

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | | |
|---------------------------------------|---|-------------|-----------|
| In re: Proceedings to Implement Rules |) | DOCKET NO.: | 881005-EG |
| on Capacity and Energy Payments to |) | ORDER NO.: | 21053 |
| Solid Waste Facilities. |) | ISSUED: | 4-14-89 |

The following Commissioners participated in the disposition of this matter:

- MICHAEL MCK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- JOHN T. HERNDON

NOTICE OF ADOPTION OF RULE AMENDMENT AND FINAL ORDER

NOTICE is hereby given that the Commission, pursuant to Section 120.54, Florida Statutes, has adopted the amendments to Rule 25-17.091 relating to capacity and energy payments to solid waste facilities with changes.

The rule amendment was filed with the Secretary of State on April 6, 1989, and will be effective on April 26, 1989. A copy of the relevant portions of the certification filed with the Secretary of State is attached to this Notice.

BY THE COMMISSION:

On March 21, 1989, the Commission took final action on revisions to Rule 25-17.091, Florida Administrative Code, in order to implement the 1988 Solid Waste Act (Chapter 88-130).

The following parties participated at some point in the docket: Tampa Electric Company (TECO), Lake County, Coalition of Local Governments, Ogden Martin Systems, Inc., Florida Power and Light Company (FPL), Florida League of Conservation Voters, Inform, Sierra Club, City of Tampa (City), Commission technical staff, Pasco County, Pinellas County, Wheelabrator Environmental Systems, Inc., Metropolitan Dade County, and Gulf Power Company.

A rulemaking hearing was held December 12, 1988. The Commission voted on March 21, 1989, to take final agency action on the rules.

In addition, the Commission voted that in the case of the agreement between the City and TECO for the capacity and energy payments, the City should have a one-time option to renegotiate the contract. Such renegotiation should be based on the 1992 vintage unit but apply current cost estimates. The agreement between the City and TECO could not be adequately covered in the rules due to the unique situation that the agreement was not based on a Commission-designated avoided unit. All of the other contracts in existence for the payment of utilities for the energy from solid waste facilities do have a provision regarding such unit. The "general applicability" of the revised Rule 17.091, Florida Administrative Code, covers these other contracts.

Additionally, the Commission voted on March 21, 1989, that FPC, FPL, and TECO be required to file amended COG-2 tariffs for the purchase of capacity and energy from qualifying facilities which incorporate the proposed changes.

IT IS THEREFORE,

ORDERED by the Florida Public Service Commission, that the City of Tampa has a one-time option to renegotiate its contract with Tampa Electric Company applying a 1992 vintage coal unit and


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the most recent Commission-approved cost estimates of Rule 25-17.083(7), Florida Administrative Code, to determine the utility's value of avoided capacity over the remaining term of the contract. It is further

ORDERED that Florida Power Corporation, Florida Power and Light Company, and Tampa Electric Company file by April 22, 1989, amended COG-2 tariffs for the purchase of capacity and energy from qualifying facilities which incorporate the proposed changes.

By ORDER of the Florida Public Service Commission, this 14th day of APRIL, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

(1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

(2) There is no administrative determination under section 120.54(4), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

(a) And are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

(c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

(d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(e) Are filed within 21 days after the date the transcript was received by this agency.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

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| <u>Rule No.</u> | <u>Specific Rulemaking Authority</u> | <u>Law Being Implemented, Interpreted or Made Specific</u> |
|-----------------|--|--|
| 25-17.091 | 350.127(2), F.S. 377.709(5), F.S. | 366.05(90), F.S. 366.055(3), F.S. 377.709, F.S. |

Under the provision of paragraph 120.54(12)(a), F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
 (month) (day) (year)

 Steve Tribble

 Director, Division of Records & Reporting
 Title

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 Number of Pages Certified

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25-17.091 Governmental Solid Waste Energy and Capacity
Advance-Funding-of-Governmentally-Owned-Small-Power-Producing
Solid-Waste-Facilities.

(1) Definitions and Applicability:

(a) "Solid Waste Facility" means a facility owned or operated
by, or on behalf of, local government, the purpose of which is to
dispose of solid waste, as that term is defined in section
403.703(13), Fla. Stat. (1988), and to generate electricity.

