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March 11, 2002

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COMMISSION
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Ms. Blanca S. Bayo, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Petition of Lee County, Miami-Dade County and Montenay-Dade, Ltd., to Initiate Rulemaking to Amend Rule 25-17.0832, F.A.C., Regarding Firm Capacity and Energy Payments to Qualifying Facilities; FPSC Docket No. 020166-EQ

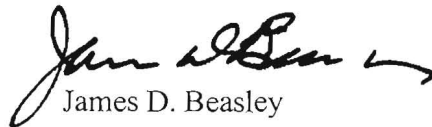
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response to Petition to Initiate Rulemaking.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

JDB/pp
Enclosures

cc: All Parties of Record (w/enc.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Lee County, Miami-Dade)
County and Montenay-Dade, Ltd., to Initiate) DOCKET NO. 020166-EQ
Rulemaking to Amend Rule 25-17.0832, F.A.C.,) FILED: March 11, 2002
Regarding Firm Capacity and Energy Payments)
to Qualifying Facilities.)
_____)

**TAMPA ELECTRIC COMPANY’S RESPONSE
TO PETITION TO INITIATE RULEMAKING**

Tampa Electric Company (“Tampa Electric” or “the company”) responds as follows to the Petition to Initiate Rulemaking filed in this proceeding on behalf of Lee County, Miami-Dade County and Montenay-Dade, Ltd. (“Petitioners”):

1. The name, address and telephone number of Tampa Electric are as follows:

Tampa Electric Company
Post Office Box 111
Tampa, FL 33601-0111
(813) 228-4111

2. All notices, orders, pleadings, correspondence and other legal papers to be served on Tampa Electric should be served on:

Angela Llewellyn, Administrator
Regulatory Coordination
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601-0111

Lee L. Willis
James D. Beasley
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302

3. Tampa Electric is a Commission regulated investor-owned electric utility providing service to customers in Hillsborough and portions of Polk, Pinellas and Pasco Counties in Florida. As such, Tampa Electric is an electric utility subject to the requirements of Rule 25.17.0832, Florida Administrative Code.

4. The petition states that each of the Petitioners is the owner or operator of a solid waste facility that is eligible to execute a standard offer contract for the sale of firm energy and capacity under the Commission's existing Rule 25-17.0832, Florida Administrative Code.

5. Each Petitioner presumably had an opportunity to participate in the proceedings that gave rise to the existing provisions of Rule 25-17.0832 governing standard offer contracts.

6. In Docket No. 001574-EQ the Commission has proposed certain amendments to Rule 25-17.0832, Florida Administrative Code, designed to reduce the risk that ratepayers would be tied to a long term cogeneration contract that is priced above the utility's avoided cost because of the uncertainties in the wholesale generation market. The principal change proposed in that docket is to change the minimum term of standard offer contracts from ten years to five years. In recommending this change, the Staff has noted a high degree of uncertainty currently existing in the electric market because of recent regulatory changes, potential future regulatory changes, fuel price volatility and technological change. The Staff has stated that the five year minimum term balances the interests of the ratepayers without unduly discouraging the construction of small qualifying facilities.¹

7. As the Petition to Initiate Rulemaking notes, the Petitioners have participated in Docket No. 001574-EQ through written comments, presentations to the Commission at Agenda Conferences or both.

8. In their comments to the Commission, the owner/operators of solid waste facilities have characterized the existing rule governing standard offer contracts as a rule that

¹ Staff Recommendation dated August 23, 2001 in Docket No. 001574-EQ at page 3.

results “in a fair implementation of the requirements of federal and state laws and the encouragement of the development of qualifying facilities.”²

9. The owner operators of solid waste facilities have taken no issue with the existing standard offer contract rule in Docket No. 001574-EQ but, instead, have characterized it as being in compliance with state and federal law. It is only the proposed amendments in Docket No. 001574-EQ that Petitioners have taken issue with. Indeed, counsel for Petitioners stated during the course of the Commission’s September 4, 2001 Agenda Conference discussion of the proposed amendments in Docket No. 001574-EQ that his clients would be very happy with no change to the existing Rule 25-17.0832, Florida Administrative Code.³

10. While Petitioners obviously disagree with the rule changes proposed in Docket No. 001574-EQ, they are on record in that docket as having agreed that Rule 25-17.0832 does not need Petitioners’ recently contrived amendments in order to properly implement state and federal law as it relates to qualifying facilities.

11. Having admitted that their proposed amendments are unnecessary, Petitioners appear to have petitioned for them anyway in hopes of leveraging Petitioners’ opposition to the Commission’s proposed change to a five year minimum standard offer contract term.

12. If, as Petitioners have admitted, their recently proposed rule amendments are not needed with a ten year minimum standard offer contract term, there is nothing to support a conclusion that they are needed with a five year minimum term.

13. Each of Petitioners’ recently proposed amendments appears to be designed to shift risk to ratepayers and to generate a higher level of compensation for QFs. As such, the

² Testimony of Mr. Frank Seidman filed March 1, 2002 in Docket No. 001574-EQ at page 14, line 21 through page 16, line 2.

³ Transcript of Agenda Conference, Item No. 4, dated September 4, 2001 at page 22.

Petitioners' proposed amendments would run counter to the Commissioner's expressed goal of avoiding having consumers pay higher rates for QF supplied energy and capacity than might otherwise be available in the market.

14. Based on the foregoing, the Commission should issue an order pursuant to Section 120.54(7), Florida Statutes, denying the Petition based on Petitioners own acknowledgment that the amendments Petitioners now propose are not needed in order for Commission Rule 25-17.0832, Florida Administrative Code, to fully comply with controlling state and federal law concerning payments to qualifying facilities. It would be a waste of the Commission's time to initiate a separate rulemaking solely to enable Petitioners to utilize admittedly unnecessary proposed amendments as a bargaining tool with which to oppose the rule amendments the Commission has proposed in Docket No. 001574-EQ.

WHEREFORE, Tampa Electric urges the Commission enter its order denying the petition with a written statement of its reasons for the denial.

DATED this 11th day of March 2002.

Respectfully submitted,



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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response, filed on behalf of Tampa Electric Company, has been served by hand delivery (*) or U. S. Mail on this 11th day of March 2002 to the following:

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Senior Attorney
Division of Appeals
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Miami, FL 33133

Mr. Richard Zambo
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Palm City, FL 34990

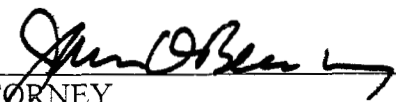
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Tallahassee, FL 32303-6290

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Tallahassee, FL 32301-1859

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ATTORNEY