying purposes of the statute by encouraging small qualifying facilities (QF). FPC has stated that recent revisions to the cogeneration rules focus the rules more closely upon QFs less than 0.1 MW. Therefore, neither FPC nor its ratepayers will be at a disadvantage if FPC issues a RFP for Hines Unit 3 while the standard offer contract is outstanding.

We also agree with FPC in that the timely completion of the RFP process is a key milestone in the schedule to place this 500 MW capacity addition in service by December, 2005, and be available to meet the ensuing 2005/2006 winter peak demand period. Delaying the completion of the RFP process until after the standard offer has been approved and open solicitation period has expired would significantly impair FPC's ability to satisfy its 20% reserve margin responsibilities within this important reliability time frame. Such an impairment to the reliability of FPC's generation resources would create a real and substantial hardship on FPC and its customers.

We agree that if the waiver is not granted, FPC's efforts to meet the new 20% reserve margin would be frustrated. On November 30, 1999, we approved an agreement between FPC, FPL, and TECO adopting a 20% reserve margin planning criterion starting in the summer of 2004. A delay in the RFP process could seriously jeopardize FPC's ability to bring Hines 3 on line by the December, 2005, in-service date.

Finally, we note that by Order No. PSC-00-0504-PAA-EQ, issued March 7, 2000, in Docket No. 991973-EQ, we granted a requested waiver of the rule's standard offer closure requirement and approved the contract's open solicitation period that ran concurrent with the RPF process conducted for Hines 2 self-build option. The request granted was on substantially the same grounds asserted by FPC in this docket. FPC's petition satisfies the statutory requirements for a rule waiver. FPC has demonstrated that the purpose of the underlying statute will be met if the waiver is granted. This is so because the requested waiver will

eliminate a limitation on the availability of a standard offer contract to cogenerators. In addition, FPC's Petition for waiver will remove the impairment to the reliability of FPC's generation resources, thus eliminating a substantial hardship to its ratepayers that would have result from application of the rule.

For these reasons, we approve FPC's petition for a waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code.

III. Petition for Approval of New Standard Offer Contract

Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CAR 292.304. Florida law requires the Commission to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. We are further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

We implemented these federal and state requirements through our adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file with the Commission a tariff and a Standard Offer Contract for the purchase of firm capacity and energy from small QFs. These provisions implement the requirements of the PURPA and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger QFs and other non-utility generators may participate in a utility's RFP process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, FPC proposed a Standard Offer Contract based on a Combine Cycle (CC) unit with an in-service date of December 1, 2005, as its avoided unit. Specifically, the Contract is based on a 20 MW portion of a 530 MW CC unit. FPC has also proposed an associated tariff, COG-2 (firm capacity and energy). This tariff would expire on the earlier of the date the subscription limit (20 MW) is fully

subscribed, or two weeks after approval of this standard offer by this Commission.

We believe that FPC's evaluation criteria will be readily understandable to any developer who signs FPC's Standard Offer Contract. The avoided unit cost parameters appear to be reasonable for a CC unit, and the resulting capacity payments are appropriate. The performance provisions include dispatch and control, and on-peak performance incentives.

Given that the subscription limit of FPC's avoided unit is only a portion of its total capacity, purchases made by FPC pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of the 2005 CC unit. If FPC enters into Standard Offer Contracts, but the need for the 2005 CC unit is not deferred or avoided, FPC will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of state regulations discussed above may result in a subsidy to the QFs. We note, however, that the potential subsidy could be mitigated, as FPC may have opportunities to sell any surplus capacity to the wholesale market.

Ideally, QFs should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, QFs are given some preferential treatment. We have minimized this unequal footing by requiring Standard Offer Contracts only for small fossil fueled QFs, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement due to their size or timing. Thus, our rules balance market imperfections with the existing policy of promoting QFs.

In summary, we do not expect that FPC's proposed Standard Offer Contract will result in the avoidance of its proposed avoided unit, a 2005 CC. Nonetheless, FPC's proposed contract and tariff comply with our cogeneration rules. For this reason, we approve FPC's Petition to Establish its New Standard Offer Contract and associated tariffs.

Since it would not be reasonable to have this tariff go into effect if the waiver portions of this Order were protested, the tariff shall not be effective if a protest is filed. If there is

no protest by a substantially affected person to the portion of the order approving the contract or the waivers, FPC's proposed Standard Offer Contract shall become effective upon the issuance of a Consummating Order for the waiver portions of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition of Florida Power Corporation for waiver of Rule 25-17.0832(4)(e)7, Florida Administrative Code, is hereby granted. It is further

ORDERED that the Petition of Florida Power Corporation for waiver of Rule 25-17.0832(4)(e)5, Florida Administrative Code, is hereby granted. It is further

ORDERED that Florida Power Corporation's Petition for Approval of a Standard Offer Contract is approved. It is further

ORDERED that the tariff for the Standard Offer Contract shall become effective upon the issuance of a Consummating Order in this docket. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of July, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

LAH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 29, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Jeanette Sickel

From: Jim Dean
Sent: Monday, July 08, 2002 2:10 PM
To: Adrienne Vining; Jeanette Sickel
Subject: FW: New Contact and Questionnairerenewables

Adrienne: Would you please add this person to our mailing list.

Jeanette: Would you please send her a questionnaire for completion.

thanks
jim
-----Original Message-----
From: Tanzy, Florida Hydro [mailto:Tanzy@floridahydro.com]
Sent: Monday, July 08, 2002 2:01 PM
To: jdean@psc.state.fl.us
Subject: renewables

Jim,
Here's our contact info:

Florida Hydro Power & Light Co.
171 Comfort Road
Palatka, FL 32177

phone: (386)328-2470
fax: (386)328-2558

e-mail: tanzy@floridahydro.com
web site: www.floridahydro.com

Much thanks,
Tanzy Kratzke

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of Rule 25-17.0832(4)(e), F.A.C., which requires ten-year minimum contract term, by Florida Power & Light Company, and for approval to offer standard offer contract with five-year minimum term.	DOCKET NO. 011199-EQ ORDER NO. PSC-01-2488-PAA-EQ ISSUED: December 20, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

On September 14, 2001, Florida Power & Light Company (FPL) filed a Petition for Waiver of Rule 25-17.0832(4)(e), Florida Administrative Code (Petition for Waiver). FPL seeks a waiver from the 10 year minimum standard offer contract term required by the rule. Instead, FPL requests that it be permitted to substitute a standard offer contract term of five years. Pursuant to Section 120.542(6), Florida Statutes, the petition for rule waiver was noticed in the October 5, 2001, Florida Administrative Weekly. No

comments were received. The Commission is vested with jurisdiction over this matter by Section 120.542, Florida Statutes.

Also on September 14, 2001, FPL filed its petition for approval of a standard offer contract in Docket No. 011200-EQ. The term of the proposed standard offer contract is five years.

II. Request for Waiver

A. Standard for Approval

Section 120.542, Florida Statutes (2001), mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

B. FPL's Petition For Waiver

The waiver requested by FPL is for a standard offer contract term limited to five years instead of the ten year minimum contract term required by Rule 25-17.0832(4)(e), Florida Administrative Code.

1. Purpose of the Underlying Statute

In its Petition For Waiver, FPL identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues. According to FPL, the purposes of the statute, and the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA), are to promote the growth of alternative generating facilities, with the express limitation that electric customers should not pay more for power than they otherwise would.

FPL believes that its requested waiver, if granted, will still meet the purpose of the statute. FPL asserts that the standard offer contract will provide economic incentive for the development of the type of projects contemplated by the statute. FPL further asserts that the waiver requested is more likely to ensure that electric customers do not pay excessive costs for power purchased under the standard offer contract.

2. Substantial Hardship

FPL states that the standard offer contract will not defer or avoid the construction of additional generating capacity. FPL asserts that its customers are prejudiced to the extent they are required to make capacity payments where no generation is avoided or deferred. FPL states that to require capacity payments in such instance for a ten-year period, would incur a substantial risk and hardship.

C. Analysis

1. Purpose Of The Underlying Statute

The purpose of Section 366.051, Florida Statutes, to encourage cogeneration and small power production, is express: "Electricity produced by cogeneration and small power production is of benefit

to the public when included as part of the total energy supply of the entire electric grid of the state...." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Subsection 25-17.0832(4)(e)7, requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit;

The rule provides a range for the contract period tied to the plant life of the utilities' avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten year minimum contract term, while not a requirement of PURPA, was mandated by the Commission in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, the Commission addressed the issue of a ten year minimum contract term. The Commission stated:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.
>
> Order No. 12634, pg. 19.

The purpose of the underlying statute is to encourage cogeneration. To promote cogenreation, investor-owned utilities

who plan generating units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and nonutility generators by Rule 25-17.0837(1), Florida Administrative Code. The alternative provision is the standard offer contract. Insofar as cogenerators' ability to enter into negotiated contracts is unaffected by the waiver request, and a cogenerator retains the ability to enter into a five year standard offer contract with FPL, FPL's request for a waiver appears to satisfy the underlying purpose of the statute.

2. Substantial Hardship

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological, or legal hardship. Purchases made by FPL pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of its proposed avoided unit, the 2003 CT. This is due to the subscription limit being 5 MW of a 165 MW unit. FPL has demonstrated, in this case, that application of the rule would create an economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred.

3. Other Requests for Waiver/Variance of Rule

We note that there have been other requests for variance or waiver of Rule 25-17.0832(4)(e), Florida Administrative Code:

1. Order No. PSC-99-1713-TRF-EG, issued on September 2, 1999, in Docket No. 990249-EG granted FPL a variance of this rule.

