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From: ljacobs50@comcast.net
Sent: Friday, October 19, 2007 12:10 PM
To: Filings@psc.state.fl.us
Cc: bgraniere@psc.stae.fl.us; Bob Trapp; Judy Harlow; Mark Futrell
Subject: Supplemental Comments of SACE and NRDC In Re Renewable Portfolo Standard Undocketed
Attachments: SACE - NRDC supplemental comments on proposed RPS rule - 10-15-07.doc

Dear Commission Clerk:

Attached, please find the supplemental comments of the Southern Alliance for Clean Energy and the Natural Resources Defense Council in the Commission's undocketed proceeding to develop rules for a Renewable Portfolio Standard.

Please contact my office if you have additional questions.

Regards,

E. Leon Jacobs
Williams & Jacobs

10/19/2007

DOCUMENT NUMBER-DATE

09569 OCT 19 5

FPSC-COMMISSION CLERK

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October 19, 2007

Ann Cole
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

RE: SUPPLEMENTAL COMMENTS - In the Matter of: Renewable Portfolio
Standard; Undocketed

Dear Ms. Cole:

On behalf of the Southern Alliance for Clean Energy, and the Natural Resources Defense Council, I have enclosed for filing supplemental comments for consideration by the Florida Public Service Commission in this undocketed matter regarding the implementation of compliance and enforcement provisions in a renewable portfolio standard, and specifically administration of renewable energy credits associated with a renewable portfolio standard. I thank you for your attention to this matter.

Sincerely,

/s/ E. Leon Jacobs, Jr.

E. Leon Jacobs, Jr.

Enclosures

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09569 OCT 19 08

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the matter of)
RENEWABLE PORTFOLIO STANDARD)
_____)

UNDOCKETED

Submitted: October 19, 2007

**SUPPLEMENTAL COMMENTS AND SUGGESTIONS OF THE
SOUTHERN ALLIANCE FOR CLEAN ENERGY, AND OF
THE NATURAL RESOURCES DEFENSE COUNSEL,
PERTAINING TO RULEMAKING ON A RENEWABLE PORTFOLIO STANDARD**

The Southern Alliance for Clean Energy, Inc., ("SACE") is a nonprofit, nonpartisan organization that promotes responsible energy choices that in turn provide solutions to global warming problems and ensure clean, safe and healthy communities throughout the Southeast.. The Natural Resources Defense Council ("NRDC") is a nonprofit organization whose purpose is to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC has a total constituency of 1.2 million members and activists, including 63,000 in Florida.

SACE and NRDC thank the Florida Public Service Commission ("Commission") and its Staff for the opportunity to submit these supplemental comments following the Commission Staff Workshop held on September 27, 2007, regarding the establishment of a renewable portfolio standard in Florida. These comments are intended to supplement the amended initial comments of SACE and NRDC, and specifically focus on compliance and enforcement issues related to an RPS, and to renewable energy credits. It is our hope that in making these comments we succeed in communicating to the Commission a common vision for the incredible potential that renewable and clean energy resources have in Florida's energy portfolio.

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Overview of Florida Renewable Portfolio Standard

SACE and NRDC reiterate that there is clear statutory authority supporting the Commission's establishment of an RPS.¹ Section 366.91(1), Florida Statutes, clearly states the Legislature's intent to promote broad public policy for the "development of renewable energy resources in this state." The Legislature further declared that renewables should be developed as a way to diversify the state's energy mix.

Though the Commission chose in Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, and 050810-EQ to initially implement the statutory provisions using the standard offer rules,² it did not interpret the statute to be limited to this approach, nor did it preclude future implementation methods for the statute. The Standard Offer Portfolio approach encourages development of renewable energy resources by allowing renewable generators to choose from a menu of contracts based on various generating technologies, with different pricing, timing, and operating characteristics. These are more narrowly stated, indeed substantially more narrow than the express language in Section 366.91(1).³ The RPS has become the leading and most effective regulatory tool in the nation to promote renewable energy resources. It is reasonable and prudent that the Commission implement an RPS in Florida in order to effectively carry out the existing legislative mandate. In other states, specifically in Arizona, New Mexico, and Pennsylvania, RPS policies have been established through regulatory proceedings (AZ and NM) or multi-party regulatory settlement (PA), and without express legislation.

