

**RICHARD A. ZAMBO, P.A.**  
ATTORNEYS AND COUNSELLORS  
598 S.W. HIDDEN RIVER AVENUE  
PALM CITY, FLORIDA 34990  
Telephone (772) 220-9163  
FAX (772) 220-9402

**ORIGINAL**

REGISTERED PROFESSIONAL ENGINEER  
REGISTERED PATENT ATTORNEY

COGENERATION & ALTERNATIVE ENERGY  
ENERGY REGULATORY LAW

**HAND DELIVERY**

March 7, 2003

RECEIVED-FPSC  
03 MAR - 7 AM 10:48  
COMMISSION  
CLERK

Ms. Blanca S. Bayó, Director  
Division of Records & Reporting  
Florida Public Service Commission  
Capitol Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

In re: **FPSC Docket No. 001574-EQ**  
Proposed Amendments To Rule 25-17.0832, F.A.C.  
Firm Capacity And Energy Contracts

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM 5 + Original  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL 1  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC 1  
OTH \_\_\_\_\_

Dear Ms. Bayó,

Enclosed for filing in the captioned proceeding, please find the original and 15 copies of the Supplemental Direct Testimony of Frank Seidman on behalf of the City of Tampa, Florida (City) and the Solid Waste Authority (SWA) of Palm Beach County, Florida.

In addition, you are hereby advised that the City adopts and sponsors the March 1, 2002 testimony of Frank Seidman and Ralph Michael Salmon previously filed in this proceeding, and that the SWA adopts and sponsors the March 1, 2002 testimony of Frank Seidman and Marc C. Bruner previously filed in this proceeding. We respectfully request that the referenced testimony be included in the Docket file.

If you have any questions regarding this filing, or require any additional information, please do not hesitate to contact this office.

RECEIVED & FILED  
R. V. P.  
FPSC-BUREAU OF RECORDS

Sincerely,



Richard A. Zambo  
Florida Bar No. 312525

RAZ/sn  
Enclosures

DOCUMENT NUMBER-DATE

02293 MAR-7 8

FPSC-COMMISSION CLERK

## COURTESY SERVICE LIST

Jeffrey Stone/Russell Badders, Esqs.  
Beggs & Lane Law Firm  
P.O. Box 12950  
Pensacola, FL 32576-2950

Mr. Bill Walker  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301-1859

Robert Scheffel Wright, Esq.  
Landers Law Firm  
P.O. Box 271  
Tallahassee, FL 32302

David E. Ramba, Esq.  
Lewis Law Firm  
P.O. Box 10788  
Tallahassee, FL 32302

James A. McGee, Esq.  
Progress Energy Florida, Inc.  
P.O. Box 14042  
Saint Petersburg, FL 33733-4042

Charles Guyton, Esq.  
Steel Law Firm  
215 S. Monroe St., #601  
Tallahassee, FL 32301-1804

James Beasley/Lee L. Willis, Esqs.  
Ausley Law Firm  
P.O. Box 391  
Tallahassee, FL 32302

Gerard J. Kordecki  
10301 Orange Grove Drive  
Tampa, FL 33618

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to )  
Rule 25-07.0832, F.A.C., Firm )  
Capacity and Energy Contracts )

Docket No. 001574-EQ

Filed: March 7, 2003

SUPPLEMENTAL DIRECT TESTIMONY

OF

FRANK SEIDMAN

ON BEHALF OF

THE CITY OF TAMPA

AND

THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

DOCUMENT NUMBER-DATE

02293 MAR-7 8

FPSC-COMMISSION CLERK

1 SUPPLEMENTAL DIRECT TESTIMONY OF FRANK SEIDMAN  
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
3 IN DOCKET NO. 001574-EQ  
4 REGARDING PROPOSED AMENDMENTS  
5 TO RULE 25-17.0832, F.A.C.,  
6 FIRM CAPACITY AND ENERGY CONTRACTS  
7 ON BEHALF OF  
8 THE CITY OF TAMPA and  
9 THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY  
10

11 **Q. Please state your name, profession and address.**

12 A. My name is Frank Seidman. I am President of  
13 Management and Regulatory Consultants, Inc.,  
14 consultants in the utility regulatory field. My  
15 mailing address is P.O. Box 13427, Tallahassee, FL  
16 32317-3427.

