

Section 1. Background and Draft Rule Development Efforts

During the 2008 Regular Session, the Florida Legislature amended Section 366.92, Florida Statutes (F.S.), in House Bill 7135 (HB 7135), Chapter 2008-227, Laws of Florida. The Florida Public Service Commission (FPSC) is required to adopt rules to establish a renewable portfolio standard (RPS), in consultation with the Department of Environmental Protection (DEP) and the Florida Energy and Climate Commission. The RPS rule would require each investor-owned electric utility (IOU) to supply a percentage of retail electricity sales from renewable energy resources located in Florida. The FPSC is required to submit a draft rule to the Legislature by February 1, 2009.

Over the past four years, the FPSC has actively engaged in efforts to further encourage the development of renewable energy in compliance with legislative policy on renewable energy. During 2007, the FPSC conducted numerous public workshops in order to gather information on the appropriate design and implementation of an RPS. Subsequent to the 2008 Legislative Session, the FPSC embarked on an accelerated rule development process with the participation of numerous stakeholders and interested persons. During this process, the FPSC conducted three public workshops in July, August and December, 2008 to discuss issues relevant to the development and implementation of an RPS for Florida that is consistent with the provisions of Section 366.92, F.S.

As part of the rule development process, HB 7135 requires the FPSC to evaluate the current and forecasted availability and cost through 2020 of each renewable energy resource. In order to meet this statutory requirement, in August 2008, the FPSC, in cooperation with the Governor's Energy Office and the Lawrence Berkeley National Laboratory, engaged Navigant Consulting, Inc. (Navigant Consulting) to perform an assessment of renewable energy resources in Florida. Funding for this study was provided through a grant from the U.S. Department of Energy. Navigant Consulting's final report, entitled *Florida Renewable Energy Potential Assessment*, was submitted to the FPSC on December 30, 2008, and provides a source of information and data to validate the final percentages and timing of the RPS. A summary of Navigant Consulting's final report is appended to this document as Appendix C.

At the January 9, 2009 Special Agenda Conference, the FPSC discussed two separate draft RPS strategies: (1) a market-based approach with negotiated contracts between IOUs and renewable energy providers, and (2) a standard offer contract approach.¹ The FPSC also discussed: (1) the magnitude and timing of the RPS standard, (2) the level of the rate cap for the protection of consumers, (3) whether and to what degree solar and wind should be given greater weight in the formulation of the draft RPS rule, (4) the frequency of review of the rule once implemented, and (5) rewards and penalties for the IOUs to encourage compliance. In addition, the FPSC discussed whether to suggest that the Legislature consider expanding the eligible resources in the existing statute to include other "clean energy" options. Resources such as

¹ The two strategies discussed at the Special Agenda Conference are described in the FPSC staff recommendation, included as Appendix A. At the Special Agenda Conference, Commissioner Skop distributed a document that elaborated on the standard offer contract approach. The document was subsequently revised to reflect discussion at the Special Agenda Conference and is included as Appendix B.

nuclear energy and energy savings associated with efficiency improvements and customer conservation efforts are not currently eligible pursuant to the definition of Florida renewable energy resources in Section 366.92, F.S.

Section 2. The Draft Renewable Portfolio Standard Rule

At the January 9, 2009 Special Agenda Conference, the FPSC voted to submit to the Legislature a draft RPS rule featuring a market-based approach to compliance, with an aggressive standard of 20 percent renewable energy by 2020. The draft RPS rule also features ratepayer protections, including a 2 percent rate cap with close oversight by the FPSC of the costs of compliance. This section provides: (1) a summary of the draft RPS rule, (2) the draft RPS rule, and (3) a description of other resources the Legislature may wish to consider including as eligible for compliance with the standard.

A. Summary of the Draft RPS Rule

The FPSC's draft RPS rule balances the legislative intent to protect existing renewable resources, promote the development of new renewable resources, and protect the environment, while minimizing the costs of power for consumers. The rule sets aggressive, mandatory standards for Florida's IOUs that must be met with Florida renewable energy resources. To protect ratepayers from undue rate increases, the rule caps incremental compliance costs at 2 percent of each IOU's annual retail revenues. The rule also provides the necessary proceedings and reporting requirements for the FPSC to closely monitor both the development of the renewable market and its associated costs and requires FPSC review at least once every 3 years. Table 1 on page 6 summarizes the key components of the draft rule and the major provisions of the rule are discussed below:

Renewable Portfolio Standards – The FPSC recommends an aggressive RPS that requires each IOU to achieve 20 percent renewable energy by 2020. This aggressive standard is intended to protect existing renewables, and spur new renewable developers to enter the Florida market by establishing a long-term dedicated market for renewable energy in the state.

