

State of Florida



Public Service Commission

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DATE: JANUARY 21, 2003
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK
ADMINISTRATIVE SERVICES (BAYÓ)
FROM: OFFICE OF THE GENERAL COUNSEL (BELLAK)
DIVISION OF ECONOMIC REGULATION (HARLOW, HEWITT)
RE: DOCKET NO. 001574-EQ - PROPOSED AMENDMENTS TO RULE 25-17.0832, F.A.C., FIRM CAPACITY AND ENERGY CONTRACTS.
AGENDA: 02/04/03 - REGULAR AGENDA - RULE ADOPTION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF
RULE STATUS: ADOPTION SHOULD NOT BE DEFERRED
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\GCL\WP\001574.RCM

CASE BACKGROUND

On September 13, 2001, the Commission issued its Notice of Rulemaking in this docket to initiate rulemaking to amend Rule 25-17.0832, Florida Administrative Code, relating to firm capacity and energy contracts.

On March 14, 2002, the Commission issued Order No. PSC-02-0341-PCO-EQ in Docket 020166-EQ granting petitioners Lee County, Miami-Dade County, and Montenay-Dade, Ltd.'s petition to initiate rulemaking to amend Rule 25-17.0832, F.A.C. Those petitioners' motion to consolidate Docket No. 020166-EQ with this docket was also granted.

Due to various scheduling conflicts, the hearing in this case was postponed and rescheduled numerous times, including a rescheduling from November 6, 2002 to March 19, 2003. This last rescheduling was the result of a decision to have the hearing

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before a full panel of Commissioners who would be available both to attend the hearing and to vote at the agenda conference.

Unfortunately, the decision to reschedule the November 6, 2002 hearing to March 19, 2003 was only made two or three days prior to the hearing, an insufficient time to allow for notification of the change in the Florida Administrative Weekly prior to November 6, 2002. In fact, notification of the change only appeared on November 22, 2002.

Accordingly, staff received a letter from attorney John Rosner of the Joint Administrative Procedures Committee (JAPC) advising that even if the previous lengthy delays in scheduling the hearing in this rulemaking could be demonstrated to have been properly noticed, the rescheduling from November 6, 2002 to March 19, 2003 could not be made to fit within the requirement that 7 days notice be provided of such changes pursuant to Section 120.525(1), F.S. Mr. Rosner noted that such deviation from the rulemaking requirements would cause the rule amendments to be rejected by the Secretary of State.

After discussions, Mr. Rosner suggested the following: First, that the proposed rule amendment be withdrawn. Second, that the rule amendment be re-proposed. Mr. Rosner further noted that it was unnecessary to issue a new notice of proposed rule development. Moreover, Mr. Rosner indicated that the rule amendment could be withdrawn and re-proposed by notices to that effect in the same issue of the Florida Administrative Weekly.

The result of doing what has been suggested by JAPC will bring the re-proposed rule amendment within the parameters of proper rulemaking and cure the failure to provide timely notice of rescheduling the November 6, 2002 hearing. Moreover, it will allow for the hearing to remain scheduled for March 19, 2003 as well as for a workshop to be held prior to the hearing on February 25, 2003 as requested by several parties.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission withdraw the current rulemaking to amend Rule 25-17.0832?

RECOMMENDATION: Yes. The current rulemaking to amend Rule 25-17.0832 should be withdrawn.

STAFF ANALYSIS: As noted above, the rulemaking failed to comply with the notice requirement of Section 120.525(1), F.S. for failure to provide notice in the Florida Administrative Weekly (FAW) of the rescheduling of the November 6, 2002 hearing prior to November 6, 2002. The rulemaking lapsed at that point and should be withdrawn.

ISSUE 2: Should the Commission re-propose the amendment of Rule 25-17.0832?

RECOMMENDATION: Yes. The amendment of Rule 25-17.0832 should be re-proposed.

STAFF ANALYSIS: Rule 25-17.0832 requires investor-owned utilities to file a tariff and a standard offer contract for the purchase of firm capacity and energy from specified types of small qualifying facilities. The rule sets forth the minimum specifications and acceptable pricing methodologies for standard offer contracts. Order No. PSC-01-1844-NOR-EQ, issued September 13, 2001, summarizes the content and purpose of the proposed rule amendments as follows:

The amendment to subparagraphs (4)(e)3. and 7. would reduce the ten year minimum contract term for standard

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offer contracts to five years. In addition, the amendment to subparagraph (4)(e)7. would require investor-owned utilities to specify the contract term when filing the standard offer for approval by the Commission. The effect is to reduce the risk that ratepayers will be tied to long-term contracts that are above avoided cost.

