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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Lee County, Florida)	
for a Declaratory Statement Concerning)	DOCKET NO. 970898-EQ
the Conservation Status of Electric)	
Power and Energy Produced from the)	FILED: SEPT. 11, 1997
Lee County Resource Recovery Facility)	
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**LEE COUNTY'S MEMORANDUM IN RESPONSE TO THE
LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION'S
PETITION TO INTERVENE**

LEE COUNTY, FLORIDA ("Lee County"), pursuant to Rule 25-22.037(2), Florida Administrative Code, hereby files this memorandum in response to the petition to intervene filed in this proceeding by the Legal Environmental Assistance Foundation ("LEAF").

SUMMARY

Lee County recognizes that electricity production by the Lee County Resource Recovery Facility ("the Facility") is, like cogeneration, a measure or technology that adds to the electricity supply, but it is also a measure that contributes to the energy conservation goals enunciated in the Florida Energy Efficiency and Conservation Act ("FEECA") in the same ways that "pure" demand-side measures do. Specifically, electricity production from the Facility promotes the specific goals of FEECA by conserving expensive energy resources, particularly petroleum fuels and other fossil fuels, via the combustion of renewable-source waste materials that would otherwise be uselessly discarded in landfills. The conservation of expensive energy resources is exactly the same ultimate result achieved by reducing electricity consumption via

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"pure" demand-side measures. Accordingly, Lee County believes that allowing the firm capacity and energy produced by the Facility to be counted toward a purchasing utility's conservation goals is specifically consistent with FEECA. This conclusion is buttressed by the Legislature's declaration, in Section 377.709, Florida Statutes, that "the combustion of refuse by solid waste facilities to supplement the electricity supply . . . represents an effective conservation effort" (Emphasis supplied.)

Since virtually all of the Facility's thermal energy input comes from renewable-source materials, there can be no serious argument that the requested declaratory statement would be specifically consistent with FEECA's mandate to encourage the use of renewable energy sources. Although LEAF mistakenly suggests that there is some doubt whether the Commission can interpret Section 377.709, Florida Statutes, when granting the requested declaratory statement, the Commission has express duties under Section 377.709, and it is therefore obviously appropriate for the Commission to consider and derive guidance from Section 377.709 when evaluating Lee County's petition for declaratory statement. Moreover, the Commission has specifically referred to Section 377.709 in carrying out its duties under the need determination statute, Section 403.519, Florida Statutes, which is also a part of FEECA.

Finally, no hearing is necessary to decide the issues posed by LEAF's petition. LEAF's issues are predominantly legal issues rather than factual issues, and no hearing is necessary for the Commission to render the requested interpretation. Nonetheless, Lee County would not object to participating in an oral argument on

these issues, if the Commission believes it would be beneficial to the Commission's consideration of Lee County's request for a declaratory statement.

ARGUMENT

I. FIRM CAPACITY AND ENERGY PRODUCED BY THE LEE COUNTY RESOURCE RECOVERY FACILITY IS DIRECTLY CONSISTENT WITH FEECA AND ACCOMPLISHES THE SAME ULTIMATE PURPOSES OF FEECA AS "PURE" DEMAND-SIDE MEASURES.

LEAF criticizes Lee County's request for a declaratory statement by alleging that (1) the Facility's capacity and energy do not represent a demand-side resource, but rather represent a supply-side resource, and (2) the treatment of the Facility's capacity and energy as requested by the County is not consistent with FEECA or the Commission's conservation goals promulgated pursuant to FEECA. Lee County disagrees with LEAF's analysis because the Facility's electrical output has both supply-side and demand-side characteristics and effects, and indeed serves and promotes exactly the same ultimate result as "pure" demand-side measures, i.e., the conservation of expensive energy resources.

