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Sent: Friday, December 08, 2006 2:37 PM
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Subject: Docket No. 060555-EI -- Post Hearing Comments Of David McCary for City of Tampa
Attachments: 120806McCarySupplementalCommentsDkt060555.doc

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2. Docket No. and Title:

Docket No. 060555-EI
In re: Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts

3. Document filed on behalf of:

The City of Tampa, Florida

4. Number of pages of document:

5 pages

5. Description of documents:

Supplemental/Post Hearing Comments Of David W. McCary For The City Of Tampa

Thank you for your attention to this electronic filing. If you have any questions or require anything further in this regard, please do not hesitate to contact our offices.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Payments	Docket No. 060555-EI Filed: December 8, 2006

SUPPLEMENTAL/POST-HEARING COMMENTS
OF DAVID W. MCCARY FOR THE CITY OF TAMPA

1. The City of Tampa (City) files these supplemental/post-hearing comments in further support of the critical need for fair, equitable and full avoided cost-based standard offer contracts for renewable energy facilities. These supplemental comments are in addition to and should in no way be construed as replacing or supplanting either my previously filed testimony in these proceedings, or the testimony of Messers Seidman and Bedley filed on behalf of the City. The purpose and intent of the City in filing that testimony was to offer its strong support for new rules that would address the needs of the renewable energy industry and shortcomings of the both the existing and proposed rules. The City's purpose and intent was not to challenge existing contracts or electric sales arrangements between the City and any utility.

2. Tampa Electric Company (TECO) has advised that unless I withdraw or substantially edit my previously filed testimony, TECO will file a detailed rebuttal to my testimony, apparently based on previous dealings between the parties, including those from over 20 years ago and prior to the Commission's adoption of firm capacity and energy rules. My testimony included passing references to prior negotiations with TECO for purposes of explaining the City's desire for rules that will result in fair, equitable and full avoided cost standard offer contracts, but it was not the City's intent to specifically address past negotiations with TECO in these proceedings. However, TECO seems to have chosen to interpret our support for the proposed rules presented

by Mr. Seidman as a challenge to previous negotiations between the City and TECO. Accordingly, TECO has left the City no choice but to submit – in anticipation of TECO's promised rebuttal - these post hearing comments that will summarize limited aspects of several more recent negotiations between the City and TECO in order to describe the negotiating strategies and advantage enjoyed by TECO.

3. As discussed in my direct testimony, the City began producing electricity from renewable energy resources at its McKay Bay Facility in 1985, selling that electricity to TECO pursuant to a Small Power Production Agreement executed in 1982 ("1982 Agreement") subsequent to the enactment of PURPA and implementing rules of the Federal Energy Regulatory Commission (FERC), but prior to the Commission's adoption of its 1983 QF rules.

4. Since that time the City has, as a matter of necessity, become and remains an active participant in matters affecting - among other things - the markets, prices, terms and conditions for the sale of renewable energy. The City discovered that it must routinely monitor and participate in matters before this Commission, the Florida Legislature and, less frequently, the Federal Energy Regulatory Commission (FERC) in order to protect the interest of the City and its residents.

5. The City has been an active participant in Florida legislative matters for many years – participation that included the City playing significant roles in support of the legislative initiatives that resulted in; (i) the enactment of legislation that provided the opportunity for the City to renegotiate its 1982 Agreement with TECO to better reflect avoided cost, and (ii) the enactment of Section 366.91, F.S., promoting renewable energy – the basis for this proceeding.

6. The City has also been an active participant in matters before this Commission because the prices for renewable energy resulting from both the existing rules and proposed rules are not

truly reflective of the costs avoided by the purchasing utility. This is a very important issue to the City and its residents, because to the extent the Commission's rules fall short of providing full avoided cost payments for the electric capacity and energy produced by McKay Bay, the City's residents are called upon to provide the financial support necessary to make up the shortfall. Furthermore, because neither the Commission's current nor proposed rules result in fair, equitable and full avoided cost-based standard offers, renewable energy producers such as the City are typically at the mercy of the purchasing utility when attempting to "negotiate" for the sale of electricity to the utility.

