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September 5, 2008

Via Hand Delivery

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COMMISSION CLERK

Ann Cole
Office of Commission Clerk
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 080503-EI

Dear Ms. Cole:

Enclosed are the original and 7 copies of the Post-Workshop Comments of Wheelabrator Technologies, Inc., with Attachments A and B. Also enclosed is an extra copy for you to stamp and return to me. Thank you for your assistance. Please contact me with any questions.

Sincerely,

Vicki Gordon Kaufman

CC: Cindy Miller (w/ enclosures)
Judy Harlow (w/ enclosures)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of Rule on Renewable Portfolio Standard
_____/

Docket No. 080503-EI

Filed: September 5, 2008

POST-WORKSHOP COMMENTS OF WHEELABRATOR TECHNOLOGIES, INC.

Wheelabrator Technologies, Inc. (Wheelabrator) attended the August 20th and 26th workshops regarding the Commission's implementation of a Renewable Portfolio Standard (RPS) for Florida. In accordance with the agreed upon schedule, Wheelabrator files the following post-workshop comments and revised rule language.

Introduction

Wheelabrator has been a participant in the RPS process since its inception. As Wheelabrator, and many others, have noted throughout the numerous proceedings the Commission has conducted on the RPS, it is critical to appropriately structure the RPS and related performance and compliance mechanisms to effectuate the Legislature's intent to protect existing renewable facilities and to spur the development of new facilities. Also, as many participants have pointed out, the Staff "strawman" proposal simply does not implement the important renewable energy goals which both the Legislature and the Governor have found critical to Florida's energy future.

Wheelabrator provides these comments on a section by section basis and has attached a mark-up of the "strawman" proposal as Attachment A.[1]

[1] At the conclusion of the workshop on August 26th, Staff members raised various questions or issues on which they requested further comment. Wheelabrator has addressed those issues in Attachment B.

Rule 25-17.400, Renewable Portfolio Standard

(1) Application and Scope.

(b) This subsection appears to provide that after the initial RPS goals are set, such goals may be modified and standards may be set for *each* investor-owned utility (IOU), rather than setting the same goal for each IOU. The IOUs should not have or be permitted to have individual goals – the RPS goals set should be the same for each IOU.

(3) Renewable Portfolio Standard.

Subsection (a) of this portion of the strawman provides that "Initially, each investor-owned utility shall submit ***proposed*** annual renewable portfolio standards ...." However, the standards are not ***proposed***. The RPS is clear and precise, i.e., each utility takes its prior year's retail sales and multiples it by the above percentages. This calculation results in the utilities' RPS obligation.

In addition, the Legislature was very clear in specifying that the RPS was to "protect the economic viability of existing renewable energy facilities."[2] Therefore, the minimum RPS required starting in 2010 should be set at the percent of statewide generation that is comprised by existing renewable energy sources. As was requested at the workshop, the Commission Staff needs to determine what that amount is and publish that data as soon as possible to allow public review and comment.

The strawman proposal provides three options for wind and solar preferences. The RPS rule should provide separate and distinct requirements for solar and wind, in whatever amount is appropriate. In this way, there is no "competition" between other renewable technologies and solar or wind, which could constrain developers of other renewable resources from providing renewable resources in the state.

[2] Section 366.92(1), Florida Statutes.

Thus, the amount that should be supplied from Class I sources should be tied to the value set for the RPS. For example, if the total generation from existing renewables is 2%, of which 0.25% is from solar and wind, then the 2010 Class I requirement should be 0.25% and the Class II requirement should be 1.75%. The 2017 Class I requirement should be 0.75% (20% of 3.75%) and the Class II requirement should be 3%, and so on.

(4) Compliance.

While this section is entitled "compliance," it contains ***no enforcement or compliance mechanism*** whatsoever. This omission is contrary to the clear statutory directive of the legislature. Section 366.92(3)(b), Florida Statutes, provides:

> The commission's rule:
>
> . . .
>
> 2. *Shall* provide for appropriate compliance measures. . . .
>
> . . .
>
> 3. *Shall* provide for monitoring of compliance with and enforcement of the requirements of this section.