(b) A facility is owned by or operated on behalf of a local
government if the power purchase agreement is between the local
government and the electric utility.

(c) A solid waste facility shall include a facility which is
not owned or operated by a local government but is operated on its
behalf. When the power purchase agreement is between a
non-governmental entity and an electric utility, the facility is
operated by a private entity on behalf of a local government if:

1. One or more local governments have entered into a
long-term agreement with the private entity for the disposal of
solid waste for which the local governments are responsible and
that agreement has a term at least as long as the term of the
contract for the purchase of energy and capacity from the
facility; and

2. The Commission determines there is no undue risk imposed
on the electric ratepayers of the purchasing utility, based on:

a. The local government's acceptance of responsibility for
the private entity's performance of the power purchase contract, or

b. Such other factors as the Commission deems appropriate,
including, without limitation, the issuance of bonds by the local
government to finance all, or a substantial portion, of the costs
of the facility; the reliability of the solid waste technology;
and the financial capability of the private owner and operator.

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3 3. The requirements of subparagraph 2 shall be satisfied if a
4 local government described in subparagraph 1 enters into an
5 agreement with the purchasing utility providing that in the event
6 of a default by the private entity under the power purchase
7 contract, the local government shall perform the private entity's
8 obligations, or cause them to be performed, for the remaining term
9 of the contract, and shall not seek to renegotiate the power
10 purchase contract.

11 (d) This rule shall apply to all contracts for the purchase
12 of energy or capacity from solid waste facilities entered into, or
13 renegotiated as provided in subsection (5), after October 1, 1988.

14 ~~{1}--The Commission shall apply the principles contained in~~
15 ~~Rule 25-17.080---26-17.089, Florida Administrative Code, in the~~
16 ~~evaluation of contracts submitted pursuant to s. 377.709(3)(b),~~
17 ~~F.S.~~

18 (2) Except as provided in subsections (3) - (6) of this rule,
19 the provisions of Rules 25-17.080 - 25-17.089, Florida
20 Administrative Code, are applicable to contracts for the purchase
21 of energy and capacity from a solid waste facility.

22 (3) In addition to the requirements of Rule 25-17.083,
23 Florida Administrative Code, each utility's standard offer for
24 purchase of energy and capacity from a solid waste facility shall
25 include the following:

26 (a) Use of a constant risk multiplier of 1.0 in lieu of the
27 constant risk multiplier provided in Rule 25-17.083.

28 (b) At the election of the solid waste facility, allow for
29 early payment of the operation and maintenance components of the
30 capacity payments, up to a Commission-designated number of years
31 before the in-service date of the avoided units(s), calculated in
accordance with Rule 25-17.083(3), F.A.C.; and

(c) At the election of the solid waste facility allow for

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either:

- 1. levelized capital payments calculated in accordance with subsection (4), or
- 2. early levelized capital payments, up to a Commission-designated number of years before the in-service date of the avoided unit, calculated in accordance with subsection (4).

(4) Levelized capital payments shall be calculated as follows:

$$P_L = \frac{F \times r}{12 \times (1+r)^{-t}}$$

Where: P_L = the monthly levelized capital portion of the capacity payment, starting up to a Commission-designated number of years before the in-service date of the avoided unit(s);

F = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of capacity payments which would have been made had the capacity payments not been levelized;

r = the annual discount rate, defined as the utility's incremental after tax cost of capital; and

t = the term, in years, of the contract for the purchase of governmental solid waste capacity.

(5) Any solid waste facility which has an existing firm energy and capacity contract in effect before October 1, 1988, shall have a one-time option to renegotiate that contract to incorporate any or all of the provisions of Subsection (2), (3), (4), and (6) into their contract. This renegotiation shall be based on the unit that the contract was designed to avoid but applying the most recent Commission-approved cost estimates of

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3 Rule 25-17.083(7), Florida Administrative Code, for the same unit
4 type and in-service year to determine the utility's value of
5 avoided capacity over the remaining term of the contract.

6 (6) Because section 377.709(4), Fla. Stat., requires the
7 local government to refund early capacity payments should a solid
8 waste facility be abandoned, closed down or rendered illegal, a
9 utility may not require a surety or equivalent assurance of
10 repayment as required in Rule 25-17.083(3), Florida Administrative
11 Code. However, a solid waste facility may provide such surety
12 bond or equivalent assurance.

