

LANDERS & PARSONS, P.A.
ATTORNEYS AT LAW

9

CINDY L. BARTIN
DAVID S. DEE
JOSEPH W. LANDERS, JR.
JOHN T. LAVIA, III
FRED A. McCORMACK
PHILIP S. PARSONS
ROBERT SCHEFFEL WRIGHT

HOWELL L. FERGUSON
OF COUNSEL

VICTORIA J. TSCHINKEL
SENIOR CONSULTANT
NOT A MEMBER OF THE FLORIDA BAR

310 WEST COLLEGE AVENUE
POST OFFICE BOX 271
TALLAHASSEE, FLORIDA 32302
TELEPHONE (904) 681-0311
TELECOPY (904) 224-6696

July 17, 1997

BY HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: **Petition of Lee County, Florida for a Declaratory
Statement Concerning the Conservation Status of Electric
Power and Energy Produced from the Lee County Resource
Recovery Facility, FPSC Docket No. 770898 -EQ**

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of the above-styled petition, including a diskette with the petition in WordPerfect 5.1 format. Please confirm receipt of this filing by stamping the enclosed filing copy and returning the same to me via our runner.

Thank you again for your and your staff's kind, courteous, and professional assistance. If you have any questions, please give me a call.

Cordially yours,



Robert Scheffel Wright

Enclosures

DOCUMENT NUMBER DATE
07195 JUL 17 97
FPSC SYSTEMS DEPARTMENT

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Lee County, Florida)
for a Declaratory Statement Concerning)
the Conservation Status of Electric)
Power and Energy Produced from the)
Lee County Resource Recovery Facility)
_____)

DOCKET NO. _____-EQ

FILED: JULY 17, 1997

PETITION FOR DECLARATORY STATEMENT

LEE COUNTY, FLORIDA ("Lee County"), pursuant to section 120.565, Florida Statutes, and Rule 25-22.020, Florida Administrative Code, hereby files this its Petition for Declaratory Statement requesting that the Commission enter an order declaring that electric capacity and energy produced from the Lee County Resource Recovery Facility, a "solid waste facility" pursuant to Section 377.709, Florida Statutes, is properly considered as an energy conservation measure and may be counted toward meeting the energy conservation goals of an electric utility pursuant to Section 366.82(2), Florida Statutes, and Commission Rule 25-17.0021(1), Florida Administrative Code.

1. The name and address of the Petitioner are

Lee County, Florida
c/o Office of the County Attorney
2115 Second Street (ZIP 33901)
Post Office Box 398
Ft. Myers, Florida 33902

2. All pleadings, motions, orders, notices, and other documents directed to Lee County should be directed to the following:

David M. Owen
Office of the County Attorney
2115 Second Street (ZIP 33901)
Post Office Box 398
Ft. Myers, Florida 33902

and

Robert Scheffel Wright
Landers & Parsons, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302

3. Lee County seeks an interpretation of the following statutes and rules as they apply to Lee County's facts and circumstances: sections 377.709, 366.82(2), and 366.051, Florida Statutes, and Commission Rules 25-17.001 and 25-17.0021, Florida Administrative Code, relating to electric utilities' conservation goals.

4. Lee County has a real and immediate need for the requested declaratory statement because the Commission's interpretation and application of the subject statutes and rules to Lee County's circumstances will directly affect Lee County's ability to pursue contracts with electric utilities for the sale of firm capacity and energy from the Lee County Resource Recovery Facility.

STATUTES AND ORDERS INVOLVED

5. Lee County requests the Commission's interpretation of the following statutes and orders.

a. Section 366.81, Florida Statutes, relating to the State's policy regarding energy conservation, which provides in pertinent part as follows:

Since solutions to our energy problems are complex, the Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load-control systems be encouraged.

* * *

The Legislature further finds and declares that ss. 366.80-366.85 and 403.512 are to be liberally construed in order to meet the complex problems of . . . increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use, . . . and conserving expensive resources, particularly petroleum fuels.

(emphasis supplied)

b. Section 366.82(2), Florida Statutes, relating to electric utilities' energy conservation goals, which provides in pertinent part as follows:

(2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels . . .

c. Section 377.709, Florida Statutes, which encourages the development of facilities that generate electricity and recognizes that such electricity generation "represents an effective conservation effort." Section 377.709 provides in pertinent part as follows:

(1) LEGISLATIVE INTENT. - The Legislature declares that it is critical to encourage energy conservation in order to protect the health, prosperity, and general welfare of this state and its citizens. . . . The Legislature further declares that the combustion of refuse by solid waste facilities to supplement the electricity supply not only represents an effective conservation effort but also represents an environmentally preferred alternative to conventional solid

waste disposal in this state.

(emphasis supplied)

d. Section 366.051, Florida Statutes, which provides in pertinent part as follows:

Electricity produced by cogeneration and small power production is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state or consumed by a cogenerator or small power producer.

e. Commission Rule 25-17.001, Florida Administrative Code, which provides in pertinent part as follows:

(2) The Florida Energy Efficiency and Conservation Act requires increasing the efficiency of the electric system of Florida, increasing the conservation of expensive resources, such as petroleum fuels, reducing the growth rate of weather sensitive peak demand, and reducing and controlling the growth rate of kilowatt hour consumption to the extent cost effective.

(emphasis supplied)

f. Commission Rule 25-17.0021(1), Florida Administrative Code, which provides in pertinent part as follows:

(1) The Commission shall establish numerical goals for each affected electric utility, as defined by s. 366.82(1), F.S., to reduce the growth rates of weather-sensitive peak demand, to reduce and control the growth rates of electric consumption, and to increase the conservation of expensive resources, such as petroleum fuels.

