

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

September 27, 2007 Staff Workshop On)
Renewable Energy Portfolio Standards)
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UNDOCKETED

Submitted: October 16, 2007

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

The following comments, submitted in response to issues identified and questions raised during the September 27, 2007 Staff workshop in the referenced matter, are “preliminary” in nature. As such, the responses/positions of Renewable QFs are subject to modification and supplementation as further information is gathered, discussed and analyzed. Beginning at page 3, these comments are, to the extent applicable, presented in the order and under general headings as they appeared in Judy Harlow’s Power Point presentation at the workshop.

Opening Remarks

The development of a renewable portfolio standard (RPS) or renewable energy goals 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 an RPS or renewable energy goals. In that regard, 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 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 Legislature as set forth in 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:

the RPS or renewable energy goals must include existing as well as new renewable energy facilities;

the renewable energy subject to the RPS or renewable energy goals must be produced in Florida;

the term renewable energy is include only those technologies specifically listed in Chapters 366.91 and 377.803, F.S.; and,

the purposes of promoting renewable energy through an RPS or renewable energy goals 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 during the September 27th Staff workshop, provide the Commission with a framework and directions by which to reach the articulated goals.

During the workshop, utility representatives questioned both the Commission's authority to adopt an RPS and/or renewable energy goals as well as its authority to enforce an RPS or renewable energy goals. The Commission has long had the authority to impose penalties on a utility for failure to comply with applicable law. It is also clear, as noted above, that the Commission is now also vested with the necessary authority to adopt and enforce an RPS and/or renewable energy goals.

Verification methodologies:

- 1) Contract path
- 2) Renewable Energy Credits (RECs)
- 3) Utility ownership of renewable facility

Q1. Once a verification methodology is chosen, how do we make it work?

A1. Both the Florida REC supplier and the purchasing utility should be jointly and severally liable to assure/guarantee that the REC's are sold and purchased legitimately and not previously or subsequently encumbered during the applicable period of time involved.

Common Issues:

Q1. Who administers verification of compliance?
- state agency or third party

A1. No position at this time

Q2. Should there be a weighting system based on objectives?
- multipliers or tiered approach

A2. 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, or to discriminate against producers of renewable energy.

Q3a. Should there be a safety valve, such as an alternative compliance payment?
- who administers

A3a. Yes, but with the caveat that such a compliance payment would only be applicable after the utility has demonstrated, by a preponderance of the evidence in an adjudicatory proceeding, that in spite of its best efforts it is unable to meet the applicable RPS. Additionally and importantly, there should be imposed a rebuttable presumption that a utility's failure to meet an RPS is due to the utility's failure to use its best efforts to encourage/acquire/develop the necessary amounts of renewable energy or RECs to meet the RPS.

Q3b. - use of funds

A3b. No position at this time

Q3c - recovery for IOUs

A3c. *There should be no recovery for an IOU unless it overcomes, by a preponderance of the evidence in an adjudicatory proceeding, a rebuttable presumption that its failure to meet the RPS is due to the utility's failure to use its best efforts to encourage, acquire or develop the necessary amounts of renewable energy or RECs to meet the RPS. To allow recovery by the utility would remove any incentive for the utility to comply with the RPS. Only if the utility owners/stockholders are required to finance the alternative payment and penalties will the proper signals and incentives be given the IOU industry.*

Q4. Should self-service generation be counted toward goals?

A4. *Self-generation must be counted toward the RPS or renewable energy goals as a matter of law. Chapter 366.92, F.S., the source of the Commission's jurisdiction and authority with respect to the adoption of renewable energy goals or an RPS, specifically defines what is meant by renewable energy. More specifically, the Legislature refers to those existing and new facilities that produce renewable energy "in Florida" and "in the state" as defined in Chapters 366.91, 366.92, and 377.803 F.S., and 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.

There is absolutely no implication in the statutes that the "use" or "disposition" of the renewable energy would affect its status as "renewable", nor is there any other such distinction made with respect to whether the renewable energy is consumed by the producer or is delivered to the grid. Renewable energy is renewable energy without distinction between the technologies identified.

Because the statutory language does not defer to the Commission or provide the Commission with discretion to define renewable energy – i.e. include or exclude anything on or from the specifically defined resource - the Commission may not lawfully exercise discretion in a manner that would discriminate by excluding, limiting or expanding the clear legislative definition. In fact, to do so would be to unlawfully discriminate against producers of renewable energy. The "bottom line" is that as far as the legislature is concerned, any renewable energy that is produced in Florida is renewable energy for all intents and purposes.

