

ORIGINAL

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December 8, 2006

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED-FPSC
DEC 8 PM 3:17
COMMISSION
CLERK

Re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy contracts; FPSC Docket No. 060555-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Post-Hearing Comments of Tampa Electric Company.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

- CMP _____
- COM 5 _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1 _____
- OTH Kumil. _____

JDB/pp
Enclosure

cc: All Parties of Record (w/enc.)

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
11265 DEC-8 g
FPSC-COMMISSION CLERK

ORIGINAL

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: December 8, 2006

POST-HEARING COMMENTS OF TAMPA ELECTRIC COMPANY

In addition to the joint comments submitted on behalf of the four investor-owned utilities including Tampa Electric, the company is compelled to refute the false and misleading comments submitted by Mr. David W. McCary on behalf of the City of Tampa.

On November 3, 2006 the City of Tampa filed direct testimony of David W. McCary, Director of the Department of Solid Waste and Environmental Program Management of the City of Tampa. Mr. McCary stated in his testimony that he is not personally familiar with all of the details of the City's two small power production agreements with Tampa Electric. (Testimony, pg. 4, lines 21-22). Notwithstanding his admitted unfamiliarity with the two contracts, Mr. McCary went on to speculate about the spirit of cooperation and good faith of Tampa Electric in the negotiation of both the 1982 contract, the 1989 amendment to that contract and the new contract executed earlier this year between Tampa Electric and the City. At page 7 of his testimony Mr. McCary says the original contract severely undervalued the electricity generated by the City. On page 8 of his testimony he suggests that Tampa Electric was reluctant to negotiate in good faith.

The facts underlying the negotiation of the 1982 agreement, the 1989 amendment to that agreement and the new 2006 agreement between the City and Tampa Electric demonstrate that Mr. McCary's comments with regard to these matters are baseless.

DOCUMENT NUMBER-DATE

11265 DEC-8 8

FPSC-COMMISSION CLERK

Dr. Richard A. Garrity, someone who was familiar with the negotiation of the 1982 agreement, testified in the 1983 hearing before the Commission where the contract between Tampa Electric and the City was approved for cost recovery purposes. At the time Dr. Garrity was Urban and Environmental Coordinator for the City of Tampa and project administrator of the McKay Bay refuse energy project.

Dr. Garrity testified in detail regarding the payments Tampa Electric agreed to pay the City under the 1982 agreement. Those payments included full avoided energy and capacity costs as well as line loss credits due to the close proximity of the City's facility to Tampa Electric's load center. See hearing transcript pages 1, 66-79, attached hereto and by reference made a part hereof.

Dr. Garrity summarized his testimony in the 1983 hearing as follows:

A. [Dr. Garrity] I believe the Facility is a state of the art response to the policy objectives of the City of Tampa, the State of Florida, and the Florida Public Service Commission concerning the environmentally sound disposal of solid waste and the cogeneration[sic] of electrical power. The solid waste disposal and energy generation system that includes the Facility is economically feasible, environmentally desirable[sic], and, above, all, technically reliable. The Small Power Production Agreement was negotiated at arms length in light of all Commission guidelines available at the time. And I believe the Agreement is fair – fair to the City of Tampa, fair to Tampa Electric and fair to the consuming public. I urge Commission approval of Tampa

Electric's petition in this matter. (Emphasis supplied) (Tr. 78, line

16 – Tr. 79, line 6)

Dr. Garrity knew the facts when he testified on behalf of the City and, unlike Mr. McCary, did not have to resort to baseless speculation. It is important to recall that Tampa Electric willingly negotiated the 1982 agreement with the City prior to the adoption of any Commission rules requiring it to do so or requiring a standard offer contract. Tampa Electric expended considerable time and effort in obtaining Commission approval of its 1982 agreement with the City.

Tampa Electric cooperated with the City of Tampa in the 1989 amendment to the 1982 Small Power Production Agreement and further cooperated in the execution of a 1999 agreement on force majeure procedures between the City of Tampa and Tampa Electric Company.

