

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In 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.

DOCKET NO. 020166-EQ  
ORDER NO. PSC-02-0341-PCO-EQ  
ISSUED: March 14, 2002

ORDER GRANTING PETITION TO INITIATE  
RULEMAKING AND MOTION TO CONSOLIDATE

On February 27, 2002, Lee County, Miami-Dade County and Montenay-Dade, Ltd. filed a Petition to Initiate Rulemaking Regarding Firm Capacity and Energy Payments To Qualifying Facilities (Petition) pursuant to Rule 28-103.006, Florida Administrative Code and Section 120.54(7), Florida Statutes. The Petition was accompanied by a Motion to Consolidate (Motion) the petitioned-for rulemaking with Docket No. 001574-EQ, in which, it is acknowledged, that

[e]ach of the Petitioners is already  
identified as an interested person ... and  
each has submitted comments and otherwise  
participated ....

Motion, p.1.

It is clear from both the Petition and the Motion that Petitioners' purpose is to suggest amendments to Rule 25-17.0832, F.A.C., in addition to those already being considered in Docket No. 001574-EQ. Docket No. 001574-EQ is a current, open docket already considering amendments to the same Rule 25-17.0832, F.A.C. Petitioners have attached their suggested amendments to the Petition. The Petition, in turn, explains Petitioners' view that the

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proposed amendments would provide for fair  
and equal treatment of qualifying facilities  
and utilities . . .

Petition, p.1.

On March 11, 2002, Tampa Electric Company filed a Response To Petition to Initiate Rulemaking (Response To Petition) accompanied by a Response In Opposition To Motion To Consolidate Rulemaking Proceedings. (Response In Opposition). Therein, Tampa Electric argues that

It would be a waste of the Commission's time to initiate rulemaking to consider those amendments. Petitioners' real goal is to oppose the proposed amendment to the minimum contract term - something that will be addressed and resolved in Docket No. 001574-EQ .... [e.s.]

Response In Opposition, p.2.

As I view the Petition and Motion To Consolidate, the relief being sought is indistinguishable from Petitioners filing comments in Docket No. 001574-EQ consisting of their suggestions for additional amendments to Rule 25-17.0832, F.A.C., and their supportive arguments therefor. Tampa Electric's Responses are, for their part, indistinguishable from responsive comments entered in that same docket. For the purposes of Section 120.54(7), Florida Statutes and Rule 28-103.006, F.A.C., the Commission has already initiated rulemaking to amend Rule 25-17.0832. Moreover, by Notice dated March 5, 2002, Petitioners waived any different time schedule for consideration of their suggested amendments from that already adopted in Docket No. 001574-EQ.

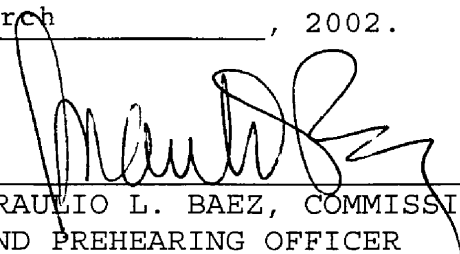
Accordingly, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Petition to Initiate Rulemaking of Lee County, Miami-Dade County and Montenay-Dade, Ltd. is granted. It is further

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ORDERED that Petitioners' Motion to Consolidate is granted.

BY ORDER of Commissioner Braulio L. Baez as Prehearing  
Officer this 14th day of March, 2002.



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BRAULIO L. BAEZ, COMMISSIONER  
AND PREHEARING OFFICER

( S E A L )

RCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in

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the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.