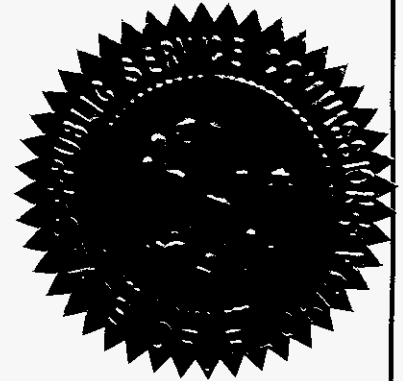


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090165-EQ

PETITION FOR APPROVAL OF STANDARD  
OFFER CONTRACT FOR SMALL QUALIFYING  
FACILITIES AND PRODUCERS OF RENEWABLE  
ENERGY, BY TAMPA ELECTRIC COMPANY.



PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 9

COMMISSIONERS  
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, June 30, 2009

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

DOCUMENT NUMBER-DATE

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## P R O C E E D I N G S

1  
2           **CHAIRMAN CARTER:** We will move to Item 9.  
3 Let staff get an opportunity to change out with the  
4 staff that just finished, and we will start on Item  
5 9, Commissioners.

6           Staff, you may proceed.

7           **MS. SICKEL:** Good morning, Commissioners.  
8 I'm Jeanette Sickel with Commission staff. I'd like  
9 to introduce a new member of the staff, Mr. Phillip  
10 Ellis, and he will introduce this item.

11           **MR. ELLIS:** Good morning, Commissioners.

12           **CHAIRMAN CARTER:** You know, we usually  
13 have a tradition where we haze the new people, but  
14 we won't do that this morning.

15           **MR. ELLIS:** I appreciate it. Thank you.

16           Commissioners, Item 9 is a petition from  
17 Tampa Electric Company requesting approval of its  
18 2009 standard offer contract. Staff believes that  
19 the proposed standard offer is in compliance with  
20 the Commission's rules with one exception. The  
21 proposed standard offer contract contains the right  
22 of first refusal for tradable renewable energy  
23 credits or TRECs. Staff believes the right of first  
24 refusal has a negative impact upon the interests of  
25 renewable energy providers.

1                   Staff recommends the Commission deny the  
2 contract as filed and require Tampa Electric Company  
3 to file a revised standard offer contract that does  
4 not contain the right of first refusal within  
5 30 days, and that staff should be granted the  
6 administrative authority to approve the revised  
7 tariffs.

8                   Staff is available to answer any questions  
9 you may have. Thank you, Mr. Chairman.

10                   **CHAIRMAN CARTER:** Thank you.

11                   Commissioners? Commissioner Skop, you're  
12 recognized.

13                   **COMMISSIONER SKOP:** Thank you, Mr.  
14 Chairman.

15                   I guess, not to belabor the point, but I  
16 disagree with the staff recommendation in this  
17 instance for the following reasons.

18                   **CHAIRMAN CARTER:** On the right of first  
19 refusal?

20                   **COMMISSIONER SKOP:** Yes.

21                   **CHAIRMAN CARTER:** Okay. You're  
22 recognized.

23                   **COMMISSIONER SKOP:** Thank you, Mr.  
24 Chairman.

25                   And, again, I guess, you know, I would

1 look at what staff is citing as the basis for  
2 consistent outcomes between cases that have been  
3 previously heard by the Commission. I did not  
4 participate in the standard offer contract for the  
5 FPL, however, had I done so I would have likely  
6 raised the same issue. And I would distinguish the  
7 case before us from the FPL case to the extent that  
8 in the FPL case the right of refusal period was a  
9 30-day period. And I believe, if I'm correct, I  
10 don't have the standard offer contract in front of  
11 me, but in TECO it's five business days. And I  
12 guess, you know, when I look at these things, again,  
13 FPL's rationale, I went back and looked at the FPL  
14 case, and I would have adopted their reasoning, and  
15 they made the representation that the first refusal  
16 provision is reasonable and consistent with  
17 applicable rules and statute.