17  
18 **Q. Have you previously filed direct testimony in this**  
19 **proceeding?**

20 A. Yes. I filed direct testimony on March 1, 2002.  
21

22 **Q. What is the purpose of your supplemental direct**  
23 **testimony?**

24 A. The purpose of my supplemental testimony is to  
25 address two statements made in the February 6, 2003

1 Notice of Rulemaking (NOR) as well as to address  
2 issues or concerns that have been brought to my  
3 attention since I filed my direct testimony.

4

5 **Q. What is the first statement in the NOR that you**  
6 **wish to address?**

7 A. On page 3 of the NOR, in discussing the effect of  
8 the proposed reduction in the minimum contract  
9 length it is stated, " The effect is to reduce the  
10 risk that ratepayers will be tied to long-term  
11 contracts that are above avoided cost." In my  
12 opinion, the basic premise of that statement - that  
13 standard offer contracts can be above avoided cost  
14 - is in error.

15

16 **Q. Please elaborate.**

17 A. That statement not only implies that this  
18 Commission has approved contracts that result in  
19 payments to Qualifying Facilities (QFs) that are  
20 above avoided cost, but it also implies that the  
21 rule and formulae of this Commission could even  
22 produce payments that are above avoided cost. This  
23 is an absolutely false premise on which to base  
24 these proposed rule amendments.

25

1       **Q.    Could you explain further?**

2       A.    Yes.  Contracts that result in payments to QFs in  
3            excess of avoided cost are not possible in Florida.  
4            Such contracts are not allowed under the law, are  
5            not allowed by existing rules, and cannot happen  
6            when prices are determined using the formulae that  
7            were developed and implemented by this Commission.  
8            There are three very good reasons for this:

9

10           First, federal law requires that no rule  
11            prescribed shall provide for a rate which  
12            "exceeds the incremental cost to the electric  
13            utility of alternative electric energy."  And  
14            federal law defines incremental cost as "the  
15            cost to the electric utility of the electric  
16            energy which, but for the purchase from such  
17            cogenerator or small power producer, such  
18            utility would generate or purchase from  
19            another source."  In other words, whether  
20            capacity is supplied by the utility or the QF,  
21            the cost will be transparent to the ratepayer.

22

23           Second, this Commission implemented federal  
24            law by setting prices to be paid to qualifying  
25            facilities under a standard offer contract

1           which, according to Commission rule, "shall be  
2           based on the need for and equal to the avoided  
3           cost of deferring or avoiding the construction  
4           of additional generation capacity or parts  
5           thereof by the purchasing utility."

6  
7           Third, all contracts approved by the  
8           Commission must contain prices that pass a  
9           test set up in the rules that insures that  
10          they do not exceed the avoided cost.

11  
12          Accordingly, under the formulae and provisions of  
13          the Commissions rules, a situation cannot exist  
14          where the ratepayers will be tied to long-term  
15          contracts that are above avoided cost. Prices  
16          based on a utility's avoided cost cannot - by  
17          definition - result in prices that exceed that  
18          utility's avoided cost. Therefore, the premise for  
19          the proposed rule amendments is nonexistent.

20  
21          **Q. That same statement in the NOR also addresses**  
22          **reducing the risk of QF contracts to the**  
23          **ratepayers. Do you have any comments on that issue?**

24          **A.** Yes, I do. The risk to ratepayers of payments made  
25          to QFs is already so much less than the risk of a

1 utility constructing its own generating capacity,  
2 that I do not believe anything further can be done  
3 without violating the provisions of state and  
4 federal law. This is because there are so many  
5 safeguards already built in to the formulae and the  
6 rules.

7  
8 First, is the value-of-deferral  
9 (VOD) payment stream on which payments  
10 under the standard offer contracts are  
11 based. Under VOD, QFs get paid very small  
12 fixed cost payments in the early years of  
13 a contract (in exchange for larger  
14 payments in future years), whereas, if a  
15 utility constructed its own capacity, it  
16 would receive very large payments in the  
17 early years.

18  
19 Second, a QF only gets paid for the "planned"  
20 or "projected" cost of generation. In  
21 comparison, if a utility builds its own  
22 generating capacity, it gets paid for the  
23 actual cost of construction, including any  
24 cost overruns. An example of this, is TECO's  
25 Polk coal-gasification units which were



1 projected to cost \$389 million but actually  
2 ended up costing in excess of \$506 million. A  
3 standard offer contract for deferral of  
4 capacity from this unit would have been based  
5 on the \$389 million, whereas all \$506 million  
6 ended up in TECO's rate base. QF contracts -  
7 in lieu of the coal-gasification units - would  
8 have reduced the risk to ratepayers by about  
9 \$117 million.

