

Case Assignment and Scheduling Record

Section 1 - Bureau of Records and Hearing Services Completes

Docket No. 020397-EQ Date Docketed: 05/03/2002 Title: Petition for declaratory statement by Florida Power & Light Company that FPL may pay a Qualified Facility (QF) for purchase of renewable energy an amount representing FPL's full avoided cost plus a premium borne by customers voluntarily participating in FPL's Green Energy Project.
 Company: Florida Power & Light Company

Official Filing Date: _____
 Last Day to Suspend: _____ Expiration: _____

Referred to: _____
 ("()") indicates OPR) AUS CAF CCA CMP ECR EXT (GCL) MMS PIF
 _____ _____ X _____ X _____

Section 2 - OPR Completes and returns to CCA in 10 workdays. Time Schedule

Program/Module A12(a);C4

Staff Assignments

OPR Staff C Moore

Staff Counsel C Moore

OCRs (ECR) L Colson

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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel _____
 Hearing Examiner _____ Staff _____

Date filed with CCA: 05/16/2002

Initials: OPR _____
 Staff Counsel _____

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT. IT IS TENTATIVE AND SUBJECT TO REVISION. FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770
 Current CASR revision level

0

1. Staff Recommendation
2. Agenda
3. Standard Order
4. FAW Notice Filed
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Due Dates

Previous Current

	Previous	Current
1. Staff Recommendation	NONE	07/11/2002
2. Agenda	NONE	07/23/2002
3. Standard Order	NONE	08/05/2002
4. FAW Notice Filed	NONE	08/06/2002
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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	JB	DS	BZ	PL	BD		
X							

- Prehearing Officer

Commissioners					ADM
JB	DS	BZ	PL	BD	
	X				

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case.
 Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: *S/Am*
 Date: 05/16/2002

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

STATE OF FLORIDA



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

May 6, 2002

Elizabeth C. Daley, Attorney
Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804

Docket No. 020397-EQ

Dear Ms. Daley:

This will acknowledge receipt of a petition for declaratory statement by Florida Power & Light Company that FPL may pay a Qualified Facility (QF), for purchase of renewable energy, an amount representing FPL's full avoided cost plus a premium borne by customers voluntarily participating in FPL's Green Energy Project, which was filed in this office on May 3, 2002, and assigned the above-referenced docket number. Appropriate staff members will be advised.

Mediation may be available to resolve any dispute in this docket. If mediation is conducted, it does not affect a substantially interested person's right to an administrative hearing. For more information, contact the Office of General Counsel at (850) 413-6248 or FAX (850) 413-7180.

Division of the Commission Clerk and Administrative Services
Florida Public Service Commission

DOCUMENT NO

15007-02

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PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

State of Florida



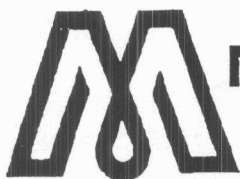
Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
02 JUL -8 PM 12:28
COMMISSION
CLERK

DATE: July 8, 2002
TO: Blanca S. Bayó, Director of Commission Clerk and Administrative Services
FROM: Christiana T. Moore, Office of the General Counsel *ATM*
RE: Docket No. 020397-EQ - Florida Power & Lights's Petition for a Declaratory Statement

Attached for filing on the correspondence side of the above docket is a letter from Montenay Power Corp. that was faxed to Chairman Jaber and other Commissioners on July 3, 2002.



MONTENAY POWER CORP.



FACSIMILE TRANSMITTAL SHEET

TO: LILA A. JABER, CHAIRMAN
FLORIDA PUBLIC SERVICE
COMMISSION

FROM: BEN GILBERT

CC:

DATE:
7/3/2002

FAX NUMBER:
(850)413-6395

PHONE NUMBER:
(305)593-7202

PHONE NUMBER:

TOTAL NO. OF PAGES INCLUDING
COVER:
4

Re: FPL's Petition for Declaratory
Statement Regarding Funding
Mechanism for Green Energy,
PSC Docket No. 020397-EI

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Sent by: _____

Fax Number: (305) 593-7274

MONTENAY POWER CORP.