Staff still supports the original amendment and asks that the Commission re-propose it in view of the original rulemaking having been withdrawn.

ISSUE 3: Should the current docket remain open?

RECOMMENDATION: Yes, the current docket should remain open.

STAFF ANALYSIS: This will permit previous filings by the parties to the lapsed rulemaking process to be applied to the newly proposed rule amendment.

Attachments
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3 25-17.0832 Firm Capacity and Energy Contracts.

4 (1) Firm capacity and energy are capacity and energy produced
5 and sold by a qualifying facility and purchased by a utility
6 pursuant to a negotiated contract or a standard offer contract
7 subject to certain contractual provisions as to the quantity, time,
8 and reliability of delivery.

9 (a) Within one working day of the execution of a negotiated
10 contract or the receipt of a signed standard offer contract, the
11 utility shall notify the Director of the Division of Safety
12 ~~Electric~~ and Electric Reliability Gas and provide the amount of
13 committed capacity and the type of generating unit, if any, which
14 the contracted capacity is intended to avoid or defer.

15 (b) Within 10 working days of the execution of a negotiated
16 contract or receipt of a signed standard offer contract for the
17 purchase of firm capacity and energy, the purchasing utility shall
18 file with the Commission a copy of the signed contract and a
19 summary of its terms and conditions. At a minimum, the summary
20 shall include report:

- 21 1. The name of the utility and the owner and operator
22 of the qualifying facility, who are signatories of
23 the contract;
- 24 2. The amount of committed capacity specified in the
25

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3 contract, the size of the facility, the type of
4 facility, its location, and its interconnection and
5 transmission requirements;

6 3. The amount of annual and on-peak and off-peak
7 energy expected to be delivered to the utility;

8 4. The type of unit being avoided, its size, and its
9 in-service year;

10 5. The in-service date of the qualifying facility; and

11 6. The date by which the delivery of firm capacity and
12 energy is expected to commence.

13 (2) Negotiated Contracts. Utilities and qualifying
14 facilities are encouraged to negotiate contracts for the purchase
15 of firm capacity and energy to avoid or defer the construction of
16 all planned utility generating units which are not subject to the
17 requirements of Rule 25-22.082. If a utility is required to issue
18 a Request for Proposals (RFP) pursuant to Rule 25-22.082,
19 negotiations with qualifying facilities shall be governed by the
20 utility's RFP process. Negotiated contracts will be considered
21 prudent for cost recovery purposes if it is demonstrated by the
22 utility that the purchase of firm capacity and energy from the
23 qualifying facility pursuant to the rates, terms, and other
24 conditions of the contract can reasonably be expected to contribute
25

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3 towards the deferral or avoidance of additional capacity
4 construction or other capacity-related costs by the purchasing
5 utility at a cost to the utility's ratepayers which does not exceed
6 full avoided costs, giving consideration to the characteristics of
7 the capacity and energy to be delivered by the qualifying facility
8 under the contract. Negotiated contracts shall not be counted
9 towards the subscription limit of the avoided unit in a standard
10 offer contract, thus preserving the standard offer for small
11 qualifying facilities as described in subsection (4).

12 (3) Cost Recovery for Negotiated Contracts. In reviewing
13 negotiated firm capacity and energy contracts for the purpose of
14 cost recovery, the Commission shall consider factors relating to
15 the contract that would impact the utility's general body of retail
16 and wholesale customers including:

17 (a) Whether additional firm capacity and energy is needed by
18 the purchasing utility and by Florida utilities from a statewide
19 perspective;

20 (b) Whether the cumulative present worth of firm capacity and
21 energy payments made to the qualifying facility over the term of
22 the contract are projected to be no greater than:

- 23 1. The cumulative present worth of the value of a
24 year-by-year deferral of the construction and
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3 operation of generation or parts thereof by the
4 purchasing utility over the term of the contract,
5 calculated in accordance with subsection (5) and
6 paragraph (6)(a) of this rule, provided that the
7 contract is designed to contribute towards the
8 deferral or avoidance of such capacity; or

9 2. The cumulative present worth of other capacity and
10 energy related costs that the contract is designed
11 to avoid such as fuel, operation, and maintenance
12 expenses or alternative purchases of capacity,
13 provided that the contract is designed to avoid
14 such costs;

