

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to Rule)
25-17.0832, F.A.C., Firm Capacity And)
Energy Contracts)
_____)

Docket No. 060555-EI

Filed: November 3, 2006

DIRECT TESTIMONY

OF

DAVID W. McCARY

FOR

THE CITY OF TAMPA, FLORIDA

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DIRECT TESTIMONY
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DAVID W. MCCARY
FOR
THE CITY OF TAMPA, FLORIDA

Q. Please state your name, occupation and business address.

A. My name is David W. McCary. I am the director of the Department of Solid Waste and Environmental Program Management of the City of Tampa, Florida. Our offices are located at 4010 W. Spruce Street, Tampa, Florida 33607.

Q. State briefly your educational background and experience.

A. I hold a Bachelor of Science in Business Management from LaTourneau University, Houston, Texas. I received my Certified Public Manager's (CPM) accreditation from Southwest Texas State University, School of Public Services. I also received my Solid Waste Management Certifications from Texas A & M University Extension Services and Solid Waste Association of North America (SWANA) Certification Services. Prior to joining the City of Tampa, I was employed as the Deputy Assistant Director of Operations for the City of Houston, Texas and subsequently was employed as the Director of the Department of Solid Waste Management for the City of Durham, North Carolina.

1 **Q. On whose behalf are you appearing and presenting this testimony?**

2 A. I am presenting this testimony on behalf of the City of Tampa, Florida (the
3 “City” or “Tampa”) in my capacity as Director of the City’s Department of
4 Solid Waste and Environmental Program Management.

5

6 **Q. What is City’s interest in this proceeding?**

7 A. The City is a long-time producer of renewable energy, first generating
8 electricity from our McKay Bay Refuse-to-Energy Facility (“McKay Bay”) in
9 1985. Currently, McKay Bay has an electrical generating capacity of
10 approximately 22 megawatts, the majority of which is sold to Tampa Electric
11 Company (“TECO”). The electricity produced by McKay Bay is defined as
12 “renewable energy” by the Florida Legislature in Section 366.91, Florida
13 Statutes. As such, we are of the class of facilities that are eligible for the
14 continuous contracts required by the law and that are the subject of this
15 proceeding.

16 In addition to our existing facilities, there is the possibility that our generating
17 capacity at McKay Bay could be expanded, or that we would construct one or
18 more additional renewable energy facilities. Moreover, as a large consumer of
19 electricity, the City is concerned with increasing electric rates due to a lack of
20 diversity in Florida’s fuel mix (the growing reliance on natural gas as an
21 electric generating fuel).

22 Accordingly, as both a renewable energy producer and large energy consumer,
23 the City will be directly affected and has a vested interest in how the

1 Commission implements what we believe is the very clear intent of the
2 Legislature to promote renewable energy, diversify Florida's fuel mix, reduce
3 reliance on natural gas for electricity production and reduce volatility of
4 electricity prices.

5

6 **Q. Please provide a brief description of the City's McKay Bay facility.**

7 A. The City's facility disposes of approximately 330,000 tons of municipal solid
8 waste annually – most of which is generated within the City of Tampa – at our
9 McKay Bay facility. Our facility is of the “mass burn” type, where, after
10 separating out large non-combustibles, and certain recyclables, the bulk of the
11 solid waste is combusted “as-is” in a furnace. Recyclable metals, and other
12 materials are recovered from the ash after the combustion process. (This is in
13 contrast to refuse derived fuel or “RDF” facilities which recover recyclables
14 prior to combustion and which convert non-recyclable combustible wastes into
15 RDF for firing in a boiler.) Heat produced in the combustion process is
16 recovered to produce steam for use in a 22mW steam turbine generator. The
17 City's McKay Bay facility generates approximately 164,000 mWh of
18 electricity annually.

