

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO: 060555-EI

IN RE: PROPOSED AMENDMENTS TO RULE NO. 25-17.0832, F.A.C., FIRM CAPACITY  
AND ENERGY CONTRACTS

NOTICE OF CHANGE

TO

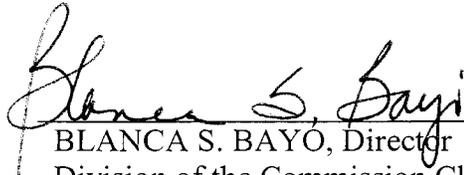
ALL INTERESTED PERSONS

ISSUED: January 18, 2007

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission has approved a change to proposed amendments to Rule 25-17.0832, Florida Administrative Code.

The attached Notice of Change will appear in the January 26, 2007, edition of the Florida Administrative Weekly.

By DIRECTION of the Florida Public Service Commission, this 18th day of January, 2007.

  
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BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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Notice of Change/Withdrawal

**PUBLIC SERVICE COMMISSION**

RULE NO: RULE TITLE

25-17.0832: Firm Capacity and Energy Contracts

25-17.200: Application and Scope

25-17.210: Definitions

25-17.220: Qualifying Criteria

25-17.230: The Utility's Obligation to Purchase and Sell

25-17.240: Negotiated Contracts

25-17.250: Standard Offer Contracts

25-17.260: Subscription Limits

25-17.270: Changes in Environmental and Governmental Regulations

25-17.280: Tradable Renewable Energy Credits (TREC)s

25-17.290: Imputed Debt Equivalent Adjustments

25-17.300: Reporting

25-17.310: Dispute Resolution

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rules in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 41 No. 37, October 13, 2006, issue of the Florida Administrative Weekly.

Docket No. 060555-EI

Strike the rule text as published and replace with the following:

PART III UTILITIES' OBLIGATIONS WITH REGARD TO COGENERATORS AND SMALL POWER PRODUCERS

25-17.0832 Firm Capacity and Energy Contracts.

25-17.0832(1) through 25-17.0832(3) – No changes

25-17.0832(4) Standard Offer Contracts.

(4) Standard Offer Contracts.

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

~~1. A small power producer or other qualifying facility using renewable or non fossil fuel where the primary energy source in British Thermal Units (BTUs) is at least 75 percent biomass, waste, solar or other renewable resource;~~

~~2. A qualifying facility~~ies~~, as defined by subsection 25-17.080(3), F.A.C., with a design capacity of 100 kW or less;~~

~~or~~

~~3. A municipal solid waste facility as defined by Rule 25-17.091, F.A.C.~~

25-17.0832(4)(b) through end – no changes.

Specific Authority: 350.127, 366.05(1), F.S.

Law Implemented: 366.051, 366.81, F.S.

History–New 10-25-90, Amended 1-7-97, 5-18-03,

#### PART IV UTILITIES' OBLIGATIONS WITH REGARD TO RENEWABLE GENERATING FACILITIES

25-17.200 Application and Scope. The purpose of these rules is 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. Unless otherwise stated, these rules apply to all investor-owned utilities.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New \_\_\_\_\_.

25-17.210 Definitions. For purposes of these rules:

(1) "Renewable Generating Facility" means an electrical generating unit or group of units at a single site, interconnected for synchronous operation and delivery of electricity to an electric utility, where the primary energy in British Thermal Units (BTUs) used for the production of electricity is from one or more of the following sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, or waste heat from a commercial or industrial manufacturing process.

(2) "Biomass" means a fuel source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, agricultural and orchard crops, waste products from livestock and poultry

operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

(3) "Full Avoided Costs," as defined in 366.051, Florida Statutes, means the incremental costs to the purchasing utility of the electric energy or capacity, or both, which, but for the purchase from a renewable generating facility, such utility would generate itself or purchase from another source.

(4) "Investor-owned utility" shall have the same meaning as Section 366.02(1), Florida Statutes.

(5) "Electric utility" shall have the same meaning as Section 366.02(2), Florida Statutes.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History--New \_\_\_\_\_.

25-17.220 Qualifying Criteria. For purposes of these rules, a renewable generating facility shall be deemed a qualifying facility pursuant to Rule 25-17.080(1) and shall have all the rights, privileges, and responsibilities specified in Rules 25-17.082 through 25-17.091, F.A.C.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History--New \_\_\_\_\_.

25-17.230 The Utility's Obligation to Purchase and Sell.

(1) Each investor-owned utility shall purchase electricity produced and sold by renewable generating facilities at rates that have been agreed upon by the utility and renewable generating facility or at the utility's published tariff. Each investor-owned utility shall file a tariff or tariffs and a standard offer contract or contracts for the purchase of energy or capacity, or both, from renewable generating facilities that reflects the provisions set forth in these rules.