Lee County recognizes that power supplied by the Facility has characteristics of both supply-side and demand-side resources. The Facility's power is supply-side in character because it supplements the state's electricity supply system. The Facility's power is also demand-side in character because, like insulation, enhanced window glazing, and other measures that reduce electric demand and energy requirements, electric power from solid waste facilities reduces the need for utilities to build additional power plants and reduces the consumption of the primary fuels -- coal, oil, and gas

-- that would otherwise be burned to generate electricity. Electric power produced by the County's Resource Recovery Facility has the same demand-side characteristics as self-service cogeneration, which is expressly recognized as an eligible conservation measure under Commission Rule 25-17.0021(3), F.A.C. and under Section 366.82(3), Florida Statutes.

Capacity and energy produced by the Facility provide cognizable benefits under FEECA, including, specifically, the conservation of expensive resources, particularly non-renewable petroleum fuels and other fossil fuels. See Fla. Stat. §§366.81 & 366.82(2) (1995). As such, the Facility's capacity and energy contribute to the specific purposes of FEECA in the same way that "pure" demand-side measures do, i.e., by conserving expensive energy resources. The Recommended Order for the Facility's certification pursuant to the Power Plant Siting Act noted that by "using solid waste to produce electricity, the County will save nonrenewable resources such as oil or coal that otherwise would be needed for power production. The energy produced from garbage will offset the need for more than 7,000,000 barrels of oil." In Re: Application for Power Plant Site Certification of Lee County Solid Waste Resource Recovery Facility, Case No. 90-3942LPP (Division of Admin. Hearings, December 9, 1991). This order was approved and adopted by the Power Plant Siting Board by its order dated June 17, 1992. This conservation of expensive and finite energy resources is, of course, exactly what is accomplished by reducing and controlling and growth rate of energy consumption.

There is no significant difference under FEECA whether the reduction in electric utility power demand and energy occurs on the

customer's side of the meter, via self-service cogeneration, or on the utility's side via power supplied by a solid waste facility, where that power also directly promotes the purposes of FEECA. Both serve and promote the same goals, the overall efficiency and cost-effectiveness of electricity production and the conservation of expensive and finite resources, particularly petroleum and other fossil fuels.

Finally, while LEAF is correct that power from solid waste facilities, like the Lee County Resource Recovery Facility, is not specifically enumerated as a conservation measure in FEECA or in the Commission's rules implementing that statute, it is also true that power from solid waste facilities is nowhere prohibited from inclusion as an eligible measure. Indeed, Section 366.82(3) of FEECA states that utility conservation programs may include "variations in rate design, load control, cogeneration, residential energy conservation subsidy, or any other measure within the jurisdiction of the commission which the commission finds likely to be effective." (emphasis supplied) As explained above, the Facility's power is similar in many respects to cogeneration and, pursuant to Sections 366.051 and 377.709, Florida Statutes, is within the Commission's jurisdiction. Section 377.709 expressly recognizes power from solid waste facilities, like the Lee County Resource Recovery Facility, as "an effective conservation effort." FEECA itself states that it is to be liberally construed in order to meet the complex problems of promoting energy efficiency and conservation. See Fla. Stat. §366.81 (1995). Lee County submits that the requested declaratory statement is also specifically consistent with this mandate.

II. THE FACILITY'S USE OF PREDOMINANTLY RENEWABLE-SOURCE MATERIALS TO GENERATE ELECTRICAL ENERGY IS DIRECTLY CONSISTENT WITH FEECA.

In its petition to intervene, LEAF questions whether "the alleged status of the facility or its raw materials as renewable resources is relevant" to the requested declaratory statement. Lee County submits that the renewable-source status of the vast majority of the Facility's thermal energy input is directly relevant to the requested declaratory statement under authority of Section 366.81, Florida Statutes. Among other things, Section 366.81 directs that "the use of . . . renewable energy sources . . . be encouraged."