19

20 **Q. What does the City do with the electricity generated at McKay Bay?**

21 A. The City consumes a relatively small amount of electricity for use on-site, with
22 the majority of the electricity being sold to Tampa Electric Company (TECO)
23 pursuant to a negotiated contract for firm energy and capacity. The contract

1 under which capacity and energy are being sold today (the "first" contract)
2 commits 15.5 megawatts to TECO. That contract was executed in August,
3 1982 prior to adoption of the Commission's QF rules, was amended by
4 renegotiation in May, 1989, and will expire in August, 2011. There is a second
5 contract, which was just approved by the Commission at its October 24, 2006
6 Agenda Conference in Docket No. 060573-EQ but which is not yet in effect.
7 That contract, which commits an additional 3.5 megawatts to TECO, will
8 expire simultaneously with the first contract.

9
10 **Q. Are the City's two contracts with TECO standard offer contracts?**

11 **A.** No. The contracts are the result of negotiations between the City and TECO.
12 As I mentioned, the first contract was originally negotiated and executed prior
13 to the Commission's adoption of the standard offer rules. It was renegotiated
14 and amended in 1989 in accordance with subsequently adopted rules of the
15 Commission. The second contract was negotiated as a result of very specific
16 provisions contained in the 1989 amendment to the first contract that allowed
17 the sale of additional capacity under certain conditions. Please understand that
18 this is a much abridged description and explanation of the genesis of the two
19 contracts. There were a number of significant and perhaps unique factors that
20 contributed to the final disposition of certain controversial issues between the
21 parties. I am not personally familiar with all the details as I only assumed my
22 position with the City in 2003, but I'm certain our legal counsel can answer
23 any questions that are beyond my scope of knowledge.

1 **Q. Do I understand correctly that the City has successfully negotiated two**
2 **contracts with TECO for the sale of capacity and energy - one before rules**
3 **were adopted and one under the current rules?**

4 A. You are correct - to a degree.

5

6 **Q. What do you mean by “to a degree”?**

7 A. Basically the City had to take what it could get. Let me say that until you have
8 attempted to negotiate with an electric utility, you cannot appreciate the
9 tremendous and unfair advantage that the utility has in the process. Without
10 the fallback “benchmark” of a legitimate and fair standard offer, the renewable
11 energy producer or other non-utility generator is at the mercy of the utility.
12 What happens in the world outside of this hearing room is that the standard
13 offer becomes the “best” deal the utility will offer. Therefore, in the absence
14 of special circumstances such as were present in our two contracts with TECO,
15 any negotiation will likely result in “less” than the standard offer because for
16 every change requested by the renewable energy producer, the utility will
17 require something more in return. Staff’s suggestion that if you’re not happy
18 with the standard offer, you can always negotiate what you want is a laudable
19 aspiration that unfortunately does not reflect the real world. The standard offer
20 must be “good enough” so that the utility will have an incentive to seek
21 negotiation with the renewable energy producer – rather than the current
22 philosophy that yields a “not good enough” standard offer that makes it a
23 necessity for the renewable energy producer to seek negotiation.

1 **Q. You stated that the utility has an unfair advantage in the negotiating**
2 **process. Please explain.**

3 A. Selling electricity to a utility is very similar to buying electricity from a utility.
4 As retail electric consumers, we are all restricted to purchasing electricity from
5 our designated “monopoly” electric utility supplier. As a producer of
6 electricity, we are also limited to selling only to the “monopsony” utility
7 purchaser. Either way – exercising its monopoly or monopsony power – as our
8 only seller or buyer the utility has a great advantage in the market. It can set
9 prices too low when buying and too high when selling because the other party
10 to the transaction has no alternative. In the same way that “standard” retail
11 electric tariff rates approved by this Commission are necessary to prevent
12 monopoly utilities from overcharging for electricity sold, standard offer
13 contracts are necessary to prevent monopsony utilities from underpaying for
14 electricity purchased. A fair and reasonable standard offer that is not biased
15 against the renewable energy producer will act as a constraint on the
16 monopsony power of the utility just as approved retail tariffs act as constraints
17 on its monopoly power. We need both.