July 3, 2002

Lila A. Jaber, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: FPL's Petition for Declaratory Statement Regarding Funding Mechanism for Green Energy, PSC Docket No. 020397-EI

Dear Chairman Jaber:

I write to convey the comments of Montenay Power Corp. ("Montenay") regarding the petition for declaratory statement submitted by Florida Power & Light Company ("FPL") regarding a potential funding mechanism for the purchase and sale of renewable energy, notice of which was published in the May 24, 2002 issue of the Florida Administrative Weekly. In summary, Montenay agrees that the Commission should issue the specific declaratory statement requested by FPL, i.e., that FPL may pay suppliers of renewable energy rates that are greater than FPL's calculated "avoided cost" and that FPL may in turn charge customers who elect to participate in FPL's Green Energy Project rates that include those payments. However, Montenay would urge the Commission to address only the question presented and not to give any declaration as to the issue whether FPL, or any other utility, may only pay higher rates for renewable or green energy when those higher purchase rates are borne by customers who voluntarily participate in FPL's, or another utility's, Green Energy Project. Moreover, in order to appropriately circumscribe the scope of the declaratory statement, Montenay would urge that the Commission expressly adopt the definitions of "renewable energy" and "green energy" enacted by the Florida Legislature in Chapter 2002-276, Laws of Florida.

Montenay operates two waste-to-energy facilities in Florida, the Dade County Resources Recovery Facility and the Bay County Resource Recovery Facility, which produce "renewable energy" and "green energy" as that term has been defined by the Florida Legislature in Chapter 2002-276, Laws of Florida. Both of these facilities are "solid waste facilities" within the meaning of Section 377.709, Florida Statutes. While most of the output from these two facilities is sold to Florida Power Corporation ("FPC") pursuant to Commission-approved long-term negotiated contracts, under the Dade County-FPC contract, the output of the Dade County Resources Recovery Facility may be sold to other utilities under specified conditions. As a producer and supplier of "renewable energy" and "green energy," Montenay is vitally interested in the Commission's policy pronouncements regarding renewable energy and green energy, including funding mechanisms that may be used to support renewable and green energy programs and projects in Florida. Montenay also furnishes biomass fuel to the Okeelanta and

Lila A. Jaber, Chairman
Florida Public Service Commission
July 3, 2002
Page 2 of 3

Osceola electrical generating facilities, which are also producers and suppliers of renewable and green energy in Florida.

As stated above, Montenay agrees with FPL's analysis of the question that is actually before the Commission, i.e., that FPL may pay green energy suppliers rates that are greater than FPL's avoided cost as calculated pursuant to the Commission's cogeneration rules, and that FPL may in turn recover those payments from customers who participate in FPL's Green Energy Project. However, Montenay believes that there is no need for the Commission to address other scenarios in its declaratory statement and would, accordingly, urge the Commission to limit its declaration to that necessary to address the issue presented. Specifically, Montenay would urge the Commission not to address, either directly or indirectly, FPL's assertion that FPL may only make such above-avoided-cost payments where those payments are recovered from customers who voluntarily participate in FPL's Green Energy Project. First, it is a well-established principle of Florida and federal law that courts and other tribunals should only address questions actually presented. Accordingly, no statement is needed or appropriate with respect to other payment-and-recovery scenarios.

Second, although the issue need not and should not be decided here, Montenay believes that there are strong legal arguments to support a utility's request for Commission authority to recover payments for renewable or green energy above its avoided cost from its general body of ratepayers, rather than exclusively from voluntary program participants. In short, the legal authority for such Commission approval would rest in the Legislature's mandate that "the use of . . . renewable energy sources . . . be encouraged." Fla. Stat. § 366.81 (2001). No provision of either the Public Utility Regulatory Policies Act of 1978 or of Section 366.051, Florida Statutes, prohibits a utility regulatory authority from permitting a utility from paying rates above avoided cost for renewable or green energy; the applicable federal and state laws and regulations simply limit the authority of utility commissions to require a utility to pay more than avoided cost for mandatory purchases from qualifying facilities.