18 My reading of the rule is that a first  
19 right of refusal comports with that rule. It's not  
20 in direct conflict in any way, form, or manner due  
21 to the language. The rule only specifically  
22 excludes conditions upon such government incentives.  
23 It does not exclude a right of refusal. Such a  
24 right is standard industry practice. And, again, I  
25 would respectfully depart from the staff

1 recommendation to the extent that a five-day period  
2 is reasonable.

3 And should the state of Florida ever adopt  
4 an RPS where compliance would have to be shown  
5 through the purchase or acquisition of TRECs, you  
6 know, that would be something that the utilities  
7 obviously would need to comply with any given RPS.  
8 And to, you know, give up a right of refusal which I  
9 don't believe is in any way detrimental or  
10 prejudicial to the renewable generator, it just  
11 merely gives the utility the option to match the  
12 price in a short period of time to retain the RECs  
13 for compliance purposes. I think that's a good  
14 thing for ratepayers as FPL has previously  
15 articulated in its prior case to the extent that  
16 they would need those attributes, and it doesn't  
17 impose a financial penalty on the renewable  
18 generator.

19 So I guess I would respectfully disagree  
20 with the staff recommendation. Again, there is a  
21 prior decision, but I think in that decision it can  
22 be readily distinguished by the fact that the  
23 refusal period was 30 days versus a 5-day period,  
24 and I think a more reasonable period, such as TECO  
25 has requested, comports with standard industry

1 practice. And I think it would be a good thing and  
2 fair balance between the needs of making sure the  
3 ratepayers have access to things that may need to be  
4 on an affordable basis versus just having a  
5 situation where you, perhaps, could run into what  
6 has happened in the natural gas markets where you  
7 have speculation in the intercontinental exchange or  
8 such like that where you have people hoarding  
9 attributes and then suddenly there is no supply and  
10 that drives the prices up, which ultimately affects  
11 the ratepayers.

12 So it seems to me that, again, I'm not  
13 criticizing the prior decision, I'm readily  
14 distinguishing it. And, again, I would respectfully  
15 disagree with the staff recommendation to deny the  
16 right of first refusal for the reasons I've  
17 articulated.

18 **CHAIRMAN CARTER:** Thank you, Commissioner.

19 Commissioner Edgar, you're recognized.

20 **COMMISSIONER EDGAR:** I would just ask  
21 staff to elaborate a little bit on the points that  
22 Commissioner Skop has raised, and speak specifically  
23 to the reasoning in the staff recommendation on that  
24 language regarding point of first refusal. And I  
25 would ask as part of that that -- I know in my

1 thinking on the earlier case that the Commissioner  
2 has raised to us the difference between a negotiated  
3 versus a standard offer template resonated in my  
4 mind and my thinking on that issue, so I would like  
5 staff to make a comment on that point, as well.

6 **MR. TRAPP:** Yes, ma'am. Let me go first  
7 to the rule, which is 25-17.280, which staff refers  
8 to in our recommendation. It's a very short rule,  
9 so let me just read it to you. It says, "Tradable  
10 renewable energy credits and tax credits shall  
11 remain the exclusive property of the renewable  
12 generating facility. A utility shall not reduce its  
13 payment of full avoided costs or place any other  
14 conditions upon such government incentives" --  
15 meaning tradable renewable energy credits or tax  
16 credits -- "in a negotiated or standard offer  
17 contract unless agreed to by a renewable generating  
18 facility."

19 Staff has interpreted that language to  
20 mean that there should not be any encumbrance placed  
21 upon a standard offer contract on the tradable  
22 renewable energy credits. The reason being a  
23 standard offer contract is not a negotiated  
24 contract, it is a fixed firm contract. If you sign  
25 it, you have got it. There is no variation. Any

1 variation to the standard offer contract becomes a  
2 negotiated contract. So the provision about unless  
3 agreed to by the renewable generating facility is  
4 mooted by a standard offer contract.

