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Florida Industrial Cogeneration Association
Solid Waste Authority of Palm Beach County, Florida

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Joint Post-Workshop Comments

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Staff August 23, 2007 Workshop)
On Renewable Energy Portfolio)
Standard)
_____)

UNDOCKETED

Submitted: September 12, 2007

**Joint Post-Workshop Comments
of
City of Tampa, Florida
Florida Industrial Cogeneration Association
Solid Waste Authority of Palm Beach County, Florida**

The following comments are submitted in response to the issue identified and questions posed by Staff, as reflected in the official Agenda of the August 23, 2007 Workshop in the referenced matter. To the extent practicable, the comments will be presented in the order and under the section headings as they appear in the agenda. Where applicable, joint commenters will be referred to as the "renewable QFs".

A. Opening Remarks

The development of a renewable portfolio standard (RPS) by the Commission **must first and foremost** comply with and advance the legislative directives of Chapter 366.92, F.S. – absent which the Commission would find itself lacking the requisite authority to implement a renewable portfolio standard. More specifically, Chapter 366.92, F.S. provides as follows:

366.92 Florida renewable energy policy.--

(1) It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.

(2) For the purposes of this section, "Florida renewable energy resources" shall mean renewable energy, as defined in s. 377.803, that is produced in Florida.

(3) The commission may adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable energy resources. The

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commission may change the goals. The commission may review and reestablish the goals at least once every 5 years.

(4) The commission may adopt rules to administer and implement the provisions of this section.

Secondarily, the Commission may consider the aspirational goals expressed by the Governor in Executive Order 07-127, subject to the limitation that the Commission first implement the legislative mandates specifically articulated in Chapter 366.92, F.S., and may only implement the aspirational aspects of the Executive Order to the extent consistent and not in conflict with the explicit directives of the statute.

Importantly, and as may be addressed more fully in comments below, Chapter 366.92, F.S. provides the Commission with clear guidance and instructions that:

- (i) the RPS must include existing as well as new renewable energy facilities;
- (ii) the renewable energy subject to the RPS must be produced in Florida;
- (iii) the term renewable energy is include only those technologies listed in Chapter 377.803, F.S.; and,
- (iv) the purposes of promoting renewable energy through an RPS are limited to diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.

These legislative mandates, which clearly and unambiguously address a number of the issues identified and questions posed by Staff its August 23rd workshop agenda, provide the Commission with a framework and directions by which to reach the articulated goals.

B. Goals and Objectives of a Renewable Portfolio Standard

Q1. What are the underlying goals and objectives of a Renewable Portfolio Standard?

A1. Referring again to Chapter 366.92, F.S., the basis for the Commission's authority to consider and implement an RPS – The intent of the Legislature is to:

- (i) promote the development of renewable energy;
- (ii) protect the economic viability of Florida's existing renewable energy facilities;

- (iii) diversify the types of fuel used to generate electricity in Florida;
- (iv) lessen Florida's dependence on natural gas and fuel oil for the production of electricity;
- (v) minimize the volatility of fuel costs;
- (vi) encourage investment within the state;
- (vii) improve environmental conditions; and,
- (viii) at the same time, minimize the costs of power supply to electric utilities and their customers.

C. Applicability of a Renewable Portfolio Standard

- Q1. Does the statute require all utilities to meet the goal?
- A1. At this juncture, it is clear that the goal would apply to the State's four investor owned utilities. The provisions of Chapter 366.11, F.S. would seem to indicate that municipals and electric cooperatives may not be within Commission's jurisdiction in this regard.
- Q2. Should the goal be statewide or utility specific?
- A2. The goals should be utility specific but the obligations of each utility could be aggregated thereby effectively resulting in a statewide goal. Utilities subject to the goals should be permitted to "sub-contract" with each other to allow utilities in areas more conducive to renewable energy and where amounts in excess of the goals can be readily developed to sell or otherwise transfer renewable energy to those utilities located in areas less conducive to renewable energy and where shortfalls in meeting the goals may occur.
- Q3. How should a statewide goal be allocated across utilities?
- A3. Because the utility specific goal should be expressed in a percentage of megawatt hours sold at retail by the utility, the statewide goal should also be expressed as a percentage of aggregate megawatt hours sold at retail statewide.
- Q4. Should existing renewable resources be included in the standard?
- A4. Absolutely. The clear mandate of Chapter 366.92, F.S. will allow for no other interpretation. (See A1. under heading B., above.)