2. Order No. PSC-00-0265-PAA-EG, issued February 8, 2000, in Docket No. 991526-EQ granted Florida Power Corporation a waiver of this rule. This order also directed staff to initiate a rulemaking proceeding to amend Rule 25-17.0832(4)(e)(7), Florida Administrative Code, to amend the contract term provision of the rule.

3. Order No. PSC-00-0504-PAA-EQ, issued on March 7, 2000, in Docket No. 991973-EQ granted Florida Power Corporation a waiver of this rule.

4. Order No. PSC-00-1773-PAA-EQ, issued on September 27, 2000, in Docket No. 000684-EQ, granted Tampa Electric Company a waiver of this rule.

5. Order No. PSC-00-1748-PAA-EQ, issued on September 26, 2000, 2000, in Docket No. 000868-EI, granted FPL a variance of this rule.

6. Order No. PSC-01-1418-TRF-EQ, issued on June 29, 2001, in Docket No. 010334-EQ, granted Tampa Electric Company a waiver of this rule.

The Commission has proposed a modification of the rule in Docket No. 001574-EQ. A hearing is scheduled for May 15, 2002.

III. Conclusion

In sum, FPL's Petition for Waiver from the minimum standard offer contract term is granted because it satisfies the statutory requirements for a rule waiver. FPL has demonstrated that the purpose of the underlying statute will be met if the waiver is granted because cogeneration will continue to be encouraged through negotiated as well as standard offer contracts. In addition, FPL's Petition for Waiver demonstrates that substantial hardship to its ratepayers would result from application of the rule.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's request for a Waiver of Rule 25-17.0832(4)(e)(7), Florida Administrative Code, is hereby granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no timely protest is filed, this Order shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 20th day of December, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

KNE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 10, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of new standard offer contract for qualifying cogeneration and small power production facilities by Tampa Electric Company.	DOCKET NO. 010334-EQ ORDER NO. PSC-01-1418-TRF-EQ ISSUED: June 29, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER GRANTING PETITION FOR WAIVER AND APPROVING STANDARD OFFER CONTRACT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

On March 19, 2001, Tampa Electric Company (TECO) filed a Petition for Approval of a Standard Offer Contract for qualifying congeneration and small power production facilities. The proposed contract is based on a 5 megawatt (MW) subscription limit of a 180 MW combustion turbine generating unit with an in-service date of May 1, 2004.

Along with its March 19, 2001, Petition, TECO filed a Petition for Waiver of Rule 25-17.0832(4)(e)(7), Florida Administrative

Code. TECO seeks a waiver from the 10 year minimum contract term required by the rule, and proposes a 5 year contract term. On May 2, 2001, TECO filed amended copies of Fifth Revised Tariff Sheet No. 8.295.

II. PETITION FOR WAIVER

TECO's request for a waiver is granted because TECO demonstrated that the purpose of the underlying statute will be met, and that TECO and its ratepayers will suffer substantial hardship if a waiver is not granted.

A. Standard Of Review

Section 120.542, Florida Statutes (1997), mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

The waiver requested by TECO is for a standard offer contract term limited to five years instead of the ten year minimum contract term required by Rule 25-17.0832(4)(e)(7), Florida Administrative Code.

B. TECO's Petition For Waiver

1. Purpose of the Underlying Statute

In its Petition For Waiver, TECO identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues. According to TECO, the purposes of the statute, and the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA), to encourage cogeneration while at the same time protecting ratepayers from paying costs in excess of avoided costs, will be achieved by utilizing a five-year contract term.

TECO states that its Petition For Waiver will meet the underlying purpose of the statute. TECO submits that new technologies and other factors may lower TECO's costs in the future. TECO contends that limiting the term of the standard offer contract to five years will give the company an opportunity to reassess its avoided costs and take advantage of lower costs for the benefit of ratepayers prior to the passage of ten years. TECO also states that PURPA and Section 366.051, Florida Statutes do not establish a minimum term for standard offer contracts.

2. Substantial Hardship

TECO argues that obligating it to a ten year contract term in the face of declining costs would subject it to substantial hardship by adversely affecting its cost structure. TECO also states that ratepayers would be subjected to substantial hardship by raising the price that they would otherwise have to pay for electricity, in the face of declining costs.

C. Analysis

1. Purpose Of The Underlying Statute

The purpose of Section 366.051, Florida Statutes, to encourage cogeneration and small power production, is express. "Electricity

produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state...." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Subsection 25-17.0832(4)(e)7, requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit;

The rule provides a range for the contract period tied to the plant life of the utilities' avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten year minimum contract term, while not a requirement of PURPA, was mandated by this Commission in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, the issue of a ten year minimum contract term was addressed as follows:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.
>
> Order No. 12634, pg. 19.

The purpose of the statute underlying Rule 25-27.0832(4)(e)is to encourage cogeneration. To promote cogeneration, investor-owned

utilities' planned generation units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and non-utility generators. Rule 25-17.0837(1), Florida Administrative Code. The alternative provision is standard offer contracts. Insofar as cogenerators' ability to enter into negotiated contracts is unaffected by the waiver request, and a cogenerator retains the ability to enter into a five year minimum standard offer contract with TECO, TECO's request for a variance appears to satisfy the underlying purpose of the statute.

2. Substantial Hardship

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological or legal hardship. The hardship demonstrated by TECO is economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred. Specifically, the unit to be avoided is Bayside Unit 2, a 5 MW portion of a 180 MW combustion turbine scheduled to be placed in service in May 2004 as part of the Gannon Station repowering project.

In sum, TECO's Petition For Waiver from the minimum standard offer contract term shall be granted because it satisfies the mandatory, statutory requirements of Section 120.542, Florida Statutes. TECO demonstrated that the purpose of the underlying statute, Section 366.051, Florida Statutes, will be met if the waiver is granted.

III. PETITION FOR APPROVAL OF A NEW STANDARD OFFER CONTRACT

Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR292.304. Florida law requires us to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. We are further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

These federal and state requirements were implemented through our adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file a tariff and a Standard Offer Contract with us. These provisions implement the requirements of the Public Utilities Regulatory Policies Act and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger qualifying facilities and other non-utility generators may participate in a utility's Request For Proposal process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, TECO proposed a new Standard Offer Contract based on a combustion turbine (CT) unit with an in-service date of May 1, 2004. Specifically, the Contract is based on a 5 MW portion of a 180 MW CT. CT units typically require about 18 months to construct. Therefore, TECO will need to commence construction by November 1, 2002.

TECO's proposed COG-2 (firm capacity and energy) tariff includes a three-week open season period for receiving standard offer contracts. If TECO does not receive a full subscription of 5 MW within the initial three-week open season period, an additional three-week open season period will be held in 60 days. This open season period is similar to the open season period in TECO's previous Standard Offer Contract. TECO's previous Standard Offer Contract tariffs have stated that subsequent to the open season period, TECO will file a petition with the Commission to close the Standard Offer Contract. TECO's Fifth Revised Tariff Sheet No. 8.295, filed on May 2, 2001, now states that TECO will advise our staff in writing and indicate that the Standard Offer Contract should be closed, "once the Company's Standard Offer Contract is fully and acceptably subscribed or has expired." The revised language also states that TECO's written notification will include: 1) the results of the open season period; 2) an estimated time when a new Standard Offer Contract will be filed; and, 3) the revised tariff sheets reflecting the closure of the Standard Offer Contract. We believes that it will increase efficiency for both the Company and this Commission to administratively approve the closure of TECO's proposed Standard Offer Contract. TECO's written notification will provide the necessary information for our staff

to track the results of the Standard Offer Contract. Our staff will advise us if any substantive issues are raised by TECO's written notification.

TECO's evaluation criteria in the proposed Standard Offer tariff should be readily understandable to any developer who signs TECO's Standard Offer Contract. The avoided unit cost parameters appear to be reasonable for a CT unit, and the resulting capacity payments are appropriate.

It is unlikely that purchases made by TECO pursuant to the proposed Standard Offer Contract will result in the deferral or avoidance of TECO's 2004 CT unit, because: 1) the eligibility pool for Standard Offer Contracts is limited; 2)the subscription limit of TECO's avoided unit is only a portion of the CT's total capacity; and, 3) TECO has not received any takers for its last two Standard Offer Contracts. The interest in TECO's last two Standard Offer Contracts may have been reduced because the contracts were based on TECO's next avoided units, which were all CT's. The capacity payments for CT's are typically low relative to those for contracts based on other avoided generation technologies, such as combined cycle, coal, or nuclear facilities.

If TECO enters into Standard Offer Contracts under the proposed contract, but the need for the 2004 CT unit is not deferred or avoided, TECO will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of the state regulations discussed above may result in a subsidy to the qualifying facilities. We note, however, that the potential subsidy could be mitigated, as TECO may have opportunities to sell any surplus capacity to the wholesale market.

Ideally, qualifying facilities should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, qualifying facilities are to be given some preferential treatment. This unequal footing is minimized by requiring Standard Offer Contracts only for small qualifying facilities, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement due to their size or timing. Thus, our rules balance market imperfections with the existing policy of promoting qualifying facilities.

In summary, we find that TECO's proposed Standard Offer Contract will probably not result in the avoidance of the 2004 CT unit. Nonetheless, TECO's proposed contract and tariffs comply with our cogeneration rules. For this reason, we approve TECO's Petition for Approval of a Standard Offer Contract and associated tariffs.

