

RESOLUTION NO. 1-09

A RESOLUTION BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA (U.C.), FURTHER DECLARING THE U.C.'S DIRECTION WITH REGARD TO THE REQUIREMENTS OF THE PUBLIC UTILITIES REGULATORY POLICIES ACT (PURPA); SUPPLEMENTING U.C. RESOLUTION NO. 2-08; RESCINDING ALL RESOLUTIONS, OR PORTIONS THEREOF, IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Utilities Commission, City of New Smyrna Beach, Florida (U.C.), was duly created and validly existing under and by virtue of Chapters 67-1754 and 85-503, Laws of Florida, as the governing body of the utility system of the City of New Smyrna Beach, Florida; and

WHEREAS, the Public Utilities Regulatory Policies Act (PURPA) became law in 1978 and municipal utilities were considered non-regulated utilities and therefore must independently consider adoption of the PURPA standards; and

WHEREAS, the Energy Policy Act of 2005 amended PURPA by adding five new standards, and the Energy Independence and Security Act of 2007 added four additional standards, (additional information regarding these standards contained in U.C. Resolution No. 2-08, Exhibit A); and

WHEREAS, the U.C. previously considered and adopted U.C. Resolution No. 2-08 on July 21, 2008, formally declaring the U.C.'s direction at that time with regard to the above nine standards; and

WHEREAS, the U.C. is still not required to comply with the provisions under PURPA however, the U.C. believes it prudent to publicly consider and subsequently declare our organization's direction regarding the PURPA standards at this time; and

WHEREAS, a fifth non-PURPA standard, "SEC. 374. ADDITIONAL INCENTIVES FOR RECOVERY, USE, AND PREVENTION OF INDUSTRIAL WASTE ENERGY", has been adopted which does not specify a minimum threshold for application, therefore the U.C. must consider this standard in a similar procedural manner; and

WHEREAS, two public hearings have been duly noticed and held on December 15, 2008, and January 26, 2009 for the public consideration of said standards.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1: The U.C. hereby continues to exercise its option of exclusion from the respective PURPA standards.

SECTION 2: The U.C., when appropriate, will enact voluntary measures that will provide benefit for all our customers and our system, i.e. energy conservation and efficiency measures placed into effect by the UC during the last two years. Another measure voluntarily adopted was the Interim Net Metering Rider. (Additional statements in Exhibit A attached to this resolution.)

SECTION 3: If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4: This resolution is supplemental to U.C. Resolution No. 2-08.

SECTION 5: All Resolutions, or portions thereof, in conflict herewith are hereby rescinded and superseded.

SECTION 6: This resolution was approved by the Utilities Commission during a Regular U.C. Meeting held January 26, 2009, and took effect immediately upon passage.

THE ABOVE AND FOREGOING RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held on January 26, 2009, by Commissioner Hall, who moved its adoption, which motion was seconded by Commissioner Reynolds, and upon roll call vote of the Commission was as follows:

CHAIRMAN	<u>Walter Allen III</u>	<u>yes</u>
VICE CHAIRMAN	<u>William E. Hall</u>	<u>yes</u>
SECY.-TREAS.	<u>Walter Reynolds</u>	<u>yes</u>
ASST. SECY.-TREAS.	<u>Oscar Zeller</u>	<u>ABSENT</u>
COMMISSIONER	<u>Francis A. Moran</u>	<u>yes</u>

APPROVED:
Walter Allen III
CHAIRMAN

ATTEST:
Walter Reynolds
SECRETARY-TREASURER

S E A L

APPROVED AS TO FORM AND CORRECTNESS:

Walter Reynolds
Utilities Commission Attorney

EXHIBIT A – UC Resolution No. 1-09

The Utilities Commission, City of New Smyrna Beach, Florida, previously detailed and considered in July 2008 nine standards which amended the Public Utility Regulatory Policies Act of 1978 (PURPA).

The relevant standards were five new standards under The Energy Policy Act of 2005 and the four new standards under the Energy Independence and Security Act of 2007 (detailed in U.C. Resolution No. 2-08, Exhibit A).

The Energy Independence and Security Act of 2007 additionally contained a standard for states and non-regulated utilities to consider that is not an amendment to PURPA. While some of the provisions for consideration are similar to the PURPA standards, this standard has distinctive requirements written as part of the standard's statutory language and does not specify a minimum threshold for application. This fifth non-PURPA standard has been adopted as: "SEC. 374. ADDITIONAL INCENTIVES FOR RECOVERY, USE, AND PREVENTION OF INDUSTRIAL WASTE ENERGY". The focus of this standard is to encourage "waste energy recovery" projects that generate "net excess power." There are very few businesses classified as industrial in the U.C.'s service territory. There are no known entities which produce waste heat byproducts from their processes or any that have continuous waste heat which is able to be processed into a beneficial use.

PURPA requires each jurisdictional utility to "consider" the standards and make a "determination" on whether it is appropriate to implement each standard within certain time deadlines and taking into consideration PURPA's purposes, which include: (1) conservation of energy supplied by electric utilities; (2) optimal efficiency of electric utility facilities and resources; and (3) equitable rates for electric consumers. The utility's consideration "shall be made after public notice and hearing," and the "determination" must be in writing and made available to the public. Adoption of each standard is entirely discretionary.

Non-regulated utility requirements contained in PURPA apply only to utilities with total annual retail sales greater than 500 million kWh. Based on the Utilities Commission total retail sales, we are not required to comply with the stated provisions under PURPA.

Based on our assessment of PURPA rules, supported by advice from FMPA/FMEA legal counsel, the Utilities Commission is not required to consider these rules for implementation. Also, based on our relative size, potential impacts to our electric system, and requirements under Resolution 28-78 and the UC's Charter, implementation of these standards are not feasible at this time.

However, as previously discussed during Regular U.C. Meetings in June 2007, and in March and April, 2008, with a formal resolution being adopted by the U.C. in July 2008, regarding PURPA applicability requirements, it is still believed that our customers would likely subsidize those few benefiting from some measures while other expenditures would not likely provide a priority benefit for our system at this time.

Consequently, staff recommends that the U.C. exercise its option of exclusion from the respective PURPA standards and also recommends that voluntary measures, when appropriate, be taken to provide benefit for all our customers and our system. Such has been the case with energy conservation and efficiency measures placed into effect by the UC during the last two years and with the adoption of an Interim Net Metering Rider.

Staff also recommends non-implementation of the fifth non-PURPA standard (“SEC. 374. ADDITIONAL INCENTIVES FOR RECOVERY, USE, AND PREVENTION OF INDUSTRIAL WASTE ENERGY”), unless these measures could be accomplished through our proposed and anticipated generation projects which would then provide benefit for all our customers and our system.