15 (c) To the extent that annual firm capacity and energy
16 payments made to the qualifying facility in any year exceed that
17 year's annual value of deferring the construction and operation of
18 generation by the purchasing utility or other capacity and energy
19 related costs, whether the contract contains provisions to ensure
20 repayment of such payments exceeding that year's value of deferring
21 that capacity in the event that the qualifying facility fails to
22 deliver firm capacity and energy pursuant to the terms and
23 conditions of the contract, provided, however, that provisions to
24 ensure repayment may be based on forecasted data; and

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3 (d) Considering the technical reliability, viability, and
4 financial stability of the qualifying facility, whether the
5 contract contains provisions to protect the purchasing utility's
6 ratepayers in the event the qualifying facility fails to deliver
7 firm capacity and energy in the amount and times specified in the
8 contract.

9 (4) Standard Offer Contracts.

10 (a) Upon petition by a utility or pursuant to a Commission
11 action, each public utility shall submit for Commission approval a
12 tariff or tariffs and a standard offer contract or contracts for
13 the purchase of firm capacity and energy from small qualifying
14 facilities. In lieu of a separately ~~seperately~~ negotiated
15 contract, standard offer contracts are available to the following
16 types of qualifying facilities:

- 17 1. A small power producer or other qualifying facility
18 using renewable or non-fossil fuel where the
19 primary energy source in British Thermal Units
20 (BTUs) is at least 75 percent biomass, waste, solar
21 or other renewable resource;
- 22 2. A qualifying facility, as defined by Rule 25-
23 17.080(3), with a design capacity of 100 kW or
24 less; or

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3 3. A municipal solid waste facility as defined by Rule
4 25-17.091.

5 (b) The rates, terms, and other conditions contained in each
6 utility's standard offer contract or contracts shall be based on
7 the need for and equal to the avoided cost of deferring or avoiding
8 the construction of additional generation capacity or parts thereof
9 by the purchasing utility. Rates for payment of capacity sold by
10 a qualifying facility shall be specified in the contract for the
11 duration of the contract. In reviewing a utility's standard offer
12 contract or contracts, the Commission shall consider the criteria
13 specified in paragraphs (3) (a) through (3) (d) of this rule, as well
14 as any other information relating to the determination of the
15 utility's full avoided costs.

16 (c) The utility shall evaluate, select, and enter into
17 standard offer contracts with eligible qualifying facilities based
18 on the benefits to the ratepayers. Within 60 days of receipt of a
19 signed standard offer contract, the utility shall either:

- 20 1. Accept and sign the contract and return it within
21 five days to the qualifying facility; or
22 2. Petition the Commission not to accept the contract
23 and provide justification for the refusal. Such
24 petitions may be based on:
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- 3 a. A reasonable allegation by the utility
4 that acceptance of the standard offer
5 will exceed the subscription limit of the
6 avoided unit or units; or
- 7 b. Material evidence showing that because
8 the qualifying facility is not
9 financially or technically viable, it is
10 unlikely that the committed capacity and
11 energy would be made available to the
12 utility by the date specified in the
13 standard offer.

14 (d) A standard offer contract which has been accepted by a
15 qualifying facility shall apply towards the subscription limit of
16 the unit designated in the contract effective the date the utility
17 receives the accepted contract. If the contract is not accepted by
18 the utility, its effect shall be removed from the subscription
19 limit effective the date of the Commission order granting the
20 utility's petition.

21 (e) Minimum Specifications. Each standard offer contract
22 shall, at minimum, specify:

- 23 1. The avoided unit or units on which the contract is
24 based;

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- 3 2. The total amount of committed capacity, in
4 megawatts, needed to fully subscribe the avoided
5 unit specified in the contract;
- 6 3. The payment options available to the qualifying
7 facility including all financial and economic
8 assumptions necessary to calculate the firm
9 capacity payments available under each payment
10 option and an illustrative calculation of firm
11 capacity payments for a minimum five ~~ten~~ year term
12 contract commencing with the in-service date of the
13 avoided unit for each payment option;
- 14 4. The date on which the standard contract offer
15 expires;
- 16 5. A reasonable open solicitation period during which
17 time the utility will accept proposals for standard
18 offer contracts. Prior to the issuance of timely
19 notice of a Request for Proposals (RFP) pursuant to
20 Rule 25-22.082(3), the utility shall end the open
21 solicitation period;
- 22 6. The date by which firm capacity and energy
23 deliveries from the qualifying facility to the
24 utility shall commence. This date shall be no
25