(2) Each investor-owned utility's tariff or standard offer contract shall specify the metering requirements for billing purposes in accordance with Rule 25-17.082 subsections (2) and (3), F.A.C.

(3) Each investor-owned utility shall interconnect with any renewable generating facility in accordance with Rule 25-17.087, F.A.C.

(4) Each investor-owned utility shall sell energy to renewable generating facilities in accordance with Rule 25-17.084, F.A.C.

(5) Each investor-owned utility shall provide, upon request by a renewable generating facility, transmission service to wheel as-available energy or firm energy and capacity produced by the renewable generating facility from the renewable generating facility to another electric utility in accordance with Rule 25-17.0889, F.A.C.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New \_\_\_\_\_.

25-17.240 Negotiated Contracts.

(1) Investor-owned utilities and renewable generating facilities are encouraged to negotiate contracts for the purchase of firm capacity and energy to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability, and energy security.

(2) Negotiated contracts will be considered prudent for cost recovery purposes if it is demonstrated by the investor-owned utility that the purchase of firm capacity and energy from the renewable generating facility pursuant to the rates, terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility and provide fuel diversity, fuel price stability, and energy security at a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the renewable generating facility under the contract.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New \_\_\_\_\_.

25-17.250 Standard Offer Contracts.

(1) Standard Offer Contract. In addition to the requirements contained in Rules 25-17.082 through 25-17.091, F.A.C., each investor owned utility shall, by April 1 of each year, file with the Commission a standard offer contract or contracts for the purchase of firm capacity and energy from renewable generating facilities and small qualifying facilities with a design capacity of 100 kW or less. A separate standard offer contract shall be based on

the next avoidable fossil fueled generating unit of each technology type identified in the utility's Ten-Year Site Plan filed pursuant to Rule 25-22.071, F.A.C. Each standard offer contract based on each of the utility's avoidable units shall be consistent with the requirements of Rule 25-17.0832(4), (5), and (6), F.A.C., except as modified by this rule. Each investor-owned utility with no planned generating unit identified in its Ten-Year Site Plan shall submit a standard offer based on avoiding or deferring a planned purchase.

(2) Continuous Offers.

(a) In order to ensure that each utility continuously offers a purchase contract to producers of renewable energy, each standard offer contract shall remain open until:

1. A request for proposals (RFP) pursuant to Rule 25-22.082, F.A.C., is issued for the utility's planned generating unit: or

2. The utility files a petition for a need determination or commences construction for generating units not subject to Rule 25-22.082, F.A.C.

3. The generating unit upon which the standard offer contract was based is no longer part of the utility's generation plan, as evidenced by a petition to that effect filed with the Commission or by the utility's most recent Ten Year Site Plan.

(b) Before a standard contract offering is closed, the utility shall file a petition for approval of a new standard offer contract based on the next unit of the same generating technology, if any, in its Ten-Year Site Plan. If no generating unit of the same technology is in the utility's Ten-Year Site Plan, the utility shall notify the Director of the Division of Economic Regulation prior to closing a standard offer.

(3) Term. At the election of the renewable generating facility, the term of each standard offer contract shall be for a minimum of 10 years from the in-service date of the avoided unit up to a maximum of the life of the avoided unit.

(4) Capacity Payments Options. In addition to the capacity payment options contained in Rule 25-17.0832(4)(g), F.A.C., and subject to the provisions of Rule 25-17.0832(3)(a) through (d), F.A.C., a renewable generating facility may elect a payment stream for the capital component of the utility's avoided unit, including front-end loaded capacity payments, that best meets the financing requirements of the renewable generating facility. Early capacity payments consisting of the capital component of the avoided unit may, at the election of the

NOTICE OF CHANGE  
DOCKET NO. 060555-EI  
PAGE 7

renewable generating facility, commence any time after the actual in-service date of the renewable generating facility and before the anticipated in-service date of the utility's avoided unit. Regardless of the payment stream elected by the renewable generating facility, the cumulative present value of capital cost payments made to the renewable generating facility over the term of the contract shall not exceed the cumulative present value of the capital cost payments which would have been made to the renewable generating facility had such payments been made pursuant to Rule 25-17.0832(4)(g)(1), F.A.C. Fixed operation and maintenance expense shall be calculated in conformance with Rule 25-17.0832(6), F.A.C.

(5) Content. Unless otherwise modified by these rules, the contents of each standard offer contract shall be in accordance with Rule 25-17.0832(4) , F.A.C.