5 This issue arose in the 2008 standard  
6 offer contracts beginning with Florida Power and  
7 Light in which the parties singularly agreed to  
8 allow that to take place in that tariff, but then it  
9 was protested by a party, and then there was a  
10 hearing held, and the Commission ruled in that  
11 hearing that those conditions should not be  
12 placed -- that the right of first refusal should not  
13 be placed in the standard offer contract. So  
14 basically the staff is relying on, number one, an  
15 interpretation of the rule, and this is an  
16 interpretation, so you are free to interpret it  
17 differently.

18 We are also relying on past Commission  
19 action in that Florida Power and Light tariff case.  
20 And then I might add that we are also relying on the  
21 fact that there is not an RPS in Florida. Tradable  
22 renewable credits at this point in time are  
23 voluntary, and it just simply occurs to staff that  
24 it's premature to start putting preconditions in a  
25 standard offer contract associated with a



1 marketplace that we haven't even seen yet.

2           So we don't believe that the ratepayers  
3 are prejudiced by this action. We think that the  
4 renewable energy market needs all the help they can  
5 get, and the standard offer contract gives them that  
6 help in terms of full avoided cost. If there is  
7 anything extra out there in terms of renewable  
8 energy credits, whether it be voluntary or  
9 mandatory, then that's the property of the renewable  
10 generator, and until such times as those costs are  
11 internalized in avoided cost, they should be able to  
12 be unconstrained in what they do with those tradable  
13 energy credits. So that's the staff's position.

14           **COMMISSIONER EDGAR:** Thank you. That's  
15 helpful.

16           **CHAIRMAN CARTER:** Thank you.

17           Commissioner McMurrrian.

18           **COMMISSIONER McMURRIAN:** Actually,  
19 Commissioner Edgar I think asked the question I  
20 would have asked, so I can wait.

21           **CHAIRMAN CARTER:** We'll come back to you  
22 later?

23           **COMMISSIONER McMURRIAN:** Sure.

24           **CHAIRMAN CARTER:** Okay. Commissioner  
25 Skop.

1                   **COMMISSIONER SKOP:** Thank you, Mr.  
2 Chairman.

3                   Again, going back to the FPL decision,  
4 again. FPL asserted that the provision is  
5 reasonable consistent with the applicable rules and  
6 statute. I wholeheartedly agree. The provision Mr.  
7 Trapp read deals about such government incentives.  
8 And I think that with all due respect, I would  
9 disagree with the representation that a TREC is a  
10 government incentive. That is clearly not true.

11                   An investment tax credit is a government  
12 incentive, a production tax credit is a government  
13 incentive, but I have never heard of a tradable  
14 noncompliant TREC being a government incentive. So  
15 I think that is an absolutely incorrect  
16 interpretation that is -- again, I respectfully  
17 disagree with staff.

18                   Secondly, the period being placed on the  
19 RECs, would 30 days perhaps be overreaching?  
20 Absolutely. Would five days be consistent with  
21 giving a utility a reasonable right to, you know,  
22 purchase the RECs for compliance? Yes. But this  
23 whole notion that we are going to be in a realtime  
24 market, a spot market like we would be for  
25 electricity for RECs is patently absurd. I mean,

1 you know, I don't see a market like the New York  
2 Stock Exchange where we realtime trade RECs. I  
3 mean, I just don't see that ever materializing.

4 So, again, I'm trying to do what I feel is  
5 reasonable. But, again, I think if I take exception  
6 to some of the things that staff is suggesting, it's  
7 probably founded on me having actual real world  
8 renewable experience and knowledge of standard  
9 industry practices. And so if I feel passionately  
10 about that, that's probably me trying to make sure  
11 that we drive the correct policy. But when I hear  
12 our rule being interpreted in a manner that does not  
13 comport with, you know, reality, I guess I take a  
14 little bit of exception to that, because to my  
15 knowledge TRECs are not government incentives.  
16 Again, investment tax credits, I have no problem  
17 with. Production tax credits for wind are  
18 government incentives. But I have never heard of a  
19 TREC being deemed or considered to be a government  
20 incentive.