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3 later than the anticipated in-service date of the
4 avoided unit specified in the contract;

5 7. The specific period of time over which firm
6 capacity and energy shall be delivered from the
7 qualifying facility to the utility. Firm capacity
8 and energy shall be delivered, at a minimum, for a
9 period of five ~~ten~~ years, commencing with the
10 anticipated in-service date of the avoided unit
11 specified in the contract. At a maximum, firm
12 capacity and energy shall be delivered for a period
13 of time equal to the anticipated plant life of the
14 avoided unit, commencing with the anticipated in-
15 service date of the avoided unit;

16 8. The minimum performance standards for the delivery
17 of firm capacity and energy by the qualifying
18 facility during the utility's daily seasonal peak
19 and off-peak periods. These performance standards
20 shall approximate the anticipated peak and off-peak
21 availability and capacity factor of the utility's
22 avoided unit over the term of the contract;

23 9. The description of the proposed facility including
24 the location, steam host, generation technology,
25

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3 and fuel sources;

4 10. Provisions to ensure repayment of payments to the
5 extent that annual firm capacity and energy
6 payments made to the qualifying facility in any
7 year exceed that year's annual value of deferring
8 the avoided unit specified in the contract in the
9 event that the qualifying facility fails to perform
10 pursuant to the terms and conditions of the
11 contract. Such provisions may be in the form of a
12 surety bond or equivalent assurance of repayment of
13 payments exceeding the year-by-year value of
14 deferring the avoided unit specified in the
15 contract.

16 (f) The utility may include the following provisions:

17 1. Provisions to protect the purchasing utility's
18 ratepayers in the event the qualifying facility
19 fails to deliver firm capacity and energy in the
20 amount and times specified in the contract which
21 may be in the form of an up-front payment, surety
22 bond, or equivalent assurance of payment. Payment
23 or surety shall be refunded upon completion of the
24 facility and demonstration that the facility can
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3 deliver the amount of capacity and energy specified
4 in the contract; and

5 2. A listing of the parameters, including any impact
6 on electric power transfer capability, associated
7 with the qualifying facility as compared to the
8 avoided unit necessary for the calculation of the
9 avoided cost.

10 3. Provisions that allow for revisions to the contract
11 based upon changes to the purchasing utility's
12 avoided costs.

13 (g) Firm Capacity Payment Options. Each standard offer
14 contract shall also contain, at a minimum, the following options
15 for the payment of firm capacity delivered by the qualifying
16 facility:

17 1. Value of deferral capacity payments. Value of
18 deferral capacity payments shall commence on the
19 anticipated in-service date of the avoided unit.
20 Capacity payments under this option shall consist
21 of monthly payments escalating annually of the
22 avoided capital and fixed operation and maintenance
23 expense associated with the avoided unit and shall
24 be equal to the value of a year-by-year deferral of
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3 the avoided unit, calculated in accordance with
4 paragraph (6) (a) of this rule.

- 5 2. Early capacity payments. Each standard offer
6 contract shall specify the earliest date prior to
7 the anticipated in-service date of the avoided unit
8 when early capacity payments may commence. The
9 early capacity payment date shall be an
10 approximation of the lead time required to site and
11 construct the avoided unit. Early capacity
12 payments shall consist of monthly payments
13 escalating annually of the avoided capital and
14 fixed operation and maintenance expense associated
15 with the avoided unit, calculated in conformance
16 with paragraph (6) (b) of the rule. At the option
17 of the qualifying facility, early capacity payments
18 may commence at any time after the specified early
19 capacity payment date and before the anticipated
20 in-service date of the avoided unit provided that
21 the qualifying facility is delivering firm capacity
22 and energy to the utility. Where early capacity
23 payments are elected, the cumulative present value
24 of the capacity payments made to the qualifying
25

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3 facility over the term of the contract shall not
4 exceed the cumulative present value of the capacity
5 payments which would have been made to the
6 qualifying facility had such payments been made
7 pursuant to subparagraph (4)(g)1. of this rule.

