

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR APPROVAL OF STANDARD DOCKET NO. 080184-EQ
OFFER CONTRACT FOR SMALL QUALIFYING
FACILITIES AND PRODUCERS OF RENEWABLE
ENERGY, BY TAMPA ELECTRIC COMPANY.

PETITION FOR APPROVAL OF AMENDED DOCKET NO. 080187-EQ
STANDARD OFFER CONTRACT AND COG-2
RATE SCHEDULE, BY PROGRESS ENERGY
FLORIDA.

PETITION FOR APPROVAL OF RENEWABLE DOCKET NO. 080193-EQ
ENERGY TARIFF AND STANDARD OFFER
CONTRACT, BY FLORIDA POWER & LIGHT
COMPANY.

PETITION FOR APPROVAL OF NEW STANDARD DOCKET NO. 080194-EQ
OFFER FOR PURCHASE OF FIRM CAPACITY
AND ENERGY FROM RENEWABLE ENERGY
FACILITIES OR SMALL QUALIFYING
FACILITIES AND APPROVAL OF TARIFF
SCHEDULE REF-1, BY GULF POWER COMPANY.

_____ /



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 15

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

DOCUMENT NUMBER DATE

04470 MAY 27 '88

FPSC-COMMISSION CLERK

1 DATE: Tuesday, May 20, 2008
2 PLACE: Betty Easley Conference Center
3 Room 148
4 4075 Esplanade Way
 Tallahassee, Florida
5 REPORTED BY: LINDA BOLES, RPR, CRR
 Official FPSC Reporter
6 (850) 413-6734

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 PARTICIPATING:

2 BOB TRAPP, representing Florida Public Service
3 Commission staff.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2 CHAIRMAN CARTER: Item 15. Commissioners, on Item 15
3 I just want to, before staff introduces the issue, we've got a
4 briefing here before us, but I want to recognize Commissioner
5 McMurrian for a comment.

6 Commissioner McMurrian, you're recognized.

7 COMMISSIONER McMURRIAN: Thank you, Chairman. I had
8 a question with respect to this item, and I know that it's in a
9 sense a simple suspension rec and, but I had a concern and I
10 guess before I get to my question I wanted to put it in context
11 a little bit.

12 There was, in the issue, in Issue 1, staff analysis,
13 there's a statement within, I think it's the sixth line down
14 under the staff analysis that's on Page 3, and it states,
15 "Staff believes that the new energy legislation adopted by the
16 Legislature will also have a material impact on the content of
17 the standard offer contracts." And yesterday I posed the
18 question to staff about this statement because I've had some
19 concerns lately that, that I need to be more aware of how a
20 staff recommendation becomes an order and that the staff
21 beliefs become Commission beliefs when the order is issued.
22 And I just am not familiar enough with the impact of that
23 energy legislation on the standard offer contracts and followed
24 up on that a little bit, and I sensed a little bit of hesitancy
25 to be as unequivocal as I believe that statement was. I'm not

1 sure that I sensed that staff was as sold that there would be a
2 material impact. And sensing that hesitancy, I wasn't sure
3 that -- I did want to just ask that today and see if staff
4 believes that it is going to have a material impact so that I'm
5 comfortable with our order saying that we believe it will have
6 a material impact. So I wanted to pose that question to staff
7 today. And if not, perhaps suggest that we tone it down
8 somewhat to say it may have an impact or leave it in the order
9 that staff believes that it will have a material impact. So --

10 CHAIRMAN CARTER: Okay. You want to address staff --
11 and, Commissioners, we'll just go ahead and discuss this point
12 that Commissioner McMurrian has raised. You want to address
13 your question to staff? Staff, you're recognized.

14 MR. TRAPP: Good morning, Commissioners. I'm
15 Bob Trapp of Commission staff. There has been significant new
16 legislation adopted by the Legislature and staff is currently
17 in the process of evaluating the impact of that legislation.
18 There may be future impacts with respect to the Commission's
19 treatment of standard offers. I think one of the purposes, as
20 you'll hear from staff in their opening remarks, of suspending
21 this tariff is to evaluate those and other impacts as well as
22 the technical detail underneath the proposals that the
23 utilities have filed.