7. As you heard from other witnesses in these proceedings – witnesses who know the renewable energy business – it will be very difficult to finance a renewable energy facility of the type operated by the City based on the less-than-avoided cost value of deferral pricing formula and onerous terms and conditions resulting from Commission policy and rules. The utilities and the Commission seem to fail to consider that the City must impose higher fees for the collection and disposal of the municipal solid waste fuel in order to make up the shortfall between full avoided costs and the less-than-full avoided costs resulting from the Commission's rules.

8. In more general terms, the tremendous disparity in negotiating leverage between utilities and renewable energy facilities provides an unfair advantage to the utility which is financially detrimental to renewable energy producers and electric consumers alike. That negotiating advantage is not limited to purchases of electricity from renewable energy facilities, but is employed by the utilities in other areas as well -- whenever the opportunity presents itself.

9. To more clearly describe the realities of the negotiating disparity, I will provide a brief description of two recent cases-in-point of negotiations between the City and TECO that will serve demonstrate the City's concerns.

10. As my first case-in-point, and as the Commission is aware, the City and Tampa Electric Company (TECO) recently entered into a 2006 Small Power Production Agreement (2006 Agreement) which was recently approved by the Commission in Docket No. 060573-EQ. Although the City and TECO ultimately reached agreement on this short-term (less than 5 years) agreement, negotiations between the parties did not begin on a positive note. Importantly, the 1982 Agreement, as amended, contained specific provisions that addressed the rights of the City in the sale of additional energy and capacity from the McKay Bay Waste-to-Energy Facility. However, when the negotiations began, in spite of the fact that the City had spent over $100 million dollars "retrofitting" its McKay Bay Facility to meet new environmental standards – and in the process significantly increase its electric generating capacity by about 3.5 megawatts – and contrary to those specific provisions of the 1982 Agreement as amended, TECO took the position that the City could not sell additional generating capacity from McKay Bay. It was not until the City made it clear that it would be willing to accept less than it was entitled to under those specific provisions that negotiations began to proceed in a cooperative fashion. To paraphrase from my Direct Testimony of November 3, 2006, the City took what it could get without engaging in a prolonged dispute or litigation.

11. As my second case-in-point, I will refer to again to the environmental retrofit of the McKay Bay Facility as mentioned above, as well as in my Direct Testimony of November 3rd. The need to reduce and/or shut-down operation of McKay Bay in order to perform the modifications necessary to comply with newly enacted emission limitations was clearly a Force Majeure event under the terms of the 1982 Agreement. Typically, during the term of a Force Majeure, the performance obligations of the parties are temporarily suspended and the contract enters a state of abeyance. Even though the City would have been relieved of the obligation to

delivery electricity to TECO, the City's retrofit schedule and installation were designed to allow the McKay Bay Facility to continue to generate electricity – although at reduced amounts - during certain phases of the retrofit work. This approach allowed the City to delivery part of the committed capacity to TECO during portions of the Force Majeure event. One of the points of contention between the City and TECO was payments to be made by TECO to the City for electricity delivered to TECO during the Force Majeure. The City took the position that because the 1982 Agreement was in a temporary state of suspense or abeyance, and because the City would not receive capacity payments from TECO during the Force Majeure, it would only be fair that the electricity delivered to TECO should be sold at the as-available rate. TECO took the illogical position that the contract rate – the coal based energy prices reflected in the 1982 Agreement – would be paid even though no capacity payments would be made and even though the 1982 Agreement was temporarily suspended. TECO refused to move from its position and, as a result, the City received less money for the electricity delivered to TECO during the Force Majeure period than it was entitled to – money that could have been used to offset some of the cost of the retrofit. In light of the fast approaching time constraints imposed by the new regulations and the City's unwillingness to engage TECO in a prolonged legal dispute and litigation, the City was again left with no choice but to take what it could get.

12. There are other instances that further demonstrate the unfair advantage utilities such as TECO enjoy in dealing with renewable energy facilities that can be provided upon request.

I appreciate the opportunity to present these comments to the Commission and Commission Staff for your consideration.