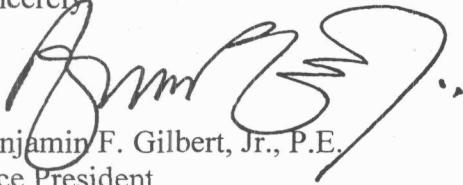
Finally, in order to appropriately specify the scope of the declaratory statement, Montenay would urge the Commission to specifically adopt the definitions of "renewable energy" and "green energy" enacted by the Florida Legislature in Chapter 2002-276, Florida Statutes. This act defines "green energy" as "renewable energy," and "renewable energy" as "electricity generated from any method or process that uses one or more of the following sources of energy, but not

Lila A. Jaber, Chairman
Florida Public Service Commission
July 3, 2002
Page 3 of 3

limited to: biomass; municipal solid waste;" (This act also defines "biomass" as including municipal solid waste, urban wood waste, liquid waste treatment operations, and landfill gas.)

Thank you very much for considering Montenay's comments on the important issue of encouraging the development and utilization of renewable, green energy in Florida. Montenay representatives will be present at the Commission's agenda conference discussion of FPL's requested declaratory statement, and Montenay respectfully asks that the Commission allow our representatives to participate in the discussion. If you or your Staff have any questions in the meantime, please call me at (305) 593-7000 or our attorney, Schef Wright, at (850) 681-0311.

Sincerely,



Benjamin F. Gilbert, Jr., P.E.
Vice President

cc:

Ms. Judy Harlow, Division of Economic Regulation
Mr. James Dean, Division of External Affairs
Ms. Marlene Stern, Esquire, Office of the General Counsel

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
02 JUL 15 AM 11:23
COMMISSION
CLERK

DATE: July 12, 2002
TO: Blanca S. Bayó, Director of Commission Clerk and Administrative Services
FROM: Christiana T. Moore, Office of the General Counsel *CTM*
RE: Docket No. 020397-EQ - Florida Power & Lights's Petition for a Declaratory Statement

Attached for filing on the correspondence side of the above docket are letters from Miami-Dade Solid Waste Management and Covanta Energy, Inc., that were sent to Chairman Jaber and other Commissioners recently.



RECEIVED

JUL 09 2002

Florida Public Service Commission
CHAIRMAN JABER

July 5, 2002

Lila A. Jaber, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: FPL's Petition for Declaratory Statement Regarding Funding Mechanism for Green Energy, PSC
Docket No. 020397-EI

Dear Chairman Jaber:

As Director of the Miami-Dade County Department of Solid Waste Management, I am writing to provide input to the Commission regarding the petition for declaratory statement submitted by Florida Power & Light Company ("FPL") regarding a potential funding mechanism for the purchase and sale of renewable energy, notice of which was published in the May 24, 2002 issue of the Florida Administrative Weekly. In summary, this Department agrees that the Commission should issue the specific declaratory statement requested by FPL, *i.e.*, that FPL may pay suppliers of renewable energy rates that are greater than FPL's calculated "avoided cost" and that FPL may in turn charge customers who elect to participate in FPL's Green Energy Project rates that include those payments. We would, however, urge the Commission to limit its response to only the question presented and not give any declaration as to the issue whether FPL, or any other utility, may only pay higher rates for renewable or green energy when those higher purchase rates are borne by customers who voluntarily participate in FPL's, or another utility's, Green Energy Project. Moreover, in order to appropriately circumscribe the scope of the declaratory statement, the Department would urge that the Commission expressly adopt the definitions of "renewable energy" and "green energy" enacted by the Florida Legislature in Chapter 2002-276, Laws of Florida.

As an owner of one of Florida's thirteen waste-to-energy facilities in Florida, ("solid waste facilities" within the meaning of Section 377.709, Florida Statutes), all of which produce "renewable energy" and "green energy" (as defined by the Florida Legislature in Chapter 2002-276, Laws of Florida), we are vitally interested in the Commission's policy pronouncements regarding these terms, including funding mechanisms that may be used to support renewable and green energy programs and projects in Florida. As stated above, the Department is in agreement with FPL's analysis of the question that is actually before the Commission, *i.e.*, that FPL may pay green energy suppliers rates that are greater than FPL's avoided cost as calculated pursuant to the Commission's cogeneration rules, and that FPL may in turn recover those payments from customers who participate in FPL's Green Energy Project. We believe, however, that there is no need for the Commission to address other scenarios in its declaratory statement and would, accordingly, urge the Commission to limit its declaration to that necessary to address the issue presented. Specifically, the Department would urge the Commission not to address, either directly or indirectly, FPL's assertion that FPL may only make such above-avoided-cost payments where those

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Lila A. Jaber
July 5, 2002
Page 2


payments are recovered from customers who voluntarily participate in FPL's Green Energy Project. First, it is a well-established principle of Florida and federal law that courts and other tribunals should only address questions actually presented. Accordingly, no statement is needed or appropriate with respect to other payment-and-recovery scenarios.