Issues that are specific to RECs:

Q1a. Should out-of-state RECs be counted?
- regional limitation

A1a. *Absolutely not. The provisions of Chapter 366.92, F.S. are unquestionably 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).*

Q1b. - requirement that energy be delivered to Florida

A1b. *This is a moot issue. The renewable energy must be produced in Florida. See previous response provided in A1a., above.*

Q1c. - coordination to prevent double counting

A1c. *Yes, there should be coordination to prevent double counting. Both the Florida REC supplier and the purchasing utility should be jointly and severally liable to assure/guarantee that the REC's are sold and purchased legitimately and not previously or subsequently encumbered during the applicable period of time involved.*

Q2. What flexibility measures should be allowed?

- banking
- borrowing
- true-up period

A2. *Yes, to all three.*

Q3. How often should utilities be reviewed?

- annual or other interim goals

A3. *Chapter 366.92, F.S. requires a review not less frequently than every five years. This seems too infrequent, especially in the "early" years after adoption of an RPS. Annual review may be appropriate initially, to be revisited in the future as experience is gained.*

Q4. What is the best way to ensure compliance?

- penalties versus guidelines

A4. *By the imposition of significant penalties, including reductions in allowed rate of return. The utility must face the prospect of its owners/stockholders bearing the cost of its failure to comply, in order for there to be meaningful incentives or price signals that will actually encourage the promotion and development of renewable energy in Florida. Failure to impose significant penalties to be borne by the utility stockholders would remove any incentive for the utility to comply with the RPS. Only if the utility owners/stockholders are required to finance the alternative payment and penalties will the proper signals and incentives be given the IOU industry.*

Q5a. Penalty-specific issues:

- How should penalties be applied?

A5a. *Penalties should be applied to the utility bottom line, holding the customers/ratepayers harmless for a utility's failure to comply with the applicable RPS or goals. As noted above, the utility must face the prospect of its owners/stockholders bearing the cost of its failure to comply, in order for there to be meaningful incentives or price signals that*

will actually encourage the promotion and development of renewable energy in Florida.

Q5b. - How should funds be used?

A5b. No position at this time.

Q5c. - Who administers the funds?

A5c. No position at this time

Q5d. - Force majeure exceptions?

A5d. Yes, there should be standard Force Majeure provisions, but a utility should not be permitted to claim a Force Majeure event for its failure to acquire sufficient renewable energy and/or REC to meet the applicable RPS or goals. A claim of Force Majeure should not relieve a utility of its obligation to overcome the rebuttable presumption that a utility's failure to meet an RPS is due to the utility's failure to use its best efforts to encourage/acquire/develop the necessary amounts of renewable energy or RECs to meet the RPS.

Q5e. - Should IOUs receive recovery?

A5e. There should be no recovery for an IOU unless it overcomes, by a preponderance of the evidence in an adjudicatory proceeding, a rebuttable presumption that its failure to meet the RPS is due to the utility's failure to use its best efforts to encourage, acquire or develop the necessary amounts of renewable energy or RECs to meet the RPS. To allow recovery by the utility would remove any incentive for the utility to comply with the RPS.

Only if the utility owners/stockholders are required to finance the alternative payment and penalties will the proper signals and incentives be given the IOU industry. Penalties should be applied to the utility bottom line, holding the customers/ratepayers harmless for a utility's failure to comply with the applicable RPS or goals.

Q6. Should we establish a baseline of current renewables?
- If so, what counts toward baseline?

A6. The question is not clear to Renewable QFs – specifically as to what is meant by a “baseline”. If the question relates to whether or not current renewables should be included in the RPS or established goals, Renewable QFs would answer “yes” - all existing renewable energy facilities should be included. Such facilities would be limited to those defined in Florida Statutes and as specifically noted previously, above.

Q7. What reporting requirements are needed?

A7. No position at this time

Q8a. Should there be a process to review the RPS?
- automatic process such as conservation goals proceedings (review every 5 years)

A8a. Yes, there should be a process. However, a five-year review period appears too long for the initial years of the RPS or goal. Renewable QFs recommend a shorter time period – at least annually for the first few years – or a continual and ongoing review without a defined time periods.

Q8b. - ongoing review with no automatic process

A8b. Yes, an ongoing/continuous review for the first several years after adoption of an RPS or renewable energy goals.

These post-workshop comments of the Renewable QFs are hereby submitted electronically on the 16th day of October, 2007.

s/ *Richard A. Zambo*

Richard A. Zambo
Florida Bar No. 312525
Richard A. Zambo, P.A.
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34996

Phone: (772) 225-5400
Direct: (954) 224 5863
FAX: (772) 232-0205
Email: richzambo@aol.com

Attorney for Renewable QFs