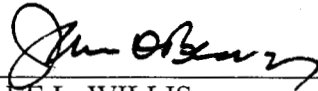
In 2005 and continuing into 2006 Tampa Electric negotiated in good faith with the City of Tampa for the purchase of 3.5 megawatts of additional capacity and associated energy from the McKay Bay facility made possible by certain environmental retrofits required of the City which enabled the plant to produce the additional capacity. Tampa Electric willingly negotiated the 2006 agreement in lieu of the standard offer contract which had been available to the City in 2005. Tampa Electric was prepared to enter into the agreement months earlier than the actual execution date of the agreement, but was unable to do so because of unexplained delays in the City's internal processing of the agreement. After those delays were resolved, Tampa Electric promptly petitioned the Commission and obtained Commission approval of capacity and energy payments pursuant to the new agreement. The City did not object to the Commission about this agreement nor the negotiation process undertaken to reach agreement before or during the

docket, and did not file an objection to the PAA order entered into by the Commission resolving the docket just last month.

In summary, Mr. McCary's comments in his November 3, 2006 direct testimony in this proceeding regarding the nature of prior negotiations between the City of Tampa and Tampa Electric are inaccurate and erroneous. They should be rejected out of hand.

DATED this 8th day of December 2006.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Hearing Comments, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 8th day of December 2006 to the following:

Mr. Larry D. Harris*
Office of General Counsel
Florida Public Service Commission
Room 301D – Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Richard A. Zambo
Richard A. Zambo, P.A.
1334 S.E. MacArthur Boulevard
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Ms. Vicki Gordon Kaufman
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Mr. Robert Hunter
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2521 Traveler's Palm Drive
Edgewater, FL 32141

Mr. Jeff Cooper
Lake County, Florida
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Tavares, FL 32778

Ms. Susan F. Clark
Radey Thomas Yon & Clark
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Tallahassee, FL 32301



ATTORNEY

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BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :

TAMPA ELECTRIC COMPANY'S petition :
for approval of their proposed
payment to the City for energy and:
capacity to be provided by the
City's small power production :
facility.

DOCKET NO. 830199-EU

RECEIVED

OFFICE OF COMMISSION CLERK

JUN 16 1983

FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32301

Florida Public Service Commission

Wednesday, June 8, 1983

Met pursuant to notice at 9:30 a.m.

BEFORE: COMMISSIONER GERALD L. GUNTER, Chairman
COMMISSIONER JOSEPH P. CRESSE
COMMISSIONER JOHN R. MARKS, III
COMMISSIONER KATIE NICHOLS

APPEARANCES:

JOHN M. STIPANOVICH, of the firm Fowler, White,
Gillen, Boggs, Villareal & Banker, P. A., Post Office Box
1438, Tampa, Florida 33601, Telephone No. (813) 228-7411,
appearing on behalf of the City of Tampa.

JAMES D. BEASLEY, of the firm Ausley, McMullen,
McGehee, Carothers & Proctor, Post Office Box 391,
Tallahassee, Florida 32302, Telephone No. (904) 224-9115,
appearing on behalf of Tampa Electric Company.

2-17
1 Q. Will you please state your name, business
2 address and occupation?

3
4 A. My name is Richard D. Garrity. My business
5 address is City Hall Plaza, 5th Floor, Tampa,
6 Florida 33602. I am Urban Environmental Coordina-
7 tor for the City of Tampa, and, additionally, I am
8 Project Administrator of the McKay Bay Refuse-to-
9 Energy Project.

10
11 Q. Would you please give us a brief outline of
12 your educational background and professional
13 experience?

14
15 A. I was educated in the public school system in
16 Boston, Massachusetts, and received a Bachelor of
17 Arts degree, a Master of Science degree, and a
18 Doctor of Philosophy degree, all in Biological
19 Sciences from Boston University, Northeastern
20 University, and Florida State University, respec-
21 tively. I have served as Urban Environmental
22 Coordinator for the City of Tampa for the past five
23 years. As part of my duties, I served from 1980 to
24 mid-1981 as Project Director of the Hillsborough
25 County Solid Waste/ Resource Recovery Management

2-14

1 Committee. For the past two years I have served as
2 Director of the McKay Bay Refuse-to-Energy Project
3 ("the Project"). I was appointed Administrator of
4 the Project in March of this year. I am active in
5 several professional organizations, including the
6 Institutes of Solid Waste and Water Resources of
7 the American Public Works Association, the Govern-
8 mental Refuse Collection and Disposal Association,
9 and the American Chemical Society. Prior to join-
10 ing the City of Tampa, I was employed in the pri-
11 vate sector as a consulting environmental
12 scientist.