Second, although the issue need not and should not be decided here, it is believed that there are strong legal arguments to support a utility's request for Commission authority to recover payments for renewable or green energy above its avoided cost from its general body of ratepayers, rather than exclusively from voluntary program participants. In short, the legal authority for such Commission approval would rest in the Legislature's mandate that "the use of . . . renewable energy sources . . . be encouraged." Fla. Stat. § 366.81 (2001). No provision of either the Public Utility Regulatory Policies Act of 1978 or of Section 366.051, Florida Statutes, prohibits a utility regulatory authority from permitting a utility from paying rates above avoided cost for renewable or green energy; the applicable federal and state laws and regulations simply limit the authority of utility commissions to require a utility to pay more than avoided cost for mandatory purchases from qualifying facilities.

Finally, in order to appropriately specify the scope of the declaratory statement, the Commission is urged to specifically adopt the definitions of "renewable energy" and "green energy" enacted by the Florida Legislature in Chapter 2002-276, Florida Statutes. This act defines "green energy" as "renewable energy," and "renewable energy" as "electricity generated from any method or process that uses one or more of the following sources of energy, but not limited to: biomass; municipal solid waste; . . ." (This act also defines "biomass" as including municipal solid waste, urban wood waste, liquid waste treatment operations, and landfill gas.)

Thank you very much for considering the comments of representatives of local government on the important issue of encouraging the development and utilization of renewable, green energy in Florida. We respectfully request that the Commission continue to consider the valuable input from the Florida's cities and counties on this important issue.

Sincerely,



Andrew Wilfork
Director

Cc: Judy Harlow, Division of Economic Regulation
James Dean, Division of External Affairs
Marlene Stern, Esquire, Office of General Counsel
James Bostic, DSWM



Covanta Waste to Energy, Inc.
A Covanta Energy Company
14230 Hays Road
Spring Hill, Florida 34610
Telephone #: 727-856-2917
Facsimile #: 727-856-0007

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JUL 12 2002

Division of External Affairs

July 9, 2002

Lila A. Jaber, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: FPL's Petition for Declaratory Statement Regarding Funding Mechanism for Green Energy, PSC
Docket No. 020397-EI

Dear Chairman Jaber:

I write to convey the comments of Covanta Energy, Inc. ("Covanta") regarding the petition for declaratory statement submitted by Florida Power & Light Company ("FPL") regarding a potential funding mechanism for the purchase and sale of renewable energy, notice of which was published in the May 24, 2002 issue of the Florida Administrative Weekly. In summary, Covanta agrees that the Commission should issue the specific declaratory statement requested by FPL, i.e., that FPL may pay suppliers of renewable energy rates that are greater than FPL's calculated "avoided cost" and that FPL may in turn charge customers who elect to participate in FPL's Green Energy Project rates that include those payments. However, Covanta would urge the Commission to address only the question presented and not to give any declaration as to the issue whether FPL, or any other utility, may only pay higher rates for renewable or green energy when those higher purchase rates are borne by customers who voluntarily participate in FPL's, or another utility's, Green Energy Project. Moreover, in order to appropriately circumscribe the scope of the declaratory statement, Covanta would urge that the Commission expressly adopt the definitions of "renewable energy" and "green energy" enacted by the Florida Legislature in Chapter 2002-276, Laws of Florida.