To process both the waiver request and the tariff filing simultaneously, the proposed agency action process shall be utilized instead of the tariff process. While both processes provide for a point of entry for protest, under the tariff process, if there is a protest, the tariff would go into effect pending the outcome of the hearing; whereas under the proposed agency action process, if protested, the tariff would not go into effect as the proposed agency action order becomes a nullity. Since it would not be reasonable to have this tariff go into effect if the waiver portion of the Commission's order were protested, the tariff shall be processed as proposed agency action.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's Petition for Waiver of Rule 25-17.0832(4)(e)(7), Florida Administrative Code, is aproved. It is further

ORDERED that Tampa Electric Company's Petition for Approval of a Standard Offer Contract is hereby approved. It is further

ORDERED that the standard offer contract shall become effective upon the issuance of a consummating order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 29th Day of June, 2001.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 20, 2001.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of standard offer contract for qualifying cogeneration and small power production facilities by Tampa Electric Company.	DOCKET NO. 000684-EQ ORDER NO. PSC-00-1773-PAA-EQ ISSUED: September 27, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING STANDARD OFFER CONTRACT
AND GRANTING RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose substantial interests are affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On June 2, 2000, Tampa Electric Company (TECO) filed a Petition for Approval of a New Standard Offer Contract for Qualifying Cogeneration and Small Power Production Facilities and associated tariffs. According to this petition, TECO has determined that its Standard Offer Contract should be based on a 5 megawatt (MW) portion of a 180 MW combustion turbine (CT) scheduled to be placed in service on May 1, 2003. TECO asserts that this CT is an integral component of the Gannon Station repowering project, specifically Bayside Unit 1. By Order No. PSC-00-1418-PCO-EQ, issued August 3, 2000, we suspended the proposed Standard Offer Contract and associated tariffs. We are vested with jurisdiction over this matter through several provisions of Chapter 366, Florida

Statutes, including Sections 366.04, 366.05, 366.051, 366.06, and 366.80-.82, Florida Statutes.

TECO also filed a Petition for Waiver of the requirement in Rule 25-17.0832(4)(e)7, Florida Administrative Code, that Standard Offer Contracts have a minimum term of ten (10) years. The term of TECO's proposed Standard Offer Contract is five (5) years. Pursuant to Section 120.542(6), Florida Statutes, notice of TECO's petition was submitted to the Secretary of State for publication in the August 11, 2000, Florida Administrative Weekly. No comments concerning the petition for waiver were filed within the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code, which expired on August 25, 2000.

Pursuant to Section 120.542(8), Florida Statutes, a petition for rule waiver is deemed approved if the Commission does not grant or deny it within 90 days. TECO has waived this 90-day deadline to allow the waiver request to be addressed together with the Standard Offer Contract. We are vested with jurisdiction to address TECO's petition for waiver through Section 120.542, Florida Statutes.

I. PETITION FOR RULE WAIVER

A. Standard for Approval

Section 120.542, Florida Statutes (1999), mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way

it affects other similarly situated persons who are subject to the rule.

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

B. TECO's Petition for Waiver

The waiver requested by TECO is for a standard offer contract term limited to five years instead of the ten year minimum contract term required by Rule 25-17.0832(4)(e), Florida Administrative Code.

1. Purpose of the Underlying Statute

In its petition for waiver, TECO identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues. According to TECO, the purposes of the statute, and the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA), are to promote the growth of alternative generating facilities, with the express limitation that electric customers should not pay more for power than they otherwise would.

TECO states that its petition for waiver will meet the purpose of the statute. TECO asserts that the standard offer contract will provide an economic incentive for the development of the type of projects contemplated by the statute. TECO further asserts that the waiver requested is more likely to ensure that electric customers do not pay excessive costs for power purchased under the standard offer contract.

2. Substantial Hardship

TECO states that the standard offer contract will not defer or avoid the construction of additional generating capacity. TECO asserts that its customers are prejudiced to the extent they are required to make capacity payments where no generation is avoided

or deferred. TECO states that to require capacity payments in such instance for a ten-year period would result in a substantial risk and hardship.

C. Analysis

1. Purpose Of The Underlying Statute

The purpose of Section 366.051, Florida Statutes, to encourage cogeneration and small power production, is express: "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state...." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Rule 25-17.0832(4)(e)7, requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit;

The above rule provides a range for the contract period tied to the plant life of the utilities' avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten year minimum contract term, while not a requirement of PURPA, was mandated in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, we addressed the issue of a ten year minimum contract term. We stated:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the

> avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.
>
> Order No. 12634, pg. 19.

The purpose of the statute underlying Rule 25-17.0832(4)(e) is to encourage cogeneration. Pursuant to Rule 25-17.0837(2), Florida Administrative Code, investor-owned utilities with planned generation units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and nonutility generators. Rule 25-17.0832(4) requires investor-owned utilities to offer standard offer contracts as an alternative for certain types of QFs. Insofar as cogenerators' ability to enter into negotiated contracts is unaffected by the variance request, and a cogenerator retains the ability to enter into a five year standard offer contract with TECO, we find that TECO's request for a waiver satisfies the underlying purpose of the statute.

2. Substantial Hardship

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological, or legal hardship. Purchases made by TECO pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of its proposed avoided unit, the 2003 CT. This is due to the subscription limit being 5 MW of a 180 MW unit. Therefore, we find that TECO has demonstrated in this case that application of the rule would create an economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred.

3. Other Requests for Waiver/Variance of Rule

We note that we have granted other requests for variance or waiver of the ten year minimum contract requirements of Rule 25-17.0832(4)(e), Florida Administrative Code, to a five year term:

1. By Order No. PSC-99-1713-TRF-EG, issued on September 2, 1999, in Docket No. 990249-EG, we granted Florida Power & Light Company (FPL) a variance from this rule.

2. By Order No. PSC-00-0265-PAA-EG, issued February 8, 2000, in Docket No. 991526-EQ, we granted Florida Power Corporation (FPC) a waiver of this rule. This order also directed that a rulemaking proceeding be initiated to amend Rule 25-17.0832(4)(e)(7), Florida Administrative Code, to amend the contract term provision of the rule.

3. By Order No. PSC-00-0504-PAA-EQ, issued on March 7, 2000, in Docket No. 991973-EQ, we granted FPC a waiver of this rule.

4. On July 17, 2000, FPL petitioned for a variance from the ten year minimum contract period in Docket No. 000684-EQ. That request was approved at our September 5, 2000, Agenda Conference.

The requests granted to date were granted on substantially the same grounds asserted by TECO in this docket.

In sum, we grant TECO's petition for waiver from the minimum standard offer contract term because it satisfies the statutory requirements for a rule variance. TECO has demonstrated that the purpose of the underlying statute will be met if the variance is granted. This is so because cogeneration will continue to be encouraged through negotiated as well as standard offer contracts. In addition, TECO's petition for waiver demonstrates that substantial hardship to its ratepayers would result from application of the rule.

II. PETITION FOR APPROVAL OF NEW STANDARD OFFER CONTRACT

For the reason's stated below, we find that TECO's new Standard Offer Contract complies with Rule 25-17.0832, Florida Administrative Code, and should therefore be approved.

Pursuant to federal law, the availability of standard rates is required for fossil-fueled QFs less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR

292.304. Florida law requires us to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. We are further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

These federal and state requirements were implemented through our adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file with this agency a tariff and a Standard Offer Contract for the purchase of firm capacity and energy from small QFs. These provisions implement the requirements of PURPA and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger QFs and other non-utility generators may participate in a utility's Request for Proposal process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, TECO proposed a new Standard Offer Contract based on a CT unit with an in-service date of May 1, 2003, as its avoided unit. Specifically, the Contract is based on a 5 MW portion of a 180 MW CT. TECO has also proposed an associated tariff, Schedule COG-2, Firm Capacity and Energy. This tariff would expire on the earlier of the date the subscription limit (5 MW) is fully subscribed, or upon the expiration of the two week open solicitation period which would begin ten days after the date that a Consummating Order is issued in this docket.

We believe that TECO's evaluation criteria will be readily understandable to any developer who signs TECO's Standard Offer Contract. The avoided unit cost parameters appear to be reasonable for a CT unit, and the resulting capacity payments are appropriate. The performance provisions include dispatch and control and on-peak performance incentives.

Given that the subscription limit of TECO's avoided unit is only a portion of its total capacity, purchases made by TECO pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of the 2003 CT unit. If TECO enters into

Standard Offer Contracts, but the need for the 2003 CT unit is not deferred or avoided, TECO will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of state regulations discussed above may result in a subsidy to the QFs. We note, however, that the potential subsidy could be mitigated, as TECO may have opportunities to sell any surplus capacity on the wholesale market.

Ideally, QFs should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, QFs are given some preferential treatment. We have minimized this unequal footing by requiring Standard Offer Contracts only for small QFs, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement due to their size and the time and resources required for negotiations. Thus, our rules balance market imperfections with the existing policy of promoting QFs.

In summary, we do not expect that TECO's proposed Standard Offer Contract will result in the avoidance of its proposed avoided unit, a 2003 CT. Nonetheless, TECO's proposed contract and tariff comply with our cogeneration rules. For this reason, we approve TECO's petition to establish its new Standard Offer Contract and associated tariffs.

Because it would not be reasonable to have this tariff go into effect if the waiver portion (part I) of this Order is protested, the tariff shall not be effective if a protest is filed. TECO's proposed standard offer contract shall become effective upon the issuance of the Consummating Order for the waiver if there is no timely protest filed to either the waiver or the standard offer contract portion (part II) of the Order. The open solicitation period for the Standard Offer Contract shall begin ten days after the effective date. The docket shall be closed upon the issuance of a Consummating Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's Petition for Waiver of the minimum contract term

requirements in Rule 25-17.0832(4)(e), Florida Administrative Code, is granted. It is further

ORDERED that Tampa Electric Company's Petition for Approval of a New Standard Offer Contract for Qualifying Cogeneration and Small Power Production Facilities and associated tariffs is granted. It is further

ORDERED that the tariff associated with the new Standard Offer Contract shall become effective upon the issuance of a Consummating Order. The open solicitation period for the Standard Offer Contract shall begin ten days after issuance of a Consummating Order. It is further

ORDERED that if no timely protest is filed to either the waiver portion (part I) or the standard offer contract portion (part II) of this Order, this docket shall be closed upon the issuance of a Consummating Order.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 27th day of September, 2000.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The actions proposed herein are preliminary in nature. Any person whose substantial interests are affected by either of the actions proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 18, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for approval of standard offer contract.	DOCKET NO. 000868-EI ORDER NO. PSC-00-1748-PAA-EI ISSUED: September 26, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING PETITION FOR STANDARD OFFER CONTRACT
AND GRANTING VARIANCE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose substantial interests are affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

On July 17, 2000, Florida Power & Light Company (FPL) filed a Petition for Approval of a Standard Offer Contract (Petition) for qualifying cogeneration and small power production facilities (QFs). The proposed contract is based on a 5 megawatt (MW) subscription limit of a 165 MW combustion turbine generating unit with an in-service date of January 1, 2002.