13 (7) ~~(2)~~ Nothing in this rule shall preclude a solid waste
14 facility from electing advance ~~Advance~~ capacity payments
15 authorized pursuant to section 377.709(3)(b), F.S., which advanced
16 capacity payments shall be in lieu of firm capacity payments
17 otherwise authorized pursuant to this rule and Rule 25-17.083,
18 F.A.C. The provisions of subsection (6) are applicable to solid
19 waste facilities electing advanced capacity payments. ~~and~~
20 ~~shall be secured by a surety bond or equivalent assurance of~~
21 ~~repayment should the local government be unable to meet the terms~~
22 ~~of the contract.~~

23 Specific Authority: 350.127(2), 377.709(5), F.S.

24 Law Implemented: 366.05(9), 366.055(3), 377.709, F.S.

25 History: New 8/8/85, formerly 25-17.91, Amended _____.

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SUMMARY OF RULE

The proposed rule implements the requirement in the 1988 Solid Waste Management Act which mandates that the Commission promulgate rules relating to the purchase of capacity or energy by electric utilities from solid waste management facilities. "Solid waste facility" is defined statutorily as a facility owned or operated by, or on behalf of, a local government, for the purpose of disposing of solid waste by any process that produces heat and incorporates, as a part of the facility, the means of converting heat or electrical energy in amounts greater than actually required for the operation of the facility. The proposed rule, pursuant to the statute, is intended to encourage the development of local government solid waste facilities.

The proposed rule directs utilities to incorporate the following provisions, which will only be available for governmental solid waste facilities, into their standard offer contract for the purchase of firm capacity and energy:

1. The risk multiplier normally used when determining capacity payments to qualifying facilities is eliminated when determining capacity payments to governmental solid waste facilities;
2. Local governments will not be required to produce a surety bond;
3. Local governments will be entitled to early operation and maintenance payments;
4. Local governments will be entitled to receive levelized capital payments or early levelized capital payments;
5. Local government solid waste facilities with existing contracts for the purchase of firm energy or capacity shall have a one-time option to renegotiate that contract to incorporate the provisions of the rule into the contract. The renegotiation shall be based on the vintage and type of unit that the contract was

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designed to avoid but applying the Commission's most recent approved cost estimates of Rule 25-17.083(7).

SUMMARY OF HEARINGS ON THE RULE

A rulemaking hearing was held December 12, 1988, to obtain comments from interested persons. The primary issues attracting attention and debate are:

1. The legislative meaning and the parameters of a facility owned or operated "on behalf of a local government;"
2. The question of whether renegotiation of an existing contract should be negotiated by using the avoided unit at the time of the original contract or at the time of renegotiation.

The following parties participated at some point in the docket: Tampa Electric Company (TECO), Lake County, Coalition of Local Governments, Ogden Martin Systems, Inc., Florida Power and Light Company (FPL), Florida League of Conservation Voters, Inform, Sierra Club, City of Tampa (City), Commission technical staff, Pasco County, Pinellas County, Wheelabrator Environmental Systems, Inc., Metropolitan Dade County, and Gulf Power Company. Thus, the groups consisted of utilities, cogenerators, local governments, private solid waste companies, and environmentalists.

At the hearing, technical staff expressed concern about the reliability of private facilities when a local government was not involved and sought from the participants proposed language on the issue. Ogden Martin expressed some concern with "the approach that would have the County completely backstop all of the obligations of the private owner under a power contract."

The City of Tampa discussed the unique situation of the City's agreement with TECO which is not based on a Commission-designated avoided unit. They recommended that parties renegotiate based on the avoided unit in their existing contract. In order to address the City's unique situation, the City recommended the addition of the following language to the rule:

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If a solid waste facility has entered into a contract prior to May 1, 1984, it shall be entitled to renegotiate on the basis of the avoided unit costs and parameters designated by the Commission in Order No. 13247, Docket No. 830377-EU, issued May 1, 1984.

This would essentially apply the 1992 avoided unit to the City's agreement.

At the hearing, TECO said the law only encourages renegotiation. TECO recommended deleting any reference in the rule to specific provisions to be renegotiated "and let the statute speak for itself."