21 So, again, I think FPL's interpretation as  
22 properly plead in the previous case was spot on. It  
23 was accurate. Was the 30-day period perhaps  
24 excessive? Perhaps. Okay. That is a little bit,  
25 perhaps, maybe overreaching. A five-day period, I

1 mean, seems very reasonable. It is almost realtime.  
2 You give a utility, hey, we have a bona fide offer  
3 from another purchaser; do you want to, you know,  
4 purchase the attributes or do you want us to sell  
5 them elsewhere. And, again, I'm not trying to  
6 infringe the right of renewable generators; I'm very  
7 passionate about making sure that there is an  
8 equitable marketplace. You know, I support standard  
9 offer contracts. I've actually managed them in  
10 California.

11 So, again, I think that the standard offer  
12 contract historically really hasn't can kind of  
13 worked in Florida. I know it certainly works in  
14 California because PG&E gets 20 percent of their  
15 renewables -- or actually 20 percent of their  
16 generation under standard offer contracts. So,  
17 again, I would just respectfully -- not to belabor  
18 the point -- take exception to staff's reasoning and  
19 interpretation. And, again, I would reemphasize  
20 that I feel that the right of first refusal is not  
21 an undue burden or unduly prejudicial to a renewable  
22 generator so long as the period is finite in  
23 duration, and I believe five days achieves that  
24 finite period.

25 **CHAIRMAN CARTER:** Thank you, Commissioner.

1           I think that what staff was saying is that  
2 this is how they interpreted the rule and we are  
3 free to interpret it as we deem necessary. And I  
4 think Mr. Trapp was fairly clear on that.

5           Commissioners, anything further?

6           Commissioner Edgar, you're recognized.

7           **COMMISSIONER EDGAR:** I just want to make  
8 sure that I understand, and I'm not sure that I do  
9 on one point, one specific point. And that is the  
10 comments that Commissioner Skop, or the  
11 interpretation about the TREC being in a different  
12 category or a different characterization than, say,  
13 a government tax incentive.

14           Mr. Trapp, could you speak to that very  
15 narrow point, again?

16           **MR. TRAPP:** I'm not sure I have an  
17 opinion. Commissioner Skop may be technically  
18 correct on that. I just know in the context of the  
19 rule, the way I read the sentence and the way I  
20 recall the sentence being constructed, rather than  
21 reiterate the two words or the two phases, the term  
22 such government incentives was used, and I believe  
23 in the context of the sentence it embraces both  
24 tradable renewable energy credits and tax credits.  
25 If that's a technical faux pas, maybe we need to

1 clarify the rule that it is either one or the other  
2 or both. But that's at least the way we have been  
3 interpreting the rule.

4 **COMMISSIONER EDGAR:** Thank you.

5 Just to say I have gone back also and  
6 reviewed the decision that we made. It seems like  
7 much longer ago, but it was only about a month ago  
8 on the standard offer contract item that had come  
9 before us for FPL, and I'm still comfortable with my  
10 decision on that one. I am very, very sensitive to  
11 the concerns that the Commissioner has expressed,  
12 and in particular the issue about a potential RPS in  
13 the future.

14 Commissioner, I think you made the  
15 statement that the TRECs would obviously be needed  
16 to comply with an RPS, and I just have to agree with  
17 staff that I think those types of statements to me,  
18 as far as decisions that we are making at this point  
19 in time, seem a little bit premature, as well. So I  
20 guess, Mr. Chairman, I'm comfortable with the staff  
21 recommendation.

22 **CHAIRMAN CARTER:** Commissioner Skop,  
23 you're recognized for a response.

24 **COMMISSIONER SKOP:** Thank you, Mr.  
25 Chairman, and I concur with that.

1 I guess the problematic phrase to me is  
2 government incentives. If that phrase were not  
3 included in the language of the rule, I would agree  
4 with staff. However, again, I think those words are  
5 words of limiting what conditions could be placed  
6 upon such standard offer contracts. And, again, I  
7 just think based on having industry experience and  
8 renewable experience, again, I just respectfully  
9 take a different opinion.