¹ See Sections 366.041(1); 366.91; and 366.92, Florida Statutes; 43 Fla Jurisprudence 2nd §§ 43.

² See Order No. PSC-06-0486-TRF-EQ

³ See Rule 25-17.0832(4)-(5), Florida Administrative Code

The Governor’s Executive Order No. 07-127 builds on this commitment, calling for a renewable portfolio standard (“RPS”) that will ensure that Florida meets at least 20% of its demand for electricity from renewable sources.

Renewable Energy Generation

Public policy surrounding renewable energy has shifted to a market-based approach, as reflected in the growing number of RPS programs around the country. This means that renewable energy resources must generate revenues to support their expansion, rather than rely on subsidies.

SACE and NRDC propose that the Commission focus its RPS regulatory policy on ensuring market recognition of and, fostering market growth based on the extrinsic and intrinsic economic value derived from renewable energy. Renewables bring value by decreasing risk of price volatility in electric markets, by diversifying energy resources in the generation mix, and by reducing greenhouse gases emitted from fossil fuels. Ultimately, renewable energy will combine with energy efficiency to lower overall generation costs to the consumer. Global energy policy faces severe challenges in each of these areas, each of which imposes economic costs on consumers of electricity.

Renewable energy further encourages consumers to channel their energy investments to the creation of environmental, economic and social benefits in the state. The Commission’s establishment of a mandatory RPS, buttressed by strong verification and compliance provisions, is an appropriate vehicle to allow Florida consumers to invest in renewables. SACE and NRDC maintain that it is vital that the emerging markets accurately assess the economic costs of

electricity price volatility, of regimented fossil fuel generation, and of climate change, and then crystallize the value of renewable energy in offsetting these factors. It is this value proposition which must drive renewable energy markets in Florida.

Use of Renewable Energy Credits

Around the country, “renewable energy credits” or “renewable energy certificates” (“REC”) are emerging as the multi-purpose tool to address a host of market needs affiliated with promoting renewable energy. From a regulator’s perspective, their use is based largely on the convenience offered in the administration of an RPS, along with their effectiveness in reducing compliance and other costs for the RPS. From a market perspective, RECs offer a least-cost method to stabilize and promote a private market for renewable energy. At its core, a REC is a market-created instrument that can be bought and sold, and that conveys the value of a unit of renewable generation.

Each kilowatt-hour of generated electricity takes on multiple dimensions reflecting various attributes of that power: (i) the generating fuel source; (ii) the generating technology; (iii) its emissions profile; (iv) the location of the generator; and (v) time of generation. An essential regulatory function in an RPS is the verification and accounting of the electric supply attributes of renewable energy generated in Florida. From these attributes are derived a secondary level of non-energy attributes; the prospective environmental, economic and social benefits of renewable energy generation.

A REC should be proof that one kWh of eligible renewable energy has been sold to an end-user in Florida, and should be an effective tool for regulators to confirm that the claimed

generation of renewable energy in fact exists in the grid. SACE and NRDC propose that the eligibility of renewable generators to participate in the RPS should be based on whether the generators provide benefits to Florida, through the accounting of the basic power attributes. This is only possible with strong accounting practices that the Commission should impose. Only with this type of control should a mandatory RPS rely on RECs to demonstrate compliance of retail providers with their renewable purchase obligations.

An ancillary and no-less vital role for RECs in this market-based initiative, is the facilitation of a fungible market based on the extrinsic and intrinsic values of renewable energy. The Commission will define which attributes of renewable energy to be valued in Florida. RECs should alleviate the cumbersome need to track the actual displacement of fossil fuel energy in the grid to specific renewable energy providers. They not only track this displacement, but place a value on it which guides the market investment.