10  
11 Third, there are always additional capital  
12 costs incurred during a generating plant's  
13 lifetime, be it for replacements of major  
14 components, technological upgrades or for  
15 meeting changing environmental requirements.  
16 For a utility constructed unit, those costs  
17 end up in rate base. For capacity provided by  
18 a QF, they do not. The payments are fixed,  
19 based solely on the originally projected  
20 costs, without consideration for any future  
21 capital expenditures.

22  
23 Fourth, when a utility constructed unit  
24 operates at a lower efficiency and reliability  
25 than planned or projected, the additional

1 operating costs end up in the expenses passed  
2 on to the ratepayer. That cannot happen under  
3 a QF standard offer contract because, the  
4 payments are based on a set level of  
5 efficiency and reliability. Lower levels of  
6 efficiency or reliability result in reduced  
7 payments to the QF and accordingly reduce  
8 costs to be borne by the ratepayers.

9  
10 All of these factors act to reduce the risk of QF  
11 standard offer contracts to the utility's  
12 ratepayers to a level much lower than the risk  
13 associated with utility constructed capacity.

14  
15 **Q. What is the second statement in the NOR that you**  
16 **wish to address?**

17 A. On page 5 of the NOR, it is stated, "Allowing a  
18 qualifying facility to choose the contract term  
19 would abrogate the Commission's regulatory  
20 responsibility over capacity and energy contracts."  
21 In my opinion, this statement is completely  
22 misguided and in error. Allowing the QF to choose  
23 the maximum length of the contract has been an  
24 option since 1983. Staff therefore seems to be  
25 implying that the Commission has been abrogating

1 its responsibility for the past 20 years. Surely  
2 that has not been the case. Staff's statement begs  
3 the question "why does allowing a qualifying  
4 facility to choose the contract term abrogate the  
5 Commission's regulatory responsibility, but  
6 allowing the utility to choose it does not?"  
7

8 The purpose of setting contract term limits in the  
9 rules seems to have been forgotten. The rules set a  
10 minimum and maximum contract period. The minimum  
11 contract period was set at only 10 years (even  
12 though it would not offset the life of a generating  
13 unit) to ensure the QF would be around long enough  
14 to confer a capacity benefit on the utility and its  
15 ratepayers. The maximum contract period was set at  
16 the life of the unit because, with payments being  
17 made on the VOD basis, it was only at the end of  
18 that period that the QF would receive the same  
19 amount, on a present value basis, as it would have  
20 received on a revenue requirements basis. In other  
21 words, the minimum period protected the ratepayer  
22 from the QF not conferring a capacity benefit, and  
23 the maximum period protected the QFs entitlement to  
24 a full avoided cost payment.  
25

1 This newly advocated preference for short-term  
2 contracts, without any assurance that a long-term  
3 contract can be secured, goes against the purposes  
4 of the rule. By removing the protection that a QF  
5 can earn full avoided cost, QF development will be  
6 impeded contrary to the intent and requirement of  
7 the law.

8  
9 Allowing the QF to seek longer contract terms, up  
10 to the life of the avoided unit, not only assures  
11 benefits to the ratepayers, but also allows QFs to  
12 secure long term financing for what is a major,  
13 long term, capital commitment on behalf of local  
14 governments. The ability to enter into a long term  
15 contract is essential for obtaining financing for  
16 waste-to-energy projects which typically have  
17 useful lives and financing terms in excess of 20  
18 years. Eliminating the option of long term standard  
19 offer contracts will severely limit a QF's ability  
20 to finance.

21  
22 **Q. You stated that you also wanted to address some**  
23 **issues or concerns that have been brought to your**  
24 **attention since you filed your direct testimony.**  
25 **Would you please elaborate?**

1       A.    Yes; I would be happy to. There seems to be a  
2            concern that small amounts of generating capacity  
3            cannot defer the need for large utility power  
4            plants. I touched on this matter to some degree in  
5            my original direct testimony of March 1, 2002. In  
6            that testimony I pointed to language in several  
7            Commission orders regarding approval of revised  
8            utility standard offer contracts that said that it  
9            was unlikely that the avoided unit would be  
10           avoided. It has always been my opinion that any  
11           capacity provided by a QF avoids an equal or  
12           greater amount of utility capacity. Until recently,  
13           tangible evidence and utility admission of this  
14           "theory" had been lacking. However, evidence  
15           confirming this opinion and theory can be found in  
16           the records of this Commission's Determination of  
17           Need for FPL's Martin Unit 8 plant. In that case,  
18           the Commission observed that the lack of 15 MW  
19           required FPL to accelerate installation of a new  
20           789 MW plant in order to maintain reserve margins.