However, instead of following this clear legislative directive, the strawman provides a mechanism to excuse the utilities from compliance with the RPS but ***lacks any*** enforcement mechanism. An enforcement and compliance mechanism is necessary to ensure that there are consequences if the RPS standard is not met. Otherwise, the rule has no teeth and there will be no incentive to pursue renewable energy as the Legislature has directed.

Further, the strawman proposal provides that the Commission shall consider excusing a utility from compliance if it shows that the supply of renewable energy or RECs is not adequate to satisfy demand or the cost of securing renewable energy or RECs is prohibitive. The strawman then goes on to essentially define prohibitive as "the total costs for compliance for the

RPS exceed 1% of the IOU's total annual retail revenues." The 1% cap is too restrictive and will result in IOUs being able to easily avoid compliance. This cap should be eliminated.

The rule should include a mechanism for Alternative Compliance Payments (ACP). Such a mechanism eliminates the need for a revenue cap. It encourages utilities to seek out renewable resources and would allow an IOU to discharge some or all of its RPS obligations by making an ACP.

The ACP is a commonly-used mechanism to ensure compliance with RPS standards. In establishing the ACP amount, the Commission should set the ACP rate to provide adequate incentive for the IOUs to purchase or generate qualifying electricity in lieu of using ACPs to meet the renewable portfolio standard. That is, the ACP rate must be set sufficiently high so that it incentivizes development of renewable energy and subsequent procurement of RECs by the IOUs before reliance on the ACP. The ACP should therefore be designed to be the compliance option of last resort under normal market situations.

The ACP clearly has another objective: the ACP should be designed to serve as a hedge against market volatility for the other two compliance options – bundled renewable electricity and unbundled RECs. The ACP should be set at a rate that provides utilities with an alternative to purchasing renewable electricity or RECs in situations where market prices for either have diverged significantly from expected levels.[3] Thus, the ACP:

- Should be the compliance option of last resort under normal market conditions and;
- Should serve as a hedge against market volatility and provide an alternative to bundled renewable electricity or RECs when market prices for either have diverged significantly from expected levels.

[3] An ACP program immediately sets the "price ceiling" for RECs since under this type of program, a prudent utility would only purchase RECs priced at or below the price of the ACP.

The ACP is, in effect, a cap on payments. The maximum amount that an IOU would ever pay per year would be the ACP multiplied by the total number of RECs the IOU needs for that year. Not only does the ACP act as a "cap", it also incentivizes private capital to invest in renewable resources.

In its comments to the strawman proposal,[4] Staff questioned the Commission's authority to establish ACPs, but linked the issue of authority to use of the ACPs to fund additional renewable resources. First, as discussed above, the Legislature has made it absolutely clear that the Commission rule *shall* include an enforcement mechanism. The ACP mechanism is a well-known, tried and true mechanism which other states currently used. Such a program is clearly within the Commission's statutory authority.

Second, regarding the issue of what is done with any funds the Commission may receive under an ACP program, the rule should include a proposal or alternative proposals for use of such funds since the Commission's rule will go back to the Legislature for review. For example, the rule could provide that the ACP be paid into the General Revenue Fund. The Commission already has independent statutory authority to impose penalties upon regulated utilities for non-compliance with Commission rules and to deposit such funds into the General Revenue Fund.[5] Alternatively, the Commission could direct ACP funds to be deposited into the Regulatory Trust Fund.[6] Or, the Commission could suggest the establishment of a fund for renewable development, subject to legislative approval. The Commission has sufficient authority to pursue any of these avenues, but should again bear in mind that the Legislature will review any proposal that it makes.

[4] See page 4 of the materials Staff distributed for the August 20th workshop.
[5] Section 350.127, Florida Statutes.
[6] Section 350.113, Florida Statutes.

Rule 17.410, Florida Renewable Energy Credit Market

(1) Establishment and administration of the REC market.

In order for the REC market to be robust and to function appropriately, it must be independent and transparent for all participants. Such a market cannot exist when it is run by the IOUs, the entities that will be the ones to purchase the commodities at issue.

The IOUs should not be in charge of "running" the REC market. As the entities that will purchase the RECs, the IOUs should not administer the market, but rather they should participate in it. As many workshop participants commented, having the IOUs run the REC market is akin to having the fox guard the henhouse. The RPS rule must ensure that all market participants have access to all pertinent information regarding market transactions. Therefore, either the Commission itself, or the Commission via contract with an independent third party, should manage the REC market. In that way, all market participants will be able to fully and fairly participate and the market will be truly transparent.

