

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Lee County, Florida)
for a Declaratory Statement Concerning)
the Conservation Status of Electric)
Power and Energy Produced from the)
Lee County Resource Recovery Facility)

Docket No. 970898-EQ
Filed: August 22, 1997

PETITION FOR INTERVENTION OR HEARING OF
LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC.

Legal Environmental Assistance Foundation, Inc. (LEAF),
pursuant to Rules 25-22.036 & 22.039, Florida Administrative Code
(FAC), petitions to intervene or for a hearing in the above-
captioned docket and states:

1. LEAF is located at 1115 North Gadsden Street, Tallahassee, Florida, 32303.
2. Persons to be served with copies of documents in this docket are:

Gail Kamaras/Debra Swim
Legal Environmental Assistance Fdn.
1115 N. Gadsden Street
Tallahassee, FL 32303

3. LEAF is a public interest advocacy organization with a substantial interest in protection of public health and the environment.

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LEAF has a substantial interest in the Commission's determination of the matter presented by the Petition for Declaratory Statement of Lee County. A substantial number of LEAF's members use and enjoy the natural resources whose quality is placed at risk by electric generation facilities, including that of Petitioner. LEAF and its members have a substantial and longstanding interest in the full and appropriate interpretation

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and implementation of the Commission's energy conservation goals. A substantial number of LEAF's members are customers of Florida utilities who benefit from utility energy conservation programs.

5. LEAF alleges that the follow material issues of fact are in dispute in this proceeding:

a. Whether the relevant municipal solid waste incinerator/small power producer is a supply-side resource as opposed to a demand-side resource as contemplated pursuant to sections 25-17.001 and 17.0021, FAC.

b. Whether the alleged status of the material combusted in Lee County's facility as a renewable resource is relevant to consideration of the matter.

c. Whether the combustion of material in Petitioner's incinerator contributes significantly to achieving state energy policy goals promoting conservation of energy and discouraging waste.

d. Whether the Commission can be asked for a Declaratory Statement involving interpretation of a statute not within its express jurisdiction (377.706, Florida Statutes [F.S.]).

LEAF reserves the right to raise or dispute any issues of material fact as come to be known to it during the course of this proceeding.

6. LEAF alleges as a concise statement of ultimate facts that Lee County is requesting a statment that the electric capacity and energy it produces is an energy conservation measure that may be counted toward meeting utility conservation goals. LEAF contends that the petition fails to contain affirmative showings:

- a. That the facility is a demand-side resource rather than a supply-side one for which preferential treatment as a small power producer is already provided for in statute;
- b. That the statement it seeks would be consistent with the letter or spirit of the Florida Energy Efficiency and Conservation Act or the Commission's implementing energy conservation goal rule;
- c. That the alleged status of the facility or its raw materials as renewable resources is relevant; and
- d. That the Commission is authorized to interpret Chapter 377, F.S.

7. The following statutes and rules entitle LEAF to relief: Chapters 120, 366 and 403 F.S. and Rules 25-17 and 25-22 FAC. LEAF reserves the right to rely on additional legal authority.

WHEREFORE, LEAF respectfully requests to be allowed to intervene as a party to this proceeding and/or, in the alternative, to be granted a hearing.

Respectfully submitted,

Gail Kamaras
Gail Kamaras
Debra Swim
Legal Environmental Assistance
Foundation, Inc.
1115 N. Gadsden Street
Tallahassee, FL 32303
(850) 681-2591

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MEMORANDUM IN SUPPORT OF
LEAF'S PETITION

Petitioner, Lee County, seeks to have the electricity generated by its solid waste incinerator treated as a conservation measure for purposes of utilities meeting conservation goals set pursuant to 366.82, Florida Statutes (Florida Energy Efficiency and Conservation Act or FEECA) and Chapter 25-17, Florida Administrative Code. LEAF believes that such treatment would directly conflict with the purposes of FEECA and implementation of Florida Public Service Commission (PSC)-set goals based on DSM potential; would confer on electric generation by incinerators unwarranted duplicate treatment as both a supply and demand side resource; would set an inappropriate precedent for other cogenerators and small power producers to seek similar treatment; and would otherwise stand the Commission's conservation goal concept on its head.

Under state and federal law, the electricity Lee County's incinerator generates is a supply-side resource benefiting from entitlement to capacity and/or energy payments from utilities. The incinerator receives a special preference as a small power producer-type Qualifying Facility and may take advantage of standard contract offers by electric utilities. 366.051 F.S.

While receiving the benefits afforded to supply-side resources, Petitioner also seeks to be declared a conservation measure which, pursuant to FEECA and the Commission's numeric conservation goals rule, is reserved for demand-side resources. The notions of conserving energy use and reducing peak demand both contemplate reductions in the use of supply-side resources, not substitution of alternative types of supply: in energy conservation, the need for baseload supplies is reduced by reducing energy consumption; in demand reduction, the need for peaking supplies is reduced by reducing consumption at peak times (which may be shifted to off-peak times).