FPL also filed a Petition for a Variance from Rule 25-17.0832(4)(e), Florida Administrative Code (Petition for Variance). FPL seeks a variance from the 10 year minimum contract term required by the rule, and instead proposes the contract be limited to a term of five years. Pursuant to Section 120.542(6), Florida Statutes, notice of FPL's petition was submitted to the Secretary of State for publication in the August 11, 2000, Florida

Administrative Weekly. No comments on the Petition for Variance were filed. The 14-day comment period provided for variances by Rule 28-104.003, Florida Administrative Code, expired on August 25, 2000.

In this Order we rule on both the petition for approval of the proposed standard offer contract and the requested rule variance. We are vested with jurisdiction over this matter through several provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, 366.051, 366.06, and 366.80-.82, Florida Statutes. We are vested with jurisdiction to address FPL's Petition for Variance through Section 120.542, Florida Statutes.

II. VARIANCE

The variance shall be granted because FPL has demonstrated that the purpose of the statute underlying the rule from which it seeks a variance will be met, and that FPL and its ratepayers will suffer substantial hardship if the variance is not granted.

A. Standard for Approval

Section 120.542, Florida Statutes (1999), mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are

subject to the rule.

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

B. FPL's Petition For Variance

The variance requested by FPL is for a standard offer contract term limited to five years instead of the ten year minimum contract term required by Rule 25-17.0832(4)(e), Florida Administrative Code.

1. Purpose of the Underlying Statute

In its Petition For Variance, FPL identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues. According to FPL, the purposes of the statute, and the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA), are to promote the growth of alternative generating facilities, with the express limitation that electric customers should not pay more for power than they otherwise would.

FPL states that its Petition For Variance will meet the purpose of the statute. FPL asserts that the standard offer contract will provide an economic incentive for the development of the type of projects contemplated by the statute. FPL further asserts that the variance requested is more likely to ensure that electric customers do not pay excessive costs for power purchased under the standard offer contract.

2. Substantial Hardship

FPL states that the standard offer contract will not defer or avoid the construction of additional generating capacity. FPL

asserts that its customers are prejudiced to the extent they are required to make capacity payments where no generation is avoided or deferred. FPL states that to require capacity payments in such instance for a ten-year period, would result in a substantial risk and hardship.

C. Analysis

1. Purpose Of The Underlying Statute

The purpose of Section 366.051, Florida Statutes, to encourage cogeneration and small power production, is express: "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state...." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Rule 25-17.0832(4)(e)7, requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit;

The above rule provides a range for the contract period tied to the plant life of the utilities' avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten year minimum contract term, while not a requirement of PURPA, was mandated in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, we addressed the issue of a ten year minimum contract term. We stated:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.
>
> Order No. 12634, pg. 19.

The purpose of the statute underlying Rule 25-17.0832(4)(e) is to encourage cogeneration. Pursuant to Rule 25-17.0837(2), Florida Administrative Code, investor-owned utilities with planned generation units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and nonutility generators. Rule 25-17.0832(4) requires investor-owned utilities to offer standard offer contracts as an alternative for certain types of Qfs. Insofar as cogenerators' ability to enter into negotiated contracts is unaffected by the variance request, and a cogenerator retains the ability to enter into a five year standard offer contract with FPL, FPL's request for a variance satisfies the underlying purpose of the statute.

2. Substantial Hardship

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological, or legal hardship. Purchases made by FPL pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of its proposed avoided unit, the 2002 CT. This is due to the subscription limit being 5 MW of a 165 MW unit. Therefore, we find that FPL has demonstrated in this case that application of the rule would create an economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred.

3. Other Requests for Waiver/Variance of Rule

We note that we have granted other requests for variance or waiver of the ten year minimum contract requirements of Rule 25-

17.0832(4)(e), Florida Administrative Code, to a five year term:

1. By Order No. PSC-99-1713-TRF-EG, issued on September 2, 1999, in Docket No. 990249-EG, we granted FPL a variance from this rule.

2. By Order No. PSC-00-0265-PAA-EG, issued February 8, 2000, in Docket No. 991526-EQ, we granted Florida Power Corporation a waiver of this rule. This order also directed that a rulemaking proceeding be initiated to amend Rule 25-17.0832(4)(e)(7), Florida Administrative Code, to amend the contract term provision of the rule.

3. By Order No. PSC-00-0504-PAA-EQ, issued on March 7, 2000, in Docket No. 991973-EQ, we granted Florida Power Corporation a waiver of this rule.

4. On June 2, 2000, Tampa Electric Company petitioned for a waiver of the ten year minimum contract period in Docket No. 000684-EQ. That request was approved at our September 5, 2000, Agenda Conference.

The requests granted to date were granted on substantially the same grounds asserted by FPL in this docket.

In sum, we grant FPL's Petition for Variance from the minimum standard offer contract term because it satisfies the statutory requirements for a rule variance. FPL has demonstrated that the purpose of the underlying statute will be met if the variance is granted. This is so because cogeneration will continue to be encouraged through negotiated as well as standard offer contracts. In addition, FPL's Petition for Variance demonstrates that substantial hardship to its ratepayers would result from application of the rule.

III. PETITION FOR APPROVAL OF NEW STANDARD OFFER CONTRACT

For the reason's stated below, FPL's new Standard Offer Contract complies with Rule 25-17.0832, Florida Administrative Code, and is therefore approved.

Pursuant to federal law, the availability of standard rates is required for fossil-fueled QFs less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR 292.304. Florida law requires us to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. The Commission is further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

These federal and state requirements were implemented through our adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file with this agency a tariff and a Standard Offer Contract for the purchase of firm capacity and energy from small QFs. These provisions implement the requirements of PURPA and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger QFs and other non-utility generators may participate in a utility's Request For Proposal process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, FPL proposed a new Standard Offer Contract based on a CT unit with an in-service date of January 1, 2002, as its avoided unit. Specifically, the Contract is based on a 5 MW portion of a 165 MW CT. FPL has also proposed an associated tariff, COG-2 (firm capacity and energy). This tariff would expire on the earlier of the date the subscription limit (5 MW) is fully subscribed, or upon the expiration of the two week open solicitation period which would begin ten days after the date that a Consummating Order is issued in this docket.

We believe that FPL's evaluation criteria will be readily understandable to any developer who signs FPL's Standard Offer Contract. The avoided unit cost parameters appear to be reasonable for a CT unit, and the resulting capacity payments are appropriate. The performance provisions include dispatch and control and on-peak performance incentives.

Given that the subscription limit of FPL's avoided unit is only a portion of its total capacity, purchases made by FPL pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of the 2002 CT unit. If FPL enters into Standard Offer Contracts, but the need for the 2002 CT unit is not deferred or avoided, FPL will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of state regulations discussed above may result in a subsidy to the QFs. We note, however, that the potential subsidy could be mitigated, as FPL may have opportunities to sell any surplus capacity on the wholesale market.

Ideally, QFs should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, QFs are given some preferential treatment. We have minimized this unequal footing by requiring Standard Offer Contracts only for small QFs, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement due to their size and the time and resources required for negotiations. Thus, our rules balance market imperfections with the existing policy of promoting QFs.

In summary, we do not expect that FPL's proposed Standard Offer Contract will result in the avoidance of its proposed avoided unit, a 2002 CT. Nonetheless, FPL's proposed contract and tariff comply with our cogeneration rules. For this reason, we approve FPL's petition to establish its new Standard Offer Contract and associated tariffs.

Because it would not be reasonable to have this tariff go into effect if the variance portion of this Order is protested, the tariff shall not be effective if any protest is filed. FPL's proposed standard offer contract shall become effective upon the issuance of the Consummating Order for the waiver if there is no timely protest filed to either the waiver or the standard offer contract portion of the order. The open solicitation period shall begin ten days after the effective date. The docket shall be closed upon the issuance of a Consummating Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power and Light Company's Petition for a Variance from Rule 25-

17.0832(4)(e), Florida Administrative Code, is granted. It is further

ORDERED that Florida Power and Light Company's Petition for Approval of a Standard Offer Contract is approved. It is further

ORDERED that the tariff for the Standard Offer Contract shall become effective upon the issuance of a Consummating Order. The open solicitation period for the tariff shall begin ten days after issuance of a Consummating Order. It is further

ORDERED that if no timely protest is filed to either the variance or the standard offer contract portion of this Order, this docket shall be closed upon the issuance of a Consummating Order.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of September, 2000.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The actions proposed herein are preliminary in nature. Any person whose substantial interests are affected by either of the actions proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 17, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for Approval of Standard Offer Contract and Accompanying Rate Schedule COG-2	DOCKET NO. 991526-EQ ORDER NO. PSC-00-0265-PAA-EG ISSUED: February 8, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING STANDARD OFFER CONTRACT AND ACCOMPANYING RATE SCHEDULE COG-2

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On October 8, 1999, Florida Power Corporation (FPC) filed a Petition for Approval of a Standard Offer Contract (Petition) for qualifying cogeneration and small power production facilities. The proposed contract is based on a 20 megawatt (MW) subscription limit of a 90 MW combustion turbine generating unit with an in-service date of January 1, 2001.