18
19 **Q. But isn't it true that you can sell to other utilities?**

20 A. Although it may appear that we can sell to “other” utilities, that is really more
21 perception than reality. You have to remember that selling to another utility
22 will automatically result in increase costs (decreased revenues) – both direct
23 out-of-pocket costs and indirect administrative cost. For example, selling to a

1 utility other than our “native” supplier would require that the City incur
2 additional costs associated with transmission services, the assessment of line
3 loss charges as opposed to line loss credits, and the administrative and
4 personnel costs of scheduling electricity deliveries, among other things.
5 Moreover, because all investor-owned utilities are subject to the same
6 Commission rules that prescribe a uniformly under-valued price for capacity
7 and onerous terms and conditions, the City is left with no economically viable
8 option other than sales to our local utility.
9

10 **Q. You said the City renegotiated its first contract with TECO before the**
11 **standard offer rules were adopted. Isn't this evidence that the negotiation**
12 **process works?**

13 A. No, it is not. The original contract severely undervalued the electricity
14 generated by the City. We were only able to renegotiate our contract with
15 TECO as a result of appeals by the City (and a number of other local
16 governments) to the Florida Legislature for relief. As a result, the Legislature
17 directed this Commission to adopt rules under which certain solid waste
18 facilities (which included McKay Bay) could renegotiate their firm capacity
19 and energy contracts with the purchasing utility. It is only as a result of
20 Legislative intervention and those rules that TECO renegotiated with the City.
21
22
23

1 **Q. You said the City negotiated its second contract with TECO just recently**
2 **and presumably under the current standard offer rules. Isn't this**
3 **evidence that the current rules are sufficient to encourage renewable**
4 **energy?**

5 A. No, not at all. I mentioned that there were special circumstances and specific
6 provisions contained in the 1989 amendment to our first contract that enabled
7 the City to negotiate for the sale of additional capacity and energy from
8 McKay Bay. In the absence of those provisions it is unlikely, based on our
9 initial meetings with the utility to discuss a second contract, that we would
10 have been able to negotiate the second contract.

11
12 **Q. You have indicated that neither of the City's two contracts with TECO**
13 **are standard offers. Please explain then why standard offers are of**
14 **importance to the City?**

15 A. Having a reasonable, fair and legitimate standard offer that prescribes realistic
16 prices and terms and conditions for the sale of firm energy and capacity would
17 be of great value in leveling the playing field for renewable energy producers.
18 If the utility is reluctant to negotiate in good faith, or seeks to unduly delay the
19 negotiation process, the standard offer would be there to serve as a "safety net"
20 of sorts. If negotiations are failing and time is running out, a fair and
21 reasonable standard offer provides an attractive alternative to the renewable
22 energy producer.

23

1 **Q. Please explain how the standard offer serves as a safety net.**

2 A. I meant that if the standard offer contract is a reasonable one and if the utility
3 proves to be unreasonable in negotiations, the renewable energy producer
4 would have the option of accepting the standard offer in lieu of negotiation. If
5 the Commission were to adopt the rules sponsored and supported in the
6 testimony of Mr. Frank Seidman, and if the Commission enforced those rules,
7 the resulting standard offer would by definition be a reasonable standard offer
8 that would serve in this safety net capacity. However, the rules proposed by
9 the Commission (as drafted by your Staff) would do little to assure that the
10 pricing, terms and conditions contained in the standard offer would be
11 reasonable.

12
13 **Q. Would you please elaborate?**

14 A. Yes. If a legitimate standard offer is in effect at the time a renewable energy
15 producer is negotiating for the sale of firm capacity and energy (one that is
16 reasonable with respect to pricing, terms and conditions), the renewable energy
17 producer will be in a position to resist unreasonable demands of the utility, as
18 well as undue delays in the negotiation process. If necessary, the renewable
19 energy producer could accept the standard offer. One way to look at it is that
20 the existence of a legitimate standard offer in a sense establishes the
21 Commission's presence in the negotiation process as a mediator to help the
22 parties overcome sticking points.