13
14 Q. What is the purpose of your testimony today?

15
16 A. I am testifying today in support of the peti-
17 tion filed by Tampa Electric Company ("Tampa Elec-
18 tric") in this matter. Specifically, I am testify-
19 ing in support of the request of Tampa Electric for
20 clarification from the Commission regarding the
21 propriety of energy and capacity payments to be
22 made by Tampa Electric to the City of Tampa, pur-
23 suant to the Small Power Production Agreement exe-
24 cuted by Tampa Electric and the City of Tampa on
25 August 26, 1982, and in support of Tampa

1 Electric's request that it be allowed to recover
2 such payments from its customers.
3

219
4 Q. Would you describe the Project that is the
5 subject of the Small Power Production Agreement
6 between the City of Tampa and Tampa Electric?
7

8 A. The Project evolved over a five year period of
9 careful and thorough resource recovery feasibility
10 studies, procurement planning, and contract nego-
11 tiations. A driving force in the implementation of
12 the Project was the desire to eliminate the land-
13 filling of raw solid waste to avoid the increasing
14 expense and potential environmental problems asso-
15 ciated with landfilling above the high water table
16 in central Florida.

17 The McKay Bay Refuse-to-Energy Facility ("the
18 Facility") is designed to burn 1,000 tons of muni-
19 cipal solid waste per day while producing steam
20 that will be used to generate electricity. The
21 Facility will utilize European, mass burn techno-
22 logy, whereby solid waste is incinerated with
23 little or no preprocessing. Mass burn technology
24 has been used extensively and successfully in
25 Europe since the early 1930's.

2-20

1 The principal components of the Facility will
2 consist of the proprietary combustion grate/rotary
3 kiln system, the boilers, electrostatic precipita-
4 tors, and a turbine generator. Combustion will
5 take place in four refractory furnaces, each having
6 a daily capacity of 250 tons. The hot gases crea-
7 ted by combustion will pass through boiler sec-
8 tions, thereby generating steam. The steam will
9 drive a 22.8 MW full condensing turbine generator.
10 The electricity generated will flow to on-site
11 electrical switch gear for voltage step-up, and it
12 will then be transferred along a 1.6 mile tie-line
13 to Tampa Electric's Hooker's Point Substation.
14 Water from the City of Tampa's Hooker's Point
15 Advanced Wastewater Treatment Plant will be piped
16 to the Facility for use as cooling water.

17 The electricity produced by the Facility and
18 sold to Tampa Electric will satisfy the electrical
19 needs of approximately 10,000 homes, replacing the
20 equivalent of approximately 290,000 barrels of oil
21 per year.

22
23 Q. Would you briefly describe the Small Power
24 Production Agreement to which you referred?
25

1 A. The Small Power Production Agreement between
2 the City and Tampa Electric contains provisions
3 for: (1) the purchase by Tampa Electric of the net
4 output of electric power generated by the Facility;
5 and (2) the construction and maintenance by Tampa
6 Electric of a 69 kv transmission line with relay
7 protection and metering between the Facility and
8 the Hooker's Point Substation at the City's ex-
9 pense. Tampa Electric's contracted price for the
10 design and construction I have described is
11 \$408,953, subject to simple 8.5% per year escala-
12 tion from July, 1982, to the Notice to Proceed with
13 construction.

14 Payments for electricity generated by the
15 Facility and sold to Tampa Electric will be based
16 on Tampa Electric's avoided fuel and purchased
17 power costs. Additionally, Tampa Electric will pay
18 the City of Tampa line loss credits due to the
19 close proximity of the Facility to Tampa Electric's
20 load center. The avoided cost for electricity gen-
21 erated by the Facility will be determined on an
22 hour-by-hour basis for Tampa Electric's most expen-
23 sive alternative source for the last 100 MW decre-
24 mental block of power. Therefore, the per megawatt
25

22

1 hour rate will fluctuate hourly and be dependent on
2 the price of fuel and the character of the displa-
3 ced electric generation. Monthly energy payments
4 will be the sum of the appropriate hourly rates
5 during the month, plus the payment for line loss
6 credit. The line loss credit will be based on the
7 average line losses for the applicable service
8 area (currently 3.3%) with a minimum of 2%. A 3%
9 line loss credit was assumed for the base case eco-
10 nomic analysis utilized to establish the financial
11 feasibility of the Facility.