Commission Staff expressed concern about the funding for market establishment. Funding could come from an assessment to the IOUs or separate legislative funding. Again, the Commission's rule will receive legislative review prior to adoption and any funding concerns can be addressed at that time.

Finally, costs of market administration should not be charged against the price of a REC. That would have the effect of under valuing the REC and discouraging renewable resources.

(2)(a) Eligible facilities.

The strawman proposal inappropriately and very narrowly defines entities "eligible to produce renewable energy credits." The strawman would limit such facilities, for the most part,

to facilities providing energy and capacity under a power purchase agreement (PPA). This restrictive definition appears nowhere in the statute.

The proposed language is too restrictive and would inhibit the development of renewable resources. The only required qualification for entitlement to sell a REC should be that the facility generates renewable energy. The artificial constraint of the requirement of a PPA before an entity can participate in the REC market would lead to unnecessary roadblocks. IOUs might be tempted to include burdensome or unnecessary provisions in required contracts which would impact the ability of providers to participate in the market. An unnecessary requirement for a contract would also allow utilities to extract price concessions from renewable energy generators during PPA negotiations.

(3) Calculation of price of REC.

The strawman proposal provides that the price of the REC shall be capped at the equivalent of $16/ton of net green house gas (GHG) avoided. This cap is unnecessary and should be deleted. As was discussed at the workshop, renewable resources do reduce GHG, but they also do much more. Focus on just GHG reduction is inappropriate. Further, the Department of Environmental Protection is engaged in a rulemaking related to GHG.

However, if the Commission does retain a cap, it should be calculated based on a life cycle analysis, and this should be clearly stated in the rule. There are already current tools in use, such as the EPA Decision Support Tool, that can be utilized for this calculation.

(4) Filing by IOUs regarding structure, governance and procedure for REC market.

As noted above, the REC market should be administered by the Commission or an independent third party, not the IOUs, to maintain market independence and transparency.

Conclusion

The Legislature's directive to the Commission is clear: protect existing renewable facilities and encourage more renewable energy in the state. While the strawman proposal has some appropriate provisions, it is, by and large, overly restrictive and will fail to accomplish the appropriate legislative goals. Wheelabrator commits to continue to work with the Commission and Staff to develop a rule that will enable Florida to become a renewable energy leader.

s/ Vicki Gordon Kaufman

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Attorneys for Wheelabrator Technologies, Inc.

Attachment A
Wheelabrator RPS Rule Revisions

I. Renewable Portfolio Standard

17.400 Florida Renewable Portfolio Standard

(1) Application and Scope.

(a) The Commission shall establish numerical portfolio standards ~~for~~ applicable to each investor-owned electric utility that will promote the development of renewable energy, protect the economic viability of existing renewable energy facilities, diversify the types of fuel used to generate electricity in Florida, lessen Florida's dependence on fossil fuels for the production of electricity, minimize the volatility of fuel costs, encourage investment in the state, improve environmental conditions, and minimize the costs of power supply to electric utilities and their customers.

(b) After approval of the initial renewable portfolio standards, the Commission shall review and set a renewable portfolio standards for ~~each~~ the investor-owned electric utilities~~y~~ at least once every five years. The Commission on its own motion, or upon petition by a substantially affected person or a utility, shall initiate a proceeding to review and, if appropriate, modify the renewable portfolio standards. All modifications of the approved renewable portfolio standards and the associated compliance plans shall only be on a prospective basis.

(c) In a proceeding to establish or modify the renewable portfolio standards, ~~each~~ the investor-owned electric utilities~~y~~ shall propose a numerical renewable portfolio standards based on an analysis of the technical and economic potential for Florida renewable energy resources ~~to provide reasonably achievable and affordable annual energy (KWH) savings.~~

(2) Definitions.

(a) "Florida renewable energy resources," means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources:

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

hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power that is produced in Florida.

(b) "Renewable energy," means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy source, waste heat, from sulfuric acid manufacturing operations.

(c) "Biomass," means a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, or co-products from agricultural and orchard crops, waste or co-products from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

(d) "Class I renewable energy source," means Florida renewable energy resources derived from wind or solar energy systems.

