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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION  
CLERK

Petition of Lee County, )  
Miami-Dade County, and Montenay-Dade, ) DOCKET NO. \_\_\_\_\_-EQ  
Ltd., to Initiate Rulemaking )  
Regarding Firm Capacity and Energy ) FILED: FEBRUARY 27, 2002  
Payments to Qualifying Facilities )

020166-EQ

PETITION TO INITIATE RULEMAKING

Petitioners, Lee County, Miami-Dade County, and Montenay-Dade, Ltd., collectively referred to herein as the "Petitioners," pursuant to Rule 28-103.006, Florida Administrative Code ("F.A.C.") and Section 120.54(7), Florida Statutes,<sup>1</sup> respectfully request the Florida Public Service Commission (the "Commission") to amend Commission Rule 25-17.0832, F.A.C., as set forth herein. In summary, the Petitioners' proposed amendments would provide for fair and equal treatment of qualifying facilities and utilities with regard to the costs of alternate power supply resources that would be borne by Florida electric consumers and provide for certain protections for consumers against unanticipated fuel cost increases. The Petitioners request the Commission to adopt the Petitioners' proposed amendments to the subject Rule because those amendments are consistent with applicable statutes, are in the best interests of electric

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SEC \_\_\_\_\_  
OTH \_\_\_\_\_

<sup>1</sup> All references herein to the Florida Statutes are to the 2001 edition thereof.

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FPSC-COMMISSION CLERK

consumers in Florida, and are in the public interest. In further support of their Petition, the Petitioners state as follows.

**PROCEDURAL BACKGROUND**

1. The name, address, and telephone number of Petitioner Lee County, Florida are as follows:

Lee County Department of Solid Waste Management  
ATTN: Lindsey J. Sampson, P.E.  
2013 Altamonte Avenue  
Fort Myers, Florida 33901  
(941) 479-8181.

2. The name, address, and telephone number of Petitioner Miami-Dade County, Florida, are as follows:

Miami-Dade County  
Department of Solid Waste Management  
8675 N.W. 53<sup>rd</sup> Street, Suite 201  
Miami, Florida 33166  
(305) 594-1540.

3. The name, address, and telephone number of Petitioner Montenay-Dade, Ltd. are as follows:

Montenay-Dade, Ltd.  
ATTN: Benjamin F. Gilbert, Jr., P.E., Vice President  
6990 N.W. 97<sup>th</sup> Avenue  
Miami, Florida 33178  
(305) 593-7202 .

4. All notices, orders, pleadings, correspondence, and other legal papers to be served on Petitioner Lee County, Florida should be served on:

Robert Scheffel Wright  
Diane K. Kiesling  
Landers & Parsons, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
(850) 681-0311

with a courtesy copy to

David M. Owen  
Assistant County Attorney  
Lee County, Florida  
Post Office Box 398  
Fort Myers, Florida 33902.

5. All notices, orders, pleadings, correspondence, and other legal papers to be served on Petitioner Miami-Dade County, Florida, should be served on:

Robert Scheffel Wright  
Diane K. Kiesling  
Landers & Parsons, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
(850) 681-0311

with a courtesy copy to

Eric A. Rodriguez  
Assistant County Attorney  
Miami-Dade County  
111 N.W. 1<sup>st</sup> Street  
Miami, Florida 33128.

6. All notices, orders, pleadings, correspondence, and other legal papers to be served on Petitioner Montenay-Dade,

Ltd., should be served on:

Robert Scheffel Wright  
Diane K. Kiesling  
Landers & Parsons, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
(850) 681-0311

with a courtesy copy to

Frederick M. Skopp  
General Counsel  
Montenay International Corp.  
3225 Aviation Avenue, Fourth Floor  
Miami, Florida 33133.

7. Based on the apparent requirements of Rule 28-103.006, F.A.C.,<sup>2</sup> the Petitioners have filed this Petition to Initiate Rulemaking as a pleading to initiate a new docket. The Petitioners have also simultaneously filed a motion to consolidate their Petition with the Commission's existing proceeding relating to the same rule, PSC Docket No. 001574-EQ, In Re: Proposed Amendments to Rule 25-18.0832, F.A.C., Firm Capacity and Energy Payments. The Commission initiated the existing docket in October, 2000, and has proposed several amendments to its Rule 25-17.0832, F.A.C., which relates to payments to qualifying facilities, like the Petitioners, who are eligible to sell firm electric capacity and energy to public utilities pursuant to standard offer contracts. The Petitioners

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<sup>2</sup> Rule 28-103.006(1), F.A.C., Petitions to Initiate Rulemaking, provides in pertinent part as follows: "Petitions to initiate rulemaking pursuant to Section 120.54(7), F.S., include all petitions to adopt, amend, or repeal a rule."

have participated in Docket No. 001574-EQ via written comments, presentation to the Commission at agenda conferences, or both. On November 5, 2001, the Commission issued its Order No. PSC-01-2175-PCO-EQ establishing the procedures to be followed in this proceeding (the "Order Establishing Procedure").