RPS Percentage and Timing - Section 25-17.400(3), Florida Administrative Code (F.A.C.), of the draft rule establishes the following standards of the prior year's retail sales for each IOU to be provided by Florida renewable energy resources:

1. 7 percent by January 1, 2013;
2. 12 percent by January 1, 2016;
3. 18 percent by January 1, 2019;
4. 20 percent by January 1, 2021.

Eligible Resources – Only Florida renewable energy resources as defined in Section 366.92(2), F.S., are eligible for compliance with the RPS. The draft rule casts a wide net to include in-state renewable resources of all capacity sizes, which are owned by utilities, non-utility generators, and customers. Small renewable systems (2 megawatts or less) are eligible as long as these systems do not receive monetary incentives through a utility's energy efficiency program pursuant to the Florida Energy Efficiency and Conservation Act (FEECA – Sections 366.80-.82, F.S.).

Compliance Mechanism – The draft rule establishes a compliance mechanism that requires each IOU to produce or purchase sufficient Renewable Energy Credits (RECs) to meet the RPS. A REC is a tradable financial instrument that represents the renewable attributes associated with one megawatt-hour (1,000 kilowatt-hours) of renewable energy. Utilities may comply with the RPS using RECs associated with the energy produced by self-built renewable facilities, or may purchase RECs from other utilities, non-utility renewable generators, or customer-owned renewables. The draft rule establishes a REC market to facilitate both a short-term spot market and long-term negotiated contracts for RECs from all in-state renewable facilities.

Rate Cap - Incremental RPS compliance costs, above the cost which a utility would otherwise pay for capacity or energy, would be limited to a 2 percent rate cap. The rate cap would be based on each IOU's total annual revenue from retail sales of electricity. As an example, a 2 percent cap would represent \$370 million annually, based on 2007 IOU retail revenues. Given the aggressive standards established by the draft rule, the FPSC recognizes that this rate cap must be reviewed over time in light of ongoing economic conditions and the impact on customers. The draft rule provides the flexibility for the FPSC to review, and if appropriate increase or decrease the rate cap in the annual cost recovery proceedings.

Frequency of Review – In order to fully balance the interests of encouraging renewables while protecting ratepayers, the RPS rule contains a process for FPSC review at least every 3 years or as conditions warrant. This process for review will also allow the FPSC to amend the rule in the event that a new provision of state or federal law supplants or conflicts with the rule.

Mandatory Standards or Aspirational Goals – The draft rule establishes mandatory standards to be met by each IOU. These standards will be enforced with penalties, to be paid by the stockholders, of up to 50 basis points on an IOU's authorized return on equity if an IOU does not meet the standards and is not excused from compliance. The rule provides the conditions under which an IOU may be excused for non-compliance, as required by statute. These conditions include insufficient supply of Florida renewable energy resources or prohibitive cost.

Rewards and Penalties - To encourage compliance, the draft rule includes provisions that allow the FPSC to assess penalties to an IOU that does not fully comply with the RPS. The FPSC may assess a penalty, to be paid by stockholders, of up to 50 basis points of an IOU's authorized return on equity. As required by statute, however, the draft rule provides that the FPSC may excuse the IOU from compliance if sufficient renewable energy credits are not available, or if compliance is cost prohibitive. IOUs are encouraged to build renewable facilities due to the opportunity to earn a return on their investment and recover reasonable and prudent costs through a dedicated cost recovery clause.

Encouragement of Solar and Wind – The draft rule includes a carve-out for solar and wind whereby a minimum of 25 percent of the RPS must be provided by these resources. Section 366.92(3)(b)3, F.S., authorizes the FPSC to provide added weight to solar and wind in its draft rule. Providing a carve-out of the RPS for these zero-greenhouse gas emission renewables will meet the legislative intent to improve environmental conditions. In addition, a carve-out for these currently higher-cost resources may encourage their development and put downward pressure on the cost of solar and wind over time. To further encourage solar and wind resources,

1.5 percent of annual IOU revenues are allocated for solar and wind for the incremental costs of complying with the RPS, with the remaining 0.5 percent for all other Florida renewable energy resources, for a total rate cap of 2 percent.