10 I'm not looking at it in -- you know, from  
11 staff's perspective, I'm looking at it from what  
12 happens in the real world, and that is often  
13 something that I found over the course of my time at  
14 the Commission to be lacking from our  
15 recommendations as they pertain to renewables. So,  
16 again, trying to bring that real world experience  
17 and do what's fair and what is good policy is merely  
18 what I'm trying to, you know, encourage our staff to  
19 do, but often we disagree.

20 So, again, I respect Commissioner Edgar's  
21 comments. I think that certainly I probably would  
22 have the same concern with a 30-day period, that  
23 being overreaching, but a five-day period is very  
24 reasonable. And, you know, even if I were to  
25 purchase a stock today, I wouldn't get confirmation

1 of that in closing of that but for three days. So,  
2 again, I guess it's just a respectful disagreement  
3 with staff's position.

4 **CHAIRMAN CARTER:** Commissioner McMurrian.

5 **COMMISSIONER McMURRIAN:** Thank you,  
6 Chairman.

7 And I'll just say that I, of course, was  
8 persuaded by the renewable generators arguments in  
9 the FPL hearing that the 30-day period was too long,  
10 and I think that Commissioner Skop is saying that,  
11 as well.

12 I'm not sure that the five days is too  
13 long. And you'll recall, Commissioner Skop, that  
14 early on you and I shared some similar opinions  
15 about the TREC's and the right of first refusal in  
16 some of our other cases. But I'm persuaded that it  
17 is probably the better policy at this point to not  
18 include the -- well, to not include the right of  
19 first refusal in the standard offer contract. I  
20 think it's just cleaner as far as a standard offer  
21 contract not to have that kind of language in there,  
22 whether five days is too long or not, and just  
23 delete that from the -- just delete that right of  
24 first refusal provision from these contracts I think  
25 is probably the better policy now. So I am in



1 support of the staff recommendation.

2 **CHAIRMAN CARTER:** Commissioners, anything  
3 further?

4 **COMMISSIONER ARGENZIANO:** Mr. Chair.

5 **CHAIRMAN CARTER:** Commissioner Argenziano,  
6 you're recognized.

7 **COMMISSIONER ARGENZIANO:** Can you hear me  
8 okay?

9 **CHAIRMAN CARTER:** We can now, yes, ma'am.

10 **COMMISSIONER ARGENZIANO:** I am in support  
11 of staff's recommendation, also.

12 **CHAIRMAN CARTER:** Thank you, Commissioner.  
13 Commissioner Edgar, you're recognized.

14 **COMMISSIONER EDGAR:** Thank you, Mr.  
15 Chairman.

16 I make a motion at this time in favor of  
17 the staff recommendation on Item 9.

18 **COMMISSIONER McMURRIAN:** Second.

19 **CHAIRMAN CARTER:** It has been moved and  
20 properly seconded.

21 Commissioners, any further debate? Any  
22 further debate?

23 Hearing none. We have a motion and a  
24 second. All in favor, let it be known by the sign  
25 of aye.

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Aye.7

**COMMISSIONER EDGAR:** Aye.

**COMMISSIONER McMURRIAN:** Aye.

**COMMISSIONER ARGENZIANO:** Aye.

**CHAIRMAN CARTER:** All those opposed, like  
sign.

**COMMISSIONER SKOP:** Aye.

**CHAIRMAN CARTER:** Show it done.

\* \* \* \* \*

1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

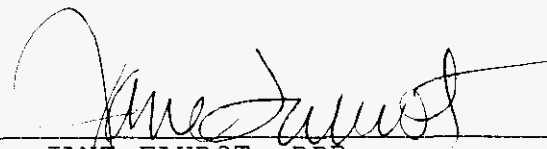
3 COUNTY OF LEON )

4  
5 I, JANE FAUROT, RPR, Chief, Hearing Reporter  
6 Services Section, FPSC Division of Commission Clerk,  
do hereby certify that the foregoing proceeding was  
heard at the time and place herein stated.

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

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

14 DATED THIS 28th day of July, 2009.

15 

16 JANE FAUROT, RPR

17 Official FPSC Hearings Reporter  
18 (850) 413-6732

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