- 8 3. Levelized capacity payments. Levelized capacity
9 payments shall commence on the anticipated
10 in-service date of the avoided unit. The capital
11 portion of capacity payments under this option
12 shall consist of equal monthly payments over the
13 term of the contract, calculated in conformance
14 with paragraph (6)(c) of this rule. The fixed
15 operation and maintenance portion of capacity
16 payments shall be equal to the value of the
17 year-by-year deferral of fixed operation and
18 maintenance expense associated with the avoided
19 unit calculated in conformance with paragraph
20 (6)(a) of this rule. Where levelized capacity
21 payments are elected, the cumulative present value
22 of the levelized capacity payments made to the
23 qualifying facility over the term of the contract
24 shall not exceed the cumulative present value of
25

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3 capacity payments which would have been made to the
4 qualifying facility had such payments been made
5 pursuant to subparagraph (4)(g)1. of this rule,
6 value of deferral capacity payments.

- 7 4. Early levelized capacity payments. Each standard
8 offer contract shall specify the earliest date
9 prior to the anticipated in-service date of the
10 avoided unit when early levelized capacity payments
11 may commence. The early capacity payment date
12 shall be an approximation of the lead time required
13 to site and construct the avoided unit. The
14 capital portion of capacity payments under this
15 option shall consist of equal monthly payments over
16 the term of the contract, calculated in conformance
17 with paragraph (6)(c) of this rule. The fixed
18 operation and maintenance expense shall be
19 calculated in conformance with paragraph (6)(b) of
20 this rule. At the option of the qualifying
21 facility, early levelized capacity payments shall
22 commence at any time after the specified early
23 capacity date and before the anticipated in-service
24 date of the avoided unit provided that the
25

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3 qualifying facility is delivering firm capacity and
4 energy to the utility. Where early levelized
5 capacity payments are elected, the cumulative
6 present value of the capacity payments made to the
7 qualifying facility over the term of the contract
8 shall not exceed the cumulative present value of
9 the capacity payments which would have been made to
10 the qualifying facility had such payments been made
11 pursuant to subparagraph (4)(g)1. of this rule.

12 (5) Avoided Energy Payments for Standard Offer Contracts.

13 (a) For the purpose of this rule, avoided energy costs
14 associated with firm energy sold to a utility by a qualifying
15 facility pursuant to a utility's standard offer contract shall
16 commence with the in-service date of the avoided unit specified in
17 the contract. Prior to the in-service date of the avoided unit,
18 the qualifying facility may sell as-available energy to any utility
19 pursuant to Rule 25-17.0825.

20 (b) To the extent that the avoided unit would have been
21 operated, had that unit been installed, avoided energy costs
22 associated with firm energy shall be the energy cost of this unit.
23 To the extent that the avoided unit would not have been operated,
24 the avoided energy costs shall be the as-available avoided energy
25

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3 cost of the purchasing utility. During the periods that the
4 avoided unit would not have been operated, firm energy purchased
5 from qualifying facilities shall be treated as as-available energy
6 for the purposes of determining the megawatt block size in Rule
7 25-17.0825(2) (a).

8 (c) The energy cost of the avoided unit specified in the
9 contract shall be defined as the cost of fuel, in cents per
10 kilowatt-hour, which would have been burned at the avoided unit
11 plus variable operation and maintenance expense plus avoided line
12 losses. The cost of fuel shall be calculated as the average market
13 price of fuel, in cents per million Btu, associated with the
14 avoided unit multiplied by the average heat rate associated with
15 the avoided unit. The variable operating and maintenance expense
16 shall be estimated based on the unit fuel type and technology of
17 the avoided unit.

18 (6) Calculation of standard offer contract firm capacity
19 payment options.

20 (a) Calculation of year-by-year value of deferral. The
21 year-by-year value of deferral of an avoided unit shall be the
22 difference in revenue requirements associated with deferring the
23 avoided unit one year and shall be calculated as follows:

24
$$\underline{VAC_m = 1/12 [KI_n(1-R)/(1-R^L) + O_n]}$$

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3 Where, for a one year deferral:

4 VAC_m = utility's monthly value of avoided capacity, in
5 dollars per kilowatt per month, for each month of
6 year n;

7 K = present value of carrying charges for one dollar of
8 investment over L years with carrying charges
9 computed using average annual rate base and assumed
10 to be paid at the middle of each year and present
11 value to the middle of the first year;

12 R = $(1+ip)/(1+r)$;

13 I_n = total direct and indirect cost, in mid-year dollars
14 per kilowatt including AFUDC but excluding CWIP, of
15 the avoided unit with an in-service date of year n,
16 including all identifiable and quantifiable costs
17 relating to the construction of the avoided unit
18 that would have been paid had the avoided unit been
19 constructed;