- ***RECs Transactions***

The sale of RECs in a well constructed regime is the essential method to maintain the viability of the market-based renewable energy. SACE and NRDC propose that the Commission continue the present structure for RECs in Florida, as established under the provisions for standard offer renewable contracts in Rule 25-17.280, Florida Administrative Code. This rule provides that renewable energy credits and any tax credits be owned by renewables generators. SACE and NRDC recommend that RECs in the RPS be owned by renewables generations, be initially sold bundled with the power, and retired to meet the RPS obligations of retail providers. However, it is further recommended that the Commission assess

the feasibility of a commodity trading system for unbundled RECs for retail providers to meet their RPS obligations. If it is concluded that such a system is feasible, and can eliminate the prospect of abuses such as generation fraud, double counting or double selling of REC attributes, then SACE and NRDC urge the adoption of a trading system for RECs.

SACE and NRDC recommend that at minimum, the transaction systems for RECs should enhance the competition among renewables providers in Florida, and lower the costs of RPS compliance, while generating revenues for expansion of the market. The Commission should further ensure that any trading system be designed and implemented to value the attributes of renewable energy which decrease risk of price volatility in electric markets, diversify energy resources in the generation mix, and reduce greenhouse gases emitted from fossil fuels. A trading system should expressly enhance the liquidity of the market to allow more rapid expansion. The feasibility analysis should especially consider the administrative infrastructure for trading RECs, and an outsourced administrator.

- ***RECs from Existing Facilities***

SACE and NRDC further recommend that the Commission should devote special attention to RECs associated with renewable power from facilities in rate base, or facilities supported by PURPA contracts. There are essential questions of fairness and equity for the Commission to resolve where ratepayers are supporting a facility which generates renewable energy in Florida. A recent New Jersey ruling has important implications as to the Commission's jurisdiction to provide oversight in these circumstances. The Appellate Division of the Superior Court of New Jersey held that the State Board of Public Utilities acted lawfully in

enacting a rule resolving the ownership of RECs in a purchased power arrangement (in the case at bar an underlying Power Purchase Agreement was silent on this point).⁴ The Court found that PURPA does not speak to RECs and therefore cannot preempt pertinent state policy regarding who owns them. SACE and NRDC suggest that a reasonable policy would be to encourage RECs from these facilities in the RPS, subject to our prior-stated position that municipal solid waste facilities should not be eligible for the RPS. All revenue derived from these facilities should be directed either to ratepayers, or to R&D for renewable energy.

- ***Regional REC trading***

A mandatory RPS which strictly forbids use of renewable energy from outside the state runs the risk of violating the Interstate Commerce Clause of the US Constitution. Thus, SACE and NRDC recommend that the RPS provide for use of renewable energy from providers in a strategically designed multi-state region, anchored in the Southeast. If RECs will be traded across a region, the definition of eligible technologies, of eligible providers and eligible attributes should be coordinated across that region. There should be specific attention to ensure that the eligibility of RECs used for compliance in Florida be tied to benefits that accrue to Florida. Conflict of Law issues should be expressly resolved to invoke Florida law

Value-Added Factors in the Establishment and Sale of RECs

There are several ways in which the RPS assures least-cost achievement of the Florida's renewable energy goals. Cost savings are first achieved because the certainty and stability of the RPS policy will enable long-term contracts and financing for the renewable power industry,

⁴ *In Re: Ownership of Renewable Energy Credits*, _____ A2d _____, 2007 WL 57171 (January 10, 2007)

which will, in turn, lower renewable power costs. Secondly, an RPS program must assure least-cost compliance by encouraging generators to compare the cost of owning a renewables facility to the cost of a REC/renewable power purchase package. Compliance costs are further lowered through the compliance flexibility provided to generators. Finally, since generators will be looking to improve their competitive position in the market, and since all must meet the standard, each generator will have an interest in driving down the cost of renewables, perhaps by lending their own financial resources to a renewables project, by seeking out least-cost renewables applications, or by entering into long-term purchasing commitments. This fosters a "competitive dynamic" that is not achieved with policies that involve direct subsidies to renewable generators without involving the rest of the electric industry.⁵