(e) "Class II renewable energy source," means renewable energy derived from Florida renewable energy resources other than wind or solar energy systems.

(f) "Renewable Energy Credit," means a financial instrument that represents the unbundled, separable, renewable attribute of renewable energy or equivalent solar thermal energy produced in Florida and is equivalent to one megawatt-hour of electricity generated by a source of renewable energy located in Florida.

(g) "Renewable Portfolio Standard," means the minimum percentage of total annual retail electricity sales by an investor-owned electric utility to consumers in Florida that shall be supplied by renewable energy produced in Florida.

(h) "Solar Energy System," means equipment that provides for the collection and use of

incident solar energy for water heating, space heating or cooling, or other applications that would normally require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.

(i) "Solar Photovoltaic System," means a device that converts incident sunlight into electrical current.

(j) "Solar thermal system," means a device that traps heat from incident sunlight in order to heat water.

(k) "Equivalent Solar Thermal Energy," means the conversion of the thermal output, measured in British Thermal Units, of a solar thermal system to equivalent units of one megawatt-hour of electricity otherwise consumed from or output to the electric utility grid.

(l) "Compliance Year," means each calendar year beginning with January 1, 2010.

(m) "Alternative Compliance Payment," means a payment of a certain dollar amount per megawatt hour, resulting in the issuance of Alternative Compliance Credits which an investor-owned utility may submit to the Commission or independent third party market administrator, required by section 17.410(1), in lieu of providing renewable energy credits under section 17.10(2).

(n) "Alternative Compliance Credit," means a credit issued to an investor-owned utility upon submission of an Alternative Compliance Payment.

(o) "Force Majeure," means events or circumstances beyond the reasonable control of an IOU that could not have been reasonably anticipated or ameliorated that materially and adversely affect the ability of an IOU to meet the renewable energy requirement for a particular Compliance Year.

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

(p) "IOU," means investor-owned utility as defined in section 366.8255(1)(a), Florida Statutes.

(3) Renewable Portfolio Standard.

(a)~~Within 90 days of the effective date of this rule~~By January 30, 2010, and not less than ~~every five years thereafter, each investor-owned electric utility shall file for approval by the Commission proposed renewable portfolio standards based on an analysis of the technical and economic potential of Florida renewable energy resources for each utility's service area.~~

~~(a) Initially,~~annually thereafter ~~each~~ investor-owned utility shall submit ~~proposed~~ to the Commission an annual report demonstrating compliance renewable portfolio standards which meet or exceed the following long term standards through the production or purchase of renewable energy credits pursuant to Rule 17.410, F.A.C.:

1. by January 1, 2010: ~~2~~ 3 percent of the prior year's retail electricity sales; 0.5% shall be from Class I renewable resources; 2.5% shall be from Class II renewable resources.

2. by January 1, 2017: ~~3.756~~ percent of the prior year's retail electricity sales; 1% shall be from Class I renewable resources; 5% shall be from Class II renewable resources;

3. by January 1, 2025: ~~6~~ 12 percent of the prior year's retail electricity sales; 3% shall be from Class I renewable resources; 9% shall be from Class II renewable resources;

4. by January 1, ~~2050~~2035: 20 percent of the prior year's retail electricity sales. ; 8% shall be from Class I renewable resources; 12% shall be from Class II renewable resources;

~~*Options for Wind & Solar Preference:*~~

~~OPTION I:~~

~~(b) By January 1, 2017, a minimum of 25% of the renewable portfolio standard shall be~~

~~provided from Class I renewable energy sources:~~

~~OPTION II:~~

~~(b) By January 1, 2017, a minimum of 20% of the renewable portfolio standard shall be provided from Class I solar photovoltaic or solar thermal systems and 5% of the renewable energy portfolio standard shall be provided by Class I wind energy systems;~~

~~OPTION III:~~

~~(b) For purposes of compliance with the renewable portfolio standards, a multiplier of 5 shall be applied to all renewable energy credits produced from Class I renewable energy sources until the first year in which they represent, in aggregate, 25% of the annual Renewable Portfolio Standard.~~

(be) Each investor-owned electric utility ~~proposed~~ renewable portfolio standard filing shall, at a minimum, contain the following:

1. Current and ten-year forecast of installed capacity in kilowatts for each Florida renewable energy resource;

2. Levelized life-cycle cost in cents per kilowatt-hour for each Florida renewable energy resource;

3. Current and ten-year forecast of the effects of the renewable portfolio standard on the reduction of greenhouse gas emissions in Florida;

4. Current and ten-year forecast of the effects of the renewable portfolio standard on economic development in Florida;

5. Current and ten-year forecast of the effects of the renewable portolio standard on fuel diversity in Florida; and

~~5~~6. Current and ten-year forecast of the estimated retail rate impact for each class of

customers of the proposed renewable portfolio standard.