12 In addition to energy payments and line loss
13 credits, capacity payments, conditioned on Florida
14 Public Service Commission approval, will be paid by
15 Tampa Electric for the generating capacity added by
16 the Facility to Tampa Electric's power grid system.
17 To qualify for the payment of capacity credits, the
18 Facility must generate each month at least 70% of a
19 guaranteed capacity level. The amount to be paid
20 by Tampa Electric for capacity will be the charge
21 for Firm Schedule "B" power, which is tied to Tampa
22 Electric's average in-place capital cost for gener-
23 ating capacity. Like the monthly energy payment,
24 capacity payments will be made monthly and will be

25

1 based on the total kilowatt hours generated during
2 a billing period (one month) divided by the total
3 hours during such billing period.

2.23
4 The City must guarantee a capacity level to
5 Tampa Electric. If, at any time, the Facility
6 fails:

7
8 (1) to generate electricity for an aggregate
9 period of six months during any twelve month
10 period; or

11 (2) to generate at least 70% of the guaran-
12 teed capacity for a period of twelve conse-
13 cutive months;

14
15 then Tampa Electric will suspend capacity payments
16 for the following twelve months. If this failure
17 occurs during the first five years of operation,
18 and, at the end of the suspension period, the
19 Facility does not generate electricity at a minimum
20 of 70% of the guaranteed capacity level, the City
21 must immediately begin making monthly payments to
22 Tampa Electric equivalent to the monthly per KW
23 equivalent of the megawatts of net capacity that
24 the City has guaranteed.

25

2.24

1 Any such repayments shall be calculated on a
2 month to month basis, with each monthly repayment
3 being based on the then most current rate for Firm
4 Schedule "B" Power, until either (1) the total of
5 such monthly repayments equal the total number of
6 months Tampa Electric paid capacity payments to the
7 City during the first five years or (2) the City
8 resumes earning capacity payments in accordance
9 with the terms of the Agreement. If capacity
10 failure occurs after the first five years of opera-
11 tion, and if, at the end of the suspension period,
12 the Facility does not generate electricity at a
13 minimum of 70% of the guaranteed capacity level,
14 then the repayment period for prior capacity pay-
15 ments is reduced to three years. These provisions
16 allow Tampa Electric to pass along to its rate
17 payers costs only for energy and capacity actually
18 available to its system.

19
20 Q. What assurances are there that there will be
21 funds available to the City of Tampa to meet poten-
22 tial capacity repayment liabilities?

23
24 A. The City of Tampa has executed full service
25 contracts with Waste Management, Incorporated

2-25

1 ("WMI"), for the design, construction, operation,
2 and maintenance of the Facility. The contracts
3 define specific performance criteria with respect
4 to energy production, throughput capacity, and dis-
5 charges to the environment. If the Facility fails
6 to meet these performance criteria as the result of
7 WMI's acts or omissions, WMI will be obligated to
8 pay the City liquidated damages. These damage pay-
9 ments would be equivalent to the value of the reve-
10 nues which would have been generated by the Faci-
11 lity had it been operating at the guaranteed le-
12 vels. The City also has purchased extensive insur-
13 ance coverages to provide funds in the event that
14 there is a performance shortfall at the Facility
15 due to uncontrollable circumstances.

16
17 Q. What is the nature of the commitment of the
18 City of Tampa to resource recovery as a means of
19 solid waste disposal, specifically with respect to
20 a guaranteed flow of combustible waste for the
21 Facility?