Along with its October 8, 1999, Petition, FPC filed a Petition for Waiver of Rule 25-17.0832(4)(e)(7), Florida Administrative Code (Petition for Waiver). FPC sought a waiver of the 10 year minimum contract term required by the rule. FPC proposed that its contract be limited to a term of five years. The petition for rule waiver was noticed in the October 29, 1999, Florida Administrative Weekly. The comment period expired on November 12, 1999.

On November 15, 1999, the Florida Industrial Cogeneration Association (FICA) filed comments in opposition to FPC's petition. In its comments, FICA requests that the Commission enter an order: denying FPC's petition and waiver request; directing FPC to file a standard offer contract based on an appropriate avoided unit in full compliance with Commission rules; and, directing FPC to open a solicitation period on its standard offer contract ending October 1, 2000.

By letter dated November 24, 1999, FPC waived its right under Section 366.04, Florida Statutes, to a consent or suspension decision on its proposed tariff within 60 days of filing its petition. In the same letter, FPC also waived its right under Section 120.542, Florida Statutes, to a decision on its rule waiver request within 90 days of its petition.

I. Petition for Waiver of Rule 25-17.0832(4)(e)(7), Florida Administrative Code

A. Standards for Approval

Section 120.542, Florida Statutes (1997), mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations

relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

FPC requests a waiver of the ten year contract term for standard offer contracts mandated by Rule 25-17.0832(4)(e)(7), Florida Administrative Code. FPC seeks to have the term limited to five years instead of the ten years required by Rule 25-17.0832(4)(e)(7), Florida Administrative Code.

B. FPC's Petition For Waiver

1. Purpose of the Underlying Statute

In its Petition For Waiver, FPC identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues. According to FPC, the purposes of the statute, and the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA) are to encourage cogeneration while at the same time protecting ratepayers from paying costs in excess of avoided costs. FPC contends that these purposes will be achieved by utilizing a five-year contract term.

FPC states that its Petition For Waiver will meet the underlying purpose of the statute. FPC submits that new technologies and other factors may lower FPC's costs in the future. FPC contends that limiting the term of the standard offer contract to five years will give the company the flexibility to reassess its avoided costs and to take advantage of lower costs for the benefit of its ratepayers prior well in advance of the ten years required by the rule. FPC also states that PURPA and Section 366.051, Florida Statutes do not establish a minimum term for standard offer contracts.

2. Substantial Hardship

FPC argues that obligating it to a ten year contract term in the face of declining costs would subject the it to substantial hardship by adversely affecting its cost structure. FPC also states that ratepayers would be subjected to substantial hardship because the ten year term would increase the price that they would otherwise have to pay for electricity, in the face of declining costs.

C. FICA's Comments

Florida Industrial Cogeneration Association members own and/or operate small qualifying facilities which generate and sell electricity in conjunction with their industrial operations. FICA advances three arguments against the five-year contract term requested by FPC.

1. Value Of Deferral

FICA's first argument was that the objective of the value of deferral pricing mechanism for capacity payments, a component of the standard offer rules, will not be met if standard offer contract terms are limited to five years. According to FICA, the proposed five year contract term will not meet this objective because value of deferral pricing assumes that a small qualifying facility will sell capacity to the utility over the projected useful life of the utility's avoided unit. The value of deferral methodology inverts the capacity revenue stream in comparison to what the utility would receive if it constructed the avoided unit and added it to rate base. Value of deferral payments begin low and increase over time. Traditional revenue requirements begin high and decrease over time.

2. Purpose of Underlying Statute

FICA's second argument was that the purpose of the underlying statute will not be met if the requested five year waiver were granted. The underlying statute is designed to encourage cogeneration and small power production. FICA argued that FPC's proposed five year fixed term guarantees less than full avoided cost payments to the cogenerator and will discourage, rather than encourage, cogeneration and small power production. "Granting the waiver sought by FPC would deny SQF's [small qualifying facilities] the opportunity to provide electric generating capacity to FPC. Such a result would be contrary to both Florida and Federal law which favors QFs as an alternative to the construction of generating capacity by electric utilities." (Comments, pg. 9)

3. Inadequate Basis

FICA's third argument was that FPC has not adequately pled a basis for a variance. Citing the uniqueness requirement of Section 120.542, Florida Statutes, FICA stated that FPC's request is based

on "vague allegations and unsubstantiated opinions". (Comments, pg. 8) FICA maintained that, if FPC's request were granted, it would defeat the underlying statutory objective and render the standard offer rules meaningless. FICA stated that FPC's petition was more in the nature of rulemaking because it operates to undermine the purpose of the rule. In sum, FICA argued that FPC's Petition For Variance should be denied because the request defeats the purpose of the statute and does not satisfy the burden of proof required to obtain a waiver.

D. Analysis

1. Purpose Of The Underlying Statute

Section 366.051, Florida Statutes, expressly encourages cogeneration and small power production. "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state . . ." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Subsection 25-17.0832(4)(e)7, requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit;
>
> Rule 25-17.0832(4)(e)7, Florida Administrative Code.

The rule provides a range for the contract period tied to the plant life of the utility's avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten year minimum contract term, while not a requirement of PURPA, was mandated by the Commission in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, the Commission addressed

the issue of a ten year minimum contract term. The Commission stated:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.
>
> Order No. 12634, pg. 19.

The purpose of the underlying statute is to encourage cogeneration. To promote cogeneration, investor-owned utilities' planned generation units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and nonutility generators. Rule 25-17.0837(1), Florida Administrative Code. The alternative provision is the standard offer contract. FPC's request for a waiver appears to satisfy the underlying purpose of the statute because a cogenerators' ability to enter into negotiated contracts is unaffected by the waiver request, and a cogenerator retains the ability to enter into a five year standard offer contract with FPC.

2. Substantial Hardship

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological or legal hardship.

In determining whether a rule waiver should be granted to a utility which bases its assertion of substantial hardship upon hardship to its ratepayers, we refer to Order No. PSC-98-1211-FOF-EI, issued September 14, 1998, in Docket No. 980740-EI. In that Order, which determined a rule waiver request by Florida Power & Light Company (FPL), we noted that the Legislature intended the provisions of Section 120.542, Florida Statutes:

> to remedy situations where "strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results . . ." Section 120.542(1), Florida Statutes. We believe that

> this language should be read together with subsection (2) of the statute in order to determine whether FPL has demonstrated a substantial hardship in this case.
>
> In terms of the rule's impact on FPL alone, it is arguable whether the rule creates a substantial hardship. However, FPL's ratepayers may achieve substantial benefits if FPL's request for a rule waiver is granted. Conversely, if the rule waiver is not granted, FPL's ratepayers must forego those benefits. We believe that this is the type of "unreasonable, unfair, and unintended result" that Section 120.542, Florida Statutes, was intended to remedy. Therefore, given the interests of FPL's ratepayers and our responsibility to those ratepayers, we find that FPL has demonstrated that application of Rule 25-17.015(1) Florida Administrative Code, creates a substantial hardship.

We, therefore, believe that our precedent holds that a demonstration by an Investor Owned Electric Utility (IOU) that the application of a rule will cause a substantial hardship to its ratepayers is sufficient to grant the IOU the requested rule waiver.

The hardship demonstrated by FPC is economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred. We disagree with FICA's argument that the value of deferral payment methodology compels a minimum ten year contract term. First, value of deferral is but one of four payment methodologies provided for in Rule 25-17.0832(4)(g), Florida Administrative Code. Second, the value of deferral payments compensate the cogenerator for the service provided. For example, if a cogenerator signed a 12 year contract, it would be paid the value of deferring construction of an avoided unit for 12 years. The cogenerator would not be paid the entire cost of the unit because of the finite term of the contract.

3. Inadequate Basis

FICA's argument that FPC has not demonstrated uniqueness, incorrectly applies the law of waivers and variances. Section 120.542, Florida Statutes states that when "principles of fairness" are alleged to be violated, the petitioner must demonstrate application of the rule affects it differently than similarly situated persons subject to the rule. FPC did not allege that

principles of fairness were violated, therefore, the standard does not apply.

We believe that FPC's Petition For Waiver from the minimum standard offer contract term satisfies the mandatory, statutory requirements. We believe that FPC has demonstrated that the purpose of the underlying statute will be met if the variance is granted because the company will continue to enter into negotiated as well as standard offer contracts with cogenerators. We also believe that FPC's Petition For Waiver demonstrated substantial hardship to its ratepayers should we have declined to grant the waiver.

II. Rule 25-17.0832(4)(e)(7) Florida Administrative Code

We believe that the number of requests for variance or waiver of Rule 25-17.0832(4)(e)(7), Florida Administrative Code, that we have ruled upon in the last year indicates that the rule needs to be amended. In at least two dockets, Docket No. 991973-EI, and the present docket, utilities have requested a variance of this rule. Both of these instances have occurred since we issued Order No. PSC-99-1713-TRF-EG on September 2, 1999, in Docket No. 990249-EG. In that Order we granted Florida Power & Light Company a variance of this rule. We believe that five year terms for standard offer cogeneration contracts are sufficient to fulfill the purposes of the underlying statutes: Section 366.051, Florida Statues; and, PURPA. We, therefore, direct staff to initiate rulemaking proceedings to amend the contract term provision of Rule 25-17.0832(4)(e)(7), Florida Administrative Code.

III. FPC's Standard Offer Contract

Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities less than 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR 292.304. Florida law requires us to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Chapter 366.82(2), Florida Statutes. We are further directed to "establish a funding program to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Chapter 377.709, Florida Statutes.