(emphasis supplied)

THE FACTS PRESENTED

6. Lee County is a political subdivision of the State of Florida. Lee County, Florida owns and operates the Lee County

Resource Recovery Facility, a 40 MW waste-to-energy facility located in Lee County. The facility is a qualifying small power production facility within the meaning of applicable rules of the Commission and the Federal Energy Regulatory Commission, and is also a "solid waste facility" within the meaning of section 377.709, Florida Statutes. The municipal solid waste that Lee County burns to produce electricity is composed predominantly of renewable-source waste material. Lee County currently sells the net electrical energy output of the Facility, approximately 180,000 megawatt-hours per year, to Florida Power & Light Company pursuant to a contract based on a discount from FPL's as-available energy costs. The Facility enables Lee County, for the benefit of its citizens, to dispose of solid waste in an environmentally preferable manner, as compared to conventional landfill disposal, and to reduce the volume of municipal solid waste flowing to landfills by more than 80 percent. In addition, because the Facility produces electricity predominantly from the combustion of refuse, the Facility contributes significantly to the State's energy conservation goals and to reducing the State's dependence on expensive fossil fuels.

THE DECLARATORY STATEMENT SOUGHT

7. Lee County respectfully asks the Commission to enter an order declaring that electric capacity and energy produced from the Lee County Resource Recovery Facility, a "solid waste facility" pursuant to Section 377.709, Florida Statutes, is properly considered as an energy conservation measure and may properly be

counted toward meeting the energy conservation goals of an electric utility pursuant to Section 366.82(2), Florida Statutes, and Commission Rule 25-17.0021(1), Florida Administrative Code.

DISCUSSION

8. The need for the Commission's declaration arises from the uncertainty as to the treatment that may be accorded to firm capacity and energy produced by "solid waste facilities" as defined in Section 377.709, Florida Statutes, and purchased by electric utilities that are subject to the energy conservation goals requirements of Section 366.82(2), Florida Statutes. This uncertainty impedes Lee County's ability to sell the output of its Resource Recovery Facility at fair, compensatory rates.

9. On the facts presented, the Commission must recognize that capacity and energy produced from the Lee County Resource Recovery Facility "represents an effective conservation effort" as declared by the Legislature in Section 377.709, and accordingly, the Commission should declare that firm capacity and energy produced by the Lee County Resource Recovery Facility can count toward electric utilities' energy conservation goals under FLECA.

10. The Commission should also recognize and affirm that firm capacity and energy produced by the Lee County Resource Recovery Facility constitute a legitimate energy conservation measure because this power resource promotes, and is specifically consistent with, the State's overall energy conservation policy and with numerous specific provisions of the relevant statutes and rules. Perhaps most importantly, firm capacity and energy produced

by the Lee County Resource Recovery Facility promotes the State's specific policy and goal of "conserving expensive resources, particularly petroleum fuels." In most hours (if not in every hour) that oil is the marginal electric generating fuel in Peninsular Florida, energy produced by the Lee County Resource Recovery Facility displaces such oil fuels. In other hours, energy produced by the Lee County Resource Recovery Facility displaces natural gas, and perhaps sometimes coal. (While coal is less expensive than oil and gas, it is a non-renewable resource that is still much more expensive than municipal solid waste.) Energy produced by small power producers, such as the Lee County Resource Recovery Facility, is also expressly recognized as providing benefits to the public when it is integrated into the State's energy supply system. Fla. Stat. § 366.051 (1995).

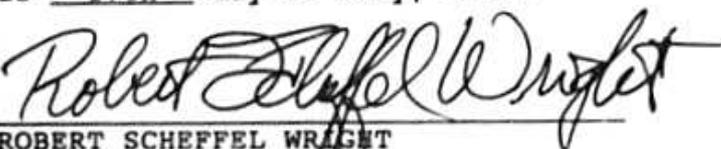
11. Thus, recognizing energy produced by the Lee County Resource Recovery Facility as an energy conservation measure is specifically consistent with Sections 366.81 and 366.82(2), Florida Statutes, and with Commission Rules 25-17.001(2) and 25-17.0021(1), Florida Administrative Code.

12. Finally, power and energy produced from the Lee County Resource Recovery Facility must, necessarily, be cost-effective to any purchasing utility and its ratepayers because the Commission must generally approve the rates at which power and energy from the Lee County Resources Recovery Facility would be sold and purchased.

CONCLUSION

WHEREFORE, Lee County respectfully asks the Commission to enter an order declaring that firm capacity and energy produced by the Lee County Resource Recovery Facility and purchased by an electric utility subject to the energy conservation goals requirements of FEECA, may be counted toward the purchasing utility's energy conservation goals established by the Commission pursuant to Section 366.82(2), Florida Statutes, and Commission Rule 25-17.0021, F.A.C.

Respectfully submitted this 17th day of July, 1997.



ROBERT SCHEFFEL WRIGHT
Florida Bar No. 966721
LANDERS & PARSONS, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302
Telephone (904) 681-0311
Telecopier (904) 224-5595

and

DAVID M. OWEN
Florida Bar No. 380547
2115 Second Street (ZIP 33901)
Post Office Box 398
Ft. Myers, Florida 33902
Telephone (941) 335-2236
Telecopier (941) 335-2606

Attorneys for Lee County, Florida