20 O_n = total fixed operation and maintenance expense for
21 the year n, in mid-year dollars per kilowatt per
22 year, of the avoided unit;

23 i_p = annual escalation rate associated with the plant
24 cost of the avoided unit(s);

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3 i_o = annual escalation rate associated with the
4 operation and maintenance expense of the avoided
5 unit(s);

6 r = annual discount rate, defined as the utility's
7 incremental after tax cost of capital;

8 L = expected life of the avoided unit; and

9 n = year for which the avoided unit is deferred
10 starting with its original anticipated in-service
11 date and ending with the termination of the
12 contract for the purchase of firm energy and
13 capacity.

14 (b) Calculation of early capacity payments. Monthly early
15 capacity payments shall be calculated as follows:

16
$$A_m = [A_c (1 + ip)^{(m-1)} + A_o (1 + io)^{(m-1)}] / 12 \quad \text{for } m=1 \text{ to } t$$

17 Where: A_m = monthly early capacity payments to be made to
18 the qualifying facility for each month of the
19 contract year n , in dollars per kilowatt per
20 month;

21 i_p = annual escalation rate associated with the plant
22 cost of the avoided unit;

23 i_o = annual escalation rate associated with the
24 operation and maintenance expense of the avoided
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3 unit(s);

4 m = year for which early capacity payments to a
5 qualifying facility are made, starting in year
6 one and ending in the year t;

7 t = the term, in years, of the contract for the
8 purchase of firm capacity;

$$9 \quad \underline{A_c} = F[(1-R)/(1-R^t)]$$

10 Where: F = the cumulative present value in the year that
11 the contractual payments will begin, of the
12 avoided capital cost component of capacity
13 payments which would have been made had
14 capacity payments commenced with the
15 anticipated in-service date of the avoided
16 unit(s);

17 R = $(1+ip)/(1+r)$; and

18 r = annual discount rate, defined as the
19 utility's incremental after tax cost of
20 capital; and

$$21 \quad A_o = G[(1-R)(1-R^t)]$$

22 Where: G = The cumulative present value in the year that the
23 contractual payments will begin, of the avoided
24 fixed operation and maintenance expense component

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3 of capacity payments which would have been made had
4 capacity payments commenced with the anticipated
5 in-service date of the avoided unit; and

6 $R = (1+io)/(1+r).$

7 (c) Levelized and early levelized capacity payments. Monthly
8 levelized and early levelized capacity payments shall be calculated
9 as follows:

10 $P_L = F/12\{r/[1-(1+r)^{-t}]\} + O$

11 Where: P_L = the monthly levelized capacity payment,
12 starting on or prior to the in-service date of
13 the avoided unit;

14 F = the cumulative present value, in the year that
15 the contractual payments will begin, of the
16 avoided capital cost component of the capacity
17 payments which would have been made had the
18 capacity payments not been levelized;

19 r = the annual discount rate, defined as the
20 utility's incremental after tax cost of
21 capital; and

22 t = the term, in years, of the contract for the
23 purchase of firm capacity.

24 O = the monthly fixed operation and maintenance
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3 component of the capacity payments, calculated
4 in accordance with paragraph (5)(a) for
5 levelized capacity payments or with paragraph
6 (5)(b) for early levelized capacity payments.

7 (7) Upon request by a qualifying facility or any interested
8 person, each utility shall provide within 30 days its most current
9 projections of its future generation mix including type and timing
10 of anticipated generation additions, and at least a 20-year
11 projection of fuel forecasts, as well as any other information
12 reasonably required by the qualifying facility to project future
13 avoided cost prices. The utility may charge an appropriate fee,
14 not to exceed the actual cost of production and copying, for
15 providing such information.

16 (8)(a) Firm energy and capacity payments made to a
17 qualifying facility pursuant to a separately negotiated contract
18 shall be recoverable by a utility through the Commission's periodic
19 review of fuel and purchased power costs if the contract is found
20 to be prudent in accordance with subsection (2) of this rule.

21 (b) Upon acceptance of the contract by both parties, firm
22 energy and capacity payments made to a qualifying facility pursuant
23 to a standard offer contract shall be recoverable by a utility
24 through the Commission's periodic review of fuel and purchased
25

CODING: Words underlined are additions; words in ~~struck~~
~~through~~ type are deletions from existing law.