We implemented these federal and state requirements through the adoption of the Standard Offer Contract in Rule 25-17.0832(4)(a), Florida Administrative Code. Pursuant to this rule, each investor-owned electric utility must file a tariff and a Standard Offer Contract with the Commission. These provisions implement the requirements of the Public Utilities Regulatory Policies Act and promote renewables and solid waste-fired facilities by providing a straightforward contract. Larger qualifying facilities and other non-utility generators may participate in a utility's Request For Proposal process pursuant to Rule 25-22.082, Florida Administrative Code.

To comply with Rule 25-17.0832(4)(a), Florida Administrative Code, FPC proposed a new Standard Offer Contract based on a 20 MW portion of a 90 MW combustion turbine (CT) unit with an in-service date of January 1, 2001. FPC's proposed COG-2 (firm capacity and energy) tariff shall expire on the earlier of the date the subscription limit (20 MW) is fully subscribed, or July 1, 2000. We believe that the nearly six month open season period will increase the probability that FPC will receive offers under its proposed Standard Offer Contract.

FPC's evaluation criteria should be readily understandable to any developer who signs FPC's Standard Offer Contract. The avoided unit cost parameters appear to be reasonable for a CT unit, and the resulting capacity payments are appropriate. The performance provisions include dispatch and control, and on-peak performance incentives.

Given that the subscription limit of FPC's avoided unit is only a portion of its total capacity, purchases made by FPC pursuant to the proposed Standard Offer Contract will not result in the deferral or avoidance of the 2001 CT unit. If FPC enters into a Standard Offer Contract, but the need for the 2001 CT unit is not deferred or avoided, FPC will essentially be paying twice for the same firm capacity. Therefore, the requirements of federal law and the implementation of state regulations discussed above may result in a subsidy to the qualifying facilities. We note, however, that the potential subsidy could be mitigated, as FPC may have opportunities to sell any surplus capacity to the wholesale market.

Ideally, qualifying facilities should compete on equal footing with all other producers of electricity. However, until and unless there is a change in federal and state law, qualifying facilities are to be given some preferential treatment. We have minimized

this unequal footing by requiring Standard Offer Contracts only for small qualifying facilities, renewables, or municipal solid waste facilities. These types of facilities may not be in a position to negotiate a purchased power agreement because of either timing or their small size. Thus, our rules balance market imperfections with the existing policy of promoting qualifying facilities.

We do not expect that FPC's proposed Standard Offer Contract will result in the avoidance of the 2001 CT unit. Nonetheless, FPC's proposed contract and tariffs comply with the Commission's cogeneration rules. We, therefore, approve FPC's petition to establish its new Standard Offer Contract and associated tariffs.

Because it would not be reasonable to have this tariff go into effect if the waiver portion of this Order were protested, FPC's COG-2 tariff approved in this Order shall be processed as a proposed agency action. Therefore, FPC's proposed standard offer contract shall become effective upon the issuance of a consummating order.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the Petition of Florida Power Corporation for Approval of Standard Offer Contract and Accompanying Rate Schedule COG-2 is hereby approved. It is further

ORDERED that the Petition for Waiver of Rule 25-17.0832(4)(e)(7), Florida Administrative Code is hereby granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of February, 2000.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 29, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for approval of a standard offer contract and revised COG-2 tariff.	DOCKET NO. 990249-EG ORDER NO. PSC-99-1713-TRF-EG ISSUED: September 2, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER DENYING FLORIDA POWER & LIGHT COMPANY'S PETITION FOR APPROVAL OF STANDARD OFFER CONTRACT AND GRANTING REQUEST FOR VARIANCE

BY THE COMMISSION:

On March 3, 1999, Florida Power & Light Company (FPL) filed a Petition for Approval of a Standard Offer Contract (Petition) for qualifying cogeneration and small power production facilities. The proposed contract is based on a 5 MW subscription limit of a 209 MW combustion turbine generating unit with an in-service date of 2001. In determining the appropriate payment amounts, FPL accounted for an offsetting equity adjustment to compensate for costs imposed on its customers due to a risk adjusting practice of the Standard and Poor's rating agency. The proposed standard offer contract also includes a "Regulatory Disallowance" section which permits FPL to adjust payments to a signatory to compensate for any unforeseen regulatory action.

Along with its March 3, 1999, Petition, FPL filed a Petition for a Variance from Rule 25-17.0832(4)(e), Florida Administrative Code (Petition for Variance). FPL seeks a variance from the 10 year minimum contract term required by the rule and instead proposes a fixed five-year contract term.

The 60-day suspension date of May 3, 1999, has been waived by FPL pursuant to correspondence dated April 14, and 16, 1999. Order No. PSC-99-1053-TRF-EG, issued May 24, 1999, suspended FPL's proposed standard offer contract and COG-2 tariff revision until

final review. By letter dated May 12, 1999, FPL agreed to waive its right to a decision on the Petition for Variance within 90 days after receipt pursuant to Section 120.542(8), Florida Statutes.

On May 6, 1999, the Florida Industrial Cogeneration Association (FICA) filed comments requesting denial of both FPL's Petition and Petition for Variance. In its comments, FICA asks the Commission to enter an order: (1) denying FPL's petition and variance request; (2) instructing FPL to file a standard offer contract based on its next proposed generating plant; and (3), directing FPL to open a solicitation period on its standard offer contract ending July 1, 2000. On June 11, 1999, FPL filed a Response to Comments of the Florida Industrial Cogeneration Association.

This order addresses both the petition for approval of the proposed standard offer contract and the requested variance. The merits and conformity of FPL's proposed standard offer contract with our rules is discussed first. Next the order addresses FPL's use of an Equity adjustment when determining capacity payments under the proposed contract and FPL's Petition for Variance.

I. Proposed Standard Offer Contract

FPL's Petition For Approval of a Standard Offer Contract based on a combustion turbine unit with an in-service date of 2001 and revised COG-2 tariff is denied for two reasons. Contrary to our rule requirements, the proposed standard offer contract is not based on FPL's next avoided unit. In addition, consistent with the decision set forth in Order No. 24989, issued August 29, 1991, a "Regulatory Out Clause" is not appropriate in a standard offer contract. FPL should revise its standard offer contract to reflect the recommended changes and provide no less than a two week availability. FPL is directed to submit a revised standard offer contract and associated tariffs no later than 60 days from the date of the our vote.

Pursuant to federal law, the availability of standard rates is required for fossil-fueled qualifying facilities (QFs) less than or equal to 100 kilowatts (0.1 MW) in size. 16 U.S.C. 2601 *et seq.*, 15 U.S.C. 791 *et seq.*, 16 U.S.C. 792 *et seq.*, 18 CFR 292.304. Florida law requires the Commission to "adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration." Section 366.82(2), Florida Statutes. The Commission is further directed to "establish a funding program

to encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." Section 377.709, Florida Statutes.

These federal and state regulations are implemented in part through the standard offer contract rules. Pursuant to Rule 25-17.0832(4)(a), Florida Administrative Code, each investor-owned electric utility must file a tariff and a standard offer contract with this Commission. These provisions effectuate the requirements of the Public Utilities Regulatory Policies Act (PURPA) and promote renewables and solid waste facilities by providing a straightforward contract. Larger QFs and other non-utility generators may participate in a utility's Request For Proposal process, referred to as the bidding rule.

A. Avoided Unit

To comply with our rules, FPL proposed a standard offer contract based on a hypothetical combustion turbine (CT) unit with an in-service date of January 1, 2001. This is the same unit FPL used to evaluate Demand-side management programs in the on-going Conservation Goals proceedings. FPL's April, 1998, and its April, 1999, *Ten Year Site Plan* identifies the Ft. Myers Repowering project as its next planned generation addition.[1] This project entails replacing the existing steam boilers with six 150 MW GE-7FA combustion turbines and Heat Recovery steam generators (HRSG) at the Ft. Myers site by January, 2002. The contract-based hypothetical CT has no relationship to the repowering project nor any of the proposed additions identified in FPL's current *Ten Year Site Plan*. Our Rules require that standard offer contracts be based on a utility's "avoided unit" which is its next planned generating unit addition. More specifically, Rule 25-22.082(2), and Rule 25-17.0832(4)(e)5, Florida Administrative Code, require that:

> Prior to filing a petition for determination of need for an electrical power plant pursuant to Section 403.519, Florida Statutes, each investor-owned electrical utility shall evaluate supply-side alternatives to its <u>next planned generating unit</u> by issuing a request for proposals. (Emphasis added)

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[1]See Schedule 9 of FPL's 1998 and 1999 *Ten Year Site Plan* filings.

> A reasonable open solicitation period during which time the utility will accept proposals for standard offer contracts. Prior to the issuance of timely notice of a Request for Proposals (RFP) pursuant to Rule 25-22.082(3), the utility shall end the open solicitation period;

Though these Rules pertain to those planned additions that are subject to the Florida Electric Power Plant Siting Act (PPSA), Rule 25-17.0832(2), Florida Administrative Code, encourages utilities and QFs to:

> ...negotiate contracts for the purchase of firm capacity and energy to avoid or defer the construction of all planned utility generating units which are not subject to the requirements of Rule 25-22.082. (Emphasis added)

In lieu of a separately negotiated contract, standard offer contracts are available to QFs as defined in Rule 25-17.0832(4)(a)1-3, Florida Administrative Code.

We believe these rules collectively require investor-owned utilities to pursue construction deferring alternatives for their next planned resource additions, whether they are PPSA affected or unaffected. Basing a standard offer contract on something other than the next generating unit addition would render the intended construction deferring purpose of such an option meaningless. Moreover, it is likely that subsequent planned additions may indeed be delayed or modified from an original proposal, depending on load growth, the effect of demand-side management measures, and technological changes. In Order No. PSC-94-1008-FOF-EQ, issued August 22, 1994, we held that it was important that Tampa Electric Company (TECO) not purchase standard offer capacity too far in advance of the avoided unit's in-service date.