21  
22           As an aside, but of great significance in this  
23           regard, it should be noted that selection by a  
24           utility of a proposed planned plant size is not an  
25           exact science. Plant size selection depends to a

1 large extent on the unit sizes available in the  
2 market - especially from manufacturers of  
3 combustion-gas turbines. Because there is a  
4 substantial degree of flexibility necessary when  
5 choosing a specific plant size, it is reasonable to  
6 assume that small increments of QF capacity can  
7 avoid or defer capacity - either small increments  
8 equal in size to the QF, or, as demonstrated in the  
9 Martin need hearings, a 789 MW plant.

10  
11 **Q. Are there any other areas of concern that you would**  
12 **care to address?**

13 A. Yes. It appears that the large amounts of QF  
14 capacity purchases by FPC (now Progress Energy of  
15 Florida) in the early 1990's, necessary to avert  
16 capacity shortages, may have played a role in  
17 focusing the Commission (staff) attention on the  
18 so-called "above market" pricing issue. If so,  
19 this is an erroneous premise for several reasons -  
20 each equally important. As I will discuss, those  
21 problems arose as a result of poor planning on the  
22 part of FPC, and the QFs in fact rescued FPC and  
23 its ratepayers at a time when there were no other  
24 options available.

25

1           First, FPC insisted that its next planned  
2           generating unit - the avoided unit on which  
3           those QF contracts were based - was a coal  
4           fired power plant with high capital and low  
5           operating costs.

6  
7           Second, absent the urgent need for capacity,  
8           FPC would have constructed a coal fired power  
9           plant. However, FPC would not have been able  
10          to permit and construct the avoided coal plant  
11          in the time frame they deemed necessary to  
12          avoid capacity shortfalls and outages.

13  
14          Third, QFs were able to provide the capacity  
15          needed in a much shorter time frame thereby  
16          "rescuing" FPC and the grid in general, from  
17          the results of poor utility planning.

18  
19          Fourth, if FPC had constructed the avoided  
20          coal plant, the ratepayers would have been  
21          responsible for its total cost - fixed and  
22          variable - over its useful life - with no  
23          opportunity for FPC to "renegotiate" or "buy-  
24          down" the cost as it has done with many of the  
25          QF contracts.

1           The issues that arose in the early 1990's had  
2           nothing to do with QF payments in excess of avoided  
3           cost and everything to do with the utility planning  
4           process and the utility's inability to react as  
5           quickly as QFs to changes in a utility's planning.  
6           The proposed amendments to the rule are intended to  
7           solve a problem that does not exist by penalizing  
8           the QF industry which actually came to the rescue  
9           of FPC and its ratepayers.

10

11       **Q.    Do you have any concluding remarks?**

12       A.    Yes. I would ask the Commissioners to keep in mind  
13           the many safeguards for the ratepayers that are  
14           already built into the rules, such as value of  
15           deferral pricing. Value of deferral pricing, which  
16           pays the QF very little up-front dollars, assures  
17           that the only way a QF can earn full avoided cost -  
18           as required by state and federal law - is to  
19           provide capacity and energy for as many years as  
20           the utility's avoided generating unit would have  
21           provided that capacity and energy. Please also keep  
22           in mind that by reducing the contract term, as is  
23           proposed in these amendments, guarantees that a QF  
24           will never receive the cost avoided by the utility  
25           and thus will end up subsidizing the utility. It is



1           understandable therefore, why the utilities are  
2           supportive of the rule amendments proposed by staff  
3           in this proceeding. But please keep in mind that  
4           the end result of the amendments - if implemented  
5           by the Commission - would be: (1) a substantial  
6           deterrent to QF development contrary to law, and  
7           (2) a pure and simple subsidy from the QF to the  
8           utility and its ratepayers.

9  
10          I would also ask that the Commission keep in mind  
11          that smaller, dispersed generating units - such as  
12          those typically provided by QFs - contribute to a  
13          more reliable and secure electric system, and  
14          provide it at a cost no greater than that which  
15          would be incurred by the utility. The proposed  
16          amendments would thwart the intentions of the law  
17          and reduce the availability of those benefits.

18

19       **Q.   Does that conclude your supplemental direct**  
20       **testimony?**

21       A.   Yes it does.

22