24 But, you know, to specifically address your question,
25 I would turn to the enrolled version of the House Bill 7135

1 which is anticipated to be signed by the Governor. And in that
2 bill there's a new RPS section that requires the Commission to
3 develop a draft RPS rule to submit for ratification by the
4 Legislature that rule and policy with respect to an RPS.

5 My initial review of what came out in the final draft
6 is that I believe that the Commission has a wide latitude of
7 flexibility in developing that RPS rule and which cost factors
8 and avoided cost considerations and relationships with
9 renewable energy providers is taken into consideration and the
10 Commission is given some guidance. If you'll bear with me, I'd
11 like to read the pertinent section of the statute.

12 It's -- well, let me, let me just say it's on Page 97
13 of the enrolled version of the bill, and it's Section 1. It
14 says, "The Commission's rule," and this pertains to the RPS
15 Rule, "shall include methods of managing the cost of compliance
16 with the renewable portfolio standard whether through direct
17 supply or procurement of renewable power or through purchase of
18 renewable energy credits. The Commission shall have rulemaking
19 authority for providing annual cost recovery and
20 incentive-based adjustments to authorized rates of return on
21 common equity to providers to incentivize renewable energy."

22 And here's where the impact of the previous statute
23 comes in. "Notwithstanding Section 366.91(3) and (4)," which
24 pertain to the matter we're here before you today on, "upon the
25 ratification of the rules developed pursuant to this

1 subsection, the Commission may approve projects and power sales
2 agreements with renewable power producers and the sale of
3 renewable energy credits needed to comply with the renewable
4 portfolio standard. In the event of any conflict, this
5 subparagraph shall supersede Section 366.91(3) and (4).
6 However, nothing in this section shall alter the obligation of
7 each public utility to continuously offer a purchase contract
8 to producers of renewable energy."

9 So while staff has not fully analyzed this yet, my
10 initial impressions are the Legislature is very clear that they
11 want us to continue to go forth offering a standard offer is my
12 first observation.

13 My second observation is that with respect to the
14 pricing of that standard offer, there's a new concept that's
15 introduced in this statute called energy credits. And to the
16 extent that energy credits are something that the Commission
17 may determine to be either within or outside the conventional
18 definition of avoided cost, one might consider energy credits
19 as cost-plus. And I think the purpose of the statute is to
20 make it clear if that is the decision of the Commission in its
21 proposed rulemaking, which has to be ratified by the
22 Legislature, that that may come into a new element of pricing
23 that may affect future standard offers. But since we're
24 dealing with a new statute that hasn't yet been approved,
25 expected to be approved, and a time frame in which we will have

1 to develop an RPS rule and that rule will have to be ratified
2 by the Legislature, I think the potential impact of whatever
3 those words are will have to be revealed in time. So I would
4 encourage you to look at what you have today before you in the
5 context of our current statutes and our current rule makings,
6 and, again, staff will use the period of time during the
7 suspension to try to analyze further the impacts of the
8 legislation. But the overwhelming theme I get from or message
9 I get from the statute is that the utilities are to continue to
10 offer contracts.

11 CHAIRMAN CARTER: Commissioner McMurrin.

12 COMMISSIONER McMURRIAN: Thank you, Chairman. And
13 thank you, Mr. Trapp, for that.

14 I guess my intention wasn't necessarily to get into
15 the details of the, of the statute, but I think it is helpful
16 and perhaps, perhaps you've answered the question whether staff
17 believes that it will have a material impact. And I think that
18 it's -- I guess the -- and I'm probably splitting hairs, but I,
19 but I guess the way I saw it was we're either saying
20 unequivocally it will have an impact or we're saying that staff
21 wants some extra time to analyze the filings altogether, plus
22 this additional issue of whether the energy legislation might
23 have some material impact on it. And I think it's fine to say
24 that that's a concern you have and something you want to look
25 at, but I guess I was concerned that this would be turned into

1 the order and I wasn't sure that the legislation would
2 definitely have a material impact on it.