Covanta operates four waste-to-energy facilities in Florida, serving Hillsborough, Lake, Lee and Pasco Counties. All of these facilities produce "renewable energy" and "green energy" as that term has been defined by the Florida Legislature in Chapter 2002-276, Laws of Florida. All of these facilities are "solid waste facilities" within the meaning of Section 377.709, Florida Statutes. The electrical power generated by the Lake and Pasco County Facilities is sold to Florida Power Corporation ("FPC"), and, the electrical power generated by the Hillsborough County Facility is sold to Tampa Electric Company ("TECO"), all pursuant to Commission-approved long-term standard offer contracts that reflect the utility's avoided cost, plus pays the WTE facility for a generating capacity commitment. The electric power generated by the Lee County Facility is sold to Seminole Electric pursuant to a Commission-approved shorter term contract (Initial term 5 years, with optional 3 year extensions) that reflects the utility's avoided cost, plus provides incentives for the WTE facility to manage their scheduled maintenance to the advantage of both parties. As a producer and supplier of "renewable energy" and "green energy", Covanta is vitally interested in the Commission's policy pronouncements regarding renewable energy and green energy, including funding mechanisms that may be used to support renewable and green energy programs and projects in Florida.

As stated above, Covanta agrees with FPL's analysis of the question that is actually before the Commission, i.e., that FPL may pay green energy suppliers rates that are greater than FPL's avoided cost as calculated pursuant to the Commission's cogeneration rules, and that FPL may in turn recover

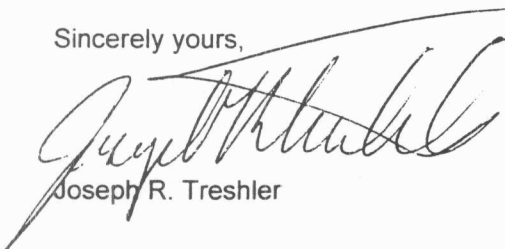
those payments from customers who participate in FPL's Green Energy Project. However, Covanta believes that there is no need for the Commission to address other scenarios in its declaratory statement and would, accordingly, urge the Commission to limit its declaration to that necessary to address the issue presented. Specifically, Covanta would urge the Commission not to address, either directly or indirectly, FPL's assertion that FPL may only make such above-avoided-cost payments where those payments are recovered from customers who voluntarily participate in FPL's Green Energy Project. First, it is a well-established principle of Florida and federal law that courts and other tribunals should only address questions actually presented. Accordingly, no statement is needed or appropriate with respect to other payment-and-recovery scenarios.

Second, although the issue need not and should not be decided here, Covanta believes that there are strong legal arguments to support a utility's request for Commission authority to recover payments for renewable or green energy above its avoided cost from its general body of ratepayers, rather than exclusively from voluntary program participants. In short, the legal authority for such Commission approval would rest in the Legislature's mandate that "the use of . . . renewable energy sources . . . be encouraged." Fla. Stat. § 366.81 (2001). No provision of either the Public Utility Regulatory Policies Act of 1978 or of Section 366.051, Florida Statutes, prohibits a utility regulatory authority from permitting a utility from paying rates above avoided cost for renewable or green energy; the applicable federal and state laws and regulations simply limit the authority of utility commissions to require a utility to pay more than avoided cost for mandatory purchases from qualifying facilities.

Finally, in order to appropriately specify the scope of the declaratory statement, Covanta would urge the Commission to specifically adopt the definitions of "renewable energy" and "green energy" enacted by the Florida Legislature in Chapter 2002-276, Florida Statutes. This act defines "green energy" as "renewable energy," and "renewable energy" as "electricity generated from any method or process that uses one or more of the following sources of energy, but not limited to: biomass; municipal solid waste; . . ." (This act also defines "biomass" as including municipal solid waste, urban wood waste, liquid waste treatment operations, and landfill gas.)

Thank you very much for considering our comments on the important issue of encouraging the development and utilization of renewable, green energy in Florida. Covanta representatives will be present at the Commission's agenda conference discussion of FPL's requested declaratory statement, and we respectfully ask that the Commission allow our representatives to participate in the discussion. If you or your Staff has any questions in the meantime, please call me at 727-856-2917.

Sincerely yours,



Joseph R. Treshler

Other addressees (same street address as Chairman Jaber):

J. Terry Deason, Commissioner

Braulio L. Baez, Commissioner

Rudolph Bradley, Commissioner

Michael A. Palecki, Commissioner

Judy Harlow
Division of Economic Regulation

James Dean
Division of External Affairs

Marlene Stern, Esquire
Office of the General Counsel

cc: Paula Soos
Frazier Blaylock
Bruce Stone
Scott Whitney
Tom Smith - Hillsborough County
Bill Gilley - Lake County
Lindsey Sampson - Lee County
John Power - Pasco County