The statutes cited by Petitioner do not lead to the conclusion that its generation should properly be treated as a conservation measure. Section 366.709 F.S. relates to the funding by electric utilities of local government solid waste facilities that generate electricity. The legislative intent language recognizes combustion of refuse as a supplement to the electricity supply, thereby representing an effective supply-side efficiency or conservation effort. This is not the same as constituting a demand-side conservation measure for purposes of a different chapter of Florida statute, 366.82 F.S.. The references to solid waste facilities in section 377.709 F.S. are replete with references to the generation aspects of this source and deals explicitly with capacity and energy payments by utilities. If Lee County can collect capacity and energy payments and at the same time be compensated by utilities for providing goal-accountable conservation, it would be

double-dipping. Demand-side conservation suppliers (eg., residential customers) are not now eligible for capacity and energy payments. To follow Petitioner's logic, any utility customer that installed a conservation measure would be due capacity and/or energy payments from its utility. If Petitioner's supply is eligible as a conservation measure, then it should have to give up its capacity and energy payment benefits as a supply-side resource. Either that or customers installing conservation measures should be eligible to receive capacity and energy payments from utilities.

Petitioner also cites the Commission's conservation goals rule, sections 25-17.001 and 17.0021 as supporting its position. We believe those provisions support the opposite conclusion. Section 25-17.001 is the section on general information that reiterates the statutory goals of increasing efficiency and reducing peak demand. Subdivision (5) states:

In addition to specific demand-side goals, general goals and methods for increasing the overall effectiveness of the bulk power system are broadly stated since these methods are an ongoing practice such as...aggressively integrating nontraditional sources of power generation...including small power production.

This subdivision clearly distinguishes between the specific numeric demand-side goals and other, general goals for utility efficiency efforts (such as the Generation Performance Incentive Factor). Subdivision (6) also states that the goals "represent a starting point for establishing DSM programs for all electric utilities," again distinguishing between demand-side and other ongoing supply-side programs.

Section 25-17.0021 (1), goals for electric utilities states that:

The Commission shall establish numerical goals...based on an estimate of the total cost effective kW and kWh savings reasonably achievable through DSM in each utility's service area.

No part of these rule provisions support the use of small power as meeting the statutory purpose of conserving energy or reducing demand on a kW or kWh basis or as comprising a DSM program. In fact, Chapter 25-17, F.A.C. (labelled "conservation"), is divided into three parts: Part I is conservation goals and related matters; Part III deals separately with utility obligations for cogeneration and small power production. Small power production by Petitioner, like efficient operation of power plants generally, may constitute a conservation "effort", but is not an energy conservation measure for numeric utility goal purposes.

Other statutes Lee County cites to support its petition also do not support its conclusion that its generation should properly be treated as a demand-side conservation measure. Section 366.051 F.S. deals with cogeneration and small power production. The statute recognizes that electricity produced by such suppliers has a public benefit and requires that local utilities purchase such power; the producer is also given the option to sell its supplies to other utilities in the state.

Section 366.81 F.S., (not cited by Petitioner) constitutes the legislative findings and intent of FEECA. It cites reducing and controlling growth rates of electric consumption and peak demand -- Lee County's facility does neither of these things, it simply provides an alternative power supply to meet energy demands. The findings also direct the Commission to adopt goals and approve

plans for the conservation of electric energy and state that the Legislature intended that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration and load-control systems be encouraged. There is no mention of municipal solid waste facilities.

Section 366.82 (2) requires the Commission to adopt goals for increasing the efficiency of energy consumption and for the development of cogeneration. The purpose of the PSC goals rule is to set specific conservation goals, not specific cogeneration or small power production rules. Even if FEECA contemplates cogeneration or small power production goals, the PSC Chapter 25-17 rules set on general supply-side goals because, as noted above, these are an "ongoing practice" of generators. This shows the legislative recognition that producing electricity (eg., through cogeneration) is different from energy conservation. Subdivision (3) of that section states that utility conservation programs may include variations in rate design, load control, cogeneration, residential energy conservation or any other measure within the Commission's jurisdiction. Conservation is one measure; cogeneration (or small power production) is separate, just as rate design is. If supply by cogenerators or small power producers is to be considered as conservation in the same manner as DSM, then a potentials study and other preliminary efforts similar to those undertaken to set DSM goals must be undertaken and either 1) separate goals set; or 2) existing utility goals increased based on the resulting increased "conservation" potential.

No part of FEECA or the Commission's conservation goals contemplates the use of a small power producer's electric generation as meeting the intent of the statute or the Commission's program for conserving energy and reducing peak demand as a DSM program for numeric utility goal purposes. Petitioner's proposal is a fantastic warping of the concept of DSM which underlies the conservation goals; it is also an attempt to double dip the benefits of its status as a small power producer that would give it an unfair advantage against other producers or that would encourage them to seek the same status, thereby corrupting the entire conservation goals scheme.

Respectfully submitted by
Gail Kamaras/Debra Swim
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Legal Environmental Assistance Foundation, Inc. (LEAF) Petition for Intervention and Memorandum in Support have been furnished by hand delivery to Mary Ann Helton, Esq., Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL, 32301 and by U.S. Mail to the following parties of record this 22nd day of August 1997.

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