Wheelabrator stated its view that the "mere existence of a service contract with a municipality to dispose of its municipal solid waste would serve to satisfy the condition that the plant is operated on behalf of that local government."

Sierra Club discussed environmental concerns regarding solid waste facilities and recommended not eliminating the risk factor.

Based on input at the hearing and on post-hearing comments, Staff published a proposed final version of Alternatives A and B on January 12, 1989. Both versions added clarifying language drafted by Lake County counsel as to what facilities qualify as local government facilities. In addition, Proposed Version A provided for renegotiation of existing contracts at the avoided unit in effect at the time of renegotiation. Version B provided for renegotiation of contracts based on the avoided unit at the time of the original contract. Additional comments were received. Both Pinellas and Pasco Counties, who are represented by the same counsel, criticized the proposed rules for limitations on the private facilities entitled to the Act's benefits as "burdensome and unjustified." In response to concerns raised by Pinellas and Pasco Counties, Staff recommended adding some language to the section regarding the fact that "a facility is owned by or operated on behalf of a local government if the power

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purchase agreement is between the local government and the electric utility." Counsel for the counties stated that the modification takes care of the concerns.

The City of Tampa filed comments regarding the impropriety of applying the currently-designated avoided unit in renegotiation.

The City states:

The Legislature intended that all solid waste facilities be able to receive the maximum incentives available under avoided cost. By imposing a lower-value avoided unit as a quid pro quo to elimination of the risk-related discount, the rule simply trades one reduced incentive for another -- contrary to the Legislature's will.

As an alternative to the City's previously-recommended rule language, the City recommended an addition that would incorporate the 1992 avoided unit(s) "if the contract was entered into prior to March 27, 1987, and based on the Commission-designated 1995 avoided unit if the contract was entered into after that date." A further alternative, said the City, would be for the Commission to adopt subsection (5) as shown in Proposed Final Version B but include a specifically-designed interpretive statement in its Notice of Adoption, or other official notice issued contemporaneously with the adoption of the amendment, clearly articulating the fact that the rule is intended to encompass situations where a contract preceded the Commission's official designation of an avoided unit and that such contracts would be renegotiated based on the 1992 avoided unit.

In its comments, TECO pointed out that the Legislature did not require renegotiation; it only encouraged it. TECO recommended rejecting Version B as inconsistent with the statutory language "(s)uch exemptions are intended to foster the development of solid waste management facilities" without imposing undue risk or cost to electric customers."

FPL requested that the rule be modified so that it would "not apply when the local government which is receiving the benefit of

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the solid waste facility is served by such government's publicly-owned electric utility system."

Wheelabrator Environmental Systems, Inc. urged the Commission to strike the reference to "the issuance of bonds by the local government to finance all, or a substantial portion, of the costs of the facility" as one of the criteria regarding projects on behalf of a local government. They argued that "in projects that our company has financed without local government bonds, our obligations to the purchasing utility and its ratepayers are at least as strong and under some circumstances stronger than those where the municipality or county has the legal obligation for the delivery of powers."

Electric and Gas technical staff developed a Proposed Version C in response to the comments. Certain concepts of Versions A and B have been melded together to form Version C. As in Version B, renegotiation is based on the type and vintage of the unit in the original contract; as in Version A, the concepts of the most recently designated cost parameters are used in the renegotiation.

At the final public hearing on March 21, 1989, the Commissioners voted to add the language which clarifies what facilities qualify as "owned or operated by or on behalf of local government." Also, they voted to follow the staff proposed version which applies renegotiation of existing units based on the avoided unit the contract was designed to avoid but applying the Commission's most recent approved cost estimates.

In summary, the initial rulemaking hearing was held December 12, 1988. After taking into account the comments at that hearing, the post-hearing filings and comments on Staff's Proposed Final Version, Staff presented three proposed versions of the rule to the Commission. The rule went to the agenda conference for public hearing, was debated, and then deferred. On March 21, a final public hearing was held on the rule and a final agency action was taken.

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FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

This proposed revision is intended to implement the 1988 Solid Waste Management Act (Chapter 88-130). It would provide measures to encourage the development of local government solid waste facilities, by adding provisions in the standard offer contracts between solid waste facilities and utilities.