Our position with respect to the correctness of basing a standard offer contract on a utility's next planned unit is consistent with precedent recently affirmed in Docket Nos. 990172-EI and 981893-EQ[2]. In resolving each of these matters, we found it

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[2]DOCKET NO. 990172-EI - Petition by Gulf Power Company for waiver of Rule 25-17.0832(4), F.A.C., which sets forth requirements for filing of a standard offer contract, Order No. PSC-99-1091-PAA-EI, issued May 28, 1999.

appropriate to base both Gulf Power Company's (Gulf) and TECO's proposed standard offer contracts on their next planned generating unit. Gulf's next planned unit addition is required to go through the PPSA process whereas TECO's next planned unit addition is not.

B. Regulatory Out Clause

Within its proposed standard offer contract, FPL has included a section entitled "Regulatory Disallowance", Section 18, Second Revised Sheet No. 9.857. This type of provision, more commonly referred to as a "Regulatory Out Clause", permits FPL to adjust a QF's scheduled payments based on some unforeseen regulatory action. Staff recommends that FPL be directed to remove this section from its proposed standard offer contract. In Order No. 24989, we instructed FPL and the other three large investor-owned electric utilities to remove the "Regulatory Out Clause" from standard offer contracts. In that decision, we concluded that utilities would not be allowed to include a "Regulatory Out Clause" in their standard offer contracts citing them as "unnecessary surplusage" given the our commitment to allow recovery of the mandated payments. FPL appealed Order No. 24989 to the Florida Supreme Court alleging that "the Commission's decision to eliminate the regulatory out clause was based on a misrepresentation of the doctrine of 'administrative finality' and the faulty legal conclusion that the finality of the Commission's decision rendered regulatory out clauses unnecessary." Florida Power & Light Co. v. Beard, 626 So.2d 660, 662 (Fla. 1993). The Supreme Court held that "the Commission's decision to remove regulatory out clauses from standard offer contracts with small QFs is supported by substantial competent evidence and consistent with the doctrine of administrative finality." Id. at 663. FPL did not present any arguments which persuade us that a different result is appropriate in this case. Therefore, we find that FPL shall submit revised tariff sheets that reflect removal of Section 18, "Regulatory Disallowance".

Clearly, FPL should have been aware of the decision to remove Regulatory Out Clauses from standard offer contracts. This places us in the position of having to deny FPL's petition and then wait for FPL to refile its standard offer contract further delaying

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DOCKET NO. 981893-EQ - Petition to Establish New Standard Offer Contract for Qualifying Cogeneration and Small Power Production Facilities by Tampa Electric Company, Order No. PSC-99-0748-FOF-EQ, issued April 19, 1999.

achievement of any capacity deferring benefits. As discussed in the following section, this timing problem has been exacerbated, in large part, due to FPL waiting so long to file its Standard Offer Contract.

C. Timing

FPL was questioned regarding its required filing immediately after it identified the Ft. Myers repowering as its next planned generation addition. On July 15, 1998, a letter was sent to FPL questioning when it would be filing a petition seeking approval of a standard offer contract or, in the alternative, a waiver of Rule 25-17.0832(4), Florida Administrative Code. FPL was asked to respond by July 31, 1998. FPL was again contacted by letter on October 1, 1998, requesting that it provide an estimated date of filing and the avoided unit(s) the contract would be based on. This letter asked FPL to respond no later than October 15, 1998. FPL ultimately responded on October 15, 1998, and again on December 22, 1998, indicating that it would be filing a standard offer contract by January 22, 1999, based on a 5 MW portion of a 209 MW CT with an in-service date of January 1, 2002. The instant Petition was not filed until March 3, 1999. Contrary to the intended benefit of standard offer contracts, we believe that FPL has essentially ensured that any signed standard offer contract will have an inadequate opportunity to delay or avoid any portion of FPL's next capacity addition.

D. Conclusion

FPL's proposed standard offer contract does not comply with either Rule 25-17.0832, Florida Administrative Code, or Order No. 24989. The proposed contract is based on a purely hypothetical unit that is not part of FPL's current or previous generation expansion plan. The purpose of a standard offer contract is to offer small QFs, renewable, and municipal solid waste facilities a straightforward contract after all other cost-effective measures have been taken. The dual benefit of these contracts is that, when filed in a timely manner, they encourage energy efficiency while avoiding or deferring the construction of generating plants at a cost no greater than that which would otherwise be incurred by an electric utility. To allow utilities to select avoided units other than their next planned addition as the basis for a standard offer contract renders the intent of our rules regarding these contracts meaningless. It is for these reasons, as more fully discussed within the body of this order, that FPL's Petition is denied. FPL

shall file a revised standard offer contract consistent with this order.

Upon filing revised tariff sheets, the revised standard offer contract should remain available for a period of no less than two weeks from the date of our approval. This approach is consistent with the approach recently taken by Tampa Electric Company in Docket No. 981893-EQ. In that case, TECO's planning process indicated that its next planned generating unit would need to be built sooner than expected. While TECO was not required to issue an RFP for the unit, there was no time to issue a standard offer contract that could effectively defer the necessity to construct the unit. In order to comply with the rule, however, TECO petitioned for approval of a standard offer contract based on that unit. The contract called for a brief open solicitation period of two weeks. By Order No. PSC-99-0748-FOF-EQ, issued April 19, 1999, we approved TECO's petition.

II. Equity Adjustment

We find it is appropriate to include an equity adjustment when determining FPL's proposed standard offer contract payments. However, FPL should recalculate the capacity payments to reflect an equity adjustment based on a 10% risk factor.

A utility can add capacity by buying power with a long-term contract or by building generating plants. Both alternatives have advantages and disadvantages. Regarding financial risk, building capacity can involve adding debt to finance the construction, cost overruns, and regulatory lag. Buying power increases the utility's fixed charges, which, in turn, can reduce financial flexibility. Standard & Poor's (S&P) notes that, "regardless of whether a utility buys or builds, adding capacity means incurring risk."

Particularly since the passage of the National Energy Policy Act of 1992, bond rating agencies have viewed the fixed charges from long-term purchased power contracts in part as off-balance sheet debt equivalents. S&P's method for recognizing off-balance sheet obligations is to discount a utility's future capacity payments under a long-term purchased power contract at a 10% discount rate. Part of the present value of the capacity payments is added to the utility's balance sheet as debt for rating purposes. Financial ratios - including the equity ratio and interest coverage ratio - are adjusted for this off-balance sheet obligation. The risk factor, which is how much of the present

value of capacity payments is treated as debt, depends on S&P's qualitative analysis of market, operating, and regulatory risks. These include the following:

Whether the contract is take-or-pay or take-and-pay, with take-or-pay being riskier;

Whether the power is economic and needed;

Whether there is a recovery clause for capacity payments;

Whether there is a regulatory out clause that passes disallowances to the seller;

Whether there are performance standards;

Whether the utility has a say in maintenance and dispatch; and

Whether the contract has been preapproved by regulators.

In its standard offer contract, FPL has included an "equity adjustment" reflecting the adjustment to the equity ratio that bond rating agencies make. In including this equity adjustment, FPL is reflecting the cost, in the form of less financial flexibility, that is imposed on electric utilities with purchased power contracts. The adjustment to a utility's equity ratio for the effects of purchased power is made only for bond rating purposes. For regulatory and accounting purposes, the amount of equity and debt on the utility's books is the actual amount and is not adjusted to reflect the effect of purchased power contracts.

The discussion of the perceived need for utilities to increase the level of equity in the capital structure to offset the adjustment made to the financial ratios by rating agencies and how this affects the overall cost of capital has not been specifically addressed. We note, however, that there are persuasive arguments on both sides of the issue of who should be responsible for the incremental cost of additional equity to compensate for these contracts. Given the terms of the recently approved Stipulation and Settlement (Stipulation) involving FPL, we believe FPL's current cost of capital includes recognition of this cost.

In Order No. PSC-99-0519-AS-EI issued March 17, 1999, we approved the Stipulation entered into by FPL, the Office of Public

Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and the Coalition for Equitable Rates (the Coalition) to settle the issues raised in Docket No. 990067-EI. Provision 4 of the Stipulation caps FPL's adjusted equity ratio at 55.83% for surveillance purposes. This adjusted ratio equates to an actual ratio of 65.7% as reported in the Company's projected 1998 Rate of Return Report.

We recognize the effect that purchased power contracts have on the utility's financial ratios as calculated by S&P. To be consistent with the terms of the Stipulation approved in Order No. PSC-99-0519-AS-EI which allows for the recovery of the "equity adjustment" through base rates, we approve FPL's adjustment to its standard offer contract to recognize the effect of purchased power contracts and to avoid possible double recovery. However, while we are approving FPL's request in the instant case due to the unique circumstances surrounding FPL's Stipulation, the broader policy issue of who should bear the incremental cost of additional equity to compensate for purchased power contracts has not been addressed.

Although the facts and circumstances in this case persuade us that this adjustment should be included in the Company's standard offer contract, FPL calculated its equity adjustment using a 20% risk factor. FPL subsequently represented that S&P assigns a 10% risk factor to its existing cogeneration contracts. Therefore, we find that a recalculation of the capacity payments to reflect an equity adjustment based on a 10% risk factor to be appropriate.

III. Request For Variance

FPL's request for a variance from the ten-year minimum contract term required by Rule 25-17.0832(4)(e), Florida Administrative Code is granted. FPL has demonstrated that the purpose of the underlying statute will be met and that it will suffer substantial hardship if the variance is not granted.