With regard to the status of the Lee County Resource Recovery Facility as a renewable energy resource, the U.S. Energy Information Administration specifically recognizes waste-to-energy as a renewable resource. U.S. Energy Information Administration, Renewable Resources in the U.S. Electricity Supply (February 1993); esp. Tables 4 & 5 and accompanying text at pages 7-8. Even a source cited by LEAF in FPSC Docket No. 931186-EQ, relating to amendments to the Commission's cogeneration rules, recognizes that waste-to-energy is a renewable energy resource: at pages 1-4 of its report Renewable Energy in Florida, presented to the Commission on June 22-23, 1994, The Regulatory Assistance Project presented tables showing that waste-to-energy was the second largest source of non-hydroelectric renewable electric generating capacity and energy in the U.S. (Copies of pertinent excerpts from the above-cited sources were included with Lee County's post-hearing comments in Docket No. 931186-EQ.)

III. THE COMMISSION HAS SPECIFIC DUTIES UNDER SECTION 377.709, FLORIDA STATUTES, AND IT IS OBVIOUSLY REASONABLE FOR THE COMMISSION TO CONSIDER THIS STATUTE IN DECIDING WHETHER TO RENDER THE REQUESTED DECLARATORY STATEMENT.

In its petition to intervene, LEAF alleges that Lee County's petition fails to contain an affirmative showing that "the Commission is authorized to interpret Chapter 377, F.S." The Commission must interpret and implement Section 377.709, Florida Statutes, to carry out its statutory responsibilities. Moreover, this statute deals with the same or similar subject matter as other Commission statutes, specifically Section 366.051 and FEECA. FEECA and Section 377.709 both deal with conservation. Section 366.051 deals with cogeneration and small power production, and Section 377.709 deals specifically with solid waste facilities, which comprise a species of small power production facilities. Accordingly, it is appropriate for the Commission to read Section 377.709 in pari materia with Section 366.051 and FEECA.

Moreover, it is not novel for the Commission to refer to Section 377.709, Florida Statutes, in reference to its duties under FEECA, which comprises Sections 366.80-85 and 403.519, Florida Statutes. Like the provisions of FEECA referenced in Lee County's petition for declaratory statement, the need determination statute, Section 403.519, Florida Statutes, is also a part of FEECA. In granting the petition for determination of need for the Lee County Resources Recovery Facility, the Commission specifically recognized that "[t]he legislature . . . favors municipal waste cogeneration facilities so [the Commission] will therefore presume cost effectiveness" of power produced by the Facility. In Re: Petition for Determination of Need for a Solid Waste-Fired Cogeneration

Power Plant by Lee County, 91 FPSC 1:57 at 59. In that order, the Commission also specifically stated that "pursuant to Section 377.709, Florida Statutes, the legislature has encouraged construction of municipal solid waste facilities as both an effective conservation effort and environmentally preferred alternative to conventional solid waste disposal in Florida." Id.

In light of FEECA's express directive that it is to be liberally construed to accomplish its purposes, it would be an extremely narrow construction that would have the Commission ignore the Legislature's express findings in Section 377.709 when informing itself as to the conservation benefits of capacity and energy produced by the Lee County Resource Recovery Facility in regard to the requested declaratory statement.

**IV. MOST OF LEAF'S ASSERTED ISSUES OF FACT
ARE ACTUALLY ISSUES OF LAW FOR WHICH NO
HEARING IS REQUIRED.**

In its petition to intervene, LEAF asserts that four material issues of fact are in dispute in this proceeding. Lee County submits that LEAF's issues are, in fact, predominantly issues of law, and no hearing is required with respect to Lee County's petition for a declaratory statement. Nonetheless, Lee County would not object to participating in an oral argument on these issues, if the Commission believes it would be beneficial to its consideration of Lee County's request for a declaratory statement.