23

1 **Q. What is the City's position with regard to the proposed rule amendments?**

2 A. For details on this point, I would refer you to the testimony and exhibits of our
3 expert witness Mr. Frank Seidman. However, as a general proposition, our
4 position is that the proposed amendments will not result in standard offer
5 contracts that are reasonable in their pricing, terms and conditions and as such,
6 will fall well short of the policy goals articulated by the Florida Legislature in
7 Section 366.91, F.S. As a larger electricity consumer, we are concerned that
8 Florida's growing reliance on natural gas to produce electricity has resulted in
9 unreasonably high electric rates and has unfairly imposed the entire risk of
10 natural gas price increases or supply interruptions squarely on the consumer's
11 shoulders. Rules that strongly encourage renewable energy will reduce those
12 risks now and into the future.

13

14 **Q. Aren't there also risks associated with renewable energy?**

15 A. I'm not an expert on this but I would imagine there are some risks associated
16 with renewable energy. However, speaking from experience, I would have to
17 say that such risks, if any, are minor. Let me explain. As I mentioned, the
18 City has been producing electricity at its McKay Bay facility for over 20 years.
19 Similarly, other local governments – Palm Beach County, Hillsborough
20 County, Pinellas County, Pasco County, Broward County, Miami-Dade
21 County to name a few – have been doing likewise. To my knowledge, none of
22 these local governments have failed to live up to their contractual
23 requirements, none of them have ceased operations, and none of them have

1 done anything other than provide value to the State by adding much needed
2 diversity of fuel supply in addition to the many environmental benefits.

3 As Mr. Seidman will testify, the current standard offer rules were adopted at a
4 time when the renewable energy or “non-utility generating” industry was in its
5 infancy with little or no history of performance or reliability. As a result, the
6 Commission adopted rules and a philosophy designed to address its concerns
7 at that time about the long-term reliability and viability of the fledgling
8 industry. As it turns out the industry – especially the waste-to-energy industry
9 – has proven itself to be very reliable over the short and long term. As Mr.
10 Seidman will advise the Commission, it is now time to acknowledge this
11 reliability by substantially changing the rules and philosophy to reflect the
12 realities of renewable energy producers as reliable, long-term contributors to
13 Florida’s energy needs.

14 Rather than recognizing the reliability of the industry and its many benefits to
15 the State, and embracing this proceeding as an opportunity to fix the problem,
16 it seems that the proposed amendments are little more than an attempt to
17 maintain the status quo in the face of a direct mandate from the Legislature to
18 the contrary. Meaningful change can only begin to occur after the inherent
19 bias against renewable energy producers and other non-utility generators is
20 eliminated.

21
22 **Q. Would you please explain what you mean by the inherent bias?**

1 A. Yes. As I mentioned earlier, the City is a long-time producer of renewable
2 energy, having produced and sold electricity produced at McKay Bay for over
3 twenty years. During that time, the City has been involved – by direct
4 participation or by monitoring – in matters before the Florida Legislature and
5 this Commission dealing with QFs and/or renewable energy. There is a
6 general consensus in the waste-to-energy industry, with which I agree, that a
7 long-standing institutional bias exists against any non-utility form of
8 generation - including renewable energy. For example, your Staff's September
9 21, 2006 recommendation in this Docket repeatedly refers to the "risks"
10 associated with renewable energy producers yet fails to mention any basis for
11 presuming such risks. To my knowledge, there is no evidence that renewable
12 energy facilities such as the City's McKay Bay facility present significant
13 risks. Is the Commission aware of evidence that QFs and renewable energy
14 facilities routinely fail to perform under their contracts? I know the City has
15 done all – and more – than it was/is required to do under its contract with
16 TECO. Preoccupation with the presumed but not identified risks of renewable
17 energy begs several questions -- what about the risk associated with the
18 thousands upon thousands of megawatts of natural gas fired generators that
19 were approved by this Commission and built by the utilities based on natural
20 gas fuel price projections that – as it turns out – were terribly understated?
21 Where is that risk mentioned or accounted for? Are the ratepayers held
22 harmless from those risks by the utilities? Are those risks less than the risks of
23 renewable energy? Why then must renewable energy facilities be totally risk