A. Standard Of Review

Section 120.542, Florida Statutes (1997), mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other

> means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Thus, under the statute, a person requesting a variance or waiver must affirmatively demonstrate that the purpose of the underlying statute has been met. In addition, the petitioner must demonstrate that it will either suffer "substantial hardship" or that "principles of fairness" will be violated. If the allegations relate to fairness, an additional proof of uniqueness to the petitioner is required by the statute.

As previously stated, FPL filed its Petition For A Variance From Rule 25-17.0832(4)(e) on March 3, 1999, in conjunction with its Petition For Approval Of A Standard Offer Contract. The variance requested by FPL is for a fixed standard offer contract term of five years instead of the ten year minimum contract term required by Rule 25-17.0832(4)(e)(7), Florida Administrative Code. Notice of the variance request was published in Florida Administrative Weekly on April 23, 1999. The comment period expired on May 7, 1999. Comments in opposition to the Petition For Variance were received from the Florida Industrial Cogeneration Association on May 6, 1999. This section of the order addresses FPL's Petition For Variance, FICA's Comments on the variance request and FPL's Response To FICA's Comments.

B. FPL's Request For Variance

1. Purpose of the Underlying Statute

In its Petition For Variance, FPL identifies the underlying statute implemented by the rule as Section 366.051, Florida Statues. According to FPL, the purpose of the statute with respect to cogeneration and small power production is to "encourage the growth of alternative competitive electrical generating facilities which would use non-traditional fuel sources for power while at the same time ensuring that electric consumers are not harmed through

the imposition of such purchase obligations." (Petition For Variance, pgs. 2-3)(*citing* H.R. Rep. No. 1750, 1978 U.S.C.C.A.N. 7797)

FPL states that its Petition For Variance will meet the underlying purpose of the statute. FPL acknowledges that the ten-year minimum standard offer contract term provides both the purchasing utility and the cogenerator a reasonable planning horizon. Notwithstanding that, FPL's position is that a five-year standard offer contract will provide economic incentive for the development of cogeneration projects and is more likely to ensure that consumers do not pay excessive costs for power purchased under the contracts. FPL opines that the ability of cogenerators to plan must be weighed against consumer protection concerns.

2. Substantial Hardship

FPL argues that a ten year contract term will create an unreasonable risk and burden for its customers. In support of its position, FPL asserts that Congress is currently considering repeal of Section 210 of PURPA and there is thus uncertainty surrounding the statutory foundation for FPL's obligations under Rules 25-17.080 through 25-17.0832, Florida Administrative Code. In addition, FPL states that any cogeneration contracted for under the standard offer contract will not defer or avoid the construction of additional generating capacity. FPL's argument appears to be that a fixed five-year standard offer contract term accomplishes the purpose of the statute to encourage cogeneration but at a lower cost to the ratepayers. With the passage of time, the cost to the ratepayers becomes a substantial hardship.

C. FICA's Comments

Florida Industrial Cogeneration Association members own and operate small qualifying facilities which generate and sell electricity in conjunction with their industrial operations. FICA advances three arguments against the five-year contract term requested by FPL. First, FICA argues that the Rule's minimum ten-year term correlates to the value of deferral pricing mechanism and is, therefore, necessary to effectuate the intent of the rule. Second, FICA opines that the purpose of the underlying statute will not be met if FPL's variance request is granted. Third, FICA states that FPL's basis for a variance request is inadequate.

1. Value Of Deferral

FICA's first argument is that the objective of the value of deferral pricing mechanism for capacity payments, a component of the standard offer rules, will not be met if standard offer contracts are limited to five years. This is so, according to FICA, because value of deferral pricing assumes that a small qualifying facility will sell capacity to the utility over the projected useful life of the utility's avoided unit. The value of deferral methodology inverts the capacity revenue stream in comparison to what the utility would receive if it constructed the avoided unit and added it to rate base. Value of deferral payments begin low and increase over time. Traditional revenue requirements begin high and decrease over time.

2. Purpose of Underlying Statute

FICA's second argument is that the purpose of the underlying statute will not be met if the five year variance is granted. The underlying statute is designed to encourage cogeneration and small power production. FPL's proposed five year fixed term guarantees less than full avoided cost payments to the cogenerator and will discourage, rather than encourage, cogeneration and small power production. "Granting the waiver (sic) sought by FPL would deny SQF's the opportunity to provide electric generating capacity to FPL. Such a result would be contrary to both Florida and Federal law which favors QFs as an alternative to the construction of generating capacity by electric utilities." (Comments, pg. 7)

3. Inadequate Basis

FICA's third argument is that FPL has not adequately pled a basis for a variance. Citing the uniqueness requirement of Section 120.542, Florida Statutes, FICA states that FPL's request is based on "vague allegations and unsubstantiated opinions". (Comments, pg. 6) If granted, FICA asserts, FPL's request would defeat the underlying statutory objective and render the standard offer rules meaningless. FICA states that FPL's petition is more in the nature of rulemaking insofar as it undermines the purpose of the rule. In sum, FICA argues that FPL's Petition For Variance should be denied because the request defeats the purpose of the statute and does not satisfy the burden of proof.

D. Analysis

1. Purpose Of The Underlying Statute

The purpose of Section 366.051, Florida Statutes, to encourage cogeneration and small power production, is express. "Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state...." Rule 25-17.0832(4), Florida Administrative Code, implements Section 366.051, Florida Statutes. Pursuant to the Rule, standard offer contracts must contain certain minimum specifications relating to, among other things, the term of the contract and the calculation of firm capacity payments. With respect to the term of standard offer contracts, Subsection 25-17.0832(4)(e)7, requires:

> Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in service date of the avoided unit;
>
> Rule 25-17.0832(4)(e)7, Florida Administrative Code.

The rule provides a range for the contract period tied to the plant life of the utilities' avoided unit by establishing a minimum and a maximum term for standard offer contracts.

The ten year minimum contract term, while not a requirement of PURPA, was mandated by the Commission in order to assist utilities and cogenerators with planning. In Order No. 12634, issued October 27, 1983, Docket No. 820406-EU, Amendment of Rules 25-17.80 through 25-17.89 relation to cogeneration, the Commission addressed the issue of a ten year minimum contract term. The Commission stated:

> The requirement that a QF be willing to sign a contract for the delivery of firm capacity for at least ten years after the originally anticipated in service date of the avoided unit is important from a planning perspective. While a ten-year contract will not offset the expected thirty year life of a base load generating unit, we

believe it is of sufficient length to confer substantial capacity related benefits on the ratepayers.

Order No. 12634, pg. 19.

The purpose of the underlying statute is to encourage cogeneration. To promote cogeneration, investor owned utility's planned generation units not subject to Rule 25-22.082, Florida Administrative Code, are encouraged to negotiate contracts for the purchase of firm capacity and energy with utility and nonutility generators. Rule 25-17.0837(1), Florida Administrative Code. The alternative provision is standard offer contracts. Insofar as cogenerators' ability to enter into negotiated contracts is unaffected by the variance request, and a cogenerator retains the ability to enter into a five year minimum standard offer contract with FPL, FPL's request for a variance appears to satisfy the underlying purpose of the statute.

2. Substantial Hardship

An allegation of substantial hardship requires an affirmative demonstration by the petitioner of economic, technological or legal hardship. The hardship demonstrated by FPL is economic hardship to its ratepayers who may bear the risk of generation which is not avoided or deferred. We disagree with FICA's argument that the value of deferral payment methodology compels a minimum ten year contract term. First, value of deferral is but one of four payment methodologies provided for in Rule 25-17.0832(g), Florida Administrative Code. Second, the value of deferral payments compensates the cogenerator for the service provided. For example, if a cogenerator signed a 12 year contract, it would be paid the value of deferring construction of an avoided unit for 12 years. The cogenerator would not be paid the entire cost of the unit because of the finite term of the contract. Our current rules specify the maximum term as an option to the cogenerator with a cap on the avoided unit.

3. Inadequate Basis

FICA's argument that FPL has not demonstrated uniqueness, incorrectly applies the law of waivers and variances. Section 120.542, Florida Statutes states that when 'principles of fairness' are alleged to be violated, the petitioner must demonstrate application of the rule affects it differently than similarly situated persons subject to the rule. FPL did not allege that

principles of fairness were violated, therefore, the standard does not apply.

In sum, FPL's Petition For Variance from the minimum standard offer contract term is granted because it satisfies the mandatory, statutory requirements. FPL has demonstrated that the purpose of the underlying statute will be met if the variance is granted. This is so because cogeneration will continue to be encouraged through negotiated as well as standard offer contracts. In addition, FPL's Petition For Variance demonstrates substantial hardship to its ratepayers.

4. Conclusion

FPL's Petition For Approval of a Standard Offer Contract based on a combustion turbine unit with an in service date of 2001 is denied. The proposed Contract is not based on FPL's next avoided unit, the regulatory out clause is inappropriate. FPL is directed to revise its proposed Standard Offer Contract within 60 days of the date of our vote consistent with this order and provide a minimum two-week availability. FPL's requests for an equity adjustment and variance are granted as set forth herein. This docket shall remain open for final resolution of matters considered in sections I and II of this order. With respect to section III, this docket shall be closed if no protest is filed in accordance with the requirements set forth below.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Petition For Approval of Proposed Standard Offer Contract is denied. It is further

ORDERED that Florida Power & Light Company's Request For An Equity Adjustment is approved as set forth in the body of this order. It is further

ORDERED that Florida Power & Light Company's Request For a Variance is approved. It is further

ORDERED that Florida Power & Light Company shall submit a revised proposed standard offer contract and revised tariff sheets in accordance with this order on or before September 27, 1999. It is further

ORDERED that this docket shall remain open for final resolution of sections I and II of this order and that with respect to section III of this order, if no protest is filed in accordance with the requirements set forth below, that portion of this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of September, 1999.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

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SECTIONS I AND II:

NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida

Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 23, 1999.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

SECTION III:

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 23, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.