D. Resources Eligible for Inclusion in a Renewable Portfolio Standard

Q1. What renewable resources should be eligible to meet the goal?

A1. Those existing and new facilities that produce renewable energy as defined in Chapter 366.92, F.S., which are limited to the following: electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

Q2. Should there be a process to approve new technologies?

A2. No. Chapter 366.92, F.S., the source of the Commission's jurisdiction and authority with respect to the adoption of renewable energy goals (an RPS), specifically defines what is meant by renewable energy. Because the language does not defer to the Commission to define renewable energy, it is not likely that the Commission may lawfully exercise its discretion in a manner that would limit or expand the clear legislative definition.

Q3. Should other resources be eligible to meet the goal?

A3. No. Chapter 366.92, F.S., the source of the Commission's jurisdiction and authority with respect to the adoption of renewable energy goals (an RPS), specifically defines what is meant by renewable energy. Because the language does not defer to the Commission to define renewable energy, it is not likely that the Commission may lawfully exercise its discretion in a manner that would limit or expand the clear legislative definition.

There was much discussion by utility interests that nuclear power plants and conservation programs be included in the definition of renewable energy for purposes of an RPS. Clearly neither nuclear power nor conservation were included in the list of resources defined as renewable by the Florida Legislature in Chapter 366.92, F.S. Proponents of adding such resources should revert to the legislative process – as they attempted unsuccessfully during the 2007 regular session.

Importantly, utilities are (i) obligated under existing law to construct nuclear power plants when such plants are the most cost-effective alternative available and (ii) to design and implement conservation programs that will encourage all cost-effective conservation. The utilities should not now be allowed to argue that there are cost-effective nuclear power plants and conservation programs that they have not already proposed or implemented. In any event, the legislation is devoid of any reference to either nuclear power or conservation as a renewable energy resource and the Commission has not been granted the discretion to modify or expand the legislative definition.

F. Structure of a Renewable Portfolio Standard

- Q1. What is the basis for setting the standard? i.e. net energy for load, capacity.
- A1. The standard should be set as a percentage of the amount of metered electric energy metered sold at retail by the utilities subject to the standard and should be measured in megawatt hours or kilowatt-hours.
- Q2. What type of goal should be established?
- A2. The goal should be set as a percentage of the amount of metered electric energy sold at retail by the utilities subject to the goals and should be measured in megawatt hours or kilowatt-hours. The percentage should be set at the appropriate level that reflects a prudent fuel diversity/fuel mix for the state of Florida. Because the interests of the utilities – especially investor owned utilities – are not necessarily compatible with the interests of electricity consumers with respect to renewable energy, the Commission must rely on its expertise to objectively establish an RPS that reflects a prudent fuel diversity and fuel mix that includes a substantial renewable energy component. A mandated percentage of renewable energy in the range of 20% to 25% would present a reasonable starting point with an ultimate fuel diversity/fuel mix objective of 25% renewable, 25% natural gas, 25% coal and 25% nuclear.

There was much discussion at the workshop regarding the “subsidization” of renewable energy and the need to “cap” any such subsidy to avoid impacting electricity consumers with higher energy costs. Renewable QFs submit that it is a mistake at worst and premature at best to proceed with development of an RPS based on the unfounded assumption/presumption that (i) subsidy payments to renewable energy producers will be necessary in order meet any significant RPS; or, (ii) implementation of any significant RPS will result in higher costs (read above avoided costs) to the consumers. Such assumptions/presumptions are contrary to recent experience which has demonstrated that the lack of significant amounts of renewable energy in Florida has resulted in higher than predicted costs to the consumers.