(6) Fixed Energy Payments. In order to facilitate third-party financing of renewable generating facilities and provide fuel price stability to electric ratepayers, upon request by a renewable generating facility, each investor-owned utility shall provide for the following fixed energy payment options:

(a) As-available energy payments. As-available energy payments made prior to the in-service date of the avoided unit shall be based on the utility's year-by-year projection of system incremental fuel costs, prior to hourly economy energy sales to other utilities, based on normal weather and fuel market conditions plus a fuel market volatility risk premium mutually agreed upon by the utility and the renewable generating facility.

(b) Firm energy payments. Subsequent to the determination of full avoided cost and subject to the provisions of Rule 25-17.0832(3)(a) through (d), F.A.C., a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the utility and renewable energy generator, shall be fixed and amortized on a present value basis over the term of the contract starting, at the election of the renewable generating facility, as early as the in-service date of the renewable generating facility. "Base energy costs associated with the avoided unit" means the energy costs of the avoided unit to the extent the unit would have been operated.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New \_\_\_\_\_.

25-17.260 Subscription Limits. There shall be no preset subscription limits for the purchase of capacity and energy from renewable generating facilities. To the extent that the purchase of capacity and energy from a renewable

generating facility is not needed for reliability or will increase costs to the general body of ratepayers above full avoided cost, the utility shall petition the Commission for relief. In any such proceeding, the Commission shall determine the need for power and the utility's full avoided cost, including strategic benefits such as fuel diversity and energy security, that are in the best interests of the general body of ratepayers.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New \_\_\_\_\_.

25-17.270 Changes in Environmental and Governmental Regulations. All contracts for the purchase of capacity and energy from a renewable generating facility shall include a provision to reopen the contract, at the election of either party, limited to changes affecting the utility's full avoided costs of the unit on which the contract is based as a result of new environmental and other regulatory requirements enacted during the term of the contract.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New \_\_\_\_\_.

25-17.280 Tradable Renewable Energy Credits (TRECs). Tradable renewable energy credits and tax credits shall remain the exclusive property of the renewable generating facility. A utility shall not reduce its payment of full avoided costs or place any other conditions upon such government incentives in a negotiated or standard offer contract, unless agreed to by the renewable generating facility.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New \_\_\_\_\_.

25-17.290 Imputed Debt Equivalent Adjustments. An investor-owned utility shall not impose any imputed debt equivalent adjustments (equity adjustments) to reduce the avoided costs paid to a renewable generating facility unless the utility has demonstrated the need for the adjustment and obtained the prior approval of the Commission.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.81, 366.91, 366.92, F.S.

History–New \_\_\_\_\_.

25-17.300 Reporting. Each electric utility shall report, by April first of each year, the following information, actual and projected:

(1) The total megawatts and percentage of each utility's total capacity mix comprised of renewable generating capacity.

(2) The total megawatt-hours and percentage of each utility's net energy for load and fuel mix of energy purchased from renewable generation.

(3) The total megawatts and megawatt-hours of self-service generation by renewable generation.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.04(5), 366.05(7), F.S.

History—New \_\_\_\_\_.

25-17.310 Dispute Resolution

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between renewable generating facilities and investor-owned utilities.

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute either through negotiation or by seeking mediation from an independent third party or Commission staff.

(3) Subject to subsection (2) of this rule, any party negotiating an agreement under this Part may, at any point in the negotiation, petition the Commission to resolve any differences arising in the course of the negotiation.

The petition shall contain, at a minimum:

(a) an overview of the issues discussed and resolved by the parties;

(b) the unresolved issues;

(c) the position of each of the parties with respect to each unresolved issue;

(d) all relevant documentation concerning each unresolved issue.

(4) A party petitioning the Commission under subsection (1) shall provide a copy of the petition and any other documentation accompanying the petition to the other party or parties not later than the day on which the petition is filed with the Commission. A non-petitioning party may respond to the petition and provide additional information within 30 days after the petition is filed with the Commission.

(5) The Commission will require the petitioning party and the responding party to provide additional information if it determines the additional information is necessary for the Commission to reach a decision on the unresolved issues. If any party refuses or fails to respond on a timely basis to any request from the Commission, then the Commission shall proceed on the basis of the best information available to it from whatever source derived.

(6) The Commission will resolve each issue set forth in the petition and the response, if any, in an expedited manner, normally within 90 days unless waived by the parties or on the Commission's own motion. The Commission shall base its decision on whether the provision in dispute will encourage the development of renewable generation in the State and is in the best interests of the purchasing utility's general body of ratepayers pursuant to the provisions of this Part.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.051, 366.076, 366.81, 366.91, 366.92, F.S.

History--New \_\_\_\_\_.