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Public Service Commission

January 16, 2007

HAND DELIVER

Mr. Scott Boyd, Executive Director
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

RE: Docket No. 060555-EI – Proposed Amendments to Rule No. 25-17.0832, F.A.C.,
Firm Capacity and Energy Contracts

Dear Mr. Boyd:

The Commission has approved the adoption of new Rules 25-17-200 through 25-17.310, and amendments to Rule 25-17.0832. While the subject matter and content are similar to that published, these new rules are changes from the amendments to Rule 25-17.0832, as published October 20, 2006.

We plan to publish a Notice of Change on January 26, 2007. If there are no rule challenges filed, we plan to file with the Department of State for adoption on February 19, 2007.

Sincerely,

Larry D. Harris
Associate General Counsel

CMP _____

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GCL 060555 AdoptLetter.ldh.doc

Enclosure

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c: Division of the Commission Clerk

RCA _____ and Administrative Services

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STATEMENT OF CHANGES

As a result of comments received at the November 9, 2006, hearing, and in post-hearing comments, the Commission determined that a number of the proposed amendments to Rule 25-17.0832 would more logically fit as a new part to Chapter 25-17, F.A.C. Accordingly, new Rules 25-17.200 through 25-17.310, F.A.C., comprising new Part 4, have been adopted.

In addition to the structural reorganization, significant substantive changes have been made. These changes include:

- allowing the renewable generator to fix some portion of future variable payments based upon value of deferral;
- no subscription limits on the amount of renewable generation a utility must purchase;
- allowing re-opening of existing contracts if future environmental laws change;
- clarification that Transferable Renewable Energy Credits belong to the renewable generator;
- requiring demonstration of need and Commission approval before an equity adjustment is imposed by utility; and
- establishing an expanded dispute resolution procedure.

1 PART IV UTILITIES' OBLIGATIONS WITH REGARD TO RENEWABLE

2 GENERATING FACILITIES

3 25-17.200 Application and Scope. The purpose of these rules is to promote the
4 development of renewable energy; protect the economic viability of Florida's existing
5 renewable energy facilities; diversify the types of fuel used to generate electricity in Florida;
6 lessen Florida's dependence on natural gas and fuel oil for the production of electricity;
7 minimize the volatility of fuel costs; encourage investment within the state; improve
8 environmental conditions; and, at the same time, minimize the costs of power supply to
9 electric utilities and their customers. Unless otherwise stated, these rules apply to all investor-
10 owned utilities.

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

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

13 History—New _____.

14

15 25-17.210 Definitions.

16 For purposes of these rules:

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

24 (2) "Biomass" means a fuel source that is comprised of, but not limited to,
25 combustible residues or gases from forest products manufacturing, agricultural and orchard

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1 crops, waste products from livestock and poultry operations and food processing, urban wood
2 waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

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

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

9 (5) "Electric utility" shall have the same meaning as Section 366.02(2), Florida
10 Statutes.

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

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

13 History--New _____.

14
15 25-17.220 Qualifying Criteria.

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

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

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

21 History--New _____.

22
23 25-17.230 The Utility's Obligation to Purchase and Sell.

24 (1) Each investor-owned utility shall purchase electricity produced and sold by
25 renewable generating facilities at rates that have been agreed upon by the utility and

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1 renewable generating facility or at the utility's published tariff. Each investor-owned utility
2 shall file a tariff or tariffs and a standard offer contract or contracts for the purchase of energy
3 or capacity, or both, from renewable generating facilities that reflects the provisions set forth
4 in these rules.

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

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

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

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

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

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

18 History—New _____.

19
20 25-17.240 Negotiated Contracts.

21 (1) Investor-owned utilities and renewable generating facilities are encouraged to
22 negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction
23 of planned utility generating units and provide fuel diversity, fuel price stability, and energy
24 security.

25 (2) Negotiated contracts will be considered prudent for cost recovery purposes if it is

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1 demonstrated by the investor-owned utility that the purchase of firm capacity and energy from
2 the renewable generating facility pursuant to the rates, terms, and other conditions of the
3 contract can reasonably be expected to contribute towards the deferral or avoidance of
4 additional capacity construction or other capacity-related costs by the purchasing utility and
5 provide fuel diversity, fuel price stability, and energy security at a cost to the utility's
6 ratepayers which does not exceed full avoided costs, giving consideration to the characteristics
7 of the capacity and energy to be delivered by the renewable generating facility under the
8 contract.

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

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

11 History—New_____.

12
13 25-17.250 Standard Offer Contracts.