8. In preparing their prefiled written comments to be filed pursuant to the Order Establishing Procedure in Docket No. 001574-EQ, the Petitioners identified additional issues relating to payments under standard offer contracts, and thus to Commission Rule 25-17.0832, F.A.C., that are appropriate for the Commission to address. Because there is an existing docket relating to the Commission's rules affecting such payments, the Petitioners believe that the interests of the Commission, the interests of all parties, and the efficient administration of justice can probably best be served by addressing the Petitioners' proposed amendments within that existing docket. Accordingly, the Petitioners have simultaneously moved the Commission to consolidate this Petition to Initiate Rulemaking with the existing docket.

#### **FACTUAL BACKGROUND**

9. Each of Petitioners Lee County and Miami-Dade County owns a solid waste facility within the meaning of Section 377.709, Florida Statutes, and Rule 25-17.091, F.A.C. Petitioner Montenay-Dade, Ltd. operates the Dade County Resources Recovery

Facility, which is the solid waste facility owned by Miami-Dade County, pursuant to an operations and management agreement between Miami-Dade County and Montenay-Dade, Ltd. Each of the solid waste facilities owned or operated by the Petitioners is a facility owned or operated by, or on behalf of, a local government for the purpose of disposing of solid waste, as that term is defined in Section 403.703(13), Florida Statutes, by burning solid waste, a process that produces heat; the heat thus produced is then used to produce steam in boilers; and the steam is then processed through steam electric turbine generators that produce electrical energy in amounts greater than actually required to operate each facility.

10. Each of the solid waste facilities owned or operated by the Petitioners is also a qualifying small power production facility within the meaning of Rule 25-17.080, F.A.C., the Public Utility Regulatory Policies Act of 1978, and the rules of the Federal Energy Regulatory Commission promulgated thereto. See esp. 18 CFR § 203(a), 204, & 206. Pursuant to Commission Rule 25-17.0832(4)(a), the owners or operators, or both, of each of the Petitioners' solid waste facilities are eligible to execute a standard offer contract for the sale of firm electric capacity and energy with a public utility.

#### **ACTION REQUESTED**

11. The Petitioners respectfully request that the

Commission amend the following sections of Rule 25-17.0832, F.A.C., as indicated in type-and-strike format below.

A. Amend Rule 25-17.0832(4)(b), F.A.C., to read as follows:

(4) Standard Offer Contracts.

\* \* \*

(b) The rates, terms, and other conditions contained in each utility's standard offer contract or contracts shall be based on the need for and equal to the avoided cost of deferring or avoiding the construction or purchase of additional generation capacity or parts thereof by the purchasing utility. Each standard offer contract shall provide the option for the qualifying facility to be paid rates equal to the costs that would be borne by the utility's general body of ratepayers if the utility were to build its avoided unit or purchase capacity and energy from another source. Without limitation, this shall include payments calculated on the same basis as the utility's revenue requirements where the qualifying facility signs a standard offer contract with a term equal to the projected life of the avoided unit, payments calculated on the same basis as payments to be made pursuant to a power purchase arrangement where such power purchase is the generation resource avoided by the purchase from the qualifying facility, and payments calculated on the same basis as the utility's proposed revenue requirements for a proposed plant where the utility plans to limit cost recovery for the proposed plant to a fixed period of time. This requirement shall not preclude the use of the value of deferral payment methodology to calculate capacity payments where the qualifying facility proposes to sign a contract with a term less than the projected life of the avoided unit. Rates for payment of capacity sold by a qualifying facility shall be specified in the contract for the duration of the contract. In reviewing a utility's standard offer contract or contracts, the Commission shall consider the criteria specified in paragraphs (3)(a) through (3)(d) of this rule, as well as any other information relating to the determination of the utility's full avoided costs.

- B. Amend Rule 25-17.0832(4)(e)7., F.A.C., to read as follows:

(E) Minimum Specifications. Each standard offer contract shall, at minimum, specify:

\* \* \*

7. The period of time over which firm capacity and energy shall be delivered from the qualifying facility to the utility. Firm capacity and energy shall be delivered, at a minimum, for a period of ten years, commencing with the anticipated in-service date of the avoided unit specified in the contract. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in-service date of the avoided unit. Consistent with the utility's obligation to purchase the firm capacity and energy that a qualifying facility has available to sell to a utility, the qualifying facility shall have the option to specify the duration of its obligation to deliver firm capacity and energy within the above parameters.