Renewable Request for Proposal Requirements – The draft rule requires each IOU to issue a request for proposals (RFP) for renewable resources every 2 years. The RFP framework would utilize a market-based approach to encourage renewable developers to participate in the Florida market. Also, the renewable RFP will provide the IOU and the FPSC with needed information to evaluate the cost-effectiveness and need for a utility self-build renewable option.

Cost Recovery – Section 25-17.400(7), F.A.C., of the draft rule establishes a dedicated cost recovery clause for reasonable and prudent costs associated with renewables. These costs include the costs associated with: (1) the purchase of RECs, (2) administrative costs of the REC market, (3) IOU-owned Florida renewable facilities, and (4) renewable purchased power contracts. IOUs are required to identify the incremental costs of compliance with the RPS as a separate line item on customer bills.

Florida Renewable Energy Credit Market – Draft Rule 25-17.410, F.A.C., provides for FPSC oversight of the establishment of the REC market. The IOUs would issue an RFP for an independent third-party administrator, select an administrator, and petition the FPSC for approval. Upon approval of the administrator, the IOUs would submit the proposed structure and governance of the REC market for FPSC approval. The draft rule lists the entities eligible to produce RECs, and provides for the use of RECs. Finally, the rule cites the FPSC's dispute resolution processes.

Reporting Requirements for Municipal and Cooperative Electric Utilities – Draft Rule 25-17.420, F.A.C., specifies the annual reporting requirements for the municipal and rural electric cooperative utilities. The information in these reports will facilitate the FPSC's efforts to track municipal and cooperative policies regarding renewable energy and energy efficiency, as well as identify any associated increase in statewide renewable resources in Florida.

Table 1 Components of the FPSC’s Draft RPS Rule	
General Concept	Compliance through RECs. Requires IOUs to generate through self-build renewables, or to purchase sufficient RECs from other utilities or non-utility renewable generators to meet RPS requirements. Establishes REC market to facilitate short-term spot market and long-term negotiated contracts for RECs from all in-state renewable facilities (unless subject to FEECA).
Renewable Portfolio Standard	20% by 2020
RPS Percentage and Timing	7% by 1/1/2013 12% by 1/1/2016 18% by 1/1/2019 20% by 1/1/2021
Rate Cap	Charges to utility customers are initially capped at an amount equal to 2 percent of the utility’s annual retail revenues. The rule provides the FPSC with the flexibility to review and modify the rate cap, if appropriate, annually in the cost recovery proceeding or in a proceeding initiated on its own motion.
Frequency of Review	RPS reviewed at least once every 3 years.
Mandatory Standards or Aspirational Goals	Mandatory, due to the presence of penalties that would be assessed to the utility’s stockholders. However, non-compliance may be excused due to lack of sufficient renewable energy credits or prohibitive cost (i.e., costs over 2 percent rate cap).
Rewards and Penalties	Penalty of up to 50 basis points for unexcused non-compliance to be assessed to the utility’s stockholders. No specified rewards.
Solar and Wind Carve-Out	Carve-out for solar and wind, such that 25 percent of RPS requirements, must be met with these resources. Also, 3/4 of 2 percent rate cap (1.5 percent) funding is allocated to solar and wind resources. The rule provides the FPSC with the flexibility to review and modify the allocation of the rate cap annually, if appropriate.
Renewable Request for Proposals (RFP) Requirements	IOUs are required to issue a renewable RFP every 2 years to determine if a utility’s self-build renewable project is cost-effective.
Cost Recovery	Establishes a dedicated cost recovery clause for all costs associated with renewables. The incremental cost of compliance with the RPS would appear separately on customer bills.
Florida Renewable Energy Credit Market	Provides for FPSC oversight of the establishment of the REC market. Lists the entities eligible to produce RECs and provides for the use of RECs. Cites the FPSC’s dispute resolution processes.
Reporting Requirements for Municipal and Cooperative Electric Utilities	The municipal and rural electric cooperative utilities would annually report to the FPSC information to track utility efforts in renewable energy and energy efficiency.