14 (1) Standard Offer Contract. In addition to the requirements contained in Rules 25-
15 17.082 through 25-17.091, F.A.C., each investor owned utility shall, by April 1 of each year,
16 file with the Commission a standard offer contract or contracts for the purchase of firm
17 capacity and energy from renewable generating facilities and small qualifying facilities with a
18 design capacity of 100 kW or less. A separate standard offer contract shall be based on the
19 next avoidable fossil fueled generating unit of each technology type identified in the utility's
20 Ten-Year Site Plan filed pursuant to Rule 25-22.071, F.A.C. Each standard offer contract
21 based on each of the utility's avoidable units shall be consistent with the requirements of Rule
22 25-17.0832(4), (5), and (6), F.A.C., except as modified by this rule. Each investor-owned
23 utility with no planned generating unit identified in its Ten-Year Site Plan shall submit a
24 standard offer based on avoiding or deferring a planned purchase.

25 (2) Continuous Offers.

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

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

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

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

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

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

18 (4) Capacity Payments Options. In addition to the capacity payment options
19 contained in Rule 25-17.0832(4)(g), F.A.C., and subject to the provisions of Rule 25-
20 17.0832(3)(a) through (d), F.A.C., a renewable generating facility may elect a payment stream
21 for the capital component of the utility's avoided unit, including front-end loaded capacity
22 payments, that best meets the financing requirements of the renewable generating facility.
23 Early capacity payments consisting of the capital component of the avoided unit may, at the
24 election of the renewable generating facility, commence any time after the actual in-service
25 date of the renewable generating facility and before the anticipated in-service date of the

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1 utility's avoided unit. Regardless of the payment stream elected by the renewable generating
2 facility, the cumulative present value of capital cost payments made to the renewable
3 generating facility over the term of the contract shall not exceed the cumulative present value
4 of the capital cost payments which would have been made to the renewable generating facility
5 had such payments been made pursuant to Rule 25-17.0832(4)(g)(1), F.A.C. Fixed operation
6 and maintenance expense shall be calculated in conformance with Rule 25-17.0832(6), F.A.C.

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

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

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

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

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

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

3 History–New _____.

4
5 25-17.260 Subscription Limits.

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

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

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

15 History–New _____.

16
17 25-17.270 Changes in Environmental and Governmental Regulations.

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

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

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

25 History–New _____.

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1 25-17.280 Tradable Renewable Energy Credits (TRECs).

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

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

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

8 History–New _____.

9
10 25-17.290 Imputed Debt Equivalent Adjustments.

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

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

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

17 History–New _____.

18
19 25-17.300 Reporting. Each electric utility shall report, by April first of each year, the
20 following information, actual and projected:

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

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

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

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1 generation.

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

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

4 History–New _____.

5

6 25-17.310 Dispute Resolution

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

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

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

15 (a) an overview of the issues discussed and resolved by the parties;

16 (b) the unresolved issues;

17 (c) the position of each of the parties with respect to each unresolved issue;

18 (d) all relevant documentation concerning each unresolved issue.

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

24 (5) The Commission will require the petitioning party and the responding party to
25 provide additional information if it determines the additional information is necessary for the

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1 Commission to reach a decision on the unresolved issues. If any party refuses or fails to
2 respond on a timely basis to any request from the Commission, then the Commission shall
3 proceed on the basis of the best information available to it from whatever source derived.

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

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

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

12 History—New _____.

13
14 PART III UTILITIES' OBLIGATIONS WITH REGARD TO COGENERATORS AND
15 SMALL POWER PRODUCERS

16 25-17.0832(1) through 25-17.0832(3) – No changes

17 25-17.0832(4) Standard Offer Contracts.

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

24

25

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- 1 ~~1. A small power producer or other qualifying facility using renewable or non-fossil fuel~~
2 ~~where the primary energy source in British Thermal Units (BTUs) is at least 75 percent~~
3 ~~biomass, waste, solar or other renewable resource;~~
4 ~~2. A qualifying facility, as defined by subsection 25-17.080(3), F.A.C., with a design capacity~~
5 ~~of 100 kW or less; or~~
6 ~~3. A municipal solid waste facility as defined by Rule 25-17.091, F.A.C.~~
7 ~~25-17.0832(4)(b) through end – no changes.~~
8 Specific Authority: 350.127, 366.05(1), F.S.
9 Law Implemented: 366.051, 366.81, F.S.
10 History—New 10-25-90, Amended 1-7-97, 5-18-03,

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