- C. Add new subsection (5)(d) to Rule 25-17.0832(5), F.A.C., as follows:

(d) As a risk management and fuel-cost hedging measure, each public utility subject to this rule shall provide for a minimum of twenty (20) percent of the energy purchased pursuant to standard offer contracts entered into following the effective date of this subsection to be purchased at the projected energy costs reflected in the utility's analyses and plans as of the date that the standard offer contract is executed by the utility and the qualifying facility. Such projected energy costs shall reflect not only the projected fuel costs associated with the avoided unit, but also the avoided operation and maintenance costs of the avoided unit, and shall also be based on the projected operations of the avoided unit as of the time the standard offer contract is executed. Further, all such costs shall be calculated on a directly comparable basis to that upon which the utility would calculate the costs associated with its avoided unit for the purpose of seeking recovery of such costs from its customers if it were to build and operate the avoided unit.



D. Amend Rule 25-17.0832(6)(a), F.A.C., to read as follows:

(6) Calculation of standard offer contract firm capacity payment options.

(a) Calculation of year-by-year value of deferral. The year-by-year value of deferral of an avoided unit shall be the difference in revenue requirements associated with deferring the avoided unit one year.

All analyses to identify the type and timing of a utility's avoided unit, and all calculations of the value of deferral of an avoided unit, shall be conducted on a basis that treats supply-side and demand-side options equally and comparably. Specifically, all such analyses and calculations shall include only the impacts of existing and contractually committed demand-side management measures and shall not include the effects of any projected demand-side management measures that are not already in place or contractually committed to the utility. The value of deferral shall be calculated as follows:

\* \* \*

(The Petitioners suggest no changes to the existing language of Rule 25-17.0832(6)(a) from this point to the end of the section.)

#### **REASONS FOR THE REQUESTED AMENDMENTS**

12. The proposed amendments to Rule 25-17.0832(4)(b), F.A.C., will provide fair, equal, level-playing-field, and non-discriminatory treatment of purchases from qualifying facilities as compared to the costs incurred, and rate impacts resulting from, utility-built capacity or other power purchases made by the utility.

13. The proposed amendments to Rule 25-17.0832(4)(e)7., F.A.C., will effectuate the legislative requirements of Section 366.051, Florida Statutes, and of PURPA, by requiring public utilities' standard offer contracts to provide for the purchase

of all electricity offered for sale by eligible QFs on a fair, non-discriminatory basis.

14. Proposed new Rule 25-17.0832(5)(d), F.A.C., will provide the opportunity for purchases under standard offer contracts to include protection for the electric consumers served by Florida public utilities from unanticipated fuel cost increases. The proposed new rule will accomplish this by requiring that a minimum of 20 percent of all energy purchased pursuant to standard offer contracts be priced according to a fixed payment stream based on the utility's projected fuel costs and projected variable operating and maintenance costs, and based on the projected operations of the utility's avoided unit, as reflected in the utility's analyses and plans as of the date that the standard offer contract is executed by the utility and the qualifying facility.

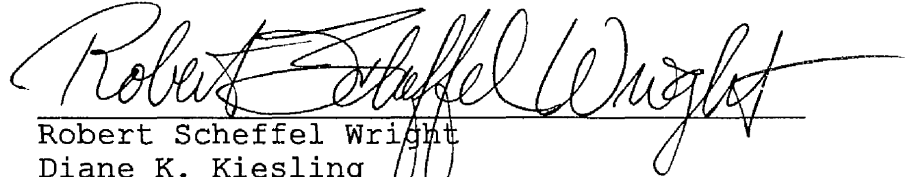
15. The proposed amendments to Rule 25-17.0832(6)(a), F.A.C., will ensure that analyses of supply-side and demand-side measures are conducted on a fair, comparable, and non-discriminatory basis by requiring that such analyses not include uncommitted resources of either type.

#### **RELIEF REQUESTED**

WHEREFORE, for the reasons set forth above, Petitioners, Lee County, Miami-Dade County, and Montenay-Dade, Ltd., respectfully request the Florida Public Service Commission to amend its Rule

25-17.0832, F.A.C., as specifically indicated above.

Respectfully submitted this 27th day of February, 2002.

A handwritten signature in black ink, reading "Robert Scheffel Wright". The signature is written in a cursive style with a horizontal line drawn across the middle of the signature.

Robert Scheffel Wright  
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Attorneys for Lee County, Florida,  
Miami-Dade County, Florida, and  
Montenay-Dade, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (\*), or U.S. Mail, on this 27<sup>th</sup> day of February, 2002, to the following:

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