Renewable energy producers suggest that the Commission proceed on the following basis with respect to establishing an RPS.

First, the Commission should determine, using its expertise in such matters, the appropriate amount of renewable energy that would provide an ideal fuel diversity/fuel mix for the state without being concerned with the cost, the likelihood of achieving that amount or any other extraneous issues that are being raised by the utilities in hopes of delaying progress in RPS adoption; and,

Second, the Commission should undertake a thorough and complete analysis and review of the methodologies employed by the utilities in determining “avoided costs”. To Renewable QF’s knowledge, such analysis and review has not been conducted since the avoided cost rules were adopted in the early 1980s. Renewable QFs suspect, based on apparent inconsistencies/discrepancies in average energy costs reported by utilities in

various Commission proceedings vs. avoided cost payment received by Renewable QFs, that avoided costs are being significantly understated by some utilities. If this is correct, the Commission may be able to add significant incentives for the development of renewable energy simply by assuring avoided costs are being accurately calculated.

Q3. Should the goal be phased-in?

A3. Yes. The goal should be phased-in to allow for the promotional and encouragement efforts of the utilities to bear fruit.

Q3. Should provisions be established to encourage the use of particular renewable sources? i.e. percentage purchase obligations; tiers; carve-outs; multipliers.

A3. No. The legislative mandate and definition of renewable energy as set forth in Chapter 366.92, F.S. does not allow the Commission the discretion to adopt such an approach. As noted previously, the Governor's Executive Order can be viewed as aspirational, but cannot be used as a basis on which to displace or otherwise act inconsistently with the express provisions contained in the legislation.

G. Renewable Energy Credits

Q1. Should renewable energy credits be counted toward the goal?

A1. Only if the renewable energy credit arises from renewable energy facilities located in the state of Florida which use the electricity within the state or sell the electricity to Florida utilities for resale.

Q2. Should out-of-state renewable energy credits be counted toward the goal?

A1. No. The provisions of Chapter 366.92, F.S. are clear on this point. *"Florida renewable energy resources" shall mean renewable energy, as defined in s. 377.803, that is produced in Florida.*" (emphasis supplied)

Q2. What entity should administer the renewable energy credits, including tracking across regions?

A2. The renewable energy credit would be treated the same as a purchase of renewable energy by the utility. Accordingly, whatever entity would be responsible for assuring compliance by the utilities with the renewable energy goals/RPS would be responsible for administering renewable energy credits and tracking across regions within Florida. (The Commission would be an obvious choice of such an entity.) The burden of proof should be on the utility to demonstrate affirmatively that it has complied and is in compliance with the goals/RPS.

Q3. How long should a renewable energy credit be allowed to be used for compliance?

- A3. So long as the renewable credits arise from renewable energy facilities located in the state of Florida which use the electricity within the state or sell the electricity to Florida utilities for resale there should be no limit on how long they may be used for compliance.
- Q4. Should owners of renewable energy credits have the ability to “bank” credits and if so, how long?
- A4. Renewable QFs are not clear on the meaning of the work “bank” in this context. If this refers to utilities that purchase renewable energy credits for compliance purposes, yes they should be allowed to be banked for as long as the underlying renewable energy resource is producing electricity for use within the state or for sale of the electricity to Florida utilities for resale
- Q5. How will voluntary green power programs be affected by the use of renewable energy credits in a renewable portfolio standard?
- A5. If the reference is to voluntary green power programs of the Florida utilities, the affect will be nominal as the overall impact of those programs has been minimal at best. If the reference is to other programs, there should be no material impact.
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These post-workshop comments are submitted electronically on the 12th day of September, 2007.

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