1 DOCKET NO. 001574-EQ
2 DATE: January 21, 2003

3 power costs.

4 (c) Firm energy and capacity payments made pursuant to a
5 standard offer contract signed by the qualifying facility, for
6 which the utility has petitioned the Commission to reject, is
7 recoverable through the Commission's periodic review of fuel and
8 purchased power costs if the Commission requires the utility to
9 accept the contract because it satisfies subsection (4) of this
10 rule.

11 Specific Authority: 350.127, ~~366.04(1)~~, ~~366.051~~, 366.05(1) ~~& (8)~~,
12 F.S.

13 Law Implemented: 366.051, 366.81 ~~403.503~~, F.S.

14 History: New 10/25/90, amended 01/07/97, amended _____.
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JOHN M. McKAY
President



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
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CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

December 23, 2002

Mr. Richard C. Bellak
Office of the General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0852

Re: Public Service Commission Rule 25-17.0832

Dear Mr. Bellak:

According to my records, the rule referenced above was noticed in the Florida Administrative Weekly on September 21, 2001. On November 21, 2001 a notice of public hearing was published which set hearings on May 15, 2002, and August 6, 2002.

On May 24, 2002 a notice was published which stated that the hearing scheduled for May 23, 2002 was cancelled. However, no such hearing had ever been noticed in the FAW.

On August 2, 2002, a notice was published which announced that the hearing was changed from October 28, 2002 to November 6, 2002. The October 28 hearing was not noticed in the FAW.

On November 22, 2002, a notice announced a hearing for March 19, 2003, and stated that changes to the rule had been published in the October 25, 2002 FAW. No such changes had been published.

In a subsequent conversation, you informed me that the May 15, 2002 meeting was changed to October 28, but was incorrectly identified as May 23 in the notice which appeared on May 24, 2002. You did not know if the August 6, 2002 meeting was held. You also informed that the November 6 meeting was not held.

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OFFICE OF THE
GENERAL COUNSEL

Mr. Richard C. Bellak
December 23, 2002
Page 2

Section 120.525(1), F.S., provides in pertinent part that “each agency shall give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Weekly not less than 7 days before the event.” (e.s.) Normally, the 90-day period in which to adopt the rule would have ended on December 20, 2001. The notice of hearing which was published on November 21, 2002 could have extended the filing date pursuant to section 120.54(3)(e)2., F.S.; however, it is not clear whether a hearing on August 6, was actually held.

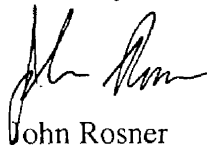
In my judgment, even if the August 6 hearing had been held, the foregoing sequence of events fails to satisfy the provisions of section 120.525 (1). Assuming that the August 6 hearing had occurred, the 90-day period would have been extended to September 20, allowing the commission to publish the August 2 notice. However, although the August 2 notice scheduled a hearing for November 6, that hearing was not held.

In our conversation, you related that hearings were re-scheduled by order. However, nothing in Chapter 120 authorizes an agency to schedule a hearing or change the date of a previously scheduled hearing except in compliance with section 120.525(1).

Therefore, it appears that the commission did not follow the applicable rulemaking procedures set forth in Chapter 120. See, section 120.52(8)(a), F.S. Section 120.54(3)(e)5., F.S., provides that “[i]f a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly.” The Department of State is directed by section 120.54(3)(e)4., to reject any rule not filed within the prescribed time limits or that does not satisfy all statutory rulemaking requirements.

I am available at your convenience to discuss the foregoing comments.

Sincerely,



John Rosner
Chief Attorney

cc: Mr. Harold McLean

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JOHN M. McKAY
President



THOMAS FEENEY
Speaker



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
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CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

November 27, 2002

Mr. Richard C. Bellak
Office of the General Counsel
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0852

Re: Public Service Commission Rule 25-17.0832

Dear Mr. Bellak:

The notice of proposed rulemaking for rule 25-17.0832 was originally published on September 21, 2001. Please provide me with the dates of the public hearings held on the rule which extended the 90-day deadline. Specifically, please identify the issues of the FAW which contain the notices of such public hearings.

The notice of hearing which appeared in the November 22, 2002 FAW states that the proposed changes to rule 25-17.0832 were published in the October 25, 2002 FAW. However, the only PSC rule which appears in that edition is 25-22.082.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rosner".

John Rosner
Chief Attorney

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