(4) Compliance and Enforcement.

(a) Alternative Compliance Mechanism.

1. An investor-owned utility may discharge its obligations under section 17.400(3)(a), in whole or in part, for any Compliance Year by making an Alternative Compliance Payment (ACP), as defined in section 17.400(2)(m).

a. Procedures. An investor-owned utility shall receive Alternative Compliance Credits from the Commission or independent third party market administrator subject to the following:

1. The quantity of Credits, specified in MWhs, that can be applied to an investor-owned utility's obligations under section 17.410(2) shall be determined by subtracting the number of RECs obtained by the investor-owned utility for the Compliance Year from the total number of RECs that the investor-owned utility is required to supply under 17.400(3) for the Compliance Year.

2. The ACP shall be $60 per MWh for Compliance Year 2010. For each subsequent Compliance Year, the Commission shall publish the ACP by January 31st of the Compliance Year. The ACP shall be equal to the previous year's ACP Rate adjusted up or down according to the previous year's federal Consumer Price Index.

3. Each investor-owned utility shall include with the annual report required by section 17.400(6), copies of any ACP receipt(s) for ACPs made during the Compliance Year.

b. The cost of ACPs shall be recoverable, when the Commission finds that force majeure exists, or that renewable energy credits are not reasonably available in sufficient quantities.

c. When RECs are reasonably available in sufficient quantities and cost below the ACP, the investor-owned utility shall not recover the cost of ACPs from ratepayers.

~~(a) In approving the proposed renewable portfolio standards and enforcing compliance with the approved renewable portfolio standards, the Commission shall consider excusing an investor-owned electric utility from compliance with any renewable portfolio standard based upon a showing that:~~

~~1. the supply of renewable energy or renewable energy credits is not adequate to satisfy the demand for such energy; or~~

~~2. the cost of securing renewable energy or renewable energy credits was prohibitive such that the total costs for compliance with the renewable portfolio standard exceeded one percent of the investor-owned electric utility's total annual retail revenues.~~

~~(b) Any utility requesting to be excused from meeting its renewable portfolio standard must submit its request along with the annual report required by Rule 25-17.400(6), F.A.C.~~

(5) Cost Recovery. Reasonable and prudent costs associated with the ~~provision~~ production or purchase of renewable energy credits to meet the utility's renewable portfolio standards, including administrative costs of the Florida Renewable Energy Credit Market, shall be recovered through the Environmental Cost Recovery clause.

(6) Reporting Requirements. Each investor-owned electric utility shall file with the Commission an annual report no later than April 1 of each year for the previous calendar year. Each investor-owned electric utility's report shall include the following:

(a) the retail sales of the prior year in megawatt-hours;

(b) the quantity of self-generated renewable energy in megawatt-hours separated by fuel type;

(c) the quantity of renewable energy purchased in megawatt-hours, separated by type of ownership and fuel type;

(d) the quantity and vintage of self-generated renewable energy credits;

(e) the quantity and vintage of renewable energy credits purchased;

(f) the fuel type and ownership of the Florida renewable energy resource associated with each renewable energy credit;

(g) a statement as to whether it was in compliance with the renewable portfolio standard in the previous calendar year; and

(h) the utility's plan for additional generation or procurement to meet the renewable portfolio standard for the current calendar year and the following two years.

(i) copies of any ACP receipt(s) for ACPs made during the Compliance Year.

Specific Authority 350.127(2), 366.05(1), FS. Law Implemented 366.02(2), 366.04(2)(c), (5), (6), 366.041, 366.05(1), 366.81, 366.82(1),(2), 366.91(2), 366.92 FS. History–New XX-XX-08.