1. LEAF's first issue is whether the Lee County Resource Recovery Facility is a supply-side or a demand-side resource under Rules 25-17.001 and 17.0021, Florida Administrative Code. This is clearly a question of law that is arguably related to, but not the

same as, the question raised in the County's petition. Lee County has asked the Commission simply to declare that firm capacity and energy produced by the Facility is properly considered as an energy conservation measure and may be counted toward meeting a utility's conservation goals pursuant to Section 366.82(2), Florida Statutes. Whether the Facility is a "supply-side resource" or a "demand-side resource" is not directly relevant to the requested determination. Further, the rules cited by LEAF include cogeneration, which is clearly an electric power supply technology. It would be inconsistent for the Commission to construe its rule as authorizing cogeneration but excluding all other supply-side measures. It would also be inconsistent with FEECA's "liberal construction" mandate to interpret FEECA as excluding measures that directly serve its purposes.

2. LEA's second issue is whether the alleged renewable status of the refuse burned in the Facility is relevant. This is also a question of law, which Lee County has addressed in Section II above. In short, Lee County believes that the facts that (a) virtually all of the material combusted to generate electricity at the Facility is from renewable sources, and (b) numerous sources clearly recognize electricity generation from municipal solid waste facilities as a renewable energy source, are directly relevant to the state's goal of conserving expensive resources, particularly non-renewable petroleum and other fossil fuels, as well as directly consistent with FEECA's mandate to encourage the use of renewable energy sources.

3. LEAF's third issue is whether the combustion of refuse material contributes significantly to achieving Florida's energy

policy goals. Virtually all of the thermal energy input from which the Facility produces electricity is from renewable sources, e.g., food remains, wastepaper, packaging material, and biomass. There can be no dispute that electric energy produced from these renewable-source materials reduces the amount of electricity that must otherwise be generated by means of non-renewable resources, including coal, oil, and gas, because these are the marginal electric generating fuels in the state in all, or virtually all, hours. Accordingly, there can be no doubt or argument that the Facility's electricity production contributes to the specific goals of FEECA, including the conservation of expensive, non-renewable resources, particularly petroleum fuels.

This leaves only the question whether these contributions are "significant." This is an issue of fact, but one that invites an inappropriate analysis. If this "significant contribution" analysis were applied to all energy conservation measures, then many programs that make smaller contributions (e.g., less than 30 MW of capacity or 180,000 MWH of energy per year) would have to be rejected as not making significant contributions to state energy policy goals, which is, of course, a nonsensical result.

Finally, Lee County submits that the contributions of power produced by solid waste facilities, like the Lee County Resource Recovery Facility, to the state's energy policy goals have been expressly recognized by the Legislature in Section 377.709, Florida Statutes. The Legislature obviously has deemed such facilities to make significant contributions to the state's energy policy goals.

4. LEAF's fourth issue, i.e., whether the Commission can be asked for a declaratory statement involving Section 377.709,

Florida Statutes, is also clearly a question of law for which no hearing is required.

For these reasons, no hearing is necessary to address LEAF's concerns. Hearings on petitions for declaratory statements

are discretionary . . . and appropriate only when there is a disputed factual issue which must be determined in order to provide the legal interpretation requested.

See In Re: Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility, 86 FPSC 9:211. A hearing on LEAF's single factual issue (i.e., whether the contributions of the Facility to FEECA's goals are significant) is not necessary to issue the requested declaratory statement. The important point is that the energy conservation benefits of the Facility are cognizable under FEECA. (Of course, Lee County would submit that savings of 30 MW of capacity and 180,000 MWH per year of electrical energy, and the associated expensive, non-renewable fossil fuel that would otherwise be used to generate it, are well within the range of "significant" benefits under any reasonable reading of FEECA.)

Lee County would not object to participating in an oral argument on these subjects, if the Commission believes that it would be beneficial to its consideration of Lee County's petition for declaratory statement.

CONCLUSION

WHEREFORE, Lee County respectfully requests that the Commission grant Lee County's petition for declaratory statement.

Respectfully submitted this 11th day of September, 1997.



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CERTIFICATE OF SERVICE
DOCKET NO. 970898-EQ

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*) or by United States Mail, postage prepaid, on the following individuals this 11th day of September, 1997:

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