1 free? I think we can agree that no form of electric generation is totally free of
2 risk, but the level of exposure to the electric consumer appears to be far greater
3 when the electricity is produced by the utility than when it is produced by
4 renewable energy facilities. Unfortunately, the Commission's perception
5 appears to be that if the utility does it, there is no risk, but if it's a non-utility
6 every conceivable risk must be identified and protected against. That may be
7 why the Legislature saw fit to intervene in this regard.

8
9 **Q. Do you have any other examples of how utility generation is more risky?**

10 A. Yes, and in answering that, I will assume that by "risky" we mean the potential
11 to impose additional costs on the electricity consumers. Aside from the fuel
12 price risk of utility generation which is essentially borne completely by the
13 utilities' customers, I have what I believe is a very good example of something
14 that affected the McKay Bay facility several years ago. In the late 1990s the
15 Federal EPA adopted new environmental emission regulations which McKay
16 Bay could not meet without substantial modifications to the facility.
17 Accordingly, the City undertook – at a cost of over \$100 million -- an
18 environmental retrofit of McKay Bay that reduced emissions below the new
19 emission guidelines, and thereby continue to operate well into the future. The
20 costs of those modifications – which were greater than the original cost of the
21 McKay Bay facility were wholly borne by the City. Had that been a utility
22 owned generating plant the utility would almost certainly have made use of the

1 “environmental cost recovery clause” mechanism to add those costs to the
2 electric bills of all its customers. How is that risk accounted for by the
3 Commission?

4
5 **Q. What other concerns does the City have?**

6 A. **First**, the QF rules which Staff proposes to amend in minor ways were
7 originally adopted in 1983. They were amended on several instances but in
8 essence maintain the same basic philosophy that was adopted in the early
9 1980s – a very different time in our energy history. It is time to take a fresh
10 look, make a new start, think out of the box. I am told that the way the
11 Commission regulates utilities today is very different than the way it regulated
12 them in 1983 – that the basic philosophy has changed. Why not then try a
13 different philosophy for renewable energy? Some of the parties in this room
14 today, myself included, want to sell renewable energy and/or build renewable
15 energy facilities. By our testimony and that of our expert witnesses, we are
16 telling the Commission what our industry needs. By and large, this reiterates
17 our post workshop comments submitted on several prior occasions, which were
18 essentially dismissed.

19 **Second**, it is our view, and that of our legal counsel, that the proposed rule
20 amendments would clearly fail to comply with Section 366.91, F.S. in that they
21 would do nothing to significantly change the status quo. As our consultants
22 Mr. Seidman and Mr. Bedley will testify, the Commission’s rule proposal will
23 not advance the policy objectives set forth by the Legislature because it will

1 not result in reasonable prices and will make project financing difficult. The
2 proposed rule contained in the testimony of our expert witness, Mr. Seidman,
3 is specially designed to comply with the legislative intent based on the needs of
4 the industry.

5

6 **Q. Do you have any suggestions or closing comments for the Commissioners?**

7 A. As I mentioned, our consultant Mr. Frank Seidman will address the details of a
8 proposed rule that is supported by the City. However, as a general comment,
9 the City would suggest that the Commission explore and include in its rules
10 ways to encourage the development of renewable energy resources rather than
11 taking steps to maintain the status quo or to further discourage the industry.

12

13 **Q. Does this conclude your direct testimony?**

14 A. Yes it does.