II. Florida Renewable Energy Credit Market

17.410 Florida Renewable Energy Credit Market.

(1) ~~Investor-owned electric utilities~~The Commission ~~shall establish and administer~~, either on its own or through contract with an independent third party, ~~subject to Commission approval~~ pursuant to subsection (4), an electronic renewable energy credit market. The renewable energy credit market shall allow for the transparent production, buying, selling, and trading of renewable energy credits used to comply with the renewable portfolio standards of Rule 25-17.400, F.A.C. All records associated with the ~~production of and~~ the buying, selling, or trading of renewable energy credits shall be available to the Commission for audit purposes and shall be available to all market participants for review.

~~(a) Investor-owned electric utilities are encouraged to collectively establish and contract with an independent not-for-profit corporation for the development, administration, and maintenance of a Florida Renewable Energy Credit Market.~~

(b) Municipal electric utilities and rural electric cooperative utilities are encouraged to participate in the Florida Renewable Energy Credit Market.

(c) The administrative costs associated with the Florida Renewable Energy Credit Market shall be collected ~~either~~ through membership dues paid by the investor-owned utilities., ~~certification fees, or administrative fees assessed to a renewable energy credit.~~ Fees shall be fair, equitable, and cost-based and shall be recoverable through the Environmental Cost Recovery Clause.

(2) Each investor-owned electric utility shall comply with the renewable portfolio standards approved by the Commission pursuant to Rule 25-17.400, F.A.C., through the production or purchase of renewable energy credits.

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

(a) An entity that produces renewable energy, as defined in Rule 14.400(2)(b), F.A.C., with the exception of customer-owned renewable less than 2 megawatts. ~~The following entities are eligible to produce renewable energy credits that may~~ shall be considered to be an eligible renewable energy source producing renewable energy credits that shall be counted toward the renewable portfolio standard. ~~:~~

~~1. Investor-owned electric utility Florida-owned renewable energy resources;~~

~~2. Municipal electric utility and rural electric cooperative utility owned Florida renewable energy resources;~~

~~3. Non-utility Florida renewable energy resources providing net capacity and energy under a purchase power agreement to a Florida electric utility;~~

~~4. Non-utility Florida renewable energy resources greater than 2 megawatts providing on-site generation to offset all or a part of the customer's electrical needs.~~

~~5. Non-utility Florida renewable energy resources greater than 2 megawatts providing equivalent solar thermal energy to offset all or a part of the customer's electrical needs;~~

~~6. Customer-owned Florida renewable energy resources, 2 megawatts or less, that have not received incentives from a Commission-approved demand-side conservation program pursuant to the Florida Energy and Efficiency Conservation Act, Sections 366.80-.85 and 403.519, F.S.~~

(b) A renewable energy credit is retained by the owner of the eligible Florida renewable energy resource from which it was derived unless specifically sold or transferred.

(c) A renewable energy credit shall be valid for two years after the date the corresponding megawatt-hour or equivalent solar thermal energy was generated. A renewable energy credit from a customer-owned renewable system less than 2 megawatts shall be valid for two years

after the date the renewable energy credit is certified. However, a renewable energy credit shall be retired after it is used to comply with the Florida or any other state, regional or federal renewable portfolio standard.

(d) Renewable energy credits shall not be used for compliance with the Florida renewable portfolio standard if the renewable energy credit or its associated energy has already been counted toward compliance with any other state or federal renewable portfolio standard.

(e) Renewable energy credits shall not be used for compliance with the Florida renewable portfolio standard if the renewable energy credit results from a Commission-approved demand-side conservation program pursuant to the Florida Energy Efficiency and Conservation Act, Sections 366.80-.85 and 403.519, F.S.

~~(3) Initially, the price of each renewable energy credit shall be capped at the equivalent of $16 per ton of net greenhouse gas emissions (GHG) reduced by Florida renewable energy resources relative to the GHG emissions otherwise emitted by the utility. The price cap shall be reevaluated or phased out upon adoption of a state or federal cap and trade system.~~

(34) Within 90 days from the effective date of this rule, the ~~investor-owned electric utilities shall file for~~ Commission shall institute a ~~approval the~~ structure, governance, and procedures for administering the renewable energy credit market pursuant to Rule 17.410(1), F.A.C.. The ~~compliance~~ market structure, governance, and procedures ~~filing~~ shall, at a minimum, provide provisions for the following:

(a) a mechanism to buy, sell, and trade renewable energy credits generated by utilities and Florida renewable energy resources;

(b) the aggregation of renewable energy credits for customer-owned Florida renewable energy resources;

(c) the certification and verification of renewable energy credits as defined in Rule 25-

17.400(2)(f), F.A.C., including renewable energy credits resulting from Equivalent Solar Thermal Energy as defined in Rule 25-17.400(2)(k), F.A.C.;

(d) an accounting system to verify compliance with the renewable portfolio standard; and

(e) a method to record each transaction instantaneously, and to indicate whether the renewable energy credit is associated with a Class I or Class II renewable energy source as defined in Rule 25-17.400(2)(d) and (e), F.A.C.

Specific Authority 350.127(2), 366.05(1), FS. Law Implemented 366.02(2), 366.04(2)(c), (5), (6), 366.041, 366.05(1), 366.81, 366.82(1),(2), 366.91(2), 366.92 FS. History–New XX-XX-08.

III. Municipal and Rural Electric Cooperative Reporting

25-17.420 Municipal Electric Utility and Rural Electric Cooperative Renewable Energy Reporting

(1) Each municipal electric utility and rural electric cooperative utility shall file with the Commission an annual report no later than April 1 of each year for the previous calendar year. Each utility's report shall include the following:

(a) the retail sales of the prior year in megawatt-hours;

(b) the quantity of self-generated renewable energy in megawatt-hours separated by fuel type;

(c) the quantity of renewable energy purchased in megawatt-hours, separated by type of ownership and fuel type;

(d) the quantity and vintage of self-generated renewable energy credits;

(e) the quantity and vintage of renewable energy credits purchased;

(f) the fuel type and ownership of the Florida renewable energy resource associated with each renewable energy credit;

(g) a statement as to whether the utility has adopted a renewable portfolio standard, or has any plans to conduct a proceeding to establish a renewable portfolio standard in the upcoming year.

Specific Authority 350.127(2), 366.05(1), FS. Law Implemented 366.02(2), 366.04(2)(c), (5), (6), 366.041, 366.05(1), 366.81, 366.82(1),(2), 366.91(2), 366.92 FS. History–New XX-XX-08.

Attachment B
Wheelabrator Response to Staff Questions

RPS Rulemaking
Docket No. 080503-EI
Wheelabrator's Responses to Staff Questions

At the August 26th workshop, Staff raised a number of questions on which they sought the parties' views. Wheelabrator's comments follow.

1. Should bilateral contracts be used in the REC market?

To the extent that Staff used the term "bilateral contract" to mean a contract between the buyer of RECs and the seller of RECs, there should be contract or some written agreement between those parties. However, if by "bilateral contract" Staff means some sort of purchase power agreement (PPA) or other similar agreement, no such agreement should be required. PPA contracts should not be made a requirement for the REC market and an investor-owned utility should be prohibited from requiring such a contract before purchasing RECs. RECs and the sale of power by the REC generator are two separate and distinct issues and one should not be tied to the other.

2. Should there be rewards and/or penalties for compliance?

Wheelabrator has discussed the absolute necessity for a compliance mechanism in its comments. Wheelabrator recommends the use of an ACP mechanism.

3. Should REC payments be recovered through a separate recovery clause?

Wheelabrator has no position on this issue.

4. Should an RFP be required before a utility may self-build a renewable resource?

Absolutely. Before a utility is permitted to self-build, it should be required to issue an RFP for renewable energy.

5. Should a standard offer contract be required in the REC market?

No. See response to number 1.

6. How should any revenue cap be evaluated?

Wheelabrator believes a revenue cap is unnecessary. The ACP takes the place of a cap.

7. Staff requested that the parties include penalty language in their comments.

Wheelabrator has included specific ACP language in its rule mark up.

8. How can the Commission ensure that the best projects are built and that the least cost RECs are purchased?

The best way to ensure this is to have a robust market for RECs. Such a market will encourage developers to provide renewable energy in Florida leading to the best, most cost-effective projects.

9. Are any ratepayer protections need if there is no revenue cap?

As noted above, an ACP eliminates the need for a cap and will protect the ratepayers.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of these comments has been submitted by electronic mail this 5th day of September, 2008 to the following:

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s/Vicki Gordon Kaufman
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