22
23 A. The City of Tampa has made contractual commit-
24 ments to supply a guaranteed amount of solid waste
25 (200,000 tons per year) to the Facility for the

2-26

1 next twenty years. WMI has guaranteed that it will
 2 burn 300,000 tons per year. In addition to its
 3 contractual commitments, the City has very strong
 4 incentives to deliver all available solid waste to
 5 the Facility. First, the City is faced with the
 6 very real logistical problem of disposing of an
 7 ever increasing amount of solid waste on a daily
 8 basis. At present, it is estimated that approxi-
 9 mately 240,000 tons per year of processible solid
 10 waste are generated within the incorporated boun-
 11 daries of the City, and this quantity is expected
 12 to increase gradually to a level that will even-
 13 tually exceed the guaranteed capacity of the Faci-
 14 lity. Of the residential solid waste currently
 15 generated within the City, 75% is collected direct-
 16 ly by the City. The remaining solid waste gene-
 17 rated within the City is being collected by private
 18 haulers permitted by the City. It is anticipated
 19 that additional solid waste will be obtained as a
 20 result of disposal contracts with Plant City and/or
 21 Temple Terrace, or by the delivery of solid waste
 22 generated outside the boundaries of the City and
 23 collected by private haulers. Based upon the
 24 growth projections for population and employment,
 25 the following solid waste quantities are projected:

2-27

Year	Tampa	Plant City	Temple Terrace	Total
1985	248,500	12,000	8,200	268,700
1990	275,000	13,000	8,700	296,700
1995	302,800	13,900	9,000	325,700
2000	331,800	16,200	9,100	357,100

Additionally, the City realizes economic benefits from burning solid waste at the Facility, and, therefore, it has adopted an ordinance ("the Flow Control Ordinance"), which provides that "all solid waste and any recyclable materials mixed therein, except hazardous wastes once placed in a permitted refuse bin, in a container at a collection location, or at curbside, becomes the exclusive property of the City." The Flow Control Ordinance further provides that it is unlawful "to burn or dispose of any solid waste generated or brought within the City" except at a City designated facility. Recovery of recyclable materials from any solid waste generated or brought within the City must occur prior to the placing of such solid waste into any permitted refuse bin or container or

2-28
1 at curbside. The City has covenanted in the bond
2 resolution adopted in connection with the financing
3 of the Facility to exercise complete control over
4 the collection and disposal of solid waste within
5 its jurisdiction and to comply with its contractual
6 obligations to deliver at least 200,000 tons per
7 year of processible solid waste to the Facility.

8 Finally, the City has instituted a permitting
9 system for solid waste collectors whom the City may
10 allow in the future to collect or dispose of solid
11 waste within the City's boundaries. The Flow Con-
12 trol Ordinance provides that "any person holding
13 one or more permits to engage in the business of
14 collection, transportation or disposal of solid
15 waste, or recycling of recyclable materials, within
16 the City" must annually report its collection acti-
17 vities for the preceding year.

18
19 Q. What is the relative importance of the pro-
20 posed energy sales and capacity payments from Tampa
21 Electric to the City of Tampa in the financial pro-
22 jections for the Project?

23
24 A. During the first complete year of operation of
25 the Facility, revenues from energy sales and capa-

2-29
1 city payments represent approximately 16% of the
2 total projected revenues of the Facility. Revenues
3 from projected capacity payments during the first
4 full year of operation will represent 3.5% of the
5 total Facility revenues and approximately 22% of
6 all energy related revenues. Other revenues asso-
7 ciated with the Facility are investment earnings
8 and system user fees. Should electricity sales and
9 capacity payments be reduced, system user fees
10 (fees paid by the citizens of the City of Tampa for
11 solid waste collection and disposal) would have to
12 be increased accordingly.

13
14 Q. Would you care to summarize your testimony?

15
16 A. I believe the Facility is a state of the art
17 response to the policy objectives of the City of
18 Tampa, the State of Florida, and the Florida Public
19 Service Commission concerning the environmentally
20 sound disposal of solid waste and the congeneration
21 of electrical power. The solid waste disposal and
22 energy generation system that includes the Facility
23 is economically feasible, environmentally desire-
24 able, and, above all, technically reliable. The
25 Small Power Production Agreement was negotiated at

2-30

1 arms length in light of all Commission guidelines
 2 available at the time. And I believe the Agreement
 3 is fair - fair to the City of Tampa, fair to Tampa
 4 Electric and fair to the consuming public. I urge
 5 Commission approval of Tampa Electric's petition in
 6 this matter.

7
 8 Q. Does this conclude your testimony?

9
 10 A. Yes.

11 (End of prefiled direct testimony.)
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