3 MR. TRAPP: I think your, your interpretation or
4 reading is correct. I don't think it has an immediate impact
5 on what we're here to do today. I think staff was wanting to
6 be, that you're aware that it may have some future impact. And
7 obviously in any transition period there's some element of
8 confusion that takes place and our purpose is to try to
9 minimize that confusion as much as possible.

10 COMMISSIONER McMURRIAN: I appreciate that. And,
11 Commissioners, the only reason in doing this, again, I don't
12 have any concerns about whether or not -- I think that it's
13 good that staff looks at whether or not legislation has some
14 impact on what's before us. I was just concerned with the sort
15 of unequivocal, unequivocality, if that's a word --

16 CHAIRMAN CARTER: It is now.

17 COMMISSIONER McMURRIAN: -- with the sentence and,
18 again, concerned perhaps I wasn't clear that that was the case.
19 And so I guess I would suggest that for the purposes of the
20 order that perhaps we soften it a bit. If it does become a
21 Commission belief statement, that it would read something along
22 the lines of the Commission believes the new energy legislation
23 adopted by the Legislature may also have a material impact or
24 something. I think that was my concern with it. It just
25 seemed so absolute.

1 CHAIRMAN CARTER: And obviously, Commissioners, we
2 want to hear from all of you, but I agree with Commissioner
3 McMurrin because the critical perspective is that whatever we
4 do has to go back to the Legislature before it's approved. So
5 in that, in that situation it won't be final until the
6 Legislature says yea or nay based upon where we come from. So
7 they have final approval. So I think that the recommendation
8 in terms of the language, as Commissioner McMurrin has
9 presented, I think "may" does work for us better in that
10 context if we're going to keep this sentence in here.

11 Commissioners? Commissioner Skop, you're recognized.

12 COMMISSIONER SKOP: Thank you, Mr. Chairman. And I
13 appreciate Commissioner McMurrin's question and also
14 Mr. Trapp's response. Again, I think that the comprehensive
15 legislative package under House Bill 7135 is, every one is
16 still digesting the impact of that. But I do concur with both
17 the Chair and Commissioner McMurrin that perhaps "may have a
18 material impact" may be appropriate. But, again, I do respect
19 staff's independent judgment and I do, you know, I'm fine with
20 it in the recommendation, but certainly I could live with
21 "may."

22 CHAIRMAN CARTER: And I, and I think from the context
23 of what Commissioner McMurrin is saying is that the Commission
24 believes, you know, the Commission believes that the new energy
25 legislation adopted by the Legislature may also have, and

1 that's because the Legislature has given us fairly clear
2 directions in that 7135 in terms of what they want us to do,
3 but by the same token they said bring it back to us for
4 approval. So that's a little extraordinary step in the
5 rulemaking process. So I think with that, if they put it in
6 there, they probably meant it to be that way. So I think that
7 that would probably put us in a posture where we're not so much
8 tying their hands as we're presenting them with the request
9 that they made of us.

10 Commissioner McMurrin probably said it far more
11 artfully than I did, but I did want to just kind of say that
12 before I had one of my moments and I forgot what I was
13 thinking.

14 Commissioners? Commissioner McMurrin, you're
15 recognized.

16 COMMISSIONER McMURRIAN: If, if my colleagues are
17 comfortable with that, I guess I would make a motion that we
18 approve the staff recommendation. And just for clarification,
19 I wasn't suggesting that the staff recommendation should be
20 changed. I think that is what we have before us. I just
21 wanted to clarify that perhaps I had concerns with how the
22 order would be worded, and I felt like it was best for us all
23 to hash that out rather than try to figure out how to do that
24 separately.

25 So my recommendation would be to approve staff

1 recommendation with that understanding, and that would be on
2 Issues 1 and 2.

3 COMMISSIONER SKOP: Second.

4 CHAIRMAN CARTER: Commissioners, it's been moved and
5 properly seconded.

6 Staff, any questions going forward? Do you
7 understand what we're saying?

8 Commissioners, any further debate?

9 Hearing none, all those in favor, let it be known by
10 the sign of aye.

11 (Unanimous affirmative vote.)

12 All those opposed, like sign. Show it done.

13 (Agenda Item 15 concluded.)

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 27th day of May, 2008.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734