Thus, an RPS which effectively integrates a tradable RECs program should produce and be held accountable to clear benefits, including:

- Promotion of a competitive renewables market
- Promotion of market entry by diverse and small renewable energy providers
- Promotion of least-cost decisions by consumers
- Reduction of compliance risks and costs for retail providers
- Reduction of overall implementation costs
- Lowered costs for regulators to verify compliance by retail providers
- Crystallization of the value-added benefits of renewable energy for decision-makers, the general public and market participants⁶

Reporting for Compliance

⁵ Rader, *The Mechanics of a Renewable Portfolio Standard Applied at the Federal Level*, American Wind Energy, 1997.

⁶ N. Rader, S. Hempling, *The Renewable Portfolio Standard: A Practical Guide*, Report prepared for the National Association for Regulatory Utility Commissioners, February, 2001.
<http://www.naruc.org/goto.cfm?returnto=displayindustrynews.cfm&industrytopicnbr=380&page=www.naruc.affiniscape.com/associations/1773/files/rps.pdf>.

The reporting process for compliance should be straightforward. It revolves around two separate procedures at the administering agency: (1) renewable producers voluntarily certify their kilowatt-hour output and apply for an equivalent number of RECs or the system operator can report the output for facilities above a threshold generation level. This reporting should be subject to random audits by the Commission, and each facility should undergo a thorough review at the time it is certified for RECs; (2) generators comply with the RPS mandatory standard by demonstrating ownership of a sufficient number of RECs in relation to electricity generation (or sales). In the first instance, renewable-resource generators report and certify the number of RECs created as a result of their generation. Proof of sale of renewable power is required. With regard to the second, generators document and report their total generation in kilowatt-hours (kWhs) for the accounting cycle adopted by the Commission. SACE and NRDC recommend that this cycle be the previous year. At the end of the year, SACE and NRDC recommend that the Commission adopt a three-month true-up period, during which the retail provider/generator will demonstrate ownership of the requisite RECs. At the end of the true-up period, the administering agency simply compares the generators' reports with the renewable producers' reports.⁷

Enforcement and Penalties

For retail providers that fall short of the required number of credits at the end of the reporting period, an automatic penalty for non-compliance must be assessed. The amount of the penalty is two-to-three times what it would have cost to purchase each REC that the generator should have acquired.

⁷ Rader, *Mechanics of a renewable portfolio program*, supra note 5, at pg 6.

SACE and NRDC recommend that should the Commission consider an alternative compliance mechanism (ACM), it should do so for a limited time period, which should end when an active market for renewable energy has been established. The RPS penalty is different than the ACM, because it far exceeds expected costs. The ACM should be designed to protect those who make a good-faith effort to comply and cannot find RECs in a reasonable price range established by the Commission. The penalty is to ensure that everyone makes that good faith effort so that an active market for RECs is created and to ensure that retail providers and potential market participants are engaged in thinking about how to generate renewables (or incorporate them into their resource portfolio) at least cost, instead of seeking ways out of the program.⁸

SACE and NRDC also recommend that the Commission adopt a limited period for banking of RECs. It is anticipated that this will enhance the liquidity of the market and further reduce compliance costs. Finally, SACE and NRDC recommend that the Commission adopt a force majeure provision in the RPS which provides an extended true-up period to facilitate compliance following unexpected events outside of the control of the renewables market, and that disrupt supply of renewable energy.

Administration

i. *Regulatory Oversight.* SACE and NRDC propose that the Commission provide regulatory oversight of the RPS, essentially for certification and compliance requirements.

⁸ Id.

ii. *Compliance Verification.* SACE and NRDC propose further that information technology be specifically developed to facilitate fiscal administration of the RPS, as well as for RECs trading, and that the operation of this technology be assigned to an independent organization, perhaps the Florida Reliability Coordinating Council.

Respectfully re-submitted this 19th day of October, 2007.

Southern Alliance for Clean Energy
Natural Resources Defense Council

By:

/s/ E. Leon Jacobs, Jr.

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